In the Matter of the Arbitration between ALLIED SERVICES DIVISION/BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES and WESTERN RAILROAD ASSOCIATION	Section 11 New York Dock Conditions

APPEARANCES

For the Association

John S. Godfrey - Assistant to the President and Association Board Member

For the Union

Robert F. Davis - General Secretary/Treasurer and Union Board Member

BEFORE

Rodney E. Dennis - Chairman, Arbitration Bo:

CARRIER'S EXHIBIT "A"

BACKGROUND OF THE CASE

As of October 1, 1982, Claimants were properly placed on protective status and were to be paid a monthly displacement allowance in accordance with New York Dock Conditions. Claimants L.P. Wiggins, R. Passarelli, M. Dragisic, and R. Lopacinski were highly skilled white-collar workers who had been engaged in the processing of proposals for the establishment of freight rates for member Carriers. During the months of August and September 1982, Claimants had also worked for Carrier on a voluntary basis moving furniture, files, and office equipment into its newly remodeled office space at 222 S. Riverside Plaza, Chicago, Illinois. They worked nights and weekends and were paid on a time-and-one-half basis. When Claimants' displacement allowances were calculated, the Association did not include the money they earned on the moving project. Petitioner claims that this money should be included in the displacement allowance calculations. A claim was filed that has resulted in this arbitration.

THE ISSUES PLACED BEFORE THE ARBITRATION BOARD

1. Did the Association properly calculate the displacement and/or dismissal allowances due c, R. Passarrelli, R. Lopacinski, and , when it excluded certain payments

rate to the individuals during the last twelve months in which they performed service immediately preceding the date of their displacement and/or dismissal?

2. If the answer to the above question is in the negative, are the claimants entitled to have their protected rate recalculated and to be paid the difference in pay beginning with their protective period and continuing throughout its duration?

NEW YORK DOCK PROVISIONS PERTINENT TO THIS DISPUTE

Section 5.a.

So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

POSITION OF THE PARTIES

The Union

The Union contends that the Association should have included all compensation earned by Claimants during the 12 months prior to their displacement in the calculation of their respective displacement allowances. In support of its position, the Union presents the following arguments:

(1) The language of Section 5, Paragraph 2, is clear and unambiguous. It states that the "displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee" during the 12 months he performed service prior to his displacement. Nowhere in the language pertinent to this dispute is any exception of any kind made in regard to compensation received during the 12-month period prior to displacement.

(2) Claimants received compensation for work performed as employees of the Association. The money appeared in their regular paychecks and it was not designated as money earned while Claimants had any status other than employees of the Association. The Association's argument that Claimants operated as subcontractors during the [illegible] is not valid.

(3) The argument presented by the Association that the work performed by Claimants was not work covered by the Scope Rule or work related to Claimants' basic position is not relevant. Section 5 does not exclude any work performed by an employee for the Company in the calculations to establish a displacement allowance.

(4) There are numerous arbitration awards that support this position.

The Association

The Association contends that the compensation earned by Claimants while they were engaged in the "moonlighting project" is not compensation that should be included in the calculation of displacement allowances. In support of its position, it presents a number of arguments, chief among them are the following:

(1) The Claimants involved here are highly skilled white-collar workers who are not called on under any conditions to perform manual labor. All compensation earned by these men on their basic jobs were included in the calculations of their respective displacement allowances.

(2) The work performed by the Claimants was on a volun basis. It was not work covered under the BRAC Scope Rule an

not granted in accordance with terms of the Controlling Agreement. A work opportunity was offered in order to allow Association employees the chance to make extra money on a moonlighting basis. The fact that Claimants were paid at time-and-one-half their base rate and the pay was included in their regular paychecks has no significance. Despite this, the Association considered these people to be subcontractors, not regular employees covered under the Controlling Agreement.

(3) While the Union argues that all moneys earned, regardless of the conditions under which they were earned, should be included in the allowance calculations, there are numerous arbitration awards to the contrary.

FINDINGS

After considerable review of the material presented by the parties and a detailed reading and study of prior awards submitted by both parties, this Board is persuaded that the weight of the probative evidence is supportive of the Association's position. We have concluded this in spite of the fact that the pertinent Agreement language appears to support the Union's case.

The Contract language clearly states that when an employee

displacement allowance is determined, the salary base to be used for calculation shall be the total compensation earned during the 12 months preceding the date of the employee's displacement. The critical question here is what constitutes total compensation for purposes of calculating the displacement allowance? Specifically, should the overtime wages earned by Claimants on the moving project during August and September 1982 be included in the calculations? Based on a reasonable application of New York Docket Conditions, the materials presented at the hearing, and the prior awards on the issue, we can find no basis for answering yes to the latter question.

New York Dock Protective Conditions were implemented to save employees harmless from loss of pay and job status when they were adversely impacted as a result of a transaction. A practical interpretation of that application is that an employee should not be awarded a monthly displacement that would cause him to be financially better off or worse off than if he continued to work his job. To include one-time windfall earnings in the calculation of the displacement allowance would tend to inflate the monthly allowance above what should reasonably be anticipated.

Claimants performed a moving job for the Association.

had : claim to the work nor was the work granted

employees on other than a voluntary basis. The fact that the Employer chose to pay them at the overtime rate and include the wages earned in their regular checks in no way makes the work part of the Claimants' jobs that were eliminated as a result of the coordination.

The bulk of the awards cited in the record by both parties clearly exclude from calculation of the 12-month average earnings from casual or unassigned overtime as well as most other forms of compensation received by employees not directly related to their basic jobs. We see no reason in this case to decide otherwise. To include the overtime earned on the moving project in the calculation of the Claimants' displacement allowance would be to strain the definition of the term total earnings beyond what a reasonable review of the facts could require.

AWARD

The answer to question one is yes.

R. E. Dennis, Neutral Member

S. Godfrey, Association Member

R. F. Davis, Union Mem