Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31684
Docket No. SG-31757
96-3-94-3-163

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Railway Company (KCS):

Claim on behalf of C. H. Crowson 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 51, when it refused to compensate the Claimant for this actual and necessary expense. Carrier's File No. 013.31-414(3). General Chairman's File No. 51-1123. BRS File Case No. 9249-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.

The claim at bar is for payment of required purchase of steel toed boots. In a revision of Rules, January 1, 1991, the Organization argues the Carrier became obligated to fully reimburse the costs of the work shoe.

The Carrier denied this claim on property arguing that there had been no change in its practice mandated by the Rules revision of 1991. The Carrier held that the safety shoe had always been required of employees and been accepted by the Organization. It further argued that since 1989 a voucher of $25.00 per year had been paid toward that end, as shoes were also worn away from the workplace.

As a preliminary point the Carrier's ex-parte Submission includes materials and argument which were not a part of the record on property. These Rules, history and exhibits are not properly before this Board and beyond our consideration.

As to the central issue of dispute, the Organization points to Rule 51 of the Agreement which states in pertinent part:

> "The Carrier shall furnish employees covered by this agreement, without cost to the employees, ... safety equipment... that are considered necessary by management to properly and safely perform the work of their assignments...."

The Organization emphasizes the clear and unambiguous language to hold that safety equipment is to be provided without cost to the employees. It further points out that on January 1, 1991, Rule J. (3) was revised from the 1982 Rule which required employees to "wear shoes that afford maximum protection" to language that held in part that:

> "All employees... subject to foot injury, must wear an approved steel toe 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."

This Board has fully examined the Rules, supra, as well as the on-property record. We have carefully read Public Law Board No. 3570, Award 1 and Carrier Dissent presented by the Organization, as well as Third Division Award 31071 and Organization Dissent introduced by the Carrier. We are aware of the full range of issues as presented therein, as well as by the advocates to this Board.

The Agreement language has been carefully reviewed in light of the on-property record. We find nothing in this Agreement stating that a steel toe safety shoe is equipment, or safety equipment as contemplated by the Agreement. There is no clear and explicit language linking these two elements crucial for the interpretation necessary to uphold the Organization's burden. Inasmuch as such linkage is absent, the Board has reviewed the issue of the reimbursement and history. The Carrier argued on property that the $25 reimbursement was "for the steel toe portion of the boots and the boots have been accepted as normal attire for years." The Board finds no rebuttal on property or language linking the reimbursement to full compensation. The Organization's position is that practice is irrelevant, as changed by the 1991 renegotiated Rule. The Board is not persuaded by the language of the Rule or evidence of record as to the correctness of that argument.

Inasmuch as the burden of proof rests with the Organization, the Board is compelled to deny the claim under the Rules and evidence presented. The Organization's proof is not persuasive. Nothing in the Rule or evidence moves beyond assumption and substantiates that safety equipment refers to or encompasses safety shoes. There is no evidence of record, substantiation or language suggesting that the $25 was toward the full cost of shoes and only a partial payment, as herein claimed. The Board is compelled to deny the claim for a lack of proof (Third Division Award 29656).

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 29th day of August 1996.