

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38004
Docket No. SG-37794
06-3-03-3-133

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 (UP):

Claim on behalf of D. E. Beck, for reimbursement of \$96.60 in expenses, account Carrier violated the current Signalmen's Agreement, particularly Rules 77 and 80, when the Claimant purchased safety equipment (safety boots) as a requirement of his position and Carrier denied his request for reimbursement for this expense on January 26, 2002. Carrier's File No. 1308021. General Chairman's File No. N77-80-250. BRS File Case No. 12391-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.

This claim was initiated on January 4, 2002, when the Claimant filed a request with the Carrier contending that it was the Carrier's responsibility to reimburse his expenditure for safety boots. The Manager Signal Maintenance R. E. Easley denied the request on January 26, 2002. In his denial, he asserted that the boots were required by the FRA and OSHA rather than Carrier management.

The Organization then filed a formal claim with Manager Signal Projects J. M. Tausz on February 13, 2002. In support of its position, the Organization cited Rule 77 A of the Agreement, which reads, in relevant part, as follows:

"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."

The Organization further relied on Rule 80 – Loss of Earnings which reads as follows:

"An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss."

The Carrier denied the claim on April 9, 2002. The Carrier noted CFR Title 49, Part 214-Railroad Workplace Safety, Rule 214.111 "Personal Protective Equipment" which states in part:

". . . with the exception of foot protection, the railroad or railroad contractor shall provide and the employee shall use all appropriate personal protective equipment."

The Carrier further contended that safety shoes were a condition of employment when working in areas such as the Claimant was working. The Organization appealed the denial and cited an OSHA regulation that reads, in pertinent part, as follows:

". . . the employer must pay for shoes or outerwear [if they are] subject to contamination by carcinogens or other toxic or hazardous

substances, which cannot be safely worn off-site. Failure of the employer to pay for PPE [Personal Protective Equipment] that is not personal and not used away from the job is a violation and shall be cited."

The Organization contended that there were areas that were contaminated and had toxic or hazardous substances in the Claimant's work area, and that the presence of such substances meant that the boots could not be safely worn off-site. It concluded that it was, therefore, the Carrier's responsibility to reimburse the Claimant for the safety boots that he purchased.

In its June 21, 2002 denial of the Organization's appeal, the Carrier insisted that it was only responsible for providing equipment considered essential by management. It reiterated that the steel-toe boot requirement was not a management requirement, but rather was considered necessary by OSHA. It also noted an exception in the OSHA legislation at 29 CFR 1926.95 which provided that "... the employer is not required to pay for safety-toe protective footwear."

The Board reviewed the parties' positions in this case and notes that this issue is certainly not a matter of first impression. Numerous Boards have found that the Carrier does not bear responsibility for safety equipment requirements that may be imposed upon it by OSHA or the FRA. Nor have they found that the Board is empowered to make rulings on or interpret either OSHA or FRA safety regulations. See, for example, Third Division Awards 31746, 31156 and 29656, as well as Second Division Award 12726.

Nothing presented persuades the Board that we should overturn the well reasoned Awards cited above. Accordingly, we find no basis upon which to sustain the present claim.

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 25th day of October 2006.