

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21800
Docket Number SG-21862

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(**Missouri** Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood
of Railroad Signalmen on the Missouri Pacific
Railroad Company:

On behalf of Signal Maintainer E. **J. Markle** who was dismissed
April 4, 1975 for restoration to his former position and paid for ail
time lost with seniority, vacation and all other rights unimpaired.

/Carrier's file: K 225-670/

OPINION OF BOARD: This dispute arose when the Carrier dismissed
Claimant E. J. **Markle** from its service **following**
an investigation into its charge that he had failed to **make** proper
tests and inspections after underground track wires had been cut **and**
repaired on March 11, 1975, all in violation of certain of Carrier's
Rules and Regulations for the Maintenance of Way and Structures. At the
investigation the Carrier made a showing that the work in question,
performed by the Claimant, did permit the displaying of a **clear**
signal at **Conroe**, Texas, when in fact a track switch was open, setting
up a hazardous, unsafe condition.

The Organization has shown that Mr. Markle, a very young
employee, was in some doubt about how to test the work in question and
sought the advice of **his** supervisor. **Claimant** apparently followed
the **instructions** of his Supervisor **as** he understood them, but still
did not detect the error in his work. The Organization's **representative**
on the property suggested that the **instructions** given Claimant were
incomplete and defective.

We make no **judgment** on the **competence** of the Supervisor
because we have not been presented **sufficient** evidence. We **do**, however,
note that the work **performed** by **Claimant** was defective and the
consequences potentially serious; hence, Carrier has made a prima facie
case for severe disciplinary action. We must also **note** that Mr. Markle
made an apparently sincere effort to acquire competent guidance in hopes
of preventing **what** nevertheless happened. We finally note **that** the
record does not establish **that** **Claimant** Markle had otherwise been an
undesirable **employee**.

Hence, while we do not condone unsafe workmanship, we find the discipline administered here to be excessive. We therefore order that ~~the~~ Claimant be forthwith reinstated in Carrier's service with seniority and related rights restored, but without pay for time lost.

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 **discipline** was excessive.

A W A R D

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST::

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.

