

PUBLIC LAW BOARD No. 3750

AWARD No. 1

CASE No. 1

PARTIES TO THE DISPUTE:

Brotherhood of Railroad Signalmen (BRS)
and
Consolidated Rail Corporation (Conrail)

ISSUE:

Does Rule 8-A-1 of the June 16, 1981
Agreement require the Company to
provide safety shoes? If so, what
shall the remedy be?

OPINION OF BOARD:

The origin of this dispute is a March 2, 1984
Notice by the Company to employee organizations:

see following pages

R. E. SWERT
VICE PRESIDENT
LABOR RELATIONS

March 2, 1984

Mr. A. V. Robey
Int'l Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers

Mr. J. A. Vinanskie
Brotherhood Railway Carmen of the United States and Canada

Mr. J. A. Lieb
Brotherhood of Railway, Airline and Steamship Clerks

Mr. E. J. Zaldaris	Mr. R. G. Klocek
Mr. A. J. Carbon	Mr. D. H. Rice
Mr. R. L. Kilpatrick	Mr. B. D. Nardis
American Railway & Airway Supervisors Division-BPAC	

Mr. P. A. Puglia
Mr. H. L. Lindenmuth
Int'l Brotherhood of Electrical Workers

Mr. G. J. Francisco, Jr.
Int'l Brotherhood of Firemen and Oilers

Mr. J. A. Mendralla
International Longshoremen's Association

Mr. J. E. Burns	Mr. N. Papaiani
Mr. C. A. Arthur	Mr. W. F. Mitchell
Mr. G. L. Datres	
Int'l Assn. of Machinists and Aerospace Workers	

Mr. J. P. Cassese
Mr. J. Dodd
Mr. J. J. Lattanzio
Brotherhood of Maintenance of Way Employes

EXHIBIT 1

Mr. E. J. Fusco
 Mr. T. F. Nolan, Jr.
 Sheet Metal Workers International Association

Mr. B. E. Britcher
 United Signalmen General Committee

Mr. W. D. Summerville
 International Brotherhood of Teamsters

Mr. M. A. Schwartz
 American Train Dispatchers Association

Mr. A. A. Terriego
 Transport Workers Union of America

Mr. J. C. Thomas
 Railroad Yardmasters of America

Mr. D. F. Riley
 Brotherhood of Locomotive Engineers

Mr. E. T. Adkins	Mr. C. P. Jones
Mr. G. Baloozian	Mr. R. E. Frear
Mr. W. A. Beebe	Mr. R. M. Leslie
Mr. C. F. Fuller	Mr. S. T. Malizia
Mr. R. D. Jarvis	Mr. J. J. Weyhe
	Mr. C. D. Winebrenner

United Transportation Union (C&T)

Mr. R. M. Belle	Mr. J. N. Fralick
Mr. T. H. Cannon	Mr. A. Gula
Mr. C. A. DeBolt	Mr. T. McGovern
Mr. R. E. Doan	Mr. T. C. Roll

United Transportation Union (E)

Gentlemen:

As most of you are aware, the Occupational Safety and Health Administration, based on complaints filed, cited Conrail for various alleged violations of OSHA requirements, including 29 CFR 1910.132(a) for failing to require the wearing of safety shoes at the Enola, Pa. diesel repair facility.

Consequently, under the order, last November this Company was obliged to require all employees directly involved in the repair and maintenance operations, including material handling, at Enola Locomotive Terminal to wear safety shoes.

Based on this ruling, Conrail is now instituting a system-wide safety shoe policy and has advised OSHA accordingly. Therefore, effective June 1, 1984, it will be mandatory that all employees wear safety shoes while in field service in the Maintenance of Equipment, Maintenance of Way and Material Distribution Departments and other Departments as may be designated. Bulletin board notices will be posted throughout the system advising all employees of this requirement.

The safety shoes must have a steel toe cap that meets ANSI Z-41, classification 75; a definite heel not more than two inches high; a sole and height appropriate to the occupation; and be fastenable by laces, zipper or buckle.

Effective March 15, 1984, when the safety shoes are purchased from one of the following companies through payroll deduction, Conrail will reimburse the employee in the amount of \$15 for each pair of shoes, not to exceed two pair each calendar year. Any change in the list of approved companies will be communicated to employees via bulletin board notices.

Safety First Shoes, Inc.
421 South Carlisle Street
Allentown, PA 18105

Knapp King Size Corp.
Safety Shoe Division
One Knapp Centre
Brockton, MA 02401

Iron Age Protective Company
2406 Woodmere Drive
Pittsburgh, PA 15205

Safety Shoe Distributors, Inc.
500 West 172nd Street
South Holland, IL 60473

Lehigh Safety Shoe Company
1100 East Main Street
Endicott, NY 13760

In an effort to promote the wearing of safety shoes, even where not mandatory, this \$15 subsidy will be available to any Conrail employee purchasing shoes through payroll deduction. In addition, any employee in those Departments where safety shoes will be mandatory, who purchased safety shoes between January 1, 1984 and March 15, 1984, will be allowed a \$15 reimbursement upon presentation of proof of purchase.

Your participation in conveying to your members the necessity of complying with this safety requirement will be appreciated.

Sincerely,

/s/ R. E. Swert

R. E. Swert
Vice President-Labor Relations

A May 10, 1984 Notice to Organization Chairmen, including Mr. W.A. Radziewicz, United Signalmen General Committee, informed them that the "effective date for enforcement will be delayed until July 16, 1984." It is this policy which has given rise to this dispute.

Conrail and BRS have differing positions on how the issue before this Board should be framed. Conrail views it as "Does Rule 8-A-1 require the Company to reimburse employees for the cost of safety shoes?" BRS sees the issue in two dimensions namely, that Rule 8-A-1 of the June 16, 1981 Agreement between the Parties covers the use of safety shoes; and, if it does not, the issue of how much is a proper allowance towards their purchase is a condition of employment to be negotiated between them. After reviewing the entire record this Board has determined that the issue set forth above focuses upon the essence of the dispute.

Rule 8-A-1 of the June 16, 1981 Agreement provides "Protective clothing as required by the Safety Rule Book (S-7-C) will be provided by the Company." In that Rule Book as of the date of this Agreement there is a portion headed "Attire" followed by:

ATTIRE

3020. Wear suitable gloves and clothing:

- (a) That gives ample body, arm and leg protection. When acetylene, electric or thermit cutting or welding, wear cuffless overalls or trousers. Short sleeve or "T" type shirt may be worn if not performing work requiring arm protection.
- (b) Not badly torn or loose enough to be hazardous, including long necktie or jewelry, unless fastened or securely tucked inside shirt.
- (c) Not greasy, oily or saturated with flammable substance.
- (d) With loose or baggy trouser cuffs or bottoms secured to prevent flapping, catching or dragging.
- (e) That does not interfere with vision or hearing, except authorized hearing protection.

3021. Wear suitable shoes and overshoes:

- (a) Preferably leather shoes not less than six inches high, appropriate soles and steel toe protection.
- (b) Not sandals, open-toed, canvas or other shoes, that cannot be fastened.
- (c) Completely laced, buckled, zipped or otherwise fastened.
- (d) Not with loose, thin, cracked or rippled or wedge type soles, or without a definite heel.
- (e) Not cowboy boots, "Cuban" or stacked heels or platform soles.
- (f) Not with metal plate or cleat on sole or heel. Not with laces dangling far enough to be a tripping hazard."

The Company's contention is that Section 3020 of the Rule Book clearly covers "...suitable gloves and clothing" while Section 3021 covers "...suitable shoes and overshoes" (emphasis added). Because of this specific reference to "clothing" in the one and "shoes" in the other, it follows that the word "clothing" in Rule 8-A-1 must be limited to just that, clothing and not shoes. If shoes were intended the Parties could have readily used the term "protective attire" or "protective shoes and clothing." The Organization contends that under Rule 8-A-1 all kinds of protective clothing would be provided by the Company, even as they have provided other protective gear mentioned in the Safety Rule Book. Moreover, once the safety shoe policy became effective the Safety Rule Book (S-7-C) was changed to reflect the requirement of safety shoes in Section 3021. In the alternative the Railway Labor Act "precludes Conrail from changing working conditions without negotiating a consummated agreement between the parties" (Organization submission).

Thus the critical question presented here is the meaning of the word "clothing." On one level the term "clothing" suggests "cloth" which has been defined as "pliable material made usually by weaving, felting or knitting," i.e., the suggestion of something

made of fibers; although modern plastic garments certainly do not fit such a narrow definition. On another level, however, the "clothing" in Rule 8-A-1 does not stand alone, but is part of the phrase "protective clothing," that is some sort of material(s) which stand between the body and a hazard to it. In this sense "clothing" or "clothes" means "covering for the human body...for ...defending the body from cold or injuries" (Webster's Universal Dictionary). That "clothing" encompasses protection of all parts of the body against "injuries" is instructive here. Beyond dictionary definitions the term "clothing" is commonly used in popular every day parlance to indicate what one wears without any necessarily precise differentiation between "clothing" and "shoes". Incidentally, in both dictionaries and in ordinary language "attire" is a widely accepted term for everything that a person wears (Webster's New Collegiate Dictionary and Rodale's Synonym Finder).

This "semantic" analysis is supported by the following:

- 1) OSHA regulations are an expression through an administrative agency of Congressional (national) intent that the health and safety of employees in the workplace be of paramount concern

to the Employer. The main thrust of the regulations is in directing that the Employer provide a healthy and safe environment, including protective materials and devices of all manner and type which are placed on the employee's body: A reading of "protective clothing" in Rule 8-A-1 as including "safety shoes" is in harmony with this national policy.

2) The Company has long provided employees with various protective devices, whether mentioned in the Safety Rule Book or in other Company generated policies, when they are required on the job, e.g., "hard hats, goggles, helmets, or hand shields for welding, rubber plastic-coated gloves, shin protectors and face shields. In addition, the Company has always provided foot protectors under certain conditions which act as 'steel toes' attached to the outside of the shoes" (Company Brief). Also see Sections of the Safety Rule Book (S-7-C) under the Heading of Personal Protective Equipment, e.g., "goggles", "hearing protection", "foot protectors or safety shoes" under certain circumstances, "shin protector", "helmet", "face shield"; and Electrical Protective Gloves. These "non-clothing" devices could not easily be fitted within a narrow definition of "clothing", but they do indeed fall within the broader, commonly understood meaning of "protective clothing."

3) Sections 3020 and 3021 of the Safety Rule Book, i.e., the details under the headings "Wear Suitable Gloves and Clothing" and "Wear Suitable Shoes and Overshoes," are both listed under the main heading of "ATTIRE" in bold capitalized letters. On the basis of the commonly used synonym for body covering in general "shoes" are perforce covered under "attire".

4) Any doubt as to whether or not the Safety Rule Book mandates the use of safety shoes while the employees in question here are on the job is eliminated in the new language of Section 3021 in place since the safety shoes policy became effective. It now reads (Exhibit 16, Organization Submission):

3021. Employees must wear safety-toe footwear of sturdy construction and proper height (preferably at least six inches) to ensure adequate protection. Safety-toe footwear shall meet the requirements specified in American National Standards Institute Safety-Toe Footwear, Z41.1 class 75 minimum. This footwear must be completely laced, buckled, zipped or otherwise fastened.

You must NOT wear footwear which:

- (a) Are sandals, open toed, open heeled, wood bottomed, canvas or non-fastenable. (Does not apply in offices).
- (b) Have loose, thin, cracked, rippled, wedge or platform type soles.
- (c) Have a metal plate or cleat on the sole or heel.
- (d) Have laces dangling far enough to be a tripping hazard.
- (e) Does not have a definite heel, have heels over two inches or elevated toes.

Thus the waering of safety shoes is now mandated, i.e., "required by the Safety Rule Book (S-7-C) " consistent with Article 8-A-1 and the sections of the Safety Rule Book dealing with such items as goggles and Electrical Protective Gloves.

5) No NRAB or Public Law Board authority has been cited which deals directly with the words "clothing" and "shoes".

It follows therefore that it is Conrail's responsibility to provide the safety shoes. There is however a legitimate Company concern which must be addressed. As the Company's Brief put it:

The Organization has contended that it sees very little difference between safety shoes and other protective devices supplied by the Company, i.e., safety glasses, rubber gloves, etc. While these items have been supplied by Conrail, either by Company policy or through Rule 8-A-1, the Carrier submits that these items are issued for wear only when the employees are on duty, on Company property, to be returned to Company custody at the end of the work day.

To avoid employees wearing safety shoes on off time the Company can require that they be worn by the employees only while on duty. Even as a failure to wear safety shoes while on duty can be the basis for discipline, an employee wearing these shoes while off duty will also be committing an infraction.

Therefore the Board determines that Rule 8-A-1 of the June 16, 1981 Agreement requires the Company to provide safety shoes to the employees covered by the Agreement. These employees are to wear the safety shoes only when on duty.

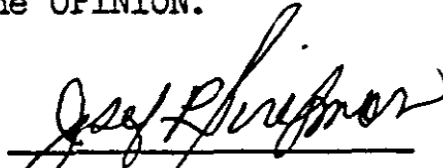
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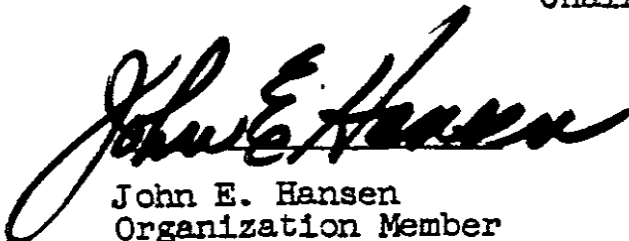
Public Law Board No. 3750, upon the record as a whole, finds and holds as follows:

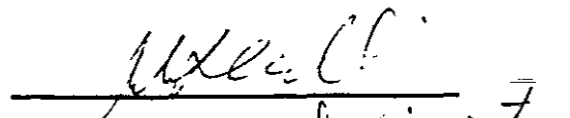
1. That the Carrier (Company) and Employee(s) involved in this dispute are, respectively, Carrier and Employee(s) within the meaning of the Railway Labor Act;
2. That the Board has jurisdiction over the dispute herein;
3. That the Agreement was violated as set forth in the OPINION.

AWARD

The Claim is sustained as set forth in the OPINION.


 Josef P. Sirefman
 Chairman


 John E. Hansen
 Organization Member


 Robert O'Neill *dissent*
 Carrier Member
(See attached)

Dated: March 5, 1986

NATIONAL ASSOCIATION

Carrier's Dissent to Award No. 1 of Public Law Board No. 3750

NATIONAL ASSOCIATION
ADJUSTMENT BOARD

The neutral in this award became so engrossed in his own brand of semantics that he failed to take into account different meanings of the words "clothing", "clothes" and "attire" as set forth in other accredited reference dictionaries and tomes concerning the meaning and use of words. He also went beyond dictionary definitions when he provided his own particular definition of "clothing". The Carrier will not engage in further semantics to prove its point. The neutral overlooked the cardinal established rule of contract construction which holds that if a contract is susceptible to alternative constructions, one of which would lead to a reasonable or sensible result and the other to an absurd or ridiculous result, the contract must be construed in light of the former. There are numerous awards, such as 1st Division Award 7454 (Malry), 2nd Division Award 1321 (Donaldson), 3rd Division Award 15011 (Wolf) and 4th Division Award 1224 (Coburn), which may be cited in support of the foregoing.

The crux of the issue involves an interpretation of the term protective clothing as used in Rule 8-A-1. In reality, the dispute does not concern shoes per se but evolves around the requirement of a steel safety covering on a shoe. The employees have always been required to wear shoes and the carrier has never, by contract or otherwise, provided free shoes while working.

The Board is well aware that the Carrier does provide \$15.00 for each pair of safety shoes purchased, not to exceed two pair each calendar year, to cover the cost of the steel protective covering. The neutral sidestepped carrier's question, "Does Rule 8-A-1 require the Company to reimburse employees for the cost of safety shoes?" The answer to that question would have to be no.

If the Board were to properly consider the different question posed by the employees, it would have to determine that the steel protective covering was protective clothing and, if so, how much is a proper allowance for the steel protective covering.

The Board majority exceeded its authority when it determined safety shoes per se were protective clothing and that it is Conrail's responsibility to provide and pay for safety shoes to be used only when a signalman is on duty.

The Carrier vigorously dissents to the absurd and ridiculous conclusion of the majority when they failed to consider a reasonable or sensible conclusion. This award will not establish a precedent in any other case.

Robert O'Neil
Carrier Member, PLB. 3750
March 11, 1986