

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 all  
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. Preller  
Executive Secretary

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

