

SPECIAL BOARD OF ADJUSTMENT NO. 605

*John P. Allen*  
PARTIES ) Brotherhood of Railway, Airline and Steamship Clerks,  
TO ) Freight Handlers, Express & Station Employees  
DISPUTE ) and  
Chesapeake and Ohio Railway Company

QUESTIONS  
AT ISSUE:

1. Is the Carrier improperly calculating and paying Claimant John P. Allen the monthly guarantee due him under Article IV, Section 2 of the Agreement of February 7, 1965?
2. If the answer to Question (1) is in the affirmative, shall the Carrier properly pay Claimant Allen for July 1967 and succeeding months for which he is improperly paid?

OPINION  
OF BOARD:

The instant dispute involves an interpretation of Article IV, Section 2, of the February 7, 1965 National Agreement. Pertinent portions are hereinafter quoted for ready reference:

" . . . shall not be placed in a worse position with respect to compensation than that earned during a base period . . . his total compensation and total time paid for during the base period will be separately divided by twelve . . . . but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the time paid for during the base period; . . . ."

Within this context, Claimant is a protected employee performing extra work. His monthly guarantee for the base period was calculated at 150.22 average hours and \$447.88 average compensation. In computing average hours and compensation during the base period, Claimant's total time and total compensation were included - - such as holidays, vacation and sick time.

In July, 1967, Claimant worked a total of 160 hours and, in addition, was paid eight hours holiday pay for July 4. Under his guarantee, he was entitled to \$447.88 per month with average hours of 150.22. For the total 160 hours which Claimant worked, he was paid \$455.82, which included the eight hours holiday pay.

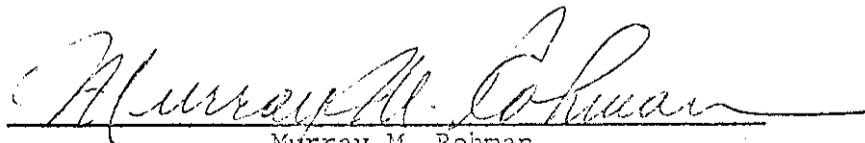
It is the Organization's contention herein that the Carrier excluded the hours paid for the holiday, but included it when determining the compensation due to Claimant. Thus, it contends that Claimant was placed in a worse position with respect to compensation. In further support of its position, the Organization incorporated a hypothetical example for the purpose of explaining how Claimant's earnings should have been calculated by the Carrier for the month of July. Two items are included therein, compensation for "holiday" and "sick", as well as the hours.

The Carrier specifically counters the Organization's hypothesis, insofar as counting the sick hours, by reference to Article IV, Section 2, ". . . less compensation for any time lost on account of voluntary absences to the extent that he is not available for service . . . ." It further argues that fortuitous circumstances of the calendar in a particular month do not affect an employee's compensation.

In our view, the key phrase in Article IV, Section 2, of the February 7, 1965 Agreement, is contained in the following: ". . . for any time worked in excess of the time paid for during the base period, . . ." (Underline added). What was Claimant paid for during the base period? In arriving at the average, the Carrier included all money paid to Claimant, as well as all hours for which such payment was made, i.e., actual hours worked, holiday pay, vacation and sick leave payments. In this regard, the Section specifically excludes compensation for time lost on account of voluntary absences. Hence, we would agree that the Organization's hypothetical example containing hours for "sick" is inaccurate. Nevertheless, it appears to us that Section 2, is unambiguous, insofar as it provides for additional compensation for any time worked in excess of the time paid for during the base period.

Award:

The answer to Questions (1) and (2) is in the affirmative.



Murray M. Rohman  
Neutral Member

Dated: Washington, D. C.  
December 17, 1969