

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40308
Docket No. SG-40960
10-3-NRAB-00003-090279**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of S. D. Dewey, for one day's pay at the overtime rate and the discipline assessed expunged and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 68, when it issued excessive Level 2 discipline against the Claimant without providing a fair and impartial investigation and without meeting its burden of proof in connection with an investigation held on February 20, 2008. Carrier's File No. 1494445. General Chairman's File No. N 68 719. BRS File Case No. 14132-UP.”

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.

On February 20, 2008, the Carrier conducted an Investigation at its Grand Island, Nebraska, yard office into charges lodged against Claimant S. D. Dewey for allegedly failing to wear proper winter footwear, causing him to slip and resulting in a personal injury in possible violation of Rule 1.1.2 (Alert and Attentive) Rule 1.13 (Reporting and Complying with Instructions) and Rule 80.1 (Avoiding, Slips, Trips and Falls).¹ On March 14, 2008, the Carrier notified the Claimant that he was found in violation of the Rules and was being assessed Level 2 discipline of up to one day alternative assignment to develop a corrective action plan to modify behavior. Following denial in case handling on the property, the case was advanced to the Board for final resolution.

The facts surrounding the above incident are relatively straightforward. On January 22, 2008, the Claimant, a Signal Maintainer on Gang No. 5128 at Odessa, Nebraska, was out working on a switch failure on the 3B Crossover. He stepped over the No. 1 main line to work on a switch on the No. 2 main line. During this process, he stepped over a heater duct, onto a concrete tie, which was frosty, slipped, lost his balance, fell and strained his neck.

On his accident report, completed the day after the injury, the Claimant stated that, "I lost my footing on the end of main concrete tie due to frost." The form also reflects that the Claimant believed that two conditions caused the accident - improper lighting and weather conditions. During the Hearing, the Claimant confirmed the presence of frosty conditions noting that there was a walkway that he could have taken to get across to the area where he needed to go, but he bypassed it

¹ The Rules at issue provide, in relevant part, as follows:

- 1.1.2 "Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury."
- 1.13 "Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties."
- 80.1 "Observe safety practices that eliminate slips, trips and falls."

because “when I shined my light on there, it appeared to have some frost on it, which is why I went away from it and slipped on the . . . other concrete tie.”

It is undisputed that the Carrier provides winter footwear to employees in the form of Lacrosse five-buckle boots with ice cleats on the toe and heel that grip the ground or other surfaces during winter weather conditions. Employees are required to have such footwear with them while they are on duty and are instructed to wear such footwear in icy, frosty, and/or snowy conditions. The Carrier also instructs employees to use a salt and sand mix around their work locations to avoid slips.

Patrick J. O’Brien, Manager of Signal Maintenance, testified, and the Claimant confirmed, that he regularly briefs his employees, typically during the daily morning safety conference calls, on avoiding personal injuries. O’Brien looks at weather conditions and makes sure the employees have the proper personal protective equipment including the Lacrosse boots when necessary.

Mark E. Hauser, Director of Signal Maintenance for the Northern Region, also testified that employees are briefed on avoiding personal injuries and are required to wear the winter footwear provided by the Carrier: “If there’s any condition that they believe – whether that be frost, ice, slick conditions, they are required to wear the footwear by my direction,” as well as the direction of other Managers and the Chief Engineer. Hauser also testified that “Safety is the Number 1 importance in the discharge of every employee’s duty out there and I think I have said that more times than any other thing. Safety takes precedence over any production or any other items that we do out here.”

The Investigation revealed that the Claimant was not wearing the Lacrosse footwear at the time of his injury. The Claimant does not dispute this fact.

The Organization asserted that there should be no violation because (1) there was no evidence other than the fact of the accident to prove that the Claimant was not alert and attentive; and (2) whether to wear the Lacrosse boots is left to an employee’s discretion to determine whether conditions warrant such wearing.²

² The Board carefully considered the Organization’s procedural arguments of bias and denial of a fair Hearing and rejected such arguments as unpersuasive.

It is undisputed that the Claimant was repeatedly instructed on avoiding unsafe conditions and informed that he should wear the proper footwear depending on weather conditions. Despite observing ice and snow in one area away from where he parked his truck and frosty conditions in the area in which he was walking, the Claimant ignored such clues as to the likely slippery nature of the ground and paths and chose to proceed without the advised footwear.

We agree with the Organization that the fact that an injury occurred does not mechanically translate to a violation. However, Rule 1.1.2 requires employees to “plan their work to avoid injury.” Here, the Claimant observed ice and snow in certain areas, which was a clear indication that despite the absence of precipitation, there could be other patches up ahead in the dark where he was to perform his work. At that point, the most prudent course would have been to “plan ahead” and don his winter footwear. Failure to do so was a failure to observe “safety practices” and heed the repeated instructions to wear the winter boots where slippery conditions might exist in violation of Rules 80.1 and 1.13.

The Organization’s argument that individual employee discretion trumps the Carrier’s clear Rules and safety efforts is not valid – an employee cannot avoid the consequences of failing to adhere to Rules designed specifically to protect his personal safety by claiming he used his discretion, but miscalculated. To hold otherwise would be to negate such Rules and instructions. The Carrier’s Safety Rules emphasize personal responsibility for one’s safety while on the job. The Claimant’s exercise of discretion here consisted essentially of ignoring those Rules.

Under the circumstances, the Board concludes that the discipline imposed was both moderate and warranted.

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 1st day of March 2010.