

CASE NO. 461  
AWARD NO. 461

Carrier File:19-02995  
Organization File N/A

**PUBLIC LAW BOARD NO. 7163**

PARTIES ) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEE DIVISION,  
 ) IBT RAIL CONFERENCE  
TO )  
 )  
DISPUTE ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. F. Maccarrone, by letter dated March 6, 2019 in connection with allegations that he violated CSX Transportation Rule 104.4(b) and CSX Code of Ethics was arbitrary, capricious, unnecessary and excessive (Carrier's File 19-02995 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant F. Maccarrone must be fully exonerated of all charges brought against him and be made whole, including all benefits and credits."

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant, F.D. Maccarrone, had been employed by the Carrier since June 13, 2005. On March 6, 2019, following an investigation, the Carrier found that, as set forth in the Investigation Notice, Claimant had, on January 5, 2019, been arrested by local police in the Buffalo, New York area for child endangerment and disseminating indecent material to minors. The Carrier concluded

that Claimant had violated Carrier Rule 104.4(b) and its Code of Ethics and dismissed him from service. The applicable Carrier Rule provides, in relevant part:

**104.4** The following behaviors are prohibited at all times:

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- b. Criminal conduct that may damage CSX's reputation or that endangers CSX property, employees, customers or the public.

The Carrier Code of Ethics also requires employees to act in "a safe and ethical manner that is always consistent with law . . ."

The Organization raised numerous procedural objections to the discipline assessed against Claimant, which we have carefully considered. As the Carrier states, however, the type of objections made herein have been addressed and rejected in numerous arbitration awards, including decisions involving these parties. We therefore find these objections without merit.

With respect to the substantive case against Claimant, we find that the Carrier has met its burden of proving his guilt by substantial evidence. The Organization, and Claimant himself, do not dispute that he was arrested and criminally charged as set forth in the Carrier's disciplinary decision. At the investigation, Claimant did not deny that he had engaged in criminal conduct, and the record shows that he subsequently pled guilty to the felony charge of disseminating indecent material to a minor, activities which endangered two underage girls and caused him to have to register as a sex offender.

The Organization stresses that this case involves off-duty misconduct and asserts that the Carrier has not proven any damage to its employees, or that it was subjected to criticism or suffered damage to its reputation. We disagree.

As the Carrier points out, Claimant's criminal conduct was the subject of some notoriety in the Buffalo, New York area where he worked, primarily because he coached girls youth soccer and basketball in the community. His name and crime were reported in the local news media,

which caused Carrier employees to become aware of Claimant's conduct and express concern about working with him. He was easily identifiable as a Carrier employee on social media. The Carrier has proven both that Claimant engaged in criminal conduct as alleged, and that this conduct reflected badly upon the Carrier as his employer. The Carrier has proven Claimant's guilt by substantial evidence.

As for the penalty, Claimant is now an admitted felon and a registered sex offender. It was not arbitrary, discriminatory or unfair for the Carrier to determine that it could not continue to employ such an individual. The claim will be denied.

AWARD: Claim denied.



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Jacalyn J. Zimmerman  
Neutral Member



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Ross Glorioso  
Organization Member



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John Nilon  
Carrier Member

Dated: 8/16/2022