

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { United Steelworkers of America
 { Lake Terminal Railroad Company

Dispute: Claim of Employes:

- (1) Due to this Carrier's irrational refusal to deal with the issue of the use of portable communication radios with the Organization during the present negotiations, it becomes incumbent upon the Organization to seek equity in this matter through our contractual grievance procedure.

It is our position that when the Carrier unilaterally and arbitrarily ordered Car Inspectors and sundry other employees under our Agreement to carry radios during their tours of duty, it violated Article XII, Moratorium of the Memorandum of Agreement, dated September 26, 1977, which prohibits the changing of the existing Agreement covering rates of pay, rules and, as in the instant working conditions during the life of the Agreement.

- (2) Therefore, it is requested that the Carrier compensate employees E. Barens, C. Parsons, A. Shlapak, W. Carter, R. Keyser and D. Hanko eight (8) hours at the Car Inspector's rate, for each workday beginning with September 15, 1980, in addition to all other earnings, as penalty for the instant violation.

- (3) Additionally, under Rule 13(d) this claim shall be considered a continuing claim until the issue is resolved.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Sometime during the first few months of 1979, the Carrier instructed its car inspectors to carry portable "walkie-talkie" radios during their tour of duty to facilitate communication between the inspectors and the assistant trainmasters. On June 18, 1980, the Organization served a notice pursuant to Section Six of the Railway Labor Act which included a proposal that employes be paid a premium or additive if they were required to carry portable radios. Subsequently,

after negotiations on the radio proposal (as well as others), the parties signed an Agreement dated November 14, 1980 which did not provide for any additive for employes who were directed to use radios. During negotiations, on October 14, 1980, the Organization instituted this continuing claim on behalf of six employes who seek eight hours of pay for each day they are required to carry and use portable radios.

The Organization argues that the Carrier unilaterally changed working conditions when it ordered car inspectors to carry portable radios in violation of the moratorium contained in Article XII of the September 26, 1977 Agreement. The Carrier contends the Organization has resorted to the grievance system to attempt to obtain compensation that it was unable to procure in collective bargaining. In addition, the Carrier cites Article XI of the November 14, 1980 Agreement which states, in part:

"This agreement is a full and final settlement of all notices and/or requests, either written or otherwise, which have been served and/or made or which may be served and/or made by either party before October 1, 1980, in accordance with Article XII--Moratorium-- of agreement between the parties dated September 26, 1977."

For several reasons, we conclude that the Organization is improperly petitioning this Board to write a contract rule for the parties. First, the Organization tacitly recognized that the issue of additional compensation for carrying portable radios was an appropriate subject for collective bargaining (rather than a grievance) since the Organization served a Section Six notice prior to instituting this claim. Second, the Organization was unsuccessful in negotiating a premium for car inspectors required to carry radios during negotiations leading to the 1980 Agreement. This Board is precluded from granting the Organization relief which it was unable to obtain during collective negotiations. Second Division Award No. 7440 (Wallace). Third, the Organization has failed to raise any rule in either the 1977 or 1980 Agreements which prohibits the Carrier from requiring car inspectors to use radios. The scope of this Board's authority is confined to adjudicating disputes concerning the interpretation and application of agreements. The Organization has the burden, which it has not met here, of showing which rule was violated. Second Division Awards No. 6948 (Lieberman) and No. 7426 (McBrearty). The issue presented in this claim must be resolved through collective bargaining and, thus, we must dismiss the claim.

A W A R D

Claim dismissed.

Form 1
Page 3

Award No. 9106
Docket No. 9356
2-LT-USWA-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of June, 1982.