Grissom #10

VOLUNTARY LABOR ARBITRATION TRIBUNAL

TERMINATION APPEAL PROCEDURE

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYER,

AND

EMPLOYEE, APPELLANT

DAVID W. GRISSOM

ARBITRATOR

ARBITRATION OPINION AND AWARD

This Arbitration, conducted under Employer's Termination Appeal Procedure took place on November 15, 1994 at the City A, Michigan HOTEL A. Pursuant to the receipt of the official transcript of these proceedings and Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

FACTS

This Appeal arises from the discharge of Mr. Employee effective May 4, 1994 on the grounds that he manipulated the payroll reporting system and used poor judgment in having an Associate pick up his wife from home pursuant to which he deleted time from the Associate's lunch period. The Employer has charged that Appellant Employee's actions violated the Employer's Payroll Override Policy, to wit (E Exhibit #7):

DATE: April 22, 1991 (Also issued in 1988 and 1989) MEMO TO: All Store Directors
FROM: Person 1, Person 2, Person 3, Person 4, Person 5, Person 6, Person 7.

SUBJECT: OVERRIDES ON THE PAYROLL REPORTING SYSTEM AND ACCURATE RECORDING OF TIME WORKED.

This information is being communicated as a reminder to managers of their responsibilities regarding the Payroll Reporting System. This communication is designed to prevent associates from becoming involved in situations that may result in discharge. Overriding the Payroll Reporting System should be done only when absolutely necessary and for legitimate reasons. Changing the time an associate actually works is a violation of Wage and Hour Laws.

Overrides cannot be performed to eliminate overtime, whether by changing lunch periods, deleting the overtime and paying it at the straight time equivalent time on a different day or week. Everyone who uses the Payroll Reporting system to record their time, has a responsibility to do so accurately. If overtime is worked, it must be paid as such on the day it is earned.

If an override must be performed, it must be done only by the associate's first assistant, line manager, manager in charge, or in some cases, the store secretary. Overrides are not to be performed by systems monitors, authorized cashiers, or other non-management personnel. Overrides are not to be performed by one department manager for another unless that manager is the manager is charge. An associate cannot override their own time records.

Associates who perform overrides will be responsible for showing good cause for the override. Overrides on the Payroll Reporting System, as well as calls in to Payroll to alter time records, will be monitored at both store level and corporately. ANYONE FOUND TO BE USING AN OVERRIDE FOR OTHER THAN LEGITIMATE BUSINESS REASONS WILL RECEIVE DISCIPLINE UP TO AND INCLUDING TERMINATION.

Please have your management team sign the reverse side of this memo; give a copy to each manager and keep a copy for your files. Send the original to Person 8, OMP Relations, in Michigan; and in State A send them to Person 9, State A Personnel, 986.
(Emphasis added)

It is not in dispute that Mr. Employee, a Store No. 105 Toy Department Manager hired on September 25, 1990, had received a copy of this Policy and was familiar with its contents. The Employer contends that on April 29, 1994, Mr. Employee used his position to override the time card system when he asked an hourly employee while on unpaid lunch, to pick up his wife - who

is a cashier in the Service Department. This Policy violation was allegedly manifested by the fact that Mr. Employee changed the employee's time card when she returned; to allow the employee to be paid for the time she was out of the store picking up and bringing back Mr. Employee's wife.

At the Arbitration Hearing, Mr. Employee asserted that on April 29, 1994, he did ask Toy Associate Person 10, who he supervised, to pick up his wife. Mr. Employee has advised that in the meantime, he had two (2) corrections regarding Associate Person 10's time card, that required attention; that it was necessary for him to go into the computer to make a two (2) minute deduction and a ten (10) minute overtime adjustment that had arisen earlier in the week. There is no dispute on this point. In this connection, Mr. Employee stated that since he was already into the computer and at the same time felt that it was "unfair" for Ms. Person 10 to have lost twelve (12) minutes while she was bringing another Associate to work, he did adjust her time card (TR. 18-25).

The specific events of April 29, 1994 were ascertained from the testimony of Ms. Person 10, Loss Prevention Manager Person 11, Store Director Person 12 and OMP Relations Manager Person 13 as described below.

Toy Associate Person 10 was assigned to the 7:30 A.M. to 4:00 P.M. shift. On April 29, 1994, her Department Manager, Mr. Employee, asked her to go pick up his wife from home and bring her back to the store. Ms. Person 10 agreed, ate quickly in the cafeteria and punched out at 10:02 A.M. Ms. Person 10 has testified that she picked up Ms. Employee and punched back in at 10:44 A.M. Lunch breaks are unpaid. Ms. Person 10 further testified that she never expected to be credited with the twelve (12) minutes or any other amount of time for picking up Appellant Employee's wife and had no idea that he had done it. She also confirmed the late break and

overtime items that occurred on the previous Thursday and stated that she had asked Appellant Employee on April 29, 1994 to correct the time in the computer. Ms. Person 10 stressed that when she had picked up Appellant Employee's wife in the past (at least six (6) times), it was usually after her shift was over and that she never felt any pressure to do this favor for her boss. Ms. Person 10 also emphasized that there was a friendly, trusting relationship with Mr. Employee that remained professional at all times. There had also been occasions when she told Mr. Employee she could not pick up his wife and there were no problems related to this (TR. 25-43).

Loss Prevention Manager Person 11 (Store No. 105), testified that one of his Store Detectives asked him to check Ms. Person 10's time card which he did the following Monday, May 2, 1994 (Employer Exhibit #1). This computer-generated document denotes that on April 29, 1994, Toy Manager Employee effectuated an override (Code 0000) to add an extra twelve (12) minutes to Associate Person 10's work time. Mr. Person 11 advised that the affect of this override was that Ms. Person 10 received another fifteen (15) minutes of pay since the twelve (12) minutes is rounded off to fifteen (15) minutes. Pursuant to this course of events, Mr. Person 11 interviewed Mr. Employee, who immediately acknowledged that he had made a mistake and was wrong. He provided two (2) written statements, to wit (Employer Exhibits #2 and 3):

> On 4-29-94 I Employee, while employed as a Toy Dept Man. at Employer #105, asked Toy associate Person 10 Person 10 to pick up my wife and bring her to work. Person 10 agreed, and did so while punched out for lunch.
>
> Person 10 punched out at 10:02 a.m. and back in at 10:44 a.m. Because Person 10 had done me a favor, and I did not want her to be shorted time, I changed her in from lunch punch to 10:32 a.m. to reflect a half-hour lunch. The actual lunch being 42 minutes.
>
> I was fully aware of the Employer payroll reporting policy, and understand that what happened is a violation of that policy. I have read and fully understand the above statement. This statement may be used in any public or private hearing.

Signature Employee Date 5-2-94 Time 2:10

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SUPPLEMENTAL / INCIDENT REPORT

DATE
5-2-94

Person 10 from Toys on her lunch picked up associate Person 14 from her apartment and brought her back to work Person 10 punched in at 10:44 A.M. I did not pick Person 14 up myself because I was too involved in work. Person 10 said she would pick up Person 14 for me. I don't know why but I didn't think Person 10 should be shorted on hours so I punched her in at the time her lunch we (sic) be over and she not picked up Person 14.

Loss Prevention Manager Person 11 also filed a Report on the matter at hand, confirming that pursuant to his interview with Associate Person 10, she was unaware that her time card had been changed, never noticed the extra fifteen (15) minutes and had never inferred or implied to Mr. Employee that she should be paid for picking up his wife. Mr. Person 11 also stated that Mr. Employee readily admitted that he had made a mistake and that he was aware of the Override Policy (Employer Exhibit #4) (TR. 44-63).

Store Director Person 12 testified that when he learned about the incident on May 2, 1994, he interviewed Ms. Person 10 and Mr. Employee. Yes - according to Mr. Person 12, Appellant Employee said he understood that he was wrong. Mr. Person 12 did note that Appellant Employee could have accomplished the same result without violating the Override Policy my simply extending Ms. Person 10's shift by twelve (12) minutes (TR. 64-82). Director Person 12 filed two (2) Reports on this incident with OMP Relations Manager, Person 13 (Employer Exhibits #5 and 6).

Ms. Person 13 testified relative to the Override Policy (Employer Exhibit #7) (TR. 85-104). As set forth earlier, in pertinent part, this Policy states as follows:

OVERRIDE POLICY

> Associates who perform overrides will be responsible for showing good cause for the override. . . . ANYONE FOUND TO BE USING AN OVERRIDE FOR OTHER THAN LEGITIMATE BUSINESS REASONS WILL RECEIVE DISCIPLINE UP TO AND INCLUDING TERMINATION.

This Appeal was filed by Mr. Employee on May 17, 1994 alleging that the discharge was not for just cause and requesting that he be reinstated and made whole (Joint Exhibit #2).

ISSUE

Was the discharge for just cause?

DISCUSSION

The elements in this case require the undersigned Arbitrator to move directly to the point. The evidence finds that Appellant Employee did violate the Override Policy. He has acknowledged as much. Succinctly put, he added twelve (12) minutes to Toy Associate Person 10's time card to prevent her from losing time in picking up his wife for work. This squarely did not constitute a "legitimate business reason" for the effectuation of an override. As such, there was just cause for discipline.

The above determination having been made, there are other important considerations in favor of Appellant Employee which require attention. They are mitigating circumstances which in all fairness under Employer's Termination Appeal Procedure, shall serve to reduce the discharge penalty. These mitigating factors are listed below.

1) Mr. Employee was hired in September 1990. During his tenure with the Employer, there has been no blemish on his employment record.

2) It is acknowledged by all concerned that Mr. Employee was a good employee and a responsible Department Manager.

3) Mr. Employee admitted from the very beginning that he had used poor judgment, was wrong in his efforts on behalf of Ms. Person 10 and did violate the Override Policy. At the earliest stages, he apologized to supervisors for his actions. Mr. Employee's forthrightness from the start is noteworthy.

4) The evidence shows that Mr. Employee maintained no intent to convert Employer time or money to his own use or to benefit himself in anyway.

5) There was no collusion whatsoever between Mr. Employee and Ms. Person 10 to defraud the Employer and in fact, Mr. Employee made the time card adjustment unbeknownst to her, a wrongful act but an act that has proven to be spontaneous. Mr. Employee effectuated the override when he was already in the computer to legitimately realign Ms. Person 10's time card (Thursday break and overtime) when he decided to add the twelve (12) minutes in question - an adjustment that could readily be detected afterwards by a Management review of time cards.

6) The Employer elected not to apply progressive discipline in this matter. In this connection, it is importantly noted that the Override Policy states that employees found to be using an override for other than legitimate business reasons "will receive discipline up to and including termination." Ergo, termination is not mandatory. There is room in the circumstances of this case for a reduced penalty comprehending discipline less than discharge.

7) Mr. Employee's presentation, demeanor and testimony at the Arbitration Hearing has persuaded the undersigned Arbitrator that he fully appreciates the impropriety of his actions and that the use of such poor judgment will not happen again. The undersigned Arbitrator was further impressed by the fact that notwithstanding the

nature of the Hearing, Mr. Employee was up front, honest and remained most dignified throughout.

8) Mr. Employee has been separated from the Employer for some nine (9) months (May 4, 1994). This represents a sufficient period of time off in the circumstances of this case and therefore it shall constitute a long-term disciplinary suspension.

Pursuant to the above listed mitigating elements, the discharge penalty is reduced to a disciplinary suspension from Mr. Employee's date of discharge to the date of his return to work. It is the undersigned Arbitrator's view that Mr. Employee deserves another opportunity at employment with Employer and that in this, he will make good.

There was just cause for discipline less than discharge for Appellant Employee's violation of the Override Policy. Due to mitigating circumstances, the discharge penalty is reduced to a long-term suspension. There is no evidence of retaliation or discrimination. It is directed that Appellant Employee be forthwith reinstated without back pay or benefits as a Department Manager with his seniority in tact. His reinstatement shall be to Store No. 105 if the Appellant so elects. If not, his return shall be to a Store in close proximity as determined by the Employer.

The Appeal is sustained in part and denied in part.

AWARD

There was just cause for discipline less than discharge. Due to mitigating circumstances, Appellant Employee is to be forthwith reinstated without back pay and benefits if at all feasible to his old job or to another Department Manager's position at Store No. 105 or to an alternative Store in accordance with the remedy set forth above. The Appeal is sustained in part and denied in part.

DAVID W. GRISSOM

ARBITRATOR

February 1, 1995