Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35615
Docket No. SG-35644
01-3-99-3-573

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Santa Fe Railway Company
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co. (former Burlington Northern Railroad):

Claim on behalf of F. L. Voie for all compensation lost, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it withheld the Claimant from service without benefit of an investigation. Carrier File No. SIA 98-07-03AC. General Chairman's File No. SP-8-98. BRS File Case No. 11049-BN."

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 were given due notice of hearing thereon.

This claim arose after the Carrier ordered the Claimant off the property on February 9, 1998 for not wearing safety work boots with steel toes. He was instructed to

remain off until he could report with the proper boots. The Claimant lost work time until late March 1998 as a result. The several year history preceding the Carrier's action is quite remarkable.

It is undisputed that the Carrier has had a safety boot policy and purchase program for many years. The Claimant bought boots through the program in 1992 but soon experienced irritation due to a condition affecting the fourth toe on his left foot. The condition was verified in the record by proper medical evidence. As a result, the Carrier agreed to pay for the full cost of custom-made steel-toed boots for the Claimant.

Although the on-property correspondence has conflicts about the content of discussions between the Claimant and a representative of the Carrier's medical department in the 1992-93 time frame, certain facts are established by well-settled principles of railroad arbitration. The Claimant found a manufacturer who could custom-make boots for the Claimant to applicable safety standards. However, the manufacturer required a $150.00 deposit to start work. The final conversation between the Claimant and the medical department representative occurred on May 19, 1993.

According to the Carrier's assertions, the Claimant was instructed by the medical department representative to place the deposit himself and he would be reimbursed. The Claimant refuted this assertion via a proper written evidentiary statement. Although the record contains two letters from the medical department representative, neither constitutes the requisite proof of the Carrier's refuted assertion. Moreover, it is clear that at no time did the Carrier charge the Claimant with failure to comply with instructions from proper authority.

What is established in the record is that the Claimant informed his Supervisor, in writing, on August 2, 1993 of the need for the $150.00 deposit. He also wrote, "How do we get them the $150?"

Thereafter, the Claimant began wearing regular work boots (non-steel-toed) to work. He continued to do so with the full knowledge of the then and subsequent Supervisors without objection for the next four and one-half years until, as previously noted, he was ordered off the property on February 9, 1998.

There is no evidence that the Claimant was given any warning of the Carrier's impending action. Interestingly, the record establishes that the Carrier directly paid the $150.00 deposit the following day, February 10, 1998, and the boots were produced in due

course. In addition, there is no evidence that the Claimant delayed the manufacture of the boots in any manner whatsoever or that he did not timely report for work after receiving the boots.

It is axiomatic that Carriers have the right to implement reasonable work Rules. But it is also well-settled that this is a two-faceted process. Not only must the content of work Rules be reasonable, they must also be reasonable in the application.

The Board does not quarrel with the Carrier's requirement of steel-toed safety boots in general. But this record clearly establishes that the Claimant's Supervisors, by their consistent response over several years, granted the Claimant an indefinite exception to the requirement. Having done so, the Carrier's action was unreasonable when that exception was revoked without warning on February 9, 1998.

Because the record fails to demonstrate a proper administrative or disciplinary basis for having removed the Claimant from active payroll status, we are compelled to sustain the claim.

This dispute is remanded to the parties to determine the appropriate calculations to make the Claimant whole for all losses resulting from the Carrier's improper action.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of July, 2001.