

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35821  
Docket No. MW-34838  
01-3-98-3-539**

**The Third Division consisted of the regular members and in addition Referee Robert L. Douglas when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company (former St. Louis  
( Southwestern Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (withheld from service and subsequent dismissal) imposed upon Foreman J. R. Pryor for alleged violation of Southern Pacific Rules 1.6 and 1.1.3 in connection with a vehicular accident that occurred on April 20, 1997 was arbitrary, capricious, at a hearing that was neither fair nor impartial and in violation of the Agreement. (System File MW-97-42-CB/1079874-D SSW).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to his former position with seniority and all rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered with per diem beginning April 22, 1997 and continuing until he is returned to service.”**

**FINDINGS:**

**The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

**Parties to said dispute were given due notice of hearing thereon.**

**The Carrier sent a termination letter, dated May 1, 1997, to the Claimant. The letter indicated, in pertinent part, that:**

**“On Sunday, April 20, 1997, at approximately 4:30 p.m., while operating a Company vehicle . . . , you were involved in a vehicular accident, which resulted in damages to the vehicle in excess of \$5000, and for which you were cited for reckless driving and submitting a falsified accident report to the local law enforcement officers. Subsequently, you submitted several different accident reports, to Manager Todd Plank, which were also falsified. Also, you were operating this vehicle without proper authorization. Such actions on your part are considered to be dishonest, conduct unbecoming an employee, and careless of the safety of yourself, and others in connection with this incident.**

**Therefore, in accordance with Article 14 of your agreement, you are hereby dismissed from the service of the Company.”**

**The General Code of Operating Rules provides:**

**“1.0 General Responsibilities**

**\* \* \***

**1.1.3 Accidents, Injuries, and Defects**

**Report by the first means of communication any accidents; personal injuries; defects in tracks, bridges, or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident.**

**\* \* \***

### **1.6 Conduct**

**Employees must not be:**

- 1. Careless of the safety of themselves or others**
- 2. Negligent**
- 3. Insubordinate**
- 4. Dishonest**
- 5. Immoral**
- 6. Quarrelsome**
- or**
- 7. Discourteous”**

**Rules 1.1.3 and 1.6 constitute reasonable work Rules. The requirement for honesty in the workplace is a critical ingredient in the overall mixture that enables co-workers to function with each other in an effective manner on an ongoing basis. Similarly, the safety of employees and the safety of the public constitute critical concerns for everyone connected with the workforce. The failure of an employee to comply with such reasonable and necessary work Rules provides a legitimate basis for the Carrier to initiate appropriate discipline.**

**A careful review of the record indicates that the Claimant failed to comply with the referenced Rules by engaging in the referenced misconduct, which arose in connection with the improper operation of a Carrier vehicle. The Claimant, for whatever reason, acted improperly with respect to the operation of the vehicle and with respect to his actions after the accident had occurred.**

**The Carrier has a right to expect employees to act responsibly in operating such vehicles and to act honestly in the event that an accident occurs. The Claimant failed to meet his responsibilities and therefore the Carrier had a right to discipline the Claimant in an appropriate manner.**

**The violations of the Rules by the Claimant constituted serious breaches of the reasonable expectations that an employee, such as the Claimant, had an obligation to fulfill to the Carrier. No cognizable evidence exists that required the Carrier to mitigate the decision to terminate the Claimant. As a consequence, the Carrier had a right to terminate the Claimant under these precise circumstances.**

The record omits any persuasive evidence that the Carrier failed to follow the procedural requirements concerning the imposition of the disputed discipline. In particular, the record contains sufficient evidence that the Carrier afforded the Claimant a fair and impartial Hearing consistent with the relevant requirements. As a result, the claim is denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 14th day of November, 2001.