

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
DIVISION – IBT RAIL CONFERENCE)

) Case No. 91

) Award No. 91

NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)
NORFOLK & WESTERN RAILWAY COMPANY))

Richard K. Hanft, Chairman and Neutral Member
D. M. Pascarella Labor Member
D. L Kerby, Carrier Member

STATEMENT OF THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. S. McCarty, issued by letter dated September 5, 2017, in connection with his alleged conduct unbecoming an employe in that on January 1, 2017, it was brought to the Carrier’s attention that his Facebook page displayed posts published by him that contained offensive and inappropriate remarks to falsely attack the character of Norfolk Southern Railway and several Carrier officers, whom he specifically identified by name was discriminatory and capricious (Carrier’s File MW-ATLA-17-01-SG-043 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. McCarty shall be reinstated by the Carrier and he shall be made whole for all losses suffered.”

FINDINGS:

Public Law Board No. 6394, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedence in any other cases.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant in this matter entered Carrier's service on January 30, 2012 and at the time giving rise to the charges brought in this matter, Claimant was on sick leave.

On January 1, 2017 Carrier Supervision was made aware of a posting on social media allegedly made by Claimant and in violation of Norfolk Southern Safety and General Conduct Rule 900 that, in relevant part, prohibits "...display [of] material that would be considered offensive or inappropriate by co-workers, customers or the public..." [including] "...making disparaging remarks..."

The record evidence leaves no doubt that several disparaging and defamatory remarks concerning Carrier Officials were published on social media on or about January 2, 2017 under Claimant's name. By letter dated January 17, 2017 Claimant was advised that he was being held out of service and summoned to a formal investigation that was eventually held, after numerous postponements, on August 16, 2017, *in absentia*. Claimant was represented by the Organization at the investigation. The Hearing Officer, after review of the evidence and testimony, found Claimant guilty as charged with violation of General Conduct Rule 900 and by letter dated September 5, 2018 Claimant was dismissed from all service with the Carrier.

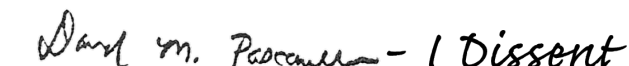
It has come to the Board's attention that after this dispute was heard by the Board, but before an Award was issued, Claimant and the Carrier entered into an Agreement that resolves the instant dispute. Accordingly, the Claim is dismissed.


AWARD:

Claim dismissed.



Richard K. Hanft, Chairman and Neutral Member


D. M. Pascarella, Labor Member


D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.