

NATIONAL RAILROAD ADJUSTMENT BOARD

'THIRDDIVISION

Award Number 23998
Docket Number SG-2410

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: { **Brotherhood of Railroad Signalmen**
{ **Consolidated Rail corporation**

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad **Signalmen** on the Consolidated Rail Corporation (former Lehigh Valley):

That Signal **Maintainer M. A. Doyle** be restored to service and be paid for **all time** and benefits lost since his suspension **from service** on May **9, 1980** and subsequent dismissal."

(Carrier file: System Docket **1511**)

OPINION OF BOARD: Claimant, **M. A. Doyle**, entered the service of the **Carrier** as a **Signalman** Helper on May **5, 1972** and was subsequently **promoted** to Signal Maintainer. An investigation was held on May **16, 1980** in **regards** to the charge that **Claimant** failed to properly **perform** service **in connection with** revising the **Krimpko** Switch at Clark, New Jersey on May **8, 1980** resulting **in a** false indication being displayed to traffic approaching **191 Signal**. Claimant was **notified** by Notice of **Discipline**, dated May **23, 1980** that he was "Dismissed **in** all Capacities."

Claimant's discipline was thereafter appealed up to and including the Senior Director-Labor Relations. The Senior Director-Labor Relations denied Claimant's appeal by letter dated July **8, 1980**. **Following a** conference held on July **23, 1980**, the Senior Director-Labor Relations reaffirmed **denial** of Claimant's appeal by a letter dated July **28, 1980**. The Carrier **maintains** that testimony by Supervisor **J. Stanko** indicates that **Claimant** Doyle failed in his responsibilities as a **Signal Maintainer**. **Mr. Stanko testified** that **Claimant** Doyle did not receive permission for the work he was doing and that procedure required that **Claimant** receive **permission**. **Mr. Stanko** further testified that Claimant did not **make** the proper tests at the Signal location **which would** have avoided the incident.

Mr. Stanko's testimony is corroborated by the **testimony** of Assistant Supervisor **F. Wilcewski**. In addition, the Claimant admitted that he did not **arrange to have proper switch point protection** even **though** he **knew** that it was **necessary** to have such protection. Claimant Doyle testified as follows:

"Q: Did it have point **protection**? In other words, if the point was gapping, what **kind** of protection would you have to **prevent the train from picking a point**?

A: There would have been no protection if the point was gapped.

"Q: Are you **aware** that it is necessary to have a **switch** point protection on the switch?

A: Yes, I am "

Claimant Doyle further testified that he knew sufficient tests **needed** to be made after making revisions to **Krimpko** Switch. The **Carrier** **maintains** that sufficient tests were not made.

The **Carrier** maintains that the seriousness of an offense and the tragic events which may have resulted therefrom **is** a proper **determinant** in arriving at the degree of discipline to be imposed (Award Nos. 11887 and 14768). The **Carrier** further maintains that **an employe's** past record may **be considered in** assessing discipline (Award Nos. 6307 and 16244). **claimant** Doyle had been disciplined twice before on **November 25, 1975** and **May 26, 1977**.

The **Carrier** also maintains that the dereliction or **negligence** of others is not justification for the actions of an **employe** who also is derelict or negligent (Award Nos. 11555 and 13399).

The **Claimant** was allegedly in **violation** of "General Instructions c S 23 #7" as **follows**: "Alterations or additions must not be made to any **individual** components **involving** signal apparatus or **circuits** unless properly authorized." **Claimant's** **notorized** statement dated May 15, 1980 stated that he received authority "...to remove our stuff..." from Supervisor J. **Stanko** at approximately 7:15 A.M. on May 8. In addition, according to **Claimant's** statement, Mr. J. Savarese, the **Carrier's** Maintenance of Way Supervisor advised that the "...points, stockrail, circle-rail and frog **would** be coming out at **Krimpko** siding in Clark and it would be straight railed and this must be done **today**, May 8, 1980, no matter what." The **Claimant** also asserts that he **notified** Supervisor **Stanko** at 2:00 P.M. on May 8 of removal of the **controller** on the **siding** "...and that the HD and **HHD** wires were moved in the case at the **cut** section." Supervisor **Stanko** denied this assertion although he **stated** that **Claimant** Doyle had "talked about something."

Claimant Doyle **was** also charged with "Alleged violation-General Instruction C & S 23, #25-When any changes are **made**, sufficient tests **shall be performed promptly** to assure signal system **is** functioning as intended. All such modifications shall be recorded on C & S 4 by the responsible man making the changes." Upon restoration of the track, the **Claimant** conducted normal tests to assure that **the** governing signal was functioning as **intended**. However, unknown to the **Claimant**, a condition existed which caused a **spurious** signal aspect. **The** **Claimant** sought authority **for** overtime work **to** perform overtime tests but was unable to receive the necessary authority from **Carrier** officers.

The third Carrier rule allegedly violated by the Claimant is as follows: "Alleged Violation-Changes and Tests Incident thereto C & S 23, #257-Before Final cutoff, all circuits changed must be thoroughly tested as far as possible, and final arrangement must be tested in entirety by a supervisory employee other than the man in charge." Claimant maintains that supervisory personnel were aware of the "straight-railing" project and the associated signal circuit changes. The Supervisors, however, failed to comply with the provisions of Rules No. 257 and entire responsibility was attributed to the Claimant.

The Claimant maintains that it is improper for management to punish an employee for improper work performance when management had effectively "encouraged and abetted." (Award 7001)

The Claimant further maintains that Carrier's previous policy was one of not assessing more than ten (10) days suspension for similar offenses. The Hearing Officer, however, would not allow examination into this area.

Claimant maintains that the Carrier was at least equally responsible for the incident and that the Carrier acted arbitrarily and capriciously during the investigative hearing by restricting examination by the Claimant's representative.

Upon careful consideration of the record-herein the Board finds that the discipline imposed under the' circumstances was excessive. The Board notes that total culpability cannot be ascribed to the Claimant in this matter. Furthermore in a related case (Docket SG-24055) involving another employee, the Carrier imposed discipline of suspension and not dismissal.

Under these circumstances the Board reinstates Claimant without backpay and seniority and all other rights unimpaired.

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.

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A W A R D

Claim sustained in accordance **with** the Opinion.

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 **17th day of September 1982**.

