

Award No. 13757

Docket No. DC-15191

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 849, on the property of the Chicago, Rock Island & Pacific Railroad Company, for and on behalf of Waiter Paul Burgess, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss account of Carrier dismissing claimant from service on August 26, 1964, as a result of an investigation held on the 14th day of August, 1964, at which investigation claimant did not appear account of failure of Carrier to give claimant proper notice as required by the Agreement between the parties hereto and, further, account of the discipline assessed by Carrier being arbitrary, excessive, and in abuse of Carrier's discretion.

OPINION OF BOARD: On August 11, 1964, the Carrier sent the following notice by registered mail to the Claimant with copy to his representative:

"You have absented yourself from work with this company in the capacity of waiter since June 29, 1964, without permission. Arrange to appear with your representative at Chicago Commissary on August 14, 1964, at 10:00 A. M. for formal investigation, at which time you will be required to show good and sufficient cause why your record and seniority with this company in the capacity shown above should not be closed at once."

On August 13, the Carrier checked the local Post Office to find out if the letter had been delivered. It had not. The Carrier then dispatched two of its officials to Claimant's home address with instructions to serve the notice on Claimant. He was not living at the address, but was receiving his mail there. Claimant's divorced wife refused to accept the notice on his behalf, but the officials were told where to reach Claimant by telephone. Upon contacting him and informing him of the hearing to be held the next day, he replied, in effect, that it was doubtful he would attend because he had a regular job with United Airlines.

Neither Claimant nor his representative at any time requested a postponement of the investigation, and neither was present when it was held.

Claimant was dismissed from service on August 26.

Under the foregoing facts, there is no merit in the Employees' contention that Claimant was not given due notice, as required by Rule 11 (b)2. That rule cannot reasonably be read to mean that the Carrier is an insurer of the receipt of notice by the addressee, and that, therefore, no investigation may properly be held until after the notice is actually received. (Cf. our Award 13685.) Where, as here, bona fide efforts are made by the Carrier to effect delivery but without success due to Claimant's own conduct, then the spirit and intent of the rule have been complied with.

Moreover, in this case, both the Claimant and his representative had an opportunity to request postponement of the hearing, and neither did so. Neither, therefore, has any grounds for complaint now.

Accordingly, this claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1965.