

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express and Station Employees
DISPUTE) and
Colorado and Southern Railway Company

QUESTIONS

AT ISSUE:

1. Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article IV, Section 1, when it failed to properly compensate Mr. R. H. Kernan as provided for by said Article and Section?
2. Shall the Carrier be required to compensate Mr. R. H. Kernan effective December 16, 1965, the wage losses he has suffered on and after December 16, 1965, and accord him the full allowances and benefits prescribed in the February 7, 1965 Agreement?

OPINION

OF BOARD: The Claimant was assigned the position of Traveling Car Agent on November, 1963, with a base rate of \$536.54 plus \$84.87 arbitrary monthly overtime allowance for 20 hours, equalling \$621.41 per month. On December 15, 1965, the position was abolished, whereupon the Claimant elected to take a lower rated position rather than exercise his seniority on the highest rated position available.

At this juncture, we should note that pursuant to Article IV, Section 4, the Claimant shall "...be treated for the purposes of this Article as occupying the position which he elects to decline." -- the Chief Clerk position.

In pressing the instant claim, the Organization urges that the "overtime allowance was added as a means of increasing the salary on these positions in lieu of an increase of the basic rate over and above the standard negotiated wage increases." Furthermore, this allowance was paid whether the employee holding such position worked overtime or not; and the prior incumbent of this position, similarly, received the overtime allowance.

The Carrier, on the other hand, argues that the governing rate for this position on October 1, 1964, was \$553.61 per month based on 189 2/3 hours. That

"Overtime is not a factor in determining the normal rate of compensation for said regularly assigned position on October 1, 1964 as set forth in Section 1, Article IV. The parties to the February 7, 1965 Agreement have interpreted such language to mean the rate of the position to which regularly

- 2 -

assigned on October 1, 1964 as evidenced by their Questions and Answers numbered 1 through 5 at pages 11 and 12 of their interpretations of November 24, 1965. 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."

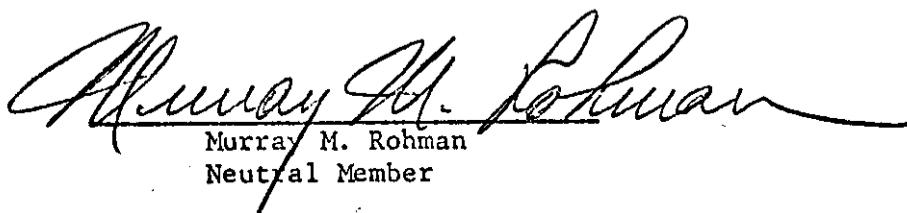
We, wholeheartedly, agree with the conclusion that nowhere in the Interpretations is there a reference to overtime. We would, additionally, just as emphatically disagree with the assumption that the aforementioned questions and answers have any bearing on the issue in dispute. As a matter of fact, we fail to find any guidelines to help us resolve the question whether regular, as distinguished from irregular, overtime is to be included in the normal rate of compensation.

Under these circumstances, we are adhering to our conclusion reached in CL-22-W, Award No. 46, Special Board of Adjustment No. 605.

We would add one further note in support of this analysis. In CL-22-W, Award No. 46, normal is defined as regular, whereas the antonym is defined as abnormal, irregular. In this dispute, the overtime was a regular part of his compensation -- paid whether or not he worked the overtime hours.

Award:

Answer to questions 1 and 2 is in the affirmative.



Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 18, 1969