

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **24305**
Docket Number **a-24632**

Robert Silagi. Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-\$13)
that:

(a) Carrier violated the provisions of the current **Clerks'** Agreement at **Barstow**, California, on or about October 31, 1980. when it **wrongfully** assessed the **personal** record of **Ms. A. D. Chavez** with **twenty** demerits, and

(b) Carrier shall **now remove** the **twenty demerits** and any reference to the formal investigation held on October 15, **1980**, from the personal record of Ms. A. D. Chavez.

OPINION OF BOARD: On September 16, **1980**, Ms. Chavez, **an employee** with two years of seniority, was regularly assigned to a Zoned Extra Board Position **in Barstow**. At approximately **5:05** a.m. that day Carrier telephoned **Claimant** at her **home** to report for duty at **7:00**a.m., but received no answer. About 15 minutes later Carrier again attempted to telephone **Claimant** with the same result. The vacancy was then filled according to seniority. At **11:00** a.m. Carrier once **more** telephoned and was successful **in** reaching Claimant. Ms. Chavez stated that she had been asleep at **home** but had not heard the telephone ring. On **September 23, 1980**, Carrier scheduled **a formal investigation** concerning the allegation that **Claimant** had failed to report for **work in** violation of Carrier's General Rules for the Guidance of Employees. The investigation was scheduled to **begin** the next **morning**. **In view** of the short notice. Ms. **Chavez requested post-**
ponement to obtain representation from the Organization. Carrier granted the
request and rescheduled the investigation to October 15, **1980** at which **time**
Claimant was represented and **participated in** the hearing.

The evidence supports the finding that two **telephone** calls were placed to Ms. Chavez' **home** early in the **morning** of September 16th but that Claimant had not answered. Ms. Chavez offered a **statement from** the local telephone company to the effect that there was a defective cord **on** the **master bedroom** telephone which caused trouble on her line. She stated that she was up and about at **11:00** a.m. and therefore able to answer the call **on a** second instrument in her **home**. **Claimant** was **found** guilty of violating Rules **2, 13, 14** and 15 of the General Rules and subsequently assessed twenty **demerits**.

The Brotherhood raised several defenses. The first defense alleges that Carrier did not **comply** with Rule 24 in that it failed to furnish the **Division chairman** with a copy of the letter postponing the investigation. **The record does** show, however, that the **Division** chairman received a copy of the original notice of the investigation and the **reasons** therefore. In any event the failure to furnish the Division Chairman with a letter of the postponement was **an** inconsequential error, if at all, since Claimant was represented by the Organization at **the postponed investigation**.

The Organization claims that it was improper to introduce into the record evidence of a prior failure by Claimant to report for work. While such evidence **may** not be used to determine whether **the** offense charged was actually **committed**, once the guilt is established, such evidence is proper to determine the severity of the discipline. The Board is satisfied that the evidence of a prior failing was **used** for that purpose.

The Board is of the opinion that the Carrier sustained its burden of **proof**. The claim will therefore be denied.

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 Curier 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: Acting Executive **Secretary**
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.

