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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36005
Docket No. SG-36324
02-3-00-3-567**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of S. A. Brubaker, for reinstatement to service with compensation for all lost time and benefits and that the discipline be removed from the Claimant's personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 68, when it dismissed the Claimant from service without the benefit of a fair and impartial investigation, and without meeting the burden of proving the charges against him in connection with an investigation held on October 13, 1999. Carrier's File No. 1204047. General Chairman's File No. SWGC-2061. BRS File Case No. 11326-UP."

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 Claimant was assigned to the position of Signal Foreman with headquarters at Martinez, California. In a letter dated October 6, 1999, the Carrier issued the Claimant a letter directing him to attend an Investigation to:

“ . . . develop the facts and place responsibility, if any, regarding that while on vacation between August 9, 1999 and August 27, 1999 you allegedly used a company vehicle without authorization and made fuel purchases out of state. Also on September 30, 1999, you allegedly used a company vehicle, which you altered without authorization to haul your fifth wheel trailer from Martinez to Truckee where you parked it in a company trailer park without authorization, and you were seen by Signal Maintainer J. Stahlman on October 1, 1999, approximately 12:30 p.m. with your family in the company vehicle.”

The Investigation was conducted on October 13, 1999. On October 29, 1999, the Claimant was dismissed from service.

The Claimant did not deny the charges against him, and the Board agrees with the Carrier that there is substantial evidence to establish that the allegations have been proven. While we do not condone the Claimant's actions, there are mitigating circumstances in this case which merit consideration. The Claimant has shown himself to be a highly cooperative, competent employee. His 20 years of service with the Carrier have been exemplary. Moreover, the record indicates that there were extenuating circumstances present which were not considered by the Carrier in assessing the penalty imposed.

For these reasons, the Board concludes that dismissal was excessive. The termination will be converted to a suspension without pay or other monetary benefits for the duration of time covered by the dismissal.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of April, 2002.