

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GEORGE RUSSELL, Appellant,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, Respondent.

Case 59  
No. 69722  
PA(adv)-183

DECISION NO. 33845-B

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**Appearances:**

Lisa G. Goldman, Attorney, Goldman & Davey, 7609 Elmwood Avenue, Suite 203, Middleton, Wisconsin, 53562, appearing on behalf of George Russell.

Jennifer Sloan Lattis, Senior System Legal Counsel, University of Wisconsin System, 1852 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin, 53706, appearing on behalf of the Board of Regents of the University of Wisconsin System.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

George Russell was discharged by the University of Wisconsin on March 23, 2010. He timely filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats. Hearing on the appeal was held on July 30 and 31, August 1, 14, 15 and 16, 2012, before Commission Examiner Mathew Greer in Madison, Wisconsin. Examiner Greer left the Commission's employ before briefing began. The appeal was reassigned to Examiner Peter G. Davis for issuance of a proposed decision. On August 28, 2012, Examiner Greer advised Examiner Davis that "... I can't think of any witnesses where demeanor influenced my view of their credibility." Briefing was completed March 11, 2013.<sup>1</sup>

On May 9, 2014, Examiner Davis issued a Proposed Findings of Fact, Conclusions of Law and Order.

No objections to the proposed decision were filed.

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<sup>1</sup>Appellant's motion to strike Respondent's reply brief was denied.

Having reviewed the record and being fully advised in the premises, the Commission makes the following

### **FINDINGS OF FACT**

1. George Russell was hired by the Board of Regents of the University of Wisconsin in February 2008 to work as a supervisor for the University of Wisconsin-Extension in the information technology department.
2. On January 21, 2010, Russell removed computer 19 from Room L47 in the Pyle Center without authorization and for purposes unrelated to his employment.
3. On January 26, 2010, the absence of computer 19 was reported missing by information technology employees.
4. On February 22, 2010, Russell was interviewed by University of Wisconsin Police regarding the whereabouts of computer 19. Following that interview, Russell returned computer 19 to the information technology office on Regent Street.
5. On February 23, 2010, computer 19 was found by information technology staff.
6. On March 23, 2010, Russell was discharged for "Unauthorized possession or removal of University ... property." as to computer 19.

Based on the above and foregoing Findings of Fact, the Commission makes the following

### **CONCLUSIONS OF LAW**

The Board of Regents of the University of Wisconsin had just cause within the meaning of § 230.34(1)(a), Stats., to discharge George Russell.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

### **ORDER**

Pursuant to § 230.44(4)(c), Stats., the discharge of George Russell is affirmed.

Dated at Madison, Wisconsin, this 13th day of August 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

Section 230.34(1)(a), Stats., provides in pertinent part the following as to employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

... may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

Russell had permanent status in class at the time of his discharge, and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that the employee was guilty of the misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v Personnel Board*, 53 Wis.2d 123, 133 (1971); *Safransky v Personnel Board*, 62 Wis.2d 464, 472 (1974). The Commission's role is to make findings of fact which it concludes are "proven to a reasonable certainty, by the greater weight of credible evidence." *Reinke* at 138; *Safransky* at 472. As to discharge, the court in *Safransky* observed that:

[o]nly if the employee's misconduct has sufficiently undermined the efficient performance of the duties of employment will "cause" for termination be found.

*Safransky* at 475.

The dispositional paragraph of the March 23, 2010 discharge letter states:

The sequence of events described above, and documented by a variety of logs and testimony, convincingly supports the conclusion that you removed Computer ADM-W400019 from Room L47. Unauthorized removal is a very serious charge made even more serious by the fact that you are the unit supervisor and responsible for the safety and security of property under your care. It is my judgment, that this violation warrants your immediate removal from employment. Therefore, you are being terminated from your IS Supervisor 2 position effective March 23, 2010.

Therefore, our consideration of Russell's discharge will be focused on his conduct as to "Computer 19." While evidence as to "Computer 18" is relevant to analysis of Computer 19 conduct, the dispositional text of the discharge letter (which we acknowledge does reference Computer 18 elsewhere) limits the inquiry to Computer 19.

After considering the substantial evidentiary record, we conclude that Respondent has met its burden of establishing that Russell removed Computer 19 from Respondent's premises without authorization and not for any work-related purpose, and that said conduct constitutes just cause for his discharge.

As to removal of Computer 19, the evidence<sup>2</sup> presented persuades us that: (1) Computer 19 was in Room L47 on January 21, 2010 when Russell entered at 12:48 p.m.; (2) no one else was in Room L47 at that time; (3) one minute after Russell entered Room L47, Computer 19 was disconnected from network and power cables; and (4) no one else entered Room L47 between January 21, 2010 and January 26, 2010, when two employees (accompanied by two vendors) discovered that Computer 19 was missing. From these factual determinations, we conclude that Russell removed Computer 19 from Room L47.

Russell denies removing Computer 19 from Room L47 and thus does not assert that the removal was for any authorized or work-related purpose. There is no record of anyone else authorizing removal. Therefore, we conclude the removal was not authorized and not for any work-related purpose.

While the foregoing is sufficient to meet Respondent's burden to establish the Russell's misconduct, the reappearance of Computer 19 in the workplace the day after Russell was interviewed by police supports our determination in that regard.

As to whether the unauthorized removal of Computer 19 constitutes just cause for discharge, the conduct in question amounts to theft. We think it beyond dispute that theft of a computer provides just cause for discharge. When reaching this conclusion, we reject Russell's contention that other employees of Respondent have received far more lenient discipline for the same level of misconduct. The destruction of a computer mouse clearly warrants discipline but the value of the mouse vis-a-vis the value of a computer provides a rational basis for a dramatically different level of discipline. The same is true for use of equipment for purposes that are job-related but unauthorized. Such conduct can harm the ability to provide services and reflects a disregard for internal process. But such misconduct substantially differs from taking property for purposes unrelated to one's employment.

In light of the foregoing, we conclude Respondent Board of Regents of the University of Wisconsin System had just cause to discharge Appellant George Russell.

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<sup>2</sup> We deny Respondent's motion to strike the video of Appellant's expert witness. While a strong argument can be made that it is unfair to Respondent for us to be able to review that evidence without the ability to review video of Respondent's expert, we conclude the interest in reviewing all probative evidence overrides the potential for unfairness.

Dated at Madison, Wisconsin, this 13th day of August 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner