

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44859  
Docket No. MW-47046  
23-3-NRAB-00003-220126**

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

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

**PARTIES TO DISPUTE: (**

**(Dakota, Minnesota & Eastern Railroad Company**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed on Ms. B. Nelson, by letter dated August 17, 2020, for alleged violation of CP Policy HR #202 - Social Media Policy, GCOR 1.6 – Conduct, GCOR 1.9 – Respect for Railroad Company and Policy 1300 – Workplace Harassment - Including Sexual Harassment was excessive, unduly harsh and in abuse of discretion (System File B-2034D-202/2020-00019295 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Nelson shall ‘... now be made whole by compensating her for all wage and benefit loss suffered, any and all expenses incurred or lost as a result of Round trip Travel not paid for the scheduled Hearing on July 22, 2020, and the alleged charge(s) be expunged from her personal employment record. Claimant must also be made whole for any and all other loss and this event be expunged from the Charged employees (sic) employment record.’”**

**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.

On May 29, 2020 the Claimant posted the following comment on her Facebook account page and a member of the public reported it to the Carrier's marketing and media group "Community Connect":

. . . just because he signed up to protect and serve doesn't mean it's still acceptable for him to be murdered in cold blood? What pisses me off is white kills black 'black lives matter.' Let's steal, burn people's livelihoods, and cause chaos and act like brainless monkeys. But black kills white, nothing happens, no media, no one cares. It's just what a cop signs up to do. What about black kills black DAILY . . . eh it's okay, right? Why don't ya put the weed down.

On June 18, 2020 a representative in Human Resources (HR) became aware of five (5) posted responses to the Claimant's post. Some or all responses were by members of a group on Facebook identified Racism Exposed, referred to the Claimant as a racist and posed the question whether that is acceptable to the Carrier. These responses, the Carrier states, establish the Claimant as an employee and reflect negatively upon the Carrier. The Organization states this matter - - the Claimant's post dated May 29, 2020 - - was adjudicated in a prior proceeding and responses by Racism Exposed cannot be examined since the HR representative becoming aware of them did not testify. Also questioned is the authenticity of photographs allegedly showing the Claimant as a Carrier employee as the Claimant did not reference the Carrier on her Facebook account page.

This matter was timely presented and advanced on-property up to and including the Carrier's highest designated officer and is before the Board for final adjudication. A review of the record shows this claim, the underlying fact pattern and situation, implicated rules and policies, officials involved, argument and cases in

support thereof and dismissal penalty is materially and substantively the same as in Third Division Award No. 44858. Having considered the evidentiary record in this proceeding, the Board will follow and apply its precedent in Third Division Award No. 44858 as the final adjudication of the instant claim. Thus, the Carrier's letter of caution issued in Third Division Award No. 44858 applies to this claim. The Claimant's dismissal is rescinded and she is reinstated with backpay.

**AWARD**

Claim sustained in accordance with the Findings.

**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 10<sup>th</sup> day of March 2023.