

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 26774
Docket No. CL-21451
88-3-86-3-694

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10129) that:

CLAIM NO. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement at **Barstow**, California on/or about June 20, 1985, **when** it wrongfully assessed the personal record of Mr. F. L. Bonilla with thirty (30) demerits, and

(b) Carrier shall now remove the thirty (30) demerits and any reference to the formal investigation held on June 14, 1985, from the personal record of Mr. F. L. Bonilla as a result of such violation of Agreement rules.

CLAIM NO. 2:

(a) Carrier violated the provisions of the current Clerks' Agreement at **Barstow**, California on/or about June 28, 1985, when it wrongfully assessed the personal record of Mr. E. D. **Daws** with thirty (30) demerits, and

(b) Carrier shall now remove the thirty (30) demerits and any reference to the formal investigation held on June 14, 1985, from the personal record of Mr. E. D. **Daws** as a result of such violation of Agreement rules."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in **this** dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute **waived** right of appearance at hearing thereon.

Claimant F. L. Bonilla, with a seniority date of April 11, 1960, is the regular incumbent of Position No. 6050, and Claimant E. D. Daws, with a seniority data of October 3, 1961, is the regular incumbent of Position No. 6056, both of which are located at **Barstow**, California.

Under date of June 10, 1985, the Carrier filed charges against the Claimants, which reads as follows:

"You are hereby notified to attend formal investigation in Terminal Superintendent's Office, **Barstow**, at 2:00 p.m., Friday, June 14, 1985, concerning failure to devote yourselves exclusively to your duties, unauthorized use of copy machine, and copying company records, at **Barstow** June 4, 1985, so as to determine the facts and place responsibility, if any, involving possible violation of Rules 2. 14, 15, 20, 21(E), 21(G), and 29 of General Rules for the Guidance of **Employees**, 1978, Form 2626-Standard.

"You may arrange for representation in line with the provisions of Agreement or Schedule governing your working conditions, and you may likewise arrange for the attendance of any desired witnesses.

"Please acknowledge receipt of this notice on the attached copy and return to Superintendent's Office, **Barstow**, promptly."

At the investigation of the charges, held on June 14, 1985, the Claimants were present and represented by the Organization. The investigation was conducted in a fair and impartial manner.

Following the investigation, the Carrier found Claimants culpable of the charges. Based upon those findings, the Carrier assessed thirty (30) demerit marks on both Claimants' personal records.

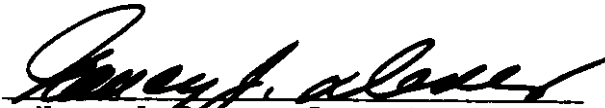
Upon due consideration of all the evidence in the record, we find the evidence is sufficient to support the Carrier's charges against Claimant **Daws**, and we will not disturb the penalty imposed. The same conclusion, however, cannot be reached in regard to Claimant Bonilla, as there is no evidence that he failed to devote himself to his duties, "or that he made unauthorized **use** of the copy machine and/or company records. **Consequently**, the discipline imposed upon Claimant Bonilla is vacated and the Carrier is to **remove** the thirty (30) demerits from his personal record.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1988.