BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

HOWARD–SUAMICO BOARD OF EDUCATION EMPLOYEES UNION, LOCAL 3055, AFSCME, AFL-CIO

and

HOWARD-SUAMICO SCHOOL DISTRICT

Case 95
No. 65974
MA-13387

(DeBauche grievance)

Appearances:

Mr. Mark DeLorme, Staff Representative, Wisconsin Council 40, AFSCME, 65 Webster Heights Drive, Green Bay, Wisconsin, appearing on behalf of the Howard-Suamico Board of Education Employees Union, Local 3055, AFSCME, AFL-CIO.

Mr. Robert W. Burns, Attorney, Davis & Kuelthau, S.C., 318 South Washington Street, Suite 300, Green Bay, Wisconsin, appearing on behalf of the Howard-Suamico School District.

ARBITRATION AWARD

Howard-Suamico Board of Education Employees Union, Local 3055, AFSCME, AFL-CIO hereinafter "Union," and Howard-Suamico School District, hereinafter "District," requested that the Wisconsin Employment Relations Commission appoint a commissioner or staff member to serve as the sole arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was assigned to arbitrate the dispute. The hearing was held before the undersigned on October 25, 2006, in Green Bay, Wisconsin. The hearing was transcribed. The parties submitted post-hearing briefs, the last of which was received January 14, 2006, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties stipulated that there were no procedural issues in dispute, and framed the substantive issues as:

> Did the District have just cause to discharge Steve DeBauche from his employment with the District? If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE II MANAGEMENT RIGHTS

The Board possesses the sole right to operate the school system and all management rights repose in it. These rights include, but are not limited to, the following:

A. To direct all operations of the school system;

B. To establish reasonable work rules and schedules of work;

C. To create, combine, modify and eliminate positions within the school system;

D. To hire, promote, transfer, schedule and assign employees in positions within the school system;

E. To suspend, demote, discharge and take other disciplinary action against employees with reasonable cause;

F. To relieve employees from their duties;

. . .

The exercise of management rights in the above shall be done in accordance with the specific terms of this Agreement and shall not be interpreted so as to deny the employee's right of appeal.

. . .

ARTICLE VII SUSPENSION-DISCHARGE

Suspension - Suspension is defined as a temporary removal without pay of an employee from h/er designated position.

A. Suspension for cause: The Employer may for just cause suspend an employee. Any employee who is suspended, except probationary and temporary employees, shall be given a written notice of the reasons for the action and a copy of such notice shall be made a part of the employee's personal history record and a copy shall be sent to the Union. No suspension for cause shall exceed thirty (30) calendar days.

No employee who has completed probation shall be discharged or suspended, except for just cause. An employee who is discharged or suspended, except probationary and temporary employees, shall be given a written notice of the reasons for the action and a copy of the notice shall be made part of the employee's personal history record and a copy sent to the Union. An employee who has been suspended or discharged may use the grievance procedure by giving written notice to h/er steward and h/er immediate supervisor within five (5) workdays after such discharge or suspension. Such appeal will go directly to the appropriate step of the grievance procedure.

B. Disciplinary Procedure: The progression of disciplinary action shall be oral/written reprimand, written reprimand, suspension, and discharge. The Union shall also be furnished a copy of any written notice of reprimand, suspension or discharge.

No disciplinary action shall be retained in the employee's personnel file in excess of thirty-six (36) months.

. . .

ARTICLE XVI MEALS AND BREAK PERIODS

A. Meals: All full-time employees shall be granted a 30-minute unpaid duty-free lunch period during the work shift. Whenever possible, the lunch period shall be scheduled at the middle of the shift.

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BACKGROUND AND FACTS

The Grievant, Steven DeBauche was a 20 year employee with the District and held the position of Custodian at Lineville Intermediate School for the last six years. The Grievant's work schedule was 40 hour per week, Monday through Friday with a one-half hour unpaid lunch period. His work day was from 7:30 a.m. to 4:30 p.m. His immediate supervisor was High School Principal Charles Templer and his secondary supervisor was Facilities Manager Kenneth Baran.

In early February, 2006, Assistant Superintendent Betty Zimdars met with the Human Resources Director James Freeman and informed him that she had a concern with the manner in which the Grievant was taking his lunch break. Per the direction of Zimdars, Baran monitored the Grievant's one-half hour unpaid practices. During the latter part of February, 2006 Baran observed the Grievant on five occasions pick up his tray, go to the maintenance room, and begin eating his lunch at his desk. Baran did not remain in the maintenance room, but later reviewed the Grievant's timecard which indicated that he had punched out between eight and 20 minutes following when Baran observed the Grievant eating his lunch. Baran was not able to testify as to which dates this occurred.

Baran directed James DeBaker, a unrepresented electrician employed by the District, to also observe the Grievant's lunch eating habits. On three or four occasions during the last three weeks of February, DeBaker ate his lunch in the maintenance room at Lineville School. When DeBaker arrived in the maintenance room, he checked the Grievant's time card to determine whether he had already punched out. He had not. DeBaker then sat down and ate his lunch. DeBacker observed the Grievant come into the maintenance room with his lunch, go to his desk and sit down and eat his lunch. DeBaker informed Baran of his observations. DeBacker did not make notes of his observations and the specific dates are unknown.

Principal Templer was unaware of the investigation into the Grievant's lunch hour practices until approximately one week before the District met with the Grievant. Templer testified that it was commonly understood by the office staff that the Grievant took his lunch from noon to 12:30 p.m.

On March 7, 2006 the District issued a letter to the Grievant informing him that he was suspended with pay pending the outcome of an investigation. The District was investigating alleged misconduct which it characterized as follows:

- Timecard Fraud. It is suspected that on numerous occasions you intentionally falsified your timecard to inaccurately report your daily lunch break. More specifically, you are suspected of having eaten lunch without first punching out and, approximately twenty to thirty minutes later after you had finished eating, then punching out to lunch. This created the illusion that you were taking your 30 minute duty free lunch break when you actually were taking a second lunch break of approximately thirty minutes. In this way you extended your lunch break on an almost daily basis by as much as twenty minutes to a half an hour. You are suspected of having consistently manipulated your timecard in this manner since before the beginning of the 2005-2006 school year.

- Excessive use of the internet on work time. You are being investigated for excessive use of the internet during work time for reasons unrelated to your work responsibilities.

. . .

Two days later on March 9, 2006, Freeman issued the following letter to the Grievant:

RE: Disciplinary Action – Termination from employment

Dear Mr. DeBauche:

This is to inform you that effective immediately you are terminated from employment with the Howard-Suamico School District. Our investigation into the allegations of misconduct leads us to conclude that you did engage in acts of misconduct as alleged and it is for this reason that you have been terminated. * Your are terminated for the following reasons:

* Timecard Fraud. On numerous occasions you intentionally falsified your timecard to inaccurately report the actual length of your daily lunch break. By doing so, you repeatedly extended your lunch break beyond the time authorized and failed to report this additional time as non-work time. As a result, you repeatedly accepted pay from the District for time you did not work. You have consistently falsified your timecard since the beginning of the 2005-2006 school year.

* Excessive use of the internet on work time. You engaged in unauthorized and excessive use of the internet during work time for reasons unrelated to our work responsibilities. As a result, you repeatedly accepted pay from the District for time you did not work.

Accompanying this letter is a final District paycheck made payable to you. This check covers all wages due for the period ending March 9, 2006. Also enclosed is an accounting showing how vacation balances were determined.

The last effective date for health and dental insurance coverage will be March 31, 2006. Thereafter, you may be able to continue to participate in the District's group health plan pursuant to COBRA regulations. The District's health insurance carrier, WEA Trust, will contact you regarding your health insurance continuation rights pursuant to COBRA. Life insurance coverage will continue through April 30, 2006. Long Term Disability Insurance coverage (LTD) is terminated immediately upon your termination from the District.

Arrangements will be made to allow you to retrieve your personal belongings from the District. You may do this yourself or designate someone to do this on your behalf. A representative of the District will be present when this occurs.

> Should you have any further questions relating to your termination or the retrieval of your personal property, please direct these questions to the District through your union representatives.

The Grievant received an oral reprimand on January 7, 2000 for combining his breaks and not completing his work duties on January 6, 2000.

POSITIONS OF THE PARTIES

District

The Grievant's discharge was justified and met the just cause standard. The Grievant was dishonest. He accepted monies from the District for time he did not work and he used the District's internet and e-mail system in an excessive manner for personal use during the school day without permission when he was supposed to be working.

The Grievant was guilty of time card fraud. He repeatedly and intentionally extended his contractually established 30 minute lunch period. The Grievant regularly obtained his lunch and some time later punched out at the time clock for his lunch break. This deviation from acceptable standards constitutes falsification of time records. Theft from an employer is a serious offense which does not require progressive discipline.

The Grievant is not credible. He offered two different explanations as to when he took his lunch break when questioned by the District. He was unable to state with certainty as to if he had a set lunch period and when he did, he couldn't say when was that lunch period. He stated that his lunch period was dictated by his workload and that he was interrupted, but the times when he was interrupted was during his work time and not his lunch period. The Grievant even lied about his employment history inasmuch as he denied having been spoken to on two separate occasions for inaccurate timecard habits.

The Grievant conducted and full and fair investigation before it imposed discipline. The District compiled data as to when the Grievant obtained his lunch in the cafeteria against his time card records. It then collected the Grievant's telephone records and internet activity. The phone records established that he regularly received a high volume of personal telephone calls between noon and 1 p.m. The internet usage records indicated that he regularly visited non-work related internet sites during his lunch period. The District then interviewed individuals to determine when and what they had observed when the Grievant took his lunch break. The District's investigation was complete and the termination was justified.

Union

The Grievant was disciplined without just cause.

The District maintains that the Grievant was stealing time and therefore committed time card fraud. The evidence does not support this conclusion. Rather, the District's evidence only establishes that Grievant picked up his lunch in the lunchroom before the lunchroom was crowded, took the lunch to his work site, and continued his work or did work-related computer work until he punched out for lunch as required.

It is common practice for custodians to pick up their lunch before punching out on the time clock. There is no rule that restricts custodians from this practice. The custodian that preceded the Grievant at Lineville followed the same lunch procedure.

There is no evidence that the Grievant was not working between the time he picked up his lunch and the time he punched out on the time clock. Baran was unable to indicate when he observed the Grievant pick up his tray and go back to his work site and eat – only that it had happened on five occasions after February 8, 2006. The District did not offer any direct evidence that the Grievant was actually punched out when Baran saw him nor could it show that the Grievant was not working when Baran saw him. No evidence of the dates or times in which the Grievant was observed. The District bears the burden of proof and there is no evidence which proves that the Grievant was taking more than thirty minutes for lunch and thus he could not have been consciously stealing time from the District.

The District discharged the Grievant for violating the policy against using the internet and e-mail, but the policy is neither clear nor understandable. The 2003 Acceptable Use and Safety Policy stated that the internet is for business and educational purposes only. This was not enforced and personal use of the internet was allowed. This changed on December 7, 2005 due to a computer slowdown and staff were directed to avoid personal use during the instructional day. This changed again on December 14, 2006 when the District informed staff they were allowed to use the internet for personal use before and after the employee's shift. It is evident that the District did not have a clear-cut policy in effect and it certainly did not enforce such a policy.

The District's investigation of the Grievant was based on suspicion of wrongdoing. The District concluded that there was no reason for the Grievant to not punch out immediately after picking up his lunch tray and then set out to find evidence that he was extending his lunch. The District created documents months after his termination to shore up their case. The District has not proven that the Grievant was guilty.

Finally, the District failed to follow the progression of disciplinary action that is required pursuant to the labor agreement. The parties' agreement does not give the District discretion to skip steps in the progression of discipline. The language is clear and unambiguous. The Grievant did not receive a warning that his behavior would subject him to discipline. These were the first alleged offenses and Article VII of the labor agreement requires that the first disciplinary action that should have been imposed on the Grievant was an oral reprimand.

District in Reply

The Union misrepresents the record in multiple instances in an attempt to justify the Grievant's behavior.

The District challenges the Union representation of the three separate memoranda prohibiting personal use of District internet and e-mail. The three memoranda were clear, succinct, and left little room for confusion. Employees were not to use District e-mail or internet for personal use during business hours. The Grievant admitted he received the memorandum and understood the limitations of use e-mail and the internet.

The District's investigation was fair and complete. The fact that internet records of the Grievant's co-workers were not produced at hearing does not negate the fact that Zimdars reviewed other employees' usage and their use did not approach the level of usage exhibited by the Grievant. There was only one employee with a similar number of "hits" and he accessed a weather internet site and left the site open on his computer throughout the day. The District was not obligated to produce the personnel files and work history of every other employee.

The record establishes that the District took into account and made a distinction between unwanted pop-ups and active sites. Zimdars and Burroughs testified that the District tested to determine how a pop-up would appear in the usage log versus how a site that was accessed would appear. It was from this information that the District learned that the Grievant was intentionally accessing a non-business websites. As to the Grievant's son's usage, while it may have been on only one occasion, it was during the clearly prohibited timeframe from the Grievant's computer. The Grievant is responsible and regardless of the amount of time that sites were visited, staff were directed to avoid personal use during the school day.

The Union asserts that although the Grievant picked up his lunch, he did not eat it until he punched out except in those instances when he might be "snacking" while at the computer. This contradicts the Grievant's testimony that he would pick up his lunch, return to his office and place the cold items in the cooler and the warm items in the microwave. Neither Baran or DeBaker observed such a practice. The District has met its burden by a mountain of evidence which demonstrates that the Grievant regularly, intentionally, and knowingly extended his lunch break and therefore received compensation for work he did not perform.

In a 61 day time period, the Grievant picked up his lunch before he punched out on 57 days. The Grievant's practice was that his lunch period – from the time he picked up his lunch until he punched back in from his punched out lunch period – frequently exceeded 45 minutes. The documented instances likely are evidence of the Grievant's longstanding practice of extending his lunch period.

Mr. Baran testified that on five occasions he personally observed the Grievant pick up his tray, return to his office, sit down and eat his lunch. When Baran later checked the Grievant's time card, on each occasion there was a significant gap in time between when the

Grievant picked up his tray and began eating to when he actually punched out for lunch. DeBaker's observations where consistent with Baran's.

The Union's argument that the Grievant cannot be terminated for his actions because the contract requires progressive discipline must fail. Arbitrators have long recognized that some types of misconduct are so egregious that they are per se dischargeable offenses.

The record supports the District's finding that the Grievant had committed theft and time card fraud. He further violated District internet use policy and used the internet for personal use during his work hours. The Grievant is guilty of egregious misconduct and the discharge was warranted.

Union in Reply

In reply, the Union points out that the District relied on suspicion and assumptions in order to conclude that the Grievant had acted inappropriately. The District had no evidence to conclude that the Grievant had extended his lunch periods.

The Grievant was in shock and was unable to offer an explanation for his activities when confronted. There was no admission of guilt. Not only was the Grievant scared and confused, but he recognized that the allegations placed his continued employment in jeopardy. It is entirely reasonable for a 20 year employee to react in this manner and the District's assertion that it is an indicator of guilt is inhumane.

The exhibits that document the Grievant's use of the telephone and internet are not the records upon which the District based its decision to terminate. The District's decision to terminate must be evaluated based on the reasons and evidence it used at the time of the termination. The District's attempt to "pad" the evidence is unwarranted and is an admission as to the weakness of its case.

The District did not terminate the Grievant for his internet use. Ms. Zimdars testified that the internet use was the "secondary reason". Moreover, the District does not enforce its computer and internet use policy and to do so with the Grievant would be selective enforcement.

The Grievant's termination lacked just cause in violation of Article VII. The Union seeks his immediate reinstatement and requests that a make whole remedy be issued.

DISCUSSION

The Union challenges the Grievant's discharge on the basis that it fails to meet the just cause standard as required by Article II and that the discharge is inconsistent with the progressive discipline proscribed by Article VII.

The methodology of a just cause analysis looks first to whether the employee engaged in the behavior for which he was disciplined and second, whether the discipline imposed reasonably reflects the employer's proven disciplinary interest.

The District terminated the Grievant for "Time Card Fraud" and "Excessive use of the internet on work time". Addressing first the "Time Card Fraud", the District explained that:

> On numerous occasions you intentionally falsified your timecard to inaccurately report the actual length of your daily lunch break. By doing so, you repeatedly extended your lunch break beyond the time authorized and failed to report this additional time as non-work time. As a result, you repeatedly accepted pay from the District for time you did not work. You have consistently falsified your timecard since the beginning of the 2005-2006 school year.

In early February, 2006, Zimdars became concerned with the manner in which the Grievant was taking and recording his one-half hour unpaid lunch break. She went to the District's Human Resources Director, James Freeman and requested that he conduct an investigation. Freeman contacted Baran who conducted the investigation with the assistance from DeBaker. The Grievant's immediate supervisor, Principal Templer was not informed of Zimdars concerns, was not informed that an investigation was underway, and was not involved in the investigation.

Baran and DeBaker were charged to monitor the manner in which the Grievant took his lunch hour. Baran testified that on five instances before the end of February he observed the Grievant enter the work room with his lunch tray, travel to his office area, and place his tray directly on his desk. Baran believed that he saw the Grievant eating, testified that he could see that he was using utensils, but could not see what the Grievant was doing in his office and could not see whether he was working. Baran then left the work room only to return at a later time and check the Grievant's time card. In checking the Grievant's time card on those dates, Baran testified that the Grievant did not punch out at the time he brought his lunch to the work room, but rather, punched out at a later time. Baran did not stay in the work area to observe the Grievant because he was concerned the Grievant would become suspicious of why he was in the work area for that length of time. The record is void of any conclusive evidence as to what the Grievant did between the time Baran observed him arrive in the work area with his lunch and the time in which he punched in and out for lunch.

DeBaker's testimony is more insightful. DeBaker arrived in the lunch area before the Grievant and stayed through his lunch break. DeBaker observed the Grievant bring his lunch into the work area and begin to eat without punching out. This occurred three or four times within the latter three weeks of February. DeBaker did not document his observations and it is therefore impossible to ascertain on which specific dates this occurred. Regardless, DeBaker's testimony is beyond reproach.

The District's vague identification of when the Grievant deviated from acceptable lunch break practices is troublesome, especially when the actual dates and times are reviewed. The window of time in which the District was monitoring the Grievant was the last three weeks of February, 2006. The dates and times that the Grievant picked up his lunch, punched out and punched in for this time period is as follows:

Date	***Lunch Purchase***	***Punch Out***	***Punch In***
2/6/06*	12:18:05	12:10	12:39
2/7/06*	12:23:05	12:35	12:58
2/8/06	12:26:01	12:2?	12:55
2/9/06	12:21	12:33	12:54
2/10/06	12:09	12:30	12:56
2/14/06	12:26	1:02	1:34
2/15/06	12:13	12:31	1:01
2/20/06	12:12	12:32	1:00
2/21/06	12:15	12:30	1:00
2/23/06*	11:27	12:33	12:56
2/24/06*	12:12	12:15	12:46
2/27/06*	12:21	12:33	1:01
2/28/06*	12:21	12:36	1:05

From this data, it is clear that February 6 is not a date in which the Grievant was fraudulent with his time as the District asserts since he punched out before he picked up his lunch. Accepting Zimdars testimony that picking up your lunch en route to the work room where the time clock is located and punching out upon arrival at the work area is acceptable, then February 23 and 24 can be ignored and it is possible that February 7, 27, and 28 are similarly not of great concern to the District. This leaves seven dates in which the District's data supports its conclusion. It is entirely possible that the remaining seven dates are the part of the seven or eight dates that DeBaker and Baran observed the Grievant. The problem with this data is there is no certainty and lacking certainty, there is no justification to impose the most serious disciplinary sanction.

The record establishes that the Grievant is expected to react to emergency or immediate need situations during his lunch break. Sharon Perryman testified that she has seen the Grievant's lunch tray abandoned in his work area with his lunch not eaten. Perryman and Gary Caelwaerts confirmed that the Grievant is expected to respond to radio and other requests for assistance between the noon and 1 p.m. time period. Baran testified that there are occasions in which the Grievant is expected to respond to calls for assistance, regardless of whether he is punched out for lunch or not. Baran indicated he monitored the radio and there were not an inordinate number of calls between noon and 1 p.m. during the latter part of February, but the possibility exists that on some of the dates identified, the Grievant responded to work calls.

An inference can surely be made that there were occasions in which the Grievant picked up his lunch, returned to his office, ate his lunch at his desk or at his computer and then punched out for his unpaid lunch break. This may have occurred for the entire 2005-2006 school year as the District suggests, but this is supposition and not fact. The District cannot or has not pointed to any one specific date in which it is sure that the Grievant purchased his lunch, ate his lunch and then took his unpaid lunch break. DeBaker's testimony confirms that it occurred on three or four occasions, but there is no documentation as to which days DeBaker observed the Grievant. While the District believes that the Grievant enjoyed an uninterrupted paid lunch break that he stacked on top of his unpaid lunch break documented on his time card on "numerous occasions", the evidence is insufficient to reach that conclusion.

Employees with just cause protections are entitled to know the offense for which they are charged. This transparency allows employees the option to challenge an employer's information is a meaningful way. If the employer's case is true, then it is beyond employee challenge. In this case, the Grievant had no means by which to defend himself. The District met with the Grievant on two occasions to address its concerns. In neither case was the Grievant forthcoming or consistent, but the fact that the Grievant flip-flopped on when he took his lunch does not create a iron clad case for discharge. The District did not afford the Grievant dates or times in which it believed he had deviated from appropriate time card reporting. This failure is a serious flaw in the District case.

The Grievant testified that he never extended his lunch break. Within a three day window, he responded to the simple question, "when do you take your lunch?" with two entirely different responses. He also indicated that he would pick up his lunch, return to the office area and put it in the cooler or microwave until he returned at a later time to take his lunch break. I do not find the Grievant to be credible. It is incomprehensible that the Grievant did not know when he regularly took his lunch break. Even if he did not take his lunch at the same or about the same time everyday, he could and should have explained that to the District when it asked. As to storing his lunch in a warm or cool place until he returned to eat it, this contradicts the observations of both Baran and DeBaker who saw the Grievant place his lunch on his desk once he entered the office area.

The District's disciplinary letter states that the Grievant "consistently falsified" his timecard since the beginning of the 2005-2006 school year. There is no evidence to support this conclusion. Assuming *arguendo* that there is sufficient evidence to establish that on seven or eight days in February 2006 the Grievant extended his lunch break, there is no evidence to conclude that he had done so for the entire school year.

The second cited reason for the Grievant's discharge was:

> Excessive use of the internet on work time. You engaged in unauthorized and excessive use of the internet during work time for reasons unrelated to our work responsibilities. As a result, you repeatedly accepted pay from the District for time you did not work.

During the course of the District's investigation into the Grievant's lunch taking practices, it became concerned with the Grievant's use of internet and e-mail. It requested and obtained a report which documented the Grievant's internet and e-mail usage. Zimdars reviewed the usage of other similarly situated employees and concluded that the Grievant's use was excessive in comparison to other employees and therefore subject to discipline.

The Grievant used the District's internet and e-mail system during his workday for non-school related activities. This was in conflict with District directives which forbade personal use during the school day. The District's Computer Use policy disallowed personal use and the subsequent December 15 memo disallowed personal use during the school day. In reaching its conclusion that the Grievant's use was excessive, the District not only failed to completely review other employees' utilization of the internet**,** but also created an exception to its policy that makes it a violation to use the system for any use during the school day. The District cannot impose a subjective "excessive" standard when the policy directive indicates all use is forbidden. There is no question that the Grievant utilized the internet for personal use, but the District cannot penalize the Grievant for behaviors that others may have committed without penalty. Inasmuch as the District acknowledged that the excessive internet use component to the Grievant's discipline was secondary, it is unnecessary to further pursue this given my finding with regard to the time card issues.

This is the Grievant's first disciplinary offense within a 36 month time period. The Grievant received no warning that his behavior was unacceptable. Recognizing the inexact instances in which the Grievant was observed by DeBaker and the fact that the Union has not challenged DeBaker's observations, the Grievant is found to have committed time card fraud on three or four dates during the latter part of February, 2006 amounting to at most, 90 minutes of over-payment. While this is not acceptable and constitutes a breach of trust, is does not amount to an offense which justifies termination of a 20 year employee with no recent disciplinary infractions.

The District offered evidence at hearing regarding incoming and outgoing telephone calls from the Grievant's office telephone. The District argued that the Grievant's had inappropriate telephone usage which served as evidence of a pattern. The Grievant was not terminated for his use of the telephone. No evidence was offered defining appropriate or inappropriate use of the telephone. The Grievant's use of the telephone is irrelevant to this proceeding.

ORDER

1. The District lacked just cause to discharge Steve DeBauche from his employment with the District.

2. The Grievant is guilty of falsification of his time card. The Grievant shall be issued a written warning.

3. The appropriate remedy is to reinstate the grievant and make him whole.

4. I shall retain jurisdiction for not less than 60 days to resolve any issues relating to remedy.

Dated at Rhinelander, Wisconsin, this 31st day of May, 2007.

Lauri A. Millot /s/
Lauri A. Millot, Arbitrator

LAM/gjc
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