

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43263
Docket No. MW-42677
18-3-NRAB-00003-140217**

The Third Division consisted of the regular members and in addition Referee Randall M. Kelly when the award was rendered.

**(Brotherhood of Maintenance of Way Employes Division –
IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (Former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement beginning on October 25, 2012 when it failed and refused the request of the members of the Centralia Section, Sessor Section and Centralia welding gang to be provided with rain gear in accordance with Rule 49 (System File C-13-A040-2/10-13-0127 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall ‘ . . . issue rain gear to all employees that requested it and any other employees in the future that might need it. Furthermore, any employees that have purchased rain gear for themselves be reimbursed for that purchase.’”**

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 Claimants to the dispute are all BMW employees who were assigned to the Centralia Section Gang, Sessor Section Gang and the Centralia Welding Gang on October 25, 2012.

The Organization cites Rule 49 of the Agreement, which, in pertinent part, provides:

“RULE 49 RUBBER BOOTS – PROTECTIVE CLOTHING AND EQUIPMENT

Employees will be furnished suitable rubber boots when necessary. The Carrier shall provide protective clothing and equipment (except shoes) that it deems necessary for the protection of the safety and health of employees covered by the Agreement.”

According to the Organization, on October 25, 2012, the Claimants made a request to the Carrier to be provided rain gear in accordance with Rule 49. The Carrier denied the request.

The Organization provided 36 statements of practice to the effect that the Carrier has always provided rain gear.

Field supervision denied the request for rain gear on the basis that employees are responsible to have proper clothing when they come to work and raincoats are no different from insulated coveralls, jackets, winter coats, or thermal underwear, which employees supply themselves.

The Carrier denied the claim on the basis that Rule 49 was intended to address safety apparel and not ordinary clothing like raincoats. The Carrier further noted that there is no mention of rain gear in Rule 49 and the Rule expressly

states that, “. . . BNSF will provide only protective apparel ‘that it deems necessary.’”

The Carrier is correct. Protective clothing has traditionally been defined to include apparel designed specifically to protect employees and make them safer in their work environment. For example, reflective vests for employees working next to a road or asbestos gloves for employees working with hot materials. Rain gear can make an employee more comfortable and probably allow him or her to work more effectively, however, it is ultimately no different from warm clothing in cold weather. The Rule specifically mentions rubber boots; it does not mention rain gear. 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 26th day of June 2018.