

**SPECIAL BOARD OF ADJUSTMENT NO. 605**

PARTIES - ) Transportation-Communications International Union  
TO THE )  
DISPUTE ) and  
)  
) Atchison, Topeka and Santa Fe Railway Company

**ORGANIZATION'S QUESTIONS AT ISSUE:**

1. Did Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended effective January 1, 1980, when it failed and/or refused to properly compensate D. E. Frederick protective benefit make-up allowance?
2. Shall the Carrier now be required to compensate Claimant Frederick the proper make-up allowance for the months of September, October, November, December, 1989, January, February, and March, 1990?

**CARRIER'S QUESTIONS AT ISSUE:**

1. Did Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, effective January 1, 1980, when it computed his protected payments for September, October, November, December 1989, January, February, and March 1990 at the lower protected rate?
2. Shall Carrier now be required to compensate Claimant Frederick makeup allowance for the months of September, October, November, December, 1989, January, February, and March 1990?

**OPINION OF  
THE BOARD:**

Claimant, a protected employee under the February 7, 1965 Job Stabilization Agreement, as amended on January 1, 1980, has a monthly protected rate of \$2,981.02. During the period from September, 1989, through March, 1990, Claimant was in off-in-force reduction status.

From September 1, 1989 through December 22, 1989, Claimant protected extra work in the Building Superintendent's Department at

Topeka, Kansas. All covered clerical positions in this Department are governed by Article VII, Section 1 of the 1986 National Clerical Agreement which set special, lower pay rates for service and intermodal positions. On several days, Claimant assisted exempt employees in constructing shelves for the law library and moving books in the law library. While there was a factual dispute as to whether these tasks constitute service work, on most days, Claimant relieved janitors, and thus, he performed custodial duties which is recognized as service-type work.

After December 22, 1989 (and through March 5, 1990), Claimant did not perform any service for the Carrier.

During the months covered by this claim, the Carrier paid Claimant a monthly protected rate lower than \$2,981.02 because it deducted subsequent general wage increases applied since November 30, 1985. The Carrier justified the lower protected rate by raising the August 19, 1986 Side Letter to the April 15, 1986 National Agreement.

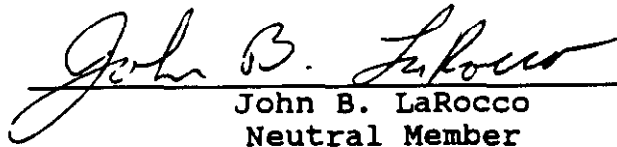
The Side Letter provides for dual (old and new) protected rates. Under the Side Letter, the protected rates are maintained in tandem but the benefits paid under the old protective agreement rate are applied to employees working on a position subject to Article VII, Section 1. In this particular case, Claimant was never assigned to a position within the ambit of Article VII, Section 1. He may have periodically performed work best described as "service" work, but the work was still extra work for the purposes of Claimant's protection. Thus, Claimant never attained

an old protected rate under the August 19, 1986 Side Letter since he never worked on a "service type position." If the Side Letter was applicable to extra work, the Carrier could simply compel protected employees to perform one day of custodial chores and then lower their protected rate. The purpose of the tandem protected rates established by the August 19, 1986 Side Letter was to protect service type employees from receiving duplicate payments, that is, from receiving both a lump sum payment in lieu of a percentage wage increase in addition to receiving a makeup allowance under a protective arrangement.

AWARD

1. The Answer to the Organization's First Question at Issue is Yes.
2. The Answer to the Organization's Second Question at Issue is Yes.
3. The Answer to the Carrier's First Question at Issue is Yes.
4. The Answer to the Carrier's Second Question at Issue is Yes.

Dated: September 29, 1992

  
John B. LaRocco  
Neutral Member