

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21959
Docket Number CL-22164

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8451, that:

1. The Carrier violated the effective Clerks' Agreement when following an investigation and hearing at which he was unable to be present through no fault of his own, it discharged Clerk K. C. Douglas from service effective June 14, 1976.

2. The Carrier shall now reinstate Mr. Douglas to its service with his seniority and all other rights unimpaired, and shall compensate him for all time lost as a result of this improper discharge, and shall pay an additional amount as interest equal to six per cent (6%) per annum, and shall clear his record of the charges placed against him by the Carrier.

OPINION OF BOARD: The Board has carefully reviewed the record.
The pivotal question before us is whether or not Carrier's certified letter of June 3, 1976 reasonably comported with the bona fides of constructive delivery.

We are certainly mindful that claimant's physical condition would unarguably warrant a postponement of the June 2, 1976 hearing upon proper application which in fact did occur when the local BRAC Chairman requested a change in date because of claimant's hospitalization.

Carrier accommodated this request by first acknowledging same over the telephone on June 2, 1976 and then following it up with a formal certified letter (supra). After focusing critically on the fact patterns attendant to these events, we think that the evidence presented falls short of that quantum of proof that would reasonably show that the Claimant's particular circumstances at that moment estopped him from receiving the aforesaid communication. Third Division case law on the essentials of acceptable "constructive delivery" is on point with our

assessment. Furthermore, while we are mindful of claimant's asserted medical condition, he offered no official proof from responsible hospital administrative authorities certifying that his ailment necessitated absolute institutional confinement during this time.

Accordingly, since we have found that the June 3, 1976 certified letter was consistent with our standards of constructive delivery, we will review the merits of the June 9, 1976, investigative proceeding. We find no reason to disturb the discipline assessed.

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;

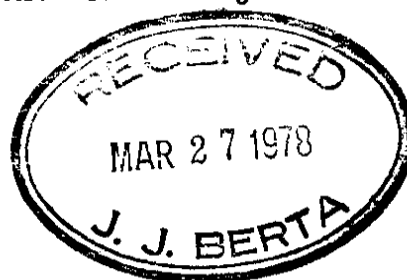
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.