

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) The Denver and Rio Grande Western Railroad Company  
TO THE ) and  
DISPUTE ) Brotherhood of Maintenance of Way Employees

QUESTION            The question at issue is the guaranteed  
AT ISSUE:           rate of compensation for the following  
                     protected employees under Section 1, Article  
                     IV, of the Mediation Agreement of February  
                     7, 1965:

A. N. Wass, B&B Foreman    )  
M. C. Laman, Leadman        ) assigned to  
C. V. Lander, Carpenter     ) work as a  
A. Dunham, Helper            ) tunnel gang  
A. W. Humphry, Helper        )

OPINION            For ten years until November 29, 1965, Mr. Wass'  
OF BOARD:    B&B gang had worked continuously in railroad tunnels  
                 and had been paid at the higher rate of a steel  
gang. The steel-gang rate for tunnel work appears to have  
been the result of a verbal understanding or practice, but it  
never appeared in the rules agreement.

Article IV, Section 1, guarantees "the normal  
rate of compensation" of the "regularly assigned position on  
October 1, 1964" held by protected employees. Although the  
Employees' submission describes them as a "tunnel gang," the  
regularly assigned positions of these men are in a B&B gang.  
They are not a steel gang and there is no contractual provi-  
sion for a tunnel gang.

If the Claimants had done B&B work not in a  
tunnel on October 1, 1964, they would have been paid at the  
regular rate of a B&B gang. The differential which was always  
paid for tunnel work would not have been given them on any day  
when they worked outside a tunnel. The February 7 Agreement  
does not contemplate that the particular compensation received  
by a protected employee on October 1, 1964, shall be main-  
tained. Rather, it specifically relates the guarantee to  
the normal compensation of a regularly assigned position.


The special tunnel differential is not "normal" compensation for a B&B gang. Even if the tunnel work is of long standing, it does not establish a new "regularly assigned position."

During the Committee's deliberations reference was made to Awards 46, 47 and 48. These dealt with overtime payments, which were held to be part of the normal compensation of regularly assigned positions. However, the Claimants here received no such built-in compensation. Theirs was paid solely when and if tunnel work was performed, and not as a regular, fixed part of the usual compensation for a "regularly assigned position" in a B&B gang. Award No. 47 noted that the overtime "allowance was paid whether the employee holding the position worked overtime or not."

The additional pay given to the Claimants is akin to overtime premiums paid whenever overtime is worked. There was no guarantee that the gang would work in tunnels every day, and that the differential would be paid every day, as occurs with built-in overtime. The ten-year duration of tunnel work does not alter the B&B gang's character and does not endow it with compensation guarantees beyond the B&B rate, under Article IV, Section 1, of the 1965 Agreement. The "regularly assigned positions" remain those of the B&B gang, whether tunnel work is performed for a week or a decade.

#### A W A R D

The guaranteed rate of compensation for the protected employees listed in the question, pursuant to Section 1, Article IV, of the Mediation Agreement of February 7, 1965, is their rate of compensation as a B&B gang, exclusive of the differential traditionally paid when work is performed in a tunnel.

  
Milton Friedman  
Neutral Member

Dated: Washington, D.C.  
June 10, 1969