

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24305
Docket Number CL-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-9613)
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 postponement 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 Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

