

C O P Y

AWARD NO 176

SSW FILE 2-47-476-4
ORT SUPPLEMENT NO. 3 - CASE NO. 2

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 required Clerk-Telegrapher B. D. LeMay, Jonesboro, Arkansas, to report at Pine Bluff, Arkansas, on Friday, May 10, 1957, one of his rest days to appear 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 7 Section 1 (m) II A (1) of the said Agreement.

(2) Claimant LeMay shall now be compensated for eight (8) hours at time and one-half rate, total amount \$26.16, for the services he was thus required to perform for the Carrier on his assigned rest day.

FINDINGS The claimant held a regularly assigned rest day relief position working Saturday, 8:00 a.m. - 5:00 p.m.; Agent-Telegrapher, Weiner, Arkansas. Sunday-Monday, 3:00 p.m. - 11:00 p.m.; Clerk-Telegrapher, Jonesboro, Arkansas. Tuesday-Wednesday, 11:00 p.m. - 7:00 a.m.; Clerk-Telegrapher, Jonesboro, Arkansas. Thursday-Friday, assigned rest day.

The claimant received a letter dated May 2, 1957, from the carrier instructing him to attend an investigation set to begin in the office of the Assistant Superintendent at Pine Bluff, Arkansas at 9:00 a.m. Friday, May 10, 1957. The claimant was ordered to report as a witness at 10:30 a.m. He was not involved in the investigation.

The claimant states that he should have been paid by the carrier pursuant to the provisions of Article 7, Section 1 (a), 2A (1) of the Effective Agreement. His claim was denied by the carrier.

Article 7, Section 1 (a), 2A (1) reads as follows:

"Section 1 (a) - The Carrier will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in this Article 7, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in

each seven (7) the work weeks may be staggered in accordance with Carrier's operational requirements, so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this Article 7 which follow:"

"2 - Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid 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 service is on their regular positions or on other work."

The carrier states that the only rule of the Effective Agreement pertaining to investigations is Article 8 of the Effective Agreement and that under this rule, unless a person is taken away from his regular assigned duties at the request of the carrier he is not entitled to any compensation for attending investigations.

As we stated in Award No 175, and has been stated many times by Awards of the Third Division, the carrier received a benefit from this claimant when he was called as a witness in an investigation in which he was not involved on his rest day, and therefore this claimant should be compensated for the time spent in attending the investigation. His rest day was a day on which his time was his own to be spent as he saw fit, yet he was instructed by the carrier to spend it otherwise for a purpose which is recognized as a benefit to the carrier.

There being no rule in the Effective Agreement relative to compensation for attending investigations on rest days, or at a time not included in an employee regular assignment, the Board finds that the claimant should be paid under Article 6-4, The Call Rule, of the Effective Agreement

The Board finds that Article 7, Section 1 (a), 2A (1), and Article 8 of the Effective Agreement have no bearing in this case

Both the submissions of the employee and the carrier are silent as to the amount of time the employee spent in going to the place where the investigation was held and returning home and the amount of time the employee spent at the investigation. It is therefore, impossible for this Board to state the number of hours this claimant should be compensated for by the carrier under Article 6-4. (See Award 4914 Third Division).

The carrier and the organization shall ascertain the number of hours spent by this claimant in traveling to and from the investigation and the carrier is ordered to compensate this claimant for that amount of time under Article 6-4 of the Effective Agreement.

AWARD: Claim sustained in accordance with opinion.

Signed: Thomas C Begley
Thomas C Begley Chairman

Signed: W. T. Christopher
W. T. Christopher Employee Member

Signed: M. L. Erwin
M. L. Erwin Carrier Member

Tyler, Texas
June 16 1958