NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 THIRD DIVISION Award No. 29656
Docket No. MW-29489
93-3-90-3-424

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement and established past practice when it unilaterally implemented 'New Safety Rule, J(3)A' and subsequently required Maintenance of Way employes to purchase and wear steel toed boots (Carrier's File 013.31-398).

(2) As a consequence of the aforesaid violation, the Carrier shall rescind 'New Safety Rule, J(3)A' and '... E. L. Black, S. S. No. 460-76-3322, Track Laborer; R. D. Lamont, S.S. No. 430-86-0430, Extra Gang Foreman; R. A. Norwood, S.S. No. 464-62-0037, Section Foreman; R. Oney, S.S. No. 446-92-1177, Section Foreman and Guy Bickham, S.S. No. 439-02-9823, Machine Operator and all the rest of the Maintenance of Way Employees all over the whole Railroad, that are currently required to obtain "Special Safety Shoes" by the Carrier's "NEW SAFETY RULE, J (3) A" with regard to mandatory "Steel toed boots, six (6) inch high tops, lace up type and sturdy soles: for the difference in what they had to pay for their new "Steel Toed Work Boots: and the Twenty-five (25) dollar allowance, that the Carrier has so graciously granted them toward a pair of boots that average about Ninety-six (96) dollars per pair."

FINDINGS:

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

The carrier or carrier s and the employe or employes involved in this dispute are respectively carrier and employe 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.

On December 22, 1988, Carrier issued a new safety Rule (Rule J(3) (A)), mandating the use of approved steel toed safety shoes by all employees, exclusive of those working solely in offices:

> "RULE J(3)(A). - ALL EMPLOYEES, EXCEPT THOSE WORKING EXCLUSIVELY IN OFFICES, REGARDLESS OF LOCATION, SUBJECT TO FOOT INJURY, MUST WEAR AN APPROVED STEEL TOED SAFETY SHOED WHILE ON DUTY. SHOES MUST BE AT LEAST SIX (6) INCHES HIGH, LACE TYPE OF STURDY CONSTRUCTION THAT PROVIDES ANKLE SUPPORT AND HAVE SOLES THICK ENOUGH TO GIVE GOOD TRACTION AND WITHSTAND PUNCTURE FROM SHARP OBJECTS. SHOES OF CANVAS MATERIAL, HEELS OF EXCESSIVE HEIGHT, SOLES THAT DO NOT HAVE A DISTINCT SEPARATION BETWEEN THE HEEL AND SOLE MUST NOT BE WORN. LACES MUST BE TIED AND WHEN OVERSHOES ARE WORN, THEY MUST BE BUCKLED."

Prior to this date, the primary operative Rules covering footwear were Basic Rule 2 and Safety Rule 685:

> "2. Employes are <u>required</u> to wear suitable footwear which provides ankle support with soles thick enough to give good traction and withstand punctures from sharp material. Shoe laces must be tied. Hells that are 'run over' and shoes that are made of cloth are pro-respectively."
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> * * *
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> "685. Employes are required to wear suitable footwear which provides ankle support with soles thick enough to give good traction and withstand punctures from sharp material. Shoe laces must be tied. Heels that are 'run over' and

shoes that are made of cloth are prorespectively." Safety shoes are recommended."

In this claim, the Organization seeks to rescind the new safety Rule, as well as compensate all Maintenance of Way employes who purchased safety shoes for the difference between the $25 allowance granted by Carrier and the amount that they were required to pay.

The Organization does not argue that employes should not wear safety shoes, only that Carrier should pay for them, as it does hard hats, goggles, and other protective gear. it contends that Carrier unilaterally changed a working condition, failing to give written notice (which is required under rule 44) to the Organization.

Carrier finds no support for the Organization's claim in the Agreement, contending that Rule 35 relates only to tools, while Rule 43 (dealing with all memoranda of agreement, interpretations, and letters of understanding) makes no mention of safety shoes. Rule 44 (Notice of Change agreement) is not relevant, since no change occurred.

Carrier also sees a difference between objects used only on the job (such as safety glasses and hard hats) and items such as shoes, which can be worn by an employe at any time. It contends that safety shoes have been required on the property for over forty years.

Upon a complete review of the record, this board is unable to find support for the Organization's contention that with the issuance of its new Safety Rule, Carrier changed a term and condition of employment contained in the parties' Schedule Agreement. That document is devoid of any mention of safety shoes as a requirement. Thus, no Rule 44 notice was required in this instance. Other Rules cannot be said to cover this issue.

In evaluating whether Carrier's new Rule should be rescinded, the basic test that must be applied is whether it is reasonable, that is, whether its requirements are reasonably related to the duties of the employes covered by the Rule. Based on this standard, it cannot be said that a requirement that safety shoes be worn by Maintenance of Way employes is unreasonable.

The real question here, as the Organization acknowledges, is who is to be responsible for their payment. Carrier has provided an allowance and has given employes the discretion to purchase their shoes wherever they choose. That is not an unreasonable act.

If the Organization believes that the current allowance is insufficient, the appropriate method to address this issue is through the service of a Section 6 notice. In the meantime, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

Attest: Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.