

**PUBLIC LAW BOARD NO. 5263**

**Case No. 206  
Award No. 206**

**United Transportation Union** )  
 )  
 vs ) **PARTIES TO DISPUTE**  
 )  
**Union Pacific Railroad Company** )

**STATEMENT OF CLAIM**

Foreman Kenneth T. Singleton, for the reinstatement to the services of the Union Pacific Railroad Company (former C. & N. W. Railway Company), with vacation and seniority rights unimpaired, the payment of vacation allowance for time wrongfully discharged, and the scheduling of a vacation period consistent with seniority ranking, in addition to the payment of any and all health and welfare benefits until reinstated, including reimbursement for any medical payments made while discharged, the payment of all Railroad Retirement taxes based on all lost and realized earnings, and reimbursement for any expenses related to the pursuit of alternative employment, and removal of this discipline from the Claimant's record and that he be compensated for any and all lost time with compound interest at 1.5 percent monthly, including compensation for time spent attending an investigation held on February 22, 2005, when charged with an alleged responsibility for "your alleged dishonest behavior with regard to the theft of computer equipment from the BRC Railroad crew room on December 30, 2004 while employed as a Brakeman/Foreman with the Union Pacific Railroad working job 4X89 on duty at 04:00 hours on December 30, 2004.

**FINDINGS**

This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.

On March 30, 2005 the Carrier dismissed the Claimant from its service. As a result of an investigation on February 22 and March 21, 2005 the Carrier found the Claimant violated Rule 1.6 on December 30, 2004 when he allegedly stole a computer mouse from the Belt Railway of Chicago on December 30, 2004.

On December 30, 2004, the Claimant was called off the Chicago Freight Terminal's yard extra board to work assignment 4x89 on duty at 0400. The Claimant was instructed to take two (2) engines, UP 6778 and UP 7068, to the BRC yard. At approximately 10:00 AM the Claimant went into the BRC crew room to log on to the computer. The Claimant was unable to log on to the computer and left the crew room. Five (5) hours after the Claimant left the crew room someone reported that the mouse for one (1) of the computer's was missing. The BRC railroad alleged that the Claimant stole the mouse.

On the first day of the hearing the Chief of Police for the Belt Railway Company testified that at 3:50 PM on December 30, 2004, they had a report of a missing computer mouse in the BRC crew room. He testified that the BRC has a digital fiber optics camera system to monitor various parts of the property including the crew room. He was told that a Union Pacific crew was in the BRC yard at 10:00 AM and turned in two (2) engines. He then contacted the Union Pacific police and brought the tape in to see if they could identify the crew member. The Carrier's Manager of Operating Practices finally confirmed that the Claimant was the crew member on the tape. The Claimant testified that he was in the BRC crew room and that he is on the tape but he did not steal the computer mouse.

A review of the testimony shows that there was a difference of opinion as to the type mouse that was allegedly stolen.

At the end of the first day of the hearing the carrier had the Claimant arrested by the Bedford Park, Illinois Police for theft of the computer mouse. The Claimant was charged with theft and bond was set by Circuit Court of Cook County. On August 17, 2005, the Claimant went in front of the Circuit Court of Cook County for his trial. The Claimant entered a plea of not guilty and the court found the Claimant not guilty. The court refunded the Claimant's bond.

The testimony also reveals that on January 7, 2005 a mouse showed up in the crew room, unexplained and not on tape. On the second day of the hearing the BRC's MIS Network Administrator testified that the mouse found on January 7 was the same make as the alleged stolen mouse.

The judge in the Claimant's case said the following:

He was there, it was gone, but so were some other people who came in after that, but he did put something in his case, but I couldn't see what it was.

I believe that was the stipulated testimony by the parties, it was impossible to see what was put in there.

He may have done it, I don't know, but it could not be proven beyond a reasonable doubt that he took the CD mouse.

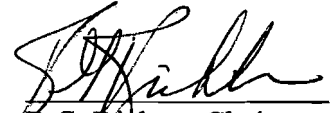
This Board is well aware that in determining guilt or innocence in industrial justice the threshold of evidence does not require proof beyond a reasonable doubt.


However, the Carrier does have the burden of proving the Claimant violated its Rules. This case is rife with contradictions as to the type of mouse. While there is tape of the Claimant in the BRC crew room, there are no other tapes. This Board has been furnished the same tape as the judge. Like the judge this Board is unable to determine from the tape that the Claimant took the mouse.

Accordingly, the Carrier has not met its burden that the Claimant stole the mouse. Claimant will be reinstated with seniority unimpaired and pay for all time lost. The discipline is to be removed from the Claimant's record.

**AWARD**

Claim sustained. Carrier is ordered to comply with this Award within 30 days from its date.

  
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R.G. Richter, Chairman  
Neutral Member

  
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R.A. Henderson  
Carrier Member

*I Dissent*

  
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M.J. Reedy  
Employee Member

Dated 11-17-06