

## Airline Management Newsletter

December 30, 2011

### Discharge of Employee for Computer Misuse Did Not Violate RLA

**Executive Summary:** In a case handled by Ford & Harrison attorneys, a federal trial court recently held that an airline services company did not violate the Railway Labor Act (RLA) when it discharged an employee based on its belief the employee accessed pornography and other inappropriate content on company computers.

#### **Background**

The plaintiff began his employment with the airline services company at its Asheville, North Carolina station and transferred to its Columbia, Missouri station in December of 2009. The plaintiff's supervisor in Columbia was the Station Manager. The plaintiff was a former member of the Steelworkers Union and discussed the union with five co-workers in Columbia. These conversations occurred outside the open door to his supervisor's office. The plaintiff did not participate in any organizing efforts other than those conversations. Neither the employer nor the plaintiff's supervisor ever communicated with the plaintiff regarding unions or union activity.

In February 2010, an employee discovered an inappropriate picture on a computer in the company's Columbia operations room. The employee reported this to the Station Manager, who searched the computer's internet history. The search of the computer's history revealed that it had been used to access pornographic web sites and revealed the use of inappropriate search terms. Around the same time, the computer was used to access the web site of an Asheville, North Carolina radio station.

Based on the employee work schedule, the supervisor determined that only the plaintiff and one other employee were working at the time the pornographic web sites were accessed. When questioned about the access of pornographic web sites, the plaintiff

denied any responsibility for the incident. He subsequently signed a statement apologizing for his actions "in regards to the sites that were noticed." Although the plaintiff later claimed he intended to admit only to accessing social networking, personal e-mail, and videogame sites, the company interpreted it as an admission that he had accessed pornographic web sites. The other employee denied using the computer at the time in question.

Based on its belief that he had accessed pornographic web sites, the company discharged the plaintiff. He subsequently sued, claiming he was discharged in violation of the RLA because he engaged in union activities.

### ***RLA Claims***

To establish a prima facie case of wrongful discharge under the RLA, a plaintiff must show that (1) he engaged in union activities; (2) his employer knew of his protected activity; (3) his employer harbored animus toward the activity; and (4) the animus was a causal factor in the termination. Even if a plaintiff establishes a prima facie case of union animus, an employer still may prevail if it can establish that it would have terminated the plaintiff's employment regardless of any union animus. The court did not consider whether the plaintiff presented a prima facie case and merely held that the airline services company established that it would have validly and independently terminated him for viewing pornography at work.

In finding that the employer met its burden to show a non-discriminatory reason for the termination, the court noted that after discovering someone had accessed inappropriate materials on a workplace computer, the employer: (1) narrowed its list of potential users by determining who was on duty when the forbidden web pages were accessed; (2) connected the specific Asheville, North Carolina web site visit to the plaintiff; (3) reviewed the alibi of the other employee on duty when the forbidden pages were accessed; and (4) was told by the plaintiff that he was sorry for his actions related to the web site he had been shown by his supervisor. Based on this information, the court held that no reasonable juror could conclude that the plaintiff was terminated because his supervisor overheard him talking about the value of unions. This was especially true because that supervisor did not participate in the decision to terminate the plaintiff and because the employer also terminated other employees accused of similar misconduct.

The plaintiff argued that the employer's investigation method was so questionable that it suggested the investigation was merely pretextual and that union animus was the true reason he was discharged. The court rejected this argument, holding that the essential question was not whether the plaintiff violated the employer's computer usage policy, but whether the employer believed in good faith that he violated the policy. The court held that in light of the evidence, "no reasonable juror could conclude that [the employer] did not have a good faith belief that [the plaintiff] did access pornography."

The court further held that the fact that the plaintiff admitted to violating the employer's policy is an "intervening event" that undermined any causal inference that might be drawn from the temporal proximity between protected activity (discussing the union with his co-workers) and his termination.

Accordingly, the court granted summary judgment in favor of the employer.