

§ 2 P. 1

AWARD NO. 175

BSW FILE R-47-476-3
ORT SUPPLEMENT NO. 3 - CASE NO. 1

SPECIAL BOARD OF ADJUSTMENT NO. 100

PARTIES) The Order of Railroad Telegraphers

TO)

DISPUTE) St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

(1) Carrier violated the Telegraphers' Agreement when it called Clerk-Telegrapher F. L. Arnold, Illmo. Missouri and required him to report at 9:00 AM. and remain on duty until 11:30 AM, May 6, 1957, as a witness for the Carrier in an investigation in which he was not involved and had no interest, and refused to compensate him therefor in accordance with Article 6-4 of the said Agreement.

(2) Claimant F. L. Arnold shall now be compensated at time and one-half rate, total amount \$8.40 for the two (2) hours and thirty (30) minutes service he was thus required to perform for the Carrier.

FINDINGS The claimant is the regularly assigned third trick Clerk-Telegrapher at Illmo. Missouri with assigned hours, 11:55 p.m. to 7:55 a.m., five days per week, Monday through Friday with Saturday and Sunday assigned rest days.

The claimant received a letter from the Carrier dated April 22, 1957, notifying him to attend an investigation to be held in the office of the Assistant Superintendent at Illmo, on May 6, 1957, at 9:30 a.m. The claimant was called as a witness for the carrier and was not involved in the investigation. The investigation was called to start at 9:00 a.m., but the letter to this claimant stated that he was to report at 9:30 a.m. The claimant was called to testify at about 11:10 a.m. and was released at 11:30 a.m. being called and used at the investigation for two hours.

The claimant filed a claim for two hours and thirty minutes at overtime rate of pay for this service and claims that the carrier should pay him under Article 6-4 of the Effective Agreement. His claim was denied by the carrier. Article 6-4 is the Gail Rule of the Effective Agreement and reads as follows

"Article 6-4 Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours time and one-half will be allowed on the minute basis."

The Carrier states that the claimant has lost no earnings and that his claim for pay is not valid and therefore was denied. The carrier also states that the only rule in the Effective Agreement pertaining to witnesses called for court and investigations is Article 8, which reads as follows:

"Article 8: Employees taken away from their regular assigned duties, at the request of the Management to attend court or to appear as witnesses for the carrier will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place, and, in addition, necessary actual expenses while away from headquarters. Any fee or mileage accruing will be assigned to the carrier."

This rule states that when employees are taken away from their regular assigned duties they will be paid in a certain manner. It is silent as to the payment to employees who are called for investigations at other times than during their regular assigned duties.

This claimant had no other choice but to attend the investigation because if he refused to do so he would have been guilty of insubordination and subject to discipline. The carrier took two hours of the claimant's time for its own use and benefit in the furtherance of its own business, and the Third Division has held in many awards that employees should be compensated for this service under the Call Rule if there is no other rule in the Effective Agreement granting them pay for such service.

This claimant is entitled to be compensated under Rule 6-4 of the Effective Agreement and should be paid at his pro-rate rate for three hours.

AWARD: Claim sustained in accordance with the opinion.

(Signed) Thomas C. Begley
Thomas C. Begley, Chairman

(Signed) W. I. Christopher
W. I. Christopher, Employee Member

(Signed) M. L. Erwin
M. L. Erwin, Carrier Member

Tyler, Texas
June 16, 1958