

**Martin #2**

**IN THE MATTER OF THE ARBITRATION**

Between

EMPLOYER

and

EMPLOYEE

EMPLOYEE DISCHARGE

**REPORT AND DECISION OF ARBITRATOR**

In these proceedings, a single Grievance was submitted for an Award to James P. Martin, selected by the parties to serve as Impartial Arbitrator under the Employer Peer Review and Arbitration Procedure for Hourly Team Members. A hearing was held in City A, State A on May 26, 1999, at which the parties were fully heard.

Briefs were not filed and the matter was submitted for an Award based upon the evidence adduced and the arguments made at the hearing.

**ISSUE**

Was the discharge of the Grievant, Employee, for just cause? If not, what is the remedy?

**NATURE OF CASE**

The Grievant was hired in 1995 as an hourly employee, was promoted to a departmental level manager, where she worked for two years, and in June 1998, she voluntarily went back to an hourly position. Late in November 1998, Mr. Person 1, Supermarket Lines Manager, was told that several employees were punching one-minute lunches. The process used for punch in/punch out is for an initial punch in and a final punch out, along with punches in and out for breaks and

lunch. The break periods are paid time, the lunch period is unpaid. Therefore, whatever time an employee punches out for lunch is deducted from the total time on which the employee is on the clock. An employee who fails to punch out at all for lunch is noted in an exceptions report, and inquiries can be made as to whether that person is, in effect, taking a lunch and being paid for it, when the policy is that lunch is to be an unpaid period. The one minute punch out for lunch keeps the employee off of the exceptions report, while still allowing the possibility of a 30 minute lunch period, along with full pay for that time.

Mr. Person 1 called in the Grievant, and specifically questioned her about November 16th, where she showed as having a one-minute punch out. The Grievant testified that she punched out for lunch and then realized that she had left a cart on the floor. Employees are not allowed to do any work while off the clock. She immediately punched in from lunch, got the cart off the floor, and then attempted to punch out once more for lunch. The computer system allows one punch out for lunch per day, and refused to allow her to input another lunch period off the clock. Her obligation under the Employer Policy is to inform a supervisor immediately of time clock errors, but the Grievant failed to do this immediately, nor did she do it after lunch, nor did she do it at all that day. In fact, she never did it. She acknowledged that she took a 15-minute lunch that day. The net result of this is that she was on lunch for 15 minutes, and still being paid by the Employer.

The Employer has a policy which its witnesses defined as absolute an employee who misuses the time clock system is fired, and no exceptions are made. This is in the Employee Handbook with the following rather clear words. "Team members should observe the following guidelines and understand that violation of these will result in termination of their employment."

Upon obtaining a statement from the Grievant as to the facts set out above, she was terminated on November 25th and appealed through the Peer Review and Arbitration Procedure. At the hearing, she stated that she did not desire reinstatement because she was now satisfactorily employed elsewhere, but did request incentive pay which she had earned, two vacation days which she stated she had earned, and pay for a holiday the week of her discharge.

## APPLICABLE CONTRACT PROVISIONS

### Attendance and Payroll Reporting

We also rely on you to accurately record all work time on the payroll reporting system. Team members should observe the following guidelines and understand that violation of these will result in termination of their employment.

- Overrides cannot be performed to eliminate overtime, whether by changing lunch periods, deleting the overtime and paying it at the straight time equivalent on another day, or by allowing time off and paying the equivalent time on a different day or week.
- All team members are personally responsible to record their time record accurately. This includes their start time, finish time, lunches and break periods.
- At no time should a team member perform any work while not on the clock.
- If it appears that any team member has recorded their work record incorrectly it is the responsibility of the team member to immediately bring the error to a team leader's attention to be corrected.
- Overrides to the payroll reporting system should be done only when absolutely necessary and for legitimate reasons. Changing the time a team member actually works is a violation of federal wage and hour laws.

### *Arbitrator's Authority*

The arbitrator's authority is limited to deciding discrimination and discharge complaints. In reaching a decision, the arbitrator shall interpret, apply and be bound by any applicable Employer handbooks, rules, policies and procedures and by applicable federal, state or local law. The arbitrator shall have no authority, however, to add to, detract from, change, amend or modify any law, handbook, rule, policy or procedure in any respect. Nor shall the arbitrator have any authority to substitute his or her judgment for the Employer's business judgment.

The arbitrator shall have the authority to hear and rule on pre-hearing disputes and to hold pre-hearing conferences by telephone or in person as the arbitrator deems necessary. The arbitrator shall also have the authority to entertain a motion to dismiss and/or a motion for summary judgment or disposition by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure.

### *Relief*

The arbitrator may grant any remedy or relief that a court of competent jurisdiction could grant, subject to the following. (1) the arbitrator shall not award relief greater than that sought by the team member; (2) the arbitrator may not reduce any penalty imposed by the Employer if the arbitrator finds the team member was disciplined or terminated in accordance with Employer policy and not for an unlawful reason; and (3) if the arbitrator awards back pay, the arbitrator shall deduct from the award all lawful setoffs, including but not limited to, the team member's interim earnings, unemployment compensation payments, any other sums paid in lieu of employment during the period after discharge and any amount attributable to the team member's failure to mitigate damages or for periods of unavailability for work.

In cases of discharge from employment, if the arbitrator orders reinstatement the Employer shall have the option, within fourteen (14) calendar days of receipt of the award, to request that the arbitrator make a monetary award in lieu of reinstatement. If the Employer makes such a request, the arbitrator shall make a monetary award which the Employer, at its discretion, may pay in lieu of reinstatement. The arbitration hearing shall be reopened for additional proofs on this issue if either party so requests.

### *Form Of Arbitrator's Award*

The arbitrator shall submit to the parties a written award signed by the arbitrator. The award shall specify the relief awarded, if any, and the elements and basis for any monetary award. The award shall be accompanied by a written opinion signed by the arbitrator which shall include findings of fact and, where appropriate, conclusions of law.

## **DISCUSSION**

The facts are essentially not in dispute. The Grievant claimed that what she did was a common practice, but that, if it were true, was not shown to be within the knowledge of managers at the level who determined discharge. The Employer presented evidence that all employees who falsely punch in or out, or otherwise misuse the timecard system, are summarily terminated. There is no basis to find that the Employer did not have just cause for the

termination, despite the Grievant's statement that it was inadvertent, she intended to notify someone, and she punched out for one minute only in order to get her cart off the floor.

The Grievant's request for a remedy in this case entailed pay for three different items: incentive pay, holiday pay, and earned vacation pay. As to the first, there is nothing in the record that would justify any type of award. As to the second, she asked for holiday pay for the week in which she was discharged. That request is denied. She also asked for two vacation days which she stated she had accrued prior to the discharge. No records were submitted to show what the vacation accumulation of the Grievant had been at the time of the hearing, and I have no basis for making an award which would require such payment. Therefore, there is effectively no remedy available.

The Employer had just cause under its policy to discharge the Grievant for violation of a policy, and there was no discrimination shown against the Grievant based upon the treatment of others who had been found guilty of the same offense.

#### **AWARD**

That the Grievance shall be and hereby is denied, since the Employer had just cause for its actions.

James P. Martin

Labor Arbitrator

June 23, 1999