AWARD NO. 304
Case No. TC-BRAC-109-W

PARTIES) Soo Line Railroad Company
TO THE) and
DISPUTE) TC Division - BRAC

QUESTIONS
AT ISSUE:

1. Did Carrier violate Article V of the February 7, 1965 Agreement when it failed to consider 28¢ per day allowed Claimant J. D. Larson for operating a highway crossing signal as part of his daily rate in computing his separation allowance.

2. If the answer to Item (1) is in the affirmative, Carrier shall be required to recompute J. D. Larson's separation allowance and include the 28¢ per day.

OPINION
OF BOARD: Claimant was entitled to a separation allowance at the time his position was abolished. For many years he had received, in addition to his regular rate of pay, $6.00 per month for operating crossing gates or crossing signals.

Rule 19(c) of the schedule agreement provides:

> Telegraphers or Levermen who are required to operate crossing gates or crossing signals, or flag crossings, will be allowed $6.00 per month in addition to the rates shown in schedule, except that after September 1, 1949 employes shall be allowed the same amount for performing such service on five days per week as they formerly received for performing such service six days per week and employes performing service on the relief days of the position shall be allowed additional proportionate amounts.

Carrier contends that the 28¢ per day sought by Claimant, based upon the $6.00 per month figure, should not be included in the separation allowance. It argues that this amount is not

part of "the normal rate of compensation," which is the measure of the protected rate under Article IV of the February 7 Agreement. The Organization contends that the $6.00 allowance has been part of Claimant's daily rate of pay for many years.

Under Section 9 of the Washington Job Protection Agreement, a monthly separation allowance is "computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied." Article V of the February 7 Agreement provides that a separation allowance shall be computed in accordance with Section 9 of the Washington Agreement.

There is no reason to find that the February 7 Agreement's "normal rate of compensation" is or was intended to be the identical counterpart of "the daily rate of pay" specified in the Washington Agreement. The language of neither Agreement is automatically transferrable to the other.

In arguing that the $6.00 is not wages, Carrier points out that special allowances, including this one, have not changed when general wage increases have been effectuated. The freezing of the $6.00 for many years is not dispositive. The parties have considered these payments to constitute a "special allowance" over and above the hourly rate. But the issue is whether such a regularly paid, long-standing special allowance is, in fact, part of the "daily rate of pay received by the employee." The two are not necessarily mutually exclusive.

Rule 19(c) of the schedule agreement provides that the allowance goes to employees "who are required to operate crossing gates..." This work assignment was not optional or voluntary, since the position occupied by Claimant required the operation of crossing signals. It was a condition of the job itself for which a contractual amount was paid, a mandatory and integral part of the tour of duty. It is certainly dissimilar from either occasional or sustained overtime work, which may be offered or withdrawn by Carrier and which might be declined by an employee. It is not equivalent to a housing allowance, which are merely expenses in lieu of accommodations.

Claimant's job was a two-fold one for which he received compensation in two parts. Handling the crossing signals was a basic part of the job he was called upon to do, and consequently the compensation payable for it was an integral part of his daily rate of pay.

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Where compensation for specific work is granted by Carrier, as is true here, the fact that it is calculated as a fixed side payment does not alter its character as part of the employee's "daily rate of pay." If a separate sum is contractually granted to an employee for any extra duty, which was a required and invariant part of his job, it can logically be considered part of his daily rate under Section 9 of the Washington Agreement, whether computed hourly, weekly or monthly. It may or may not meet the definition in Article IV, Section 1, of the February 7 Agreement. But it certainly is an established part of Claimant's daily rate of pay for the work regularly required in his position.

AWARD

The Answer to the Questions is Yes.

Milton Friedman
Neutral Member

Dated: May 19, 1972
Washington, D. C.