

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6037) that:

1. The Carrier violated the Clerks' Agreement when on May 11, 1965, it summarily dismissed J. C. Grisba, Stevedore, Houston, Texas, from service.
2. Stevedore J. C. Grisba shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.
3. Stevedore J. C. Grisba shall now be compensated for all wage and other losses sustained account this summary dismissal.
4. Stevedore J. C. Grisba's record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein.

OPINION OF BOARD: This is a discipline case in which Claimant, a stevedore, was dismissed from service by Carrier for improper conduct unbecoming an employe on April 30, 1965. Petitioner contests the dismissal of Claimant, and urges his reinstatement principally on the ground that Carrier failed to properly notify Claimant of the investigation held on May 7, 1965, which constituted the basis for Carrier's disciplinary action.

The record reflects that Carrier on May 3, 1965, addressed a letter to Claimant at the last address listed as current in Carrier's file, advising Claimant that an investigation would be conducted at 2:00 P.M., Friday, May 7, 1965. Said letter constituted proper notice under Rule 26 of the Agreement between the parties, and was mailed by Certified Mail, return receipt requested, on May 3, 1965. Attempts to deliver the certified letter were duly made by the post office; however, actual delivery was not made until May 8, 1965, the day following the scheduled investigation.

The investigation was convened at 2:00 P.M., May 7, 1965, and delayed until 2:48 P.M., because Claimant had not appeared. Present were a conducting officer, four Company witnesses, and the duly authorized representative

of Claimant, who participated in the investigation which lasted until 4:28 P.M. On May 11, 1965, a notice of dismissal was given Claimant, and on June 3, 1965, a request for rescheduling of the investigation was entered on behalf of the Claimant. The request for rescheduling was subsequently denied by Carrier on September 15, 1965. The instant claim was thereafter filed on September 23, 1965.

In the first instance, Carrier contends that the claim should be dismissed, as the dispute was not properly handled on the property in accordance with Rule 29 of the Agreement between the parties. Petitioner properly contends that the failure of the Carrier to raise any objection to the possible untimeliness of the claim on the property constitutes waiver. Accordingly, we find Carrier's contention without merit. Awards 8225, 10315 and 10438.

Petitioner urges that Carrier knew grievant had not received notification of the investigation at the time it was convened and should have so advised Claimant's representative before proceeding forward with the investigation. Moreover, Petitioner asserts that Claimant was denied an opportunity to be present at the investigation and had no opportunity to cross-examine witnesses.

We have carefully examined the various Awards submitted by both parties in support of their respective positions. In this case, the evidence is conflicting concerning whether or not Claimant actually sought to avoid service of the notice prior to the investigation. However, his representative received notification in ample time to appear and participate on his behalf, including the examination of Carrier's witnesses. The facts involved here are readily distinguishable from those found in our Award 12812. In that case, neither the Claimant nor his representative participated in the investigation. Moreover, the Claimant in that dispute was unavoidably absent at the opening of the investigation because of illness. Here, Claimant should have expected notification of an investigation following the events which occurred on April 30, 1965, but apparently he made no effort to make himself available for service at his home address prior to May 8, 1965.

This Board has previously held that a Carrier cannot be held to be an insurer of the receipt of notice (Award 13757) and that an employee has the responsibility not to avoid service of such notice (Award 13757). We have further determined an employee may not frustrate the service of such notice by absenting himself from his proper address or by delaying in some other manner a response to a Post Office Notice without offering a reasonable explanation (Award 15007).

Therefore, we find the Claimant primarily responsible for his failure to receive the Notice from Carrier and Carrier's knowledge that he had not received such notice does not relieve Claimant of his own dereliction. Accordingly, we must deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 19th day of May 1967.