

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad, that:

Carrier violated Telegraphers' Agreement commencing November 27, 1963, when Operator Herman Tyree, extra operator, was dismissed without a fair and impartial hearing. As a consequence,

Mr. Tyree shall be restored to service with full seniority and vacation rights unimpaired and reimbursed for all lost time, commencing with date of suspension from service, November 12, 1963 continuing until duly restored to service.

OPINION OF BOARD: This is a discipline case involving the dismissal of Herman R. Tyree, a spare telegrapher employed in the Boston seniority district of this Carrier. The dismissal was attacked on the ground that the Claimant was not given a fair and impartial hearing, principally in that he did not receive notice of the charges or the hearing prior to the scheduled time thereof.

On November 11, 1963, Mr. Tyree was not at his assigned post at South Braintree Tower and could not be found even by the police. On the following day, which he called the Chief Train Dispatcher's Office, he was told that he was out of service.

On November 13, Carrier sent Mr. Tyree a registered letter asking him to appear at a hearing on November 19 in connection with the charge that he had absented himself from duty without permission. The letter was delivered at Mr. Tyree's address on November 14 but since no one was home to accept delivery, the postal carrier left a notice and returned the letter to the Post Office. Mr. Tyree picked up the letter at 10:30 A. M. on November 19, one-half hour after the scheduled hearing was to have begun.

When Mr. Tyree failed to appear at 10:00 A. M. on the 19th, the hearing was postponed one hour and was held in absentia at 11:00 A. M. There is no evidence that Mr. Tyree, upon picking up the letter at 10:30 A. M., made any effort to communicate with the Carrier. He was formally dismissed on November 27.

The Organization makes several arguments: that Mr. Tyree did not receive timely notice of the hearing, did not have time for defensive prepara-

tion and did not have a hearing as required by the Rules, all of which were denied him.

It is clear that Carrier posted the notice to Mr. Tyree in time to satisfy the requirements of the Rules. The question which is raised, however, is the responsibility of the Carrier to see that the notice is actually received. The contention is that Carrier knew that Claimant had not received the notice but chose, nevertheless, to proceed with the hearing in absentia.

We have previously held that Carrier can not be held to be an insurer of the receipt of the notice (Award 13757), and that the employe has the responsibility not to avoid service of the notice (Award 13757). While the evidence is not conclusive that Claimant herein sought to avoid service of the notice, there is enough to have placed the burden upon him to explain his default in appearing. He had been advised on November 12 that he was out of service and should reasonably have expected soon to receive a notice of hearing. Yet notice of the registered letter was at his home from November 14 to 19 before he called for it, without explanation for the delay. When he did call for it, conveniently one half hour after the scheduled time, he made no attempt to cure his default or to explain his failure.

It is not enough to say that Carrier should have postponed the hearing. Claimant was obliged to act promptly and diligently on his own behalf. He may not frustrate the service of a notice by absenting himself from his proper address or by delaying to respond to the Post Office notice, without offering a reasonable explanation. His failure to receive the notice was not the fault of the Carrier but his own. The fact that Carrier knew he had not received the notice cannot cure his default.

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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December 1966.