Award No. 168
Case No. SG-12-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railroad Signalmen
and
Illinois Central Railroad

QUESTION AT ISSUE: Is H. L. Cash entitled to the rate of the position he held on October 1, 1964 (Signal Testman - $622.14 per month), plus subsequent general wage increases, after being dismissed and later reinstated and placed on a signal maintainer position at a lower rate of pay?

OPINION OF BOARD: The facts are not in dispute. Claimant was a protected employe under the terms of the February 7 Agreement. As of October 1, 1964 he held the rate of Signal Testman. On April 5, 1965 Claimant was dismissed from service as a result of negligence on his part. Approximately a month later he was allowed to return to work after he had agreed to the following:

> "In consideration for being permitted to return to service as signalman or signal maintainer effective May 17, 1965, I agree that I will not bid on any position above that of the signalman or signal maintainer's class until I have been awarded a position in the signalman or signal maintainer class by bulletin."

Claimant also agreed to the following:

> "It is agreed if I am reinstated in the Signal Department on the Kentucky Division, there will be no claim for time lost during my dismissal."

Approximately a year later, and after Claimant was awarded the position of Signal Maintainer by bulletin, a claim was filed for the difference between his rate of compensation between a Signal Maintainer and that to which he received as a Signal Testman (as of October 1, 1964).

Carrier contends Claimant voluntarily waived any right to such differential by accepting the conditions of re-employment set forth above.

It is clear that under the terms of the February 7 Agreement and the November 25 Interpretations to that Agreement, a protected employe who is reinstated after dismissal is restored to protected status after such reinstatement. He is, of course, not entitled to any compensation during his absence.

The terms and conditions under which Claimant was reinstated have no relevance to his protection under the February 7 Agreement. Claimant's agreement not to bid on certain positions until he was awarded a position by bulletin did not deprive him of his status; nor did his agreement not to claim compensation for time lost during his dismissal.

As such the question of whether an employe can waive his rights under the February 7 Agreement need not be determined.

AWARD

The question presented is answered in the affirmative.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D.C.
June 24, 1969

INTERPRETATION OF AWARD NO. 108 - CASE NO. SG-12-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railroad Signalmen
TO) and
DISPUTE) Illinois Central Railroad

This matter has been resubmitted to this Board by the Organization for an interpretation of our Award No. 108 as it applies to the Claimant under the circumstances.

Initially the question submitted to the Board in Case No. SG-12-W was:

> "Is H. L. Cash entitled to the rate of the position he held on October 1, 1964 (Signal Testman-$622.14 per month), plus subsequent general wage increases, after being dismissed and later reinstated and placed on a signal maintainer position at a lower rate of pay?"

Our award, dated June 24, 1969, answered the question in the affirmative.

In applying the ruling of our award, Carrier paid Claimant the difference between his gross earnings on the hourly rated Signal Maintainer's position, including overtime, against the monthly rated guarantee of a Signal Testman.

The central question to be determined in this Interpretation is whether Carrier is entitled to apply overtime pay earned as a Signal Maintainer to meet the minimum guarantee requirements of a Testman as was determined under our Award No. 108.

The Organization takes the position that if and when the Claimant worked his normal work week (five days per week) throughout the entire month of the hourly rated position, he should receive earnings equal to the guarantee provided under the February 7, 1965 Stabilization of Employment Agreement. If at any time during that work period, overtime work was performed, such overtime work should be paid over and above the guarantee. Stated another way, the Organization contends that Carrier is obligated to deduct all overtime pay in the computation of monthly earnings and then pay the difference between the monthly earnings and the guarantee of a Testman's monthly salary.

To hold otherwise, the Organization asserts, would allow Carrier to require an hourly rated protected employe to work overtime in order to make up the equivalent of what he would be allowed on a monthly rated guaranteed position.

The rationale for the Organization's position is that since the hourly rated Signal Maintainer works eight hours a day five days per week, the same as a Testman, he (the Signal Maintainer) should receive the equivalent of

the Testman's monthly salary for the claim period, plus all overtime worked on the hourly rated position during the claim period.

Carrier contends that Article IV, Section 1 does not prohibit it from counting the hours worked in excess of an eight hour day 40 hour week to compute protection pay. Carrier further asserts that since the monthly rate of a Testman "comprehends" service up to 211 2/3 hours per month, it is proper to include all hours (including overtime) on Claimant's current hourly rated position in the computation of the difference between the actual amount earned and the "normal rate of compensation" (Article IV, Section 1 of the February 7, 1965 Agreement) of the regularly assigned position which was occupied by Claimant as of October 1, 1964.

Article IV, Section 1 of the February 7, 1965 Agreement provides:

> "Subject to the provisions of Section 3 of this Article IV, protected employees entitled to preservation of employment who hold regularly assigned positions on October 1, 1964, shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position of October 1, 1964; provided however, that in addition thereto such compensation shall be adjusted to include subsequent general wage increases." (Underscoring added.)

The Organization takes the further position that the term "normal rate of compensation" includes not only wages, but also the number of days in the week, i.e., five day work week - six day work week. Thus, if a Signal Maintainer works a five day 40 hour position rated hourly and a Testman works a five day 40 hour monthly rated position, each of the positions must be considered equivalent to each other for payment guarantee purposes; and that any overtime worked on the hourly rated position cannot be applied to a guarantee which is based on the monthly rated position.

To construe "normal rate of compensation" any other way, the Organization submits, would put an employe in a position where he would be required or forced to work more hours (as an hourly rated employe) in order to be entitled to the full monthly guarantee.

Based on the facts as disclosed in the record in this case the Board finds that under the provisions of Article IV, Section 1, Carrier may apply overtime hours worked in the hourly rated position to fulfill its obligation not to put protected employes in a worse position with respect to compensation.

In Award No. 229, this Board held:

> "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 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."

The Board's finding is further supported by the fact that unlike Section 1 of Article IV, Section 2 of Article IV (which applies to other than regularly assigned employes) includes hours worked in determining payment.

Finally, the Board finds, as it did in Award No. 229, that the facts in this situation make it unnecessary to decide whether an employee may be required by Carrier to work a greater number of hours as an offset against the guarantee under the terms of the February 7, 1965 Agreement. The scope of this Interpretation is limited to the question of whether it is permissible for Carrier to apply such overtime hours when and if they had been worked.

Nicholas H. Zumas
Neutral Member

Washington, D. C.
Dated: August 5, 1971