

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Southern Railway Company

STATEMENT OF CLAIM:

1. Let it be known that on Monday, June 19, 1989, that the Southern Railroad Company violated the terms and conditions of the controlling Agreement dated March 1, 1975, as amended. The rule specifically violated was Rule 34. This rule was violated when Carmen C. J. Ward and S. L. Byrd were not permitted to "punch in" and perform their regular assigned duties of the previously mentioned date. Upon reporting to work both were advised that their footwear did not comply with the Norfolk-Southern Safety and General Conduct Rule 1001. Carman Byrd was wearing slip on type boots and Carman Ward was wearing shoes that were not six (6) inches high. They were instructed to leave the property until they could comply with this rule, which they did. Carman Ward purchased a pair of boots that met the requirements of this rule and returned to work the following day. Carman Byrd also acquired the required footwear and returned to work the following day also. The Employees will show that these two (2) carmen were unjustly disciplined, forced to comply with rules that did not apply, forced to spend their own money to comply with these rules that did not apply to them; they also were deprived of eight (8) hours pay on June 19, 1989 when they were not permitted to work their assigned job. All of the aforementioned without the benefit of a preliminary investigation.

2. That accordingly, the Southern Railroad Company now be ordered to provide the following relief: (a) That both Carman Byrd and Ward be fully compensated for the eight (8) hours pay at the regular Carman's rate in effect on June 19, 1989 when they were relieved of their duties for reasons not supported by the Agreement and as we will show in direct violation of the Agreement; (b) That Carman Ward be fully compensated for the boots he was required to purchase as a term of his employment. This at a cost of \$35.66. The Employees also request that he be compensated for the shoes that he was wearing at the time the discipline was imposed. This due to the fact that the Southern Railroad Company has decided that these shoes are no longer any good for work shoes at Coster Shops. This was another unnecessary expense in the amount of \$32.36; (c) The Employees are further requesting that the Company post yet another bulletin concerning footwear that states that all previous rules, bulletins and instructions concerning footwear be now considered NULL and VOID. That from this date forward all employees are to purchase footwear that they deem appropriate for their job; (d) That if this is not agreeable with the Southern Railroad Company and the bulletins now posted remain in effect that the Southern Railroad Company be required to purchase all required footwear and incur all other expenses involved; (e) That in the future all employees be governed by the same standards.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization alleges that the Carrier violated Rule 34 of the Agreement when it unjustly disciplined the Claimants on June 19, 1989. On that date they were not permitted to punch in until they obtained proper footwear for work. According to the Carrier the Claimants were in violation of Carrier's Safety and General Conduct Rules by the type of shoes they wore to work on the day in question. The Claimants did not perform service on June 19, 1989 but they did return to service the following day wearing proper footwear. They were not paid for June 19, 1989.

It is the Organization's position that the Claimants were disciplined without benefit of an investigation as required by Rule 34 of the Agreement, were wrongly required to incur the expense of purchasing new safety footwear, and were treated inequitably by the Carrier by the manner in which it enforced its Safety Rules applicable to proper footwear for work.

A review of the record shows that subsequent to the incident on June 19, 1989, the Carrier posted the following Shop Bulletin on that same day:

"All Employees, Coster Shop:

NS Safety and General Conduct Rule 1001 states in pertinent part:

Employees who work around moving equipment, tracks or uneven ground will wear shoes that provide ankle support. Any footwear chosen must provide firm ankle support, prevent slipping and be of substantial construction. Footwear provides adequate ankle support if it is six (6) inches or more in height and fits snugly about the leg and ankle. Tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip-on type boots do not satisfy the requirements of Rule 1001. Hard-sole, lace-up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle meet the requirements of Rule 1001. Safety boots are strongly recommended.

It has been noted that several employees are not complying with this rule, specifically wearing low cut shoes or slip-on type boots.

Effective July 3, 1989, all employees will be expected to be in compliance with Rule 1001. Clerks will be exempt unless their duties require their presence in any of the shop areas.

M. J. Adamczyk
Manager Coster Shop"

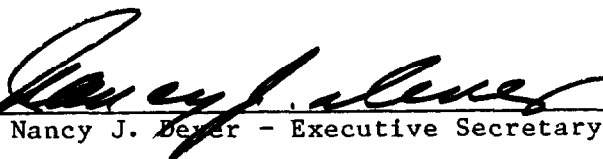
The Carrier may indeed post Safety Bulletins when it is a question of workplace safety. But the Carrier cannot expect employees to obey such Bulletins prior to their being posted. It is clear from the Bulletin posted on June 19, 1989, cited in the foregoing for the record, that "...effective July 3, 1989 all employees (were to) be expected to be in compliance with" the Rule at bar. All employees, that is, except the Claimants who were required to be in compliance on June 19, 1989. Requirements placed on the Claimants were, therefore, inappropriate and the Board directs that the Carrier compensate them for eight (8) hours' pay for the date of June 19, 1989. The Board has been presented with no Rule requiring the Carrier to reimburse the Claimants for purchase of safety footwear and that part of the claim is denied. There was no violation of Rule 34 since the employees were not, technically, disciplined.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1991.