AWARD NO. 492
CASE NO. CL-173-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Transportation-Communications International Union

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 compensate W. D. Bybee a proper lump sum separation allowance computed in accordance with the schedule set forth in Section 9 of the Washington Job Agreement?

2. Shall the Carrier now be required to compensate Claimant W. D. Bybee the difference between the correct amount of separation allowance based on 360 days pay at the daily rate of the position instead of the Carrier allowed twelve (12) months pay?

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 calculated the lump sum separation allowance for W. D. Bybee, i.e., twelve (12) months pay on the basis of the monthly rated position he held at the time of his election to resign and terminate his employment in accordance with Section 9 of the Washington Job Agreement?

2. Shall Carrier now be required to compensate W. D. Bybee $4,374.24 which rate is based on 360 days pay at the daily rate of the position rather than 12 months pay at the monthly rate of the position.

OPINION OF THE BOARD: On January 1, 1980, when Claimant became a protected employee, he was occupying a monthly rated position predicated on 213 hours per month (a six-day monthly rated position). Beginning September, 1989, Claimant went into off-force reduction status. At the time, the position on which Claimant had

established his job stabilization protection was rated at $2,875.78 per month. In each of the ensuing months, the Carrier apparently paid Claimant his monthly protected rate.

Later, pursuant to an October 17, 1989 Implementing Agreement, Claimant elected to resign from the Carrier and he accepted a separation allowance to be computed in accord with Section 9(b) of the Washington Job Protection Agreement. Section 9(b) of the Washington Job Protection Agreement provides:

> (b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

This dispute centers on the mathematical method for payment calculating the separation allowance due Claimant pursuant to Section 9(b). The Carrier divided Claimant's monthly protective guarantee by 30, multiplied this so-called daily rate by 30 and then multiplied the rate by twelve. In simple terms, the Carrier's formula for computing Claimant's separation allowance was twelve times his monthly protected rate. Based on this formula, the Carrier paid claimant a lump sum separation allowance of $34,509.36 on January 2, 1990. Claimant protested the amount contending that his true severance allowance should have been $38,833.65. The Organization contends that it reduced Claimant's allowance because the Carrier's calculations were improperly based on 261 days of pay as opposed to 360 days of pay. Section 9(b), the Organization asserts, calls for 12 months of pay (each month consisting of 30 days) which equals 360 days. Using Schedule Rule 49-B, the Organization concludes that Claimant's daily rate is his monthly

rate divided by 213 hours and then multiplied by eight hours. Using this formula, Claimant's daily rate is $108.01 per day. To compute the Section 9(b) separation allowance, the daily rate is multiplied by 360 days.

A literal interpretation of Section 9(b) of the Washington Job Protection Agreement supports the Organization's mathematical formula. The position, which embraced six days per week, was predicated on 213 hours per month. Therefore, the daily rate is computed by taking eight times 1/213th of Claimant's monthly rate. Section 9(b) then unambiguously provides that the daily rate shall be multiplied by 30 to determine one month's pay. Then, the one month's pay figure is multiplied by twelve months, which is equivalent to the Organization's formula whereby the daily rate is multiplied by 360 days.

The Carrier cites Klegg et al. v. Southern Freight Association (Zumas; July 24, 1982) and an October 15, 1973 decision issued by the Assistant Secretary of Labor Paul J. Fasser involving an exempt employee on this property. Both cases are distinguishable from the peculiar facts in this claim. In Southern Freight Association, the arbitrator ruled that, for purposes of applying Section 9(b), the daily rate of a monthly rated position must be 1/30th of the monthly rate. This decision would ordinarily carry some precedential weight except, on this property, the Carrier has consistently used a different method to calculate the daily protected rate of an employee whose guarantee was predicated on a monthly rate. To determine offsets against the protected

guarantee, the Carrier utilizes schedule rules to determine the daily protected rate. Thus, the Carrier reaps a savings because it condenses the sixth day into five days for purposes of computing the offset. (See SBA 605, Award No. 481.) However, to maintain consistent and equal treatment of protected employees, the Carrier must apply the same calculation to determine the amount of a Section 9(b) separation allowance. The Assistant Secretary of Labor's decision is inapplicable to Claimant herein since the Grievant who petitioned the Assistant Secretary of Labor occupied an all services rendered, monthly rated position as opposed to a six day monthly rated position.

Therefore, the Carrier miscalculated Claimant's separation allowance under Section 9(b) Washington Job Protection Agreement.

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

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