

IN THE MATTER OF THE ARBITRATION BETWEEN

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THE UNITED FOOD AND	)	MINNESOTA BUREAU OF
COMMERCIAL WORKERS,	)	MEDIATION SERVICES
LOCAL 653,	)	CASE NO. 08-RA-0575
	)	
	)	
	)	
Union,	)	
	)	
and	)	
	)	
RAINBOW FOODS, INC.,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

For the Union:

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On March 13, 2008, in Plymouth, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by discharging the grievant, Lamont L. Jacobs. Post-hearing briefs were received by the arbitrator on April 6, 2008.

## FACTS

The Employer operates retail grocery stores in the metropolitan area that includes Minneapolis and St. Paul, Minnesota. The Union is the collective bargaining representative of many of the non-supervisory employees of the Employer who work in the stores located in Minneapolis and its suburbs, including those who work in such classifications as Retail Specialist, Food Handler and Meat Service Worker.

The grievant was hired by the Employer on August 19, 2005, and he was discharged on October 19, 2007. At the time of his discharge, he was classified as a Meat Service Worker, and he worked at the Employer's store in Eagan, Minnesota, a southern suburb of Minneapolis. A Meat Service Worker monitors and stocks the store's meat counters and does wrapping and some small-scale meat cutting.

On October 19, 2007, Harold W. Hunt, the Store Manager of the Eagan store, and, as described below, other management personnel signed the following notice of discharge and gave it to the grievant:

On 9/23/07 [the grievant] left the Eagan Rainbow at 3:04 punching out and leaving the store. On 10/5/07 [he] made a missed punch request slip requesting a 5:15 punch out [for September 23, 2007]. When asked twice by Barb and witnessed by [Hunt] "Are you sure of the 5:15 time" [the grievant] replied "yes." [He] left at 3:04 not to return to the store. Punching out and leaving and asking to be paid for time not worked constitutes time theft & will not be tolerated. At this time your job is being terminated with Rainbow Foods.

Below, I summarize the testimony of Hunt and the grievant and of Barbara A. Johnston, an Employee Service Representative and Pricing Coordinator at the Eagan store. Johnston, who is a

bargaining unit member, testified as a witness for the Employer that one of her duties is to monitor the accuracy of information used to determine the store's payroll. The store uses a "Kronos" time-clock system, which relies upon the entry by employees of the time they started and ended each daily shift and each break taken within the shift. (Hereafter, I refer to the making of those entries as the parties do -- as "punching in" and "punching out.")

Johnston testified that sometimes employees forget to punch in or punch out and that she checks for such errors, using an "exception report" that the Kronos system is programmed to generate when the employee's punches-in do not equal the employee's punches-out. The Kronos system also is programmed with each employee's work schedule, and it can recognize when an employee's punches do not coincide with his or her work schedule. The Kronos system is programmed to show a Sunday through Saturday work week. I infer from the record that employees receive their paychecks on the Friday following the Saturday that ends the previous work week.

In the fall of 2007, the grievant was usually scheduled to work four ten-hour days per week (a "four-ten schedule") on any of six days, Monday through Saturday; usually he was not scheduled to work on Sundays. His normal ten-hour work day began at 8:00 a.m. and ended at 6:00 p.m. About once every four weeks, the grievant was scheduled to work a schedule of eight hours per day, five days per week (a "five-eight schedule") with varying start times and on varying days of the week.

The Employer presented in evidence a print-out from the Kronos records for the work week that began on Sunday, September 23, 2007, and ended on Saturday, September 29, 2007 (Employer's Exhibit 1). This document shows that the grievant was scheduled to work a five-eight schedule during that week. (Hereafter, unless otherwise noted, all dates are in the year 2007, and, when giving dates, I omit the year.) As shown on this Kronos print-out, the grievant's schedule for that week was the following:

<u>Work Day, as Scheduled</u>	<u>Hours, as Scheduled</u>
Sunday, September 23	8:00 a.m. till 4:00 p.m.
Monday, September 24	8:00 a.m. till 4:00 p.m.
Tuesday, September 25	2:00 p.m. till 10:00 p.m.
Wednesday, September 26	Not Scheduled to Work
Thursday, September 27	Not Scheduled to Work
Friday, September 28	8:00 a.m. till 4:00 p.m.
Saturday, September 29	2:00 p.m. till 10:00 p.m.

The Employer also introduced a document (Employer's Exhibit 4) that is entitled "Schedule Planner." This computer generated document shows the printed names of six employees scheduled to work in the Meat Department on Sunday, September 23. In addition, the grievant's name is written on the print-out in longhand with the hours "8-4p" also written in longhand. Hunt testified that he thought the grievant's name appeared on this document in longhand because he was not on the original schedule for that day and that the name was written in after the grievant was added to the schedule for that day. I note that Patricia A. Bergaus, a Human Resources Specialist, testified that Employer's Exhibit 4 is a Kronos form that she had printed in March of 2008, a few days before the hearing in

this matter. She testified that she wrote the grievant's name and scheduled hours for September 23 on the form in longhand because the computer would not generate data relating to an employee who was no longer employed by the Employer. From this evidence, I infer that the grievant was originally scheduled to work on September 23, from 8:00 a.m. till 4:00 p.m., as shown on Employer's Exhibit 1 and that the information from that document, as set out above, is accurate.

Kronos' original record of the grievant's punches for the week beginning September 23 shows the following:

On Sunday, September 23, the grievant punched in at 7:04 a.m., took two authorized breaks during the day, one for fourteen minutes and the other for twelve minutes, and then punched out at 3:04 p.m. Kronos shows the work time credited as "8:00."

On Monday, September 24, the grievant did not punch in or out, though he had been scheduled to work that day.

On Tuesday, September 25, the grievant punched in at 2:00 p.m., took one authorized break of fifteen minutes and punched out at 9:08 p.m. Kronos shows the work time credited as "7:08."

In accord with his work schedule, the grievant did not work on Wednesday or Thursday, September 26 or 27.

On Friday, September 28, the grievant punched in at 8:00 a.m., took one authorized break of fifteen minutes and punched out at 2:22 p.m. Kronos shows the work time credited as "6:22."

On Saturday, September 29, the grievant punched in at 2:00 p.m., took one authorized break of thirteen minutes and punched out at 9:34 p.m. Kronos shows the work time credited as "7:34."

Thus, the times at which the grievant started and ended his work day during this week, as shown on Kronos' original record of his punches, do not exactly coincide with Kronos'

record of his work schedule. Except as described below, those departures from his work schedule have little relevance here.

The grievant worked on Sunday, September 30. On Monday, October 1, he slipped on some water while at work, and, thereafter, he took workers' compensation leave until Friday, October 19.

On Friday, October 5, the grievant went to the store to pick up his pay check for the week that ended on Saturday, September 29. The grievant testified that when he saw the check, "the hours looked wrong," and that he thought he had worked more hours than he had been credited for. He went to Johnston and told her so. Johnston accessed the grievant's Kronos record for the week on her computer, and he and she looked at the monitor. The record showed that, for Sunday, September 23, he had punched in at 7:04 a.m. and punched out at 3:04 p.m. The grievant told Johnston that he should have received credit for working two additional hours on that day -- till 5:15 p.m. He testified that at the time of their discussion he thought he had worked a ten-hour day.

Johnston testified that, when there may be a discrepancy between a Kronos record and other information, such as an employee's complaint that the record is inaccurate, a form is used to start a search for the cause of the discrepancy. That form, which is entitled "Time Form," has a space to enter "missed punch data," preceded by the statements, "time forms will not be processed without the proper employee and manager signatures" and "please verify that you entered the correct day

and data." Johnston filled in the "missed punch data" in accord with the grievant's statement that he had worked until 5:15 p.m. on September 23, and the grievant signed the form. Johnston testified that during that October 5 discussion she and the grievant did not talk 1) about the reason he began work on September 23 at 7:04 a.m. rather than at his scheduled start time of 8:00 a.m., or 2) about the reason he stayed at work until 5:15 p.m.

Johnston testified that on October 19, she edited the Kronos system to show the grievant's punch out on September 23 at 5:15 p.m. and that she did so at the instruction of Paula A. Thoreson, Human Resources Manager. The Kronos records show that this edit was made at 9:51 a.m. on October 19.

Hunt testified as follows. On October 5, Johnston and the grievant came to him with the relevant print-outs from Kronos and the Time Form that Johnston had filled out and the grievant had signed. The grievant told Hunt, "I worked the time and I need to be paid." Hunt told them that the matter should be turned over to the Loss Prevention Department ("Loss Prevention") so that the September 23 video tapes from the cameras at the store's entrances could be checked to see when the grievant entered and left the store. Cameras are placed at all of the store's entrances, and they record twenty-four hours a day.

Hunt called Loss Prevention and talked to Gabe Yanez, who is responsible for loss prevention at several of the Employer's stores, including the one at Eagan. Hunt told Yanez that he wanted to verify an employee's statement that he had worked

hours not shown on Kronos. Yanez reviewed the video tapes on October 15. The parties agree that Yanez' review of the store's September 23 video tapes showed that the grievant left the store at 3:10 p.m. and did not return. That information was given to Hunt between October 15 and October 19.

On cross-examination, Hunt testified that if an investigation by Loss Prevention confirms an employee's complaint that he or she worked more hours than Kronos has recorded, the employee is paid for the additional hours, but that, if the investigation shows that the employee did not work the additional hours, the Employer will discharge the employee for theft of time. He testified that several employees at the Eagan store have been discharged for that reason. Hunt also testified, however, that if management thinks the employee's claim has resulted from a mistaken belief that he or she had worked the additional hours, the employee will not be discharged. Hunt testified that he participated in the decision to discharge the grievant and that he thought discharge was appropriate because the grievant had been adamant about his claim that he worked two additional hours and had signed the Time Form that put the claim in writing. On cross-examination, however, Hunt testified that he did not know whether the grievant was mistaken or was cheating, conceding that the grievant's claim could have resulted from his mistaken belief about the hours he worked.

On October 19, when the grievant returned to work after his workers' compensation leave, he attended a discipline meeting with Thoreson, Hunt and Yanez. Thoreson testified that sometime

after October 5, Hunt had informed her that the grievant was claiming two additional hours of work on September 23 and that Loss Prevention was checking video tapes to verify the claim. She testified that within the week preceding October 19, she learned from Loss Prevention that on September 23 the grievant left the store at 3:10 p.m. and did not return.

Thoreson testified that the Employer uses a procedure before discharging an employee that requires an upper management review, by two Directors of Area Operations and a Vice President of Operations, and that all have to agree that discharge is appropriate. She testified 1) that she informed the appropriate upper managers that the grievant had claimed two more hours than appeared on Kronos' records and that video cameras showed he was not in the store during the additional hours he claimed, 2) that she prepared the notice of discharge and reviewed it with the appropriate upper managers before the discipline meeting with the grievant on October 19 and 3) that the managers agreed unanimously that the grievant should be discharged.

Thoreson testified as follows about the discipline meeting of October 19. That day, before the discipline meeting, she had the Kronos records edited to show that the grievant had worked till 5:15 p.m. on September 23, as he claimed. She testified that she had to do so because the grievant was returning to work that day and because "it is normal" and she had not yet spoken to the grievant. At the meeting, Thoreson told the grievant "what the meeting was about." She showed him his time records. Though she did not testify that she showed

him the edited time records, I infer that she did so from the fact that the edition was made before the discipline meeting. She showed the grievant the Time Form he had signed. She told him that Loss Prevention reported that the video tapes showed he left the store at 3:10 p.m. and did not return. The grievant stood up and denied that he was not in the store, insisting that he had been in the store. She showed the grievant a copy of a policy statement he had signed at the time of his employment, part of which states:

Theft is wrong. It is Rainbow's policy that if an associate is determined to be involved in theft of any type, including "time theft" their position with the Company will be terminated and the offending associate will be prosecuted to the fullest extent of the law. Rainbow is committed to stopping associate theft. To this end, Rainbow employs a team of Loss Prevention professionals that have as one of their responsibilities the investigation of associate theft incidents.

Please remember that it is every associate's responsibility to stop associate theft.

Thoreson also testified that, after she showed the grievant this document, she told him that "it was determined that you were not in the building," and she told him that he was discharged. The grievant then said, "if I was not here, then don't pay me." She asked him if he had anything more to say and he said, "no." She and Hunt and Yanez then signed the notice of discharge, but the grievant refused to sign.

On cross-examination, Thoreson testified as follows. She did not offer and the grievant did not request Union representation at the discipline meeting. She prepared the notice of discharge and had it reviewed by upper management before the

meeting because she thought it likely that the grievant would be discharged. The grievant was paid for the additional two hours he claimed after he was discharged. She thought the grievant was "stealing time" because he had been insistent that he be paid for the additional two hours. She conceded that she did not know whether the grievant was mistaken when he claimed the additional two hours or whether he had made the claim "deliberately," that "it could have been a mistake" by the grievant, but she testified that, if she thought he was "just mistaken," she would not have decided to discharge him.

The grievant testified as follows. When he made the claim for the additional two hours of work on September 23, he genuinely believed that he had worked those hours. As he recalled his work that day, he thought that Ronald Peltier, the Manager of the Meat Department at the Eagan store and a member of the bargaining unit, called him early on September 23 and asked him to stop at the Employer's Apple Valley store, which is about five minutes from the grievant's home, and pick up some chicken parts to bring to the Eagan store. He had thought that he stopped at the Apple Valley store at about 6:40 a.m. that morning. He testified that, when he talked to Peltier about the pick-up, Peltier told him he would have the time clock adjusted to show the grievant's earlier start time. The grievant testified that on October 5 and on October 19, he thought he had made the Apple Valley store pick-up on September 23, but at the hearing he conceded that he may have been confused about the date of that pick-up.

The grievant testified that on October 5, when he went to the store to pick up his pay check, he saw that it was for an amount less than his usual pay check. He talked to Johnston and told her that the check was "too little." She brought up the Kronos records on the computer. He thought he had worked a ten-hour shift on September 23 and told her that he worked those hours and that he wanted to be paid for the work. He testified that he honestly thought he had worked a ten-hour shift and that, when Johnston filled out the Time Form to correct the Kronos record, she told him to sign it and "we'll check it out." By that, he thought she meant that she would have someone look at the store's video tapes to see when he left the store.

The grievant also testified that when he returned to work on October 19, he was surprised when he was asked to come to the discipline meeting. He testified to the following account of that meeting. Thoreson asked him if had worked till 5:00 p.m. on September 23. He told her that he had, and he believed that he had. She then told him that the store's video tapes for that day showed that he left the store at 3:10 p.m. and did not return. He told her, "well, if I didn't work those hours, don't pay me."

The grievant testified that he thought he told Johnston on October 5 that Peltier asked him to make the Apple Valley store pick-up on September 23 on his way to work; he also testified that he thought he told that to Thoreson at the discipline meeting on October 19. Johnston and Thoreson testified that the

grievant had not mentioned the Apple Valley pick up at those meetings. Peltier did not testify.

Raymond M. Sawicky, the Union's Principal Officer, testified that, when the parties met for grievance mediation at the offices of the Minnesota Bureau of Mediation Services, he made a decision not to bring up the grievant's statement that he thought he had gone to the Apple Valley store on the morning of September 23. Sawicky testified that he made that decision because he thought the case should be resolved, not as a discharge case, but as a grievance about two hours' pay.

Hunt testified that, during the October 19 discipline meeting, after the grievant had been informed that he was being discharged and when Thoreson was out of the room making copies of documents, the grievant said to him, "I got you now, boy, I got you now," and that he again said, "I got you now," as he was leaving the store after the discipline meeting. In his testimony, the grievant conceded that he had made that statement to Hunt, and he apologized for having done so.

The Employer presented evidence from its records indicating that no pick-up for transfer of chicken parts had been made from the Apple Valley store to the Eagan store on September 23.

On June 13, 2006, the grievant was given a written warning for poor attendance -- for being tardy four times and absent without excuse eleven times during the previous five months. He had no other discipline. After the grievant was discharged, the Employer paid him for the two hours of work on September 23 that were in dispute.

## DECISION

Article VI of the parties' labor agreement is set out below:

No employee shall be discharged without good and sufficient cause. Dishonesty, drunkenness, gross inefficiency and use of illegal [controlled] substance(s) (drugs) will be considered as causes for dismissal. Dismissed drug offenders who provide the Employer with a certificate of rehabilitation will be reinstated.

The parties agree that the contractual standard for discharge, "good and sufficient cause," is the equivalent of "just cause." They have stipulated that the issue to be decided is whether the Employer had just cause to discharge the grievant.

The Employer argues that an attempt to "steal time" -- even the small amount in wages and benefits the grievant would have earned for the additional two hours he claimed, and even if the attempt was unsuccessful -- constitutes just cause for discharge. The Union makes no contrary argument, and I accept the validity of the Employer's argument.

The Union disagrees, however, with the Employer's conclusion that the grievant was attempting to steal time when he made the claim for the additional two hours' pay. The Union denies that he made the claim with fraudulent intent. Thus, the parties' arguments center on the grievant's state of mind when he claimed he had worked two additional hours.

The primary issue then is whether, as the Employer argues and as Thoreson and Hunt concluded, the grievant knew he was not entitled to be paid for those hours when he claimed them, or, alternatively, as the Union argues and as the grievant repre-

sented at the hearing, whether he "honestly believed" he had worked the additional hours and was entitled to be paid for them.

In the following passage from Cub Foods, Inc., and UFCW, Local 653, 95 LA 771 (Gallagher, 1990), cited by the Employer in its post-hearing brief, I described the manner in which state of mind must usually be determined:

When motivation for an act is at issue, usually the issue must be resolved by inference from all of the circumstances in which the act occurs, and in the present case, I must resolve the issue by such an inference and not merely by choosing between the grievant's statement about his motivation and the conclusions that others reached about his motivation.

The Employer makes the following arguments that an inference of fraudulent intent is indicated by the circumstances in this case. Several discrepancies in the grievant's account of what occurred on September 23 imply that his intention was fraudulent. At the hearing, he testified 1) that, on September 23, he had picked up chicken parts from the Apple Valley store on his way to work, 2) that, on October 5, he told Johnston of that pick-up and 3) that, at the discipline meeting of October 19, he told Thoreson of that pick-up. When the grievant was confronted at the hearing with the denial by Johnston and Thoreson that he told them of the pick-up and with documentary evidence showing no store-to-store transfer fitting the alleged pick-up, he testified that he could have been confused about the date. The Employer argues that his testimony that Peltier asked him to make the pick-up and told him he would adjust his start time could not be true because Peltier was not authorized to make entries in the Kronos system.

The Employer also argues that, when the grievant gave the account of the Apple Valley pick-up, he was attempting to justify his previous false claim that he had worked two additional hours in the afternoon.

The Employer argues that the grievant was adamant and insistent that he worked the two additional hours, first to Johnston and Hunt on October 5 and then to Thoreson at the discipline meeting on October 19. The Employer argues that Thoreson and the others who made the decision to discharge the grievant were correct when they interpreted the grievant's insistence as an indication of a fraudulent intent.

The Employer argues that, when the grievant learned at the discipline meeting that the video tapes showed he left the store at 3:10 p.m. and did not return, his statement, "if I didn't work, don't pay me," was merely an effort to exculpate himself for his dishonest attempt to be paid for two additional hours. The Employer compares that statement to that of a shoplifter who, after being caught stealing merchandise, tells the store to take the merchandise back.

The Employer argues that the grievant's credibility is in doubt because, when asked if he had been convicted of a crime, he responded that he had not, though he later conceded that he had been convicted of driving without insurance.

The Employer argues that the grievant's written warning for poor attendance indicates that he would not be a reliable employee if he is reinstated -- contrary to his testimony at the hearing that he likes working for the Employer and would be a good employee if reinstated.

The Employer urges that, though the Union argues that the grievant's claim for an additional two hours was caused by confusion whether he had worked a ten-hour day on September 23, I should not accept that explanation because the grievant worked a five-eight schedule about 25% of the time.

The Employer argues that, if the grievant honestly believed that he worked the additional two hours, he would have sought corroboration from other employees. The Employer urges that the grievant did not seek such corroboration because he knew he was not in the store after 3:10 p.m. and, therefore, knew that it was not available.

The Employer points out that, after Thoreson told the grievant of the decision to discharge him at the discipline meeting of October 19, she asked him if he had anything more to say and that he said "no." The Employer argues that the grievant had a chance to explain his claim for two additional hours at that time, but failed to do so. The Employer argues that the grievant's statement to Hunt, "I got you now," after he had been discharged, should be interpreted as a threat and that, accordingly, the grievant should not be reinstated.

The Employer argues that, though it has the burden of proof in this discipline case, it should not be held to a higher standard of proof than proof by a preponderance of the evidence.

The Union makes the following arguments. It argues that there is nothing in the grievant's history or in his employment record to indicate that he is dishonest. It also argues that,

because the grievant worked a ten-hour day most of the time, it is understandable that, on October 5, twelve days after September 23, he might have been confused about his hours on that day.

The Union's primary argument, however, is that all of the Employer's witnesses who had anything to do with the decision to discharge the grievant for "stealing time" testified that they were not sure that his claim for two additional hours was dishonest. Thus, the Union points out 1) that Johnston testified, "I cannot for sure tell if he was mistaken or if he was trying to steal time," 2) that Hunt testified, "I don't know whether Lamont was simply mistaken or was cheating" and 3) that Thoreson testified, "it could have been a mistake on Lamont's part." The Union argues that, under any standard of proof, this evidence cannot support a determination that the grievant's intention was fraudulent.

The Union argues that, instead of discharging the grievant, those who considered his discipline should have merely told him that the video cameras did not confirm his claim for two additional hours.

The Union argues that, despite the doubts that management employees had about the grievant's dishonest intent, several circumstances indicate that they intended to use the incident as a means of discharging him -- 1) that the notice of discharge was prepared and approved by upper management before the discipline meeting of October 19, 2) that the grievant was not informed of the content of the video tapes until that meeting,

3) that just before the discipline meeting, the Kronos system was edited to accord with the grievant's claim even though Thoreson knew the video tapes showed the claim to be erroneous, and 4) that the Employer paid the grievant for the additional hours after he was discharged even though the claim was known to be erroneous.

For the following reasons, I rule that the grievant's claim that he worked two additional hours on September 23 resulted from his mistaken belief that he had done so and not from an intent to defraud the Employer.

I credit the testimony of Johnston and Thoreson that the grievant did not tell them on October 5 and on October 19 that he had made a pick-up at the Apple Valley store. The first time he mentioned the Apple Valley pick-up was at the hearing. If he did not tell Johnston or Thoreson that he made the Apple Valley pick-up, his statement at the hearing that he did cannot carry any implication about a fraudulent or an innocent state of mind -- either on October 5 when he first claimed the two hours or on October 19 just before he was discharged. The most plausible explanation for the grievant's first testimony that he made the Apple Valley pick-up on September 23 is the one he gave in his later testimony about it -- that he was confused about the date. From October 5, when the grievant first claimed that he worked two additional hours on September 23, through the time of his discharge on October 19, he always stated that his claim for additional time was based on a belief that he worked two additional hours in the afternoon of September 23; he did not

tell Johnston, Hunt or Thoreson that he claimed the additional two hours of pay to make up for having worked in the morning.

That the grievant was "adamant" and "insistent" in his claim that he worked two more hours was the chief rationale for Thoreson's conclusion that he was lying. As the Union argued at the hearing, however, insistence is not an indicator of probable fraud. One who insists may do so because of a sincere belief about something, whether that belief proves to be true or false, and, even if false, the insistence may, nevertheless, be based on mistake.

With respect to the Employer's argument that the failure of the grievant to seek corroboration from other employees about his claim to have worked the two additional hours in the afternoon indicates knowledge that the claim was false, I rule as follows. The grievant knew when he discussed his claim with Johnston and Hunt on October 5 that Loss Prevention would check the video tapes for September 23 and either verify or negate the claim. For that reason, it appears that he had no need to find other corroboration for the claim. That he was willing to let the issue be decided by the video tapes is consistent with his statement at the discipline meeting of October 19 when he first learned of their content -- "if I didn't work, don't pay me." The grievant's response to Thoreson on October 19 that he had nothing more to say after he made this statement indicates nothing about the grievant's state of mind when he made the claim. It is consistent with his having made the claim because of a mistake in recollection.

I rule that the fact that the grievant first testified that he had been convicted of a crime, but then admitted that he had been convicted of driving without insurance raises no doubt about his credibility. He may have made the first answer because he did not think of a traffic offense as a crime. I also rule that his written warning for poor attendance does not bear upon his credibility.

I do not interpret the grievant's statement to Hunt -- "I got you now" -- which he made just after he was informed that he had been discharged -- as a threat. As I interpret this statement, it indicates the grievant's belief that Hunt and Thoreson were not justified in discharging him and that, if he grieved, he would prevail.

Finally, I rule that the evidence does not support a finding under any standard of proof that the grievant made the claim for two additional hours of pay because he intended to defraud the Employer. Nothing in the evidence implies a dishonest intention. Rather, the evidence supports a finding that the grievant made the claim in the mistaken belief that he had worked the additional hours. Even viewed most favorably to the Employer, the evidence shows that, as Thoreson testified, "it could have been a mistake on Lamont's part."

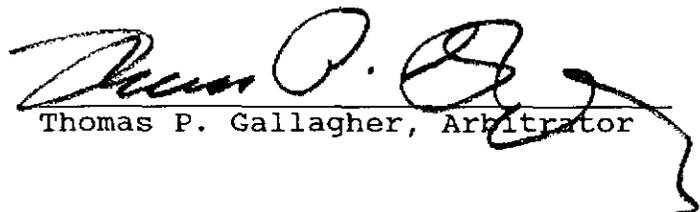
I conclude that the evidence does not support a finding that the grievant intended to "steal time" when he made the claim that he had worked two additional hours on the afternoon of September 23. The grievant's mistaken belief about the hours he worked was not a just cause for his discharge. I attribute

to the Employer most of the responsibility for the economic loss the grievant sustained, but, because the grievant's mistake began the events that led to his discharge, he should bear some of that responsibility. Accordingly, I award his reinstatement without loss of seniority and with partial back pay.

AWARD

The grievance is sustained. The Employer shall reinstate the grievant to his position without loss of seniority. The parties shall determine the amount of pay and benefits the grievant would have received from the Employer during the period between his discharge and his reinstatement and reduce that amount by whatever he received as unemployment compensation or from other employment. The Employer shall pay the grievant 75% of the net amount as an award of partial back pay and benefits.

July 3, 2008

  
Thomas P. Gallagher, Arbitrator