Award No. 13941
Docket No. DC-14935

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 370, on the property of the New York, New Haven and Hartford Railroad Company, for and on behalf of Waiter Robert Bonner 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 or about the 14th day of June, 1963, in violation of the Agreement between the parties hereto.

OPINION OF BOARD: Carrier, having received complaint from a passenger concerning certain alleged conduct of Claimant, a waiter, held a preliminary investigation on June 6, 1963. Claimant and the Local Chairman participated in the proceeding. The following colloquy terminated the investigation — Duprey being Manager Dining and Parlor Cars conducting the investigation, and Quinn being the Local Chairman:

"Mr. Duprey: There will be a hearing as a result of this investigation. I shall notify you of the time and date and will also outline the charges.

Mr. Quinn: Bonner, do I understand that you have booked off of your own volition for further notice?

Mr. Bonner: Yes.

Mr. Duprey: What is your present home address?

Mr. Bonner: 147 West Fifth St., Mt. Vernon, New York.

Mr. Quinn: You will give him sufficient time to contact a union representative of his own choosing?

Mr. Duprey: Yes."

Under date of June 7, 1963, Carrier sent to Claimant registered mail return receipt requested, the following notice of hearing and specification of charges:

"Please be present in my office at 10:00 A.M. DLT Friday, June 14th, for a hearing at which time you will be charged as follows:

1. Poor and indifferent service on Train 172, May 23, 1963.
2. Rude and abominable actions on Train 172, May 23, 1963.
3. Your past record will be reviewed.

Please protect yourself with representation if you so desire."

Copies were sent to both the General and Local Chairmen. The return receipt bore a signature purporting to be that of Claimant's wife. But, the undisputed evidence is that Claimant and his wife were out of town and the receipt was signed in the name of Claimant's wife by a neighbor who had been authorized by Claimant "to take our mail in."

By letter, under date of June 17, 1963, Carrier informed Claimant:

"On June 7, 1963 you were notified by registered letter that your hearing was scheduled for 10:00 A.M., DLT, June 14, in my Boston office. This letter also outlined the charges, and a copy was forwarded to your General and Local Chairman.

Since you failed to appear at the appointed time and neither you nor your union representatives requested a postponement, your hearing was held in absentia.

After carefully reviewing the facts of the case, also your past record in this department, I find that you are an undesirable employe.

DECISION: It is my decision that you be released from our service as of today.

Please return all company property in your possession at the present time."

The Organization claims that Carrier failed to give Claimant notice of the hearing and, therefore, violated Rule 17, which provides: ". . . employes . . . will not be suspended or dismissed without a fair and impartial hearing. . . ."

In essence, the Organization argues that Carrier knew that Claimant was out of town and acted in bad faith in issuing notice of hearing and proceeding to decision in the absence of Claimant. There is no evidence of record which supports the argument.

Claimant, at the close of the preliminary investigation, was put on notice that a hearing would be held and he would be notified of the time, date and charges. Nevertheless, he chose to leave town, without notice to Carrier, and authorized a neighbor to receive his mail. Consequently, he elected to assume the risks which might flow from those actions. Carrier, on the other hand, had the right to rely upon the return receipt as evidence that Claimant had received the notice of hearing. For the foregoing reasons, we find that Claimant had constructive notice of the hearing and charges.

There must be a termination to an adversary proceeding and the parties bear the responsibility of protection of their respective interests. The situation herein presented is analogous to a party failing to appear at a trial in a civil action set for a day certain, whereupon the court enters judgment on the pleadings or ex parte evidence. We find, in the light of the facts of record, Carrier did not violate the Agreement in proceeding to decision in the absence of Claimant.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.