

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Detroit, Toledo and Ironton Railroad Company (DTI))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Detroit, Toledo and Ironton Railroad Company (DTI):

On behalf of S&C Maintainer F.V. Bratton, headquartered at Flat Rock, Michigan, assigned hours 7:30 A.M. to 4:00 P.M. assigned meal period 11:30 A.M. to 12:00 Noon; assigned rest days Saturday and Sunday; assigned territory the DT&I System.

(a) Carrier violated the parties' Schedule Agreement, as amended, particularly Rule 60 as evidenced by past practice, when on or about January 9, 1985, Claimant was required to sign payroll deduction order No. 38144 approving a deduction from his wages, the sum of \$44.00 to cover one set of prescription safety glasses. Such payroll deduction order states: 'Signed under protest.'

(b) Carrier now be required to reimburse S&C Maintainer F.V. Bratton \$44.00 for the violation referred to in part (a) above."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claimant is employed as a Signal Maintainer headquartered at Flat Rock, Michigan. Claimant broke his prescription safety glasses and put in for a new pair through Carrier's purchase procedures. When the glasses were delivered to Claimant, he was required to sign a payroll deduction form so that the cost of the glasses (\$44) could be taken out of his pay over three pay periods.

Claimant signed the payroll deduction form under protest and filed a Claim to recover the \$44. The Claim was denied at each step by Carrier and has been placed before the Board for final resolution.

The Organization contends that for many years prior to the takeover of the DTI by the GTW, Carrier always supplied safety glasses free of charge. The Organization relies on Rules 60 and 13 to support its position:

"Rule 60. The Railroad Company will furnish the employe such tools as are necessary to perform their work, except such small tools as are customarily furnished by skilled workmen."

"RULE 13. Safety glasses will be worn at all times while on the company property by all employes of the Maintenance of Way Department (Signal & Communication, Track and B&B)...."

Carrier contends that even if the DTI did supply safety glasses at no cost, the policy was not required by Agreement and could be changed by Management, as it deemed appropriate.

This Board has reviewed the record and the numerous cases presented on both sides. The Board is in Agreement that a bona fide past practice gives meaning to an ambiguous contract term or rises to the level of a Rule if no Rule exists. The Board is not, however, persuaded that a past practice of supplying prescription safety glasses on the DTI existed. That cannot be demonstrated from the record before us and consequently the Board is compelled to deny the instant Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.