

**IN THE MATTER OF ARBITRATION BETWEEN**

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<b>THE HERTZ CORPORATION,</b>	)	
	)	
<b>Employer,</b>	)	<b>ARBITRATION</b>
	)	<b>AWARD</b>
<b>and</b>	)	
	)	<b>MOHAMOUD</b>
	)	<b>TERMINATION</b>
	)	<b>GRIEVANCE</b>
<b>INTERNATIONAL</b>	)	
<b>BROTHERHOOD OF</b>	)	
<b>TEAMSTERS, LOCAL 974,</b>	)	
	)	
<b>Union.</b>	)	<b>FMCS Case No. 080513-56079-3</b>

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Arbitrator:	Stephen F. Befort
Hearing Date:	September 25, 2008
Briefs Received:	December 15, 2008
Date of decision:	January 7, 2009
	<b>APPEARANCES</b>
For the Union:	James A. Jorgensen
For the Employer:	Jeffrey P. Pegula

**INTRODUCTION**

Teamsters, Local 974 (Union) is the exclusive representative of a unit of Mechanics and Vehicle Service Attendants employed by The Hertz Corporation (Employer) at its Minneapolis/St. Paul Airport operations. The Union claims that the Employer violated the parties' collective bargaining agreement by terminating grievant

Farhan Mohamoud without just cause. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

### **ISSUES**

1. Did the Employer have just cause to discharge the grievant?
2. If not, what is the appropriate remedy?

### **RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE IX** **CONDUCT OF EMPLOYEES**

SECTION 1. The Employer will not discharge or suspend any employee without just cause and shall give at least one (1) warning of the complaint against such employee in writing to the Union and the employee before he is discharged or suspended for a repetition of the same complaint. Such notice shall expire after nine (9) months, which includes attendance and lateness.

Discharge or suspension must be by proper written notice to the affected employee, with a copy to the Union.

No warning need be given in the case of dishonesty [or other listed occurrences] .  
...

#### **ARTICLE XXIX** **MANAGEMENT RIGHTS**

SECTION 1. The Union recognizes the right of the Employer to conduct its business, its operations, and the direction of its working force, its selection of new employees and the work and duties to which they are assigned including the right to make such reasonable uniform rules and regulations governing the conduct of its employees and the conduct of its business, provided the same do not conflict with any of the terms of this Agreement. Rules and regulations may, however, be instituted only after seven days notice to the Union. Should the Union disapprove any rule or regulation or any part thereof, the same may be submitted for arbitration in accordance with the provisions of Article XVIII hereof.

## **EMPLOYER WORK RULES**

### **Examples of Causes for Immediate Discharge:**

1. Dishonesty
12. Using an Employer's vehicle for personal use without permission.
13. Falsification of records or employment application.

### **Examples of Causes for Disciplinary Action, Up to and Including Discharge for Repeated Occurrences:**

2. Leaving the work station without the approval of the supervisor.

## **FACTUAL BACKGROUND**

The Employer operates a car rental facility at the Minneapolis/St. Paul Airport at which it employs approximately 80 employees. The Union represents a unit of non-supervisory employees at this location, including employees working in the Vehicle Service Attendant (VSA) job classification. VSAs are responsible for cleaning and refueling rental vehicles owned by the Employer. The grievant, Farhan Mohamoud, has worked as a VSA for the Employer since 2000.

The Hertz rental operation at the Twin Cities airport consists of two inter-related facilities. The Main Lot area where the primary rental business is transacted is situated in the parking garage adjacent to the main Lindbergh terminal. The Quick Turnaround Lot (QTA), where most rental cars are cleaned and readied for service, is situated one floor below. The second work area is the Overflow Lot across the Mississippi River in St. Paul. Most vehicle maintenance occurs at the Overflow Lot which also serves as a staging area for clean cars. The Overflow Lot additionally contains a designated area in which employees may park their personal vehicles. Most VSAs work in the QTA area.

The Employer has adopted and publicized work rules providing, *inter alia*, that dishonesty and falsification of records may provide cause for immediate discharge. In

addition, the Employer has issued a memorandum on time card procedures that informed employees as follows:

You cannot have any employee punch your card for you, you are the only one allowed to punch your timecard. Time card fraud is grounds for immediate termination.

The grievance in question arose out of events that occurred on April 4, 2008. The grievant, Mr. Mohamoud, was scheduled to work that day on an 11:00 a.m. to 7:00 p.m. shift. So, too, was a fellow VSA by the name of Mohamed Mohamed, who is known by his fellow workers as "M2M." Location Manager James Luxbacher was the direct supervisor of both employees.

Mr. Luxbacher provided the principal testimony on behalf of the Employer. Luxbacher testified that he observed Mr. Mohamoud walking down the hallway of the QTA toward the entrance to the employee break room at approximately 6:53 p.m. on April 4, 2008. Luxbacher testified that he observed Mohamoud holding two time cards in his hand. Since the grievant should have been cleaning cars in the QTA at this time, Luxbacher asked, "Farhan, what are you doing?" Mohamoud replied that he was planning to drive to the St. Paul Overflow Lot to clock out since he was scheduled to work the next day at the Overflow Lot. The grievant explained that since the shuttle to St. Paul usually was late, he should be able to leave early and clock out in St. Paul. Luxbacher told Mohamoud that this was contrary to company policy and that he should go back to work until the end of the shift at 7:00 p.m. The grievant complied with this directive. According to Luxbacher, he observed Mohamoud place two time cards on top of the time clock situated in the QTA hallway area and then depart toward the QTA work

area. Luxbacher examined the time cards and identified them as belonging to Mohamoud and M2M.

Luxbacher testified that he called to arrange for a Hertz Transporter vehicle to drive Mohamoud to the Overflow Lot at 7:00 p.m. Shortly thereafter, a Transporter arrived just as Mohamoud returned to the QTA hallway. Luxbacher testified that he held the hallway entrance door open for Mohamoud who then proceeded to the time clock. Luxbacher informed the grievant of the waiting Transporter and said, "let's go." Luxbacher testified that Mohamoud hesitated at the time clock for several seconds while Luxbacher walked toward the Transporter. Luxbacher testified that he heard two punch sounds emanating from the time clock. He was approximately 23 feet away from the time clock at this time. Mohamoud then departed and took the Transporter to the St. Paul lot.

Luxbacher testified that, after Mohamoud's departure, he went to the time clock to investigate. He observed that M2M's time card was no longer on the top of the clock, but instead in a time card slot with a 7:01 check out time entered. Luxbacher further testified that he remained in the hallway for a few minutes after the grievant clocked out, but did not observe anyone else in the area.

Luxbacher testified that he then attempted to ascertain M2M's whereabouts. Luxbacher reviewed M2M's productivity report which indicated that M2M had not processed any vehicles after 6:30 p.m. Luxbacher claimed that he questioned approximately eight VSAs working in the QTA area, but that no one had seen M2M for the last 20 or 30 minutes of his shift. Luxbacher and Lead VSA Abdisitar Mohamed then drove to the Overflow Lot in St. Paul and found the last vehicle that M2M had been

cleaning parked in that lot. Luxbacher also found the grievant's time card at the St. Paul security gate which similarly indicated a 7:01 p.m. check out time.

Witnesses called by the Union disagreed with several aspects of Mr. Luxbacher's story. Mr. Mohamoud testified that he did not punch out any time card on April 4 other than his own. He also claimed that he has no relationship with M2M outside of work. M2M, in his testimony, acknowledged that he drove the last vehicle that he cleaned on April 4 to the St. Paul lot, but that he then drove another dirty Hertz vehicle back to the airport. M2M testified that he parked the dirty vehicle in the QTA area, punched out his own time card on the QTA time clock, and took the light rail train to his home in Minneapolis. M2M testified that he did not see anyone else in the QTA hallway when he clocked out from his shift

Union Business Agent William Ziembo also testified that Luxbacher had changed his story about the two time cards. According to Ziembo, Luxbacher claimed at an April 15, 2008 grievance hearing that, after Mohamoud had clocked out, Luxbacher proceeded to the time clock and found both Mohamoud's and M2M's time cards, with each indicating a 7:01 p.m. check out time. At the arbitration hearing, however, Luxbacher stated that he did not observe the grievant's time card until his trip to the St. Paul Overflow Lot.

The Employer suspended both Mohamoud and M2M pending investigation. According to Luxbacher's testimony, when he informed M2M of the suspension, M2M responded by asking, "Who told on me?" Justin Fischer, the Employer's Human Resources Manager, telephoned both Mohamoud and M2M and asked to set up investigative interviews. Both employees declined unless a Union representative was

permitted to be present. No interviews were ever conducted. The Employer terminated the grievant on April 8, 2008 for time card fraud and dishonesty.

## **DISCUSSION AND OPINION**

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See Elkouri & Elkouri, HOW ARBITRATION WORKS* 948 (6<sup>th</sup> ed. 2003).

### **A. The Alleged Misconduct**

The Employer terminated Mr. Mohamoud based on allegations of time card fraud and dishonesty. The Employer contends that its action is supported both by provisions of the parties' collective bargaining agreement and by properly promulgated work rules. In terms of the former, Article 9 of the collective agreement provides that dishonesty is an offense for which discharge may be imposed without the need for a prior warning. More specifically, a company memoranda informed employees that:

You cannot have any employee punch your card for you, you are the only one allowed to punch your timecard. Timecard fraud is grounds for immediate termination.

Neither the Union nor the grievant disputes the applicability of these rules. The only real point of contention in this matter concerns whether the grievant actually violated these rules. This is a classic "he said, she said" dispute. The Employer contends

that Mr. Mohamoud violated these work rules by punching out M2M's time card on April 4, 2008. The Union denies this contention and maintains that M2M punched out his own time card on the day in question.

For the reasons set out below, I believe that the Employer's proffered version of events is more credible than that urged by the Union. As such, I conclude that the Employer has carried its burden of establishing that the grievant engaged in the misconduct alleged as the basis for discipline in this matter.

First, I found Location Manager Luxbacher's testimony to be credible. Luxbacher's testimony provided a cogent description of the events in question. He observed the grievant carrying two time cards - his own and M2M's - shortly before the end of the shift. He described the grievant hesitating at the time clock while being observed at the end of the shift and then twice punching the time clock. After the grievant left the area, Luxbacher discovered M2M's punched time card in a time card slot even though no one had observed M2M in the QTA area since 6:30 p.m. Finally, Luxbacher testified that the time cards belonging to the grievant and to M2M both registered the same 7:01 p.m. clock out time.

The credibility of Mr. Luxbacher's testimony is further bolstered by two additional facts. First, Mr. Luxbacher has no apparent incentive to distort the truth. No evidence established that Mr. Luxbacher bore any ill will toward either the grievant or to M2M. In addition, no extrinsic pieces of evidence conflict with the description of events provided by Mr. Luxbacher. Although Luxbacher erroneously stated at the grievance hearing that he had found the grievant's time card at the QTA area, this does not negate the fact that both time cards had the same 7:01 check out time.

In contrast, I found the testimony of M2M not to be credible. M2M testified that he departed from the QTA Lot driving a clean vehicle to the St. Paul Overflow Lot at approximately 6:52 or 6:53 p.m. and then drove a dirty vehicle back to the QTA Lot where he punched out on the time clock. Quite simply, it is not possible to drive a vehicle from the airport to the Overflow Lot and then back again in the eight or nine minutes alleged by M2M. Further, M2M was not observed by anyone else during this time. Approximately eight other VSAs stated that they did not see M2M in the workplace at any time after 6:30 p.m.. More significantly, Mr. Luxbacher, who was patrolling the QTA hallway from approximately 6:53 p.m. to 7:08 p.m., never saw M2M approach the time clock area. Finally, Luxbacher testified that when he informed M2M of the suspension, M2M responded by saying, “Who told on me?” even though the reason for the suspension had not yet been disclosed.

Mr. Mohamoud’s testimony, although more credible than that of M2M, also is insufficient to dispel the testimony of Mr. Luxbacher. Mr. Mohamoud, for example, does not offer an adequate explanation for why he was carrying M2M’s time card shortly before the end of the shift, or why he twice punched the time clock, or how M2M could have punched his own time card when he was not observed in the QTA Lot area at check out time.

In sum, the weight of the evidence viewed as a whole, adequately establishes that Mr. Mohamoud engaged in the prohibited conduct of time card fraud and dishonesty.

**B. The Appropriate Remedy**

Having found that the Employer established the factual predicate for its allegation of misconduct, the only remaining issue is whether the sanction of discharge is a fitting

remedy. Here, both the parties' collective bargaining agreement and applicable work rules provide that such conduct may be cause for immediate discharge. In addition, such behavior constitutes a breach of trust that severely undermines the viability of the employment relationship. Under these circumstances, I believe that the Employer has demonstrated sufficient cause for termination.

**AWARD**

The grievance is denied.

Dated: January 7, 2009

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Stephen F. Befort  
Arbitrator