



Award Number 17691

Docket Number CL-18363

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYES**

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6659) that:

1. Carrier violated rules of the current Clerks' Agreement when it dismissed Mrs. Ruthe C. Mingle from service without an investigation.
2. Carrier shall now return Mrs. Mingle to service with all rights and privileges unimpaired and paid for all time lost from February 5, 1968 until violation is corrected.

OPINION OF BOARD: The crux of this case is whether Claimant was properly notified of the investigation eventually held with both her Representative and herself "in absentia."

The Carrier initially notified her and her Representative that an investigation would be conducted on a date certain. The Representative requested postponements which were granted by the Carrier. Subsequently, letters were dispatched by registered mail to the Claimant stating that the investigation was to be conducted on another date certain. Claimant had two addresses, one a Post Office Box, and the other her home address. Notice of Registered Mail was delivered to both addresses. She was well aware of the pending of this matter, and from her conduct we can only deduce that she was in effect attempting to avoid service of notice.

As we said in Award No. 13941 "There must be a termination to an adversary proceeding and the parties have 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 judgement 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 absence of Claimant."

We adopt the logic and the reasoning of the above cited award and will accordingly 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1970.