Award No. 227
Case No. TCU-96-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Wichita Union Terminal Railway Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTIONS AT ISSUE:

1. Is the Carrier in violation of Article IV, Section 1, in refusing to include compensation for rest day service normally and regularly worked by a protected employee on his position as of October 1, 1964 as a part of his normal rate of compensation.

2. If the answer to the above is in the affirmative shall the Carrier be required under Article IV, Section 1, to compensate D. E. Eberhardt commencing November 23, 1967 and also to compensate E. R. Mikish commencing November 24, 1967 for the difference between their normal rates of compensation, including work on the sixth day of each work week and that earned subsequent to November 23, 1967 and November 24, 1967, respectively?

OPINION OF BOARD: The issue in this case is whether employees, who on October 1, 1964, held a regularly assigned position and regularly worked one of their rest days for many months prior to October 1, shall have their "normal rate of compensation" calculated to include work on the sixth day.

Dictionary definitions of "normal" offer little help. Either party can find solace in one or another of the definitions or the synonyms. But intent may often be more readily discerned from extrinsic circumstances or from the logic of the situation.

It is doubtful that any definition which is not translatable into a consistent response to varied situations, was

intended. For example, should overtime work for a month prior to October 1, 1964, be part of the "normal" rate of compensation, or should an employee have worked overtime for three months, or a year, or more? How frequently? In one case, Seaboard Coast Line Railroad Company and Transportation-Communication Division, BRAC, Award No. 3, Issue C, overtime on 50% or more of the employee's regularly assigned days, or calls on 50% of the rest days, were said to be the lines of demarcation in determining the "normal" rate of compensation. Surely the parties meant something more definite than this.

If they had intended to use a rule of thumb, they could easily have said so in the February 7 Agreement. It cannot be concluded that they meant to be subjected to the vagaries of differing interpretations, enabling one neutral to find that something which occurs 50% of the time is part of the normal rate of compensation while another would require it to be 90% of the time, and a third would require it to have persisted for two months and another for two years prior to October 1, 1964.

It is considerably more logical to assume that the term, "normal," meant to both parties that rate of compensation which an employee regularly receives for the position he occupies without regard to extra and special payments for extra and special conditions, or whether he works overtime occasionally or generally, or whether he works on his rest day almost always or sometimes.

If, for example, an employee on a regularly assigned five-day position, for good and sufficient reasons had been working only four days per week on and before October 1, 1964, it could hardly be argued that his normal rate of compensation was at the rate of a four-day week because that had been his weekly pay for some period prior to October 1. Similarly, because a dearth of extra or laid-off employees requires an employee to work one of his rest days, it should not be construed as affecting his normal rate of compensation.

There is support for this approach in the distinction between the words used in Article IV, Section 1, and in Article IV, Section 2. In the former, reference is made to the normal

rate of compensation, whereas in the latter merely compensation is the standard. Under Section 2, total compensation and total time in the year preceding the February 7 Agreement is used to calculate the amount of compensation which shall be guaranteed. Thus an extra employee covered by Section 2 might wind up with guaranteed monthly compensation different from the regular rates of the positions he fills. Section 1 sets forth the concept of a regular amount, irrespective of exigencies reguiring a shorter work week, a longer work week or other circumstances affecting compensation if and when they occur.

The Interpretations also support this concept. Machine Operators who are protected under Article IV, Section 1, are guaranteed "the respective rates of the various machines," according to the Interpretation on Page 11. The fact that a Machine Operator worked overtime in 1964 or worked on his rest day would not affect the rates which form the basis for his guarantee. Question 4 on Page 12 identifies the compensation guarantee of the incumbent of a regularly assigned relief position as "the respective rates of the various positions on which he relieved during 1964." Here, too, it is the ordinary rate of pay which governs not the presence of premium pay for overtime.

Finally, Award 47, depicts the kind of overtime which the parties no doubt contemplated would be part of the normal rate of compensation. It was paid whether or not the employee worked. The Carrier could require those hours and the employee could not be denied them. In the instant case, however, the employees had no obligation to work the rest days nor had the Carrier the obligation either to make them available or to pay for them when they were unworked.

A W A R D

The answer to the Questions is No.

Milton Friedman
Neutral Member

Washington, D. C.
November 16, 1970

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