

**IN THE MATTER OF ARBITRATION  
BETWEEN**

**International Brotherhood of Teamsters,  
Local Union 974 [MahamoudAbdi]**

**OPINION AND AWARD**

**FMCS Case No. 091125-51706-3**

**And**

**The Hertz Corporation**

**ARBITRATOR**

Joseph L. Daly

**APPEARANCES**

On behalf of Teamsters Local 974

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On behalf of The Hertz Corporation

Jeffrey P. Pegula, Esq.

The Hertz Corporation

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**JURISDICTION**

In accordance with the agreement between the Hertz Corporation and International Brotherhood of Teamsters Local, Union #974, May 1, 2008-April 30, 2013; and under the jurisdiction of the United States Federal Conciliation and Mediation Service, Washington, D.C., the above grievance arbitration was submitted to Joseph L. Daly on July 9, 2009 (in Minneapolis, Minnesota at the FMCS Office); July 21, 2009 (St. Paul, Minnesota at Hamline University School of Law); July 28, 2009 [by telephone

conference]; and July 29, 2009 [by telephone conference]. Post-hearing briefs were waived by both parties. The decision was rendered by the Arbitrator of August 25, 2009.

### **ISSUE AT IMPASSE**

The parties agree the issue is:

Whether Mr. Mahamoud Abdi was terminated for just cause? If not, what should the remedy be?

### **APPLICABLE CONTRACTUAL PROVISIONS**

#### **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 with 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 before suspension or discharge if the cause of such discipline is of such a serious and egregious nature as exemplified but not necessarily limited to the following:

In the case of dishonesty, being under the influence of narcotics or intoxicating beverages, (or possession of same on Company premises) failure to immediately report any accident which has resulted in personal injury or property damage, permitting unauthorized persons to ride in the Employer's vehicle, willful destruction of the property of the Employer, fellow employees or the public, theft, becoming involved in a serious motor vehicle accident while driving the Employer's vehicle as a result of negligence or recklessness, refusing to carry out a direct order of a superiors, using an Employer's vehicle for personal use without permission, absence for three (3) consecutive scheduled working days or more without notifying the Employer, unless unable to do so in case of extreme emergency such as hospitalization due to an accident or serious

illness. Such notification shall be by telephone or other expedient means, but must be made to the Area Manager or Supervisor to whom the employee reports.

SECTION 2. At no time will any employee of supervisory authority or working under another bargaining agreement be permitted to perform any work covered by this Agreement, except in emergency or for the purpose of training and instruction. [Joint Exhibit #1].

**APPLICABLE HERTZ CORPORATION – MINNEAPOLIS AREA  
EMPLOYEE RULES AND REGULATIONS**

Hertz has established rules of conduct for the protection of the employees, its property and to ensure the most efficient and harmonious operation.

The Company does not waive the right to discharge or discipline for other offenses not specified. This is not intended to be a complete list of rules, regulations, policies and procedures, but merely an illustration of the type of infractions which could lead to disciplinary action.

The following are breaches of good conduct (substandard performance) which can subject an employee to progressive discipline including reprimand or discharge.

3. Leaving the workstation without the approval of the supervisor, except in cases of emergency.

...Although it is difficult to outline all major breaches of substandard performance that do not require progressive discipline, the following are many of the most standard serious breaches for which immediate discharge can be initiated.

18. Leaving the facility during a scheduled shift without management approval, excluding scheduled approved breaks. [Joint exhibit #4]

**FINDINGS OF FACT**

1. By letter dated October 21, 2008, Mr. Mahamoud Abdi, a Vehicle Service Attendant (VSA) at the Minneapolis St. Paul Airport with the Hertz Corporation, was terminated from his employment. The letter stated in applicable part:

Effective immediately your employment with The Hertz Corporation is terminated for leaving your workstation and Hertz property without manager authorization and giving false information during an investigation.

Please turn in any Hertz equipment and/or property to your Manager or Human Resources as soon as possible. [Joint exhibit #2]

The letter was signed by James Lindsay, the Area Manager for The Hertz Corporation.

2. Mahamoud Abdi had been a Vehicle Service Attendant for the Hertz Corporation at the Minneapolis St. Paul Airport location since 1999. The duties of a VSA are cleaning the cars, topping off the gas tank and parking the car. A VSA at the Minneapolis St. Paul Airport works at an assigned pump while cleaning and gassing the car.

3. On October 12, 2008, Mr. Abdi punched in for work at 1:00 p.m. At approximately 1:30 p.m. James Luxbacher, the Location Manager who oversees daily operations and fleet management, arrived at the Quick Turn Around (QTA) where Mr. Abdi was working. Mr. Luxbacher began directing traffic in order to meet the needs of the customers for specific cars. He both directed traffic and the nine VSAs who were cleaning cars until approximately 2:15 p.m. At about 2:15 p.m. he received a call on his Nextel radio asking for specific cars to be transported to the pickup area. He began delivering the cars to another level of the parking area at about 2:30 p.m. He drove by the break area, which has a window, and saw Mr. Abdi sitting in the area "eating and on his cell phone." Mr. Luxbacher testified Mr. Abdi was in his uniform. Mr. Luxbacher testified he drove by three more times over the next 15 to 20 minutes and each time noticed that Mr. Abdi was in the break area. Mr. Luxbacher also testified he saw gold Toyota Highlander at Mr. Abdi's assigned pump which had been sitting there each time he drove by. Mr. Luxbacher testified that sometime between 2:50-2:55 p.m. he drove by the break room and saw Mr. Abdi walking toward him with a large "Slurpee" drink in his hand coming out of the break room. Mr. Luxbacher testified they "locked eyes; Mr. Abdi put his eyes down. I had no idea where he was going. He did not appear to be in a hurry." Mr. Luxbacher continued driving the car to the different level of the parking area.

Mr. Luxbacher testified he was curious as to what Mr. Abdi was doing, but because he was still moving cars, he was not able to talk to Mr. Abdi. When he finished moving cars, he checked Mr. Abdi's timecard and discovered that Mr. Abdi had clocked out at 2:58 p.m.

Mr. Luxbacher testified he called the managers on duty to see if Mr. Abdi had spoken with them. None of the managers had spoken with Mr. Abdi. Mr. Luxbacher then checked the VSA Productivity Details Report, a computer scan time record for each VSA, and discovered that the gold Toyota Highlander, which Mr. Abdi had scanned to begin work on at 2:27 p.m., was still not cleaned and still sitting at Mr. Abdi's pump.

Mr. Luxbacher testified that he next saw Mr. Abdi at about 4:30 p.m. on October 12, 2008. Mr. Luxbacher asked Mr. Abdi where he had been. Mr. Abdi informed Mr. Luxbacher he had left to pick up his children. Mr. Luxbacher told Mr. Abdi to punch out and to go home.

4. Mr. Abdi testified he not been scheduled to work on October 12, 2008. It was a Sunday and Sundays were normally not days for him to work. However, he had requested to work that day because on Tuesday he had to appear with his brother in court. He testified that on Sundays he typically dropped his children off at the Islamic Cultural Center for religious classes. On October 12, 2008, he'd arranged for his brother to pick up the children at the Islamic Cultural Center after their classes. Mr. Abdi testified that at 1 p.m. he clocked in and began working. He testified that sometime just before he clocked out at 2:58 p.m. he received a phone call from a teacher at the Islamic Center saying that his brother had not picked up the children. The teacher also told him that the school typically closes at 3:00 p.m. and that the teacher wanted to leave.

Mr. Abdi testified he went looking for a manager, but could not find one. He testified that the door to the manager's office, which is just off the break room, was closed. Mr. Abdi saw Hussein Dualeh, a lead VSA, in the break room. He testified he told Mr. Dualeh "I'm going to leave. My brother did not pick up the kids." Mr. Dualeh told him he did not have a Nextel radio, which lead VSAs typically carry, and that he should talk to Abdi Satar Mohammed, another Lead VSA, who was in the QTA area and had the Nextel radio. Mr. Abdi testified he went to look for Abdi Satar Mohammed, but could not find him. He returned to the break area and told Hussein Dualeh "I'm leaving."

He testified Mr. Dualeh asked, “Are you coming back?” Mr. Abdi said, “Yes.” Mr. Abdi testified he went to his locker, changed his shirt, “went through the lunchroom with a mindset to catch the Hertz transporter to the Hertz St. Paul lot” where he had parked his car.

5. Mr. Hussein Dualeh wrote a statement in the Somalian language dated June 23, 2009. The statement was translated by AAA Worldwide Translation into English. The true and correct translation of Mr. Hussein Dualeh statement is as follows:

Mahamud Abdi came to me and he told me that his kids are standing outside and there is nobody to pick them up from the bus stop. I am Hussein Dualeh and I told him I am on my break and he should talk to Abdi Satar Mohammed. Mahamud went outside and looked for that employee. He was out there for a minute and then he came back to me. He told me that he didn't see Abdi Satar Mohammed. And then he told me again that he can't wait because his kids, they are outside and I have to go get them, and I'm going right now. Then I told him, are you coming back when you pick up your kids. And he told me “I'm coming back” and I said OK.

I am Hussein Dualeh, the manager I could not call him on the radio because I don't have a radio.

And the policy of the company is you can't leave without authorization. That's what the policy says. When I started the job that is what was said in 1999. At the time (Translator Note: time of the incident) I was on break and I don't remember what time it was, I don't remember the time. And at that time I was telling him to call Abdi Satar because he (Translators Note: Mahamud) has to let him (Translator Note: Abdi) know, the manager of the conditions of the situation. I don't remember the time I talked to him. Mahmud [sic] Abdi's phone number is 651-210-6385.

Hussein (Signature) 6-23-09 [Company exhibit #15]

6. Mr. Abdi testified he drove his car from the Hertz St. Paul lot to the Islamic Cultural Center aka Higher Ground Academy, also in St. Paul, and picked up his children. He testified he spoke to the teacher to inform him he was coming. Mr. Abdi testified he took the children to a restaurant, purchased food, took them home to his seven and a one-half month pregnant wife, ate with the children, then

returned to work where he punched back in at 4:28 p.m. on the same day. At that point, Mr. Abdi testified he saw Mr. Luxbacher who asked, "Where did you go?" Mr. Abdi testified he told Mr. Luxbacher, I "went to pick up the children." Mr. Abdi testified Mr. Luxbacher said, "Leave work, leave the fucking car. Just go home. Justin will call you."

Mr. Abdi testified there were no managers in the office before he left to pick up his children. He could not find Abdi Satar Mohammed who had the Nextel radio used to make contact make contact with a manager. He testified he went back into the break room and told Hussein Dualeh "I'm leaving." Mr. Hussein Dualeh asked, "Are you coming back?" And Mr. Abdi said, "Yes."

Mr. Abdi further testified that when he received the call about his children not being picked up he had been working at a different station helping a co-worker spray a truck. Mr. Luxbacher testified that Mr. Abdi had, in fact, been in the break room from 2:30-2:55 p.m. or so.

Mr. Ahmed Kama, the teacher at the Islamic Cultural Center aka Higher Ground Academy who called Mr. Abdi testified he "knows Mr. Abdi." He testified he called Mr. Abdi "two or three times that day" to inform Mr. Abdi that Mr. Abdi's brother had not picked up the children. Mr. Kama testified that he knows Mr. Abdi's cell phone, that "as a teacher of kids I have every parent's number." Mr. Kama testified he called Mr. Abdi about 3:00 p.m. He testified he saw Mr. Abdi when Mr. Abdi came to pick up the children. Mr. Kama testified that if Mr. Abdi had not come, he himself would have taken the children to their home.

When the Arbitration hearing dates were finished The Hertz Corporation attorney, with the permission of the Arbitrator, subpoenaed the records of Mr. Abdi's cell phone. The cell phone records indicate that Mr. Abdi made seventeen (17) phone calls to Mr. Kama's phone number on October 12, 2008, the first one commencing at 1:33 a.m., lasting 11 minutes and the last of the 17 calls at 11:35 p.m. on October 12, 2008.

The Hertz Corporation essentially contends:

- (a) The evidence overwhelmingly shows Mr. Abdi violated rules and procedures in that he left the premises without authorization from a manager and was dishonest in explaining his reasons;
- (b) He punched in at 1:00, did not start cleaning until 1:07, left the work station at 2:30 p.m., saw Mr. Luxbacher and avoided looking at him, did not even try to contact a manager on duty, never did make a phone call to a manager on duty;
- (c) Mr. Abdi had the cell phone number of Mr. Brendan Costello, City Operations Manager, who was on duty on October 12, 2008. Mr. Costello testified he maintains an open door policy, that his door was, in fact, open on that day; he was working in the manger's office near the break room and was present from 6 a.m. to well after 3:00 p.m. on October 12, 2008. Mr. Costello testified he may have been in and out of the office that day, but he was "positive" that after 2:15 p.m. until well after 3:00 p.m. he was in the office with the door open. Mr. Costello testified Mr. Abdi never requested to leave work and never asked him if he could do so. Mr. Costello further testified he saw Mr. Abdi at approximately 2:20 p.m. on October 12, 2008. Mr. Costello further testified he and Mr. Abdi have talked on their respective cell phones at least 30 times since Mr. Abdi has worked as a VSA at the Hertz facility at the Minneapolis Airport;
- (d) Mr. Abdi and Mr. Kama lied in their testimony. A review of the phone records shows that there were 17 calls made between Mr. Abdi and Mr. Kama on October 12, 2008. Mr. Kama testified he spoke with Mr. Abdi that day "two or three times". "Simply put, a quick glance of the phone records conclusively establishes that both Mr. Abdi and Mr. Kama are lying and have concocted their story." [Post-hearing argument of Hertz Attorney, regarding the cell phone records provided by T-Mobile];
- (e) Mr. Abdi claimed that the car he was cleaning from 2:08 – 2:27 was very dirty, and it took him extra time to clean it. The "Abdi VSA Productivity Details Report" [Company exhibit C8] shows that Mr. Abdi was cleaning the vehicle from 2:08-2:27 p.m. Yet at the same time, Mr. Abdi was talking on his

cell phone from 2:09 p.m.-2:22 p.m. with Mr. Kama. Mr. Abdi made 13 additional calls from 2:59 -4:24 totaling 64 minutes including a 32 minute conversation from 3:32 p.m.-4:04 p.m. and another 11 minute conversation from 4:04 p.m.-4:15 p.m. Yet, he never attempted to contact a Hertz manager to inform the manager that he needed to pick up his children;

(f) Mr. Abdi has a series of written warnings about talking on his cell phone at his work stations and taking unauthorized breaks [Company exhibit #13 and Company exhibit #10]. It is obvious that Mr. Abdi continues to blatantly disregard Hertz's policies and procedures.

7. The essential contentions of the Union are:

(a) Mr. Abdi had an emergency. He had to pick up his children. They could not be left on the playground at the school. He looked for a manager, could not find one, sought permission from the lead VSA to pick up his children;

(b) Culturally it is important for a Somalian man to spend time with his children when they are eating. He was gone for one and a half hours which involved approximately, 52-56 minutes of travel time alone;

(c) The burden of proof is on the Employer by clear and convincing evidence to show just cause for the termination. Hertz did not carry its burden of proof at the Arbitration hearing;

(d) While the testimony of Mr. Luxbacher was that no employee is permitted to leave without permission from management, testimony from James Curcotte, a 22-year Hertz employee and a Lead VSA in the QTA area, was that it was "common that no manager was around" and that in the past, Mr. Curcotte, as the Lead VSA, gave permission for employees to leave when no manager was around. There were times when people have come to Mr. Curcotte, as the Lead VSA, and asked to leave. "Perhaps six times, sometimes I was able to contact the manager and sometimes not. The people left in any event." [Testimony of Mr. Curcotte at arbitration hearing];

- (e) This was an emergency and past practice has been to allow a Lead VSA to permit a VSA to leave for an emergency if a manager can not be contacted;
- (f) Testimony from Thomas Tweet, Secretary/Treasurer Local 974, was that it is not unusual for management to be doing different things and not available;
- (g) The termination of Mr. Abdi is in retaliation for a previous arbitration, which returned Mr. Abdi to his job. [See, *The Hertz Corporation, St. Paul, Minnesota and Teamsters Local 974 [Discharge of Mahamoud Abdi]*, FMCS Case No. 04-52075, [Arbitrator Daniel G. Jacobowski, August 13, 2004];
- (h) The discharge was not for just cause. It was unfair to terminate Mr. Abdi under the circumstances i.e. the need to pick up his children due to the emergency. He should be returned to work with full back pay.
- (i) Mr. Abdi was truthful in his testimony at the arbitration hearing.

### **DECISION AND RATIONALE**

These two facts are undisputed: 1) Mr. Abdi left his workstation without the approval of a supervisor/manager; 2) A Lead VSA is not a supervisor/manager.

Obviously, if Mr. Abdi's children were left on a playground by themselves outside the Islamic Cultural Center aka Higher Ground Academy on a Sunday afternoon in October at approximately 3:00 p.m. this is cause for concern. Mr. Abdi testified he could not think about anything other than getting his children. Any parent understands such concern.

Each manager on duty – and there were at least two managers on duty that day- carries a Nextel radio. It is not difficult to contact a manager. Mr. Costello testified he was in his office from 2:30- past 3:00 p.m. on October 12, 2008. He testified his door was open. Mr. Abdi testified the door was not open. Mr. Luxbacher testified he was in the QTA area a number of times moving cars up one level. He testified he saw Mr. Abdi sitting in the break area from 2:30 to approximately 2:55 p.m. He then saw Mr. Abdi walking out of the break area holding a Slurpee drink. Mr. Luxbacher testified they looked directly at one another,

“locked eyes” and Mr. Abdi looked down. Mr. Luxbacher testified that at that time Mr. Abdi had changed his uniform shirt into a regular street shirt. Mr. Luxbacher at that time was still moving cars. Both Mr. Abdi and Mr. Ahmed Kama, the teacher at the Islamic Cultural Center, testified they knew each other. Mr. Kama testified he’d called Mr. Abdi “two or three times that day about his kids.”

Mr. Costello testified that over the period of time Mr. Abdi was employed he has talked to Mr. Abdi on his cell phone “at least 30 times.” Mr. Costello testified, “Mr. Abdi would call me from his cell phone.” For example, records from Mr. Costello’s cell phone show that on October 1, 2008, Mr. Abdi called Mr. Costello and left a voice mail. Mr. Costello returned the phone call at 5:17 p.m. on October 1, 2008 to Mr. Abdi’s cell phone. They had a 21-minute conversation. Mr. Abdi was on vacation at that time. [Company exhibit #C11]

Mr. Abdi testified he has “called Costello a few times – two or three times- never thirty times. I have contacted Costello when working and not working.” Mr. Abdi testified that on October 12, 2008, he never tried to call Mr. Costello “because he didn’t come to my mind.” “After I picked up the kids I didn’t try to call a manager.” Mr. Abdi testified he was “not thinking I did anything wrong. I told the Lead VSA.” “I was worried about my kids.”

The thrust of the Hertz Corporation case against Mr. Abdi is “that Mr. Abdi lied, and tried to cover his lie with additional lies and he went as far as asking Mr. Kama to lie on his behalf.” The Hertz Corporation bolsters this conclusion on the fact that the phone records of Mr. Mahamoud Abdi – which Hertz Corporation obtained from T-Mobile by subpoena issued by the arbitrator– proves its conclusion. For example, between 2:58 p.m. and 4:28 p.m., he spent 64 minutes on the phone but made no phone calls to Hertz management to explain the “crisis with his children.” “In addition, the phone records further establish that no phone call was made to or from the director of the Islamic Cultural Center, Mr. Ali, and the schools phone number....”

Mr. Ali testified he has on occasion dropped off children at their homes, and has waited for upwards of one hour after the school closed for parents to pick up their children. Hertz notes that the T-Mobile records show Mr. Abdi was talking on

his cell phone from 2:09- 2:22 p.m. while at the same time he was supposedly cleaning a car. Mr. Abdi's VSA Productivity Details Report shows him to be cleaning a car from 2:08 -2:27 p.m. Hertz points out there were 18 phone calls either incoming or out-going to Mr. Abdi's cell phone while he was on Company time between 1 p.m. and 2:58 p.m. The calls totaled 42 minutes. Of these 18 calls, 15 were made between 2:27 p.m. and 2:58 p.m. totaling 27 minutes. Yet, as Hertz points out, Mr. Abdi claimed he was helping his co-worker clean another car at or about 2:27 p.m. till the time he punched out at 2:58 p.m.

Hertz highlights that on October 12, 2008, there were 17 calls made between Mr. Abdi's cell phone and Mr. Kama's cell phone between 1:34 a.m. and 11:35 p.m. Of these 17 calls, six of them were incoming calls from Mr. Kama's phone to Mr. Abdi from 12:38 p.m. – 4:32 p.m. on October 12, 2008, not "two or three" as alleged by Mr. Kama. Mr. Kama testified he "only knows Mr. Abdi through the school."

The Union highlights Mr. Curcotte's testimony that in the past as a Lead VSA he has given permission at least six times for a VSA to leave the premises when a manager could not be found. Mr. Abdi testified he believed he had permission from Lead VSA Hussein Dualeh so it was not necessary to try to contact a manger once he left to pick up his children. Mr. Dualeh wrote up a report at the request of Hertz, translated from Somalian into English by AAA Worldwide Translation, which said, "At that time I was on break and I don't remember what time it was, I don't remember the time. And at that time I was telling [Abdi] to call Abdi Satar because he has to let him know, the manager of the conditions of the situation." [Company exhibit #15].

Mr. Dualeh testified that Mr. Abdi "asked permission to leave" and Mr. Dualeh said, "Yeah, okay." [Testimony of Mr. Dualeh at arbitration hearing]. Mr. Dualeh also testified he "didn't see a situation like this before. I never gave permission before." [Id.] Mr. Dualeh further testified that he remembered others in emergency situations had left. He did not know if Lead VSAs had given permission in the past. Mr. Dualeh was called as a witness on behalf of the Union.

Hertz does not believe that Mr. Abdi is "credible." Hertz concludes that Mr. Abdi's cell phone records prove that Mr. Abdi and Mr. Kama did not tell the truth

about talking to each other “two or three times that day”. From this Hertz concludes that the “crisis” with his children is doubtful. Based on these facts and conclusions, Hertz argues that “Mr. Abdi continues to blatantly disregard Hertz’s policies and procedures” and therefore was terminated.

The Union sees this case as a crisis that any father would deal with in the same manner as Mr. Abdi. The children needed to be picked up and there was no manager around to seek permission to leave. Mr. Abdi asked the Lead VSA, Mr. Dualeh, for permission to leave, Mr. Dualeh said “Yeah, okay,” and so Mr. Abdi left and picked up his children. The Union contends that Mr. Abdi properly punched out, spent a little extra time with the children-only to pick up food and spend a small amount of time eating with them- and then returned to work.

If Mr. Abdi had a clean work record with the Hertz Corporation this case would be relatively easy to decide. He would get his job back. Testimony shows that sometimes a Lead VSA has given permission for a VSA to leave in an emergency situation when a manager could not be found.

Was this such a “crisis”? It is understandable that Mr. Abdi felt he needed to pick up his children when the school was closing. Yet, the phone records show Mr. Abdi spent a considerable amount of time talking on his cell phone before, during and after the “crisis”; he knew or should have known he needed to talk to a manager before he left; he could easily have contacted Mr. Costello on his cell phone (since they had talked on their cell phones over 30 times in the past); he knew both Mr. Luxbacher and Mr. Costello were at the facility and could be easily reached by phone; Mr. Costello testified his manager’s office door was, in fact, open and he was in the office between 2:15 p.m. to a little after 3:00 p.m. that day; then, after Mr. Abdi left, he spent extra time not only getting food for his children, but also eating it with his children at home. Further, Mr. Abdi made 13 additional calls from 2:59 – 4:24 totaling 64 minutes, including a 32 minute conversation from 3:32-4:04 p.m. So was he eating with his children or was he talking on the phone? During this period of time he did not attempt to contact a manager. He knew at least two managers were on duty that day. Even after punching back in at 4:28 p.m., Mr. Abdi continued to

talk on his cell phone. The phone records show that call was from Mr. Kama, four minutes after Mr. Abdi returned to the Hertz facility at the airport.

Mr. Abdi's past disciplinary record include a series of written warnings from October 27, 1999 through September 4, 2008, for such things as "no call/no show", "extremely dirty interior and exterior", "low performer", "excessive breaks", "tardiness", "cell phone use while operating and driving a vehicle", "not following all the steps necessary while servicing a vehicle", "attendance policy violations", "taking time off for vacation when the vacation time was declined", "strong odor inside the vehicle", "not meeting Hertz vehicle cleaning standards". A number of these disciplinary warnings were made by Location Manager Addinur Mohamud. [See Company exhibit #14]. None of these warnings were grieved.

It is clear from testimony that Mr. Abdi understood that a Lead VSA is not a supervisor/manager. He knew or should have known that under the Hertz Corporation – Minneapolis Area Employee Rules and Regulations [Joint exhibit #4] he needed the "approval of the supervisor" to leave the workstation. Even accepting Mr. Abdi's testimony that a manager could not be found, he still had Mr. Costello's phone number in his cell phone and could easily have contacted him considering the ready use Mr. Abdi makes of his cell phone during working hours. Mr. Abdi spent a great deal of time on the phone both before, during and after he left the workstation that day. If he was truly so worried about his children that he couldn't think of anything else, as he testified, why would he have made calls to other places during that time such as Denver at 3:01 p.m.?

On the other hand, past practice does show that a Lead VSA has granted a worker the right to leave in an emergency when a manager was not present. Also, Lead VSA Hussein Dualeh testified "Mr. Abdi asked permission to leave and I said, 'Yeah, okay.'" [Testimony of Mr. Hussein Dualeh at arbitration hearing; it is noted that Mr Dualeh's translated written statement does not contain this fact. See, Finding of Fact #3 above]. Nevertheless, Mr. Abdi knew or should have known that such permission was tenuous at best; and he should have made some attempt before he left to contact a manager by phone since all managers carry Nextel phones. Mr. Abdi knew that both Mr. Luxbacher and Mr. Costello were present that

day, even though his testimony was he couldn't find them. Even as he was leaving, according to the credible testimony of Mr. Luxbacher, Mr. Abdi and Mr. Luxbacher "locked eyes".

Further, it is clear that Mr. Abdi and Mr. Kama knew each other well enough to make 17 phone calls that day starting at 1:34 a.m. and up to 11:35 p.m. They have spoken enough so that Mr. Abdi could have been assured that the children would not be left alone. He had time to find a manager and seek permission to leave. Both Mr. Kama and Mr. Ali testified neither would have left the children alone. Mr. Ali, the Director of the school, testified he would never leave the children alone and that in the past, as recently as a week before he testified in this arbitration hearing, he had taken other children to their home when a parent failed to pick up the children. Mr. Abdi's testimony that he stopped looking for a manager because "all I could think about was the children" is not credible.

The disputed facts in this case, Mr. Abdi's past work record, and Mr. Abdi's cell phone records lead to the conclusion that he has not been completely credible in his testimony. Based on these conclusions, it is held that the Hertz Corporation has proven by a preponderance of the evidence that Mr. Abdi left his work station without the approval of a supervisor/manager and that he gave false information during the investigation. Based on the facts of this case and Mr. Abdi's past work record the termination is upheld. The grievance is denied.

\_\_\_\_\_  
August 25, 2009  
Date

\_\_\_\_\_  
Joseph L. Daly  
Arbitrator