

ARBITRATION DECISION

IN RE

Teamsters Local Union 974

and

FMCS # 08-56260-3

The Hertz Corporation,  
Minneapolis/St. Paul Airport

DISPUTE:

Mohamed Abu Mohamed Discharge

Arbitrator:  
Daniel G. Jacobowski, Esq.  
February 9, 2009

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**JURISDICTION**

APPEARANCES: Company: Jeffrey P. Pegula, Senior Staff Counsel, Hertz, Park Ridge, NJ

Union: Attorney James A. Jorgensen, St. Paul, MN

HEARING: Conducted on October 2, 2008 at the Ramada Inn in Bloomington, Minnesota, on this contract grievance, pursuant to the provisions and stipulations of the parties under their collective bargaining agreement. A court reported transcript was taken. Briefs were received December 15, 2008.

**DISPUTE**

ISSUE:

Did the company have just cause for its discharge of grievant Mohamed Abu Mohamed, also known as M2M?

CASE SYNOPSIS: The grievant, A Voluntary Service Attendant (VSA) was one of two employees discharged for alleged time card fraud on April 4, 2008. As alleged, the grievant had a co-worker punch out his timecard at the end of the shift. Additional reasons given for the discharge were the accusations that without permission, he left work early and drove a clean car to the St. Paul lot against company rules. Both denied the alleged fraud, the union challenges the additional reasons given, and claims that the discharge was without just cause. The case of the other employee, Farhan (F), was heard as a separate matter before another arbitrator.

CONTRACT PROVISIONS CITED:

**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 notice need be given in the case of dishonesty...using an Employer's vehicle for personal use without permission...walking of the job..."

**Article XXIX. MANAGEMENT RIGHTS**

"Section 1. The Union recognizes the right of the Employer...to make such reasonable uniform rules and regulations governing the conduct of its employees and conduct of its business, provided the same do not conflict with any of the terms of this agreement..."

**COMPANY RULES:**

**Time Cards Notice**

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

**Rules of Conduct**

**Examples of Causes for Immediate Discharge:**

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

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

"3. Leaving the work station without the approval of the supervisor."

**BACKGROUND-FACTS**

The grievant, employed since 2000, worked as a VSA, cleaning and gasing cars at the company main rental car location at the airport. The company also has an overflow lot 2 miles away in St. Paul where maintenance work is done on cars. Employees also park their cars at the St. Paul location and are transported to and from the airport via a shuttle van or individual cars if needed.

A number of the employees are Somalian. At the hearing the company provided an interpreter which was used for several witnesses including the grievant and co-worker F. The union also provided another employee as a back-up and double check interpreter.

The company also furnished copies of its rules of conduct which are known by all employees and given to them at time of hire. The details of the alleged discharged incident which occurred on Friday, April 4, 2008 were next described by the company.

#### The Company Case – The Discharge:

On that April 4 Friday, the grievant was working the 11:00 a.m. to 7:00 p.m. shift. The grievant's manager gave his description of events leading to the discharge. His office is by the long corridor adjacent to the work area with a window viewing the work area. At about 6:53 p.m. he encountered coworker F in the hallway and questioned where he was going. He noticed that he had two timecards in his hand. F replied that he was leaving work to go to the St. Paul lot since the shuttle was often late. The manager told him to return to work for the remaining time on his shift. As F left to return the manager noticed that he placed the two timecards on the top of the timeclock which was in the hall right by his office. He looked at them and saw the two cards were for F and the grievant, and placed them back on the timeclock. The manager then made arrangements for a transporter car to be available at 7:00 to carry F back to the St. Paul lot at the end of his shift. At about 7:00 the manager saw F returning and in the hallway told him to hurry up because he had a car waiting for him at the break room exit at the end of the hallway. As the manager tried hurrying F to the car he noticed that F paused a bit at the timeclock and then the manager heard two clicks from two timecards being punched. After F left with the transporter car the manager returned to the timeclock and the two cards were no longer on the top. He searched in the timecard rack and finally found the timecard of the grievant with the time of 7:01 p.m. punched in. The time card of F was not there and he apparently taken it with him since he was scheduled to work on Saturday at the St. Paul lot. He then checked the production schedule for the last car that the grievant had worked on which was at 6:30 p.m. He also checked and saw that no other employees were scheduled to check out at that time. During this encounter with F and his checking the records no other persons were in the hallway during that time. He went to the area to search for the last car worked by the grievant but could not find it anyplace. He also checked other employees and none had seen the grievant in the last 20-40 minutes. He then went with the lead VSA over to the St. Paul lot and there found the clean car last worked by the grievant. He also checked the security guard who had not seen the grievant and obtained from him F's timecard. The card showed the same check out time of 7:01 p.m., the same as that of the grievant. He then called his boss and related his findings who then advised that he call both the grievant and F and that he was suspending them. He did so. He told the grievant that he was suspended pending an investigation, saying that the grievant responded with who told on him. The grievant said he would like to talk with the union and the manager told him to contact the HR Manager on Monday or who would try to reach him. He did not mention what he was suspended for. He then e-mailed a memo to the various managers outlining that he had suspended the two for

time card fraud and relating the time on the two cards and finding of the last cleaned car at St. Paul.

On Monday, April 7, upon being advised and reviewing the situation, the HR manager called both the grievant and F to meet with them for further investigation. They refused and did not want to speak with him at that time saying they would speak with him at the grievance. He then recommended that both be terminated for time card fraud and the grievant unauthorized use of a vehicle and leaving the work station without authorization. His area manager approved and the HR manager sent the letter to the grievant advising that he was being terminated for violation of Hertz policy and/or procedures. At the later grievance hearing on April 15, both denied that F punched out the grievant timecard. The grievant admitted that he drove the clean car to St. Paul to pick up some personal belongings and drove a different car back to the airport and punched himself out.

The area manager verified the discussion at the grievance meeting. He also noted that normally a clean car is not driven from the airport to St. Paul. An exception would be when the airport is filled and St. Paul is used for overflow. He indicated employees are aware that they are not authorized to drive a car between locations without management approval.

The company next presented three VSA employees who verified the company rule that cars are not to be driven to the other location without management approval. One was the employee who accompanied the grievance manager to St. Paul and found the car that the grievant had last cleaned. He stated that he had not seen the grievant in the last 40 minutes of his shift. Another employee had not seen the grievant in the last 20 minutes.

In general, the several managers confirmed that employees well know the company rules which prohibit punching others timecards and driving company vehicles between locations without permission.

The Union Case: The union presented several employees as to their experiences. One a former transporter who quit testified it was common to see employees driving cars between locations. However, he said he honestly didn't know whether they had approval or not. Another, a union steward, knew it was against the rule to drive a vehicle for personal use, however, he did indicate occasions when employees drove a car between locations without authorization. However, the union would not allow him to give names to avoid possible disciplines. When questioned further on occasions he gave an example of when they are short of drivers and the VSA's just kind of jump in and help on their own initiative. Other occasions he cited where at the end of the shift when there is no shuttle nor manager around they might take a car back to St. Paul where their own cars are parked. But there are times when the managers give permission. They were aware of the rules prohibiting punching another's timecard and driving a car for personal use. Another VSA gave testimony that it was common where VSA's would drive a clean car from the airport to St. Paul, and at times bring a dirty car back. He cited occasions where his shift ends and there is no manager to ask. It was normal to drive a car from the airport to St. Paul to get his own car but he said if they are getting into trouble now they

won't do it anymore. If there is a manager around he would ask but most of the time on these shift end occasions there is no manager around.

The union president related what was stated by the parties at the later grievance meeting on the discharges. The grievant's manager stated that the grievant was terminated for time card fraud and having coworker F punch out his timecard. As the manager walked with F down the hallway for F to leave he heard two timecard punch clicks. His first statement was that when he returned from getting F a ride back to St. Paul, he pulled out and compared both timecards and that they were both punched at the same time. The union noted that this was inconsistent since F had taken the card with him to St. Paul to start work there Saturday morning. At the meeting the employer only gave the reason of time card fraud for the discharge and did not recite any other reason. The grievant stated that he punched his own time card and did not see any other person in the hallway. When the employer asked where he was the last 20 minutes of his shift, he stated he took a clean car to St. Paul to get his stuff and brought a dirty car back to the airport. The president supplied a diagram with measurements he had taken of the hallway. The hallway is 78 feet long with exits on either end. The time clock is about 27 feet from the door to the clean up work area and by the manager office and 51 feet to the exit door by the lunchroom at the opposite end where F picked up his ride. It was his opinion that anyone could enter from the clean up door, punch out, and then leave in about 5 or 10 seconds. He admitted that the company rules provide a violation for punching out another's timecard, using a company car for personal use without management permission and for leaving during work time without manager approval.

The union next presented coworker F for testimony with an interpreter. He denied punching out our grievant's timecard. He related that at 6:53 p.m. he picked up his timecard and was preparing to leave and drive back to St. Paul and punch out there. Instead the manager told him to get back to work. He then returned his timecard back to the slot and washed another car. At 7:00 p.m. he again picked up his timecard from the slot and went to the office asking for a shuttle. He didn't see any shuttle. The manager then came out of the office and as they both walked down the hallway F punched out his timecard. They went to the lunchroom door where the manager had stopped a car for F. F stated it took about a minute and a half from the time he left the door and got into the car which then left immediately. When he left the manager was standing outside the building close to the lunchroom window. F did not see the grievant at the time and did not recall if he saw him that day. He did recall seeing only 4 employees that day, two at the airport and two in St. Paul. He agreed the rules provide for termination for timecard fraud, driving a vehicle for personal reasons and leaving work without permission, but he explained that many times they are given permission or direction to pick up cars from St. Paul to keep busy with the emphasis that they should wash 32 cars a day. Frequently no managers are around and they have to use their initiative.

Next, the union presented the grievant for his testimony with the interpreter. He related his version of the incident. He scanned his last car at 6:30. It was dirty and took time to clean. He was ready to go home. At about 6:45 or 6:50 he left the airport driving his last cleaned car to St. Paul to pick up some personal belongings and then returned to the

airport with another dirty car. He then punched out at 7:01 p.m. at the airport. He did not see anyone else in the hallway at the time. He did not see any managers during his trip. At St. Paul he parked the clean car in the lot outside the administration building and it took several minutes to walk into the building for his stuff. At 10:00 p.m. at home that evening his manager called telling him he was suspended because he did not punch out. He told him he did punch out. On Monday he learned that he was suspended for a whole month. He then went to the union and signed a grievance. Later that day HR called him and told him to come to the office to talk. He replied that he cannot talk to him, that he signed a grievance with the union and HR could tell the union. That day HR sent him the letter that he was terminated. At the later grievance meeting he was told the reason he was fired because he had coworker F punch out his timecard which the grievant denied. When the company asked where he was at the time he related driving to St. Paul. The company then stated they had another case against him, driving the company car without permission. He admitted being aware of the company rules for termination and leaving the work station without management approval. He said nobody follows those rules. On driving company vehicle for personal use without permission he did not feel he violated that rule because he wasn't the driving the car at home he was only driving it to the St. Paul location for his belongings during work time.

Finally the union presented the testimony the local secretary-treasurer. He first got a call from the grievant that the two were suspended pending investigation. Later he received a call from the HR manager advising that two employees were refusing to be interviewed and were being terminated for timecard fraud, that the grievant had somebody else punch him out. The original grievance over the suspension was then changed to the termination. He related that the company rules are enforced differently with a perspective by each new manager. He acknowledged the rules regarding discharge for timecard fraud, driving a vehicle for personal use without permission, and leaving a work station without permission. But he noted in each case, the discipline depends upon the proof and the circumstances.

## **ARGUMENT**

The Company: In brief summary, the company argued the following main points in support of the discharge:

1. The grievant termination was consistent with the contract and the company rules. Article IX of the CBA states that no warning notice need be given in the case of dishonesty, using an employer's vehicle for personal use without permission, and walking off the job. The company's rules provide for termination for dishonesty, using a company vehicle for personal use without authorization, and timecard fraud.
2. The grievant was aware of these rules and grounds for termination, as were other employees.

3. The grievant clearly violated these provisions, constituting cause for his discharge.
4. The grievant story and claims are without merit. Both time cards were punched at 7:01 p.m. and neither the grievant nor F saw each other. No one saw the grievant during the last 20 minutes or more of his shift. There were 8 VSA's working at the airport at the time. It is unrealistic that the grievant returned to the airport without encountering anyone. It would be impossible to drive to St. Paul, pick up his belongings and then return to the airport with another vehicle within the time claimed to punch out at 7:01 p.m.
5. Both the company and the union witnesses recognize the company's applicable rules which provide for termination if violated.
6. The testimony of the company witnesses was credible. The testimony of the grievant was not credible. There was no evidence of any ill will or motive for the grievant by his manager. However the testimony of the grievant was not credible. The grievant had a compelling incentive to deny the charges against him. The testimony of both the grievant and coworker F completely lack credibility. The grievant's response of "who told on me?" is proof of his wrongdoing.
7. The termination is consistent with arbitral precedent. The rules are clear and acknowledged by the grievant and other employees. There were no mitigating factors presented by the grievant. The company cited other decisions which it claimed to be supportive. The company requests that the discipline remain, and the grievance denied.

The Union: In brief summary, the union argued the following main points in support of its claim that the discharge was improper with lack of just cause.

1. The employer has the burden of proof. The appropriate standard is beyond a reasonable doubt. The evidence is clear that the reason for the discharge was the allegation of timecard fraud, the grievant had F punch out his timecard. That was the claim right into the later grievance meeting. It was only after the grievant related driving to and returning from St. Paul, that the company mentioned that it then had another case against him. The claim of the company at the hearing that he was discharged for the additional reason of leaving the work station and driving the car for personal use is inconsistent with the facts.
2. When HR telephoned the grievant on April 7 the grievant stated that he had filed a grievance and did not want to speak without the union. In accord with the U.S. Supreme Court decision, the grievance has the right to have union representation during an investigation interview.

3. The grievant's manager is not credible. There were discrepancies in his testimony. He first stated that at the grievance meeting that he compared both timecards at the airport timeclock. On another instance his memo claimed finding the two timecards next to the timeclock, but his testimony was on top of the timeclock. Further, it's incredible that the manager would not have stopped F after seeing two timecards and then the two clicks and not have confronted F about the matter. Likewise incredible is that F would have left the two timecards on top of the timeclock when he returned to work.
4. The time and distance of the timeclock and the hallway doors rendered reasonable that the grievant could well have come in and punched out his timecard while the manager was occupied with getting the car for F. With knowledge of the policy, why would F take a chance at punching out the timecard of the grievant when they only knew each other through work and did not socialize.
5. The charge of unauthorized use of the Hertz vehicle is not supportable. In the mind of the grievant he was not using the car for personal use but was still working between Hertz locations. He did not realize this could result in discipline. He related it was common for the company to have employees go to St. Paul and pick up cars. The employees have to keep to working to wash the standard of 32 cars. Many times the manager is not around.
6. The grievant was not given required notice. The contract recites that the discharge must be by proper written notice of the complaint to the employee. His discharge letter only stated that it was for violation of Hertz policy and/or procedures and did not recite any further specific reason or violation. It was not until the April 15 grievance meeting that the grievant was informed. Also, the grievant was first told that he was suspended, and later discharged without any further investigation.
7. The union cited other decisions it claimed to be supportive.
8. It respectfully requests that the grievance be sustained and the grievant be reinstated with full back pay.

### **DISCUSSION-ANAYLSIS**

Upon extensive analysis of the full case evidence and arguments, I have come to the conclusion that the discharge was not justified, based upon the following reasons and factors.

1. The main issue in this case whether the timecard fraud took place as alleged by the company. This in turn involves the credibility issue of the manager versus the denial of the grievant and coworker F. Related are the additional company accusations leaving work early and driving the car to St. Paul without

authorization. Further, do these accused violations constitute just cause for the discharge of the grievant?

2. The applicable rules in context with the contract clearly provide that these three types of conduct or reasons are violations subject to discharge. The evidence is clear that all employees including the grievant were aware of these rules.
3. On the credibility issue, I find that the manager was convincing and credible in his description of the essential events and determination that the timecard fraud occurred by F punching out the timecard of the grievant. There was no motive nor reason shown why he would have fabricated such a story and his evidence is supportive.
4. In contrast, I do not find that the grievant and F are credible in their denial. It is implausible that the grievant could have returned to punch out his timecard within the same minute as F, without seeing any other employees, and returning within the short time frame from his trip to St. Paul for his belongings. Nor is F persuasive in his claim that the manager stood outside the hallway and for the time F claimed it took from leaving the door and getting into the car.
5. However in spite of these findings of credibility, I do not find that they fully constitute just cause for the discharge based upon the following tainted factors in the company case. A main factor is that the company made its decision for discharge after the grievant and F wanted the union present during any investigation talk and the grievant stated he would meet the company with the union grievance meeting. The company did not accommodate this request or defer its investigation, but instead immediately decided for the discharge. This can be regarded as retaliation for the request of the grievant for the union. The specific precipitation for the discharge was the statement of the grievant for the union.
6. At the hearing the company gave three reasons for the discharge of the timecard fraud, leaving work early, and driving the car to St. Paul. However in the initial report of the manager, the company call to the union, and the company reason given at the grievance meeting was the timecard fraud. It was only at the grievance meeting after the discharge, that the grievant explained and admitted that he left work early and drove the car to St. Paul. These two additional reasons arose only after the discharge and were not specified at the time as reasons for the discharge. That did not become clear until after the matter was discussed for arbitration.
7. In summary, I find that the manager was credible and that the grievant was not credible in his denial. While the grievant did commit the items of misconduct in violation of the rules, the precise cause of the discharge was the request of the grievant to have the union present in meeting with the company such as the grievance meeting. The two additional reasons given by the company were not

included in and at the time of the discharge decision. As an appropriate remedy, I determine that the discharge is to be revoked and reduced to a suspension.

**DECISION-AWARD**

DECISION: The union grievance is sustained that the discharge lacked just cause and should be remedied.

AWARD: The company is directed to revoke the discharge and reduce the penalty to a suspension for the period of the month from April 4 through April 30, 2008. The company further shall reimburse the grievant for back-pay from May 1, 2008 with the restoration of benefits appropriate. The back pay shall be reduced by any interim wages or unemployment benefits the grievant may have received in the interim due to the discharge. The arbitrator will retain jurisdiction should there be any question or issue over implementation of this award.

Dated: February 9, 2009

Submitted by:

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Daniel G. Jacobowski, Esq.  
Arbitrator