

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44365  
Docket No. MW-45814  
21-3-NRAB-00003-200130**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK) –  
(Northeast Corridor**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. C. Stanish, by letter dated June 18, 2019, for alleged violation of Amtrak’s Standards of Excellence and Anti-Discrimination and Anti-Harassment Policy 7.49.5 in connection with an incident that occurred on Saturday, May 10, 2019 was arbitrary, capricious and constituted a violation of the Agreement (Carrier’s File BMW-154734-D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Stanish shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all lost wages.”**

**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 had established and held seniority within the Carrier's Maintenance of Way Department. At the time of these events, the Claimant was assigned as an Engineer Work Equipment Front End Loader and had been in the Carrier's service for more than ten years.

On Friday, May 10, 2019, Manager Engineering Production Michael Travaglino received several calls and texts from employees concerned about Facebook posts that the Claimant had made regarding a co-worker, Michael Valentino. Travaglino reviewed the posts and saw that the Claimant made several derogatory and threatening statements about Valentino. When Travaglino spoke with Valentino, he learned that Valentino had previously blocked the Claimant from posting on his page or texting him, so the posts were on Valentino's wife's and mother's Facebook pages. Travaglino asked Valentino what might have set the Claimant off, and he replied that he had called the Claimant to tell him off regarding a previous comment that the Claimant had posted on his wife's page.

Travaglino reported the event to the police. In his statement, Travaglino said that Valentino "did not want to press charges, but wanted [the Claimant] to get help for his drinking and to leave his family alone." In Valentino's statement, he wrote, "After I blocked him, he proceeded to post threats towards myself which then put me in fear of imminent serious bodily injury or death. Also places a fear for the welfare of my family and their wellbeing."

On May 20, 2019, the Claimant was given notice of an investigation in connection with the following charge:

"On Saturday May 10, 2019 it was discovered that EWE "B" Christopher Stanish posted inappropriate comments on his Facebook page; as well as the wife and mother of fellow Amtrak employee Michael Valentino. At this time Mr. Stanish posted threatening, offensive, racially and sexually charged comments on Facebook directed specifically towards Mr. Valentino i.e. "Mike is Gay"; "Cross Fit Fag"; "Mike don't let me go off"; "Ring a ding ding kid Michael Valentino don't ever fuck with me"; "Short Italian fuck I'll kill you". Upon further investigation it

was also discovered that Mr. Stanish called the wife of Mr. Valentino that same Saturday May 10, 2019 to further escalate tensions. These posts and phone calls have caused Mr. Valentino, his wife and family fear for their personal safety (bodily injury/death).”

After a formal investigation on June 13, 2019, the Claimant was found in violation of Amtrak’s Standard of Excellence and Anti-Discrimination and Anti-Harassment Policy 7.49.5 and was dismissed from the Carrier’s service.

The Organization’s initial appeal was dated June 23, 2019. Amtrak denied this appeal on August 22, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that there is substantial evidence demonstrating the Claimant’s violation of the Carrier’s Standards of Excellence and Anti-Discrimination and Anti-Harassment Policy (7.49.5). The Carrier points out that there is no question that the Claimant made the Facebook posts and that they were threatening and derogatory toward Valentino’s ethnicity and sexuality. The Carrier contends that its policy prohibits discrimination and harassment both at work and outside of work.

The Carrier contends that the Claimant is asking for leniency, based on his alcohol problem and that leniency is the prerogative of the employer. The Carrier contends that the Claimant was earlier warned about inappropriate Facebook posts, so the penalty of dismissal should stand.

The Organization does not deny the posts but contends that such off-duty conduct cannot justify the penalty of dismissal. The Organization contends that this Board must consider that the posts were made while the Claimant was off duty, on his own computer, and on his own Facebook page. The Organization contends that the Claimant and Valentino were close enough personal friends to be considered “family” as well as coworkers, and that this was a personal disagreement unrelated to the workplace. As a result, the Organization contends that in order to show a nexus to the Claimant’s position, the Carrier must prove a deleterious effect on the Carrier’s operations or business.

The Organization points out that thirty-one coworkers wrote statements on the Claimant’s behalf, attesting to his character, work ethic, and friendship, and urging the Carrier not to dismiss him. The Organization contends that the Claimant was suffering from an anxiety disorder and there is no question that he was inebriated

when he made the posts. The Organization points out that the Claimant sought professional help for his alcoholism and has been in treatment ever since this incident.

Although the Claimant has admitted the conduct that formed the basis of the charges, the Organization urges this Board to find that the Carrier has not established a sufficient nexus to its business to justify imposing discipline. It cites Third Division Award 43079, an on-property award, in which this Board found that a Facebook post “that was defamatory and discriminatory toward the Carrier and one of its employees” made while off-duty did not create a sufficient nexus. The Board wrote,

“It is fundamental that in order to bring discipline against an employee, the Carrier must meet its burden of proof with sufficient evidence that the employee did something in violation of the Carrier’s rules. In this case, the Claimant was off duty when he was making the post to social media and the nexus between those posts and his job was simply not proven by the Carrier.”

Here, however, the Board finds that the Claimant did more than simply post a defamatory statement on his own social media. He made derogatory comments directly to Valentino on Valentino’s page. After Valentino called and told him to stop and blocked him from contacting him by cell phone and social media, the Claimant escalated the conflict by posting threatening and harassing statements on Valentino’s wife’s and mother’s pages. The threats and slurs identified Valentino by name and were posted directly on Valentino’s family members’ pages, prompting numerous Carrier employees to contact Travaglini out of concern.

Even if the start of the disagreement occurred outside of work, once the threats and slurs were significant enough that several other coworkers notified the Carrier’s management, and Valentino himself sought the Carrier’s help because he felt threatened, a sufficient nexus was created. Unlike in the activity considered in Third Division Award 43079, the Claimant’s social media activity was tied to the Carrier or its employees. The Carrier was within its rights to take action. The Carrier has met its burden of showing with substantial evidence that the Claimant violated its Standards of Excellence and Anti-Discrimination and Anti-Harassment Policy.

This Board well recognizes that a disciplinary penalty should not be disturbed unless the penalty is deemed to be arbitrary or excessive. The Claimant was threatening and profane toward a coworker on several occasions. The coworker and his family felt genuinely threatened. It is unfortunate that the Claimant’s excessive

drinking caused so much harm. But the option to exercise leniency belonged to the Carrier alone, and its determination not to do so here cannot be said to be arbitrary under all of the circumstances.

**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 6th day of January 2021.