

Award No. 8843

Docket No. MS-10461

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

JOSEPH COLBERT SMITH, CLERK

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the employe that:

(1) The Carrier violated the Clerks' Agreement in its failure to assign the employe to position of timekeeper in the Office of Superintendent, Danville Division, Greensboro, N. C., effective January 21, 1957, in accordance with the provisions of Rule 13 (b) of the Clerks' Agreement, as claimed;

(2) Claimant be assigned to said position of timekeeper in Carrier's Superintendent's Office at Greensboro, N. C., effective January 21, 1957.

OPINION OF BOARD: This is a discipline case involving the dismissal "from all service on Southern Railway" of Claimant J. C. Smith. Claimant was discharged from carrier's employment by the following letter of General Manager J. A. Rust, on December 18, 1956, reading:

"For violation of Rule 'G' you are hereby dismissed from position of Assistant Chief Clerk-Personnel, Office of General Manager, Charlotte, N. C., and from all service on Southern Railway."

Carrier contends, and the record so shows, that Claimant Smith did not request an investigation "within five days", as provided for in Rule 40. He did on December 23, 1956, however, request a conference with General Manager Rust, regarding his dismissal, which conference was held on January 12, 1957.

On January 16, 1957 Smith wrote Superintendent Paul C. Shu seeking to exercise displacement rights allegedly under Rule 13(b). This request was denied by Superintendent Shu by letter of January 21, 1957, reading:

"I understand that you were dismissed from the position of Assistant Chief Clerk-Personnel in the office of the General Manager

and from all service with the Southern Railway Company on December 18, 1956, for violation of Rule G.

"Therefore, since you were dismissed from all services on the Southern Railway Company, you have no displacement right on this Division, and therefore, I cannot accept your letter on January 16, 1957."

The Board finds that since Claimant Smith did not comply with the provisions of Rule 40, requesting the investigation there provided within the five days specified, he is assumed to have waived all his rights and protection thereunder; hence, this Board does not have authority to disturb Carrier's action in dismissing Smith from all service on the Southern Railway, effective December 18, 1956.

FINDINGS: The parties having waived oral hearing on this dispute, the Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

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 Carrier's action will not be disturbed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1959.