

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36231
Docket No. SG-36643
02-3-01-3-181

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Santa Fe Railway (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 J. C. Calhoun for compensation for all lost time and benefits and to have his personal record cleared of any reference to this matter. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when on September 24, 1999 Carrier suspended the Claimant from service and placed him on probation for one year in connection with an investigation held on September 3, 1999. Carrier failed to meet its burden of proving the charges against the Claimant and issued harsh and excessive discipline against him. Carrier File No. 34 00 0013. General Chairman’s File No. D-10-00(D). BRS File Case No. 11662-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.

The Claimant in this case was employed as a Signal Electronic Technician at Gillette, Wyoming. By letter dated August 13, 1999 the Claimant was notified to attend an Investigation on August 25, 1999 "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to wear your personal protective equipment while on duty at the Wyoben building in Gillette, Wyoming, at approximately 1330 hours on Thursday, August 12, 1999." After agreed upon postponements, the investigatory Hearing was held on September 3, 1999 at which time the Claimant was present, properly represented and testified on his own behalf. From the case record, it is apparent that the Claimant was accorded all due process rights to which he was entitled under the terms and conditions of the negotiated Rules Agreement.

Following completion of the Hearing, the Claimant was notified by letter dated September 24, 1999 that he was disciplined by suspension of ten days and was placed on probation for a period of one year "... for violation of BNSF Maintenance of Way Operating Rule 1.13 and BNSF Safety Rule S-21.1." The discipline was appealed on the Claimant's behalf through the normal on-property appeal procedures and the case is now properly before the Board for final and binding resolution.

The Operating and Safety Rules here involved read as follows:

"Operating Rule

1.13 Reporting and Complying With Instructions:

Employees will report to and comply with instructions from supervisors who have proper jurisdiction. Employees will comply with instructions issued by managers of various departments when instructions apply to their duties.

Safety Rule

Rule S-21.1 Personal Protective Equipment Requirements

All BNSF employees, contractors and their agents, visitors, and venders must wear the following equipment while on BNSF property:

- * **Hard hats with minimum six-point suspension.**

Exception: If the hard hat currently being worn has fewer than (sic) six points of suspension, it may continue to be used until worn out or damaged. The replacement hard hat must have a minimum of six-point suspension.

- * **Safety glasses with permanently mounted side shields and authorized by BNSF. Authorized tints for safety glasses are Rose 1 and 2 Grey 1 indoors, Rose 1 and 2 and Grey 1, 2, and 3 outdoors. No other tinting is permitted. Mirror-like lenses and amber ('shooter') lenses are prohibited.**
- * **Safety boots.**
- * **Hearing protection (ear plugs/ear muffs) when entering designated hearing protection areas, while performing designated jobs/activities, or in situations where the noise requires you to raise your voice during normal conversation at a distance of 3 feet.**
- * **Hand protection when there is a risk of exposure to harmful substance, punctures, severe abrasions, lacerations or cuts, chemicals or thermal burns, high voltage, vibrations, temperature extremes, or infectious biological agents.**
- * **Enhanced-visibility work wear (reflective lime green, yellow, or orange) when working at derailment sites, grade crossings, or work trains, or at intermodal facilities. At intermodal facilities, checkpoint employees must wear enhanced-visibility vests. Roadway workers, when working on or near tracks, must wear at least one item of high-visibility, orange work wear. (At night, the work wear must be retro-reflective.) The following items meet high-visibility requirements: radio waist belt/harness, radio belt, striping, welding jacket, hard cap/hat with reflective markings, and hard cap/hat with high-visibility cover.**

Exceptions

- * Personal protective equipment (PPE) is not required in offices, automobiles or paved services, or passenger-carrying rail cars.
- * Hard hats: Not required for Train, Yard, and Engine (TY&E) employees except when performing work services with Maintenance of Way, at derailments, or as directed by supervisor. Not required in vehicles or equipment with overhead protection.
- * Safety boots and safety glasses: Not required when excepted by contractual agreements.

Off-the-Job-Use

Employees are encouraged to use BNSF-provided personal protected equipment (PPE) off the job.

Other

Additional personal protective equipment, such as face shields, fall protection, welding jackets, may be required by supervisors or as good safety practices warrants. See the PPE Chart for task-/exposure-specific personal protective equipment requirements or recommendations.”

The Hearing transcript in this case consisted of 95 pages of testimony, plus nine attached exhibits. Much of the testimony presented was acrimonious in nature. Contentions were made that the Supervisor was on a vendetta against the Claimant; that the area where the Claimant was observed on August 12 was an “office” and therefore the exception to Safety Rule S-21.1 was applicable; that the Claimant had special permission from a previous supervisor relative to when and where he (the Claimant) was required to wear safety boots. However, nothing of a probative nature is found in the Hearing record to support any of the contentions raised.

What is found in the case record are clearly and properly promulgated Operating and Safety Rules which require compliance. There is substantial credible testimony in the Hearing record to support the conclusion that the Claimant – in spite of having been specifically instructed in regard to the wearing of safety boots – was, in

fact, found on duty without safety boots in a work area where safety boots were required.

The Board will not substitute its judgment for that of the disciplining authority when there is substantial credible evidence to support the conclusion that discipline was warranted for the charge dereliction. Such is the case here. The claim is denied.

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 24th day of September 2002.