

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Brotherhood of Railway, Airline and Steamship  
TO THE ) Clerks, Freight Handlers, Express and Station  
DISPUTE ) Employees  
) and  
) The Atchison, Topeka and Santa Fe Railway Company

QUESTIONS  
AT ISSUE:

1. Did the Carrier properly apply Article IV, Section 1 of the February 7, 1965 Mediation Agreement, as amended, effective January 1, 1980, when it refused to allow the Claimants listed herein the difference between their guaranteed daily rate and the rate of the position worked on each day the rate of the position worked was less than their guaranteed daily rate?
2. Shall Carrier be required to pay Claimants listed below the difference between the position worked and their guaranteed daily rate on a day by day basis?

R. A. Sloop  
D. W. Seiler  
G. D. Glassburn  
J. R. Wright

T. M. Gorsage  
R. L. Bocock  
J. A. Miles

OPINION

OF THE BOARD: On January 1, 1980, the parties updated the February 7, 1965 Job Stabilization Agreement. Initially, they retained most of the language of Article IV, Section 1 of the original Agreement. Article IV, Section 1 provided that protected employees "...shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on January 1, 1980..."

After the Agreement was consummated, the Railroad Retirement Board notified the parties that Article IV did not

qualify as a nongovernmental unemployment insurance plan within the meaning of Section 1(j)(ii) of the Railroad Unemployment Insurance Act. The problem surrounded the Retirement Board's interpretation of the word "compensation" as payment for time lost. Therefore, any day on which protection was paid would not qualify as a day of unemployment. To qualify protective payments as a nongovernmental unemployment insurance plan, the parties substituted "daily rate" for the two "compensation" terms in Article IV of the January 1, 1980 amendment so that Section 1 now states that a protected employee "...shall not be placed in a worse position with respect to the daily rate of the position to which regularly assigned on January 1, 1980..."

After the revision, the Carrier continued, as it had in the past, to calculate a protected employee's benefit on a monthly basis and paying the employee the difference between his monthly protected rate and the total amount he earned during the month.

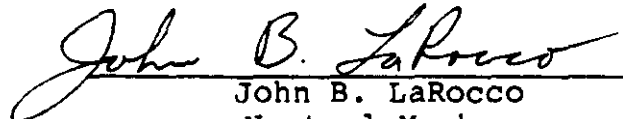
Beginning in late 1983, the Organization argued that the new reference to "daily rate" in Article IV, Section 1 entitles a protected employee to the difference between the rate actually earned each day and his or her daily protected rate.

The only substantive purpose of the Article IV revision was to bring job protective benefits into compliance with the Railroad Unemployment Insurance Act. The parties lacked any intent to tamper with the historical method of calculating monthly job protection benefits. On the contrary, instead of amending the substance of Section 1, the parties' sole motive for

the cosmetic language change in Article IV, Section 1 was to qualify protective benefits as a nongovernment supplemental unemployment insurance plan. Thus, we cannot justify the windfall which would accrue to Claimants as the result of a daily calculation of Claimants' protective benefits.

AWARD

The Answer to Question 1 is "Yes." The Answer to Question 2 is "No."

  
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John B. LaRocco  
Neutral Member

Dated: July 29, 1987