

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31746
Docket No. SG-31893
96-3-94-3-243

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of J.M. Copeland for payment of the expense of \$96.19 for the purchase of safety equipment (safety toe boots), account Carrier violated the current Signalmen's Agreement, particularly Rule 56, when it refused to reimburse the Claimant for his cost in obtaining safety equipment required by Carrier. Carrier's File No. 79-93-26. General Chairman's File No. S-AV-155. BRS File Case No. 9229-CNW."

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 or 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 were given due notice of hearing thereon.

This dispute involves an assertion by the Organization that steel-toe safety shoes are, in fact, "tools" as that term is used in Rule 56 of the negotiated agreement which reads as follows:

"Rule 56 - TOOLS

(a) The transportation company will furnish such general tools as are necessary to perform their work, except that employees will furnish their own pocket tools, such as pliers, screw drivers, rules and pocket knives."

The Claimant in this case was assigned as a Signalman whose position involved work on bridges. In August, 1992, Carrier, in compliance with directives mandated by the Federal Railroad Administration, updated their Safety Rules to include, among other provisions, the following requirements:

"The following Bridge Worker Safety Rules become effective August 24, 1992, and will supersede Items 200 through 228 in the Engineering Procedures Manual dated December 1, 1988. These procedures refer to a railroad bridge spanning at least 12 ft. or where a fall of 12 ft. or greater exists. These procedures will not be applicable as defined in Rule 200.

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210. The following procedures are designed to comply with the FRA Bridge Safety Rules, effective August 24, 1992, and apply to railroad employees and railroad contractor employees that are responsible for the construction, inspection, testing or maintenance of a bridge, whose duties affect the track, bridge structural members, operating mechanisms, water traffic controls, signal, communication or train control systems integral to that bridge. A bridge is defined as a railroad bridge structure supporting one or more railroad tracks, above land or water, spanning at least 12 feet and including the entire structure between the faces of the abutments.

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217. In addition to the personal protection equipment now required, safety toe footwear meeting ANSI Standard Z41.1 is now required by employees as defined in Item 210."

Claimant thereupon purchased a pair of steel-toe shoes from a supplier of his own choosing and requested that Carrier reimburse him for the purchase price of the shoes. When Carrier denied his request for reimbursement, the claim as outlined above was presented on his behalf by the Organization. After handling the dispute through the normal on-property grievance procedures without reaching a satisfactory resolution, it has come to this Board for final adjudication.

The Organization insists that while Carrier has the right to establish policies and rules relative to the use of safety equipment, it does not have the right to require the employee to provide such equipment at their own expense. They contend that Rule 56 requires that Carrier will furnish the "tools" which are necessary for the employee to perform their duties and that the required steel-toe shoes are nothing more than a required "tool" as that term is used in Rule 56.

Carrier posits that the use of safety shoes has been in general effect for several classes of employees for many years. Carrier argues that it has never reimbursed any of the several classes of employees for the purchase price of such shoes. Rather, Carrier points to a long-established program of arranging for employees to purchase safety shoes through a payroll deduction plan at a reduced cost to the employee. In this case, Carrier says that the employee did not follow the established program but rather purchased the shoes from a supplier of his own choice. Carrier insists that there is no agreement rule which requires the reimbursement here requested and rejects the contention that safety shoes are "tools."

The Board has considered all of the contentions of the parties and has reviewed the citations of authority presented by the parties. It is the Board's conclusion that there is no language to be found in Rule 56 which requires that the Carrier must furnish shoes to the employee. The FRA and Safety Rule requirement to wear safety-toe shoes while working in the areas as set forth in Safety Rule 210 does not ipso facto convert the shoes into a "tool." Rather, the shoes are a condition of employment when working in such areas. The opinions expressed in Third Division Awards 29656 and 31156 as well as Second Division Award 12726 support the conclusions reached in this case. Therefore, the claim as presented is denied.

AWARD

Claim denied.

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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 24th day of October 1996.