

Award No. 3040
Docket No. 2794
2-P&LE-TWUOA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That it is improper for the carrier under the present agreement to insist that car inspectors carry radios to report back to their supervisors.

That since the carrier is requiring the car inspectors to carry radios and report back to their supervisors that they be compensated for this work.

That this claim is for Mr. Thomas P. Hanlon for eight (8) hours for being required to carry radio and report back to supervisor.

EMPLOYEES' STATEMENT OF FACTS: That the carrier now does require the car inspectors to carry radios and report back to supervisors. Employees' Exhibit No. 1.

That there is only one rule in the agreement as to classification of work, Rule 25, and this rule makes no mention of carrying of radios by car inspectors.

That this claim arose at Youngstown, Ohio and is known as Case Y-60.

That the Railroad Division, Transport Workers Union of America, AFL-CIO, does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering carmen, their helpers and apprentices, (Car & Locomotive Departments), a copy which is on file with the Board and is by reference hereto, made a part of these statement of facts.

"There is little difference in principle between installing a mobile type of telephone such as the radio telephone and expanding or installing telephone call boxes at specific locations. The use of the radio telephone is similar in principle. It is merely just another advanced form of communication between yardmasters and crews. The employes have not made any claim for additional compensation by reason of being required to use stationary call boxes and they have been using them for many years.

"The above observations lead to the conclusion that, other considerations aside, the case for granting additional compensation to train crews who answer the radio telephone is weak at best. When considered with (1) the clearly established fact that these crews are in no worse situation than their brother employes on other railroads servicing other plants of the Bethlehem Steel Company who receive no additional compensation for use of the radio telephone and who ask for none and (2) the further fact that so far as appears from the record here made of all the railroads in the country using radio telephones, only one (and that one under seemingly special circumstances) has any agreement requiring additional compensation to trainmen using the radio telephone, it is apparent that this Board has no alternative but to find that the request of the Brotherhood should be denied.

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"Upon full consideration of the whole record the Board of Arbitration finds that the request of the Brotherhood that "All crews who are compelled to answer the radio telephone and take orders over same are to receive an additional \$2.00 per day per man" should be denied."

CONCLUSION

The carrier has hereinbefore conclusively shown that—

Nothing in the rules prohibit the use of radio-telephone communication, neither are there any rules which provide for penalties as sought by the employes;

The claim was progressed by the employes in violation of a moratorium set up under the provisions of the Railway Labor Act;

The claim is a virtual request on the part of the employes to have the Board—by means of a sustaining award—establish a new rule, in the absence of an existing one which would support the claims as presented—which is outside and beyond the jurisdiction of the Board to do.

A number of awards of the First Division, National Railroad Adjustment Board, and Award No. 1 of Special Board of Adjustment No. 121 have all denied similar claims, all of which support the carrier's position that the instant claim has been improperly progressed, is without merit and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

This claim concerns the assertion by the organization that Rule 25 "Classification of Work" was violated in that the claimant was required to carry a radio in order to report back to his supervisor. The claimant is not asking that the practice be stopped. He is asking for compensation. In his rebuttal the claimant does not object to the use of radio but simply objects to the carrying of a radio weighing some 10 pounds.

Rule 25 defining the work of a carman is not all inclusive. Rule 25 does not specify that car inspectors shall carry tools and equipment, for example but they do so as a necessary incident to their work. There must be some means of communication between the claimant and management. This is simply a new method of communication.

Our function is to determine if the existing rules of the agreement have been violated. We have no power to write rules for the parties. We do not find that the agreement has been violated.

For the reasons stated, a denial award is required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1958.