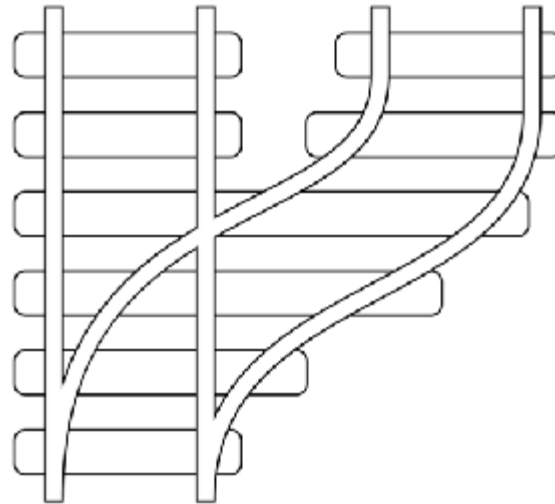


National Association of Railroad Referees (NARR)

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Social Media and the Railroad Industry

Dr. Andrée Y. McKissick



Scenario I

- Claimant, John Williams, an Engineer Work Equipment Front End Loader was employed at XYZ Carrier for approximately ten (10) years. Claimant is now charged with making several derogatory and threatening comments on Facebook concerning one of his co-workers and former friend. Co-Worker Sully asked that the Claimant stop making these derogatory comments about him and his family, nonetheless the comments escalated and continued on his wife's and mother's Facebook pages. Co-Worker Sully blocked the Claimant from posting on his Facebook page and from texting him directly.
- The Manager of XYZ Carrier was contacted by other employees about the Facebook posting. Subsequently, the manager alerted the police, but Co-Worker Sully did not press charges. Instead, he stated that he just wanted the Claimant to receive help with his alcoholism and anxiety disorder.
- XYZ Carrier has an Anti-Discrimination and Anti-Harassment Policy and views that the threatening, racist and sexist language used by the Claimant falls within the ambit of such a policy. Thus, the XYZ Company asserts that the Claimant violated this policy.
- The ABC Brotherhood argues for leniency based upon the Claimant's alcoholic behavior and mental disorder. The Organization also argues that a personal disagreement with a co-worker was outside of this policy and outside of work, thus unrelated to the workplace. In sum, the Organization argues that there is an insufficient nexus to be viable.

Questions for Scenario I

1. Should leniency be granted by the Carrier for the Claimant's alcoholism and anxiety disorder?
2. Should the type or severity of a Facebook posting be considered? For example:
 - a. Whether or not the posting was a sexually charged comment?
 - b. Whether or not the posting was a racially charged comment under the Carrier's Anti-Discrimination Policy?
 - c. Whether or not the posting was threatening and put someone in fear of his life or the lives of loved ones?
3. Was there a sufficient nexus to the Carrier's business to justify imposing discipline?
4. Does his sexually and racially charged conduct standing alone constitute substantial evidence to show a violation by the Claimant under the Carrier's "Standard of Excellence and Anti-Discrimination and Anti-Harassment" Policy?

Scenario II

- Claimant, Joe Sampson, was a Machine Operator for Montana Northern Railway Company when he was charged with Conduct Unbecoming an Employee regarding his online activity.
- The record reflects that an online news article revealed the fatality of a teenaged girl who was struck by a train. In the Comments section of the online article was the Claimant's name and picture depicting a laughing engineer and with the accompanying words "Choo, Choo." All was posted during off-duty hours.
- After the Carrier received this notification from a city official, an investigation ensued. Claimant Sampson denies that he made the posting. That is, Claimant asserts that his Facebook account must have been hacked because he changed his Facebook information and password. It was later discovered through the investigation that the deceased teenager actually committed suicide.
- Nonetheless, the Claimant was dismissed for violating the Carrier's "Social Media Policy" which requires employees to use good judgment, be respectful and avoid postings contrary to the best interests of the Company. It was the Carrier's determination that substantial evidence supports the assertion that the Claimant engaged in misconduct and also violated Rule 1.6 which prohibits "any act of hostility, willful disregard or negligence affecting the interest of the Company or its employees." The investigation also revealed that the Claimant had a perfect record, without any disciplinary offenses during his ten (10) years with this Carrier.

Questions for Scenario II

1. Can an employee be held accountable for conduct during off hours if that conduct causes a negative and detrimental impact on the employer-employee relationship?
2. Is this an unfair ruling of dismissal? If so, why?
3. Was this decision a fair determination that the Claimant's Facebook account was not hacked and that he was not credible in light of his perfect record, without any disciplinary action, and with seniority?

Scenario III

- Claimant, Sam Jones, a Locomotive Engineer with Amtrak for over fifteen (15) years, yet was dismissed for violating the Carrier's Equal Employment Opportunity (EEO) Policy because of his offensive postings on Facebook.
- The posting on Facebook used exceedingly vulgar and obscene words to describe his Co-Worker and compared him with "ISIS Muslim Scum". These postings were brought to the attention of the Senior Manager of Train Operations who conducted a subsequent investigation. At the hearing, Claimant expressed regret for this posting and was ashamed and embarrassed by his actions which occurred due to his alcoholism and depression. The investigation also revealed that he was under treatment for his alcoholism at the Macon Medical Center. The Carrier asserts that this misconduct was a flagrant violation of the Carrier's EEO Policy which prohibits such egregious conduct.
- The Organization argues that this posting occurred during off hours and off the property and was without a sufficient nexus to be viable.

Questions for Scenario III

1. Was this a fair dismissal? Was the Claimant's right to protect free speech under the First Amendment violated? If so, how and why? If not, what is the line of demarcation for protected speech?
2. Would your answer differ if the railway company was an exclusively private-owned entity regarding issues of the First Amendment?

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SHORT BIOGRAPHICAL SKETCH

Dr. Andrée Y. McKissick is from Chevy Chase, Maryland. She holds three law degrees: J.D., LL.M., and S.J.D. as she has specialized exclusively in Labor and Employment Law. She was appointed by Warren Christopher, the former Secretary of State, from 1996-1998, and reappointed by Madeline Albright, Secretary of State, to serve as a member of the Foreign Service Grievance Board from 1998-2000. In 1999, she became a member of the National Academy of Arbitrators (NAA). Her practice includes cases from the private, public, and federal sectors. She practices not only in the United States but also abroad in Wiesbaden and Heidelberg, Germany since 1995. She is listed on: Federal Mediation and Conciliation Service (FMCS), American Arbitration Association (AAA) on the Labor and Employment Panels as well as on the National Mediation Board (NMB). She was also a contributing author for Matthew Bender Publishing Company in Labor and Employment Arbitration, and has authored numerous papers and articles on this topic. Her email address is: mckiss3343@aol.com.