

**Arbitration Award 05/06/1935**

[Award of Arbitrator for Pacific Coast Ports](#)

[I. Question](#)

[II. Statement of Facts](#)

[III. Contentions of Parties](#)

[IV. Decision and Award](#)

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**ARBITRATION UNDER AWARD OF NATIONAL LONGSHOREMEN'S BOARD**

May 6, 1935

M. C. SLOSS  
Arbitrator for Pacific Coast Ports  
on Basic Questions  
1300, One Eleven Sutter  
San Francisco, California

In the Matter of )  
)  
INTERPRETATION OF )  
AWARD OF NATIONAL )  
LONGSHOREMEN'S BOARD )  
)  
RELATIVE TO RETROACTIVE )  
RATE OF PAY.

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**I. QUESTION**

There has been submitted to the arbitrator for Pacific Coast Ports a question, stated by the I.L.A. as follows:

"Is an overtime rate of pay retroactive from October 12, 1934 to July 31, 1934, under the terms of the Award of the National Longshoremen's Board?"

This form of statement does not present the issue quite accurately. The employers do not dispute that the rate of pay fixed in the Award for "overtime" was made retroactive with respect to work which was "overtime" prior to the Award. As will appear from the statement of facts which follows, the real question is whether the "overtime" rate of pay fixed in the Award shall be applied retroactively to hours which constituted "straight time" under the practice before the Award, but are defined as "overtime" in the Award.

**II. STATEMENT OF FACTS**

The Award of the National Longshoremen's Board was made on October 12, 1934. Prior to the Award "straight time" consisted of eight hours worked between 8 A.M. and 5 P.M. ("Overtime" carried a higher rate of pay before the Award, as it does under the Award). The Award established a six-hour day, and "straight time" is defined as "the first six hours worked between the hours of 8 A.M. and 5 P.M." (Section 2). Section 3 (a) fixes the basic rate of pay at not less than 95¢ per hour for "straight time" and not less

than \$1.40 for "overtime". These rates, for both "straight time" and "overtime", are greater than those prevailing before the Award. Section 3(f) provides that "increases of rates of pay shall be paid as of July 31, 1934."

In adjusting the retroactive payments for the period between July 31, 1934 and October 12, 1934, the employers have paid the increases in "straight time" rates for work which was "straight time" before the Award, i.e., for eight hours' work between 8 A.M. and 5 P.M., and have likewise paid the increases in "overtime" rates for work which was "overtime" before the Award.

### III. CONTENTIONS OF PARTIES

The claim of the I.L.A. is that the men are entitled to "overtime" pay for hours in excess of six worked between 8 A.M. and 5 P.M.; or more specifically, for work done between 3 and 5 P.M. by men who had already worked six hours up to 3 P.M. The position of the employers is that the only feature to which the retroactive provision applies is with respect to the scale of pay for "straight time" or "overtime", according to the definitions of these terms in force prior to the Award.

### IV. DECISION AND AWARD

The argument of the employers is that Section 3(f) refers only to increases in rates of pay, that the rates of pay are fixed in the earlier subdivisions of Section 3, and that the definitions of "straight time" and "overtime" are found in Section 2, which does not deal with rates or scales of pay. I think, however, that the distinction between "straight time" and "overtime" cannot be segregated from the provisions for rates of pay. An important element of the definition of "overtime" is that such time is paid for at a higher rate than "straight time". Section 3(a) fixes the basic rates of pay with relation to the kind of work, i.e., whether "straight time" or "overtime". There is no establishment of any rate of pay in and of itself, but a fixing of one rate of pay for "straight" time and of another rate of pay for "overtime". The rate of pay is, by the very language of Section 3(a), tied up with the character of the work, i.e., whether "straight time" or "overtime". In other words, the two rates of pay fixed by Section 3(a), i.e., 95¢ per hour and \$1.40 per hour are meaningless in themselves. They have a meaning only when applied to "straight time" or "overtime", as the case may be. When Section 3(a) fixes one rate of pay for "straight time" and another for "overtime", it necessarily carries into itself, by reference, the definitions of "straight time" and "overtime" found in Section 2.

I conclude and decide, therefore, that Section 3(f) makes the "overtime" rate of pay retroactive from July 31, 1934 with respect to work done in excess of six hours between 8 A.M. and 5 P.M.

(Signed) M. C. SLOSS

Arbitrator for Pacific Coast Ports

DATED:

May 6, 1935.