

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION

KENNETH MODICA

PLAINTIFF

V.

CASE NO. 05-CV-1087

PAPER, ALLIED-INDUSTRIAL,  
CHEMICAL AND ENERGY  
WORKERS INTERNATIONAL  
UNION

DEFENDANT

**AMENDED JUDGMENT**

Before the Court is the Report and Recommendation filed December 3, 2010, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 76). Judge Bryant recommends that Defendant's Motion for Summary Judgment (Doc. 50) be granted in its entirety, that judgment be entered against Plaintiff, and that the case be dismissed with prejudice. Plaintiff has responded with timely objections. (Doc. 77). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.<sup>1</sup>

Plaintiff brought suit against Defendant alleging a breach of Defendant's duty of fair representation in the handling of Plaintiff's grievance following his termination from El Dorado Chemical Company. Judge Bryant concluded that Plaintiff failed to establish that his discharge was in violation of the collective bargaining agreement between him and El Dorado Chemical Company. For Plaintiff to prevail in this action, he must not only show that Defendant breached its duty of fair

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<sup>1</sup>This Amended Judgment replaces the Judgment entered on January 5, 2011. (Doc. 78). The Court amends its Judgment to correct a clerical error.

representation but also that his discharge was in violation of the collective bargaining agreement. *Hines v. Anchor Motor Freight*, 424 U.S. 554, 570 (1976). Plaintiff argues that there are genuine issues of material fact as to whether the collective bargaining agreement was violated. Viewing the facts in the light most favorable to Plaintiff and after reviewing Plaintiff's supporting affidavits, the Court finds that the affidavits do not raise a genuine issue as to any material fact that would preclude summary judgment. Plaintiff fails to offer any proof that would allow a jury to find that his termination was in violation of the collective bargaining agreement. Accordingly, the Court adopts the Report and Recommendation of Judge Bryant. It is hereby ordered that Defendant's Motion for Summary Judgment (Doc. 50) is GRANTED and Plaintiff's claims are DISMISSED WITH PREJUDICE.

**IT IS SO ORDERED**, this 6th day of January, 2011.

/s/ Harry F. Barnes  
Hon. Harry F. Barnes  
United States District Judge