

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42814  
Docket No. MW-42922  
17-3-NRAB-00003-150004**

**The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(Soo Line Railroad Company (former Chicago,  
( Milwaukee, St. Paul and Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. M. Simon by letter dated August 27, 2013 for alleged violation of ‘. . . General Code of Operating Rules 1.1.1- Maintaining a Safe Course; 1.2.6- Statements; 1.6- Conduct; 1.13 Reporting and Complying with Instructions; Engineering Safety Rules Rights and Responsibilities; Engineering Safety Rules - Vehicles, Equipment, and Tools; Engineering Safety Rules - Material Handling Equipment; Engineering Safety Rules – Cranes’ in connection with charges on a notice of investigation dated July 30, 2013 was on the basis of unproven charges, arbitrary, capricious, excessive and in violation of the Agreement (System File D-53-13-570-01/8-00547 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Simon shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall receive ‘. . . all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare insurance, dental insurance, supplemental insurance, and any and all other benefits to which entitled \*\*\*.’”**

**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.

By letter dated July 30, 2013 Claimant was instructed to attend an investigation on August 12, 2013 for the purpose of developing all pertinent fact in connection with allegations that he violated CP Policy 1807 – Drug and Alcohol Free Workplace and Testing; alleged argumentative, discourteous and insubordinate conduct on July 23, 2013; having company vehicle being overweight and having the boom extended while in traveling mode; and alleged violation of the following rules:

- GCOR 1.1.1 – Maintaining a Safe Course
- GCOR 1.2.6 – Statements
- GCOR 1.6 – Conduct
- GCOR 1.3 – Reporting and Complying with Instructions
- Engineering Safety Rules – Rights and Responsibilities
- Engineering Safety Rules – Vehicles, Equipment, and Tools
- Engineering Safety Rules – Material Handling Equipment
- Engineering Safety Rules - Cranes

In a letter dated August 27, 2013 the Claimant was notified that he was to be dismissed for violating GCOR Rules 1.1.1, 1.2.6, 1.6, 1.13 and the four Engineering Safety Rules listed above. The Organization filed a claim on October 26, 2013 asserting the investigation was not fair and impartial, the Carrier failed to meet its burden of proof and that the discipline was excessive, unwarranted, and disparate.

The Claimant was working as a Material Truck driver on July 3, 2013 and had been employed by the Carrier for 23 years. While operating his vehicle he was stopped by the police and issued a citation for driving an overloaded vehicle. His supervisor observed the Claimant operating the vehicle on a public road with the boom extended and instructed him to return to the Yard office. Upon arrival in the office, the Claimant was asked to provide a written statement of the events. He refused and became discourteous and insubordinate with his supervisor.

The Carrier asserts it has met its burden of proof. The record shows that the Claimant overloaded his truck and received a citation from the police which resulted in a fine of \$2,700.00. The Claimant was observed driving his truck on a highway with the boom extended and was instructed to return to the Bensonville Yard Office. Upon return to the office, Mr. LeDuc, Manager Utility Crew, instructed the Claimant to write a statement concerning the events of the day. Claimant refused and became argumentative with Mr. LeDuc. During the investigation hearing, the Claimant admitted that he knew his truck was overloaded and that his material truck was not in the proper travel mode. The Claimant also acknowledged the exchange became argumentative with the supervisor.

The Organization argues the Board cannot take into consideration the Claimant's refusal to submit to a drug/alcohol test because he was not found guilty of that charge. As to the charges for which the Claimant was found guilty, the Organization asserts he was trying to work quickly after having received the ticket from the police and failed to properly secure the boom before returning to the yard as instructed by his supervisor. Upon returning to the yard, the claimant was upset by the events of the day. The Claimant acknowledged raising his voice but claims he never made any threats towards the supervisor.

The Board reviewed the evidence and testimony and concludes a fair and impartial hearing was conducted. There is substantial evidence on the record before us that the Claimant violated Carrier rules with regards to safe maintenance and operation of a vehicle. There is no dispute that the Claimant's vehicle was overloaded and that this caused him to receive a citation and \$2,700.00 fine from the police. There is also no dispute that the Claimant operated his vehicle with an extended boom. Finally, the Claimant testified that when asked to provide a written statement of the events of the day, he "refused to write it down." He also admitted to having walked off the job prior to the end of his shift. The Claimant's conduct throughout his working hours on July 23, 2013, show a disregard for safety rules in place for operating and maintaining his vehicle. Refusing to comply with a request to provide a written

statement and walking off the job prior to the end of his shift are clear indications of insubordination. While employed by the Carrier, the Claimant has been counseled and disciplined for infractions of the same safety rules for which he is charged in this case. For these reasons, the Claimant's dismissal is appropriate.

**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 28th day of November 2017.