

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20734
Docket Number CL-20571

Robert A. Franden, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station **Employees**

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond, and **Jervis**
(**Langdon, Jr., Trustees** of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7454) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of five days suspension on Clerk Ann D. Herndon, **Colehour** Yard Office, Chicago, Illinois, Western Region, Chicago Division.

(b) Claimant Ann D. **Herndon's** record be cleared of the charges brought against her on or about August 3, 1972.

(c) Claimant Ann D. Herndon be **compensated** for wage loss sustained during the period out of service.

OPINION OF BOARD: We are fully cognizant of Awards of this Board holding that an **employee** cannot avoid the service of a Notice of Investigation to frustrate the investigation process in this industry. Even when an **employee** is determined to be "hiding out" to avoid the receipt of an investigation notice, it has been held that the contractual provisions of an agreement should be complied with. (Award **20588-Sickles**).

In this dispute, however, it is not shown that Claimant avoided the "service" of the Notice and, in fact, it is recognized that she was not served with the Notice and that she was not at the investigation held in her absence. The best that Carrier can proffer is that the Notice of **Investigation** was received at Claimant's old address and receipted for by her sister. But that **information** arose only after they had completed the investigation in absentia and found Claimant guilty. The **testimony** of Carrier's only witness, Mr. Bridge, reveals:

"Q. Mr. Bridge, was Miss Herndon notified to attend this investigation by letter sent to her last known address?

A. Yes, and **I** have a receipt for certified mail dated August 2, 1972, the date it was sent, and also a delivery receipt with her signature dated August 3, 1972."

That statement was inaccurate, as clearly demonstrated by Carrier's **own** Statement of Facts, where it was noted the Letter was receipted for by "Gwen Herndon" - Claimant's sister.

Not having afforded Claimant ample notice and opportunity to attend the investigation. and not having demonstrated to our satisfaction that Claimant intentionally avoided service of the notice of investigation, we hold that it was improper under these **circumstances** for the Carrier to proceed with the investigation and assess discipline.

The claim will be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1975.