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NATIONAL RAILWAY LABOR CONFERENCE

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ROBERT F. ALLEN
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A. K. GRADIA
Director of Labor Relations

October 30, 1998

Ms. Priscilla C. Zeigler
Staff Coordinator - Arbitration
National Mediation Board
1301 K Street, N.W.
Suite 250, East Tower
Washington, DC 20572

Dear Ms. Zeigler:

Enclosed is a copy of the initial award rendered by **Special Board of Adjustment No. 1087**, established pursuant to Section II - Arbitration Committee of the October 25, 1996 Agreement between the Brotherhood of Maintenance of Way Employes and the National Carriers' Conference Committe, involving disputes arising under the February 7, 1965 Job Stabilization Agreement, as amended.

Very truly yours,

A. K. Gradia

A. K. Gradia

Enclosure

cc: Messrs. S. E. Crable
M. A. Fleming
R. A. Scardelletti
W. D. Pickett
I. Monroe
E. W. Hockenberry

RAILWAY LABOR ACT

SPECIAL BOARD OF ADJUSTMENT NO. 1087

PARTIES TO THE DISPUTE

Railroads Represented by the
National Carriers' Conference Committee
and
Brotherhood of Maintenance of Way Employees,
AFL-CIO, CLC

QUESTIONS AT ISSUE:

On June 23, 1996, Presidential Emergency Board No. 229 issued its report and recommendations concerning the February 7, 1965 Job Stabilization Agreement, Mediation Agreement No. A-7128. The parties herein adopted verbatim that report in Mediation Case No. A-12718 dated September 26, 1996. On October 25, 1996, NCCC and BMWE created this Board to resolve disputes under the amended February 7, 1965 Agreement. The parties have presented four questions to be addressed by the Board. In summary fashion, they are:

1. Under amended Article I of Mediation Agreement No. A-12718, dated September 26, 1996, what is the appropriate methodology to be used in making determinations of seasonality?

2. What is the offer of employment in future years that must be made by the Carriers to protected seasonal employees pursuant to Article I, Section 2, as amended on September 26, 1996?

3. What is the appropriate methodology to determine the rate of compensation for multi-class employees under amended Article IV, Section 1, dated September 26, 1996?

4. What information must the Carriers provide to employees pursuant to Article IV, Section 6, of Mediation Agreement No. A-7128, dated February 7, 1965? (This section was not changed by the 1996 amendments.)

OPINION OF THE BOARD:

On February 7, 1965, the parties herein reached a Mediated Agreement, No. A-7128, to govern their relationship. On November 24, 1965, the parties issued Joint Interpretations of the Agreement that contained a series of questions and answers that had the same force and effect as the provisions of the Agreement being interpreted. Pursuant to Article VII of the February 7th Agreement, the parties established a dispute resolution process that when constituted became Special Board of Adjustment No. 605. That Board has rendered numerous decisions during its existence that further interpreted the February 7, 1965 Agreement. On October 25, 1996, the parties, in accord with Article XII, Part A of the amending Mediated Agreement dated September 26, 1996, No. A-12718 established this Board to replace Special Board of Adjustment 605.

In the performance of its duties, this Board shall look with great interest to the Questions and Answers of the Joint Interpretations, and to the decisions of Special Board of Adjustment No. 605.

QUESTION ONE:

In Mediation Agreement No. A-12718, dated September 26, 1996, the parties amended Article I, Section 2, of the February 7, 1965 Agreement to read as follows:

> Seasonal employees, who had compensated service during each of the years 1995, 1996 and 1997 who otherwise meet the definition of 'protected' employees under Section 1, will be offered employment in future years at least equivalent to what they performed in 1997 unless or until retired, discharged for cause, or otherwise removed by natural attrition.

Article I, Section 1 of the February 7, 1965 Agreement, as amended on September 26, 1996, stated in pertinent part:

> All employees, other than seasonal employees, who are in active service and who have or attain ten (10) or more years' of employment relationship will be retained in service subject to compensation as herein provided unless or until retired, discharged for cause, or otherwise removed by natural attrition ....

In Question and Answer No. 1 regarding Article I, Section 2, contained in the Interpretations dated November 24, 1965, the parties provided the following definition of a "seasonal employee":

> Question No. 1: What is a 'seasonal employee'?
>
> Answer to Question No. 1: An employee is a 'seasonal employee' within the meaning of this section if his employment during the years 1962, 1963 and 1964 followed a pattern of layoffs for seasonal reasons.
>
> An employee who normally works on a regular job throughout the year in some capacity is not to be considered a seasonal employee merely because he normally takes seasonal work during a portion of the year then reverts to his regular job; such an employee is covered by Section 1 of Article I. However, if he is replaced in his regular job during the period that he is on seasonal work by an employe whose pattern of employment is simply to serve as such replacement, that employe would be a seasonal employe.

It is the position of the Carriers that whether or not an employee is a "seasonal employee" is dependent on that employee's work history during the three calendar years preceding the year in which the employee became covered by Article I (calendar, eg., years 1962, 1963 and 1964), and a finding that during those years, one's employment followed a pattern of lay-offs for seasonal reasons. The Carriers cite to the awards of SBA 605, specifically numbers 274 (M. Friedman), 312 (N. Zumas) and 439 (I. M. Lieberman) as support for their position.

Arbitrator/Neutral Chair Milton Friedman, in Award No. 274, determined that the test for seasonality is a factual one, not an academic one, and "whether an employee is or is not seasonal is determinable by looking at his employment record in these three consecutive years". Further, Mr. Friedman concluded that the purpose of the February 7, 1965 Agreement was to "protect employees' compensation and leave them whole...not designed to provide a windfall to employees by giving them more than they normally earned" (Award at p. 2). As such, each employee is viewed on an "individual" basis. In reviewing cases before him, Mr. Friedman said employees who worked a "majority" of the days during the winter months could not be classified as seasonal. The Carriers in the instant matter cite such logic as defining an objective benchmark; that is, if an employee is laid-off for seasonal reasons and does not work a majority of the days during such month, the employee must necessarily be considered to be a seasonal employee. Further, dividing 261 working days by 12 months, the Carriers herein suggest that an employee must work 11 days or more to meet the majority standard of days during a calendar month.

Arbitrator Friedman, in Award No. 274, noted further, that "the Organization's approach would give year-round compensation to employees who apparently never receive more than eight or nine months of work because of the nature of the business...the purpose of the February 7 Agreement is to protect employees' compensation and leave them whole...it was not designed to provide a

windfall to employees by giving them more than they normally earned" (Award at p. 2).

Arbitrator/Neutral Chair Nicholas H. Zumas, in Award No. 312, reviewed the language "pattern of layoffs for seasonal reasons", and interpreted the word 'pattern' to "include not only the months within one of the given years, but also the relationship of the months of that given year to the months of the other two years" (Award at p. 1). The Carriers argue that this award builds on the Friedman award and defines the pattern concept in connection with the three year look-back period, that is, "applying the standard of a 'pattern' of seasonality to include not only the vertical relationship of months within one year, but also the horizontal relationship of the years of 1962, 1963 and 1964" (Award at p. 2).

In Award No. 439, Arbitrator/Neutral Chair I. M. Lieberman endorsed the concept that the "Carrier merely used the years 1977, 1978 and 1979 to determine whether or not the Claimants were indeed seasonal in lieu of 1962, 1963 and 1964"; that is, "based on...the specific experience of the Claimants during the period 1977-1979", that Board concluded that the employees at issue were seasonal (Award at pp. 4-5). The Carriers herein maintain that that common sense approach and reading of the JSA should apply to the instant matter, that is, change the years from 1962-1964 to 1993-1995.

The Carriers herein also cite to Award No. 18265, Third Division National Railroad Adjustment Board, as the proper definition of the word 'seasonal'. In that award, Referee David Dolnick stated, "seasonal has a fixed and unmistakable meaning...not only to one of the divisions of the year...but...to different periods in a calendar year reflecting the rise and fall of the business volume...Similarly, seasonal employment refers to the fluctuation of the work force with the increase and decrease of business activity". Mr. Dolnick added, "the word 'seasonal' is clear and well understood...this Board may not modify the normal usage of that word in the Agreement...Any other interpretation would be rewriting the Agreement negotiated and agreed to by the parties" (Award at p. 8).

In addressing arguments of the Organization, the Carriers note that to provide a full twelve months of protective benefits to employees who had a pattern of working less than twelve months would grant an exception not provided for in the language of Article I, and negate Section 2 of that Article. In addition, the Carriers argue that to establish September 26, 1996 as the date for employees, who hold a regular assignment, as the trigger for protected coverage under Article I is squarely at odds with the explicit language of Article I, wherein protected employees are divided into two classes, seasonal and non-seasonal.

Citing to core principles for determining seasonality, the Carriers believe that: there was no intent by the parties to the 1996 Amendments to the February 7th Agreement to alter any

existing authority regarding seasonality determinations; the protection provided under the February 7th Agreement is 'make whole', and not a windfall to seasonal employees; the determination of a pattern of lay-offs is made by the use of a three consecutive calendar year look-back period, and that period is calendar years 1993-1995; a season means the time during a calendar year when lay-offs occur, not confined just to weather; a pattern of lay-offs for seasonal reasons is discerned by looking at lay-offs in a specific month within each year of the three year look-back period; this is a factual test, that is, if less than a majority of the available work days in a given month were worked that month is seasonal; determinations of seasonality are made on an individual employee basis over the three year look-back period; and finally, since the parties did not establish or mandate any specific methodology for seasonality determinations, individual carriers were authorized and expected to establish their own methodology.

In applying such core principles, established in the language of the February 7, 1965 Agreement, the November 24, 1965 Interpretations, the 1996 Amendment to the February 7th Agreement, arbitral awards and historical application by the parties, the Carriers maintain that the methodologies used by CSX Transportation, Inc., and Burlington Northern Santa Fe, the two carriers wherein the specific claims before this Board originated, ensure a fair and reasonable assessment as to entitlements of protective benefits under Article I of the Agreement. Specifically, the Carriers argue that each methodology evaluates employees on an individual basis; they evaluate the employee's record of employment over the course of the three year look-back period; they identify employees who have a demonstrated pattern of lay-offs, which are then further reviewed to determine whether the pattern of lay-offs is due to seasonal reasons; and finally, they evaluate whether lay-offs in a particular month also occurred in the same month in other years of the three year look-back period.

In response, the Organization notes that the September 26, 1996 National Agreement radically changed the impact of the February 7th Agreement for maintenance of way employees, conferring a rolling protection that potentially is available to any employee once he or she obtains ten years' employment relationship with a carrier. The primary area of dispute between the BMWE and the Carriers concerns the classification of employees as protected under Section 1 or Section 2 of Article I, with the Organization contending that protection under Section 1 should be conferred expansively and protection under Section 2 should be a limited exception. In the opinion of the Organization, such a conclusion is based on the language of Article I, arbitral principles as to contract administration, awards of Special Board of Adjustment No. 605, and the comments of parties to the Agreement in 1965. Further, because 'seasonal' protection is an exception, the Carriers have the burden of proving that an employee with ten or more years' employment relationship is seasonal, and thereby protected under Section 2 rather than Section 1 of Article I.

To the Organization, Article I, Section 1, confers a positive right to attrition type protection to an employee with ten or more years of employment relationship who was in active service on September 26, 1996, or his or her tenth anniversary, and the seasonal exception of Section 2 limits that right. As such, the seasonal exception must be construed narrowly so that it does not otherwise swallow the general rule set forth in Section 1, and any inquiry into whether or not an employee is 'seasonal' must begin with the presumption that the employee is protected under Article I, Section 1. Under Question and Answer No. 1 of the Joint Interpretations, that an employee is seasonal "if his employment during the years 1962, 1963 and 1964 followed a pattern of layoffs for seasonal reasons", the Carriers, to prove that an employee is seasonal, must supply a measuring period analogous to that of 1962, 1963 and 1964; show the claimant's employment followed a pattern of layoffs during that measuring period; and the layoffs were for seasonal reasons. A failure to prove any of the three areas defeats a Carrier's attempt to prove that an employee is entitled only to seasonal protection under Section 2 of Article I. In the opinion of the Organization, the years 1962 to 1964 were used as the measuring period for the original February 7th Agreement because looking back at the three previous calendar years amounted to an almost contemporaneous review of an employee's work history; but to use years 1993-1995 as the instant measuring period is unfair because the latest work history may well be eleven months old or more.

The Organization submits that a better approach is to use the employee's work history over the last 36 months before he or she otherwise became eligible for protection under Section 1. Such a measuring period best protects the interests of employees and the purpose behind the measuring period in the original February 7th Agreement, and would amount to an almost contemporaneous measure of the employee's work history in a manner quite similar to that of Question and Answer No. 1.

The Organization notes further that the term 'season' is not defined in either the Agreement, the Joint Interpretations, or the awards of SBA 605; and submits that the term should be given its ordinary maintenance of way meaning, that is, a production or maintenance season controlled largely by climate or cold weather. The Organization points to the award of Arbitrator Friedman in SBA 605, No. 274, to indicate that weather was the seasonal factor considered by that Board. In addition, the Organization argues that recent changes in maintenance of way work have diminished the seasonality of such work, and the work is far less seasonal than it was in 1965. Therefore, while the definition of seasonal may not have changed, the characterization of 'seasonal' should be applied to specific employees sparingly.

In defining the term 'pattern of layoffs for seasonal reasons', the Organization submits that the Carrier's definition of less than 11 days in any month of 1993-1995 is incorrect, as well as the standard of a majority of time concluded by SBA 605, Award No. 274, and submits that the correct standard to achieve

protection under Section 1 is an average of 7 days as noted in the Feburary 7th Agreement. In that document, Section 1 defined the term 'active service' to include employees who averaged seven days of work for each month furloughed during the year 1964. Citing to Awards Nos. 274 and 312, the Organization argues that seasonality cannot be confined to a single month, but is a multi-month period that must show a horizontal and vertical pattern of layoffs within that season.

In summary, the Organization submits that seasonal protection under Section 2 is an exception to the general presumption of protection under Section 1 of Article I, and is a narrow exception; the Carrier has the burden of proving the exception and all elements of the exception; the measuring period of an employee's work history for determining seasonality is the 36 months immediately preceding the employee obtaining ten years of employment, or September 26, 1996, in the case of those employees having ten years or more service on that date; 'season' for BMWE employees means climate driven work periods; layoffs must correspond in a horizontal and vertical pattern; and an employee who otherwise has a pattern of layoffs for seasonal reasons is protected under Section 1 of Article I if he or she averages 7 days of work per month during the off-season.

Opinion as to Question 1:

It is apparent from a review of arbitral authority under SBA 605 that the determination of an employee as seasonal is a factual matter, and that the application of years, not months, has been consistently applied (See Awards 274 and 312). When a later update was required, as in the 1980s, again the standard applied was calendar years (See Award 439). Further, the language used by Presidential Emergency Board No. 229, as captured by the instant parties in Article I, Section 2 of the 1996 amended Agreement, used calendar years, not months, as a standard. Further, such arbitral precedent established that a majority of days would be the standard as to defining seasonality, and such seasonality would be defined as a pattern of the horizontal relationship of months within one year as well as the vertical relationship of the months of that year to the months of the other two years. While the Organization's argument as to the use of 36 months to determine the measuring period has an equitable foundation, that is, most closely occurring to the obtaining of protected status, such an argument must be the grist of the collective bargaining process and not the arbitration forum.

In addition, this Board is not persuaded that the expansive reading of Article I, Section 1, as offered by the Organization, is correct, that is, Section 2 is a narrow exception to Section 1. Such an analysis appears nowhere in arbitral precedent addressing the February 7, 1965 Agreement, and such an analogy is not noted in the September 26, 1996 Amended Agreement. Section 1 of

Article I addresses "all employees, other than seasonal employees" in active service, and defines the term 'active service' for employees in Section 1 as those who have averaged "at least 7 days work for each month furloughed...". Section 2 of that same Article speaks to seasonal employees without any reference to seven days. While it makes sense that Article I, Section 1, applies to all employees except certain categories, such as seasonals, that is not the same as saying that one must assume that all employees are not seasonal employees until someone is proven to be a seasonal employee. It appears that in the history between the parties, Section 1 and 2 are considered separate, so that a crossover from Section 2 to reach the 7 day standard of section 1, rather than a majority of days in a month standard, is impermissable, and contrary to arbitral precedent.

It is also apparent that there has been no restriction on methodology as to seasonality being applied Carrier by Carrier, notwithstanding the argument of the Organization as to a national Agreement. Such a result would fail to adequately recognize the differences between Carriers as to the events affecting seasonal changes. The desire of the Organization to have such seasonal determinations made based upon weather or climate for the employees it represents cannot be supported in arbitral precedent to the exclusion of other considerations, and is not adopted by this Board. It is appropriate that any methodology applied must be uniform within a given Carrier; but for all Carriers, appears overreaching and beyond the intent of the February 7th Agreement or the amendments.

For these reasons, the appropriate methodology to be used in making determinations of seasonality under Mediation Agreement No. A-12718, dated September 26, 1996, shall be that offered by the Carriers herein. The application of that methodology to individual claims shall be a separate matter for this Board. In summary, the determination of "a pattern of lay-offs for seasonal reasons" is made as follows:

1. The Carrier shall use a three year lookback period of consecutive calendar years to determine a pattern of seasonality. In the case of disputes indentified in connection with this Question before this Board, that period is calendar years 1993, 1994 and 1995; the three years immediately preceding the year in which the claimants attained protected coverage under Article I.

2. A pattern of lay-offs for seasonal reasons is discerned by looking at lay-offs in a specific month within each year of the three year lookback period for vertical and horizontal similarity.

3. If less than a majority of the available work days (11 days) in a given month were worked, that month is seasonal.

QUESTION TWO:

Article I, Section 2 of the February 7, 1965 Agreement established the obligation of Carriers to protected seasonal employees as follows:

> Seasonal employees, who had compensated service during each of the years 1962, 1963 and 1964, will be offered employment in future years at least equivalent to what they performed in 1964, unless or until retired, discharged for cause, or otherwise removed by natural attrition.

That section was amended by Mediation Agreement No. A-12718, dated September 26, 1996, in the following manner:

> Seasonal employees, who had compensated service during each of the years 1995, 1996, and 1997 who otherwise meet the definition of "protected" employees under Section 1, will be offered employment in future years at least equivalent to what they performed in 1997 unless or until retired, discharged for cause, or otherwise removed by natural attrition.

In addition, Section 1 of Article IV of the February 7th Agreement was amended on September 26, 1996, to read as follows:

> Subject to the provisions of Section 3 of this Article IV, protected employees who hold regularly assigned positions shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position as of the date they become protected; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent wage increases.

Section 2 of Article IV, which was unchanged from the original language of the February 7th Agreement, states in pertinent part the following:

> Subject to the provisions of Section 3 of this Article IV, all other employees entitled to preservation of employment shall not be placed in a worse position with respect to compensation than that earned during a base period comprised of the last twelve months in which they performed compensated service immediately preceding the date of this Agreement. For purposes of determining whether, or to the extent, such an employee has

been placed in a worse position with respect to his compensation, his total compensation and total time paid for during the base period will be separately divided by twelve....

In the Joint Interpretations, dated November 24, 1965, the parties promulgated several questions and offered answers to the above cited sections and Articles.

Article I, Section 2

Question No. 2: What protection is guaranteed to seasonal employes under this Section?

Answer to Question No. 2: A seasonal employe is guaranteed under this Section an offer of employment in future years equivalent to his 1964 seasonal employment both as to period and as to compensation....

Question No. 4: Must the guaranteed employment period offered in future years be substantially the same period of the year as that in which the employe was employed in 1964?

Answer to Question No. 4: The guaranteed employment period offered in future years is to be in the same season as that in which the employe was employed in 1964, which could vary from year to year depending upon the characteristics of the season and the nature of the work to be performed, but limited to the amount of time the individual worked in 1964.

Article IV, Section 6*

Question No. 2: What are some examples of the types of information that carriers will furnish pursuant to this section?

Answer to Question No. 2: ...carriers will now provide the organizations with respect to each craft lists of the employes who are protected under Section 1 of Article I and those protected as seasonal employes under Section 2 of Article I. Such lists with respect to employes protected under Section 1 of Article I will include information showing whether the employe's compensation is guaranteed under Section 1 or Section 2 of

* Mislabeled in Q&A as Section 5.

> Article IV. In individual cases as they arise, the carriers will, on request, furnish information showing the normal rate of compensation of the position held on October 1, 1964 or the base period months, earnings and hours, depending on whether Section 1 or Section 2 of Article IV applies. With respect to seasonal employes covered by Section 2 of Article I, the list will show the period of seasonal employment in 1964 (including the days and hours so employed).

It is the position of the Carriers that Article I, Section 2, as amended, guarantees a seasonal protected employee an offer of employment in future years equivalent to the employment performed by such employee in 1997, and such equivalency shall be both to period and compensation. Noting the paucity of guidance, interpretations and arbitral precedent on the terms "period and compensation", the Carriers direct the Board to historical practice as to the intended application of Section 2 of Article I. To the Carriers, such practice conclusively demonstrates what the parties mutually understood and accepted to be the protection due a seasonal employee in the handling of sixteen cases under the February 7th Agreement, reinforcing a make whole arrangement but denying a windfall to the employee. The first step is for the Carrier to determine the number of days worked by the protected seasonal employee during the base year, originally 1964, and now 1997. The seasonal guarantee in the cited cases is expressed in a specific number of days based on actual employment history during the 1964 year. Such a determination establishes the guarantee for future years, obligating the Carrier to offer work days at least equal to the number worked in the base year. The protected rate of a seasonal employee is the rate of the position to which the employee was regularly assigned on the date he or she became a protected employee. If such work opportunities are offered to the employee, the Carrier's guarantee to the employee under Section 2 has been satisfied; if the guarantee is not met, the employee is paid for the shortfall at the straight time rate of pay for eight hours per day.

The formula offered by the Carriers herein is as follows. The number of days worked by the protected seasonal employee during the base year, calendar year 1997, is determined (protected days). In each future year (guarantee year), the Carrier must offer the protected seasonal employee total work days at least equal to his or her protected days. If the total work days offered during the guarantee year equals or exceeds the employee's protected days, the Carrier has satisfied the Article I, Section 2, guarantee. If the protected seasonal employee was offered less work days in the guarantee year than his or her protected days, the employee is entitled to payment for the shortfall, computed by multiplying the number of days owed (8 hours per day assuming a five day assignment) by the employee's protected straight time hourly rate. Any claim for a shortfall must be made after the close of the

guarantee year involved since the protected days must be measured against all work opportunities during the guarantee year. According to the Carriers, such a formula makes seasonal employees whole, guaranteeing the same number of work days in future years as he or she had during the base year. Further, since the number of days an employee worked during 1997 encompasses all days worked during the entire twelve month period, the Carrier, likewise, may offer employment to a protected seasonal employee throughout the full twelve months of subsequent years to fulfill its obligation. Since the Carriers have the full calendar year, according to its view of the language of Article I, Section 2, in which to offer employment to protected employees, no protective benefits are due or payable until the end of the calendar year. Finally, it is the Carriers' position that an offer of employment is manifested by giving the protected seasonal employee an opportunity to utilize his or her seniority, consistent with the schedule agreement, to obtain a position available to him or her in the normal exercise of seniority. If a protected employee does not avail himself or herself of the opportunity to perform work which seniority would allow, any protective benefits to which such employee might otherwise be entitled to receive are commensurately diminished.

The Carriers find any argument that protected seasonal employees are only required to work during their work season, and can decline work offered by the Carriers during the period of time when they had an established pattern of being furloughed during the years between 1995 and 1997 untenable, and counter to the fact that the employee's level of protection, ie., the number of days worked in 1997, would include any days worked while in a furloughed status. The Carriers note existing schedule agreements, unaltered in the original February 7th Agreement, or the 1996 Amendment, create a fundamental employment bargain; that is, the employer is obligated to use employees represented by the Organization to perform service and the employees are obligated to make themselves available to perform service for the employer whenever their services are needed. The Carriers cite to the opinion of Neutral Member Nicholas H. Zumas in SBA 605, Award No. 497, wherein Mr. Zumas noted, "It also follows from a separate analysis that the Carrier is entitled to the use of the services of its employees...That reasonable use is part of the quid pro quo of the provision of protection benefits...In the absence of the ability to reasonably use its employees, the Carrier is not required to provide the protection portion of the bargain".

In addition, the Carriers argue that seasonal employees should not have their protective benefits computed and paid under Article IV, Section 2 of the Agreement. To the Carriers, Article IV only applies to non-seasonal employees, ie., those covered by Article I, Section 1, as supported by the answer to Question 2 under Article IV, Section 5 (properly cited it is 6). Under that interpretation, the parties agreed that information showing an employee's compensation by either Section 1 or 2 of Article IV was only to be provided for 'non-seasonal employees' covered under

Article I, Section 1. For seasonal employees, the information to be provided is the period of seasonal employment during the base year of 1964, now 1997. Further, the Carriers argue that there is simply no way to calculate benefits under Article IV, Section 2, that would be consistent with the benefits to be provided to seasonal employees under Article I, Section 2. The Carriers maintain that Article IV, Section 2, was designed to cover unassigned employees who did not have a regular assignment or rate of pay, and the provision has no relevance today since employees represented by BMWE do not fit that definition. Finally, the Carriers argue that protective benefits can only be calculated at the end of the calendar year, after it is known how many days the Carrier has offered a seasonal employee compared to the number of days worked during the base year; and since Article IV, Section 2, provides for a monthly calculation, it would be impossible to compute and pay benefits on a monthly basis to a seasonal employee with an annual guarantee.

In response, the Organization views the dispute as concerning a general issue related to both the methodology that must be used to determine the guarantee to be offered, and when that guarantee must be offered and fulfilled by the Carrier. The answer offered by the Organization is that a seasonal employee is guaranteed employment in years subsequent to 1997 both as to the number of days worked and total compensation earned in 1997. Additionally, the guarantee must be provided entirely within the period, ie., season, that the employee earned his guarantee in 1997. The Organization finds support for its position in the language of Article I, Section 2, and the applicable agreed upon questions and answers adopted by the parties on November 24, 1965. Specifically, the Organization cites to the Answer to Question No. 2 under Section 2 of Article I speaking to both period and compensation for support that the clear language obligates the Carriers to provide a seasonal employee employment equivalent both in days worked and compensation earned in 1997. In addition, the Organization notes Award No. 278 of SBA 605, wherein Neutral Chair Milton Friedman determined that protected seasonal employees must respond at the time called "during the season if he is to be afforded protection...A seasonal employee who must be offered employment during what necessarily is a limited period of the year must accept it when it is offered..." (Award at pp. 2-3). The Organization opines that the rationale of this Award presupposes that the seasonal employee's guarantee runs during the season in which the employee earned the guarantee. Further, the Organization cites to Question and Answer No. 4 to Article I, Section 2, wherein it is stated that "the guaranteed employment period offered in future years is to be in the same season as that in which the employee was employed in 1964, which could vary from year to year depending upon the characteristics of the season and the nature of the work to be performed, but limited to the amount of time the individual worked in 1964". To the Organization, the language is clear, and the Carriers cannot attempt to satisfy the employee's guarantee by offering work outside the season in which the employee earned the benefit.

As to defining the term 'compensation', the Organization argues that Article IV, Section 2 is the more appropriate standard, and cites to the different definitions applied by Boards contrasting compensation and normal rate of compensation. Specifically, the Organization makes reference to SBA 605, Award No. 227, wherein normal rate of compensation was defined as contrasted to compensation by Neutral Chair Milton Friedman. The Organization notes that Article IV, Section 1, uses the term 'normal rate of compensation", while Article IV, Section 2, and Question and Answer No. 2 use the unmodified term 'compensation'. The Organization also cites to the finding of Neutral Chair Friedman in SBA 605, Award No. 225, noting that the parties were cognizant of the different meanings employed in Article IV. The Organization considers that the Question and Answer No. 2 to Article IV, Section 6, addressing information to be provided, refers only to the word compensation, and the use of that word means total earnings and not a more narrow rate of pay.

Finally, the Organization argues that, even assuming arguendo that there is evidence of a past practice in paying such claims, such past practice cannot defeat or impeach the clear language of Article I, Section 2, and Question and Answer No. 2 for that Agreement provision.

The Organization maintains that the guarantee for employees protected under Article I, Section 2 should be comprised of the employee's total earnings in 1997; the number of days the employee worked in 1997; and the guarantee as to money and time worked must be offered within a seasonal period equivalent to that worked by the employee in 1997.

Opinion as to Question 2:

Article I, Section 2, as amended on September 26, 1996, states in pertinent part for this dispute that, "seasonal employees...will be offered employment in future years at least equivalent to what they performed in 1997... (Article XII, §2). The Carriers argue that "future years" is not limited to seasonal restrictions, and compensation must be at the regular rate of pay for 8 hours per day as protected. Looking to the Questions and Answers for Section 2 of Article 1, February 7, 1965 Agreement, the answer to Question No. 2 states that the guarantee is "both as to period and as to compensation". The answer to Question No. 4 that follows defines 'period' to some extent, that is, the "guaranteed employment period offered in future years is to be in the same season as that in which the employe was employed in 1964, which could vary from year to year depending upon the characteristics of the season and the nature of the work performed, but limited to the amount of time the individual worked in 1964". The Organization herein argues that the Carriers must offer the guarantee in the same season it was earned in 1997.

Neutral Chair Milton Friedman, in SBA 605, Award No. 278, in interpreting Article II, Section 1 of the February 7th Agreement, concluded that a seasonal employee "who must be offered employment during what necessarily is a limited period of the year" must accept such assignment when offered. By analogy, the Organization argues that this recognition of a limited period of the year means that Carriers can only assign work to seasonal employees within a seasonal period equivalent to the 1997 base year.

In the opinion of this Board, that is not the question presented to the board chaired by Mr. Friedman, so that Award is not controlling of the instant matter. Further, while the answer to Question No. 4 states in the "same season", that wording is not definitive and provides for variances depending on the characteristics of the season and the nature of the work performed. The only clear limitation is to the amount of time the individual employee worked in the calendar year; in the case of Question No. 4, 1964.

Since neither the language of Article I, Section 2, as amended in Article XII, Section 2, or interpreted in the Questions and Answers, provides clear meaning, the practice of the parties as contained in proffered claims, takes on dominant significance. A careful review of such claims fails to indicate payment to claimants based on season of the year, but rather, for work or missed opportunities throughout the year in question.

Such an analysis is equally appropriate as to the term 'compensation' at issue herein. There is no indication in the proffered claims that employees were paid beyond their normal rate, that is, exclusive of overtime. The decisions of SBA 605, at Awards Nos. 94, 225 and 227, debate the terms 'compensation' and 'normal rate of compensation' found in Sections 1 and 2 of Article IV, but it does not appear that such an analysis under Article IV applies to seasonal employees pursuant to Article I, Section 2. In the Questions and Answers for Article IV, Section 6, specifically Question and Answer No. 2, there is a clear distinction between employee's compensation guaranteed under Article IV, Sections 1 or 2, and information required "with respect to seasonal employes covered by Section 2 of Article I". Absent any clear indication that compensation for seasonal employees must include overtime, the apparent practice of the parties in dealing with past claims supports a finding that payment for a shortfall by the Carrier is limited to payment for eight hours per day at a straight time rate.

For these reasons, the formula offered by the Carriers is sustained, and the arguments of the Organization must be denied. As noted by Neutral Chair Nicholas H. Zumas in SBA 605, Award No. MW-62-W, "the Carrier is entitled to the use of the services of its employees...That reasonable use is part of the quid pro quo of the provision of protection benefits.... (Award @ p. 20).

QUESTION THREE:

At issue in this question is the appropriate methodology to be used in determining the rate of compensation for a multi-class employee under amended Article IV, Section 1, dated September 26, 1996. Specifically, the dispute concerns the computation and application of the guarantee for employees whose income is protected under Article IV, Section 1, who also have a pattern of holding higher and lower rated positions during the course of a fixed measuring period. To date, the only Carrier involved is Burlington Northern Santa Fe, and it is that methodology that forms the basis of the question.

Pursuant to the Mediated Agreement dated September 26, 1996, Article IV, Section 1 of the February 7, 1965 Agreement was amended as follows:

> Section 1 - Subject to the provisions of Section 3 of this Article IV, protected employees who hold regularly assigned positions shall not be placed in a worse position with respect to compensation tnan the normal rate of compensation for said regularly assigned position as of the date they become protected; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent wage increases.

Question and Answer No. 3, addressing Article IV, Section 1, of the February 7th Agreement, and contained in the Joint Interpretations stated as follows:

> Question No. 3: What is the compensation guarantee of an employee who on October 1, 1964 held a regularly assigned position and who normally works a portion of the year in a lower-rated classification and the rest of the year in a higher-rated classification.
>
> Answer to Question No. 3: Such an employee is guaranteed in future years the compensation of the lower-rated classification for the number of months worked in such classification in 1964 and the compensation of the higher-rated classification for the number of months he worked in such classification in 1964.

The methodology offered by the Carrier (BNSF) is as follows:

The employee's work history for the three calendar years prior to the year in which the employee became protected is reviewed to determine the employee's normal work pattern. In the case of an employee who became protected on the effective date of the Amendment to the February 7th Agreement, the years reviewed are 1993, 1994 and 1995.

> If the work pattern in at least two of the three years shows the employee working part of the year in a lower rated classification, and part of the year in a higher rated classification, the Carrier classifies this employee as a Multi-Class employee.
>
> The Carrier establishes a Multi-Class employee's guarantee as the compensation of the lower-rated classification for the number of months the employee worked in such classification in the calendar year prior to the year in which the employee became protected (base year), and the compensation of the higher-rated classification for the number of months he worked in such classification in the base year. The employee is deemed to have worked an entire month in the classification in which he worked for the preponderant part of the month. In the case of an employee who became protected on the effective date of the Amendment to the February 7th Agreement, September 26, 1996, the guarantee is based on calendar year 1995.
>
> In the event that the employee works in more than two classifications in the year, the guarantees are set for each rate for the number of months the employee worked in each classification.

It is the position of the Carrier that the 1996 Amendment of Article IV, Section 1, did not make any change which would affect agreed upon Question and Answer No. 3 of the Interpretations. The Carrier's use of a three year look-back period to determine if an employee is a Multi-Class employee is consistent with the use of a three year look-back period to test for seasonality; and the use of the term 'normally' in Q & A No. 3 strongly suggests a regular pattern and not a limited period of employment experience that could be aberrational. In addition, Q & A No. 3 looked to the calendar year 1964, the year prior to the year in which the Agreement was reached and employees became protected. Likewise, the Carrier continues to use the calendar year preceding the year in which the Amendment became effective, 1995, or the year immediately preceding the calendar year in which an employee became protected for succeeding years.

The Carrier argues further that Question and Answer No. 3 is a fundamental element of the JSA's protective scheme; absent some persuasive evidence to the contrary, must be deemed to remain in effect without change. Q & A No. 3 reflects the intention of the parties to avoid the unfair result of giving an employee who normally works at varying rates of pay a single protected rate determined on the basis of the job he or she happens to hold on a particular date. In such a snap-shot situation, the employee would be either short-changed or the beneficiary of a windfall; neither of which was the intent of the parties, and contrary to the reasoning of SBA 605, Award No. 274. By

contrast, the Carrier argues that its methodology for determining a Multi-Class employee's guarantee rate results in an accurate reflection of the employee's normal compensation pattern.

In summary, it is the position of the Carrier that the methodology for determining the guarantee rates for Multi-Class employees is supported by the language of Article IV, Section 1, and follows the terms of the joint interpretations. The three year period ensures an accurate reflection of an employee's normal work pattern.

The Organization submits that the answer to the stated question affecting employees who have a pattern of holding higher and lower rated positions during the course of a fixed measuring period is as follows. The Carrier has the burden of establishing the employee has a pattern of working higher and lower rated positions. This pattern has two elements, horizontal and vertical. The initial measuring period for determining the pattern is the twelve months preceding September 26, 1996, or the twelve months preceding the date the employee is regularly assigned and has ten years or more employment relationship, whichever is applicable. If the Carrier shows a horizontal pattern of holding higher and lower rated positions in that measuring period, the preceding twenty-four months to that measuring period are analyzed to see if there is a vertical pattern of moving from higher and lower rated positions. If the Carrier proves both a horizontal and vertical pattern, then the employee is protected at the normal rate of the position held on the particular dates within the measuring period. The Organization notes that the use of horizontal and vertical measurements was sanctioned in the decision of SBA 605, Award No. 312, in the analysis of seasonal employees. The Organization argues further that an employee under a multi-rate guarantee should be entitled to make a claim monthly, and to wait until the end of the calendar year and then review his or her work history is daunting and confusing, resulting in the multi-rate employee being placed in a substantially worse position than those employees protected under a single rate by Article IV, Section 1, or a monthly rate by Article IV, Section 2.

In summary, the Organization submits that the multi-rate guarantee provisions of Article IV, Section 1, must be administered in the following manner. The presumption should be that an employee regularly assigned on September 26, 1996, or the date on which the employee is regularly assigned and attains ten years or more service is protected under a single guaranteed rate in accord with Article IV, Section 1. However, recognizing that an exception exists under Question and Answers No. 3, the Organization maintains that if a review of the employee's prior twelve months of employment shows a horizontal pattern of working higher and lower rated positions, then the Carrier may analyze the twenty-four months preceding the measuring period to determine if there is a vertical pattern of working higher and lower rated

positions. If both a horizontal and vertical pattern of working higher and lower rated positions during the course of a twelve month period is shown, the employee is protected at multiple rates. The multiple rates shall then be applied to the same periods in which the employee worked the variously rated positions in the twelve month period preceding September 26, 1996, or the date upon which the employee was regularly assigned and had ten years or more employment relationship so that the employee may calculate and make monthly claims for his or her guaranteed compensation.

Opinion as to Question 3:

There does not appear to be any dispute between the parties that preponderance means a majority of a month worked at a particular rate. Rather, the areas of contention center upon the look-back period, and whether or not an employee can match up month by month rather than at the end of the year of work.

It is clear that the 1996 amendments did not alter the interpretation or application of Question and Answer No. 3 of Article IV, Section 1. The question inquires as to an employee who "normally works" a portion of the year in a lower-rated classification and the rest of the year in a higher-rated classification. In agreement with the Carrier, such a reference suggests an analysis far greater than a one day snap-shot of the employee's work; and the use of a one year look-back based upon the calendar year preceding the Amendment, that is, 1995, eg., is supported by the answer to Question No. 3 where the calendar year of 1964 was used. Such an approach is also consistent with the methodology used as to seasonality established in the first question set before this Board herein. In addition, the Answer to Question No. 3 notes that the formula is based on the "number of months" worked in each classification, not days. Finally, a look-back period that also considers a work pattern in at least two of the three years reviewed, as offered by the Carrier, does not disturb the logic and reasoning of Question and Answer No. 3 of the Joint Interpretations.

As to the Organization's argument that employees must be able to make monthly claims, rather than annual claims, the language of Answer No. 3 states that the guarantee is for future years, allowing that as long as the number of months reflects work at a higher and lower rated classification within the year, there is no requirement that the work be performed in the same month each year. To accomplish this analysis, the review must be on an annual, rather than a monthly, basis.

The methodology offered by BSNF is not in conflict with Article IV, Section 1, and the interpretative Question and Answer No. 3, and shall be the methodology accepted in answer to question 3 presented herein.

QUESTION FOUR: (reserved)

AWARD

The methodology offered by the Carriers as to Questions 1, 2 and 3 shall be accepted for the reasons stated herein.

DATED: September 28, 1998
Washington, D.C.

E. W. Hockenberry

EARLE WILLIAM HOCKENBERRY
Neutral Chair

CONCUR/DISSENT:

Donald F. Griffin 10/6/98

DONALD F. GRIFFIN
Member
dissent

A. Kenneth Gradia 10/6/98

A. KENNETH GRADIA
Member

Ernest L. Torske 10/6/98

ERNEST L. TORSKE
Member
dissent

John F. Hennecke 10/6/98 AKG

JONH F. HENNECKE
Member

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 523-5920

August 7, 1998

Mr. A. K. Gradia, DLR
NRLC
1901 L Street, N. W.
Washington, D.C. 20036

Donald F. Griffin, Asst. General Counsel
BMWE
400 North Capitol St., NW Ste., 852
Washington, DC 20001-1511

RE: Special Board of Adjustment No. 1087
National Railway Labor Conference Committee and BMWE

Gentlemen:

Reference is made to the above-captioned Special Board of Adjustment.

A review of our files indicates:

_X_ There are no pending cases on this Special Board of Adjustment.

___ There has been no activity on this Special Board of Adjustment since.

Therefore, unless advised to the contrary, within thirty (30) days from the date of this letter, we are closing our files on this Board.

Very truly yours,

Priscilla C. Zeigler

By_____
Priscilla C. Zeigler
Staff Coordinator/Arbitration

Copies to:

Mr. D. D. Bartholomay
Mr. E. William Hockenberry, Arbitrator

Priscilla Zeigler:

The BMWE wants this Board to remain open.

D. B. Bartholomay

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 523-5920

August 7, 1998

Mr. A. K. Gradia, DLR
NRLC
1901 L Street, N. W.
Washington, D.C. 20036

Donald F. Griffin, Asst. General Counsel
BMWE
400 North Capitol St., NW Ste., 852
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Priscilla C. Zeigler

By _____
Priscilla C. Zeigler
Staff Coordinator/Arbitration

OUR RECORDS NOTED ACCORDINGLY.

Priscilla C. Zeigler

PRISCILLA C. ZEIGLER, STAFF COORDINATOR/ARB

AUG 17 1998

Copies to:

Mr. D. D. Bartholomay
Mr. E. William Hockenberry, Arbitrator

Priscilla Zeigler:

The BMWE wants this Board to remain open.

D. B. Bartholomay

Mac A. Fleming
President

William E. LaRue
Secretary-Treasurer

Brotherhood of Maintenance of Way Employes
Affiliated with the A.F.L.-C.I.O. and C.L.C.

MEMORANDUM

To: All U.S. General Chairmen

From: D. F. Griffin DFG

Re: Award No. 1, SBA No. 1087 (Supplemental)

Date: January 7, 1999

Enclosed for your information is the supplemental award on Question No. 4 which had been reserved by the Board as part of its initial Award, dated September 28, 1998.

The Board's answer to Question No. 4 concerned the information the Carriers are required to give to the Union upon our written request. The Board reiterated that the Carriers were obligated to provide the information set forth in Award No. 65 of Special Board of Adjustment No. 605 (p.2). The Board also held that the Carriers were obligated to provide the following information besides that specified in Award No. 65 (p. 4):

1. On those Carriers (currently only BNSF) that adopt the multi-rate methodology for determining the protected rate for employees protected under Article I, Section 1, the Carrier must identify multi-rate protected employees as "MR" on the lists and specify the number of months the employee is protected at a specified rate.

2. The Carriers must provide the Union with both the days and *hours* worked by seasonal employees in 1997.

William A. Bon, General Counsel
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Southfield, MI 48076-4225
Telephone (248) 948-1010
FAX (248) 948-7150

Donald F. Griffin, Assistant General Counsel
10 G Street, N.E., Suite 460
Washington, D.C. 20002-4213
Telephone (202) 638-2135
FAX (202) 737-3085

To ensure that the Carriers comply with this Award, I would suggest that you write again to the Carriers and request of them the information mandated by Award No. 65 of SBA No. 605 and Award No. 1, Question No. 4 of SBA No. 1087.

If you have any questions, please contact me.

enclosure

cc: M. A. Fleming
W. E. LaRue
S. V. Powers
U.S. Vice Presidents
Canadian Vice Presidents
Canadian General Chairmen

RAILWAY LABOR ACT

SPECIAL BOARD OF ADJUSTMENT NO. 1087

PARTIES TO THE DISPUTE)

Railroads Represented by the National Carriers' Conference Committee
and
Brotherhood of Maintenance of Way Employees, AFL-CIO, CLC

QUESTION AT ISSUE:

On September 28, 1998, this Board of Adjustment issued an Opinion addressing three "global" issues posed by the parties in response to the Report and Recommendations of Presidential Emergency Board No. 229, dated June 23, 1996; and Mediation Case No. A-12718, dated September 26, 1996. While four questions were presented to this Board, Question No. 4 was reserved for decision at a time subsequent to September 28, 1998. On October 28 and 29, 1998, the parties submitted additional arguments, followed by a conference call of October 30, 1998, at which time the reserved question was set for resolution by this Board.

That question, as noted in the Opinion dated September 28, 1998, is as follows:

...

4. What information must the Carriers provide to employees pursuant to Article IV, Section 6, of Mediation Agreement No. A-7128, dated February 7, 1965? (This section was not changed by the 1996 amendments).

OPINION OF THE BOARD:

As noted in the Decision and Opinion of this Board dated September 28, 1998, this Board will be guided by the Questions and Answers of the Joint Interpretations issued on November 24, 1965, and the decisions of Special Board of Adjustment No. 605.

Of particular interest is Award No. 65, authored by Milton Friedman, Neutral Referee, dated May 9, 1969, and the Answer to Question No. 2 of Article IV, Section 6 (mislabeled Section 5 in the parties' original document of 1965).

Award No. 65 draws its conclusion from the language of Article IV, Section 6, and notes that beyond certain enumerated types of information, general information on compensation will only be provided by the Carriers where "specific claims were made by individuals". Question No. 2 under Article IV, Section 6, offers "some examples of the types of information that carriers will furnish pursuant to this section". Pertinent to the present inquiry, the Answer states:

> ...to provide any data and information that may be necessary and appropriate to carry out the purposes of this agreement. (emphasis added)
>
> ...carriers will now provide organizations with respect to each craft lists of the employes who are protected under Section 1 of Article I and those protected as seasonal employes under Section 2 of Article I. Such lists with respect to employes protected under Section 1 of Article I will include information showing whether the employe's compensation is guaranteed under Section 1 or Section 2 of Article IV. In individual cases as they arise, the carriers will, on request, furnish information showing the normal rate of compensation....With respect to seasonal employes covered by Section 2 of Article I, the list will show the period of seasonal employment in 1964 (including the days and hours so employed). In individual cases as they arise, the carriers will on request furnish the compensation paid with respect to such seasonal employment.... (emphasis added)

The first matter to be resolved concerns employees whose compensation is protected under Article I, Section 1, and are designated "multi-rate" employees as addressed in Question 3 by this Board in its September 28, 1998 Opinion.

The Organization argues that for those employees whose compensation is protected under Section 1 of Article IV as an annual multi-rate guarantee, the Carrier will identify such employees as "MR" and identify the number of months guaranteed at each rate. In support of its position, the Organization notes that Question and Answer No 2 does not address the multi-rate issue since it was not a part of the 1996 Amendments, nor does SBA Award #65. The Organization argues further that since this Board sanctioned the multi-rate process and methodology in the September 28, 1998 Opinion involving Question No. 3, such information would be necessary to carry out the agreement. In

addition, the Organization notes that this information is within the control of the Carrier; and since the months at each rate may well float until the end of the year, there is no way an employee can figure out the formula or understand their work obligations. In the opinion of the Organization, employees need to know such information monthly to put order in their lives. To deny the information, where there is no single protected rate for multi-rated employees, places a great burden on the employee; but there would be no concomitant burden on the Carrier since they have already done the necessary calculations.

In response, the Carriers note that Award No. 65, and the Answer to Question 2 of Section 6, establish that specific information as to individual employees will be provided as claims arise, and that general principle has withstood the test of time. While agreeing with the Organization that there is no single protected rate for multi-rate employees, the Carriers maintain that there is no obligation to provide such information on a general basis, only when the employee files a claim. The Carriers caution further that it is not the function of this Board to fashion an agreement, but rather to interpret the 1965 Agreement as amended in 1996. The Carriers agree further that the language in Question and Answer No. 2, speaking to "such lists" and the "normal rate" do not address the multi-rate matter, but argue that the guidance offered by SBA Award No. 65 controls the instant debate. Finally, the Carriers argue that employees can easily determine their protected rate since it is the rate of the position to which they were regularly assigned on the date they became a protected employee, and since the employees know their protected rate, they will be able to meet their obligations under Article IV, Section 4, to mitigate any potential loss of earnings by exercising their seniority rights to secure available positions.

In response, the Organization argues that an historical approach to the information request is not dispositive of the matter since the issue has not occurred before, but because the agreement is a living document, this Board can address the problem without creating a new agreement.

The second matter raised by the parties concerns the language of Question and Answer No. 2 under Article IV, Section 6, addressing seasonal employees, wherein it was noted parenthetically that lists provided by the Carriers would include "the days and hours so employed". The Organization seeks such data for 1997, including the hours worked. The Carriers agree that such is the literal language established in the Answer, but argue that such information is of no value, beyond the number of days, which will be provided by the Carrier. The Carriers note that in giving the information in days, there will be a "rounding" factor to prevent fractionalization into parts of a calendar day. In response, the Organization notes that this Board, in its Opinion, agreed to be bound by the Questions and Answers of the Joint Interpretations of 1965, and "days and hours so employed" is clearly set out therein.

Opinion as to Question 4:

In consideration of the foregoing evidence and argument, the two issues raised by the parties concerning the production of information are to be resolved in favor of the Organization.

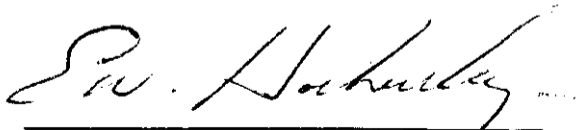
This Board, having established the methodology for the multi-rate question by Opinion dated September 28, 1998, must now recognize that the request by the Organization to have such employees identified as Multi-Rate "MR", with the additional designation of the number of months guaranteed at each rate, is a logical consequence of that decision, and not the creation of a new agreement between the parties. Further, providing this information in advance of the end of the year will be of particular benefit to the affected employees, and therefore, need not wait until the filing of individual claims. Because of the circumstances of the multi-rate position, such timing as offered by the Carriers will be of little help to the employee, and may well encourage complaints as a consequence. Finally, such information concerning multi-rate employees, as sought by the Organization, is both necessary and appropriate to effectuate the parties' agreement; and was neither addressed nor barred by SBA No. 65 or the Joint Interpretations of 1965.

As to the second issue raised under Question 4, the language of Answer No. 2 for Article IV, Section 6, indicates that for seasonal employees, those covered by Section 2 of Article I, the Carriers are obligated to provide a list for such employees "including the days and hours so employed". Following this clear guidance, the Organization is to receive the number of hours and days worked by such employees for 1997.

AWARD

The information requested by the Organization under Question No. 4 is to be provided.

DATED: November 30, 1998
Washington, D.C.



EARLE WILLIAM HOCKENBERRY
Neutral Chair

CONCUR/DISSENT:

Donald F. Griffin
DONALD F. GRIFFIN

A. Kenneth Gradia
A. KENNETH GRADIA

Ernest L. Torske /DFG
ERNEST L. TORSKE

Members

John F. Hennecke
JOHN F. HENNECKE

Members