

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Nathan Engelstein, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILROAD SIGNALMEN****NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
AND NEW YORK DISTRICT
(Except Boston and Albany Division)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Buffalo and East) that:

Signal Maintainer W. E. Kerner, Brewster, New York, be reimbursed for all time lost as a result of a ten-day actual suspension effective August 17, 1964; and that his record be cleared of this, and the additional ten-day record suspension which was assessed at the same time.

[Carrier's File: 114-B (SG64.15)]

EMPLOYEES' STATEMENT OF FACTS: This is a discipline case involving Signal Maintainer W. E. Kerner, a man with a clear record of twenty-four (24) years' service with the Carrier. He was suspended for ten days effective August 17, 1964, with his personal record assessed with an additional ten day suspension, on the basis he was responsible for damage to a pickup truck on July 21, 1964.

On July 21, 1964, Mr. Kerner was using the truck in connection with his work as a Signal Maintainer. He drove the truck to his home during the day, in accordance with a usual procedure, to pick up water for use in filling batteries. He parked the truck in the garage because the water hose is in the garage. After parking the truck and setting the hand brake, he went into the house to pick up eyeglasses which he had forgotten earlier in the day. Before he returned, the truck rolled out of the garage, over a 30-foot wall about 100 feet from the garage, and landed on its top.

Mr. Kerner was subsequently notified to appear for an investigation on July 28, 1964, "for a hearing to determine your responsibility, if any, account damage done to Ford Pickup truck, Unit 6050 on July 21st, 1964." A transcript of that investigation is attached hereto as Brotherhood's Exhibit No. 1.

Under date of August 5, 1964 (Brotherhood's Exhibit No. 2), Division Engineer McGregor advised Mr. Kerner that it was his decision that he be given a 10-day actual time suspension effective August 17th, 1964 and 10-days' record suspension.

foot retaining wall adjoining the property to Mr. Kerner's home. The truck had landed on its roof, sustaining irreparable damage at about 10:30 A.M. The Leading Signal Maintainer also reported the wreckage had been cleared and the truck towed to a service station in Brewster.

On July 22, 1964, the Signal Supervisor forwarded the following notice of hearing to Mr. Kerner and sent a copy to the Local Chairman of the Signalmen's Organization:

"Please report to my office, Room D-52, Grand Central Terminal on Tuesday, July 28th, 1964, for a Hearing to determine your responsibility, if any, with damage to Ford Pickup Truck, Unit No. 6050 on July 21st, 1964.

You may bring representation and witness in your behalf as provided in your schedule agreement."

The hearing was held on July 28, 1964 as scheduled with Mr. Kerner represented by the Local Chairman of the Signalmen's Organization. The transcript of the Hearing is reproduced as Carrier's Exhibit A.

From the evidence obtained at the Hearing, Carrier determined Mr. Kerner was responsible for the damage to Unit 6050 on July 21, 1964, and on August 5 rendered a decision, disciplining Mr. Kerner with 10 days actual suspension effective August 17, 1964, and 10 days record suspension.

The Local Chairman appealed the discipline to Carrier's Signal Supervisor in a letter dated September 23, 1964 which the latter denied on September 26, 1964. Subsequently, the General Chairman appealed the discipline to Carrier's District Signal Engineer under date of September 28, 1964 which was denied on October 2, 1964. A further appeal to Carrier's highest appeals officer dated November 26, 1964, was denied on December 28, 1964. Carrier has reproduced this exchange of correspondence as Carrier's Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: After a formal hearing, Signal Maintainer W. E. Kerner was given a ten-day record suspension and a ten-day actual suspension on the basis that he was responsible for the damages to Carrier's pick-up truck on July 21, 1964. Mr. Kerner maintains there was no evidence presented at the hearing to support the decision that he was negligent or that he violated any of Carrier's rules.

Carrier contends that the evidence developed at the hearing was sufficient to sustain the charges. It points out that when Mr. Kerner left the truck unattended he should have taken greater precaution to prevent damage to the vehicle by setting the brake or by leaving the truck in a safe position rather than on an incline. It argues that Mr. Kerner had a responsibility to know the condition of the brakes and if they were not in good condition he made a serious error in parking on a slope without taking steps to prevent the truck from rolling back down the driveway of his home and running over an embankment.

The record discloses that Mr. Kerner's duties included emergency work during a period other than his regularly assigned hours, he was permitted to take his truck home during off-duty hours. On the day the incident occurred

Mr. Kerner was using the truck in connection with his work as a Signalman Maintainer and took it home in accordance with the usual procedure and parked it in the usual place. He drove the truck to his home to pick up water for use in filling batteries and parked it in his garage where the water hose was located. Then he went into the house to get his eyeglasses which he had forgotten in the morning. When he returned he found that the truck had rolled out of the garage, over a wall and was severely damaged.

Mr. Kerner was the only witness at the hearing. He testified that the truck was left in a safe manner with the hand brake on. Carrier did not present any testimony or evidence to refute Mr. Kerner's statements. Not only did it fail to show that the brake was not on, but it also offered no proof to indicate that Mr. Kerner had knowledge that the brakes were not in good enough condition to park the truck safely in the location he customarily used when he took the truck home. The fact that a mishap took place does not in itself prove that Mr. Kerner was negligent.

From a review of the transcript of the hearing we find that Carrier has failed to meet the burden of proof. Accordingly, we hold that the Agreement was violated and the claim is sustained.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1967.