

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Nuder **23081**  
Docket Number **SG-23181**

Paul C. Carter, Referee

(Brotherhood of Railroad **Signalmen**  
PARTIES TO DISPUTE: (  
(Louisville and Nashville Railroad **Company**

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood of  
Railroad **Signalmen** on the Louisville & Nashville  
Railroad **Company**:

On **behalf** of **Signal Maintainer** G. L. **Dunaway** for reinstatement to  
the signal maintainer position at **Paris**, Kentucky, with all rights **and benefits**  
beginning August 15, **1978**, and continuing until he is notified to return **to**  
his assignment; and **that** his record be cleared of all charges concerning this  
matter."

(Carrier file: **D-107178**, C-306-4)

OPINION OF BOARD: The record shows that claimant was employed as signal  
maintainer at **Paris**, Kentucky. On July **26, 1978**, he was  
notified by **Certified Mail**:

"Mr. G. L. **Dunaway**  
Box **496**  
Winchester, **Ky. 40391**

Dear Sir:

You are **charged** with failure to protect your  
seniority by being absent from your position as  
Signal **Maintainer** at Paris, KY, July 20, 21, 24,  
25 and **26**, date of this letter, without proper  
**authority**.

Investigation of these **charges** will be **con-**  
**ducted** at the **Corbin** Division Engineer's Office  
on August **4, 1978**, at **10:30 A.M.**

Please arrange to be present with your repre-  
sentative, if you desire one, and **any** employe witness  
you may desire on **your** behalf.

Please acknowledge receipt of this letter below.

J. R. Hatfield  
Supervisor of Signals

JRH/ans

cc: Mr. R. B. Flowers  
General Chairman, B of LE (sic)  
**1152 Rodes Drive**  
**Bowling Green, KY."**

The Carrier was advised by the Postal Service that the certified letter had been placed in claimant's post office box on July **29, 1978**, and it had not been picked up as of August **4, 1978**. The claimant was written another letter on August **4, 1978**, postponing the investigation to August **15, 1978**:

"Please refer to my letter to you, copy attached, charging you with failure to protect your seniority by being absent from your position as **signal maintainer** at Paris, **Ky.**, July 20 through July **26, 1978**, without proper authority.

"**This** letter is to advise that the investigation is postponed to **August 15, 1978**, at **10:30 a.m.**, because of your not receiving the certified letter. **The** Postal **Service** advised that notice was placed **in** your **P.O. Box** July **29, 1978**, and that the letter has not been picked up as of this date.

"Please acknowledge receipt of this letter below."

A copy of the letter of August **4, 1978**, was also sent to the General Chairman of the Organization.

Efforts were made by the Assistant Signal Supervisor and an Assistant Inspector-Special Services, to hand deliver the second **letter** to claimant. **Three** attempts were made to deliver the letter to claimant at his home, also telephone calls to claimant were attempted, but without success. On **August 10, 1978**, the Assistant Signal Supervisor and the Assistant **Inspector-Special Services** made the **third** attempt to deliver the letter of August **4, 1978**, to claimant at his home at about **9:45 P.M.** **They** testified that as they approached the claimant's home **about 9:05 P.M.**, August 10, they **saw** the claimant sitting in a chair in the front of the house, that claimant apparently recognized them and left the room., His wife then answered the door and stated that claimant was not at home. **The** envelope **containing** the letter of August **4, 1978**, and copy of the letter of July **26, 1978**, were left with the claimant's wife, with explanation as to what was involved.

The claimant did not **appear** at the investigation scheduled for August **15, 1978**, which was conducted in his absence; nor did claimant offer any reason for not appearing. We consider claimant's failure to appear at the investigation was at his peril. Following the investigation conducted in claimant's absence **on August 15, 1978**, claimant was notified on September **5, 1978** of his dismissal from service.

An employe say not deliberately refuse to accept a letter of charge, or dodge delivery of same, and then contend that he was not properly notified. The Carrier did everything that could reasonably be expected of it to notify the claimant of the charge and the investigation

The Board has no alternative but to deny the claim. In reaching our decision, the Board has considered only the matters handled on the property.

**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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.