

**Award No. 13632**  
**Docket No. CL-14989**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Kieran P. O'Gallagher, Referee**

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**PARTIES TO DISPUTE:**

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

**TERMINAL RAILWAY ALABAMA STATE DOCKS  
(AN AGENCY OF THE STATE OF ALABAMA)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5523) that:

1. The Carrier violated the Clerks' Agreement when on September 13, 1963, it summarily dismissed Clerk B. J. Diamond, Mobile, Alabama, from service without hearing or investigation.
2. Clerk B. J. Diamond shall now be restored to the service of the Carrier with seniority and all other rights unimpaired.
3. Clerk B. J. Diamond shall now be compensated for all wage and other losses sustained account this summary dismissal.
4. Clerk B. J. Diamond's record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violations named herein.

**OPINION OF BOARD:** Claimant herein, with seniority date of May 15, 1937, was notified by bulletin on August 21, 1963, that the excepted position of Office Manager of the Carrier, which he occupied, was abolished forthwith. On August 26, 1963, notice was issued by the Chief Clerk that the Claimant exercised his seniority rights to displace a junior employe on the Order Clerk's position. Subsequently the Claimant requested, and was granted ten days annual vacation leave, commencing August 22, 1963, which leave was afterwards extended to September 16, 1963, and he was paid at his Office Manager rate.

On September 13, 1963, Director Feaster wrote Claimant a letter, which by its terms unequivocally dismissed him from the service of the Carrier.

There is no question that the Carrier had every right to dismiss the Claimant from its service as Office Manager, but in order to dismiss him from its service

as a clerical employe it must observe the provisions of the Current Agreement. The Carrier may not shift the burden of initiating a hearing of its charges by arguing it was the duty of the Claimant to request a hearing as provided in Rule 18 (a). In this case the Carrier dismissed the Claimant from a clerical seniority position by its letter of September 13, 1963. It failed to comply with the provisions of Rule 17 (a), which obligated it to initiate a hearing on the charges made against the Claimant, and in so doing it acted in a capricious and arbitrary manner. In the circumstances found a sustaining award is indicated and the Claimant shall be restored to the service of the Carrier with seniority and all other rights unimpaired; he shall be compensated for all wage and other losses sustained account of his dismissal; and his record shall be cleared of all charges or allegations which may have been recorded thereon as a result of the violations with which he was charged.

**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 violated.

#### AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1965.