SPECIAL BOARD OF ARBITRATION
CREATED PURSUANT TO ARTICLE IV,
SECTIONS 2 AND 3 OF THE OCTOBER 27, 1992
NEW YORK DOCK IMPLEMENTING AGREEMENT

PARTIES	SOUTHERN PACIFIC LINES	)	
		)	AWARD NO. 10
TO	AND	)	
		)	CASE NO. 10
DISPUTE	TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION	)	

EMPLOYEES' STATEMENT OF ISSUE:

Can the Carrier offset the "Displacement Allowance" of an employee by the amount of overtime declined in any given month even though that employee worked the equivalent to his average monthly time of his test period in that given month?

CARRIER'S STATEMENT OF ISSUE:

May the Carrier properly deduct the earnings a protected employee would have made had he not declined a work opportunity at a point during the protective period month when he had not worked the equivalent of his test period hours, notwithstanding that by the end of that month he had worked the equivalent of his test period hours?

HISTORY OF DISPUTE:

The issues in this case and the underlying dispute arose against the background outlined in Award No. 1, Case No. 1 decided by this Board. In the interest of brevity that background will not be reviewed here.

The issues and underlying dispute in this case were generated by the Carrier's calculation of displacement allowances under

Article I, Section 5 of the New York Dock Conditions which provides:

> Displacement allowances - (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.
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> 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.
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> If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.
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> (b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and

compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

The Carrier deducts from any monthly dismissal allowance due an employee under Article I, Section 5 any compensation the employee could have earned from overtime offered to the employee by the Carrier but rejected by the employee even before the employee has worked his average monthly time. Once the employee has worked his average monthly time, the Carrier makes no such deduction. The Carrier also credits the employee with one and one-half hours toward his average monthly time for each hour of overtime worked by the employee.

The Organization challenged the Carrier's calculation on the ground that so long as within a monthly period a displaced employee works his average monthly time the Carrier may make no deductions from that employee's monthly displacement allowance. Accordingly, urges the Organization, the Carrier must allow the displaced employee the full monthly period to work his average monthly time before making any deduction from the employee's monthly displacement allowance for rejecting overtime offered during the month.

The parties could not resolve the dispute. Accordingly, pursuant to Article IV, Sections 2 and 3 of the October 27, 1992 New York Dock Implementing Agreement (Implementing Agreement) the parties placed the foregoing issues before this Board.

The Board heard this case on June 28, 1995 in Houston, Texas. The parties presented written submissions and oral argument. No bench decision provided in Article IV, Section 3 of the Implementing Agreement was issued at the hearing. The parties extended the time provided therein within which this Board must render a decision in this case.

FINDINGS:

The Board finds that the parties have complied with all procedural requirements to bring the issues in this case and the underlying dispute before this Board for adjudication. The Board also finds that it has jurisdiction to decide the issues and to resolve the dispute. The Board further finds that all parties to the case were given due notice of the hearing before this Board.

In support of its position the Organization points to what it characterizes as the plain language of Article I, Section 5. The Organization emphasizes that under the first paragraph of Section 5(a) a displaced employee is to:

> . . . 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. (Emphasis supplied)

The Organization also emphasizes that under the second paragraph of Section 5(a) dictating how a displaced employee's displacement allowance shall be determined, the employee's time worked and compensation during the twelve months he performed service immediately preceding his displacement are to be divided by twelve ". . . thereby producing average monthly compensation and average monthly time paid for in the test period. . . ." Moreover, the Organization further emphasizes, the third paragraph of Section 5(a) governing a displaced employee's entitlement to a displacement allowance in any given month during his protective period is pegged to his monthly compensation in his retained position. Thus, the Organization argues, the governing period for the displacement allowance provided in Section 5(a) is monthly and not weekly, daily or hourly as would be the case if the Carrier's position herein prevails. The Organization contends that the Carrier may offset against the monthly displacement allowance due an employee overtime the employee has rejected only if at the end of the month the employee has not worked his test period hours.

The Carrier maintains that under Section 5(a) at a time in a month when a displaced employee has not worked his test period hours and rejects overtime the Carrier may offset against the displacement allowance the earnings or compensation the overtime

would have produced if worked, even though by the end of the month the employee works a number of hours equivalent to the employee's test period hours. To rule otherwise, urges the Carrier, would contravene the clear language of the third paragraph of Section 5(a) requiring that compensation attributable to time lost due to voluntary absences be deducted from the employee's displacement allowance. Citing arbitral authority the Carrier contends that a displaced employee's rejection of overtime at the time it is offered constitutes such a voluntary absence.

In support of its position the Carrier points to the Reference Manual produced by the Organization for interpretation of the February 7, 1965 National Employment Stabilization Agreement which contains the following statement concerning voluntary absences which may be offset against an employee's guarantee under language quite similar to the third paragraph of Sections 5(a):

> Before leaving this Section, time lost account voluntary absences should be examined. Before a reduction account time lost account voluntary absence can be made from an employee's guarantee, a determination on whether or not such voluntary absences occurred in the first hours of the month, those comparable with the hours in base period must be made. For instance, if an employee's base period hours are 150 and he is absent in a month before he completes 150 work hours, then a deduction can be made for time lost as a result of this absence, but if the absence occurs after he has worked 150 hours, no deduction can be made as the employee has already completed sufficient work hours to fulfill his guarantee.

The Carrier maintains that this interpretation by the Organization is exactly the same as the position the Carrier takes in this case.

We find the interpretation highly persuasive. It is a long-standing interpretation of language virtually identical to the third paragraph of Section 5(a) of the New York Dock Conditions. It clearly fits the facts of the dispute in this case. It fully supports the Carrier's position with respect to the dispute and undercuts the Organization's position.

In the final analysis we must conclude that the Carrier has the stronger position in this case.

AWARD

The Employee's Issue is answered in the affirmative, provided the offset occurs before the employee has worked hours equivalent to his average monthly time or test period hours. The Carrier's Issue is answered in the affirmative.

William E. Fredenberger, Jr.
Arbitrator

DATED: 10/2/95