

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36550
Docket No. SG-36039
03-3-00-3-162**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern Pacific)**

STATEMENT OF CLAIM:

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

Claim on behalf of W. G. Gillette, for reimbursement of the cost of a new pair of steel toed boots, account Carrier violated the current Signalmen's Agreement, particularly Rule 77, when it required the Claimant to purchase the boots and then failed to reimburse him for this expense. Carrier File No. 1175654. General Chairman's File No. SWGC-1920. BRS File Case No. 11103-SP.”

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 fact situation in this case is reasonably clear and not really in dispute. Neither is the situation as found herein one of first impression.

The Claimant was a regularly assigned Signal Maintainer. On or about January 14, 1999, the Claimant purchased a pair of steel-toed boots for his own use. The Organization on the Claimant's behalf submitted a claim for reimbursement of the cost of the boots alleging that, because the Carrier required the use of these steel-toed boots, such requirement constituted a violation of negotiated Rule 77, which reads as follows:

"Rule 77 - Tools and Equipment

- A. The Company will furnish all employees covered by this Agreement without cost to the employee, such tools, equipment, safety equipment and training manuals that are considered necessary by Management to properly and safely perform the work of their assignment and pass examinations given by the Company.**
- B. Hand tools that are lost or stolen will be replaced by the Company. Employees, however, will be responsible for replacement of hand tools that are assigned to them and are lost or stolen as a result of their negligence.**
- C. The employee will use and take reasonable care of equipment provided by the company.**
- D. Signal employees who are required by the company as part of their duties to work on high voltage circuits and/or pull wire or cable will be provided protective gloves.**
- E. Rubber gloves, aprons and boots will be furnished to battery men on request."**

The Carrier denied the claim for reimbursement on the basis that the Occupational Safety and Health Administration (OSHA) Regulations which provide in pertinent part that:

- "(d) Payment for Protective Equipment. All protective equipment, including personal protective equipment (PPE), required in this part, shall be provided by the employer at no cost to employees. Exception: The employer is not required to pay for safety-toe**

protective footwear, or for prescription safety eyewear, provided that all three of the following conditions are met:

- (d)(1) The employer permits such footwear or eyewear to be worn off the job-site;**
- (d)(2) The footwear or eyewear is not used at work in a manner that renders it unsafe for use off the job-site (for example, contaminated safety-toe footwear would not be permitted to be worn off a job-site); and**
- (d)(3) Such footwear or eyewear is not designed for special use on the job. [58 FR 35152; June 30, 1993; 64 FR 15441, March 31, 1999]."**

controls the requirements relative to steel-toe boots and that the Claimant had, for reasons of his own, not utilized the Carrier's one-half price purchase program, which required that purchasers of steel-toe boots must make such purchases through one of three Carrier-approved vendors of such items.

During the on-property handling of this dispute, the Organization did not challenge the existence of the Carrier's one-half price purchase program, but rather questioned "why should he (the Claimant) have to use one of the three vendors Union Pacific has listed?" The Organization argued that the boots were not intended for the Claimant's off-duty wear and were, therefore, an exception to the OSHA regulation and were covered by the provisions of Rule 77.

From the Board's review of the arguments and evidence advanced by the parties during the on-property handling of this dispute, there is no convincing evidence found to support the contention that the steel-toe boots were somehow contaminated in the normal performance of the Signal Maintainer's duties, which would have rendered the boots unsafe for wear or use off the job-site.

There is no mention of - or even a hint of - steel-toe boots found in the language of Rule 77. The normal use of such boots as required by the Carrier in its compliance with the OSHA mandate does not convert such boots into a "tool" or "equipment" as those terms are used in Rule 77.

If the Organization believes that the one-half purchase price policy relative to such items is not sufficient to meet the needs of the Signalmen, then the proper approach to change this situation would be through negotiation.

The opinions as set forth in Third Division Awards 29656, 31746 and 32009, as well as Second Division Award 12726 relate to the issues found in this case. They are by reference repeated herein.

The claim as presented 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 8th day of May 2003.

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