

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Brotherhood of Railway, Airline and Steamship Clerks,  
TO ) Freight Handlers, Express and Station Employees  
DISPUTE ) and  
Kansas City Terminal Railway Company

QUESTIONS  
AT ISSUE:

1. Can the Carrier use overtime and holiday pay paid an employee during a calendar month to offset the difference between the daily rate of a position worked and the guaranteed daily rate of the position assigned on October 1, 1964?
2. Did the Carrier properly apply Section 1 of Article IV of the February 7, 1965 Agreement when it refused, effective January 1, 1974, to compensate Claimant for the difference between his guaranteed daily rate and the daily rate of the position worked on each day his normal compensation fell below his guarantee?
3. Shall the Carrier now be required to compensate Claimant Ramon Conejo for the difference between the normal daily rate of position worked and the daily rate of the position assigned on October 1, 1964, without offset, for each day his earnings fell below the guarantee beginning with January 1, 1974 and continuing until dispute is resolved?

OPINION  
OF BOARD:

Pursuant to the February 7, 1965 National Agreement, Claimant had established the protected rate applicable to the Coder classification. Subsequently, Claimant was affected by a displacement and required to accept a position as Foreman--a lower rated classification; however, at every opportunity, Claimant exercised his seniority to vacancies as a Coder, on a day-to-day basis. Until February, 1974, Carrier paid the difference between his guaranteed rate and the position worked, on a daily basis. Commencing with the month of February, 1974, the Carrier eliminated such payment on the ground that Claimant's total compensation was in excess of his monthly guarantee. Hence, in computing Claimant's total compensation, the Carrier included therein both overtime earnings and holiday pay in its calculation.

The thrust of the instant dispute, as argued by the Organization, is reflected in the following, to wit:

"The Employees contend that daily overtime and holiday pay is not a part of the employees 'normal rate of compensation' as the term is used in Article IV, Section 1, nor is it to be used as an offset against his normal rate of pay. To permit the Carrier

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to use daily overtime in this manner would penalize the employee who responded to overtime work as compared to the employee who did not accept same."

Further, we would note at this juncture that on the claim dates, the positions of Coder and Foreman are both daily rated positions and fully covered by the effective Agreement.

In turn, the Carrier defends its method of payment by the following assertion, to wit:

"There is nothing in any Article of the February 7, 1965 Agreement that prevents Carrier from applying all of an employee's earnings, such as sick leave, earnings from higher rates (sic) positions, overtime, vacation pay, holiday pay, etc., against his guarantee."

Involved herein is Article IV, Section 1 of the February 7, 1965 National Agreement, as well as the Questions and Answers contained in the November 24, 1965 Interpretations thereto. Insofar as holiday pay is concerned, we are cognizant of the fact that the guaranteed rate for the Coder position included holiday pay--inasmuch as it was a daily rated position. Moreover, the same is true for the Foreman position--also a daily rated position. Hence, computing holiday pay under these conditions on a monthly basis, wherein the compensation paid Claimant was equivalent to or exceeded his monthly guaranteed rate would not place him "in a worse position with respect to compensation," pursuant to Article IV, Section 1 of the National Agreement.

Insofar as taking credit against the guarantee for overtime earned during the period, the Carrier supports such action by citing the following quote from Award No. 229, to wit:

"Under Article IV, Section 1, Carrier is required to insure that protected employees 'shall not be placed in a worse position with respect to compensation than the normal rate of compensation' on October 1, 1964. There is no obligation to increase the October 1, 1964, compensation which would result if it guaranteed a protected employee the monthly rate he received for 211-2/3 hours in addition to overtime pay for any hours now worked in excess of 40 per week. \* \* \*"

The \* \* \* which denotes the sentence Carrier omitted from said quote is as follows, to wit:

"The employee surely is not placed in a worse position so long as he works no more hours than he had worked to obtain his guaranteed rate."

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In order to place in proper context the significance of the omission of the last sentence of said quote, it is essential to state that in Award No. 229, Claimant's "Compensation therein was calculated on a monthly basis comprehending 211-2/3 hours, including holidays. The question is whether overtime hours now worked in a different position may be applied as an offset against guaranteed compensation."

The facts involved therein are inapposite to those reflected in the instant dispute. We have no quarrel with that award, nevertheless, we deplore the Carrier's failure to include such. We might note in passing that the parties have not advised us of the number of hours comprehended by Claimant's monthly rated guarantee granted on October 1, 1964.

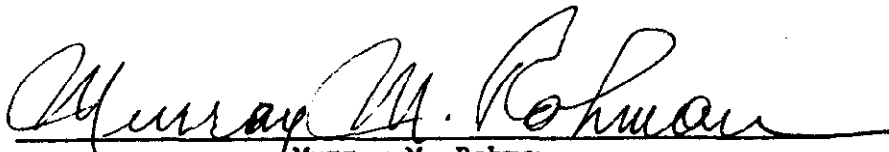
More relevant to the instant matter, we would cite our Award Nos. 46, 47 and 48. We need quote only a portion of the Carrier's argument contained in Award No. 47, on the issue of overtime, to wit:

"All these Questions and Answers are concerned with compensation of protected employees holding regular assignments as of October 1, 1964 and nowhere in such Questions and Answers is there a reference to the inclusion of overtime in determining the normal rate of compensation of holders of regularly assigned positions as of October 1, 1964."

In conclusion, it is our considered judgment that where the guaranteed rate is based on a daily rated position, the Carrier may compute such on a monthly basis. Furthermore, when holiday pay is included in the guarantee, such may also be included in the computation to determine whether an employee shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on October 1, 1964. More importantly, we reaffirm and reiterate our comments set forth above to the effect, overtime earnings shall not be utilized as an offset against the guarantee.

AWARD:

The questions at issue are answered per Opinion.

  
Murray M. Rohman  
Neutral Member

Dated: Washington, D. C.  
March 19, 1976