

**In the Matter of Arbitration between
International Brotherhood of
Teamsters, Local #1145 [Ahn Trinh]
And
Honeywell International, Inc.**

Opinion and Award

FMCS Case number 080519-56236-3

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of International Brotherhood of Teamsters, Local #1145

Katrina E. Joseph, Esq.

Anderson, Helgen, Davis & Nissen, LLC

Minneapolis, Minnesota

On behalf of Honeywell International, Inc.

Pamela R. Galanter, Esq.

Frank Madden and Associates

Plymouth, Minnesota

JURISDICTION

In accordance with the agreement between Honeywell International, Minneapolis, Minnesota, and International Brotherhood of Teamsters, Local #1145, effective January 31, 2007; and under the jurisdiction of the United States Federal Mediation and Conciliation Service, Washington, D.C., the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on June 17, 2009, in Coon Rapids, Minnesota. Post-hearing briefs were filed by the parties on July 17, 2009. The decision was rendered by the arbitrator on August 21, 2009.

ISSUE AT IMPASSE

The parties agree that the issue is: whether the employer had just cause to discharge the grievant; if not, what is the appropriate remedy? [Post-hearing brief of company at 1; Post-hearing brief of Union at 5].

POTENTIALLY RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 4 – MANAGEMENT RIGHTS

Section 1. The Company retains the full and unrestricted right to assign, direct, operate and manage all manpower, facilities and equipment; to direct, plan and control Company operations and services; to establish functions and programs; to make and enforce rules and regulations; to establish work schedules and assign overtime; to contract vendors or others for goods and services; to hire, recall, transfer, promote, demote, employees for good and sufficient reason; to discipline or discharge employees for just cause; to lay off employees because of lack of work or for other legitimate reasons; to introduce new and improved operation or production methods; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; and to perform any inherent managerial function not specifically limited by this Agreement.

ARTICLE 7 – HOURS

Section 6. Each employee who is scheduled to work more than four hours per day shall normally have an unpaid meal period of thirty (30) minutes between the 4th and 6th hour of work. Each employee shall have one fifteen (15) minute rest break between the 2nd and 3rd hour of work and one fifteen (15) minute rest break after the 6th hour of work. The scheduling of employee rest and meal periods is at the discretion of the Company. Employees working on a Saturday or Sunday may choose to work eight (8) hours without a meal period however normal rest periods will be provided.

ARTICLE 18 – GRIEVANCES

Step 4. ...The authority of the Arbitrator shall be limited solely to the determination of the written issue(s) as submitted by the parties, provided that the Arbitrator shall refer back to the parties without decision any matter not a grievance under Section 1 of this Article or which is excluded from arbitration by the terms of Section 3 herein. The arbitrator shall have no power to add to, or

subtract from, or modify, any of the terms of this Agreement, or any agreement made supplementary hereto.

ARTICLE 22 – LAYOFF, TRANSFER AND DISCHARGE

Section 8. The Company shall have the exclusive right to discipline, suspend, or discharge employees for just cause. In case of a discharge, reasonable notice shall be given to the Union prior to the discharge.

HONEYWELL FACTORY RULES & POLICIES, Revised June 1, 2007 [aka Red Book]

LEAVING THE DEPARTMENT AND/OR BUILDING DURING WORKING HOURS

Employees may not leave their department area during working hours without the express permission from their Supervisor, except as follows:

1. In case of accident or illness where seeking permission is not practical.
2. Employees whose regular duties require them to leave their department and/or building.
3. Upon notification to and approval from their Supervisor, recognized employees who hold Union positions may leave to conduct legitimate Union business providing such absence does not unreasonably interfere with the normal operation of the departments. Requests for Union business leave shall not be unreasonably denied.
4. During break periods, employees may leave their department area.
5. During unpaid lunch periods, employees may leave both the department area and the facility's property.

TIMEKEEPING

Employees shall not:

Clock in more than 15 minutes before the start of the shift.

Clock out more than 15 minutes after the end of the shift unless a supervisor has authorized overtime.

Work longer than their regularly scheduled shift without the specific permission of their Supervisor.

Work any time that is not reported on the electronic time collection system or without permission from their Supervisor.

Falsify timekeeping records for themselves or others. Each employee must wear their own badge and shall not ask or allow others to wear them in or out. Such

falsification shall be deemed both a violation of this policy and theft subjecting the employee to elevated discipline up to, and including, discharge.

ACTIONS NORMALLY RESULTING IN DISCHARGE IRRESPECTIVE OF CURRENT DEMERIT STATUS INCLUDE, BUT NOT LIMITED TO:

- Willful and malicious damage to Company property or that of others
- Stealing property belonging to the Company or others
- Committing an overt act of violence such as the striking of another
- Intentionally falsifying employee records or committing payroll fraud
- Providing false testimony during a company investigation
- Second offense Drug and Alcohol policy violations
- Conviction of a crime involving moral turpitude
- Extremely egregious safety violations such as:
 - Bringing a weapon into a company facility
 - Failure to properly lock-out/tag-out equipment per protocol
 - Knowingly place oneself or another in physical danger
 - Concealing a safety hazard or unlawful chemical release
 - Bypassing or removing safety or environmental safeguards without authorization

FINDINGS OF FACT

1. On August 9, 2007, Ms. Ahn Trinh an Electronic Troubleshooting Technician at the Honeywell Coon Rapids facility was handed a “Notice of Discharge.” The Notice of Discharge stated in its entirety.

Ms. Anh Trinh
Assembly, Aerospace – Coon Rapids
Hand Delivered

August 9, 2007

NOTICE OF DISCHARGE

Upon completion of a formal investigation and after discussion with you and your union representative such that you could offer refuting or mitigating evidence on your behalf, you are hereby discharged from employment with Honeywell.

This discharge is effective immediately and is based upon your violation of the Minneapolis Factory Human Resources O-1 Policy

- Intentionally falsifying employee records or committing payroll fraud

Via the evidence gathered, we conclude that you failed to clock out of 3G on Monday, August 6, 2007 and Wednesday, August 7, 2007 when you left the building for two hours on each day. On Wednesday, August 8th, you were observed by the security guard leaving the building around 5:15pm. You wanded back in at 7:15pm. During this two hour period, you were being paid by Honeywell. On Monday, August 6th, you wanded out of the building at 5:19pm and wanded back at 7:19pm, again you left work while you were still being paid by Honeywell. On Thursday, August 9th, your supervisor went to get you on floor during your work time and you were not there. Your supervisor found you eating your lunch in your car in the parking lot right after you just clocked in. Therefore, because you falsely claimed you were at work and were to be paid for working when you were not; you are being discharged effective immediately.

A letter concerning your benefits and other separation data will be sent to your home address from Honeywell's corporate offices.

/S/ Jim Hargreaves
Supervisor
Cc: Personnel file
Supervisor
Labor Relations

2. Honeywell International, Inc. is a diversified technology and manufacturing corporation, serving customers worldwide with aerospace/avionics products and services; control technologies for buildings, homes and industries; automotive products; turbo chargers; and specialty materials. Approximately 1,200 of the Company's employees in Minneapolis are unionized. The unionized production employees are members of the bargaining unit represented by International Brotherhood of Teamsters, Local 1145.

Ms. Ahn Trinh was employed fulltime by Honeywell as an Electronic Troubleshooting Technician at the Coon Rapids, Minnesota facility. Her scheduled work hours were 12:00 to 8:30 p.m. Her supervisor for three years prior to her discharge was Jim Hargreaves, Production Supervisor. Employees under Mr. Hargreaves supervision are responsible for testing, troubleshooting and certification of all gyros and subnavigation systems used in inertial reference units for commercial airlines. They also do repair work to recertify the inertial reference units. Ms. Ahn Trinh was responsible for testing sub-assemblies and verifying that all customer requirements were met. Her responsibilities required her to review technical data to ensure that all the specifications of the airlines were met. The various airlines have different specifications

based on their particular needs. It is critical for the work to be accurate.

3. Ms. Trinh came to the United States from Vietnam in 1998. She began working at Honeywell in September 2000, and was employed in the Assembly Department. Ms. Trinh went to Hennepin Technical School during her employment with Honeywell, paid for by Honeywell and earned an associate degree in Applied Science, which allowed her to bid into a labor grade OA Technician position in Honeywell's Golden Valley facility. Eventually, Ms. Trinh was able to bid into a labor grade OD Technician position and was transferred to Honeywell's Coon Rapids facility. At the time of her discharge, Ms. Trinh was an Assembly Electronics Troubleshooter on the second shift, with scheduled hours of 12:00 p.m. to 8:30 p.m. A review of Ms. Trinh's Employee Transfer Reports show that she was consistently ranked as "good" and "exceptional" by her supervisors. [Union exhibit #8].

4. On August 9, 2007, when Mr. Hargreaves arrived at work there was a message for him from the second shift security guard. The message indicated that during the previous evening Ms. Ahn Trinh left the building at 5:15 p.m. and did not return until 7:15 p.m. Mr. Hargreaves checked Ms. Trinh's time records by assessing the 3G electric timekeeping/payroll system for August 8th. Instead of a punch clock, employees "wand" their identification badge at the time clock when they report to work and leave work, and the 3G system reports the hours for which each employee receives wages. Ms. Trinh did not show she had wanded out for the two hours she was gone on August 8. Mr. Hargreaves then reviewed Mr. Trinh's records in the 3G system for several days prior to August 8 and found she had not punched out during her shift on any of these days.

Because the 3G system was down on August 6, 2007, employees were required to sign in and out on the Tru Track Clock Contingency Log [Employer Exhibit #3]. Ms. Trinh signed in at 12:00 p.m. and signed out at 9:30 p.m. Mr. Hargreaves checked the Door History Report maintained by security. This report reflects when employees wand into the building and wand out of the building at the security door. The security door is locked automatically from 6:30 p.m. to 5:00 a.m. on weekdays and on weekends. In order to enter or leave the building during these hours, an employee must wand in using his/her identification badge.

The Door History Report showed that on August 6, 2007, Ms. Ahn Trinh left the building at

5:19:24 p.m., returned to the building at 7:19:48 p.m. and left the building again at 9:25:48 p.m. [Employer exhibit #4, last page]. The Door History Report shows that on August 8, 2007, Ms. Trinh entered the building at 7:12:22 p.m. When Ms. Trinh left the building at 5 p.m. on August 8th, 2007, the security door was unlocked and it was therefore not necessary for her to wand out. The building security video confirmed that Ms. Trinh left the building at 5:00 p.m. Continuing his investigation, Mr. Hargreaves reviewed the video from the security cameras at the entrance into the building and various locations in the parking lot.

The video tape shows Ms. Trinh leaving the building on August 6, 2007 at 5:17:20 p.m., walking to her car, driving off the premises and turning right on to Evergreen Boulevard. At 7:15:02 p.m., Ms. Trinh returned and entered the building. [Employer exhibit #6- the video is automatically time stamped. The time stamp on the video, the time on the Door History Report and the time on the 3G System are based on three different systems, and the times on these different systems are not synchronized. The times on these systems vary by only a few minutes]. The security video also shows Ms. Trinh leaving the building on August 8, 2007, at 5:00 p.m., pulling out of her parking space and driving away, returning to the Company parking lot and pulling into a parking space at 7:02:22 p.m., beginning to walk from her car to the building at 7:07:47 p.m. and entering the building at 7:08:26 p.m.

5. Mr. Hargreaves and another production supervisor, Terry Hanson, met with Jamie Bell, HR Manager, on August 9 and decided it was necessary to meet with Ms. Trinh to find out from her what was going on. Around noon on August 9, 2007, Mr. Hanson verified through the 3G System that Ms. Trihn had punched in for the day. Mr. Hargreaves went to Ms. Trinh's work area to let her know they wanted to meet with her. She was not there and her co-workers reported they had not seen her yet that day. Mr. Hargreaves went to the main door and asked the security guard whether he had seen Ms. Trinh. The security guard reported that Ms. Trihn punched in and then returns to her car. Mr. Hargreaves went out to the parking lot at approximately 12:20 p.m. and saw Ms. Trinh sitting in her car. He walked up to the car and observed her eating lunch. He tapped on the window. Ms. Trinh rolled down the window and Mr. Hargreaves asked her why she was sitting in her car after clocking in. Ms. Trinh replied she was going to have lunch before beginning work. Mr. Hargreaves told Ms. Trinh that he and Mr. Hanson wanted to meet with her in his office.

The meeting in Mr. Hargreaves office began about five or ten minutes later at approximately 12:25 or 12:30 p.m. Mr. Hargreaves told Ms. Trinh they needed to understand why she was eating in her car at the start of her shift after punching in. Ms. Trinh asked to have a Union steward present. Mr. Hargreaves and Mr. Hanson waited until Union Steward Terry Halvorson came to Mr. Hargreaves' office. After Mr. Halvorson arrived, Ms. Trinh admitted leaving the building on August 8 to meet with the DISH repairman for her television. She also claims she was having trouble with her badge and said she was having personal problems at home. She asked to be "given a break".

6. Mr. Hargreaves met with HR Manager Bell and recommended that Ms. Trinh be terminated for violation of Company rules – 3 times all in the same week. [Post-hearing brief of Company at 6]. The basis for the immediate discharge was "intentionally falsifying employee records or committing payroll fraud." [See Joint exhibit #2 under Finding of Fact #1 above].

7. Ms. Trinh testified at the arbitration hearing that she was in the midst of a personal crisis. She was a single woman pregnant with twin girls. She was suffering from a brain tumor and depression. Ms. Trinh testified that because of cultural reasons she was unable to share any of these difficulties with her co-workers, Mr. Hargreaves or any other supervisor.

Ms. Trinh testified that on August 6, 2007 she started work at the beginning of her regularly scheduled shift but was unable to clock in or out because the Company's time keeping system was not working. At approximately 5:20 p.m., she left the Company premises and returned at approximately 7:20. She testified that when she left the Company premises she went to a local gas station, sat in her car in the parking lot and cried. When she returned to Honeywell, she testified she filled out a "Time Off Verification/Request Form" [Employer exhibit #2] and left it on her group leader's desk for processing. Ms. Trinh also testified she treated one hour of the time she was not at Honeywell as her combined rest breaks and lunch break, then worked an additional hour past her normal 8:30 p.m. shift to make up for the second hour that she did not work. Ms. Trinh testified that Mr. Hargreaves told her he was unable to find her request form when he looked for it three days later.

Mr. Trinh stated that on August 8, 2007 she again clocked in to Honeywell to start her first shift. At approximately 5:15 p.m. she left the Company premises and returned about 7:15 p.m.

She did not recall what she did or where she went that day, but acknowledged that the Company's exhibits were accurate, and that she did, in fact, leave the facility.

Ms. Trinh further testified that on August 9, 2007, she clocked in and went to her car to eat her lunch. Ms. Trinh testified that while her scheduled lunch break is normally 7:00 p.m., her shift is flexible and that she could take her break much earlier if her workload permitted and she wanted to do so. Ms. Trinh testified she did not falsify her time records and did not commit payroll fraud.

Ms. Trinh and the Union essentially contend:

- a. Ms. Trinh did not commit dischargeable misconduct. She was not on notice that her actions could result in discharge. Former Area Chief Union Steward Gary Dahlheimer testified that in his 32 years of service to Honeywell, he has frequently seen workers at the Coon Rapids facility leave Company premises during breaks and lunch periods. He testified that the Coon Rapids facility as a whole and the second shift particularly, has a more relaxed atmosphere than other company facilities. Because of the highly technical, difficult nature of their jobs, workers there are given freedoms not allowed elsewhere. Mr. Dahlheimer further testified that based upon his own observations of the conduct spawned by these freedoms, he believes it was reasonable for Ms. Trinh to assume that it was permissible to leave the Company premises, to stack her break periods, and to make up any extra time spent on the break at the end of her shift. Ms. Trinh did not hide her comings and goings from the Honeywell property, always using the door by the manned security desk, despite the availability of other unguarded entrances and exits. She wandered in and out of the door despite the fact that on several occasions the door was not locked. She clocked in and went to her car despite the fact that her supervisor was present and working at the time. These are not the furtive actions of someone who believes they are committing misconduct and are trying to avoid detection; rather these are the actions of someone who believes she has nothing to hide and is doing nothing wrong. Ms. Trinh was acting appropriately, and did not know her actions constituted misconduct.
- b. Honeywell did not conduct a thorough and full investigation.
- c. Ms. Trinh was treated differently from similarly situated Honeywell employees without good reason. While the factory rules and policies may permit the immediate discharge

of employees who engage in conduct similar to Ms. Trinh's, in practice, Company's rules do not require discharge in all such cases. Mr. Dahlheimer's un rebutted testimony was that, on at least one occasion, Honeywell permitted a worker to return to her position under facts more egregious than those in this case. Mr. Dahlheimer testified that there was an employee, a factory administrative assistant, who used her job-related access to the Company timekeeping system to knowingly and intentionally alter and falsify the number of hours she worked. Notwithstanding this particularly serious breach of trust, Honeywell returned the employee to that very same position with a last chance agreement. Consequently, Ms. Trinh was not treated equally to other employees.

- d. The penalty imposed by Honeywell is not reasonably related to the severity of Ms. Trinh's conduct. The employer has a progressive discipline policy which ranges from verbal reprimand, written reprimand, 1-4 day suspension, 5 or more days suspension and discharge. Honeywell completely ignored progressive discipline and discharged Ms. Trinh. The Penalty imposed by Honeywell is simply disproportionate to the seriousness of Ms. Trinh's actions, i.e., unintentionally getting paid for time she did not work.

The Union basically contends that neither progressive nor corrective discipline was involved; Ms. Trinh can be reabsorbed into the workforce; and, given her tenure and past unblemished record, Ms. Trinh should be returned to her job.

8. The essential contentions of the company are:
 - a. Ms. Trinh violated well-established and clearly communicated work rules regarding work hours and timekeeping. Ms. Trinh's violations are identified in the published rules and policies as one of the most serious offenses for which an employee may be discharged regardless of prior discipline.
 - b. Ms. Trinh committed the conduct for which she was discharged. The reason employees are required to punch out when they leave the premises is primarily a safety issue. The Company must know who is in the building and where they are in the event of an emergency or fire.
 - c. Employees who need or want time off from work are required to fill out a Verification/Request form and submit it to their supervisor who either approve or

deny their request. Employees are not relieved of their responsibility when a supervisor is not on the premises, for example, during the second or third shift. At those times, employees are still required to complete their Verification/Request form and leave it in their supervisor's in-box for approval/denial the following day, or give it to their group leader who in turn will submit it to the supervisor. Ms. Trinh claims she filled out a Verification/Request form on August 6 and put it on the desk of her group leader. No such form or copy of a form was produced even though the Union looked for the Verification/Request form on August 9. The Company has established by a preponderance of the evidence that Ms. Trinh committed serious violations of established work rules.

- d. The penalty of discharge is appropriate. Ms. Trinh was discharged for "intentionally falsifying employee record or committing payroll fraud" an offense that will normally result in discharge regardless of an employee's prior discipline record. There is no question that Ms. Trinh left the premises during her scheduled work hours. She chose to leave between 5 and 5:15 p.m. on August 6 and 8. This is a time when a number other employees leave at the end of their workday. She also knew Mr. Hargreaves was gone for the day prior to 5 p.m. The security video on August 6 shows that Ms. Trinh went into the bathroom and changed out of her Capri pants and into a skirt before she left the building, suggesting there was somewhere she planned to go or someone she planned to meet during her two hour absence from her scheduled work hours. Ms. Trinh deliberately clocked in and out only at the beginning and end of her workday. Employees are required to wand out or sign out on the Tru Track Clock Contingency Log if they leave the building during their workday. Ms. Trinh did not comply with this requirement on August 6. Further, although she left the building/premises for two hours, she "made up" only one hour. The Union contends Ms. Trinh combined the two 15-minute paid rest breaks and the 30-minute unpaid lunch break provided by the labor agreement. The Union's claim is without merit for several reasons. First, employees are not allowed to combine their two rest breaks except with supervisory approval only when a deadline has precluded the employee from taking one of the breaks. Mr. Hargreaves did not give Ms. Trinh permission to combine her two 15-minute rest breaks. Second, employees are never allowed to

- e. The Company's rules have been consistently enforced. No facts were presented by the Union to support its broad assertion that other employees have engaged in the same conduct as Ms. Trinh did on August 6, 8 and 9, 2007. Mr. Dahlheimer did testify that a factory administrative assistant had been returned to work for engaging in similar conduct as Ms. Trinh. While this is true, a negotiated settlement took place between a business agent for the Union and a former Labor Representative for the Company who had a close personal relationship at the time of the settlement. They were dating each other and became engaged to be married. The Company has since hired Ed Merriam, Vice President of Labor and Employee Relations, and Chuck Bengtson, Labor Relations Manager-Corporate, who are instilling professionalism in the conduct of labor relations. Conflicts of interest, collusion and unprofessional dealings are not tolerated. The grievance settlement struck between the Union business agent and the former Labor Relations Representative for the Company "is part of the Company's dark and distant past and is not representative of the manner in which the Company has done business since 2005." [Post-hearing brief of Company at 14].
- f. There are no factors mitigating the penalty of discharge. When Ms. Trinh was given an opportunity to explain her conduct on August 9, 2007, with a Union Steward present, the reasons she gave for leaving work for two hours on August 6 and 8 were: (1) she had to meet the DISH satellite television repairman, (2) she was having trouble wandering in and out with her badge, (3) she was having trouble with her boyfriend, and (4) she was trying to sell her house. None of these are acceptable reasons for intentionally leaving the building/premises during her work hours without clocking out. At the arbitration hearing, Ms. Trinh presented a number of different reasons for her conduct: (1) she was pregnant, (2) she was taking medication, (3) she went to the gas station took medication and passed out, (4) it slipped her mind, (5) she had high prolactin levels – a pituitary hormone that stimulates lactation after childbirth, (6) she had a brain tumor and (7) she had depression. All of these reasons were raised for the first time at the arbitration hearing, nearly two years after her

discharge. No documentation of any medical provider was offered into evidence at the arbitration hearing to substantiate the claims that she was taking medication, had high prolactin levels, passed out in her car at the gas station, had a brain tumor or depression. There was no evidence to support a claim that even if Ms. Trinh was diagnosed to have these various conditions, they would have caused or required her to deliberately leave work for two hours on August 6 and 8 without requesting permission or clocking out. There is no evidence to support a claim that any of these conditions, if they existed, caused or required Ms. Trinh to eat lunch in her car at the start of her shift on August 9.

- g. In the present case, the Company submitted documentation of Ms. Trinh's wandings at the security door for approximately 90 days prior to and concluding with August 9, 2007, the day of the discharge. [Employer exhibit #4]. This information was obtained by the Company between August 9 and September 7, 2007, the date of the step two grievance meeting. This documentation was timely presented and discussed with the Union during the step two grievance meeting and was referenced in the step two grievance response. The evidence shows approximately 15 other dates on which Ms. Trinh left work during her shift without permission and without clocking out and received pay for the time she was not at work. This documentation shows a serious pattern of misconduct and supports the Company's discharge decision.

Despite the sympathetic picture the Ms. Trinh displayed at the arbitration hearing, this case must be decided on its facts. The Company's rules and policies apply to Ms. Trinh and she is required to comply with the Company's rules and policies notwithstanding cultural differences that may exist. The Company expects all of its employees to accurately and truthfully report their hours of work. The Company expects all of its employees to provide a full days work for a full days pay. The Company must be able to trust that employees are working when they are on the clock and the Company must be able to trust that employees are following the rules even when their supervisor is not present. The Company has met its burden of proving just cause for the termination. Ms. Trinh and the Union admit that she left work for two hours on August 6 and again on August 8 without permission and without clocking out. On August 9 she again left the building without permission to

eat lunch and was found by her supervisor in her car in the parking lot. Her conduct was deliberate, and constitutes falsification of employee records or commission of payroll fraud. Ms. Trinh's conduct is so serious that it justifies termination.

DECISION AND RATIONALE

Ms. Trinh, the Union and the Company agree that Ms. Trinh left work for approximately two hours each day on August 6 and August 8, 2007, while remaining on the clock. All agree that on August 9, 2007, she clocked in and went immediately to her car to eat lunch.

The Company alleges that each of these transgressions prove by a preponderance of the evidence that Ms. Trinh was guilty of "intentionally falsifying employee records or committing payroll fraud." [See Joint exhibit #2, Finding of Fact #1-Notice of Discharge].

Ms. Trinh and the Union contend that she neither "intentionally falsified" nor "committed payroll fraud" on any of the three dates in question. She argues that she made up the hours, she flexibility when to take lunch, and that she filled out a "Time Off Verification/Request Form" (which was not found) and gave it to a team leader by placing it on her desk. Ms. Trinh and the Union also contend that another employee who was guilty of more egregious conduct was put back to work. The Company answers that situation was due to a serious conflict of interest between the Union representative and the management representative, i.e. they had a romantic relationship, which eventually led to marriage.

The Company further contends that it went back through its records and found that on 15 previous occasions in the 90 days prior to August 9, 2007, it found that Ms. Trinh had left work 15 times without permission. The Company says this proves a serious pattern of misconduct which proves the intentional falsifying of employee records and the committing of payroll fraud.

The question that needs to be answered is: has the Company proven by a preponderance of the evidence that Ms. Trinh was guilty of "intentionally falsifying employee records or committing payroll fraud" on August 9, August 8 and August 6, 2007?

The Company has shown that Ms. Trinh left the department and/or the building during working hours in violation of Honeywell Factory Rules & Policies. [Employer exhibit # 1]. "Employees may not leave their department area during working hours without express permission from their supervisor," with certain exceptions which were not applicable in Ms.

Trinh's case. There are both safety and security concerns surrounding the need for employees during the times they have clocked in to keep their supervisor informed of times they might be leaving. The Company has proven by a preponderance of the evidence that Ms. Trinh on at least three occasions left the building during working hours without the express permission of her supervisor. [August 9, August 8 and August 6, 2007]. On August 9 when confronted with these facts Ms. Trinh gave a series of excuses only one of which was proven at the arbitration hearing i.e. she was pregnant. The evidence the Company introduced at the arbitration hearing that Ms Trinh left 15 times in the previous 90 days before August 9, 2007 was uncontested by Ms. Trinh.

She certainly faced a personal crisis during that time. There is no question she was pregnant and single. She presently has young twins. She testified her culture did not permit her to explain her pregnancy to her supervisor or anyone else. Ms. Trinh and the Union have proven she was facing a difficult and painful personal crisis during this period of time. Prior to the 90 days before August 9, 2007 Ms. Trinh's work record was quite good. She received good evaluations and was promoted into an important position. Essentially she was a good and capable employee. But when she faced a personal crisis she began a series of actions which became very problematic.

On examination of the evidence, Mr. Hargreaves and the Company officials saw her actions as "intentionally falsifying employee records or committing payroll fraud." The evidence showed that she broke the Honeywell Factory Rules & Policies on August 6, August 8 and August 9, 2007. The Company also placed into evidence, uncontested by Ms Trinh, that she probably did so on 15 occasions 90 days before August 9, 2007. The Company was justified in terminating her.

But, should the mitigating factors allow for a lesser penalty? "In the absence of a contractually specified penalty or [a] clear limitation on arbitral discretion, both arbitrators and courts agree that the arbitrator may reduce the penalty imposed by management." Elkouri & Elkouri, *How Arbitration Works, Sixth Edition* (BNA 2003) at 960 citing *The Common Law of the Workplace: The Views of Arbitrators* 349 (St. Antoine ed., BNA Books 1998. Arbitrator Kanner in Caro Center, 104 LA 1092 (1995) stated: " Given the myriad of situations and the volume of cases where such penalties have been expunged, modified, or sustained, one fact is clear. Each case can be differentiated by its particular facts so as to justify the Arbitrator's conclusion. In my opinion, the bottom line followed by the majority of Arbitrators is that, where

the discipline/discharge appears unreasonable in light of all the facts, the Arbitrator has the authority to modify or vacate it.” It is clear from Ms. Trinh’s testimony that she is deeply sorry for her behavior. The crisis she faced led her to behave in highly uncharacteristic ways. Her past work record shows she can be a valuable employee. She put her job and her future at risk by violating an important Factory Rule & Policy concerning being in the building and not leaving without permission from a supervisor and then lying about it. Prior to this personal crisis, Ms. Trinh had an unblemished record. Her excellent work history (until her personal crisis), education, skills and past performance permit this arbitrator to mitigate the penalty of termination. I do not lightly put aside management’s decision to terminate Ms. Trinh. But under the circumstances of this case, Ms. Trinh is reinstated to her position without back pay. The Company was justified in seriously disciplining Ms. Trinh for her misconduct. But there were also valid questions raised by the Union concerning the degree of flexibility in taking lunch, the combining of the 15 minute break periods with her lunch, the lost “Time Off Verification/Request Form”, and the past “freedoms” allowed to employees at the Coon Rapids Honeywell facility. Today, Ms.Trinh and the other workers certainly must understand, as the Company stated in its Post-hearing brief, that such laxity “is part of the Company’s dark and distant past and is not representative of the manner in which the Company has done business since 2005.” [Post-hearing brief of Company at 14]. The penalty of termination is modified to long term suspension from August 9, 2007 to August 30, 2009 without back pay or benefits. Ms. Trinh will be returned to her job on August 31, 2009 with seniority from the date of her original employment. This decision is premised on: 1) mitigating circumstances i.e. her personal crisis, which helps explain Ms. Trinh’s behavior and actions and 2) Corrective Discipline - progressive discipline will allow her to return to work and be the good employee she was in the past before her personal crisis. The long term nature of the discipline being imposed i.e. suspension without pay and benefits for over two years, is severe and proper under the facts of this case.

August 21, 2009

Date

Joseph L. Daly

Arbitrator