

PUBLIC LAW BOARD NO. 4603

Parties
to the
Dispute

BROTHERHOOD OF RAILROAD SIGNALMEN

vs.

CONSOLIDATED RAIL CORPORATION

Case No. 2

STATEMENT OF CLAIM

Case No. 2-A

Claim on behalf of H.O. Rode, Jr., and C. F. Bernhard for payment of \$20.34 and \$37.97, respectively, account of the Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to pay them the full amount for purchase of Safety Shoes. Carrier file SD-2484.

Case No. 2-B

Claim on behalf of M. S. Long for \$80.99, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to reimburse him for full payment of his required Safety Shoes. Carrier file SD-2485.

Case No. 2-C

Claim on behalf of M. S. Long for \$80.99 account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to reimburse him for full payment of his required Safety Shoes. Carrier files SD-2486.

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Case No. 2-D

Claim on behalf of C. L. Six for reimbursement of \$57.50 account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to reimburse him in total for his Safety Shoes. Carrier file SD-2509.

Case No. 2-E

Claim on behalf of G. Loutzenhiser for \$27.99, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to pay him for his Safety Shoes. Carrier file SD-2513.

Case No. 2-F

Claim on behalf of J. J. Taylor for \$40.72 reimbursement, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to reimburse him in whole for his Safety Shoes. Carrier file SD-2514.

Case No. 2-G

Claim on behalf of H. W. Scheithauer and G. R. Blum, for reimbursement of monies paid for Safety Shoes, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to reimburse them for Safety Shoes they bought. Carrier files SD-2503-4.

Case No. 2-H

Claim on behalf of R. J. Ford for payment of \$54.45 account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 8-A-1, when it refused to reimburse him for the full amount of his Safety Shoes. Carrier file 2518.

Case No. 2-I

Claim on behalf of N. D. Smith, for payment of \$44.45, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 8-A-1, when it refused to pay him in full for his safety shoes. Carrier file SD-2556. BRS file Case No. 7608-CR.

Case No. 2-J

Claim on behalf of D. L. Fain, for payment of \$38.57, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 8-A-1, when it refused to pay him in full for the purchase of safety shoes. Carrier file SD-2572. BRS file Case No. 7611-CR.

OPINION OF THE BOARD

In 1978, Carrier was cited by OSHA for failing to require employees in the Enola Diesel Terminal to wear safety shoes. The OSHA ruling was upheld in the federal courts and as of January 2, 1984, all employees at Enola were required to wear safety shoes. Carrier concluded from the OSHA decision and court support for OSHA's position that the safety shoe requirement would logically be extended to any employee who worked in a situation where foot injury could occur. It therefore issued a policy requiring all employees to wear safety shoes and offered, as an incentive to do so, a \$15.00 rebate per pair, with a limit of two pairs each year. The Employees of the Brotherhood of Railroad Signalmen were not satisfied with the \$15.00 rebate policy and it filed a claim contending

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that since safety shoes are now required, the Carrier should provide them. It argued that Rule 8-A-1 of the June 16, 1981 Agreement required this. The Arbitrator in the Case (PLB 3750, Award I) adopted the Union's position and issued an Award stating that the Carrier was required to provide safety shoes to all employees required to wear them. The Award also stated that the shoes could only be worn while on duty. The Carrier dissented in this Award and noted that it did not consider the Award to be precedential in any manner.

As a result of the Award, however, Carrier did agree to reimburse employees for safety shoes up to a cost of \$65.00 per pair and \$75.00, in some special cases. This reimbursement was limited to two pairs of shoes per year. Numerous employees were not satisfied with the \$65.00 per pair reimbursement and filed claims for the total cost of safety shoes they purchased. A number of those claims are the subject of this Award. What the Claimants seek is the difference between what they paid for the shoes and the \$65.00 they were reimbursed by Carrier.

This Board has reviewed in detail the material presented in this case and it has concluded that Carrier's position on the average cost of a pair of safety shoes is justified and that a maximum of \$65.00 per pair of shoes is an equitable and reasonable amount. This Board has also discussed the reasonableness of Award I of PLB 3750 and we conclude that the direction that employees only be allowed to wear their safety shoes on duty is an unenforceable element of the Award. If

enforcement were attempted, the enforcers would become a laughing stock. Who would follow an employee around to see if he wore his safety shoes back and forth to work or while working at home? This was not a practical solution to the problem and this Board does not adopt that element of Award I.

At the same time, the Board does not see the need for or the reasonableness of requiring an employee to produce proof of purchase of the safety shoes before the \$65.00 reimbursement will be authorized. Employees are required by OSHA and by Carrier Rule to wear safety shoes. They are required to do so under pain of discipline. The Board cannot conceive of employees putting in for shoes they did not buy or obtaining false invoices from shoe stores or salesmen in order to get reimbursed for more than the cost of the shoes.

In regard to Award No. I's statement that Carrier is required to provide safety shoes, this Board adopts that principle. We do not, however, conclude that it would be practical for Carrier to establish a supply room to issue safety shoes to employees (many employees would rather purchase their own shoes) or that the requirement of providing safety shoes means that Carrier is obligated to reimburse them for according to whatever the cost may be.

It is this Board's opinion that the simpler the safety shoe policy is for Carrier and the employee, the better it will be for all concerned.

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To that end, this Board directs that Carrier make a lump sum payment of \$130.00 once each year to all employees who are required to wear safety shoes. In the event that some special shoes are required by some employees, the same procedure now in effect for such situations will apply and the maximum reimbursement will be \$150.00 per year (\$75.00 per pair, two pairs per year).

AWARD

1. The Carrier is directed to pay each employee required to wear safety shoes \$130.00 once a year.
2. Employees are responsible for the purchase of their own safety shoes.
3. Employees are required to wear safety shoes at all times while on duty. No restriction to wearing shoes off duty shall apply.
4. The individual claims as presented in this case are denied.

R. E. Dennis
R. E. Dennis, Neutral Member

C. A. McGraw
C. A. McGraw, Employee Member

R. O'Neill
R. O'Neill, Carrier Member

September 21, 1989
Date of Adoption