

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23081
Docket Number SG-23181

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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, G-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 conducted at the Corbin Division Engineer's Office on August 4, 1978, at 10:30 A.M.

Please arrange to be present with your representative, 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 Rodas 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 may 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:

A.W. Paulke
Executive Secretary

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