IN THE MATTER OF ARBITRATION BETWEEN

Office of Professional Employees International Union, Local 12 [Pamela Rogers]

Opinion and Award

and

American Arbitration Association

Joiners Apprenticeship and Journeymen Training Fund

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of OPEIU, Local 12:

Joseph J. LeBlanc, Esq.

LeBlanc Law and Mediation

Minneapolis, MN

On behalf of the Carpenters and Joiners Apprenticeship and Journeymen Training Fund:

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Minneapolis, MN

JURISDICTION

In accordance with the agreement between Construction Trades Group and Office and Professional Employees International Union, Local 12, AFL-CIO, CLC, and under the jurisdiction of

the American Arbitration Association, the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on June 11, 2014, at the offices of Federal Mediation and Conciliation Service, Minneapolis, Minnesota. Post-hearing submissions were filed by the parties on July 10, 2014. The decision was rendered by the arbitrator on July 30, 2014.

ISSUE AT IMPASSE

The employer states the issues as:

Whether the Fund had just cause to discharge the Grievant (If not, what is the appropriate remedy?)

The Union states the issues as:

1. Did the JAC Training Fund violate the collective bargaining agreement between the JAC Training Fund and OPEIU, Local 12 by terminating Pamela Rogers without just cause?
2. Did the JAC Training Fund violate the collective bargaining agreement between the JAC Training Fund and OPEIU, Local 12 by failing to follow progressive discipline when disciplining Pamela Rogers?

RELEVANT CONTRACT PROVISIONS

ARTICLE 8
DISCIPLINE/DISCHARGE

8.01 It is hereby agreed that the Employer has the right to discipline an Employee for sufficient and reasonable cause. Progressive discipline shall be used to correct the problem. Discipline shall be appropriate to the offense. Discipline shall be in the following order:

a. Verbal Warning.
b. Written Warning.
c. Suspension.
d. Discharge.

After 12 months if no further disciplinary action is taken for a similar offense, prior discipline would not be used in any future disciplinary action.

8.02 The Employees covered by this Agreement shall comply with all Employers rules, provided they are not in direct conflict with the terms of this Agreement. The Employer shall supply the Union with copies of all rules and policies as they are adopted and amended by the Employer.

8.03 If upon joint investigation by the Union and the Employer or by decision of an arbitrator appointed pursuant to the terms of this Agreement, it shall b e found that an Employee has been unjustly discharged, such Employee shall be reinstated to her/his former position without any loss of seniority or rank and shall suffer no reduction in salary and shall be compensated by the employer for all time lost retroactive to the date of discharge.

8.04 No Employee shall be held responsible for loss or shortage of funds unless clear proof of negligence or proof of dishonesty can be established.

8.05 All suspensions and discharges will be in written form and copies will be mailed to the Union immediately upon issuance of such notices. Discharges will be preceded by a suspension during which an investigation of the incident leading to the discharge will be conducted.

8.06 In the event a meeting is held for disciplinary purposes, the affected Employee shall have the right to have a Union Steward and/or Union Representative present.

ARTICLE 12
GRIEVANCE/ARBITRATION

12.05 The arbitrator shall issue the decision in writing and the decision shall be binding on the Employer, the Union, and the Employee(s) involved. The arbitrator's decision shall be based on the evidence and testimony presented. [Joint exhibit #1]

FINDINGS OF FACT

1. The Carpenters and Joiners Apprenticeship and Journeyman Training Fund is a multi-employer ERISA fringe benefits plan established to operate and provide training and benefits to apprentices and journeymen in the carpentry industry. The Fund is a trust established by payments received from employer contributions. The Fund is governed by a Board of Trustees, half appointed by the North Central States Regional Council of Carpenters, and the other half appointed by contributing employers.

The Trustees are fiduciaries under Section 404 of ERISA. The trustees are required to discharge their duties in the sole interest and benefit for participants. The Fund is regularly audited by the Department of Labor.

2. The Fund operates a training program with three administrative offices, two located in St. Paul, and one in Hermantown, Minnesota. There is a training program in Wisconsin "associated with and referred apprentices by the North Central States Regional Council of Carpenters ('Council')".

[Post-hearing brief of Employer at 3-4]. "The Council is associated with the United Brotherhood of Carpenters, and is a Union or employee organization which covers local carpenters unions in the Midwest region, including both Minnesota and Wisconsin." [Id. at 4, fn #1].

3. Pamela Rogers began working for the JAC Training Fund on December 2, 1985, and served as the Office Manager for the past 29 years. Ms. Rogers is a member of OPEIU, Local 12, which is a party to a collective bargaining agreement effective July 1, 2011-June 30, 2014. Ms. Rogers held a Class 1 position described in the collective bargaining agreement as "Office Administrator/Administrative Secretary." Her position description states:

> The main tasks this employee performs in the union environment are: correspondence, database maintenance, maintaining files from members and apprentices, assisting member and apprentices and journeyworkers…. Typically the employee in this position is accountable to meet reporting requirements to the IRS International, Pension Funds, DOL and other interested entities. [Joint exhibit #1 p.15 section 16.04(A)]

4. By letter dated February 28, 2014, Ms. Rogers received a letter terminating her employment with the JAC Training Fund. The letter stated:

> Dear Ms. Rogers:
>
> This letter is to provide you with formal notification that your employment with the Twin Cities Carpenters Journeyman and Apprenticeship Training Committee (JATC) is hereby terminated effective February 28, 2014. Your employment is being terminated because (i) you were dishonest with the JATC Director when asked about certain documents you faxed to another apprenticeship office; (ii) you were insubordinate and refused to cooperate with his investigation of the matter; (iii) you directed a subordinate employee to misrepresent the facts surrounding his investigation; and (iv) it was discovered after you were placed upon leave that you have knowingly maintained inaccurate payroll and fringe records for certain employees upon their request.
>
> These actions demonstrate a serious breach of trust, establish employee dishonesty, and evidence an abuse of your supervisory position. The JATC and Fund view these actions to be severe employee misconduct. You also seriously undermined the authority of the Director, and compromised your position as Office Manager.
>
> Most importantly, your misconduct has a substantial impact on the organization, and presents a serious risk to the organization. As you know, the Trustees have fiduciary responsibilities under ERISA, particularly with respect to maintaining accurate records regarding administration of the apprenticeship fund. As Office Administrator, (Classification I) your job duties include maintaining accurate records, and your

accountable for "reporting requirements to the IRS International, Pension Funds, DOL and other interested entities." (CBA, p. 15). Your position requires a high level of trust.

Given the results of the investigation, I have determined it is reasonable and appropriate to terminate your employment, effective immediately. We have calculated your wages owed through February 28, 2014 and accrued vacation and sick days. Enclosed are the checks for these payments. We are collecting your personal belongings and will have them sent to you no later than March 7, 2014. If there are certain belongings please inform us and we will include them.

Sincerely,
/s/
Paul H. Trudeau
Director of Apprenticeship
[Joint Exhibit #2]

On March 3, 2014, the Union filed a grievance on behalf of Ms. Rogers stating in applicable part:

NATURE OF DISPUTE, COMPLAINT OR QUESTION:
Grievant was unjustly terminated from employment on 02/28/2014 in violation of Articles 8.01, 8.05 and 8.06 and any other Article that may apply.

REQUEST FOR ADJUSTMENT:
Employee be made whole in every way and be reinstated to previously held position. [Joint Exhibit #3].

5. In early January 2014, Paul Trudeau, Director of Apprenticeship, was approached by Jeffrey Alsip, an apprenticeship instructor working for a training program in Wisconsin. Mr. Alsip informed Mr. Trudeau that the Wisconsin apprenticeship program had been giving apprentices and members credit for time they had not attended classes. [Post-hearing brief of employer at 4].

On January 3, 2014, Mr. Alsip sent Mr. Trudeau a letter package containing sign in sheets with hand-written post-it note tabs regarding classes at which apprentices and members had not attended, but were given credit. [Joint exhibit #4]. Mr. Trudeau's office received this letter on January 6, 2014. On that day, Ms. Rogers was eating lunch in Administrative Assistant Leah Wester's office. Ms. Wester began opening the mail. After opening the envelope addressed to Mr. Trudeau, Ms. Wester handed the eleven pages to Ms. Rogers and told Ms. Rogers she should deal with that. The envelope contained pages of sign in sheets for classes. After lunch, Ms. Rogers made a copy of the sheets so she

could make notes on them without disturbing the originals [Testimony of Ms Rogers at Arbitration Hearing]. Several of the sign in sheets contained post it notes with Mr. Alsip's notes written on them. The post it notes contained language such as "actually Friday, there were seven people, for about eight hrs. total class time"; "8 members signed in for class- only 2 members present on Sat., about 8 hrs. class time"; "2 sign in sheets Sunday 4 signed in on sheets, but nobody is there, including Bill Warner [emphasis in original]; "Karla said that there wasn't a motel bill for Sat. night. Not sure if he turned in hours for pay for Sunday, since he gives all his paperwork to Amanda and (Al)"; "In November 2002, I asked for Signalers [sic] card, since I was a Instructor. Amanda put me down as taking a refresher, 8 hours with John Wordel. I never took a refresher & didn't ask or want this shortcut. Jeff Alsip"; "Amanda wanted someone to teach a scaffold class in Madison, Feb. 2013. Amanda put Lance down, as having a refresher on 1-26-2013 so he would be current to teach. Lance is a great instructor, but he probably doesn't know about this." The package also contained a letter from Mr. Alsip which said in total "This is only the 'tip of the iceberg'. Al & Amanda think they are turning out more members trained, at a reduced cost. Bill Warner says that Al is trying to keep the down, for the budget. There is more info available, with a call to Bill Barreau, 608-206-7195."

Not knowing what to do, Ms. Rogers retrieved the envelope from Ms. Wester's office. She noted that it had not been marked "confidential". She placed the pages in the envelope and left it on Mr. Trudeau's desk. Mr. Trudeau was not in the office.

About the same time administrative assistant Janet Sorlie was contacted about an apprentice, Grant Niggeman, who asked Ms. Sorelie about the transfer procedure. Ms. Sorlie did not know what the transfer procedure was. Ms. Sorlie asked Ms. Rogers about the transfer process, and Ms. Rogers explained it to her.

6. On or about January 13, 2014, Mr. Trudeau took the original Alsip letter package to Las Vegas with him for a work-related conference. He was in Las Vegas from January 13-17, 2014. Mr. Trudeau testified at the arbitration hearing that his mail has been opened in the past but that "certain things that have come by certified mail don't get opened." He also testified that he "couldn't make out the documents in total detail" so he called Mr. Alsip and he told him before he left that he would talk to Mr. Alsip while they were both in Las Vegas.

7. In the meantime, Ms. Rogers came across a copy of the sign-in sheets she had made. This was while Mr. Trudeau was in Las Vegas. In reviewing the sheets, Ms. Rogers testified she was confused by the way the classes were being scheduled. She decided to call Ms. Amanda Parker, Office Manager at the Kaukauna, Wisconsin office to discuss the different ways they schedule classes. During that conversation, Ms. Rogers testified she faxed a copy of the sheets to Ms. Parker so she could refer to them as they spoke. [Post-hearing brief of union at 3]. Ms. Rogers also testified at the arbitration hearing that during that same call, she asked Ms. Parker if their training center would cover Appleton, Wisconsin, and told her their office would send Grant Niggeman's file. [Post-hearing brief of union at 3].

8. The Fund's facsimile report demonstrates that a 14-page fax was sent to Kaukauna, Wisconsin, on January 13, 2014. The Fund's general office practice has been to retain copies of the fax cover sheets along with the confirmation. However nothing had been retained for this particular fax.

9. While at the conference in Las Vegas, Mr. Alsip informed Mr. Trudeau that his letter had been faxed from Mr. Trudeau's office to Kaukauna, Wisconsin, by a person named Pam. After this fax Mr. Alsip was contacted by Al Atkinson and told by Mr. Atkinson "I am letting you go". When Mr. Alsip asked "Why?", Mr. Atkinson informed him "performance".

10. On January 22, 2014, when Ms. Rogers was getting ready to leave the office for a doctor's appointment, she was called into Mr. Trudeau's office. Mr. Trudeau asked her if she sent a 14-page fax to the Kaukauna, Wisconsin, office on January 15. Ms. Rogers, according to Mr. Trudeau, answered "no, why what documents are you looking for?" [Post-hearing brief of employer at 4]. On the other hand, Ms. Rogers testified at the arbitration conference that she "answered honestly" that she "did not know, and asked why Mr. Trudeau was inquiring." [Post-hearing brief of union at 3]. When Ms. Rogers asked "what documents are you looking for?", Mr. Trudeau responded by saying "anything" and then walked Ms. Rogers to the fax machine and pointed out the January 15, 2014 facsimile showing that a 14-page fax had been sent. Ms. Rogers testified that she then said a 14-page document was a lot and it sounded like a student file. She told Mr. Trudeau that a student wanted to transfer from Minnesota to Wisconsin, but she could not remember his name. [Post-hearing brief of Union at 3]. "Rogers told Director Trudeau it was possibly a transfer." [Post-hearing brief of Employer at 4]. Ms. Rogers testified that when she left that day to drive to the doctor's, she called Ms. Sorlie

from her car to ask if Ms. Sorlie remembered the name of the student who wanted to transfer. [Post-hearing brief of Union at 3]. Ms. Sorlie did not remember the name. Ms. Rogers asked Ms. Sorlie if she remembered faxing the file, because Ms. Rogers did not remember doing it herself. [Post-hearing brief of Union at 3]. "Because of the strange nature of Mr. Trudeau's questioning" [Testimony of Ms Rogers], Ms. Rogers asked Ms. Sorlie to "cover for me" [Testimony of Ms Rogers]. According to Ms. Rogers testimony at the arbitration hearing, she meant that Ms. Sorlie should look for the student's name until Ms. Rogers could get back to the office in the morning to try to find it herself. Ms. Rogers testified she also called the Kaukauna, Wisconsin, office to see if Ms. Parker remembered, but did not reach her and had to leave a message with Alison Spencer, the administrative assistant. Shortly thereafter, Ms. Sorlie called back with the student's name. The next day, January 23, 2014, Ms. Spencer texted Ms. Rogers asking her to send the student file immediately [Union exhibit #2]. Ms. Rogers sent the file in a 13-page fax. [Joint exhibit #5 a partial student file of Mr. Niggeman].

11. Later on the day of January 22, 2014, Mr. Trudeau approached Ms. Sorlie and asked whether she had faxed anything to Kaukauna, Wisconsin. Ms. Sorlie testified she did not want to "lie" to Mr. Trudeau so she was "intentionally vague" in her response. Ms. Sorlie testified at the arbitration hearing that she had interpreted Ms. Rogers request to "cover for me" as Ms. Rogers request to lie to Mr. Trudeau. Ms. Sorlie testified that Ms. Rogers said to her "Paul is going to ask you if you faxed anything to Wisconsin. I need you to cover for me." Ms. Sorlie testified she interpreted that language to mean Ms. Rogers was asking that she lie to Mr. Trudeau.

12. Mr. Trudeau reviewed the Niggeman file and determined that the apprentice had not completed a "drop" form. Mr. Trudeau also noticed that Mr. Niggeman was not eligible for transfer because he had not been a member of the Carpenters Local in Minnesota for over six months. Further, the file was 20-plus pages.

13. Ms. Alison Spencer, a clerical employee in Kaukauna, Wisconsin office, testified that the office did not request the Niggeman apprentice file for business purposes. The apprentice had not contacted their office and they were told about the Niggeman file by Ms. Rogers.

14. On February 10, 2014, Ms. Rogers was put on paid administrative leave. When Ms. Rogers asked "why" Mr. Trudeau said he believed Ms. Rogers had "lied" to him and asked others to

lie. Mr. Trudeau also was concerned that Ms. Rogers had not informed him that she had not only faxed the Niggeman file, but also mailed the Niggeman file to Ms. Parker's home address.

15. Ms. Rogers did tell Mr. Trudeau that she sent the Niggeman file to Kaukauna, Wisconsin because she assumed Mr. Niggeman was going to show up there and Local 322 in Wisconsin had called Ms. Sorlie about the transfer. Ms. Rogers stated she did not remember mailing the Niggeman file to Amanda Parker's home address.

16. During the investigation, and prior to Ms. Rogers termination on February 28, 2014, Mr. Trudeau concluded that Ms. Rogers had "intentionally and knowingly withheld paychecks for retired instructors to assist them in avoiding pension penalties." Mr. Trudeau discovered that retired part-time instructors were "banking hours." Retired instructors are limited to working 480 hours per year. The retired instructors are in charge of keeping track of their own hours. They are typically supposed to turn in their hours at the end of each week. But Mr. Trudeau discovered that Rick Hanson, a retired instructor, waited until 2014 to turn in some hours since he had exceeded the 480 hours in 2013. When Mr. Trudeau asked about this, Mr. Hanson said he thought "everybody up the food chain knew about this." Ms. Rogers testified and Mr. Trudeau confirmed that there was no written policy that time cards must be turned in at a certain time. Ms. Rogers testified that the retired instructors were supposed to keep their own hours and that when she did get time cards she would turn them in so that they could be paid in the next pay period.

17. Essentially, the Employer contends:

a) Ms. Rogers committed misconduct. That Ms. Rogers sent both faxes (January 15 and January 23). Most importantly, the second fax of January 23 was not sent until after Mr. Trudeau asked Ms. Rogers whether she had faxed any documents to the Wisconsin office. The Employer characterizes this second fax as a "cover up" fax. [Post-hearing brief of Employer at 7]. Further, if Ms. Rogers was simply confused about the Niggeman fax, there was no need for the Ms. Rogers to have Ms. Sorlie "cover" for her because the Niggeman file fax had not yet been sent to the Wisconsin office. According to Ms. Spencer, she stated that the second fax was only being sent to replace the first fax which had been sent on January 15. When Mr. Trudeau asked Ms. Rogers whether she faxed any documents to the Kaukauna office, "her response was a lie." [Id. at 7].

Ms. Rogers requested a subordinate (Ms. Sorlie) to lie, i.e. "cover for me", to Mr. Trudeau. "Her actions are equivalent to a refusal to cooperate in that they frustrate the purpose of [Mr.] Trudeau's investigation." Her actions demonstrate she abused her position of trust and "knowingly falsified evidence to hide her initial deception."

The Employer also proved "by a preponderance of evidence that [Ms.] Rogers intentionally and knowingly withheld paychecks for retired instructors to assist them in avoiding pension penalties. [Ms.] Rogers admitted that she manipulated the fringe reports for instructor Rich Hanson by directing her subordinate to 'hold' his fringes for November 2013 hours." [Id at 9].

b) Discharge is the appropriate remedy. This was not a small event. This case is not about sending a facsimile. "This case is ultimately about trust, honesty, and candor." [Post-hearing brief of Employer at 3]. Although Ms. Rogers is a long-term employee her misconduct was serious. "Her experience with the Fund and her position of trust only highlight that her misconduct warranted termination." "Termination is the only appropriate remedy." [Post-hearing brief of Employer at 9-10].

18. Essentially the Union contends:

a) The Employer carries a heavy burden of proof to prove misconduct when the permanent and severe effect on employee's work record is likely to cause serious damage to future long-term work opportunities. This heavy burden of proof is appropriate when an employee has a long-term career with minimal disciplinary history. Consequently, the standard of proof required in this case is "clear and convincing evidence." [Post-hearing brief of Union at 5].

b) The fund violated the collective bargaining agreement by terminating Pamela Rogers without just cause. Ms. Rogers was not forewarned of the possible or probable disciplinary consequences of her alleged conduct. There was no policy communicated to Ms. Rogers stating that time cards should not processed if turned in late. Ms. Rogers further has the right to know with reasonable precision the offense she is accused of and to defend herself. Ms. Rogers was told upon being called into Mr. Trudeau's office on February 10, 2014, that she was being suspended pending an investigation into her actions. She was not granted a Union representative at this meeting, as required during disciplinary meetings by Section 8.06 of the Collective Bargaining Agreement. Further she was neither given oral nor written notification of all the offenses she was accused of until she received her termination letter on February 28, 2014. She was never made aware of the scope of the investigation and therefore not given

adequate chance to defend herself. Also, there was not a fair and objective investigation. When Mr. Trudeau asked Ms. Rogers vague questions regarding the 14-page fax he believed she sent containing Mr. Alsip letter, he concluded she had lied to him. No evidence was presented to explain how the 11-pages Ms. Rogers had sent containing that letter would have amounted to a 14-page fax, or how she should have known that was the document he was referring to. No evidence was presented that anyone in the organization rigorously or thoroughly questioned his methods during this investigation. The investigation was not fair and objective. Additionally, the Fund did not obtain substantial evidence or proof that Ms. Rogers was guilty as charged during the investigation. Even in the termination letter the wording is vague regarding which documents Mr. Trudeau is referring to. Mr. Trudeau repeatedly asked Ms. Rogers if she sent a 14-page fax to the Wisconsin office, but never identified what the documents were. He concluded she was lying, when the questions asked were vague and required her to remember faxes by the number of pages that may have been included. Without asking directly if Ms. Rogers sent Mr. Alsip's letter to the Wisconsin office, Mr. Trudeau could not conclude that Ms. Rogers had lied. This is especially true given the document he was referring to was not actually 14 pages long. There is no evidence presented that Ms. Rogers knowingly misled Mr. Trudeau or responded to any of his questions untruthfully. The second reason given for termination was that Ms. Rogers was insubordinate and refused to cooperate with the investigation. No evidence was provided to the Union regarding these accusations during the investigation or the grievance proceedings, and no evidence of these claims was presented during the hearing on June 11, 2014. Without evidence supporting these claims, just cause for termination cannot be found. The third reason given for termination was that Ms. Rogers directed a subordinate to misrepresent the facts surrounding the investigation. However the phrase "cover for me" was meant by Ms. Rogers to request Ms. Sorlie to find the name of the apprentice who they thought was looking for a transfer. In fact, Ms. Sorlie called back shortly after this conversation with that name. The last reason given for termination was that Ms. Rogers knowingly maintained inaccurate payroll and fringe records for certain employees upon their request. Yet there is no evidence presented that Ms. Rogers knew or should have known that late time cards should have been processed differently. Finally, Ms. Rogers, a 29-year career employee with no prior discipline, was terminated immediately. She did not receive progressive discipline. Even if the charges against Ms. Rogers had been substantiated during the investigation and proven by clear and convincing evidence at

the arbitration hearing, Ms. Rogers was never given any oral warnings, written warnings, or suspensions related to the issues. Her long service, her unblemished record, is a definite factor in her favor. In accordance with Section 8.03 of the Collective Bargaining Agreement, OPEIU Local 12 asks that Pamela Rogers be reinstated to her former position without any loss of seniority or rank, suffer no reduction in salary, and be compensated by the JAC Training Fund for all time lost retroactive to the date of discharge February 28, 2014.

DECISION AND RATIONALE

A. Burden of Proof

This is a 29-year employee with an unblemished record until this time. While "preponderance of the evidence" may be the traditional burden of proof in arbitration matters, "when discharge involves the stigmatizing behavior, the appropriate standard of proof is one of clear and convincing evidence." **Riverwood Int'l Corp**, 116 LA 1331, 1335 (2001)(Nicholas Jr., Arb.) "Clear and convincing evidence is also the appropriate standard of proof when an employee had a long-term career with the employer with minimal disciplinary history." **Xcel Energy** (130 LA 1608, 1615, 2012)(Daly Arb) Consequently, I will apply the clear and convincing evidence standard.

B. Intentionally and knowingly withholding paychecks for retired instructors to assist in avoiding pension penalties

There is no written or unwritten policy regarding when part-time instructors are to turn in their time cards. The part-time instructors are responsible for keeping track of their own hours and turning in their cards. Mr. Hanson turned in his cards in 2014. This had been done on previous occasions. Ms. Rogers did what she has always done, which is to process the cards for payment when the cards were received. She violated no written or unwritten policy. Therefore the employer has not proven by clear and convincing evidence that she intentionally and knowingly withheld paychecks for retired instructors to assist them in avoiding pension penalties.

C. Dishonest with the director; insubordinate and refused to cooperate with the investigation; directed a subordinate to misrepresent facts

When Mr. Alsip's letter was received in the office on January 6, 2014, it was opened by Ms. Wester. By Mr. Trudeau's own testimony at the arbitration hearing "My mail has been opened before. Certain things if they came in certified mail don't get opened." Mr. Trudeau was not in the office. Mr. Trudeau himself characterized Ms. Rogers as his "right hand". [Post-hearing brief of Employer at 2]. The letter was not marked as "confidential". In reading the letter, Ms. Rogers found that the last sheet was a note from Mr. Alsip about training practices at another office in Wisconsin. She placed the pages in the envelope and left it on Mr. Trudeau's desk for him to read.

About a week later, Ms. Rogers came across the copy of the sign-in sheets she had made on January 6. In reviewing these sheets, she testified she was confused by the way the classes were being scheduled. Consequently, she called Amanda Parker, the office manager at the Kaukauna, Wisconsin office, to discuss the different ways they schedule classes. During that conversation, Ms. Rogers faxed a copy of the sheets to Ms. Parker so she could refer to them as they spoke. During that same call, Ms. Rogers asked Ms. Parker if their training center would cover Appleton, Wisconsin, and told her their office would send Grant Niggeman's file.

On January 22, 2014, Ms. Rogers was getting ready to leave for a doctor's appointment when she was called into Mr. Trudeau's office. He asked her if she had "sent a 14-page fax to the Kaukauna office". Ms. Rogers answered honestly that she did not know and she asked why he was inquiring. He would not give her any additional information about what the fax contained or why he was looking into it. He repeated that it was a 14-page document. Her response was that 14-pages was a lot and it sounded like a student file. She told him that a student wanted to transfer to Wisconsin, but she could not remember his name. Afterward, when she was driving to the doctor's office, she called Ms. Sorlie to ask if she remembered the name of the student who wanted to transfer. Ms. Sorlie did not remember. Ms. Rogers asked Ms. Sorlie if she remembered faxing the file because Ms. Rogers did not remember doing it herself. The file she was referring to was the student file. Ms. Sorlie said she did not fax the file. Because of the "strange nature of Mr. Trudeau's questioning" [Testimony of Ms Rogers], Ms. Rogers asked Ms. Sorlie to "cover for her" by looking for the student's name until Ms. Rogers could get back to the office in the morning to try to find it herself. Ms. Sorlie interpreted "cover for me" to mean "I want you to lie to Mr. Trudeau about faxing the file" [Testimony of Ms. Sorlie]. Ms. Rogers

did not say to lie or imply that she wanted Ms.Sorlie to lie. Ms. Sorlie interpreted the language one way while Ms. Rogers meant it in a completely innocent way.

On January 23, Ms. Parker sent a text to Ms. Rogers asking "Send paperwork immediately!" [Union exhibit #2 text sent Thursday, January 23 4:06]. The Employer characterizes this second document faxed on January 23, 2014, as being sent to "cover up the fact that the Alsip letter had been sent by Rogers on January 15th." [Post-hearing brief of Employer at 6].

Ms. Rogers testified she did not remember sending by US mail a copy of the Mr. Niggeman's file to Ms. Parker's home. But considering the text message saying "Send paperwork immediately!" it is understandable that Ms. Rogers, knowing that Ms. Parker was possibly travelling, would send the copy to her home and also fax it to the office.

In its post-hearing brief, the Employer states "this case is not about whether Rogers was fired for sending a facsimile. This case is ultimately about trust, honesty, and candor." [Post-hearing brief of Employer at 3]. But, in fact, this is case really about sending a facsimile and that facsimile being misinterpreted as a "cover up". Ms. Rogers, a long-term employee who had never been disciplined up until this time, was terminated because she was trying to do her job and couldn't remember exactly how many pages were faxed and precisely when they were faxed. She did not send the second fax on January 23 as a "cover up". She sent it because Ms. Parker asked her to send it "immediately". She sent it by fax and she sent it by US Mail. Further, she was not asking Ms. Sorlie to lie. She was asking Ms. Sorlie to "cover for me" because she was on her way to the doctor's office, could not find the file, could not remember the name of the person who they had discussed was asking for a transfer and would not be back until the next day.

Ms. Parker was not dishonest when she was asked about certain documents faxed to another apprenticeship office. She was not insubordinate or refused to cooperate with the Fund's investigation. She did not direct a subordinate to misrepresent facts surrounding the investigation. And she did not knowingly maintain inaccurate payroll and fringe benefit reports for certain employees upon their request. This is a case of leaping to conclusions too soon. Ms. Rogers actions are not equivalent to a refusal to cooperate. They were not designed to frustrate the purpose of Mr. Trudeau's investigation. Her actions do not demonstrate that she abused her position or knowingly falsified evidence to hide her initial deception. Rather, she tried to do her job. She opened a letter addressed to Mr. Trudeau, which

was not uncommon for a letter, which was not marked confidential; or, as Mr. Trudeau testified during the hearing, was not marked as "certified mail." Mr. Alsip's post- it notes made reference to two of the Wisconsin office employees. Ms. Rogers logically concluded that Ms. Parker, the office manager in Wisconsin, probably knew what this was about and needed to have this information. So she contacted Ms. Parker, copied the letter, and faxed the information to Ms. Parker so she could talk about the matter involving training of the apprentices. Ms. Rogers was Mr. Trudeau's "right hand".

Ms. Sorlie simply misunderstood Ms. Rogers' request to "cover for me." Ms. Sorlie interpreted this incorrectly. She described the request by Ms. Rogers that Ms. Sorlie "lie", when in fact, Ms. Rogers was simply asking Ms. Sorlie to find the "transfer file" so she could get the information to the Wisconsin office.

It is not a surprise that Ms. Rogers was not forthcoming with more information about further faxes when Mr. Trudeau was questioning her in such a manner. Was she being investigated for something? Was she in trouble? Why was Mr. Trudeau acting in such a "strange" manner? Ms. Rogers did not have an opportunity during the investigation to fully examine the facts, think back on precisely what occurred, and, in essence, defend herself and explain what her thinking was. This 29 year "right hand" employee was put on immediate suspension and a week later she was terminated without ever having been fully informed of the alleged violations, without being told what rules she had violated, without a fair and objective investigation being done, and without substantial evidence being shown to prove by clear and convincing evidence that she was guilty as charged in the February 28, 2014, termination letter.

Based on the above reasoning, it is awarded that the Employer has not shown just cause by clear and convincing evidence that Ms. Rogers was dishonest with the director, was insubordinate and refused to cooperate with the investigation, directed a subordinate to misrepresent facts, or did not knowingly maintain in accurate payroll and fringe records for certain employees upon their request. Ms. Pamela Rogers is reinstated to her former position without any loss of seniority or rank, she will return with no reduction in salary, with all benefits, and be compensated by the JAC Training Fund for all time lost pay retroactive to the date of discharge, February 28, 2014. There shall be set off for any other employment wages and unemployment compensation she may have received. Ms. Rogers' file shall be cleansed of all reference to her termination.

July 30, 2014

Date

Joseph L. Daly
Arbitrator