

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NICHOLSON TERMINAL & DOCK
COMPANY

AND

Case 07–CA–187907

STEVE LAVENDER

NOTICE TO SHOW CAUSE

On May 16, 2018, Administrative Law Judge Elizabeth M. Tafe issued a decision addressing, among other things, allegations that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining Personnel Handbook Rule III.Q and the email-usage rule set forth in Attachment A to the handbook. The judge applied the standard set forth in *Purple Communications, Inc.*, 361 NLRB 1050 (2014), for determining the lawfulness of an employer’s rule restricting employee use of a company’s email system. Recently, in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, the Board overruled *Purple Communications* and announced a new standard that applies retroactively to all pending cases. 368 NLRB No. 143, slip op. at 8-9 (2019). In *Caesars Entertainment*, the Board held, in relevant part, that “an employer does not violate the Act by restricting the nonbusiness use of its IT resources *absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other.*” *Id.*, slip op. at 8 (emphasis added).

The parties have not had an opportunity, on the facts of this case, to address this exception to the rule of *Caesars Entertainment*. Accordingly, having duly considered the matter,

NOTICE IS GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or before April 3, 2020 (with affidavit of service on the parties to this proceeding), why the complaint allegations involving the maintenance of Personnel Handbook Rule III.Q and the email-usage rule set forth in Attachment A to the handbook should not be severed and remanded to the administrative law judge for further proceedings consistent with the Board's decision in *Caesars Entertainment*, including reopening the record if necessary. Any response should address whether a remand would affect the Board's ability to resolve the remaining complaint allegations, including whether those allegations should be severed and retained or instead included in the remand. Any briefs or statements in support of the response shall be filed on the same date.

Dated, Washington, D.C., March 20, 2020.

By direction of the Board:

Roxanne L. Rothschild

Executive Secretary