

Grissom #2

**VOLUNTARY LABOR ARBITRATION
TERMINATION APPEAL PROCEDURE**

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYEE

AND

EMPLOYER, INC.

GR: Termination

DAVID W. GRISSOM

ARBITRATOR

ARBITRATION OPINION AND AWARD

This Arbitration took place on October 4, 1993 at the HOTEL in City A, Michigan. The Arbitration proceedings were conducted pursuant to the Employer's Termination Appeal Procedure (Joint Exhibit #1). The Hearing was concluded on the above noted date. In accordance with the receipt of the official Transcript of the proceedings and Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

FACTS

This grievance arises from the termination of Mr. Employee on March 13, 1993 for alleged Time Card Fraud and the purported violation of the Employer's Honesty Policy (Employer Exhibit #4). At all times pertinent Mr. Employee, hired on July 11, 1986, was the Paint and Furniture Area Manager at Store No. 71 in City B, Michigan. The events leading to Mr. Employee's discharge are described below.

In the early afternoon of Saturday, March 6, 1993, Mr. Employee requested Fashion Area Manager Person 1 in Store No. 71 to punch him in retroactively at 8:00 A.M. for that workday (TR. 19). Eight (8:00) A.M. was Mr. Employee's regular starting time. It is not in dispute that Ms. Person 1, as Mr. Employee's immediate supervisor, had the authority to effectuate a time punch "override" if she believed that good reason for such a request existed. Ms. Person 1 had done this for Mr. Employee between ten (10) and fifteen (15) times in the past (TR. 20). Mr. Employee provided the following explanation to Ms. Person 1 as a basis for his 8:00 A.M. punch-in override request. He advised that he had been at Store No. 19 at 7:40 A.M. where he had been looking for wallpaper for a customer; that he had arrived at Store No. 71 at 8:00 A.M., a ten (10) minute drive away but would not charge the Employer for his 7:40 A.M. presence at Store No. 19 or the drive time. Manager Person 1 believed that Mr. Employee was telling the truth and did punch Mr. Employee in for 8:00 A.M. Saturday, March 6, 1993 (see Time Card Report - (A1) - Employer Exhibit #1). Notwithstanding, Ms. Person 1 testified that when Mr. Employee arrived at work that day, there was really no reason why he could not have punched himself in but that he had no authority to effectuate an override (TR. 22-27). Pursuant to the above described course of events, Mr. Employee proceeded to finish out the day's work.

Two (2) days later on the evening of March 8, 1993, Ms. Person 1 was told by Hardware Manager Person 2 that he had asked Mr. Employee on Friday, March 5, 1993 to go out drinking that night and this was probably the reason he was late on Saturday morning, March 6, 1993; further that he believed Mr. Employee had reported to work after 9:00 A.M. Mr. Person 2 also advised that he was aware of this circumstance because one of his Department people, Mr. Person 3, was covering Mr. Employee's Department on Saturday morning until he arrived. Upon this information, Ms. Person 1 asked Store Detective Person 10 to check the video tapes of

entrances for Saturday morning, March 6, 1993. This was done and it was thereafter reported to Manager Person 1 that Mr. Employee had arrived at Store No. 71 at approximately 8:45 A.M. Ms. Person 1 then told Store Manager Person 4 about the situation. At that point, they both considered that Mr. Employee had violated Employer policy. Ms. Person 1 was thereupon asked to write a report on the matter which she did on March 9, 1993 (Employer Exhibit #2) (TR. 28-30).

On March 12, 1993, pursuant to the immediately described developments, Mr. Employee was interviewed by Loss Prevention Manager Person 5 in the latter's T.V. monitor room upstairs at Store No. 71. Store Detective Person 6 and Hardlines Manager Person 7 were present also. Written reports already in the file were reviewed by Mr. Person 5 prior to the interview, including the Person 1 and Person 2 written statements taken on March 9, 1993. On that date, Mr. Employee had also been asked by store detectives to submit a written account of the Saturday transactions as he purported them to be (Employer Exhibit #3). After studying Mr. Employee's statement, read in conjunction with the Supervisors' reports, Mr. Person 5 believed that further inquiry was in order. Ergo, the March 12, 1993 interview with Mr. Employee (TR. 39-42). Mr. Employee's March 9, 1993 written affirmation of what occurred on Saturday morning, March 6, 1993, is set out below (Employer Exhibit #3).

Date 3-9-93

On Saturday 3-6-93 I stopped at #19 on my way in to work to look for border bin #9 for a customers (sic) special order. Upon failing to find rix (sic) with the same lit (sic) #, I tried to find an associate for help. I even looked in back room. After tiring of looking, I proceeded to store #71. Before I could leave for the day I realized I was not punched in. I then asked Person 1 to punch me in at 8:00 a.m. believing I arrived at #19 at 7:45 am and arriving here at 8:35 am. These are the times I believed they occurred (sic).

Employee (signed)

During the interview, Mr. Person 5 first went over the Company's Honesty Policy with Mr. Employee. He stated that he understood the Policy. The Honesty Policy is contained in the Associate's Notebook. Pursuant to further questions from Mr. Person 5, Mr. Employee first stated that he had called Store No. 71 from Store No. 19 on Saturday, March 6, 1993. Then, when Mr. Person 5 explained that he intended to verify the alleged calls from Store No. 19 via a telephone record check and view video tapes of his entry into Store No. 71, Mr. Employee admitted that he had fabricated the true events of March 6, 1993. He acknowledged that in fact he had made the call to Store No. 71 from home and that he had never gone to Store No. 19. Mr. Employee further advised that he had "drinking problems" and that this caused him to be late for work on Saturday, March 6, 1993. Mr. Employee was asked to write a statement regarding the factual occurrences of March 6, 1993. This statement is set out below (Employer Exhibit #5):

3-12-93

This is to try to explain my actions on the morning of 3-6-93. I had been out drinking the night before and overslept. Not wanting to get in trouble for my drinking I called Person 3 and told him I was at #19 and would be late, could he cover my department. Later that day when I could not punch out I had Person 1 punch me in for eight a.m.

Then when department 10 approached me I was not totally honest, again fearing reprisals about my drinking.

Person 4 had told me I would be terminated if I missed another day because of drinking to (sic) much.

I had been doing very well and was not drinking very much and then I fell off the wagon and had way-too much on Friday night 3-5-93.

I know what I did was wrong and never should have done it. My fear of losing my career at Employer overrode (sic) my judgment and I made a poor decision. Also the effects of alcohol from the night before had a part in that decision.

If given the chance I will make sure this never happens again. My wife and two young sons rely on my income to survive.

My drinking needs to be controlled. I thought I had it under control, obviously I was wrong.

I believe I can be an asset to the Employer and should you choose to give me a chance, I can prove that and improve myself and my departments to be only the best.

Thank You,
Sincerely
Employee (signed)
Paint and Furniture Area Manager #71
Employee
3-12-93 1:37 pm

The above cited written statement of Mr. Employee does attest that (1) He had been drinking Friday night, March 5, 1993 and pursuant thereto, had overslept (2) He had called Mr. Person 3 at Store No. 71 from home, told him he was at Store No. 19 and said he would be in late (3) On Saturday afternoon, "When I could not punch out", he had Ms. Person 1 punch him in at 8:00 A.M. based upon the previously described fabrication (4) His prior written accounts to store detectives were untrue. Mr. Employee also signed a statement on March 12, 1993 prepared by the Security personnel attesting that he actually arrived at work at 8:49 A.M. and that his successful request of Manager Person 1 for an 8:00 A.M. override was an attempt to deprive the Employer of forty-nine (49) minutes of Employer time (Employer Exhibit #6). Later in the day on March 12, 1993, Loss Prevention Manager Person 5 filed his own Incident Report on the matter under consideration (Employer Exhibit #7) (TR. 42-47).

On or about March 10, 1993, O.M.P. Relations Specialist Person 8 was contacted by Store Director Person 4 and the written reports followed. After reviewing all relevant documentation, including Mr. Employee's initially submitted false statement and his subsequently written acknowledgements of what actually happened, the discharge of Mr. Employee was recommended and approved by Management effective March 13, 1993. The grounds: Time Card Fraud. The discharge was predicated upon Mr. Employee's admitted

fabrication in efforts to obtain credit for forty-nine (49) minutes of Employer time he did not work, a violation of the Policy on Time Cards/Payroll Reporting Systems (Employer Exhibit #8) and also the Honesty Policy (Employer Exhibit #4). It is not in dispute that Mr. Employee was cognizant of these Employer policies and had received the Employer Notices Notebook containing them. According to the testimony of Ms. Person 8, Time Card Fraud is of such a serious nature that discharge is warranted on the first offense. Further, Ms. Person 8 advised that since the basis for the termination had nothing to do with work performance, Mr. Employee was not referred to the Employer Assistance Program (MAP) in lieu of discharge and in any event, Mr. Employee had never sought help under MAP for an alleged drinking problem while he was employed with the Employer (TR. 54-63).

Mr. Employee instituted an Appeal of his discharge on March 24, 1993 pursuant to the Employer's Termination Appeal Procedure (Joint Exhibit #1). Therein, Mr. Employee alleges that his ". . . poor decision of reporting an incorrect time was made under the influence of alcohol" and that Employer representatives knew that he had a history of alcohol-related problems. Mr. Employee in his Appeal also alleged that his discharge was in retaliation for the fact that his wife filed for unemployment benefits some three (3) plus years ago and because he had "successfully fought two sexual harassment suits" in the past. Mr. Employee also claims that he was discharged to save the Employer money. Mr. Employee's fundamental contention is that his discharge was not for just cause. He requests that he be reinstated to his job and made whole (Joint Exhibit #2).

In Answer to the Appeal, the Employer on April 17, 1993 responded as follows (Joint Exhibit #2):

The termination of your employment was done with just cause for time card fraud and violation of the Honesty Policy. When you requested your time of arrival be placed in the

payroll reporting system, you were dishonest in the time you said you reported to work. When you were questioned about the punches by loss prevention, you were again dishonest in your statements. Our investigation also found you were not discriminated against or retaliated against.

Person 9 (signed)
ASSOCIATE SERVICES REPRESENTATIVE

4-17-93
DATE

This Arbitration was brought on for Hearing on October 4, 1993.

PERTINENT EMPLOYER POLICIES

NOTICE

TO: ALL ASSOCIATES

REGARDING HONESTY

IN ORDER TO BE A STRONG AND HEALTHY EMPLOYER IN TODAY'S BUSINESS WORLD, WE DEPEND ON YOU TO BE TOTALLY HONEST. THE COMPANY BELIEVES STRONGLY THAT THERE CAN BE NO EXCEPTION TO THIS RULE IN LIGHT OF THE NATURE OF OUR OPERATION THAT DEALS WITH SUCH A WIDE VARIETY OF MERCHANDISE. THIS LONGSTANDING CONDITION OF EMPLOYMENT HAS BEEN AND MUST CONTINUE TO BE APPLIED AND ENFORCED THROUGHOUT THE EMPLOYER.

JUST AS YOU EXPECT THE EMPLOYER TO BE HONEST WITH YOU AT ALL TIMES, LIKEWISE WE EXPECT YOU TO BE TOTALLY HONEST AT ALL TIMES. THIS TOTAL COMMITMENT IS A MUST.

BASED ON THIS, WE REQUIRE YOU TO BE TOTALLY HONEST WITH CUSTOMERS, THE EMPLOYER, FELLOW ASSOCIATES, VENDORS, SUPPLIERS, ETC. ASSOCIATES INVOLVED IN THEFT OR UNAUTHORIZED POSSESSION OF PROPERTY FROM ANY OF THESE SOURCES WILL BE TERMINATED.

DISHONEST ASSOCIATES HURT EVERYONE. THEY CAN JEOPARDIZE EVERYONE'S JOB SECURITY THROUGH THEIR ACTIONS. IF YOU SHOULD BECOME AWARE OF ANYONE WHO IS DISHONEST, IT IS YOUR RESPONSIBILITY TO NOTIFY A FIRST ASSISTANT OR LOSS PREVENTION. FAILURE TO DO THIS WILL RESULT IN YOUR DISCHARGE FROM THE EMPLOYER.

WE HOPE THAT THIS RESTATEMENT PREVENTS ANY MISUNDERSTANDINGS FROM OCCURRING IN THE FUTURE.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR FIRST ASSISTANT.

(Emphasis added)

NOTICE

TO: ALL ASSOCIATES

REGARDING: TIME CARDS/PAYROLL REPORTING SYSTEMS

THIS NOTICE IS BEING POSTED ONCE AGAIN TO INFORM ALL ASSOCIATES OF THE EMPLOYER'S LONG-STANDING POLICY REGARDING TIME CARDS/PAYROLL REPORTING SYSTEMS.

ALL ASSOCIATES ARE RESPONSIBLE FOR PERSONALLY RECORDING ACCURATELY THEIR OWN WORK RECORD (START TIME, FINISH TIME, LUNCHES AND BREAKS.)

ASSOCIATES ARE NOT TO WRITE ON TIME CARDS TO MAKE CORRECTIONS, OR FOR ANY OTHER PURPOSES. (PROPERTY SERVICES ASSOCIATES ARE EXEMPTED FROM THIS SPECIFIC PROVISION.)

IF IT APPEARS YOU HAVE RECORDED YOUR WORK RECORD INCORRECTLY, IT IS THE RESPONSIBILITY OF THE ASSOCIATE TO IMMEDIATELY BRING ANY ERROR TO A FIRST ASSISTANT'S ATTENTION TO BE CORRECTED BY THAT FIRST ASSISTANT OR AUTHORIZED PERSON.

NO ASSOCIATE IS TO PUNCH ANOTHER ASSOCIATE IN OR OUT. NO ASSOCIATE IS TO WRITE ON ANOTHER ASSOCIATES TIME CARD, UNLESS EXPRESSLY AUTHORIZED TO DO SO BY A FIRST ASSISTANT.

WE HOPE THAT THIS REVIEW OF YOUR RESPONSIBILITY IN THIS AREA WILL PREVENT ANY MISUNDERSTANDINGS FROM OCCURRING IN THE FUTURE. VIOLATION OF THIS POLICY WILL RESULT IN IMMEDIATE DISCHARGE.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR FIRST ASSISTANT.

(Emphasis added)

ISSUE

Was the discharge for just cause?

DISCUSSION

A study of the evidence in this case finds that Mr. Employee is culpable with respect to Time Card Fraud and the violation of the Employer's Honesty Policy. This determination is based upon evidentiary findings and admissions that Mr. Employee did involve himself in a series of fabrications in efforts to secure credit for forty-nine (49) minutes of Employer time when in fact he was not at work as described below.

Mr. Employee was untruthful with Manager Person 1 on Saturday, March 6, 1993 in requesting and receiving the 8:00 A.M. punch-in override. He further filed a false written report on March 9, 1993 claiming that he had called Store No. 71 from Store No. 19 at about 7:40 A.M. under the pretense that he was "on the clock" at Store No. 19 looking for wallpaper for a customer (Employer Exhibit #3). Mr. Employee thereafter was initially untruthful to Loss Prevention Manager Person 5 in the March 12, 1993 interview when he adhered to the same fabrication he had offered earlier to Ms. Person 1. Only when Mr. Person 5 advised that he intended to verify the transactions as alleged by Mr. Employee, did Mr. Employee decide to tell the truth. He subsequently acknowledged in two (2) written statements that he had been out drinking Friday night, March 5, 1993, had overslept and had called from home to tell Mr. Person 3 to cover his Department until he arrived at work. In advising Mr. Person 3 that he was calling from Store No. 19, he was untruthful and as already denoted, was further untruthful in requesting the 8:00 A.M. punch-in override from Ms. Person 1. Had Mr. Employee's fabrications not been discovered, he would have successfully and fraudulently obtained forty-nine (49) minutes of Employer time with commensurate pay.

The undersigned Arbitrator has listened carefully to the testimony of Mr. Employee. He was able to offer no justification, excuse or acceptable explanation for his actions (TR. 70-77). Certainly, the fact that he had been drinking late on Friday night, March 5, 1993 and may have had a hangover, is no excuse for the blatant untruths he told on Saturday and axiomatically does not explain away his contrivances to Employer representatives in his written statement of March 9, 1993 (Employer Exhibit #3). This evaluation is also applicable to his initial untruths to Loss Prevention Manager Person 5 during the March 12, 1993 interview. The upshot is that any attempts by Mr. Employee to hide behind the affects of an alleged drinking bout on Friday night, March 5, 1993 in this entire scenario, are squarely unacceptable.

Mr. Employee's actions did violate the Time Cards/Payroll Reporting Systems Policy that requires accurate and honest time card reporting and entries. The Policy specifies that "Violation of this Policy will result in immediate discharge" (Employer Exhibit #8). Further, the Employer's Honesty Policy requires all employees to be forthright and honest as a "total commitment." This Policy states that Associates involved in theft or unauthorized possession of property ". . . will be terminated." Overall, the penalty for violation of the Employer's Honesty Policy is discharge (Employer Exhibit #4). On the evidence, Mr. Employee did violate both of the above cited policies.

Mr. Employee has suggested in his testimony that Store Director Person 4 knew he had a "drinking problem" and therefore, he should have been referred to MAP in lieu of discharge. The only evidence on this point comes from Mr. Employee and the most that he could offer was that in July/August, 1992 when Mr. Employee came to work late and left early, Mr. Person 4 advised him not to come to work "like this" or he would be terminated. This admonition is not evidence that Mr. Person 4 was aware that Mr. Employee had a serious alcohol abuse problem.

Moreover, on cross-examination, Mr. Employee was constrained to admit that when Mr. Person 4 tried to get him to discuss anything having to do with his use of alcohol, Mr. Employee dismissed the matter as being "personal" (TR. 93-95). It is determined that there was no obligation on the part of Mr. Person 4 to refer Mr. Employee to MAP at that time or for other supervisors to do so as an alternative to discharge. Not only is this latter conclusion based upon the fact that Mr. Employee's actions involved Time Card Fraud and dishonesty as opposed to work performance, this finding is also predicated upon Mr. Employee's admission that never during his employment did he voluntarily seek assistance under the Employer Assistance Program. It is not in dispute that Mr. Employee was well aware of Employer assistance available under MAP, a program widely disseminated throughout the work place (Employer Exhibits #10 and 11).

Pursuant to Employer Policy and Procedure directive No. 050 on Termination Pay (Employer Exhibit #12), because Mr. Employee violated Employer rules and policies, he was not entitled upon discharge to accrued vacation, personal days and other such accrued benefits. There is no evidence of Employer retaliation or discrimination. The discharge was for just cause. The Appeal is denied.

AWARD

The discharge was for just cause. The Appeal is denied.

David W. Grissom

Arbitrator

December 10, 1993