

PUBLIC LAW BOARD NO. 6564

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE**

And

CSX TRANSPORTATION, INC.

Case No. 61

* * * *

Statement of Claim:

1. The dismissal of Bridge Tender R. E. Hunter for his arrests on October 5 and 7, 2004, and alleged misuse of Carrier assets, was without just and sufficient cause, based on unproven charges and in violation of the Agreement.
2. As a consequence of this violation referred to in Part (1) above, Bridge Tender R. E. Hunter shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Background

Claimant R. E. Hunter was hired by the Carrier in the Maintenance of Way Department on October 23, 1995. He was working as a Bridge Tender in Biloxi, Mississippi when, on October 5, 2004, his mother called Bridge Supervisor D. L. Peterson and advised that Claimant would not protect his assignment on October 6, 2004 because he was in jail. Later in the evening of October 5, Claimant contacted Peterson and was granted a leave of absence. Claimant returned to work on October 19, 2004.

Between October 7 and 10, 2004, several local newspapers ran accounts of two arrests made by the Jackson County Sheriff's Department involving Claimant Hunter. The first arrest, which occurred on October 5, involved three felony counts of sexual battery involving a 14-year old girl. The second arrest, occurring on October 7, entailed three felony counts of exploitation of children. Jackson County Sheriff's detectives obtained a search warrant and confiscated from Claimant's home sexually explicit nude photographs of a prepubescent female on three compact discs.

Following an internal investigation, on November 8, 2004, the Carrier charged Claimant with conduct unbecoming a CSXT employee, misuse of company assets, and failure to devote his time, while on duty, to company matters. After several postponements, the investigation went forward on March 31 and April 12, 2005. By letter dated April 29, 2005, Claimant was found guilty of all charges and dismissed from service.

The BMW's May 11, 2005 appeal was declined on July 15, 2005. Following an exchange of additional correspondence, the Carrier issued a final declination on November 18, 2005. Thereafter, the case was submitted to this Board for adjudication.

Findings

It is the finding of this Board that the investigation was timely held in accordance with Rule 25 and Side Letter No. 22, and that there were no procedural irregularities in the Carrier's handling of this case. Claimant's due process rights were protected, and he had the benefit of a fair hearing.

With respect to the merits of the appeal, the Organization contends that the Carrier acted on the basis of unproven criminal charges and that at the time of Claimant's

dismissal, there was "nothing more than a guess" as to his guilt of wrongdoing. (Org. Ex. A-4)

This Board, however, vigorously disagrees. At his hearing, Claimant admitted that he was arrested on six felony counts, three for sex crimes with a minor and three for sexual exploitation of children. While he testified that all of the criminal charges had been dropped, his testimony has been shown to be false.*

In addition to Claimant's alleged off-duty conduct, there is credible evidence in the Record that he misused company time by displaying pornographic material from his laptop computer while working and at a time when he was supposed to be training S.A. Sanchez, a new hire in 1999. While Claimant defended his conduct by asserting that he did not pull the pictures off the Internet or Carrier phone lines, he acknowledged that the pornographic photographs were stored on his laptop's hard drive and that he showed the material to Sanchez at work.

Claimant's conduct gave the Carrier just cause to dismiss him. The fact that the dismissal preceded the disposition of the criminal charges against him did not vitiate the validity of the Carrier's action. The serious nature of Claimant's alleged off-duty conduct potentially tarnished the Carrier's reputation and exposed it to criticism in the community. Furthermore, Claimant's behavior in showing pornographic pictures while he was on duty constituted a misuse of company time. Regardless of the outcome of the

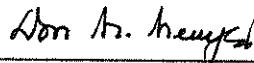
* This Board takes judicial notice that on July 8, 2005, the Grand Jury in the State of Mississippi handed down "True Bill" indictments on all six counts against Claimant, and a trial date was set for November 7, 2006. Moreover, one of the counts of sexual battery specified that at the time of the alleged sexual penetration, Claimant "occupied a position of authority or trust over the child, to wit: a parent." This multi-count felony indictment is public information of which this Board appropriately has taken notice.

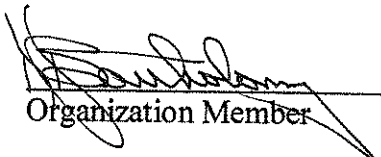
pending criminal matters, Claimant violated reasonable and well-documented rules regarding the use of unauthorized devices for the displaying of pornographic material at work. Consequently, the Carrier did not abuse its managerial discretion in terminating Claimant's employment.

Award

The claim is denied.


Joan Parker, Neutral Member


Carrier Member
Dated: April 23, 2007


Organization Member
Dated: _____