

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**TEAMSTERS LOCAL UNION 662**

and

**KONOP VENDING MACHINE, INC.**

Case 2  
No. 66995  
A-6292

(Keith Schneider Suspension Grievance)

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**Appearances:**

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S. C. by **Mr. Yingtao Ho**, Attorney at Law, 1555 North River Center Drive, Suite 202, Milwaukee, Wisconsin 53212, appeared on behalf of the Teamsters Local Union 662.

Davis & Kuelthau, S.C., by **Mr. Robert W. Burns**, Attorney at Law, 200 South Washington Street, Green Bay, Wisconsin appeared on behalf of Konop Vending Machine, Inc.

**ARBITRATION AWARD**

The Teamsters Local Union 662, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Konop Vending Machine, Inc., hereinafter the Employer, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The Employer subsequently concurred in the request and the undersigned, Steve Morrison, of the Commission's staff, was designated to arbitrate the dispute. A hearing was held before the undersigned on September 18, 2007 in Green Bay, Wisconsin. The hearing was transcribed and is the official record thereof. The parties submitted post-hearing briefs in the matter by November 7, 2007. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

**ISSUES**

The parties did not stipulate to the issue to be decided thus leaving it to the Arbitrator to frame the issue(s).

The Union states the issue as follows:

Did Konop Vending Machines violate the collective bargaining agreement by suspending Keith Schneider? If so, what shall be the remedy?

The Employer states the issue as follows:

Did the Company properly issue Grievant a one day suspension for falsifying his required daily route log? If not, what is the remedy?

The Arbitrator frames the issue as follows:

Was the Employer justified in issuing the Grievant a one day suspension for dishonesty? If not, what is the remedy?

### **RELEVANT CONTRACTUAL PROVISIONS**

#### **ARTICLE 8. ARBITRATION**

The party desiring arbitration shall, within five (5) working days after notifying the other party of its desire to arbitrate, request the Wisconsin Employment Relations Commission to appoint an arbitrator.

It is understood that the arbitrator shall not have the authority to change, alter or modify any of the terms or provisions of this Agreement.

The expense of the arbitrator shall be divided equally between the parties to this Agreement. Each party shall have the responsibility to provide for the cost of its own representative and witnesses.

#### **ARTICLE 13. DISCHARGE**

No employee who has completed his/her probationary period shall be discharged or suspended without one (1) warning notice of the complaint in writing to the employee with a copy to the Union, except that no warning notice is required for discharge due to dishonesty, being under the influence of intoxicating beverages while on duty, carrying unauthorized passengers in a Company vehicle, recklessness resulting in a chargeable accident while on duty, or being under the influence of LSD or marijuana, heroin, or any kind of narcotics. Warning notice to be effective for not more than two hundred seventy (270) days from the date of notice. Discharge shall be in writing with a copy to the Union and the employee affected.

...

Any employee desiring an investigation of his/her discharge, suspension or warning notice must file his/her protest in writing, with the Employer and the Union within five (5) days, exclusive of Sundays and Holidays, of the date the employee received such discharge or warning notice. The discharge, suspension or warning notice shall then be discussed by the Employer and the Union as to the merits of the case. Should it be found that the employee has been unjustly discharged or suspended, he/she shall be reinstated and compensated for all time lost; the Employer is to receive credit for any money earned at other employment and any unemployment compensation received.

The employee may be reinstated under other conditions agreed upon by the Employer and the Union. Failure to agree shall be cause for the issue to be submitted to arbitration as provided for in Article 8 of this Agreement. The arbitrator shall be authorized to render a compromise, if the end of justice is best served thereby.

The Employer has the right to review productivity on routes with respect to time and quality.

During the term of this agreement the company may put in place time standards to address non-productive routes. When a route man (driver) does not meet the established time standards and maintain proper quality levels, the employer (sic) reserves the right to exercise the following disciplinary procedure:

|                 |                                  |
|-----------------|----------------------------------|
| First Offense:  | Verbal warning                   |
| Second Offense: | Written warning                  |
| Third Offense:  | One day suspension               |
| Fourth Offense: | Second suspension or termination |

### **BACKGROUND**

The Grievant, Keith Schneider, has been employed by the Employer as a route man since August 4, 1997. Prior to the incident giving rise to this grievance his work record was clean. His duties require him to deliver vending machine articles to various business locations in the City of Green Bay. He has certain accounts which he services each day on a scheduled basis. The Employer provides the articles to be delivered and the schedules the deliveries and determines the "service area" within which each route man operates. The Employer also provides a truck to be used for the deliveries. The route men, including the Grievant, are paid on an hourly basis. His pay is calculated by using the difference between his punch-in time and his punch-out time, less his one-half hour unpaid lunch period. Upon his request, the Employer may grant him the right to work through his lunch period and receive pay for that time, but he has never asked for such permission and did not ask for it on the date giving rise to this grievance.

Each workday morning he comes into work just before four a.m. and punches in via a punch clock. He then loads his truck with perishable food products and other items and proceeds to his first stop for delivery. He then drives from account to account delivering his product. At the end of the day he returns to the Employer's warehouse, backs the truck up to the door and unloads his perishable product and any other products which didn't sell that day, turns in the money he received that day to the Employer, does whatever minor maintenance is needed to his truck and punches out between 1:30 p.m. and 2:00 p.m. for the day. He is allowed two ten minute breaks each day which may be taken as he decides. These breaks are paid. He is allowed one thirty minute lunch break each day, which is not paid. As part of his duties he is required to fill out a daily log listing each stop and the time of arrival and departure from each.

The Grievant's normal procedure included his routine of taking his lunch period at the end of his day just prior to returning to the Employer's warehouse for the day. On April 26, 2007, he had arranged to meet with two other drivers for lunch around noon at Nick's Bar following his last stop at Howard Johnson's. As it happened, a third driver joined the group thus making a lunch party of four. Each arrived in his Employer's truck and parked in the lot. The Grievant arrived before the others and waited for them in the parking lot of the bar. The bar was located outside of his service area. The record does not reflect his specific activity while waiting for the others but he testified that in those situations the drivers could, and normally would, do work relating to preparing the truck for the end of the day activities at the warehouse and that this was his usual practice.

While the four men had lunch in the bar Konop's president, Tom Konop, passed by the bar and noticed the four trucks in the parking lot. He returned to his office and picked up one of his route coordinators and they returned to the bar to see how long the trucks were going to stay at Nick's Bar and to document which trucks were there. They determined that the Grievant was one of the parties and, consequently, out of his service area. (Drivers are supposed to stay within their service area while on duty except to drive to and from the warehouse.) As a result of this, Tom Konop conducted an investigation into the incident and determined that the Grievant had overstayed his lunch break at Nick's. He based this conclusion on the logs submitted by the Grievant and the fact that the time devices located in the Grievant's truck differed from those times. The Grievant's logs were also incomplete in that they failed to record his lunch break at the end of his day. Following the investigation Mr. Konop confronted the Grievant with this information and the Grievant admitted that he had gone to Nick's Bar for lunch. Mr. Konop concluded that the Grievant had falsified his log sheet in order to hide his long lunch break. He considered the falsification of the logs to be an act of dishonesty and, on May 4, 2007, notified the Grievant that he was to be suspended for one day as discipline for the offense. The discipline was issued pursuant to Article 13 of the parties' Collective Bargaining Agreement and was to be served on Monday, May 7, 2007.

This grievance followed.

## THE PARTIES POSITIONS

### The Union

The Employer has the burden of establishing dishonest behavior. The Collective Bargaining Agreement provides that a discharge or suspension for dishonesty be just and so the proper standard in this case is “just cause” which requires the case to be proven by clear and convincing evidence.

Based on the in-truck time device recordings the Grievant arrived at his last stop, Howard Johnson’s, at 10:52 a.m. and left that location at 11:41 a.m. He then drove to Nick’s Bar arriving at 11:56 a.m. and departed at 12:39 p.m. He then drove to his Employer’s warehouse, arriving at 12:45 p.m., and finished his day. Although he spent a total of 43 minutes at Nick’s, he spent about 15 of those minutes working on his truck while he waited for his lunch companions. His testimony in this regard was not contradicted and those 15 minutes are compensable. Also, the logs of the other drivers who joined him for lunch at Nick’s support this time-line. As for driving time from HoJo’s to Nick’s and from Nick’s to the Konop shop, Mr. Konop has admitted that this time is compensable. As a result it is clear that the Grievant spent no more than 30 minutes at lunch and cannot be found to be dishonest. Even if the additional driving time were not compensable, there is no evidence that the Grievant had used his break time prior to lunch. Since break time may be used at the discretion of the Grievant, he could use that time for driving’ time to lunch.

Because the Employer has provided no evidence that they have ever given the Grievant instruction on what items must be recorded on the logs, they may not now discipline the Grievant for his failure to log items such as arrival and departure times from various locations. The only evidence produced at the hearing regarding this issue were two sets of route meeting minutes. The first simply tells employees to fill out the log sheets completely without any further instruction on how this is to be done. Such vague rules are unenforceable because they fail to place the employee on notice of what is expected of him. (Citing IOWA PERSONNEL DEPARTMENT, 102 LA 308 (Hoh, 1994) The second set of route meeting minutes is somewhat more specific. It tells the employees to start their logs when they leave the dock and end their logs when they return to the dock. This meeting occurred on April 10, 2002 and there is no evidence that the Grievant worked on that day or that he ever received a copy of the minutes of that meeting. Consequently, the Employer has failed to prove that it ever gave notice to the Grievant of this requirement and may not now discipline him for failure to record the time of his last stop. Even if the Employer did place the Grievant on notice of this requirement, its lax enforcement of the work rules may lead employees to believe that their conduct is tolerated by management and/or that they would not be penalized for violations of those rules. (Citing Elkouri and Elkouri, *How Arbitration Works*, (6th Ed.), pg. 994) The evidence shows that the Grievant has, for the past six years, frequently failed to record his exit time from his last stop of the day and has never recorded the times or locations of his lunch breaks. The Employer, although it periodically checks the logs, has never informed the Grievant that his logs were inadequate so it may not now impose discipline against him for failing to complete them in a different way.

The fact that the Grievant had lunch outside of his service area does not support disciplinary action against him. While the Employer has a general right to promulgate work rules, the rules must be reasonable and serve a legitimate management objective. (Citing PLYMOUTH TUBE CO., 123 LA 1652 (Van Kalker, 2007) and CITY OF CHICAGO, 109 LA 360 (Goldstein, 1997)) The rule mandating employees stay within their service area while on duty could potentially serve two management objectives: To make sure employees don't drive too far outside their normal route for lunch, and to ensure employees are available to perform work on a short term basis. Since Nick's Bar is only a four minute round trip drive from the Employer's shop, neither objective is satisfied by preventing him from eating lunch at Nick's. The Grievant's response time, if required, would be essentially the same as if he had been sitting in the Employer's lot when summoned.

In order to show that an employee falsified records and was dishonest, it must prove that the employee had an actual intent to deceive the employer and that the employee did or at least could have obtained some benefit from his dishonesty. (Citing GIW INDUSTRIES, 120 LA 1406 (Holley, 2005) This proof must be based on specific evidence rather than subjective beliefs of management. (Citing SAFEWAY STORES, 114 LA 1551 (Difalco, 2000) In the present case, the Employer's claim that the Grievant falsified his logs fails because he only took one-half hour for lunch and had nothing to gain from such falsification. Additionally, he could not have formed the requisite intent to deceive because he was not aware that his failure to log his lunch was inconsistent with his employer's expectations. (Citing RITE AID DISTRIBUTION CENTER, 115 LA 737 (Felice, 2004); UPS, 111 LA 392 (Draznin, 1998); and SCHAFFER BAKERIES, 95 LA 759 (Brown, 1001) Given Tom Konop's admission that the only dishonesty he considered was whether the Grievant was dishonest in not recording his lunch stop location and times, the arbitrator is barred from expanding the basis for suspension by also considering whether the Grievant was dishonest in not recording the time he left Howard Johnson's. At most, the Grievant was guilty of sloppy record keeping, which conclusion is supported by the fact that he frequently engaged in sloppy record keeping by failing to record his last stop on his logs over the past six years.

Under Article 13 of the Collective Bargaining Agreement any discipline issued here must not go beyond an Oral Warning. However, Article 13 has been effectively amended by the procedures announced at the April 28, 2004 route meeting. This requires progressive discipline for failing to follow "proper procedures" (including completion of log sheets correctly as confirmed by the testimony of Tom Konop) as follows:

- ✓ Verbal Warning
- ✓ Written Warning
- ✓ One-day Suspension
- ✓ Termination or Second Suspension

The Employer contends only that the Grievant committed an act of dishonesty. The other capital offenses set forth in Article 13 do not apply here. Since the Employer has failed to prove dishonesty, it is required to follow the progressive disciplinary procedures outlined in

the minutes of the April 28, 2004 route meeting relating to the Grievant's failure to follow "proper procedures" by submitting a faulty log. This progression calls for a Verbal Warning for failure to properly complete logs.

The Arbitrator should find that the one day suspension issued to the Grievant was unjust and should strike the suspension from the Grievant's record and award full back pay.

### **The Employer**

Falsification of employee time records constitutes dishonesty and has long been recognized as a serious form of misconduct because it is inconsistent with employer-employee trust. (Citing MARSHALL SCHOOL DISTRICT, MA-13294 (Bauman, 10/31/2006); BROWN COUNTY (MENTAL HEALTH CENTER), MA-9679 (Honeyman, 05/06/1997) Daily logs are Employer time records. Falsifying time records, if done so willfully and with the intent to receive some benefit, is equal to theft on the job. Employees are reasonably expected to understand this concept and to expect that discipline will follow any attempt to engage in such conduct.

The record has established a clear direction from the Employer that the logs must be completed each day and that they must be completed precisely. The record also establishes the fact that the Employer has been consistent in its position that falsification of the logs is tantamount to dishonesty. The Employer bears the burden of establishing by a preponderance of the evidence that the employee engaged in dishonest conduct. (Citing WHOLESAL PRODUCE SUPPLY, 101 LA 1101 (Bognanno, 1993) Because this case does not involve discharge a standard beyond that of preponderance of the evidence is not appropriate. To meet the burden of preponderance of the evidence the Employer need only establish that it is more likely than not that the Grievant's behavior was dishonest and the Employer has met that burden here.

Although the Grievant is paid based upon this time card, it is the route logs which support the accounting for his daily activities. The only evidence of how long the Grievant was at lunch on the day in question is the record provided by his truck timing device and this device shows that the Grievant started his truck at 11:50 a.m. and stopped it at 12:05 p.m. The Grievant admitted that he spent about 15 minutes getting to Nick's Bar and another 43 minutes at the bar. This indicates that he took well beyond 30 minutes for lunch, 58 minutes to be precise. He believed that had he accurately reflected his arrival at Nick's Bar at 12:05 and his departure at 12:48 his Employer, upon review of the log, would have seen that his lunch was actually 43 minutes long or 13 minutes longer than his allotted lunch break of 30 minutes. Thus, he was paid for time he did not work because of his failure to log the times properly.

The Grievant's attempts to explain his extended time at Nick's Bar are not persuasive because he failed to explain this to Mr. Konop at the time he was initially confronted with the issue. His attempts to now justify his choice not to record all of his time as a practice he developed over the years is not consistent with his stated knowledge that the route logs were to

be precise. In any event, his position is contrary to common sense. The log form itself reflects the intended requirement to log the full day's activity (the first entry is "start time" and the last entry is "end time") so why else would the Employer require drivers to record their day up to the last stop?

Although the Grievant testified that there are things he could have done to his truck while waiting for his lunch companions, he did not testify that he was actually doing those things. In fact, only five days after being confronted by Mr. Konop with the log discrepancies, and after having gone home and thought about the situation, he still could not recall what he was doing when he first arrived at lunch, nor could he recall if he was even the first to arrive at Nick's Bar.

There is no justification for Grievant's position that he was not aware of the need to be precise with the log entries. During the week of April 23 he managed to record his last departure on 3 of the 5 days in the week. The other three drivers who joined the Grievant at Nick's Bar that day recorded their lunch breaks and their last stops correctly and all of them were within their respective service areas. If all of the other drivers understood the log requirements then it follows that the Grievant must have understood them as well.

The record clearly establishes that the Grievant made a decision not to accurately complete his logs in order to conceal the true amount of time he spent on his lunch break. He states that he always completed his logs in this way, although the record shows this not to be the case. He was caught off guard when confronted with his conduct and had to take some time to concoct an explanation. More importantly, his explanation does not make sense. Why would the Employer be clear about the need for precise daily logs, a fact Grievant acknowledges, but not require the drivers to input the time of departure from the last stop? This information is just as important for the stated purpose of the logs as are all of the other entries. The Grievant's explanations do not make sense and are inconsistent with the rest of the record. The only reasonable conclusion to be drawn from the evidence is that the Grievant knowingly omitted portions of his daily log constituting falsification of an Employer's document and dishonesty.

The Collective Bargaining Agreement expressly provides for suspension or termination for acts of dishonesty. Mr. Konop testified that his decision to discipline the Grievant by giving him a one day suspension was based on the language in the contract; the Employer's consistent position regarding falsification of time logs; and the Employer's repeated announcement of the importance of completing the logs. He also considered favorably the Grievant's admission of his conduct. This is an appropriate exercise of management discretion in a case of dishonesty. Article 13 does not require a warning in cases of employee dishonesty and the Employer appropriately invoked its contractually preserved right to skip past warning requirements in progressive discipline when confronted by dishonesty.

The Arbitrator should uphold Management's rights under Article 13. Although Article 13 does not specifically define "dishonesty", the Arbitrator should resort to its common



meaning as “deceptive” or “fraudulent”. In this case there is no reasonable explanation for Grievant’s log entries other than to deceive his Employer by concealing some of his activities during his workday.

The evidence is sufficient to uphold the one day suspension. Although the contract does not require application of the just cause standard, that standard has been met in this case. If we were to apply Arbitrator Carroll R. Daugherty’s seven questions to determine the existence of just cause, each one can be answered in the affirmative. Even so, there are certain types of conduct for which prior warning is not necessary in order to establish that an employee knew that his/her activity was wrong and would expose him or her to discipline. Under this Collective Bargaining Agreement, dishonesty is one of them.

The crux of this case is the investigation and sufficiency of evidence establishing that Grievant’s behavior was dishonest. The investigation here was appropriate and adequate. It was occasioned by Mr. Konop’s accidental discovery of the trucks at Nick’s Bar and included a review of the logs and the time devices in the trucks parked at Nick’s Bar. Mr. Konop also spoke to the Grievant and the Grievant failed to give him an explanation for the omission of time data but simply acknowledged it and vowed to never let it happen again. Following the investigation the Employer concluded that the Grievant had falsified his log in order to cover up his extended lunch break and that this conduct was dishonest. The discipline was consistent with the only other incident regarding time log errors. In that case, back in 1991, the employee was given a three day suspension. Mr. Konop considered the 1991 case in making his determination as to the Grievant’s discipline.

### DISCUSSION

The essential facts in this case are not in dispute. On April 26, 2007 the Grievant made his last stop at the Howard Johnsons in Green Bay. After his last stop for the day he drove to Nick’s Bar to meet with three of his co-workers for lunch. He is required to keep a daily log which details his start times and stop times at each location while on his route. On this day, and on many other days, he failed to properly enter the times for his last stop and never entered times for his lunch break. Nick’s Bar is located outside of his service area and the Employer does not allow drivers to travel outside of their service areas other than to go to and from their routes for the day. His truck was observed by the Employer’s President, Tom Konop, to be at the bar for a period in excess of his authorized lunch break and, following an investigation into the event, he was disciplined with a one day suspension without pay. The basis for the discipline is set forth in an exhibit marked Employer 3 and states as follows:

- ✓ Being well out of his service area
- ✓ Route log incomplete
- ✓ No documentation on his log sheet for time spent at Nic’s (sic) Bar

The threshold consideration in my analysis is the question of whether the Grievant was actually guilty of dishonesty when he completed his logs in the shabby fashion he did, or was he simply a sloppy record keeper. I am convinced that the Grievant was not attempting to hide a long lunch break or trying to cover up his travel outside of his service area. For the following reasons, I conclude that he was not attempting to be dishonest. I do conclude that he was sloppy in his recordkeeping requirements.

First, the Grievant knew that his truck was equipped with a time device which would track his start and stop times. He had reason to believe that his stop time for lunch, and his start time after lunch, would have eventually been reviewed by the Employer, as he testified he believed it did on a regular basis, and his long lunch break would then have been discovered. The Employer argues that even after the Grievant took the time to consider the events of April 26 he could not recall what he had been doing in the parking lot before his lunch mates arrived, and this lapse in memory supports the fact that he was being dishonest. I believe it supports just the opposite conclusion. I believe this supports the conclusion that he was *not* trying to be dishonest. If he had dishonesty in mind he surely would have had his explanation ready when/if confronted by his employer. Even at the time of the hearing the Grievant testified that he could not specifically recall working on his truck on the 26<sup>th</sup> of April. He said this essentially in the same breath as admitting that the drivers often met for lunch and one or the other of them usually had time to spare in the lot prior to eating. They routinely used that time to prepare their trucks for the end of the day and he had done so on so many occasions that he simply could not recall if this was one of them or not. This testimony seems reasonable to me and does not sound like the testimony of a dishonest person prepared to testify to a concocted story. Also, I listened carefully to his testimony and concluded that it was credible.

The Grievant testified credibly that he thought the Employer routinely reviewed all the driver's logs and that if his were somehow lacking the Employer would have long ago brought his shortcomings to his attention. The Arbitrator believes this to be a reasonable expectation on the part of the Grievant. If the Employer felt the logs were as important as it now argues they were one would have expected it to review them on a regular basis and bring problems with them to the attention of the employees required to fill them out. Of course, this failure on the part of the Employer speaks directly to the basic requirement that the Employer place its employees on notice of problems in the workplace before it is allowed to discipline them for those problems. (Except, of course, those things set forth in the Collective Bargaining Agreement referred to by the Union as so-called "capital offenses" like dishonesty, theft, drunkenness, etc.) Since the undersigned has determined that the Grievant was not guilty of dishonesty in this matter, the Employer is barred from relying on Article 13 in order to skip over the requirement of progressive discipline, notice, etc.

It is important to note that the logs themselves do not determine the wages of the Grievant. The wages are determined by the difference in time the Grievant punches the time clock in the morning and the time he punches out in the afternoon. His one-half hour lunch break is automatically deducted from this calculation and his wages reflect the deduction. There is no evidence in this record that the Employer used the logs to match the activities of

the drivers to that of the punch clock. Of course, it *could* use them for that purpose, and the Employer argued that point, but the argument notwithstanding, the evidence does not support the fact that it actually did that. At best, the record supports only the conclusion that the logs were checked on a sporadic basis, normally only when the Employer had an "incident" which required a review of the logs. According to Mr. Konop a review of all the logs on a regular basis would take too much time. Consequently, the logs in and of themselves do not support the argument that their inadequacy resulted in an overpayment of wages to the Grievant.

The fact that the Grievant made plans to meet two other drivers for lunch also cuts against the theory that he was attempting to get away with something. Too many witnesses.

As for the argument that the Grievant left his service area to go to lunch, this is true. However, the record reflects that Nick's Bar is only one minute's driving time from the Konop facility itself and that is where the Grievant had to go after lunch. So to say that he had to drive some 15 minutes out of his service area to get to Nick's Bar for lunch is true, but a bit deceiving, because he had to drive 14 of those minutes to the Employer's facility anyway. The bottom line is he drove perhaps one minute out of his way to have lunch. This is a technical violation of the Employer's out of service area rule and I will address this issue below.

Finally, the uncontested fact that the Grievant, during the six years prior to this incident, never recorded his lunch break on his logs (a fact which came as a surprise to Mr. Konop) and was never told by the Employer that this was wrong is compelling evidence that the requirement to log lunch breaks, now so heavily relied upon by the Employer, is perhaps not as important as the Employer would now have us believe. If the Employer has failed to communicate the rules to the employee, it is unrealistic to think that an arbitrator will uphold a penalty for conduct the employee did not know was prohibited. This fact, coupled by the failure of the Employer to interview the employees who took lunch with the grievant and to inquire of them about the activities of the Grievant, lead to the ultimate conclusion that dishonesty is not a factor in this case. (It is worthy of note that Mr. Konop did interview one of the employees who had lunch with the Grievant, but his inquiry was related solely to that individual and did not touch on any of the Grievant's activities. Regarding that individual, Mr. Konop's inquiry related to the fact that he had left his service area to go to lunch on that day but, according to Mr. Konop's testimony, "not very far." The Arbitrator notes that the Grievant also left his service area to go to Nick's Bar, but not very far.

Because the Employer relied exclusively on its conclusion that the Greivant had been dishonest because of his failure to record his lunch stop and, through its President Tom Konop, has testified that this dishonesty was the sole basis upon which it issued discipline, I am constrained to consider alternate forms of discipline for the sloppy record keeping of the Grievant even if, in my personal judgment, such behavior would support it. Suffice it to say that I believe the Grievant has now been placed on sufficient notice of the Employer's log requirements and will pay closer attention to them in the future.

In light of the above, it is my

**AWARD**

1. The Company was not justified in issuing the Grievant a one day suspension for dishonesty.

2. The Grievance is sustained and the Grievant shall be made whole and his record shall be cleansed of any reference to this discipline.

Dated at Wausau, Wisconsin, this 14th day of January, 2008.

Steve Morrison /s/

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Steve Morrison, Arbitrator

