Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31071
Docket No. SG-31332
95-3-93-3-350

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

Claim on behalf of M.J. Ciurej for reimbursement of $101.15 actual expense incurred in the purchase of required safety equipment (steel-toed boots), account Carrier violated the current Signalmen's Agreement, particularly Rule 57, when it refused to compensate the Claimant for the actual expense incurred in obtaining this equipment. Carrier's File No. 013.31-414(2). General Chairman's File No. 57-1065. BRS File Case No. 9131-KCS."

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 employee 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 May 25, 1990, a claim was initiated "on behalf of all Signal Employees" for reimbursement of the full cost of required safety shoes over and above the $25.00 allowance as made by Carrier. This claim was progressed through the normal on-property grievance procedure. After discussion of the claim at the highest appeals level, the Organization, on February 26, 1992, advised the Carrier that "further progression of this claim is withdrawn...."

Less than one month later, on March 23, 1992, the instant claim was initiated by and on behalf of the individually named Claimant, who was also the Organization's Local Chairman. This claim alleges the same Rule violation by Carrier and requests the same remedy as was contained in the previously withdrawn claim. This claim was subsequently progressed through the normal on-property grievance procedures and is now before this Board for final resolution.

The case record shows that on January 1, 1989, Carrier issued the following bulletin notice:

"January 1, 1989

MAINTENANCE OF WAY DEPARTMENT BULLETIN NO. 3

Files: 18:02 & 025.2

TO ALL MAINTENANCE OF WAY DEPARTMENT EMPLOYEES:

Effective, January 1, 1989, the Rules and Regulations for the Maintenance of Way and Signal Department of this Company, effective July 4, 1982, and as revised, is further revised, by the following changes and additions:

MAINTENANCE OF WAY AND SIGNAL RULE J(3)(a), IS CANCELED.

BE GOVERNED BY NEW MAINTENANCE OF WAY AND SIGNAL RULE J(3)(a), READING AS FOLLOWS:

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 SHOE 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."

This bulletin notice was repeated in exactly the same wording on January 1, 1990, January 1, 1991, January 1, 1992 and January 1, 1993.

The claim as presented in this case alleges a violation of Rule 57 of the negotiated agreement which Rule reads as follows:

"RULE 57

TOOLS, FURNISHED BY CARRIER

The Carrier shall furnish employees covered by this agreement, without cost to the employees, such tools, equipment, safety equipment and training manuals that are considered necessary by Management to properly and safely perform the work of their assignment or pass examinations given by the Carrier. Employee(s) will be held accountable for tools and equipment provided by the Carrier, except normal wear and tear of such tools and equipment."

It is the Organization's position that the bulletin notice of January 1, 1991, constituted a change of policy which, for the first time, required the wearing of safety shoes by Signal Employees and therefore such requirement placed safety shoes in the category of "equipment" to be furnished by Carrier as provided in Rule 57. The Organization further argued that Carrier's payment of $25.00 toward the cost of the safety shoes was a recognition by it of its obligation to provide safety shoes as a part of the "equipment" covered by Rule 57. The Organization also contended that its withdrawal of the previous grievance on this same issue did "not prohibit the Organization from submitting claims when other related disputes occur."

The Carrier insisted that the withdrawal of the claim on behalf of "all Signal Employees" involving the very same Rule, bulletin notices, arguments, etc. as are advanced in this case is a clear violation of the principle that a claim once settled or withdrawn cannot be resubmitted to the Board for consideration. Carrier further argued that the requirement to wear safety shoes as well as Carrier's payment of $25.00 toward such purchase was not a new requirement or provision but had been in effect since at least 1988 with no complaint from or challenge by the Organization except for the withdrawal of the single dispute which originated in 1990.

From the Board's review of this case, we are compelled to conclude that the instant claim is, in all intents and purposes, the same issue which was involved in the May 25, 1990 claim which was subsequently withdrawn by the Organization. It is well recognized that one of the primary objectives of the Railway Labor Act is to accomplish an orderly settlement of disputes between Carriers and Employees. This Board has given broad application to the principle that once an adjustment of a dispute has been made by the parties, the dispute is extinguished and cannot thereafter be revived or relitigated. In Award 5342 of the First Division, the Board wrote:

"The evidence does not reveal the nature of the settlement made. The terms of the settlement are not material to the issue in any event. In the absence of a showing of fraud or mistake, the settlement and withdrawal of a claim from the Adjustment Board constitutes a final disposition of the dispute and may not be again considered by the Adjustment Board.

The prompt and orderly settlement of disputes under the Railway Labor Act, as well as a sound public policy, demand that disputes once settled, unless such settlement be procured by fraud or mistake, be permitted to lie in the state of repose to which the parties by their own actions have consigned them."

This well-reasoned opinion was repeated and enforced by Third Division Award 30624 as follows:

"When a claim is withdrawn the matter is settled and it may not be refiled as a new claim."

And again in Second Division Award 12056 we read:

"The record shows that in December 1987, two Claims identical to these now before the Board were withdrawn at the Carrier's highest level. While the Organization, at the time that the instant Claims were processed, has took (sic) the position that the 1987 Claims were withdrawn without prejudice, there is no proof that such was the case. Because the Claims were withdrawn (and, in effect, settled on the property) past Awards have upheld the principle that, in such cases, the same issue cannot be claimed again at a later date. Accordingly, we find that pursuant to Article 29(c), the Organization is precluded from raising the same substantive issues at this late date."

Even if the Board were to somehow ignore the sound principle of "withdrawn equals settlement" and were to examine this dispute on the merits, we would be required to reject the Organization's position in this instance. This is so for the reason that the same issues, same arguments, same bulletin notices on this same property which are involved in this case have already been examined and rejected by Third Division Award 29656 involving another Organization. The conclusions reached in Award 29656 were repeated and supported by Second Division Award 12726. They are likewise accepted as dispositive of this claim.

For all of the foregoing, the instant claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.

ORGANIZATION MEMBER'S DISSENT
TO
AWARD 31071, DOCKET SG-31332
(Referee Mason)

The majority concluded that the merits of this dispute were the "same issues, same arguments, same bulletin notices on this same property" that were rejected under Third Division Award 29656. Contrary to the majority opinion, Award 29656 was based on different agreement language and essentially challenged the change in the safety shoe policy. However, in this instant case the Organization recognized Carrier's right to change the policy, but invoked the Agreement Rule requiring carrier to provide required safety equipment, which obviously encompasses safety shoes under the new policy.

Notwithstanding the foregoing, the majority additionally discussed a feigned procedural issue raised by the Carrier on the property. The record indicates that Carrier argued that a similar claim was withdrawn by the General Chairman; consequently, the issue could not be raised again. The majority accepted Carrier's argument and based its decision on First Division Award 5342, which involved a claim withdrawn from the Board. If that had been the case here, the majority may have a valid point. However, the previous claim was not withdrawn from the Board, it was withdrawn during the handling on the property. This is not a case of requesting the Board to again consider the same claim. The flip side to that position is that whenever Carrier allows a claim on any basis, that establishes a precedent that applies on the same issue in any future disputes. Obviously, there are many reasons

for both allowing and withdrawing claims. The Board has recognized that such action does not preclude the parties from dealing with the same issue in future disputes. Such action does not resolve the issue, but resolves only that particular dispute, unless the parties agree otherwise. The majority's findings give the Organization no incentive at all to withdraw claims that have procedural defects, since it would apparently hold that the issue on which the claim is based would be considered settled when the claim was withdrawn. The majority held in this instant dispute that once a case is withdrawn, any future claims on the same issue would be invalid.

There is an important distinction between "claim" and "issue." It would not be proper to re-submit the same claim, but it is definitely appropriate to submit different claims involving the same issue. The "issue" is not necessarily resolved (unless the parties specifically agree) when a claim is withdrawn.

In view of the foregoing, it is obvious that the findings of the majority are based on demonstrably false premises, rendering the award palpably erroneous and of no value. Contrary to the award and findings, this dispute is not resolved nor settled.

Respectfully submitted,

C.A. McGraw

C.A. McGraw, Labor Member