

NATIONAL ACADEMY OF ARBITRATORS CONFERENCE
SOCIAL MEDIA AND ITS IMPACT ON THE WORKPLACE IN 2013
SATURDAY, FEBRUARY 9, 9:15AM-10:30AM

SESSION PANELISTS

James Brown, Esq. – Ford & Harrison (Representing Management)
Joseph Egan, Esq. – Egan, Lev, & Siwica (Representing Labor)
Lisa Henderson – National Labor Relations Board
Michele Hoyman, Ph.D. – Arbitrator

CASES ON RELEVANT SOCIAL MEDIA ISSUES FROM THE NATIONAL MEDIATION

BOARD DATABASE

Cases Involving Electronic Devices

CSX Transportation, Inc. vs. Brotherhood of Maintenance of Way Employees, PLB 7120, Award 94, (2011)

Description: Claimant was acting as a Bridge Machine Operator and had made allegations about inappropriate text messages sent by two other employees to him. In the course of the investigation the Carrier ended up finding the Claimant himself had sent inappropriate text messages and dismissed him for conduct unbecoming an employee (considering the texts as harassment) and failure to perform his responsibilities (due to sending personal texts while on the job).

Analysis & Award: The Board found that in at least once case the submitted text was a “highly demeaning racial message and picture.” However, the Board states that because there was “no aggression, pressure or intimidation,” no employee complained, and there is no evidence that a black employee saw or was intended to see the racial message (it was sent between white employees), that it could not constitute harassment. As such, the dismissal penalty was excessive and the employee would be reinstated but back pay would not be awarded because (1) the Claimant reported other employees for harassment while sending offensive text messages himself and (2) he sent a text message with a profanity, which “came within...the Carrier’s policy of Unlawful Harassment.” Claim was sustained.

CSX Transportation vs. Brotherhood of Locomotive Engineers & Trainmen, PLB 7384, Award 28, (2011)

Description: Claimant at home but on call and the Carrier contacted him during this time to ask him to report to work but could not reach him – all calls to his landline and cellphone went unanswered. Claimant was dismissed due to Carrier policies that on call employees must furnish information so that they can be reached or tell the Carrier of their general whereabouts. Claimant

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contends that his phone line was down because it was bundled with cable and due to an area storm the cable (and thus the phone line) were not in operation. Claimant also contends that his cell phone was charging and off during the time the Carrier tried to contact him.

Analysis & Award: The Board found the fact that the weather made the land line inoperable a mitigating factor as the Claimant had no control. However, it did state the Claimant had some responsibility as he knew that the phone line was not working and the Employer could only contact him then through his cell phone, which was off. On balance though dismissal was too excessive given the conduct, so he was returned to work while on a final warning stage of the Carrier's discipline policy. Claim was sustained.

United Transportation Union vs. National Railroad Passenger Corporation, PLB 6877, Award 148, (2010)

Description: Claimant was acting as conductor who was operating on train tracks maintained by a different company (CSX), and had obtained written permission to occupy those tracks for a certain period of time. While still occupying the tracks the Claimant called the dispatcher by cell phone to release the use of that portion of the track. Minutes later the Claimant realized they had not left that section of the track which he just authorized for release so he contacted the dispatcher again – but not before a track maintenance employee had been assigned to the track in both directions to make repairs.

Analysis & Award: Beyond the obvious error of releasing a portion of a track while the train was still on it, thus potentially endangering the life of the track maintenance employee, the case involves the use of a cell phone to notify the dispatcher. Three weeks before the carrier had issued an order that prohibited use of cell phones over radio communication to obtain or release track authority unless allowed via special instructions (which the Claimant did not have). However, because the Claimant had 22 years of seniority and attempted to correct his mistake, dismissal for these actions was excessive. Claim was sustained.

Cases Involving Misuse of Social Media

United Transportation Union vs. The Union Pacific Railroad, PLB 6764, Award 159 (2010)

Description: The Claimant posted messages on his personal Facebook page that (1) he heard a rumor concerning his boss being involved in a DUI in a company vehicle, (2) related that his boss “liked her booze” and that at company safety meetings she was the “first to the bar,” and (3) posted “...my boss is just a crazy drunk. Will they fire her? Of course not.” A few months later he posted a public apology to his supervisor on the same facebook page. In addition, the Claimant admitted to using a cellphone to send at least three text messages that had nothing to do with carrier business.

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Analysis & Award: The Claimants actions were a “deliberate attempt to harm the reputation” of the supervisor. In addition, the texting is prohibited not only because it distracts from work but because it had previously caused a disastrous accident. Claim was denied.