

AWARD NO. 20

CASE NO. 22
SSW FILE 47-432-24-4

SPECIAL BOARD OF ADJUSTMENT NO. 353

PARTIES) Transportation-Communication Employees Union
)
TO)
)
DISPUTE) St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Lines, that:

1. Carrier violated the agreement between the parties when on May 30, 1963, it required or permitted employees not covered by the agreement to perform work of the Agent-Telegrapher position at Addison, Texas at a time when W. L. Carroll, regularly assigned Agent-Telegrapher at Addison, was suspended from work.

2. Carrier shall be required to compensate W. L. Carroll in the amount of eight hours at the time and one-half rate of his position.

OPINION OF BOARD:

Claimant occupied the position of Agent-Telegrapher at Addison, Texas, assigned hours 4:00 P.M. to 1:00 A.M., Tuesday through Saturday. This was a seven day position with relief provided on Sunday and Monday. Claimant was notified that his position would not operate on May 30, 1963, a holiday recognized by the agreement.

On May 30, 1963, work that would have been performed by Claimant had he been covering his position, was performed by other employees; the conductor on train No. 23 copied a train order.

Carrier allowed Claimant two hours at the time and one-half rate. Claim was made for eight hours at the time and one-half rate and this claim was denied by Carrier.

The only question to be decided by this Board is how much Claimant shall be paid.

Carrier contends that Article 1 - 2 is the applicable rule and that they made a proper call payment to Claimant.

Article 1 - 2 reads:

"1-2. No employee other than covered by this schedule, and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the employee will be paid for the call."

The Employees rely on Section 2 of Article 7 of the agreement. This Article reads:

"ARTICLE 7 - Section 2 - HOLIDAY WORK

"I Time worked on the following holidays: namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday) within the hours of the regular week day assignment shall be paid for on the following bases:

"A (1) Employees occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required holiday service is on their regular positions or on other work."

We cannot agree that Article 1 - 2 is the applicable rule here.

Section 2 of Article 7 is the rule that should be applied in this case.

Carrier argues that this rule applies only to actual time worked. There are numerous awards of the N.R.A.B., 3rd Division holding that an employee is entitled to be compensated for work that he has been deprived of at the same rate as if he had performed the work.

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Carrier should have paid the Claimant for the full eight hour day at the time and one-half rate.

See 3rd Division Awards 12221 (Dolnick) and 14106 (House).

We will sustain the claim.

FINDINGS: That the agreement was violated.

AWARD: Claim sustained.

Don J. Harr
Don J. Harr, Chairman

D. A. Bobo
D. A. Bobo, Employee Member

M. L. Erwin
M. L. Erwin, Carrier Member

DISSENTING

Tyler, Texas
December 28, 1966