Abernethy #5

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

INTRODUCTION

The Employer and the Union are parties to a collective bargaining agreement (Joint Exhibit 7). In accordance with that agreement, the Union grieved the discharge of the Employee, a Lead Serviceman, and appealed that grievance to arbitration before a single arbitrator. I was selected from the parties' panel of arbitrators to hear this case and render a binding decision. This case was originally scheduled for hearing in July, but was canceled because of the illness of one of the Employer's witnesses. It was rescheduled for August.

I conducted an arbitration hearing on this matter on August 30, 1994. That hearing provided both parties the opportunity to present documentary and testimonial evidence and make arguments in support of their position. Witnesses were placed under oath and subject to cross-examination. The hearing was regular and orderly. Upon completion of final oral arguments, the hearing record was closed. The report that follows sets out the basic facts, the issues, relevant contract language, positions of the parties and my decision.

SUMMARY OF FACTS

The events leading to this arbitration all took place at the Employer's City 1 ramp service operation on March 24 and 25, 1993. In March of 1993, the Employer operated 19 flights each

day from City 1 to several international destinations. All flights were wide-body aircraft, either 747's or DC-10's. The Employer employed 1985 ramp servicemen in City 1 at that time to service these flights. These ramp attendants load and unload all baggage, mail and cargo and, in March of 1993, all meals and potable water. These ramp servicemen are covered by the 1989-1994 Ramp and Stores Labor Agreement that the Union negotiated with the Employer (Joint Exhibit 7).

The City 1 Ramp Service Department utilizes an electronic payroll system (EPS) to keep track of each employees work time for pay purposes. Each employee is issued a small plastic card with a magnetic strip which is encoded with information about that employee (e.g. name, badge number, etc.) (see Employer Exhibit 3). Employees clock-in and out by swiping this card through a magnetic card reader. That swipe activates the reader which in turn activates a computer which registers the time, employee and location of the time clock (lunchroom or readyroom). Employees are paid for the recorded work time.[1] Any exceptions to the Electronic Payroll System, such as approved time off, overtime, etc., are input into the payroll system manually.

Time clocks for ramp employees are located in the Ready Room and the lunchroom, located adjacent to each other between Gates 10 and 11. The parties provided diagrams of these areas and the arbitrator toured the area with representatives of both parties.

On March 24 and 25, 1993, Person 1 and the Employee worked Shift 5 (10:00 a.m. to 6:00 p.m.) with Person 1 serving as Lead on the 24th and the Employee serving as Lead on the 25th.

[1] The employees and the Union have serious concerns about the accuracy of this card/clock/computer system (clock not accept swipes, or accept swipes and no action or accept swipes and show unauthorized statement). (see Employer Exhibit 1, last three pages for employee signed petitions -undated) and testimony of Person 4, who ran a test of the EPS in July 1993. The Employer contends that there was no evidence showing that the system was not working properly on March 24 and 25, 1993 or that it worked for everybody but the Employee. I find the Employer's contentions are correct.

On March 24th at about 1753, Station Support Scheduler Person 2 approached Person 3, Supervisor of Ramp Services and told him that she had been looking for the Employee to offer him three hours of overtime on the 25th. She had not been able to find the Employee, so she told Supervisor Person 3 that she had removed the Employee's swipe card from the rack so that the Employee would have to see her to get his swipe card in order to punch out. At that time she could offer him overtime.

Supervisor Person 3 directed her to return the time card to the rack and said he would watch for the Employee. She did so about 1754. Person 3 waited near the ready room time clock for the Employee so he could talk to him when he came to punch out. He saw Person 1 and five other ramp servicemen punch out but did not see the Employee do so. After those six ramp servicemen punched out and left the ready room, Person 3 checked the rack and discovered that the Employee's time card was not in the rack. At 1801 he asked Person 2 to check the electronic payroll system to see if the Employee had punched out. She did so. He had not punched out. Person 3 then checked the lunchroom for the Employee but did not find him there. A second check of the EPS by Person 2 at 1803 revealed that the Employee's time card had been punched out at 1803 at the lunchroom time clock.

Person 3 next saw Person 1 at 1807 in the ready room near his mailbox, but Person 3 was called away before he could talk to Person 1. Person 2 remained at the scheduler's desk and from there she observed Person 1 walk to the mail boxes, bend down near the Employee's mailbox, stand up and leave. When Person 3 returned at 1815, she told him what she had observed Person 1 doing. They opened the Employee's mailbox and found his time card. Person 2 claimed she had not seen the Employee in the ready room between 1754 and 1815.

Person 3 and Person 2 then told Shift Foreman Person 5 what they had seen. Person 5 and Person 3 briefed Person 6, Station Operations Manager for Cargo and Ramp Services, early in the morning of the 25th. At that point, there did not appear to be enough information to order the investigation to continue, but that the supervisors were told to be alert to similar occurrences.

Person 1 denied swiping out the Employee's time card on March 24. The Employee also denied that Person 1 clocked him out. The Employee claimed he swiped out his own time card at the readyroom time clock after 1805 and put his swipe card inside his mail box. The Employee said he worked arriving flight 193 from 1535 until about 1605. He then left the airport (with Lead Ramp Serviceman Person 1's permission) to go get some soup for his upset stomach. The Employee said he arrived back at the claim area at 1645. The Employee testified that from 1645 until about 1715, he worked incoming flight 47. He testified that at about 1715 he went to the bagroom to rest because he was feeling ill. About 1730-1735 he went to the bathroom and threw up, remaining there until about 1750. He testified he then went back to the readyroom arriving about 1755, and pulled his timecard from the rack. He felt sick again so he took his timecard with him to the bathroom. He testified he returned and clocked out in the lunchroom at 1803, placed his swipe card in his mailbox and went home. The Employee testified that he never had Person 1 or anyone else clock him out on March 24, 1993. The Employee maintains that he clocked himself out from the lunchroom time clock at 1803.

Person 1 testified that his crew completed working flight 47 outbound for City 2 at 1755. He testified that he went to operations 6 at gate 9 and handed in his departure loading at approximately 1757, proceeded to his locker (between gates 10 and 11) where he stayed for one minute, proceeded to the readyroom and got his time card and talked briefly to Person 3, joined the swipe out line and swiped out at 1801. Person 1 testified that he then put his time card back

in the rack, went to his mailbox where he retrieved copies, then went to the copier just outside the readyroom where he made copies of material for Ramp Serviceman Person 7. Person 1 testified that he then went to the mail boxes and put copies of the material he had Xeroxed in Person 7's mail box.

Person 1 testified that while he was at the mail boxes, Ramp Serviceman Person 8, Shift 6, approached him with a question about shift preferencing. While they were talking, Person 1 testified, Person 3 came out of the manpower office door, looked around, turned and went back inside. Person 1 testified that he and Person 8 proceeded outside to the area between gates 9 and 10, where they completed their conversation at about 1815. Person 1 testified that he then went back through the readyroom, exited by the door facing gate 10, walked through the breezeway to the parking lot, got in his car and drove home.

Turning to the events of March 25, Person 3 testified that he saw Person 1 just prior to his shift briefing at 1505 but did not see Person 1 at the dispatch of flight 42 (between 1640 and 1700) or at flight 47 inbound or 47 outbound (about 1756). Person 3 told Person 5 he had not seen Person 1 since 1505; neither had Person 5, so she set up a plan to observe the time clocks. She and Person 3 were to watch the time clock in the readyroom and Supervisor Person 9 was to watch the time clock in the lunchroom. She and Person 3 went to the ready room near the end of Shift 5's shift time and observed other Shift 5 RSMs clock out and leave. Person 3 testified he did not see Person 1 clock out and leave but he did see the Employee do so at 1801.

Supervisor Person 9 testified he arrived in the lunchroom at 1750 and sat at the table closest to the time clock so he could watch RSMs from Shift 5 clock out. At 1758, he observed the Employee go to the time clock with a swipe card, saw him swipe the card and heard the time clock beep (indicating to Person 9 that the swipe had registered). Person 9 testified he observed

the Employee leave the lunchroom by the hallway exit. Person 9 also observed RSM Person 10 clock out at 1802, heard the time clock beep and saw the green light come on. Person 9 left the lunch room at about 1810. Person 9 testified that he never saw Person 1 in the lunchroom during the time he was there.

Person 5 testified that at 1801 she saw the Employee enter the readyroom, take a swipe card from the rack and clock out. Around 1810, she checked with Person 9 and learned that the Employee had clocked out in the lunchroom at 1758. She then ordered Person 2 to check the EPS for the clock-out time and location for both Person 1 and the Employee. That check showed Person 1 had clocked out at 1800 from the lunchroom and the Employee had clocked out from the ready room at 1801. On the 25th, Person 5 briefed Person 6 on the events of the 25th. Person 6 contacted Person 11 in Industrial Relations to get advice on how to proceed.

Person 1 denied being punched out by the Employee on March 25. Person 1 claimed that he swiped out his own time card in the lunch room on March 25 and he offered his own version of events for the 25th. The Employee testified that he went to the lunchroom on March 25th to clock out. He admitted seeing Person 9 in the lunchroom. The Employee testified that when he tried to clock out the time clock would not register so he cleared the machine, making it beep, and then proceeded to the readyroom where he saw Supervisors Person 5 and Person 3. The Employee testified he then swiped out in the readyroom, talked briefly with Person 3, went to the locker room, showered and changed and went to a retirement party for a fellow employee at a location about 10 minutes off airport property. The Employee denied swiping out Person 1's time card on March 25th.

After the events of the 25th, Supervisor Person 5 decided she now had enough information to investigate further. She conducted a fact finding investigation on March 27, 1993 with the

Employee.[2] As part of her fact findings, Person 5 obtained statements from Person 1 and the Employee and other RSMs on crew 5. After reviewing all of the evidence, including the Employee's denial, she concluded that the events of the 25th served to prove the events of the 24th, and that Person 1 punched out the Employee's time card on March 24, 1993, thus allowing the Employee to leave early on that date but not lose any pay. She also concluded that on March 25, 1993, the Employee punched out Person 1's time card, thus allowing Person 1 to leave early without losing any pay. As a result of her findings, she held both Person 1 and the Employee out of service and proposed that both employees be discharged (Level 5 discipline). Both employees were notified of her recommendation and an impending Investigative Review Hearing.

An Investigative Review Hearing to consider the proposed Level 5 disciplinary action (discharge) against the Employee for violation of Rule #2 of the Rules of Conduct was conducted on April 2, 1993 by Person 6. The Employee was in attendance and was represented by Union Committee members, Supervisors Person 5 and Person 9 presented the Employer's case, and IR Representative Person 11 was present. The Employer presented the testimony from Person 2, Person 5 and Person 9, and written statements from Supervisor Person 3 and ramp employees. The Union presented the testimony of the Employee and ramp servicemen, and notes from the fact finding investigation of March 26, 1993.

After examining the evidence, Person 6 concluded that the Employee had violated Rule 2, that there were no mitigating circumstances to excuse his actions, and that Level 5 discipline (discharge) was justified. (Joint Exhibit 3). As part of their investigation, the Employer sought from the Airport Security Manager data on access and exit from the security areas of the airport for Person 1 and the Employee for March 24 and 25.

[2] She also conducted a fact finding hearing with Person 1.

(See Joint Exhibit 12.) Employees entering or leaving the security areas of the airport do so by displaying a magnetic card which contains and identification number. That magnetic card is read by an electronic reader, dated, recorded, and then that information is stored in a computer. The computer printout for Person 1 shows that on March 24th, he entered at 09.461 hours at the N.W. Pedestrian gate and left at 18.233 hours, but that on March 25th, the printout shows he arrived at 09.878 hours at the N.W. Pedestrian gate and left at 12.637 hours from Access A (the eastern most point of the airport). The computer data for the Employee shows that on March 24, he arrived at N.W. Pedestrian gate at 09.462 and left through Access A at 12.637 hours and on March 25th, he entered at 09.897 hours through N.W. Slide by the Cargo facility and left through the N.W. Pedestrian gate (near the employee parking lot) at 18.366. (Employer Exhibit 5).

The Employee initiated a grievance protesting his termination. After that grievance was denied at Step 3, the grievance was appealed to the System Board of Adjustment for final review and adjudication by the single, neutral member of the Board. The hearing set for July was postponed due to the illness of Person 2 and rescheduled for August 30, 1994 in City 1.

STATEMENT OF THE ISSUES

Was the termination of the Employee for just cause?

RELEVANT CONTRACT LANGUAGE

Article X, paragraph F - 2 of the collective bargaining agreement provides that:

> An employee covered by this agreement shall lose his seniority status and his name shall be removed from the seniority list under the following conditions:
>
> 2. He is discharged for cause.

RELEVANT WORK RULES

> The Employer's rules of conduct specifically state:
> Violations of one or more of the following Rules will result in discharge unless mitigating factors are considered applicable.
>
> 2. Falsification of Employer records or reports, including, but not limited to:
>
> a) personal time cards or payroll records
>
> b). punching another employee's time card or payroll records.
>
> (Emphasis in original.)

POSITION OF THE PARTIES

The Employer's basic position is that it had just cause to terminate the Employee on March 30, 1993. The Employer argued that it has a clear written rule of conduct that addresses falsification of Employer reports that specifically includes punching another person's time card (Rule 2). That rule was known by the Employee and he clearly understood his obligations. The Employer contends that the evidence clearly shows that the Employee violated Rule 2 on two occasions: on March 24th (by having Person 1 punch him out and by claiming pay for time not worked) and on March 25 (by punching Person 1 out, thus allowing him to claim pay for time not worked). In the administration of the discipline the Employer provided the Employee with the charges against him and gave him an opportunity to tell his side of the story in both the fact finding investigation, the investigative review hearing and at the third step in the grievance procedure. Because the Employer regards falsification of time records as a serious and irreparable breach of trust, and because there were no mitigating circumstances, the penalty of discharge is clearly warranted, in the Employer's opinion.

The Employer also contended that its decision to terminate the Employee is consistent with several other System Board of Adjustment decisions. In one grievance the Board upheld the termination of a 15-year employee for falsification of time records (Co. Ex. 6). Similar decisions were reached by a different Board in grievances 95555-EWR and 95556-EWR (Co. Ex. 7), No. 77184-PDX (Co. Ex. 8), No. 119620-SFO (Co. Ex. 9), No. A-06832--SFOJJ (Co. Ex. 10), A13511-JFKKQ (Co. Ex. 11), No. A02450-EWRMM (Co. Ex. 12), and No. A06834-SFOJJ (Co. Ex. 13). The Employer also offered the System Board's decision in No. 20314 LAXHH (Co. Ex. 14) for its statement on circumstantial evidence. The Employer submitted Stockham Pipe Fittings Co., decided by Arbitrator Whitney McCoy in 1945 (1 LA 160) for the general proposition that in the absence of a clear showing of unfairness or abuse of discretion in regard to management's imposition of disciplinary penalties, an arbitrator may not substitute his or her judgment for that of management.

The Union's position is that the Employer did not have just cause for the discharge of the Employee. The Union argued that the Employer should be required to meet a clear and convincing standard of proof. Under that standard the Employer has not met its burden of proof. The Union argued that Person 2's statement should not be given any weight because she could not be cross examined. The Union pointed out that the Employee denied having Person 1 punch out the Employee's time card on March 24th and maintains that Person 1 punched out his own time card on the 25th. The Union contends that neither the Investigative Review Hearing nor the Third Step grievance meeting were fair and impartial because the Review Hearing and Third Step were conducted by Employer officials who were involved in the decision to terminate the Employee. Finally, the Union contends that the penalty was too severe: the Employee was a long

term employee (over twenty-five years) with a reputation as a good worker. For all these reasons the Union requests that Employee be reinstated and made whole.

ANALYSIS

The parties stipulated that the issue I am to address is whether the Employer had just cause for terminating the Employee for violating Rule of Conduct #2. The Employer has charged Employee with clocking out Lead Serviceman Person 1 on March 25, 1993 in direct violation of Rule of Conduct #2. That violation of Rule 2 allowed Person 1 to leave early and be paid for time not worked. The Employee is also charged with leaving early on March 24, 1993 and having Person 1 clock him out, thus permitting Employee to be paid for time not worked.

The just cause standard of review requires arbitrators to evaluate the evidence with regard to three questions. Namely, 1) does the evidence support the charge of misconduct; 2) was the Employee afforded due process in the administration of discipline; and 3) is the penalty, in this case, discharge, appropriate when one balances the seriousness of the event with any mitigating circumstances that are present. I will use those three questions as a framework for the analysis that follows. First, however, I shall make several evidentiary rulings.

Evidentiary Rulings

The Employer offered as evidence the written statement of Person 2, Station Support Scheduler and medical documents supporting its claim that she could not appear to testify because she had acute hepatitis (Employer Exhibit 2). The Employer contended that it had intended to call Person 2 as a witness at the first hearing scheduled in this case in July 1994. She became ill before that hearing, so the Employer sought and received a postponement of the July hearing. The parties

then rescheduled the hearing for late August and changed the hearing location to City 1 to accommodate Person 2 and other witnesses. When the new hearing date (August 29) and location (City 1) were set, the Employer (and Person 2) had every reason to believe that she would be recovered enough to testify in person. Unfortunately, she has not recovered as swiftly as originally thought and it now appears that she will be unable to return to work until sometime in November 1994. Rather than delay this arbitration further, the Employer offered as Employer Exhibit #2, Person 2's written and signed statement along with a signed oath as to the truthfulness of the statement.

The Union objected strenuously to this document (Employer Exhibit 2) on several grounds, but namely because the Union regards her testimony as critical and because the Union could not cross-examine her statement.

At the arbitration hearing, I made a preliminary ruling to admit the statement of Person 2 and give it the weight it deserves. I hereby affirm that ruling and make it a final ruling. My reasons follow.

First, I do not find the role played by Person 2 in this matter to be a pivotal one. Person 2 is not a manager, and there is no showing that she participated as a part of the management team in the investigation or the decision to terminate the Employee.

Person 2 only acted as an administrative support person in this matter. She reported what she saw and found to managers. She did not act as a decision-maker. The testimony of Supervisors Person 3 and Person 5 support her statement. So I cannot agree she played a key role in this matter.

Second, the Union did not challenge the authenticity or accuracy of Person 2's written statement. Third, the Union did not claim surprise-- they had seen her earlier statement and heard her testify at the IRH and at Step 3 in the grievance procedure.

Fourth, I find Person 2's statement, submitted as Employer Exhibit 2, agrees with her testimony at the Investigative Review Hearing held on April 12, 1993 (Joint Exhibit 3) and with her testimony at the Third Step grievance hearing held on April 29, 1993 (Joint Exhibit 5) and with her earlier written statement. All of these statements were part of the joint submissions in this case and are part of the evidentiary record.

Fifth, while the collective bargaining agreement between the parties is silent on procedural issues that may arise in arbitration, it is generally accepted that the arbitrator has the authority to conduct the hearing and make rulings necessary for the proper conduct of the hearing. For guidance in making these rulings, arbitrators frequently consult the Labor Arbitration Rules of the American Arbitration Association. I have done so here. AAA Rule 28, entitled "Evidence," permits the parties to an arbitration "...to offer such evidence as is relevant and material to the dispute...." Rule 28 also gives the arbitrator the authority to judge the relevance and materiality of the evidence offered. Finally, Rule 28 states that "...conformity to legal rules of evidence shall not be necessary." In addition, Rule 29 specifically addresses the use of affidavits as follows:

> The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as seems proper after consideration of any objection made to its admission.

Here, I have considered the Union's objection and I have determined to admit Person 2's statement and give it such weight as I feel is proper. At the very least, Person 2's statements help explain the sequence of events that led to the discharge of the Employees. As I indicated at the

hearing, I will not, however, give her statements the same weight as I would to "live" testimony that is taken under oath and subject to cross-examination.

Finally, I note that the Union has not claimed that Person 2 had it in for either the Employee or was trying to get even with him.

I note that the Union also submitted statements by Person 12 (Union Exhibit 5) and Person 13 (Union Exhibit 4). I have followed my general practice of admitting these statements and giving them the weight they deserve. Both the Person 12 and Person 13 statements are testimonials or letters of support for the Employee. Person 12 characterizes the Employee as "an asset to the Employer." Person 13 says the Employee has "outstanding qualities and character" and that he "set the standard for Lead Ramp Servicemen." Neither letter speaks to the factual disputes in this case. Consequently, I have given them very little weight.

The Union offered (Union Ex. 6) the decision of State 1's Employment Security Appeals Office on the claim for unemployment benefits filed by the Employee. The Employer objected to the admissibility of this document because that decision is based on statutory criteria and a different standard of proof, but asked if it were admitted, that it not be considered as precedent. Here again, I admitted the document, but I stated then and reaffirm now that I would not be bound by the decision or the findings of fact in that decision. I am not required to do so. I agree that the criteria, questions at issue and the standard of proof are different. I further find that it is neither relevant nor material to the issues before me.

The Union offered the testimony of former investment banker Person 14 claiming that he was an expert on the economics of the airline industry. Person 14, B.S. in Business Administration and M.B.A. testified he spent 23 years on Wall Street as an investment banker where he researched the airline industry as part of his duties and that he now serves as a Lecturer at several colleges

and universities in State 1 where he teaches 29 different courses in Business Administration and Economics. Person 14 testified that in the early 1990's, the Employer was heading toward bankruptcy. To avoid bankruptcy, EMPLOYER had to reduce costs. As labor costs represented a large portion of total costs, reducing labor costs became an obvious necessity. He testified that labor costs could be reduced in two ways--setting up a two-tier wage system whereby junior and newly hired employee would be paid less than senior employees and/or by getting rid of long-term employees through early retirement, layoffs or even discharge. He implied that the motive behind the discharge of the Employee was that of reducing labor costs.

The Employer objected to this testimony on two grounds: that the Union failed to establish this witness was an expert on the economics of the airline industry and that his testimony is irrelevant.

I allowed Person 14 to testify. I find, and now rule, that the Union did, in fact, fail to establish that he was an expert on the economics of the airline industry or on the economics of the Employer. I also find his testimony was very general and not specific to this case and could be found in economic and financial publications. I also did not find his testimony to be relevant to this case of time card falsification. He presented no evidence to support his implication that the Employee was fired as a part of the Employer’s cost-cutting measures. Consequently, I have given Person 14's testimony no weight.

The Union also offered the testimony of Committeeman Person 4 with regard to a test he ran of the EPS in July 1993. He testified that he could make the time clock beep or not beep when swiping a time card. I find this test occurred over three months after the events leading to this discharge. Even if this test is given full credence, it does not prove that the time clock

malfunctioned on the days in question or that it only malfunctioned for the Employee on those days. Consequently, I have given his testimony little weight.

Evidence of Guilt

It is undisputed that the Employer had a rule that prohibits the falsification of time records. That the Employee knew of this rule has not been disputed either. The question is whether the Employer has provided clear and convincing evidence that the Employee violated that rule on March 24 and 25, 1993.

The Employer's evidence consists of the statements[3] of Person 2; the testimony of Person 3, Person 5 and Person 9; the time clock rings showing time and place of punch out; and the security access and egress data. (Jt. Ex. 12.)

The Union's remaining evidence on the question of guilt consists of the Employee's denial of violating Rule #2 either on the 24th or 25th.

I find a compelling piece of evidence in this case is the airport security area access and exit date (Jt. Ex. 12). That document clearly shows that the Employee exited the security area through Access A (the eastern most point of the airport at 13.071 hours on the 24th and that Person 1 left at 12.637 on the 25th. The Employee claims that in the afternoon of the 24th: after 1140 he worked flight 181; he returned to Lead Ramp Serviceman Person 1's crew at about 1415; worked flight 193 at 1530 finishing about 1605; left the airport between 1605 and 1645 to get soup; and parked in the area adjacent to the claim area.

[3] I have used the plural - statements - because Person 2 made several statements: after the events of the 24th, at the fact finding and for the arbitration. She also testified at the Investigative Review Hearing and at the third step grievance meeting. I have examined all of these statements and I find they are internally consistent. At no point in the discipline and grievance process, including this arbitration, has the Union challenged the content of these statements.

However, the computer printout on airport security area access shows him leaving the airport security area of the airport at 13.071 hours-- roughly an hour before he claimed he returned to Person 1's crew. That airport security access record does not show him returning to the security areas of the airport that day. The Union offered no other witnesses as to the Employee's whereabouts on the 24th. So what remains is the contradictory evidence-- the security area data and the Employee's story. I have already found, in a companion case, that Person 1 was not a credible witness. I also find, in this case, the Employee was not a credible witness. His explanation of the events does not fit the pattern of evidence established by the time clock data, the security area data and the observations of Supervisors Person 5, Person 3 and Person 9.

On the other hand, I find the statements of Person 2 and the statements of Person 3, Person 5 and Person 9 to be credible and consistent with the time card rings and the data on access to and exit from the airport security areas.

Therefore, on balance, I find that the Employer has proven the charges levied against the Employee by clear and convincing evidence.

Due Process

I find that as noted above, the Employer has a written rule and that rule was known by the Employee.

Before taking disciplinary action, the Employer conducted an investigation and gave the Employee an opportunity to give his side of the story.

At both the Investigative Review Hearing and the Third Step grievance meeting, the charges against the Employee were presented, testimony and documentary evidence was presented and again the Employee testified on his own behalf.

The Union charged that the Investigative Review Hearing (conducted by Person 6) and the Third Step grievance meeting (conducted by Person 11) were not fair because both hearing officers had been consulted by Person 5 prior to the discipline. The Employer argued that it followed normal practice and that while discipline was proposed by Person 5 after consulting with Person 6 there was no evidence that either Person 6 recommended discipline or that they conducted a biased hearing. Furthermore, that consultation concerned how to proceed, not what to do. I have examined the record of the IRH and the Third Step grievance meeting and I find no evidence of procedural errors or evidence of bias. The records of the IRH and of Step 3 are very thorough and complete and the hearing officers' conclusions logically flow from the evidence.

Therefore, I find no violation of due process in the administration of discipline.

Appropriate Penalty

The Employer contends that the falsification of time records is considered very serious and the normal penalty for that infraction of the rules is discharge. In such cases, length of service is not considered a mitigating factor. The Employer supplied several Board of Adjustment decisions to support this claim. (See Co. Exhibits 6-13.) The Union never rebutted this Employer claim.

Therefore, I find the penalty of discharge was appropriate.

In accordance with the above findings and conclusion, I shall enter an award denying the grievance of Employee and sustain his discharge.