

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	)
	) Case No. 10
and	)
	) Award No. 5
UNION PACIFIC RAILROAD COMPANY	)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The Level 2 discipline assessed Truck Driver T. W. Brummett for his alleged failure to properly operate his vehicle which resulted in the damage to a signal house at Mile Post 71.6 on November 8, 1996, was without just and sufficient cause, discriminatory and excessive punishment (System File D-282/1064994D).
2. Truck Driver T. W. Brummett shall now have his record cleared of the charges related to the November 16, 1996 letter of charges and hearing held on December 5, 1996.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On November 19, 1996, Carrier instructed Claimant to attend an investigation on December 5, 1996, concerning the facts and his responsibility, if any, for placing the outrigger to Vehicle 1915-68067 into a signal house at Mile Post 71.6, thereby damaging the signal house on November 8, 1996. The hearing was held as scheduled. On December 23, 1996, Carrier advised Claimant that he had been found guilty of the charge and had been assessed discipline at Level 2 of Carrier's UPGRADE, a one day alternative assignment to develop a corrective action plan.

The Organization contends that Carrier failed to prove the charge against Claimant. Carrier maintains that it proved the charge by substantial evidence. No one saw Claimant strike and damage the signal house with the outrigger on his truck. However, the record reveals substantial evidence that Claimant did strike the signal house.

The signal maintainer testified that the building was undamaged when he left around 3:00 p.m. and was damaged when he returned around 3:30 p.m. Furthermore, the Claimant backed his truck up toward the building during this time period. No other truck was in a position to cause the damage. When asked, during the investigation, whether he denied striking the signal house, Claimant responded, "I'm saying I don't know."

The manager track maintenance testified that at 4:45 p.m. on the date in question, Claimant came into the office and stated that he thought he may have damaged the signal house. The manager track maintenance further testified that Claimant stated that "he did not really know that he had placed the other outrigger into the building until he had laid the rail . . ." Later in the hearing, the manager track maintenance testified that Claimant stated that he thought he "screwed up." Toward the end of the hearing the manager track maintenance testified that Claimant admitted damaging the building.

Claimant denied admitting to the manager track maintenance that he had damaged the building. However, as an appellate body, we are not in a position to resolve conflicts in the testimony. We defer to the resolution between conflicting testimony made on the property. Therefore, we defer to the Carrier's finding crediting the manager track maintenance's testimony over the Claimant's concerning the discussion in the late afternoon of November 8, 1996.

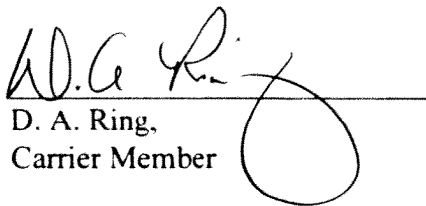
The Organization attempted to suggest that the signal house was damaged before Claimant and the other employees arrived. However, there was no evidence of pre-existing damage, only speculation. In contrast, the signal maintainer was emphatic that the door of the signal house was working properly when he left at 3:00 and was inoperable when he returned at 3:30.

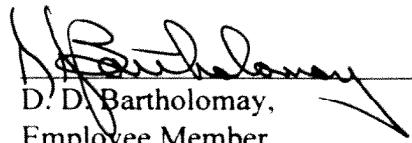
Thus, although there was no eyewitness testimony to the damage to the signal house, the record reflects that the damage occurred between 3:00 and 3:30 p.m. on November 8, 1996, Claimant backed his truck up toward the signal house during that time period, Claimant's truck was the only one in position to cause the damage. Claimant subsequently made incriminating statements to the manager track maintenance, and Claimant was unable to say at the hearing that he did not cause the damage. Taken together, these facts provide substantial evidence that Claimant was responsible for the damage to the signal house. Accordingly, we find that Carrier proved the charge by substantial evidence.

AWARD

Claim denied.



Martin H. Malin, Chairman

D. A. Ring,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, June 19, 2000.