

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**UNITED STEELWORKERS, LOCAL 1527**

and

**REXNORD INDUSTRIES**

Case 1

No. 64997

A-6178

*(Discharge of Darren Brumfield)*

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**Appearances:**

**Mr. Douglas Drake**, Sub-District Director, United Steelworkers Union, District No. 2, 1126 South 70<sup>th</sup> Street, West Allis, Wisconsin 53214, appeared on behalf of the Union.

**Mr. Ronald J. Passarelli**, Andrews, Koehler & Passarelli, P.C., Attorneys at Law, 4343 Commerce Court, Suite 615, Lisle, Illinois 60532, appeared on behalf of the Company.

**ARBITRATION AWARD**

On July 25, 2005, the United Steelworkers Local 1527 and Rexnord Industries filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a dispute pending between the parties. A hearing was conducted on August 23, 2005 in Milwaukee, Wisconsin. The proceedings were not transcribed. The parties submitted post-hearing briefs which were received and exchanged by October 5, 2005.

This Award addresses the discharge of Darren Brumfield.

**BACKGROUND AND FACTS**

Darren Brumfield, the Grievant, was hired on December 4, 2003 and subsequently terminated on February 7, 2005. Mr. Brumfield worked on a three-man assembly team. He had a significant absenteeism record during his employment with the Company. His absenteeism compromised the effectiveness of his work team and the productivity of the Company.

Rexnord has an attendance policy contained in its employee handbook. The policy provides the following:

### **ATTENDANCE POLICY**

**Purpose:** It is the policy of the company to require good attendance and punctuality on the part of all of its employees. Unauthorized or excessive absences or tardiness will not be tolerated and may result in discipline action up to and including termination. To supply a no fault, consistent attendance policy, that requires minimal administration and is easy for all parties affected to understand.

**Scope:** This policy applies to all full time hourly employees of Rexnord Engineered Chain Division.

This attendance policy is based on a point assessment similar to your driver license. Points are assessed for each absence or tardy and, at certain levels appropriate, action is taken to correct attendance. A monthly calendar is kept by each department supervisor with an annual master record in Human Resources. Supervisors will turn in monthly attendance calendars to HR for documentation and audit purposes. All employees are encouraged to check their attendance record regularly to be certain of point assessment status. Points remain on an employee attendance calendar for a period of one rolling year. One year is defined as a rolling year and is one year from the current date.

#### **What follows is a summary of point's assessment scheduled**

Absence (per occurrence not per day)	2 points
Absence called in after scheduled shift begins	3 points
Tardy or leave early (Tardy or leave early is defined as 2 hours or less)	1 point
No call no show (each assigned day/shift)	5 points

When points assessed become one year old they automatically are deleted from your record. When an employee serves 90 days of continued employment with no assessed points s/he is given 2 credit points. If the employee is currently at zero he/she remains at zero. The policy does not allow banking of credit points. Approved medical short-term disability LOA is defined as one occurrence and is assessed two points regardless of length.

If you are absent from work you are requested to:

**Call the central number 643-2030 available 24 hours per day**

Call to report your absence as early as possible prior to your shift

If you call to report your absence after your scheduled work shift has begun you

will be assessed an extra point. Failure to call and report an absence, also known as a no call no show, is assessed 5 points.

### **Definition of an Absence**

An absence is defined as time away from your work when you were scheduled to work. This includes scheduled agreed upon overtime. This includes time off for a doctor or certified injury or illness. This includes absences when you are sent home by Rexnord's Occupational Nurse because you are feeling ill. If the employee provides a physician's return-to-work notice, signed and stamped, by the treating physician, verifying that the employee was, seen in the physician's office, and was in fact under his care for the time off work no points are assessed. The verification from the physician must be turned into Human Resources within 48 hours of your return to work.

**Please Note.** Points will not be assessed for:

Approved leaves of absence (not including short term medical)

Family Medical leaves Act

Jury/Witness Duty

Work Related Injury related to your employment with Rexnord Engineered Chain

Authorized Bereavement

Military Duty

Official Union Business

Vacation

Disciplinary layoff

The following progressive disciplinary steps will be followed in regard to an employee's assessed points:

<b><u>When an employee reaches:</u></b>	<b><u>Action Taken</u></b>
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A total of 6 points	Verbal warning
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A total of 8 points	Written warning
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A total of 10 points	Second written warning with final warning
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A total of 12 points	Termination of employment
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Employees who are absent from work for three (3) consecutive days without giving proper notice to the company will be considered an employee having abandoned their employment.

### **Deleting Points**

All points are assessed for a rolling year 12-month, 1-year period. Points will be deleted when they become one year old. 2 points will be deleted for every 3 months of perfect attendance.

### **Reporting Absence**

All absences must be reported to the 24-hour attendance phone line regardless of whether you have contacted your supervisor or manager. The person calling will receive a confirmation number. Reports to other parties are not recognized within this attendance policy.

In addition to the policy stated herein, the Company will review other attendance abuse to determine if counseling and/or corrective action is not resolving an attendance problem, in which case more appropriate action up to and including termination of employment is warranted.

The policy is distributed to Company employees, including the Grievant. A notice of the policy provisions was re-posted on January 31, 2005.

Mr. Brumfield was discharged because his point total, under the policy set forth above, exceeded 12. The record in this proceeding has seven instances of discipline of Mr. Brumfield, culminating with a notice of discharge. With the exception of the termination, none of the prior disciplines was specifically grieved.

The Company maintains a running record of time off, including vacation, sick leave, personal time, tardiness and late calls. This log also lists absenteeism-related discipline, and is attached to disciplinary warnings. Mr. Brumfield's first disciplinary entry, dated April 22, 2004, is identified as a verbal warning and also as a first written warning. The document assesses eight points to Mr. Brumfield. The reference to eight is lined out and replaced with a handwritten reference to six points. Above that is a note indicating only four points, no written warning. The attendance log is attached. The attachment which spans the period February 23, 2004 through and including April 30, 2004 has three entries for which Brumfield was given points. He was given two points for a 2-23-04 sick call, two points for a 3-8-04 sick call, and two points for a 4-30-04 personal leave, for a total of 6 points. It appears that the personal leave occurred after the verbal warning.

The second disciplinary entry, dated 5-4-04, is a verbal warning, which indicates "Violation of Company attendance policy at six points". That document has the same attendance printout as did its 4-22-04 predecessor.

The third disciplinary entry in the record is a verbal warning, dated September 29, 2004 which reflects a point total of seven. There is no printout attached to this disciplinary document.

The fourth discipline in Mr. Brumfield's record is a November 8, 2004 verbal warning. The attached attendance sheet spans the period 2-23-04 through and including 11-8-04. The attached printout has the three entries which were set forth in the first and second printout, described above. Additionally, it includes the following: One point assessed for being late on 3-17-04; a two-point reduction in points for no attendance violation for 90 days, dated 9-7-04; an award of two points for use of personal leave on 9-26-04. It was Mr. Brumfield's testimony that his supervisor, Kim Goelz, gave him this discipline on November 8. Union President Bill McIntosh, testified that he got the disciplinary documents, including this one, from Brumfield's personnel file. Goelz testified that he did not issue this disciplinary matter, that he did not prepare it, and noted that his name is misspelled on the document. Goelz testified to having no recollection of a meeting with Brumfield on November 8. The March 17, 2004 entry had not previously shown on disciplinary documents issued well after that date.

The fifth disciplinary document in the record, dated November 9, 2004, is identified as a written warning at eight points. This document, dated the day after the disputed document above, contains the three entries found on the first and second printouts and also contains the March 17, 2004 entry, as well as the September 26, 2004 personal entry. Additionally, this document awards one point for a personal early leave on June 7, 2004, one point for a late arrival on July 28, 2004 and one point for a late arrival on September 16, 2004. The reference to the June 7, 2004 early leave was reflected in prior documents. However, those documents awarded no points. The consequence of an award of one point for this June infraction caused the September 7 reduction in points to evaporate. The point tally on this document is 12. Brumfield testified that he had worked the 90 days without an absence. He complained to the Company, and he complained to the Union. He protested receipt of the document. Brumfield claimed the document was wrong. Brumfield testified that Company representatives promised they would get back to him on the accuracy of the document but never did. Goelz testified that Brumfield always acknowledged his disciplinary notices under protest. However, this is the first document in the record that reflects a written protest by Brumfield.

The sixth disciplinary document in the record is a second written warning dated January 7, 2005. In addition to the entries set forth above, the attendance attachment includes one point for leaving early on 12-21-04 and five points for "medical" on 12-22-04. The point total is 18. It was the testimony of Douglas Riker, Human Resource Manager for the Company, that a termination letter was prepared around Christmas, 2004, but never given. Riker speculates that someone noticed that the second written warning had not been issued. Once again, Brumfield protested his point total to both the Union and the Company. Once again, his protest is noted on the disciplinary document. This disciplinary letter includes the following note: "Employee currently at 18 points. Has not received second written warning to date. Darren is hereby warned that additional absences will subject him to the next level of discipline which is termination."

The seventh, and final, disciplinary document is the termination letter dated February 7, 2005. It contains all prior entries, and further awards two points for a personal

day on 2-3-05 and one more point for calling in late on 2-3-05. The attendance summary shows Brumfield with a total of 15 points. There is an obvious error in computation. Under the Company tally, Mr. Brumfield had 21 points.

A meeting was held on February 5, 2005. It is the Company's view that there was no additional information forthcoming, nor were any mitigating circumstances identified. The Company claims not to have been aware of any dispute over the number of points. The Union filed a grievance on or about February 9, 2005, alleging unequal and disparate treatment under the attendance policy.

The Company points to the termination of six employees in 2004-2005, each of whom had accumulated 12 or more points.

The Union had previously, in December of 2004, filed a grievance over the attendance policy. That grievance alleged disparity and discrimination in the administration of the Company's attendance policy. That grievance had a number of attachments which include a memo from Human Resources indicating a concern over the possibility of favoritism in tracking attendance. There is no specific attachment or reference to Brumfield. There are a number of timesheets purportedly at odds with the rules of the collective bargaining agreement. These concerns were raised throughout the hierarchy of the Company in 2004.

The Union, through testimony and exhibits, made claims of disparate treatment with respect to a number of employees. The Union contends that employee L.P. met with a prior Human Resource Director and had points reduced. There is no explanation for the reduction nor, contends the Union, any basis in the contract. The Union produced an exhibit which showed that a number of employees had been signed in by either their supervisor, including Kim Goelz, or by the timekeeper. The Union contends that these records demonstrate that there was no call to the attendance line. The Union offered testimony that one employee, R.M., who was running late, called Goelz and Goelz punched him in without penalty. That same witness testified that another employee, K.R., called Goelz under similar circumstances and was directed to the hotline and subsequently received points.

Union President McIntosh testified that certain employees were not awarded points for use of emergency vacation days. Brumfield testified that he intended to ask for an emergency vacation day, but inadvertently requested a personal day on February 3. Had he asked for the former, he believes that he would not have been given points. His use of the latter awarded him points, leading to his termination.

During the time period encompassed by Mr. Brumfeld's discipline, the Company went through a series of Human Resource Directors. Tom Maratea was Human Resource Manager until he left the Company in mid-December. The Union indicated that the concerns raised by its December grievance had been raised with Maratea. During an interim period, the Human Resource job was shared by two H.R. managers brought in from other plants, Bob Kochus and Ray Jeter. Mr. Riker was hired early in January of 2005. He met with the Union during the

week of January 24, 2005. Among the topics discussed were the Union's perception of inconsistent application of the attendance policy. Riker agreed to look into the Union grievance. He further indicated that he would see to it that the Company policies were applied consistently. On January 31, he caused the handbook policy to be redistributed. He sent out a notice indicating that the policies would be applied.

### ISSUE

The parties stipulated to the following issue:

Whether the Employer had proper cause to discharge the Grievant in accordance with Article XII, Section 1 of the collective bargaining agreement. If not, what remedy?

### RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

#### *Article XII .....Disciplinary Layoff and Discharge*

**Section 1.** In the event an employee is disciplined by temporary layoff or is discharged and believes the action is without proper cause, they may request that their case be considered under the above rules for adjustment of grievances, but the Company may, nevertheless, place the layoff or discharge in effect and discontinue the services of the employee pending settlement of the matter. A protest against such temporary layoff or discharge must be submitted in writing by the employee concerned or by the Union to the management within five (5) working days from the date of disciplinary layoff or discharge; otherwise there shall be no recourse. All protested cases of disciplinary layoff or discharge shall be taken up within five (5) working days from receipt of the protest. If it is determined that the disciplinary layoff or discharge has not been for proper cause, the Company will reinstate such employee and compensate them for the wages lost by reason of the improper layoff or discharge. In the case of the layoff or discharge for cause, such disposition of the case may be as is warranted by the circumstances in the individual's case. . .

### POSITIONS OF THE PARTIES

The Union contends that the discharge was without cause. It is the view of the Union that it had raised concerns about disparate treatment of employees under the Company attendance policy, widespread inconsistencies in how absenteeism and tardiness were recorded and reported, and efforts by some Company supervisors to bypass the Company attendance policy by signing in certain employees who otherwise would have been assessed points for their violations of the attendance policy.

It is the Union's view that the lack of stability in the Company H.R. department may have contributed to the instability and discrepancies in rule enforcement.

It is the view of the Union that disparities in the assessment of points to the Grievant and the sudden appearance of points on the Grievant's personnel record, months after the fact of alleged policy violations, raise serious concerns about the appropriateness of the discharge of the employee. Even the Grievant's supervisor, when questioned about the sudden change in the number of points "accumulated", by the Grievant, could offer no explanation of the disparity.

The Union is not grieving the reasonableness of the policy itself in this proceeding, but simply whether or not the policy was enforced consistently and uniformly. Even assuming that the points assessed to the Grievant were accurate, the Union argues that the inconsistent application of the policy renders the Company's actions to be without cause.

The Union points to the record of another employee, L.P., and walks through that employee's attendance sheet noting that points have been added and removed without explanation. The Union further points to the testimony of its two witnesses that a number of hourly employees report having been advised to call their supervisor directly if they were going to be late or absent. This alleged practice is contrary to the Company's attendance policy. The Union reviewed timesheets and timecards for hourly employees in the Grievant's department. These timesheets are alleged to reveal a widespread practice, at least in that department, of supervisors "signing in" or "signing out" employees who otherwise failed to punch in and out. Notes from this investigation were made exhibits in this proceeding. During the week of November 15, 2004, it is indicated that 35 employees had their time cards and attendance records altered by Company supervisors or the Company payroll clerk. A number of employees, 29, had more than one adjustment during the week. The Union contends that the Company attendance policy was widely disregarded by supervisors, at least in this department.

The Union points to the Grievant's attendance record and contends that the volatile nature of that record alone raises additional concerns of equity and fairness.

The Union points to the Grievant's testimony that he called in on February 3 and intended to request an emergency random vacation day. He mistakenly asked for an emergency personal day and was denied. As a result of his absence on February 3, and his apparent lack of proper formulation of his emergency vacation request, he was assessed two points for his absence and an additional point for his late call-in. He was thereafter terminated.

It is the view of the Employer that it presented adequate evidence to show just cause to discipline the Grievant. While acknowledging that it has a burden of proof, the Employer contends that it presented substantial evidence that the Grievant repeatedly violated the Company's attendance policy and that discharge was the appropriate disciplinary action. Under the collective bargaining agreement, the Employer has a right to establish reasonable



rules governing the operation of the plant. The attendance policy was enacted pursuant to that authority. The question is whether or not the rule is reasonable, and reasonably related to a legitimate objective to management. The Company contends that it is. The rule is clear and unambiguous.

The Employer contends that the attendance policy states, as one of its purposes, that it is a “no-fault” policy. A “no-fault” attendance policy allows an employer to terminate an employee automatically when he or she has been absent a set number of days. The theory behind such a policy is that it is mechanical with respect to its application. Once a certain number of points are assessed, discipline, including discharge, follows at certain point levels. The “no-fault” policy calls for the automatic termination of the Grievant after he has accrued 12 points. Obviously, this Grievant exceeded 12 points and so he was therefore disciplined properly under the attendance policy. The discipline was progressive and consistent with the treatment of other employees with similar attendance records.

The Company contends that the Grievant’s attendance warranted discipline and discharge. The Company allowed this Grievant to utilize vacation days in advance of earning them in order to avoid incurring points. Between the Grievant’s date of hire and his termination, approximately 15 months, the Company contends the Grievant was late or absent approximately 42 times.

The Company disputes the Union’s contention that the attendance policy has been applied inconsistently and with favoritism. The Company notes the discipline issue prior to the discharge was not grieved. The Company dismisses the Grievant’s claim that he protested, and notes that no grievance was filed over prior point totals or prior discipline. Since the Grievant and his union never filed a grievance regarding past discipline, the Grievant’s discipline up to and including his final warning regarding attendance are valid and should be considered as such in evaluating the discharge.

Another of the Union’s arguments, the Company’s changing of points for employees, is contradictory to what is argued during the hearing. The Union argues that certain employees had points reexamined and adjusted by management, as an example of “favoritism”. Yet, the Union now tries to argue that the Company should further adjust the Grievant’s points based upon mitigating circumstances.

The Employer contends that its treatment of the Grievant is consistent with past discipline. Supervisor Goelz credibly testified that he did not allow employees to call him on his cell phone for absences and thus receive an excused absence. The Union’s hearsay evidence of alleged inconsistencies should not be allowed or afforded any weight. Similarly, while the Union pointed out numerous adjustments, there is no evidence as to whether those adjustments were a result of mitigating factors. The Company offered concrete evidence of employees with attendance records similar to that of the Grievant, who were terminated.

Finally, the Company contends that this arbitrator should not substitute his own judgment for that of the Employer with respect to the level of discipline.

### DISCUSSION

This dispute concerns the Employer's "no-fault" attendance policy. The dispute is not over the existence or propriety of the policy itself, but rather in its application. This grievant has a poor record of attendance. He was disciplined repeatedly under the policy and provided warnings at various points. Notwithstanding this series of disciplines, the record is unclear just how bad Mr. Brumfield's attendance was. Entries have been added and subtracted without explanation. The Grievant protested his record; the protest was never addressed. It is true he did not file a formal grievance. It is equally true that he put the Company on notice that he believed the record was wrong.

The Employer points to the absence of a grievance on prior disciplines, and contends that those should be deemed settled. There is ample caselaw support for that proposition. However, here the Employer was on notice of Brumfield's protest. He raised the matter repeatedly. The Union also raised a claim that there were systemic flaws in the system. Those protests were brought to two operations managers and four human resource managers. I believe under the circumstances the Company was on ample notice that the system and its application to Brumfield was under protest.

It is the essence of a no fault system that it provide clarity as to an employee's status. No fault systems sacrifice subjective decision-making for bright lines, placing all on notice as to where they stand. This system failed. On or about November 9, Brumfield's attendance record became confused. He picked up five points in one day. The entries creating the disparity are months old, unexplained, and disputed.

The Company takes issue with Brumfield's claim that on November 8 he was given a printout showing seven points. However, I credit Brumfield's testimony. When he received the November 9 printout he protested. The record does not indicate that he had ever protested his discipline in the past. Goelz could not recall showing Brumfield the November 8 discipline. However, McIntosh testified that he found the document in Brumfield's personnel file. I believe the Company had an obligation to clarify Brumfield's status following the November 8-9 sequence. The context in which Brumfield's progressive discipline was proceeding was the Union's contention that the system was badly flawed. The Union's contentions, and Brumfield's protest, were turned over to the Human Resources staff.

Manatea, the Human Resource Manager left in mid-December. The Company had two interim human resource managers hold down the fort while the position was vacant. It does not appear that the accuracy of Mr. Brumfield's attendance record was a priority to either of these two managers, both of whom were commuting from primary assignments in other states. Riker arrived in mid-January and was immediately confronted by a union claiming the attendance system was in chaos, and offering evidence of favoritism and discriminatory

treatment of employees by supervisors. There were claims that supervisors were reducing attendance points or helping certain employees avoid discipline. It is in that context that Riker indicated he would apply the system by the book. All would be treated equally.

It was at that moment that Brumfield went over the point total. From Riker's perspective, Brumfield was well over the point total. No grievance challenging his prior accumulation of points was on file. His protests were verbal. His indication that his discipline was "under protest" is not self-explanatory. The Union was at that time pressing for consistency and uniformity.

The decision to terminate is understandable under the circumstances presented. However, that does not change the fact that Brumfield's attendance record was unclear at the time. This goes to the very heart of a no-fault system. At hearing, the Company was unable to explain the differences in the November 8 and November 9 attendance records. Without an accurate summary of Brumfield's attendance record, the underpinnings of the discharge are shaky.

This record calls into question whether or not the system has been administered equitably or as written. The policy provides that ". . .disciplinary steps will be followed. . ." That was not true of Brumfield, or others. The grievant had four points on April 22<sup>nd</sup>. By May 4 he had accumulated six points. His March 17 entry was not yet in the record. By September 29 his verbal warning indicated a seven-point total. Subsequent Employer records show him at twelve points. He received a written warning that should have occurred in June, but did not. His written warning came at a twelve-point threshold. That threshold is designated a point of discharge. His second written warning occurred at eighteen points.

The record indicates a number of employees had recorded points reduced at the point of potential discipline, which resulted in the negation of that discipline. Those reductions are not explained. Union witnesses McIntosh and Lange testified that a number of employees were afforded the opportunity to call their supervisor on his cell phone and be punched in. In support of this claim, the Union also introduced documents which purported to show that in a one-week period numerous employees had their time recorded by supervisors or had their time changed. A number of employees appear to have had point reductions at critical, and unexplained, times. The Union grievance, which admittedly does not specifically mention Brumfield, complains of favoritism and a systemic disregard of the attendance policy. I believe there is sufficient evidence in the record to sustain a conclusion that this "no-fault" system was not operating as described.

Much of the evidence submitted is hearsay or secondhand. It is possible that much of it can be explained by mitigating factors. Even if that is true, it points either to a flawed recordkeeping system and/or a subjective review of the absences. The "no-fault" system is premised on accurate recording of leaves. It is incompatible with the volume of mitigation suggested by post-hearing argument. The fact that other employees have been terminated under the system does not change any of the foregoing.

In conclusion, I believe the system was broken. I do not believe it was applied as written to Brumfield. I believe there are significant unanswered questions over Brumfield's attendance record to use that record as a basis for his discharge.

**AWARD**

The grievance is sustained.

**REMEDY**

The Company is directed to reinstate the Grievant and compensate him for wages lost by reason of the improper discharge.

Dated at Madison, Wisconsin, this 4th day of November, 2005.

William C. Houlihan /s/

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William C. Houlihan, Arbitrator

