

Answer #12

(12)  
In the Matter of Arbitration :  
Between : Arbitration Proceedings Under the  
United Transportation Union : Protective Provisions of the Men-  
and : docino Coast Railway Lease and  
Southern Pacific Transportation : Operate - 360 ICC 653 and Oregon  
Company - Eastern Lines : Short Line R. C. Abandonment -  
360 ICC 91  
.. .. .

Arbitration Committee : Union  
C. L. Little - Vice President - UTU  
Carrier  
R. P. Guidry - Labor Relations Officer  
Neutral Member  
Jacob Seidenberg, Esquire

Hearing : March 28, 1985

Issue : The parties agreed that the following issue should  
be submitted to the Arbitration Committee:

"The Mendocino Coast Ry., Inc. Lease and Operate 360 ICC 653 (1980)  
and Oregon Short Line R. C. Abandonment Goshen, 360 ICC 9(1979) pro-  
tective provisions provide in pertinent part:

'Displacement allowances - (a) So long after a displaced employee's  
displacement as he is unable, in the normal exercise of his senior-  
ity rights under existing agreements, rules and practices, to ob-  
tain a position producing compensation equal to or exceeding the  
compensation he received in the position from which he was displac-  
ed, he shall, during his protective period, be paid a monthly allow-  
ance equal to the difference between the monthly compensation receiv-  
ed by him in the position in which he is retained and the average  
monthly compensation received by him in the position from which he  
is displaced.

Each displaced employee's displacement allowance shall be determin-  
ed 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.

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 the 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.

It is the Carrier's position the method of computing the 'average monthly time paid for' is as follows:

'All miles earned during the 12 month period immediately preceding the date of displacement would be totalled and divided by 12, thus the 'average monthly time paid for' would reflect hours paid for rather than the hours actually worked.'

It is the Organization's position the method of computing the 'average monthly time paid for' is as follows:

'The actual time on duty for each tour of duty for the 12 month period immediately preceding the date of displacement should be totaled and divided by 12, which will produce the average monthly time paid for in the test period.'

The issue to be resolved by the Arbitrator is to determine the correct method to be used to determine 'average monthly time paid for.'

Background: The genesis of the dispute arose from a lease by the Sante Fe RR of part of the Southern Pacific Cameron Branch and the Southern Pacific's discontinuance of service on this Branch as well as the Southern Pacific's discontinuance over certain operations over Sante Fe trackage. The ICC approved the trans-

action subject to labor protective conditions of the Oregon Short Line RR. Co. and the Mendocino Coast Ry.

As a result of the transaction, the Carrier eliminated one local crew consisting of one engineer, one fireman, one conductor and two brakemen.

On June 25, 1984 the parties executed an implementing agreement providing that all employees represented by the Organization that were adversely affected would be covered by the relevant protective conditions.

Subsequent to the execution of the implementing agreement, the parties held several conferences seeking to interpret and apply these protective conditions. The parties were able to resolve all matters in issue except the issue as to the method that should be used to compute "average monthly time paid for," i.e., what concept should be utilized in deriving the total time for which the employee was paid during the test period.

The respective positions of the parties are:

Organization

The Organization asserts that the purpose of employee protective conditions is to protect the interests of those employees who are affected by the Carrier's actions taken pursuant to the ICC authorization or approval. It notes that although one assignment was abolished as a result of the ICC Finance Docket the employees who were retained were placed in a worse condition with respect to their compensation, and they became "displaced employees" then entitled to a displacement allowance.

The Organization maintains that the essential component of the displacement allowance is both compensation and the hours worked to earn that compensation. The parties are in agreement as to the method to compute average monthly compensation, i.e., by totalling the employee's 12 month compensation immediately prior to the displacement and dividing it by 12. The dispute exists with re-

gard to the method of computing "time paid for." The Organization insists the protective provisions require the employees' "average time paid for" be computed by totalling all the time actually worked during the 12 months immediately preceding the displacement and dividing this total time by 12 to obtain the average monthly time paid for.

The Organization contends the Carrier is seeking to circumvent the proper calculation of the displacement allowance by proposing to total all the miles earned during the 12 months immediately preceding the displacement and then divide by 12 those total miles to arrive at the average.

The Organization asserts that although the Carrier will insist that train and engine services are paid by the mile at the rate of 12.5 miles to the hour, and this will produce an "average time paid for." However, the time spent to earn these miles varies from assignment to assignment. In train and engine service the more miles run, the greater the compensation. Therefore, it is necessary to compute the average time that an employee devoted to make those miles, in order to determine when the employee is or is not in a worse position in his retained position after his displacement.

The Organization asserts the determining factor in establishing "average time paid for" is the amount of time spent during the test period to earn his average monthly compensation. Section 5(a) of the protective conditions evinces this concept by providing that the affected employee will be additionally compensated for any excess time in excess of the average monthly time paid for.

The Organization states that it was not intended that a displaced employee should have to work more hours during any month of the protective period than the average time for which he was paid during the comparable period of his test year. The Organization stresses that the actual time worked must be a factor in determining the test period allowance.

The Organization notes that the parties agreed that for pay purposes the Caldwell-Quiniff run would be 163 miles although the actual miles are considerably less. The Organization adds that the employees on this assignment were on duty a considerably less period of time than it would take to operate 163 miles. The Organization further notes that to equate "average time paid for" on the basis of total miles earned, does not produce average monthly time paid for during the test period to apply the provisions outlined in Article 1, Section 5(a) in order to determine whether the employee is entitled to any additional compensation for excess time at the rate of pay of the retained position.

The Organization cited several awards which it contends support its position.

In summary, the Organization asserts that the Carrier's proposal would deny the affected employee his right to the fair and equitable protection imposed by the ICC. The Organization adds that to reach the appropriate objective, the Arbitrator should direct the Carrier to compute "average monthly time paid for" by totaling the actual time on duty for each tour of duty for the 12 month period immediately preceeding the displacement and divide it by 12, and this will produce the average monthly time paid for during the test period. To apply the Carrier's method is to deny the affected employees their protective rights prescribed by the ICC.

#### Carrier's Position

The Carrier asserts that it is well established by many awards as well as the on-going industry practice that the "total time paid for" is computed by converting the "miles paid for" into "time paid for" by calculating a basic day of 100 miles of eight hours a day or 12½ miles per hour. In freight service, overtime is calculated at 18 3/4 miles per hour. The Carrier asserts that in the In-

dustry it is well understood and accepted that an employee in road freight service is compensated on the basis of the total time for which he was paid, i.e., by converting his mileage paid for into hours paid for on the basis of the above stated formula, rather than compensating him on the basis of the actual hours worked.

With regard to the Organization's contention that a displaced person might be adversely affected and unfairly treated, if, in his retained position he had to work a greater number of hours for the equivalent time allowance payment, i.e., now work 11 hours for a displacement allowance for which he previously only worked 9 hours for his total time allowance, the Carrier asserts that this issue has been dealt with in previous awards wherein it was held that where a carrier based the overall pay calculation on the conversion to total mileage, that, therefore, the same formula should also be adhered to in determining "total time paid for" in protective pay allowances. The Carrier asserts awards have held that as long as the carrier applied the same industry formula consistently, there was no valid reason to challenge this formula in an employee protection case.

The Carrier further states with regard to the Organization's contention that employees who are required in their retained position to work a greater number of hours to receive their displacement allowance than the hours worked in the test period, that these contentions have been dealt with in a number of prior awards, and these awards have rejected the Organization's position. These awards have held that under the dual system of pay, the hours worked are converted into miles, and it is the compensated miles which are the equivalent of total time paid for, or the number of hours for which the employee was compensated rather than the actual number of hours the employee worked, that is determinative of whether the employee has been fairly and equitably treated.

Based on the precedents rendered on this issue, the Carrier requests the Board to accept its interpretation of the phrase "total time for which he was

paid," and accept its method for computing same.

Findings:

After a review of all the relevant evidence, we conclude that the Carrier's interpretation as to what constitutes "average monthly time paid for" is more persuasive and congruent with Industry pay practices, than the interpretation advanced by the Organization.

We find that the dual system of pay, well entrenched in this Industry as applied to the operating crafts, should also be applied in determining the proper compensation for employees within the ambit of the requisite protective conditions. There is no question or doubt that as how to determine compensation for operating employees outside the ambit of ICC prescribed protective conditions, i.e., that "miles run" is converted to "time paid for" in accordance with the precepts of the Basic Day and the formula of a 100 miles or 12.5 per hour for an eight hour day. It is conceded that this formula does not invest significance to the actual hours worked by the operating employees. Currently, and until the parties change the Dual System of Pay and the existing formula, there can be no dispute that for an operating employee compensated on a mileage basis, his compensation is not based on "actual hours" worked.

We find no compelling reason to depart or even deviate from this well known and generally accepted pay formula in Employee Protective benefit cases.

We find that as long as the Carrier applies, in a consistent and non discriminatory manner the relevant language of the protective conditions so that they are compatible with the formula utilized in the Dual Pay System, that there is no valid reason to accept the Organization's concept that the "actual time on duty in each tour" should be the essential and dispositive component for determining the "average monthly time paid for."



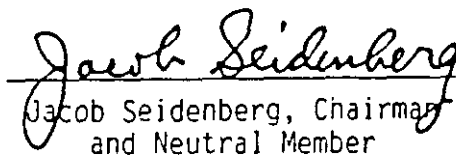
We find that the formula used to convert miles run into hours paid for, logically answers the Organization's principal objection to the Carrier's proposed method as being allegedly unfair to those displaced employees who in their retained positions, might have to work more actual hours than formerly to receive their displacement allowance. To repeat, the actual hours worked is not the criterion that is utilized in pay determination for operating employees.

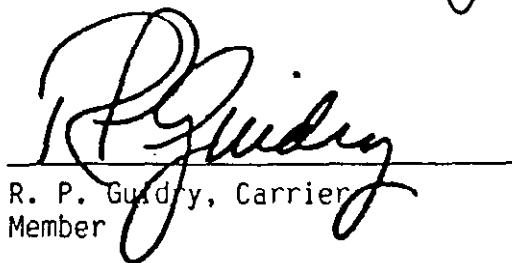
Our review of the total record convinces us that the Findings in this case represent the accepted conclusions, with rare exception, set forth in the cases which have adjudicated this issue.

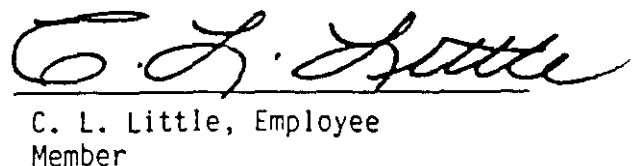
It is in light of the above stated Findings, that we are prevented from accepting as valid the Organization's position in this case.

AWARD: The correct method to be used in determining "average monthly time paid for" is that:

"All miles earned during the 12 month period immediately preceding the date of displacement would be totaled and divided by 12. Thus the 'average monthly time paid for' would reflect 'hours paid for' rather than hours actually worked."

  
Jacob Seidenberg, Chairman  
and Neutral Member

  
R. P. Gundry, Carrier  
Member

  
C. L. Little, Employee  
Member

April 15, 1985