Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31576
Docket No. SG-32136
96-3-94-3-552

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"Claim on behalf of E. K. Hubbard, D. H. Wilkins, C. E. Rogers, C. E. Satterfield, K. K. Kapelski, and V. G. Bandon for payment of expenses incurred in the purchase of safety equipment (safety toe boots), account Carrier violated the current Signalmen's Agreement, particularly Article IX, Section 2, when it refused to reimburse the Claimants for their full costs in obtaining safety equipment required by Carrier. Carrier's File No. 013-311-1. General Chairman's File No. 930923.01. BRS File Case No. 9458-TRRA."

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.

Claimants are signal employees in the Carrier's Signal Department.

Article IX, Section 2 of the Agreement states:

"The railroad will furnish the employee such tools (except pocket tools) and equipment as are necessary to perform their work."

Prior to the dispute in this case, the Carrier's safety rules did not require, but only recommended, the wearing of safety boots. On February 5, 1993, the Carrier issued General Order No. 6 substituting a new Safety Rule 1002© which required that effective April 1, 1993 "Employees in the Mechanical Department (car and locomotive), Maintenance of Way, Signal, Bridge and Building and Police Department will wear steel toe Safety Boots."

On March 4, 1993, the Carrier issued a letter to the affected employees reminding them of the new safety rule and further stating that "It is important to note that the wearing of steel toe safety boots will be mandatory." In that letter the Carrier also stated it would make a one time contribution of $30 towards the purchase of steel toe safety boots.

By letter dated March 18, 1993, the Organization referred the Carrier to Article IX, Section 2 of the Agreement and took the position that "Under this rule the Carrier is now required to furnish the steel toe Safety Boots for all Signal employees since they are being made mandatory equipment as of April 1, 1993."

By letter dated October 27, 1993, the Organization referred to its March 18, 1993 letter and noted that "there has been no acknowledgment of this letter" and further filed a claim on behalf of seven signal employees seeking reimbursement for out of pocket expenses ranging from $29.45 to $132.95 for the purchase of steel toe safety boots. These amounts were over the $30 paid for by the Carrier.

Initially, the Carrier's argument that the claim is untimely is not persuasive. The Time Limit Rule requires that claims be filed "within 60 days from the date of the occurrence on which the claim or grievance is based." In this argument, the burden is on the Carrier to demonstrate the claim is untimely. That burden has not been met.

In its letter of March 18, 1993, the Organization effectively took the position that the Carrier was obligated to pay for the required steel toe safety boots. However, the Carrier did not respond to that request. The dispute is not about the effective date of the requirement or about the ability of the Carrier to impose such a requirement. This dispute is about the Carrier's refusal to reimburse the employees for out of pocket expense for the purchase of steel toe safety boots. The burden is therefore on the Carrier to show that the Organization failed to file a claim within 60 days of the Carrier's refusal to reimburse the employees for their out of pocket expenses for purchasing the newly required steel toe boots.

Because the Carrier never responded prior to the filing of the claim to the Organization's March 18, 1993 letter seeking such payment, the Carrier never definitively stated at some point more than 60 days before the claim was filed that it would not reimburse the employees. We therefore find the Carrier has not demonstrated that the claim was filed more than "60 days from the date of the occurrence on which the claim or grievance is based."

With respect to the merits, Article IX, Section 2 obligates the Carrier to "furnish the employee such tools (except pocket tools) *and equipment* as are necessary to perform their work" [emphasis added]. When the Carrier made the wearing of steel toe safety boots mandatory, under Article IX, Section 2 it became obligated to "furnish the employee such ... equipment as are necessary to perform their work." By not paying for the entire cost of that equipment, the Carrier has not met its obligation to "furnish" that "equipment".

Third Division Award 29656 relied upon by the Carrier is not persuasive. In that case, like here, the Carrier amended its safety rules to require employees to wear steel toe safety shoes and the Organization sought the out of pocket expenses incurred by the employees for the purchase of such shoes. Unlike here, however, the Organization sought to rescind that amended rule. The Board rejected the organization's argument that the Carrier could not change the safety rule to require the wearing of steel toe safety shoes finding that such a rule was reasonable. However, as far as the reimbursement issue was concerned, there was no rule quoted in Award 29656 similar to Article IX, Section 2 in this case which mandated the carrier therein to "furnish the employee such ... equipment as are necessary to perform their work". That is the critical language in this case which was not evident in any detail in Award 29656 thereby making Award 29656 distinguishable.

Similarly, Second Division Award 12726 also cited by the Carrier is not persuasive. That Award quoted extensively from Award 29656 and found "Award 29656 fits the case under review in this docket, four square." Again, no discussion of the impact of a rule requiring the Carrier therein to "furnish the employee such ... equipment as are necessary to perform their work" is found. More closely on point is Public Law Board No. 3750, Award 1 cited by the Organization. There, like here, the dispute was over the Carrier's requirement that the employees wear steel toe safety shoes; its offer to pay part of the cost of those shoes; and the Organization's argument that the entire cost of the shoes should be reimbursed by the Carrier. There, the rule stated that "Protective clothing as required by the Safety Rule Book ... will be provided by the Company." The Board in that case found that "clothing" encompassed shoes and therefore the Carrier's requirement that steel toe safety shoes be worn also required that the Carrier provide those shoes.

Here, we discern no difference between "clothing" and "equipment" which is required by the Carrier. Under Article IX, Section 2, the Carrier is obligated to "furnish the employee such ... equipment as are necessary to perform their work". Because the Carrier chose to require steel toe safety boots—an act well within its managerial prerogatives—by operation of Article IX, Section 2 it is therefore obligated to "furnish" that "equipment". The employees shall therefore be made whole for their out of pocket expenses for the purchase of the steel toe safety boots.

AWARD

Claim sustained.

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 29th day of August 1996.