

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LINCOLN WOOD PRODUCTS, INC.

and

MIDWEST INDUSTRIAL COUNCIL LOCAL UNION 1488

Case 26
No. 59705
A-5919

(P. Hahn Termination Grievance)

Appearances:

Murphy, Gillick, & Wicht Prachthausen, by **Attorney Sandra Graf Radtke**, Brookfield Lakes Corporate Center, 300 North Corporate Drive, Suite 260, Brookfield, Wisconsin 53045 and Midwestern Industrial Council appearing on behalf of Local Union 1488 and Mr. Patrick Hahn, Grievant.

Ruder, Ware & Michler, S.C. by **Attorney Jeffrey T. Jones**, Suite 700, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050 appearing on behalf of Lincoln Wood Products, Inc.

ARBITRATION AWARD

On February 19, 2001, the Midwestern Industrial Council Local Union 1488, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a member of its staff to serve as the sole arbitrator to hear and decide a grievance pending between the parties. Hearing on the matter was conducted on May 1, 2001, in Merrill, Wisconsin, before Arbitrator Lauri A. Millot. Post-hearing and reply briefs were submitted and exchanged by July 21, 2001. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties stipulated that there are no procedural issues, but were unable to agree as to the statement of the substantive issues. The Union frames the substantive issues as:

Was the Grievant terminated for just cause and if not, what is the proper remedy?

The Employer frames the substantive issues as:

Whether the Grievant's termination violated the terms of the labor agreement? If so, what is the appropriate remedy?

Based upon the relevant evidence and arguments in this case, I accept the Employer's issue and it shall be determined herein.

RELEVANT CONTRACT PROVISIONS

ARTICLE I: RECOGNITION

. . .

SECTION B: The Union recognizes that the management of the plant and the direction of the working forces are vested exclusively with the Company. The Company retains the sole right to hire, discipline, discharge, layoff, assign, promote and transfer employees, determine the starting and quitting time and the number of hours to be worked, assign work, determine the number and the location of its plants, sub-contract and assign out work, except to the extent such rights are specifically abridged by a provision of this contract. It is understood that management rights are not limited to those specifically mentioned above. It is also understood that the Company's management prerogatives shall not be used for purposes of discrimination against employees.

. . .

ARTICLE IX: SENIORITY

. . .

SECTION D: Loss of seniority shall result under the following conditions:

. . .

2. Discharge for cause. (The Company shall immediately notify the Union in writing with the reason or reasons for such discharge.)

ARTICLE XII: GRIEVANCE

. . .

The arbitrator's decision shall be final and binding to both parties of this Contract and the cost of the arbitrator shall be equally borne by the Union and the Company.

BACKGROUND AND FACTS

Lincoln Wood Products, Inc., herein the "Company," is a window manufacturer located in Merrill, Wisconsin, that supplies windows to customers along the East Coast of the United States, South Dakota and Chicago, Illinois. The Company hired Patrick Hahn, the Grievant, on May 2, 1994, as a truck driver. His responsibilities were to haul windows via truck over-the-road stopping at various customer locations, setting-up window displays and working at home shows with sales personnel. Hahn's supervisor from the date of his hire until his termination on December 15, 2000, for "Falsification of Records" was Virgil Kleinschmidt.

Sometime during the fall of 2000, the Department of Transportation (DOT) advised the Company that it intended to conduct an audit of the Company's motor carrier license. This audit would include a review of the logbooks of the Company's drivers. DOT regulations require drivers to record their duty status for each 24-hour period by making written entries for the starting and ending times for off-duty, sleeper berth, driving and on-duty not driving. Drivers are also expected to note the name of the city, town or village for each change of duty status. The DOT regulates the number of hours a driver may drive per day and the number of consecutive days a driver may drive. Failure to comply with DOT regulations can result in the issuance of citations that fine the Company and/or fine a driver. An unsatisfactory audit could result in the Company losing its motor carrier license.

Shortly before the arrival of the DOT, Hahn went to Rick Bliese, Company Accountant, and informed him that he and the drivers believed that if changes were not made, the Employer would be fined by the DOT. Hahn testified he was told by Bliese that Bliese would inform Jane Biermann, Company CEO, of the drivers' concerns.

The DOT audit was conducted in September, 2000, and a report was issued on September 27, 2000, which found the Company unsatisfactory in the area of “Operational/Driving” due to 18 violations, issued a “CONDITIONAL” safety rating and fined the Company \$3,630.00. The report specifically described two violation types including “[r]equiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days” which was found to have occurred once and preparing “[f]alse reports of records of duty status.” The audit indicated that four drivers had prepared false reports.

As a result of the DOT audit, a driver meeting occurred on October 7, 2000 with Hahn, Bliese, Kleinschmidt, Rebecca Roberts, Scheduling Supervisor and seven drivers. The meeting minutes read as follows:

1. Review DOT audit
 - A. Driver files were good.
 - B. We received a rating of conditional
 - C. Toll slips not matching up was our #1 problem. You must stay legal!!!! We will be getting Illinois toll cards soon. But you still must stay legal Toll cards or not. We will be using Gene more to fill in if you run out of hours.
 - D. Watch hours on duty. Had a couple of violations there also.
2. Turn in logs after every trip.
3. Turn in expense sheets and toll slips at the end of every week.
4. Problems with customers.
 - A. Authorized—still a big problem. No one is ever there to help unload. Must call ahead. No loading docks to unload. Virgil will talk to Dennis Krueger about this again. AAM unloads great. Drivers like going there.
 - B. Preferred—must call ahead 24 hours before unloading or they will Not Unload. Tiffany or Becky will have to call ahead because drivers don’t Know they are going in there far enough ahead of time.
 - C. R.W. Screen—no one is ever there.
 - D. Pickens in Carmel, IN—no way to get in there. Have to block the whole street.
5. You must have an OK from Virgil or Becky to bring someone with you on a run. You must also get a signed sheet from Becky giving you Permission. One copy you keep and one signed copy goes to Becky.
6. Penske—not doing so good again. Never washes tractors.
7. Ryder—is doing fine.
8. Interplant drivers MUST check trailers. Lights, tires, etc, must be checked. Virgil will talk to Steve Riehle on this.
9. Drivers signed copies of our log book policy and expense sheet policy. Virgil went over this with them again.

Lincoln and the drivers must stay legal. No more violations. Virgil is auditing the logs, expenses, etc. daily. Overland Transportation is also auditing them on a monthly basis.

The Logbook Policy referenced in item nine of the Company Minutes was distributed at the meeting and signed by Hahn on that date states:

. . .

When you go on a run, you Must make sure that your logs match with your tolls, scale tickets, shower receipts, or anything else with a date and or time on it. You Must Stay Legal.

Also, watch your hours. You must follow the 10/15/70 hour regulations. When you have hours available, you must leave when dispatched in order to be at your first stop when the customer opens.

It is Lincoln Policy that you must take a break every four hours.

The following information must be filled out on the front side of you [sic] logs.

1. You must recap.
2. Total miles driven must be on your logs.
3. Tractor and trailer numbers must be on your logs. If you switch trailers or tractors, you must write both numbers on your log.
4. Your total hours must also be filled in. We need total hours for the following:
 - A. Off duty hours
 - B. Sleeper berth hours
 - C. Driving hours
 - D. On duty (not driving) hours
5. Your signature must be on the log
6. The carrier's name and address must also be filled in.
7. The date Must be on the log.
8. The grid must be filled in, and the remarks section must be filled in with your drops, city, and state. Any other applicable remarks must also be listed.
9. Your starting point and destination point must also be filled in.
10. You must log your vehicle inspections.

Please watch your mph. You must not exceed the speed limit.

When unloading, you must show your time as On-Duty—Not Driving. You cannot show it as off duty. Because you are not off duty, you are just not driving. This is a DOT regulation, it must be followed.

All logs Must be printed and legible. This includes your signature. Illegible logs are NOT acceptable.

All logs Must be turned in with every trip.

The Vehicle inspection report on the back of your logs Must be signed and dated, and the time written in. The tractor and trailer number must also be written in EVERY TIME! If you switch trailers or tractors, a vehicle inspection must be done and filled out on every vehicle. A vehicle inspection must be done for every trip!!!

Falsification of logs can result in Lincoln Wood Products and the driver being fined by the DOT. If you are caught falsifying you [sic] logs, you will be put out of service. If you continue to do so, you can be fined by DOT and you [sic] job will be terminated.

Your logs must be complete. You will be put out of service until they are complete. If this continues, it will result in termination.

...

Hahn testified that at the meeting, the drivers were told that they had to “run legal” and were given copies of rules and regulations. Kleinshmidt testified that at the meeting, he reviewed with the drivers the need for them to “get legal.” Kleinschmidt stated that the issue of falsifying logs was discussed at the meeting and he informed the drivers that anyone that did not comply would be disciplined or terminated. Kleinschmidt admitted that prior to the audit, the Company did not comply with DOT regulations as it related to driver logbooks and driver time. Further, Kleinschmidt acknowledged that the Company had a policy that addressed falsification, but that it was not enforced prior to the audit with drivers that did not accurately complete their logbooks.

On October 16, 2000, Hahn approached Biermann, after learning that Bliese had not informed Biermann of his concerns and Biermann requested that he give them to her in writing. Hahn drafted a letter explaining his concerns with the Company’s transportation department. Hahn criticized Kleinschmidt’s management style claiming that he lacked leadership and relied on “a heavy handed approach with the drivers.” Hahn alleged that the Company’s trucks were still “running illegal” and that it would only change if management changes were made. Hahn indicated that he believed the Company needed to transfer Kleinschmidt to another management position in the facility and “place someone in transportation that has the knowledge of how to organize routing, figure hours of service and proper dispatch and check and file logs and receipts.” Hahn hand-delivered this letter to Biermann during November, 2000, and she and Hahn immediately met with Roger Emmuel,

Company General Manager. After Emmuel reviewed the letter, he requested additional information from Hahn, which was provided later in November, 2000. Emmuel told Hahn during December, prior to Hahn's termination, that he was going to set up a meeting with all the drivers, Kleinschmidt and Roberts. 1/

1/ The meeting occurred on January 18, 2001, after Hahn's termination.

Hahn testified that on December 11, 2000, he received a telephone call in his truck from Rebecca Roberts, Scheduling Supervisor. Rebecca Roberts is married to Jeff Roberts, Company management employee. Hahn testified that Rebecca Roberts was screaming at him and questioning why he went to Biermann with his concerns about Kleinschmidt. Hahn testified that he believed Plant Manager Tom Radloff had shown Jeff Roberts Hahn's letter to Biermann and that Roberts told his wife of its contents.

Kleinschmidt testified that when he reviewed Hahn's log for the date December 4, 2000, he noticed a discrepancy between Hahn's log and a toll slip in that Hahn had logged himself in Billings, Oklahoma beginning at 7:30 p.m., but the toll slip showed Hahn as leaving the Kansas turnpike at 7:42 p.m. Kleinschmidt stated he informed his supervisor, Radloff, of the discrepancy. After meeting with Radloff, a second meeting occurred with Kleinschmidt, Radloff, Jennifer Monet, Human Resources Director and Roger Emmuel, General Manager. Following this meeting, Emmuel spoke to CEO Biermann and then informed Kleinschmidt to terminate Hahn.

On December 15, 2000, after Hahn finished his shift and went home, he received a telephone call from Kleinschmidt asking that he return to the Company facility. Hahn arrived at approximately 2 p.m. and went to Kleinschmidt's office. Kleinschmidt took Hahn to Radloff's office where Kleinschmidt informed Hahn that he was terminated. Also present during the termination meeting were Radloff, Mike Plisch, Union Representative and Monet.

The Reprimand Sheet indicates the reason for Hahn's discharge was "Falsification of Records" and further described as "Pat on 12-4-2000 showed himself off duty at 7:30 p.m. in Billings OK. the [sic] toll slip for Kansas He turned in on his expense account shows him leaving the Kansas turnpike at 19:42. which [sic] is 7:42 p.m." Neither Hahn nor the union representative signed the sheet.

Kleinschmidt testified that Hahn's prior work history was considered when making the decision to terminate Hahn. Kleinschmidt testified that Hahn was issued a Written Reprimand on August 9, 2000, for a June 23, 2000 violation he received from the South Dakota Highway Patrol for "Log violation (general/form and manner) LAST ENTRY AT 01000 [sic] HRS ON THE 3/4/0 [sic]." The reason checked on the Company's Reprimand Sheet form for the

discipline was “Violation of Work Rules” and “Miscellaneous.” The comments included “Violation Dot Code {section} 395.8 Log Book Violation” and were described as “[l]og Book was not up to date. Violation Dot 395.8 and Company Policy. Paper work must be kept up to date.” Hahn signed this Reprimand Sheet.

Kleinschmidt testified he also considered Hahn’s driving history, which included the following violations for which Hahn was not formally disciplined:

A June 29, 1998 Louisiana violation in the amount of \$100 for Record of Duty Status Not Current. The Company paid the penalty for this violation.

A May 13, 1999 Kansas violation for speeding and Drivers Record of Duty Status Not Current;

A September 7, 1999 Minnesota violation for “[f]rame accessories not bolted/riveted securely CROSSMEMBER BOLT LOOSE RIGHT SIDE BETWEEN 2ND-3RD AXLES,” “[n]o medical certificate on driver’s possession” and “[l]og violation (general/form and manner) FAILS TO RECORD SLEEPER BERTH TIME CORRECTLY;” and

A January 20, 2000 accident when Hahn backed into a tractor at Conoco Truck Stop in Clear Lake, Iowa resulting in \$399.65 damages.

Monet testified that after Hahn was informed that he was being terminated for the logbook violation, he kept saying that it was just an error. Monet acknowledged that Hahn was upset. Monet said that the meeting was not going well so she intervened, asked Hahn to sign the Reprimand Sheet, and he and Union Representative Plisch left Radloff’s office and went outside onto a landing. Monet said she went out on the landing and asked Hahn for his keys. Monet recalled that Hahn threw his keys at her out on the landing.

Monet testified Hahn failed to sign the Reprimand Sheet. An employee’s refusal to sign a warning or any documentation required by management is a violation of Company Rule 6, Group One, that has a penalty of immediate discharge. Monet explained that it was generally her practice to explain to employees that by signing a Reprimand Sheet they are acknowledging receipt of the document and not agreeing with the document’s content, but that she did not believe she explained this to Hahn.

Union Steward Keane “Mike” Plisch testified that he did not recall any management representative directing Hahn to sign the Reprimand Sheet at the termination meeting, but that Hahn had signed the document after the meeting on December 15, 2000. Plisch stated that he gave Larry Simon, Union President, the signed Reprimand Sheet, but that he was unaware of whether Simon gave the Company the signed document. Plisch testified that he was present

when Monet requested Hahn's keys out on the landing outside Radloff's office and that he observed Hahn hand the keys to Monet. Plisch stated that Hahn did not throw the keys at Monet.

Tom Radloff, Plant Manager, testified that he was present during Hahn's termination meeting. Radloff testified that he was given a copy of Hahn's letter to Biermann after Hahn's discharge, but that he had heard about it prior to the discharge.

Mike Kenny, Company Safety Director, testified that in 1997, he was employed by Midwestern Industrial Council and assisted the Union in bargaining the successor collective bargaining agreement between the parties. Kenny recalled that Rule 6 was added during August or September, 1997, as a result of documents appearing in employee personnel files which the employees alleged they had not previously seen. Kenny testified that all bargaining unit members were provided a copy of the revised Company Rules during August or September of 1997.

Truck Driver Richard Grovogel testified that throughout his seven years of employment with the Company, there have been occasions where his toll receipt did not match his logbook. Grovogel testified that he has operated his truck illegally during his employment with the Company at the direction of Kleinschmidt. Grovogel described an instance when he was leaving Ohio and Kleinschmidt told him on the telephone to "get stuff" back here as fast as he could because Kleinschmidt needed it back the next day. Grovogel testified that he got the "stuff" back the next day, but that his logbook was inaccurate and not legal because his tolls did not match his logbook. Grovogel described a second instance when he refused Kleinschmidt's request that Grovogel illegally take a load from Superior to Chicago which resulted in Kleinschmidt not assigning him any more routes for the remainder of the week. With regard to the Company Rules, Grovogel testified that he had never seen a copy of them.

POSITIONS OF THE PARTIES

The Company

The Company argues that Hahn's termination was consistent with the collective bargaining agreement. The Company points to Article IX: Seniority, and notes that the only limitation on employee termination is that it must be "for cause." The Company's brief reviews the arbitral definition of "cause" and concludes that it "simply means that an employer, acting in good faith, has a fair reason for disciplining an employee which reason is supported by the evidence," which the Company believes is fully supported by the record in this case.

The Company takes the position that the reason for Hahn's termination was his "purposeful falsification" of his driver's log. The Company relies on the testimony and opinion of the Grievant's supervisor, Virgil Kleinschmidt, who concluded that the Grievant

“purposefully” falsified his drivers log. The Company argues that Kleinschmidt reached this conclusion as a result of his 20 years truck-driving experience, his 8 years experience as a truck driver supervisor and the thousands of daily driver logs that Kleinschmidt has reviewed. The Company also points to the DOT audit and concludes that since it had occurred just two months prior and Hahn understood the seriousness of the audit results, his falsification was willful because he knew that further violations would place the Company’s motor carrier operation in serious jeopardy.

The Company argues that Hahn placed the safety of himself and other drivers on the road in danger as a result of falsifying his drivers log since the falsification occurred with the purpose of hiding the number of hours that Hahn had driven and should an accident occur, the Company would have been liable for any injuries or deaths that resulted. Finally, the Company argues that falsification of Hahn’s driver log is a Work Rule 3, Group One offense that has a penalty of immediate termination.

In response to the Union’s claim that Hahn was terminated in retaliation for the letter he provided to CEO Biermann, the Company first points out that Kleinschmidt testified that the letter had nothing to do with Hahn’s termination and secondly, that he did not see the letter prior to Hahn’s termination. The Company further notes that Kleinschmidt did not make the decision to terminate Hahn; but rather, Kleinschmidt consulted with Radloff who consulted with Emmuel who consulted with Biermann. The Company argues that the evidence does not support the Union’s claim that Hahn’s discharge was the result of a conspiracy due to the letter.

The Company denies the Union’s claim that Hahn was subjected to disparate treatment resulting in his termination. The Company points out that Jim Ryburn and Robert Kleinschmidt have very good driving records. It further asserts that Ryburn and Kleinschmidt were counseled for violations in the same manner as the Grievant prior to his December 4, 2000 violation. The Company concluded Robert Kleinschmidt made an error when going between two time zones and, therefore, discipline was not warranted. With regard to Ryburn, the Company maintains that the violation occurred prior to the October 7, 2000 drivers meeting so he was not aware of the Company’s expectation and thus discipline was not appropriate.

The Company asserts that regardless of Hahn’s termination for falsification of his driver log, he was subject to immediate termination as a result of his refusal to sign the disciplinary document at his termination meeting on December 15, 2000. Failure to sign the document is a Group One violation of the Company work rules, which has the penalty of immediate termination. The Company relies on the testimony of Mike Kenny, Safety Director, who was the Union Business Agent when the work rule was bargained that created the expectation for employees to signed documents when required to do so by management or face immediate discharge. Kenny testified that all employees where provided a copy of the new work rule. The Company argues that Hahn was told to sign the discharge document by management and his union representative, but that Hahn refused to sign thereby justifying his termination.

Finally, with regard to the issue of whether termination was the appropriate penalty for the Company to impose, the Company asserts that the Arbitrator should give “due weight” to the employer’s determination of penalty unless the arbitrator concludes that the Company has acted in an “. . . unreasonable, arbitrary or capricious manner . . .” Employer’s brief page 20. The Company argues that given the multiple warnings Hahn received, Hahn’s disregard for the warnings and the unique situation the Company was in as a result of the DOT audit, that termination was the appropriate level of discipline.

For all of the above reasons, the Company argues the termination is appropriate and the grievance should be dismissed.

The Union

The Union argues that the Grievant’s termination was not the result of his failure to adhere to Company policy or failure to comply with DOT regulations, but rather was an act of retaliation by Hahn’s immediate supervisor after Hahn wrote a letter to Company management criticizing Kleinschmidt’s performance. The Union asserts that the timing and harshness of discipline imposed on Hahn confirm that Kleinschmidt had knowledge of the letter Hahn provided to CEO Biermann and that Hahn’s termination was retaliatory. The Union argues that Kleinschmidt’s testimony denying knowledge of the letter is incredible since just four days before Hahn’s termination, he was subject to profane screaming from Kleinschmidt’s subordinate in scheduling, Rebecca Roberts. The Union also finds it improbable that the Company, once receiving and reviewing Hahn’ letter which criticized Kleinschmidt, failed to obtain Kleinschmidt’s “side of the story.”

The Union next points out the disparity in discipline imposed by the Company for the same offense. The Union relies upon the testimony of Richard Grovogel, who stated that he committed offenses very similar to Hahn’s and was not disciplined. The Union argues that just cause requires that the enforcement of rules and regulations must be consistent and the Company’s failure to treat Hahn the same as Grovogel, and drivers Jim Ryburn and Robert Kleinschmidt is evidence that the Company lacked just cause.

The Union asserts that the Company’s reliance on Hahn’s past record as a basis for the severe level of discipline of Hahn is just an attempt by the Company to “bulk up” their case for arbitration. The Union concedes that Hahn has one prior instance of discipline in his file, but points out that this discipline was not for falsifying records. The Union argues the principles of just cause do not allow the Company to rely on Hahn’s other driving violations since the citations did not result in discipline, Hahn was never informed the violations were being used to move him along the “progressive discipline track” and the violations were not subject to the grievance process. Additionally, the Union takes issue with the Company’s attempt to support Hahn’s termination with the April 30, 2001 driving record check since it was not in Kleinschmidt’s possession at the time the decision was made to terminate.

The Union argues that the Company's policy does not support a termination for a first violation of falsifying a logbook. Rather, the Union notes that the policy indicates that the driver will be "put out of service" which Kleinshmidt testified meant that the driver would not be allowed to drive that day. The Union argues that the clear meaning of the language contained in the policy requires that a "continued" violation of falsification must occur in order for the driver to be terminated subject to the policy and this second chance was not afforded to Hahn.

In response to the Company's assertion that Hahn's failure to sign his Reprimand Sheet is grounds for termination, the Union asserts this is just a "terminate the terminated" argument that the Company is creating for purposes of the arbitration hearing. The Union asserts that once Hahn was terminated, he was not under the authority and control of the Company and this type of post-discharge conduct is not of the type that can be used to deny the employee reinstatement.

For the cited reasons, the Union believes the grievance should be sustained and the Grievant returned to work.

DISCUSSION

It is well established that in cases in which the validity of discipline is questioned, the employer bears the burden of demonstrating that the discipline was issued consistent with the parties' collective bargaining agreement. The collective bargaining agreement in this case requires that the Company have "cause" to issue discipline. Cause has been interpreted in the realm of labor relations to bear the same obligations on the employer as "just cause" in cases of discipline. In order to find just cause for discipline, it must first be shown that the Grievant engaged in the conduct for which he was disciplined. The Company's Reprimand Form indicates that the Grievant was discharged for

Falsification of Records:

Falsification of Log Book Group 1 No 3

...

Pat on 12-4-2000 showed himself off duty at 7:30 p.m. in Billings OK. the [sic] toll slip for Kansas He turned in on his expense account shows him leaving the Kansas turnpike at 19:42. Which [sic] is 7:42 p.m.

Falsification of company records is an offense that infringes on the trusting relationship between an employer and an employee. The employee's conduct is reviewed to determine whether the act was a "willful, deliberate attempt to defraud the Company." AMERICPOL-

SYNPOL CO. 100 LA 896, (1993) at 899, citing Employee Discipline, Policies and Practices, James R. Redecker (BNA, 1989) p. 221. Factors to consider include whether the employee intentionally engaged in the misconduct, whether there is motivation for personal gain, what effect the falsification had on the employers business, was the employer's policy clear to the employee and consistently enforced, as well as the contract language, the employee's work record and the grievant's candor. See Discipline and Discharge in Arbitration, Norman Brand, (BNA, 1998) p. 233-237.

Review of the toll slip, Hahn's original driver logbook and the corrected driver logbook indicate that though there is no change in his total driving, on-duty (not driving), off-duty or sleeper berth time, Hahn changed his "On-Duty Driving Time" on December 4, 2000, from 5 p.m. through 7:30 p.m. to 6 p.m. through 8:30 p.m. Hahn testified that he "just made a mistake" converting the toll receipt from military time to standard time which caused the error, that he had nothing to gain by making the "error," and that he had counted wrong because he "started at 1200 hours." The logbook form requires a driver designate when he is driving, when he is on-duty, though not driving, and when he is off-duty. Whether the original or the revised logbook entry for December 4, 2000 is referred to, neither require that Hahn note the time when he left the state of Kansas as per the toll slip. Thus, I do not understand Hahn's need to convert the toll slip recorded in military time to standard time. Further, there is no explanation as to why Hahn changed his driving time from the original log of 5 p.m. to 7:30 p.m. to the corrected log driving time of 6 p.m. to 8:30 p.m. Given that there is no plausible reason provided to explain Hahn's need to convert the toll slip from military time to standard time nor is there an explanation addressing the change in driving time, I find Hahn's testimony incredible and self-serving. Yet, even given this finding, the evidence does not support the conclusion that Hahn falsified his logbook warranting termination.

Kleinschmidt testified that Hahn's motive when making the inaccurate logbook entry was to allow him to have more hours available for driving. Hahn testified that he had nothing to gain from the original December 4, 2000 entry, that he was not running illegally at that time, and that he was not trying to cover anything up. The Company did not offer any testimony regarding the number of days and number of hours Hahn had worked as of December 4, 2000, nor has the Company brought forth any evidence to indicate that Hahn was running illegally. Thus, the record does not support a conclusion that Hahn would personally gain from his original December 4, 2000 entry nor that there was any need for him to alter his logbook to avoid exceeding DOT regulations for either his hours per day driving or his days of consecutive driving.

The Company argues that Hahn posed a safety risk to other drivers since he was driving after he had exceeded the maximum of hours he had available to drive on that date and that the Grievant's logbook entry placed the Company's motor carrier license at risk. As previously indicated, the evidence does not indicate that Hahn had exceeded his available driving hours, thus, no safety risk existed for that reason.

With regard to the Company's motor carrier license, as a result of the DOT audit, the Company began a practice of in-house review of logbooks by Kleinschmidt. It was due to this newly instituted practice that the Company was able to identify the error in Hahn's logbook as well as the logbook of another driver, Robert Kleinschmidt (no relation). Kleinschmidt noticed that Robert Kleinschmidt's logbook did not match a toll in Ohio and he therefore did not accept Robert's log. Kleinschmidt testified that he talked to Robert about getting legal and told him that he had to slow down. Robert Kleinschmidt was not disciplined and he subsequently was allowed to submit a corrected logbook. In contrast, when Kleinschmidt noticed that Hahn's logbook and toll did not match, he failed to discuss it with Hahn and instead, consulted with upper management regarding discipline.

The Company argues that Robert Kleinschmidt's violation was accidental and thus, Hahn's treatment should not be compared to Robert Kleinschmidt's. The Company fails to recognize that it did not know that Robert Kleinschmidt's erroneous logbook entry was an "accident" until after Kleinschmidt questioned Robert Kleinschmidt when Robert explained that the entry was caused by a time zone change. Kleinschmidt did not offer Hahn the opportunity to explain his logbook entry. Monet, Kleinschmidt and Hahn all testified that when Hahn was informed he was being terminated for an inaccurate logbook entry, he responded that it was a "mistake" and an error. The Company's argument that the circumstances are different is not supported by the evidence. Further, had the Company afforded Hahn the same investigatory opportunity to explain his logbook entry, the Company may have concluded it, too, was an accident.

In another instance, testimony revealed that driver Jim Ryburn stopped submitting tolls to the Company for reimbursement after the DOT audit. Kleinschmidt testified that this occurred after he told Ryburn that tolls would not be reimbursed if they did not match the logbook in response to Ryburn's question. Thus, the Company was aware that it was possible that the reason Ryburn was not submitting his tolls for reimbursement was because they did not match his logbook. If true, Ryburn's actions would similarly place the motor carrier license at risk and yet, the Company did not pursue discipline with Ryburn.

Given this, I find that the Company's argument that it was primarily concerned with protecting its motor carrier license to be disingenuous, that the Company inconsistently enforced its logbook expectations, that it inconsistently imposed discipline and, therefore, it did not have cause to terminate Hahn.

The Company argues that even if the Arbitrator finds that Hahn's termination for falsification lacks just cause, there is sufficient cause to terminate as a result of Hahn's failure to sign the Reprimand Sheet. Article IX, Section D, Sub-section 2 of the collective bargaining agreement requires the Company to inform the employee of the reason for discipline or discharge at the time the discipline is administered. Hahn was provided a Reprimand Sheet that indicated the reason for his termination was "Falsification of Records." As Arbitrator Paul N. Guthrie stated, a discharge "must stand or fall upon the reason given at the time of

discharge; other reasons may not be added when the case reaches arbitration.” Elkouri and Elkouri, How Arbitration Works, 5th Edition, p. 922 (1997). Since Hahn was not initially discharged for failing to sign the Reprimand Sheet and since the agreement between the parties requires that the employee be provided with the reason for discharge, I find that the Company cannot justify Hahn’s termination with either his actions at the termination meeting or his failure to sign the Reprimand Sheet at the termination meeting.

In light of the evidence and the above discussion, the Company lacked cause to terminate Hahn for Falsification of Records. Further, it is estopped from relying on any reason for termination that was not provided to the employee at the time of discharge.

AWARD

1. Yes. The Grievant’s termination violated the terms of the labor agreement.
2. The appropriate remedy for the violation found in item one above is as follows: the Company shall immediately expunge all references to Hahn’s termination from its personnel files and it shall make him whole without interest for all money and benefits, including overtime, that he otherwise would have earned but for his termination, less any monies he would not have received but for his termination.
3. I shall retain my jurisdiction for at least sixty (60) days to resolve any questions involving application of this Award.

Dated at Wausau, Wisconsin, this 2nd day of October, 2001.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator