

**PUBLIC LAW BOARD NO. 7529  
CASE NO. 102  
AWARD NO. 102**

<b>BROTHERHOOD OF MAINTENANCE OF WAY</b>	)	
<b>EMPLOYES DIVISION – IBT RAIL CONFERENCE</b>	)	<b>PARTIES TO THE</b>
	)	<b>DISPUTE</b>
<b>vs.</b>	)	

**CSX TRANSPORTATION, INC.  
(Carrier File: 2015-191286)**

**STATEMENT OF CLAIM:**

“It is my desire to appeal the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Public Law Board No. 7529. I understand that the Neutral Member of Public Law Board No. 7529 will base his/her decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and the discipline rule of the Maintenance of Way Agreement.”

**FINDINGS:**

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Agreement, as amended, that this Board is duly constituted by Agreement dated February 15, 2012, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties have been unable to resolve this issue and they have placed the issue before this Board for adjudication.

After a thorough review of the record, and a hearing on this matter held on August 25, 2016, the Board concludes that the Claimant in this case was a Maintenance of Way employee on the dates in question in this claim.

The Claimant was hired on April 5, 2010. On March 10, 2015 he was arrested in Florida and charged with 3 felonies: 1) use of a computer to seduce/solicit/lure child; a third degree felony, 2) travel to meet after use computer-lure child; a second degree felony, and 3) use 2-way communication device to commit felony; a third degree felony.

The Carrier became aware of this incident through an ethics complaint, and by letter dated May 28, 2015, the Claimant was charged with criminal conduct that may endanger the public and directed to attend an investigation. The Claimant was present for the investigation, although he refused to answer most questions. After a review of the evidence and testimony presented during the hearing, by letter dated July 9, 2015, the Claimant was dismissed by the Carrier for violating CSX Transportation Operating Rule 104.4.

The Organization appeals that decision to this Board.

**POSITION OF THE ORGANIZATION:**

The Organization contends that the Notice of Investigation should have included a specific rule the Claimant was alleged to have violated. They also objected to the criminal documents being introduced by the investigator of the Carrier. Finally, they say that the criminal charges were not related to his work and, therefore, he should not be disciplined.

**POSITION OF THE CARRIER:**

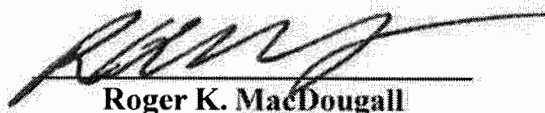
The Carrier says that the Notice of Investigation was sufficient. They say that the Claimant was ultimately found guilty on 2 of the felony counts and was incarcerated and placed on a sex offender's registry. Operating Rule 104.4 covers concealment of facts under investigation and criminal conduct that may damage the reputation of the Carrier.

**RESULT:**

The Carrier, as this is a discipline case, has the burden of proof. With respect to the Notice of Investigation, this Board finds that it was sufficient. The Claimant was given enough information to know the case to be met. He was also found guilty of the criminal charges. It is noteworthy that, in court, this must have been proven beyond a reasonable doubt – a much higher standard than required in a labor case. Further, the nature of the conviction is certainly criminal conduct which may damage the reputation of the Carrier. As a result, this Board finds that the Carrier has met its burden of proof.

**AWARD:**

The claim is denied.

  
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**Roger K. MacDougall**  
**Chair and Neutral Member**

Dated: 02/17/2017

At: Chicago, IL