

**PUBLIC LAW BOARD NO. 7660**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION - IBT**

**and**

**UNION PACIFIC RAILROAD COMPANY**

**Case No: 68  
Award No: 68**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. F. Ortezt, by letter dated December 4, 2015, for alleged violation of Rule 1.6: Conduct - Dishonest was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File B-1648U-203/1649915 UPS).

2. As a consequence of the violation referred to in Part 1 above, the Carrier shall provide Claimant F. Ortezt ' ... be made whole by compensating him for all wage and benefit loss suffered by him for his Level 5 termination, any and all expenses incurred or lost as a result, and the alleged charge(s) be expunged from his personal record. Claimant must also be made whole for any and all loss of retirement month credit and any other loss."

**FINDINGS:**

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the "Organization") and the Union Pacific Railroad Company (hereinafter referred to as the "Carrier"). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Claimant, Freddie Ortezt, has been employed by the Carrier for approximately 10

years and held the position of Ballast Regulator Operator when he was charged with violating Rule 1.6, Conduct (Dishonest) when he allegedly stole a weed trimmer from the Carrier and sold it to a pawn shop.

On October 20, 2015, the Claimant was notified in writing by the Carrier to report for a hearing and investigation, which was held on November 19, 2015, regarding the aforementioned charges. On December 4, 2015, the Claimant was notified that the Carrier found him guilty of the charges and that he was dismissed from service. The Carrier rendered its final written decision on May 26, 2016. The record indicates that an appeal conference was held on September 1, 2016 and the matter was not resolved. The Organization moved to have the matter adjudicated before this Board.

The Carrier maintains that it met its burden of proof with substantial evidence that the Claimant was dishonest when he stole a weed trimmer. It argues that the testimony provided by the Manager of Track Maintenance Ashley Brown and Special Agent Brian Bentzinger convincingly establishes that the Claimant admitted to them that he stole the weed trimmer. The Carrier asserts that its credibility determinations are reasonable particularly where the Claimant's testimony denying he made an admission is self-serving and unreliable. It contends that where dishonesty is proven permanent dismissal is appropriate.

The Organization claims that the Carrier violated Rule 48 when it deprived the Claimant of a fair and impartial investigation. It argues that the Carrier's Special Agent conducted a hearing with the Claimant and did not afford him his right to representation. The Organization contends that it was not provided with documents prior to the investigation and that the charging officer's conduct during the hearing and investigation prejudiced the Claimant's ability to receive a fair hearing.

With regard to the merits, the Organization asserts that the Carrier has not met its burden of proof that the trimmer was its property and did not belong to the Claimant. It alleges that the documentary evidence does not prove that the serial numbers presented during the hearing were from the weed trimmer. The Organization also claims that there is

no support for the allegation by the Carrier's witnesses that the Claimant admitted to stealing the weed trimmer.

In first addressing the Organization's claim of procedural errors and a failure by the Carrier in providing the Claimant with a fair and impartial trial the Boards finds that there is no evidence in the record to support such allegations. There is no evidence in the record that the interview with the Claimant conducted by the Special Agent Bentzinger and the police required union representation or that it in some way violated the Agreement. Further, there is no contract provision presented that supports the Organization's claim that it is entitled to discovery or production of evidence prior to the hearing and investigation. Lastly, the Board does not find any evidence of bias or prejudice toward the Claimant in the record.

A review of the merits reveals that there is substantial evidence that the Claimant was dishonest when he stole a weed trimmer from the Carrier. The testimony of Brown and Bentzinger sufficiently established that the trimmer belonged to the Carrier and was sold to a pawnshop. The serial number provided by the Carrier matched the one on the pawnshop ticket obtained by the police, which also contained the Claimant's name.

Despite the Organization's strenuous argument, there is nothing in the record to discount the Carrier's credibility determinations. Manager Brown testified that the Claimant admitted to her that he took the trimmer and apologized. The Claimant's testimony during the hearing denying such an admission is self-serving and untrustworthy when considering the weight of the evidence submitted by the Carrier. It is well established by legions of arbitral precedent that the Board shall not disturb the Carrier's credibility determinations except where there is evidence that it was arbitrary or biased toward the Claimant. The Carrier's conclusion that the veracity of its witnesses provided it with substantial evidence of the Claimant's guilt was neither arbitrary nor unfounded. The fact that there is a conflict between the Claimant's testimony and that of Brown or Bentzinger does not in and of itself mean that there is insufficient evidence to prove the charges. See Public Law Board No. 5666, Award No. 76.

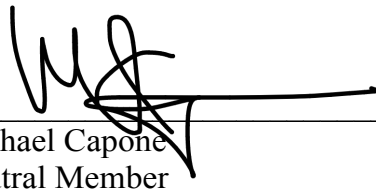
Boards of adjudication in the industry have consistently upheld dismissals for acts of

dishonesty where the Carrier has met its burden of proof. Theft and dishonesty have been found to be sufficient grounds for termination in cases involving employees with many more years of service than the Claimant has here. The Carrier's decision that it cannot trust the Claimant is neither an abuse of discretion or excessive.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has established with substantial evidence that the Claimant violated Rule 1.6 and that he was dishonest.

**AWARD**

Claim denied.

  
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Michael Capone  
Neutral Member

Dated: May 14, 2018

  
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Alyssa K. Borden  
Carrier Member

Alyssa K. Borden  
Carrier Member

Dated: 05/16/18

  
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Andrew M. Mulford  
Labor Member

Andrew M. Mulford  
Labor Member

Dated: 5/16/18