
In Re the Arbitration between:

BMS No. 08-PA-0790

State of Minnesota, Department of
Transportation,

Employer,

and

Minnesota Government Engineers
Council,

Union.

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

The parties have submitted the above captioned matter to arbitration in accordance with **Article 15** of the collective bargaining agreement effective July 1, 2005 through June 30, 2007.

The parties selected James A. Lundberg as their neutral Arbitrator from a Minnesota Bureau of Mediation Services list of Arbitrators.

The parties stipulated that there are no procedural issues and the grievance is properly before the Arbitrator for a final and binding determination.

The grievance was initiated on July 20, 2007.

The hearing was conducted on April 25, 2008 and May 6, 2008

Briefs were posted on May 16, 2008.

APPEARANCES:

FOR THE EMPLOYER

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FOR THE UNION

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ISSUE:

Whether the Employer had just cause to discharge the grievant, Jason Alman, on July 10, 2007? If not, what is the proper remedy?

FACTUAL BACKGROUND:

The grievant, Jason Alman, was employed by the State of Minnesota, Department of Transportation for ten (10) years. He is a highly skilled computer technician, who worked as an Engineering Specialist at the state's Waters Edge Building. Mr. Alman worked with the Metro Design Section's Automation Resources and provided support for Design-specific software. In simple terms, Mr. Alman was responsible for solving problems that Minn. Dot employees had with their computers. In his position Mr. Alman had the capability of gaining access to files on computers found throughout the Department of Transportation.

On February 8, 2007 the manager of Mr. Alman's section, Ms. Val Svensson, found an anonymous note on her desk. The note complained about Mr. Alman's attendance at work and the attendance of another employee. The note said "*I also know that he is NEVER here at 6 in the morning, nor does he ever stay until 4:30, EVER! He is on a 10 hour/day schedule, but rarely is he ever here even 8 hours a day.*"

Ms. Svensson was concerned about the information contained in the note. Consequently, she contacted the Human Resources Office. Ms. Svensson informally checked Mr. Alman's desk between 7:00 and 7:30 AM and between 3:30 and 4:00 PM. He was not at his work station, his computer was not turned on and there were no cold weather garments at his work station. Human Resources conducted a preliminary review of time sheets and identification card swipes from entry and exit points in the building.

Based on the initial time sheet/card swipe information, the Human Resources Department initiated a formal investigation into Mr. Alman's attendance.

The Human Resources Department made a day by day review of identification card swipes made at building entry and exit points by Mr. Alman and of his time sheet reports between the first of December 2006 and the first week of April 2007. The data review led the investigator to conclude that Mr. Alman was compensated for a minimum of 67 hours of regular pay for hours he did not work for the period between December 7, 2006 and February 8, 2007.

The Department of Transportation does not use a time card system but relies upon employee prepared time sheets. The analysis that was performed by the Human Resources Department relied upon identification card swipes that are logged into computer memory. When an employee passes the controlled access doors in the Waters Edge Building, the employee must swipe an identification badge over an electronic eye in order to disengage a lock on the door. The time and location of a specific identification card swipe is automatically logged into the computer. While it is possible that Mr. Alman may have entered and exited the building without using his identification card on a few occasions, the data presented by the Employer gives overwhelming support to the allegation that Mr. Alman was routinely late to work and left early as a matter of routine. The calculation that he was not at work during 67 hours of time claimed on his time sheets was a conservative calculation. There is no evidence that Mr. Alman logged into work on his computer earlier than any entry card swipe that was recorded. The only evidence of work activity on his computer by Mr. Alman following an exit card swipe was a remote access made for a period of 54 seconds on March 29, 2007. Between

December 2006 and February of 2007 the grievant averaged seven (7) hours per day at work, four (4) days per week. Grievant was scheduled to work four (4) days of ten (10) hours each week. There is no evidence that he worked more than four days per week.

A different employee in the Human Resources Department reviewed the content of the memory of Mr. Alman's computer together with a forensic expert, Gary L. Johnson. The investigator from the Human Resources Department and Mr. Johnson found evidence that Mr. Alman used his administrative rights to access the files on the hard drives of other employee's computers. Mr. Alman accessed, copied and exchanged music files with co-workers over the network. Mr. Alman spent significant amounts of time browsing non-work related internet websites. Mr. Alman subscribed to non work related e-mail. The grievant also made a number of purchases of products on the internet using his Mn/DOT e-mail account.

As part of the investigation, the grievant was interviewed on April 20, 2007. A Union Representative was present at the interview. The Union Representative requested that the Employer look at computer logs that would reflect remote access, as Mr. Alman claimed he worked from home on Mn/DOT business. The Employer did look at records of remote access but did not find significant access by Mr. Alman of the Mn/DOT computers. On March 29, 2007 there was evidence that Mr. Alman remotely logged on to the Mn/DOT computer for 54 seconds. Mr. Alman was interviewed again on June 25, 2007. A Union Representative accompanied Mr. Alman to the second interview.

Mr. Alman was placed on paid administrative leave on June 27, 2007.

Following a review of the investigation, the Employer determined that Mr. Alman engaged in serious misconduct and determined that his employment with the Department

of Transportation should be terminated. On July 10, 2007 the grievant was given a letter of intent to discharge at a meeting with management and his Union Representative. Mr. Alman was informed of the allegations made against him. He was informed of the evidence against him. He was given an opportunity to respond to the allegations. The Employer considered the meeting to be a *Loudermill* hearing. Mr. Alman did not challenge the allegations made on July 10, 2007. He and his Union Representative did argue that they had an inadequate opportunity to prepare responses to the allegations made against Mr. Alman. The grievant was informed that he would be discharged on July 10, 2007.

By letter dated July 23, 2007, the Employer notified Mr. Alman that after the “Loudermill hearing”, the discharge decision of July 10, 2007 would stand. Mr. Alman’s termination was made effective on July 10, 2007.

The Union filed a grievance on July 20, 2007.

SUMMARY OF EMPLOYER’S POSITION:

The Employer argues that it conducted a fair and thorough investigation and established by sufficient proof that Mr. Alman engaged in misconduct for which discharge was the appropriate remedy.

The analysis of Mr. Alman’s identification card swipes made between December of 2006 and February of 2007 disclosed a clear pattern of late arrivals and early departures. The grievant was scheduled to work a ten (10) hour day from 6:00 AM to 4:30 PM. Between December 1, 2006 and February 8, 2007 grievant’s first badge swipe occurred after his 6:00 AM start thirty two (32) of thirty three (33) days. The grievant never had a badge swipe after 3:30 PM in the same period. On fifteen (15) of the twenty

four (24) days that he swiped out of the RTMC Building between December 1, 2006 and February 8, 2007, the grievant swiped out before 3:00 PM. When Mr. Alman was informed that his attendance was being monitored, his entry times improved dramatically. He began routinely entering the work place at or near his agreed upon start time. After February 8, 2007 Mr. Alman swiped in before 6:00 AM fourteen (14) times out of twenty six (26) work days and before 6:30 AM an additional six (6) times.

The analysis of grievant's identification card swipes led the investigator to conclude that Mr. Alman claimed at least sixty seven (67) hours of time for which he was paid but did not work. Only twenty two (22) of the thirty three (33) work days were used to calculate the sixty seven (67) hour discrepancy. The Employer only used days where the grievant's last recorded badge swipe was from the door that exits out of the Water's Edge Building. There was no evidence that grievant may have worked beyond 3:30 PM on any day.

The Employer discounts the grievant's explanation that he regularly "piggybacked"¹ into the building, that he often forgot his identification badge at home and that he needed to have his wife bring his badge to him at work. The grievant's internet use was compared to the badge swipe records. He routinely used the internet shortly after he swiped a badge by a building entrance. His internet use regularly ended shortly before his last badge swipe of the day. Between December 1, 2006 and February 8, 2007, the grievant never used the internet after his last recorded badge swipe and he never used the internet before his first recorded badge swipe. The grievant's representation that he regularly "piggybacked" into the building is not supported by his

¹ The act of passing through a electronically control doorway with another person and not swiping ones identification badge.

internet use. He did not produce any witnesses to corroborate his claim that he often piggybacked. The grievant is asking the arbitrator to believe that he arrived at work before 6:00 AM and “piggybacked” into the building with another or some other employees on a daily basis. Yet, not one individual was called to verify that he or she recalled entered the building at or about 6:00 AM with the grievant, during the period of time in question.

The Employer was able to obtain records of when Mr. Alman logged on and logged off of his computer, starting on March 28, 2007. His computer log on/log off records were compared with his identification badge swipes over a five day period. On four days where he made both entry and exit badge swipes, the grievant logged off his computer shortly before 3:30 PM and exited the building within two (2) minutes. On a fifth day he logged off his computer at 3:38 PM but there was no badge swipe out of the building. On the four days where both entry and exit records were found, the grievant logged on to his computer within two (2) minutes of his entry into the building. In the time period beginning on March 28, 2007 grievant’s entry times ranged from as early as 6:35 PM to as late as 9:12 AM. His start time was 6:00 AM. And he claimed payment for ten hour days.

Mr. Alman abused his professional position by entering the private files of co-workers without authorization. The investigation into the content of his computer memory revealed that he entered personal files on other computers in his work area and pulled pictures from those files. The grievant was not authorized to enter any personal files on co-workers computers and possessed no legitimate purpose for obtaining pictures or any other data from any co-worker’s personal files.

The investigation also disclosed a large number of music files that Mr. Alman had placed on his computer. While he had obtained some of the files with the permission of one co-worker, there was evidence that he had also obtained music from other co-workers without permission. At one time there were over 1200 music files on Mr. Alman's computer. Some of the music had been downloaded, some of the music was obtained by permission from other Mn/Dot computers and some was obtained without permission. Mn/DOT is legitimately concerned that music downloads from the internet could expose the agency to legal liability. The unauthorized copying of music stored on a co-workers file violates the same policies as the unauthorized copying of any other personal file of a co-worker.

Mr. Alman spent excessive amounts of time browsing the internet. During the same period of time that the grievant's time records were scrutinized, the Employer looked at twenty two (22) days of internet usage by the grievant beginning on December 11, 2006. On twenty one (21) of the days that were reviewed, grievant's internet usage averaged one (1) hour and ten (10) minutes per day. On two days the grievant used the internet for only eighteen (18) minutes, on three different days he used the internet for more than two (2) hours. Grievant's browsing was not confined to the beginning of his day or to the lunch hour. Grievant's browsing included visits to websites on the following topics: auto racing, recipes, resorts, stores, auctions, news, and history.

The Mn/DOT Statewide Policy on the Appropriate Use of Electronic Communication states:

3. While employees may make personal use of State technology such as e-mail and Internet access, the amount of use during work hours is expected to be limited

to incidental use. Excessive time spent on such personal activities during working hours will subject an employee to disciplinary action.

The grievant was given the benefit of the doubt when his hours of work were calculated based on his claim that he did not take lunch or other breaks. Nevertheless, the card swipe data reflected an average of three (3) hours less time at work each day than the grievant placed on his time card and grievant's internet use reveals an average of one (1) hour, ten (10) minutes per day. In fact, grievant was being paid for ten (10) hours of work four days per week and only working six (6) hours per day for four days each week.

Mr. Alman used his Mn/DOT e-mail to make personal purchases and to subscribe to non work related subscriptions in violation of agency policy that is discussed in the agency "Technology Dos and Don'ts". The Employer simply does not believe that an employee who was responsible for servicing and maintaining the computer system for the Metro Design Section lacked the skill to remove the list/serves for non work related subscriptions. Between December 11, 2006 and March 14, 2007 the grievant used his Mn/DOT e-mail address on Mn/DOT time to make the following purchases:

- \$450 worth of goods from Home Depot
- Four tickets to a Minnesota Timberwolves basketball game \$255
- A PERSHINGGRL, using a Paypal account for \$148
- Four tickets to Disney on Ice: Princess Wishes for \$278.38
- Flowers from Teleflora for \$51.94
- A tungsten Palm \$204.97
- Landscaping from Lerfald Services

All of the purchases made by grievant were in violation of agency policy. He had access to the policy and should have known and followed the policy.

The grievant claimed pay for many more hours than he actually worked between December of 2006 and February of 2007. After making a review of the identification badge swipes he made to enter and leave work, the Employer determined that he worked at least sixty seven (67) hours less than the amount of time he claimed on his timesheets. Furthermore, the Employer found an average of one (1) hour and ten (10) minutes of time spent by the grievant on the internet each day. The grievant entered the personal files of other employees without authorization and made unauthorized copies of music and photographs from other co-worker's files. He also purchased products over the internet and subscribed to non work related e-mail subscriptions. The grievant's multiple incidents of misconduct took place over an extended period of time and he knew or should have known that his conduct violated work place policies.

The Employer has discharged other employees for similar misconduct. An arbitration between Mn/DOT and AFSCME Council 5, the discharge of Poehls, conducted by James Reynolds, was cited and the full context of the opinion was submitted with the Employer's brief. The claims against Mr. Poehls included excessive unproductive work time, excessive use of Mn/DOT cell phone and using the Mn/DOT computer to send and receive non work related e-mails and to browse the internet. Both Mr. Poehls and Mr. Alman were discharged for their misconduct. Mr. Alman was not the subject of disparate treatment.

The Employer gave five reasons why the grievant knew or should have known that his behavior violated Mn/DOT policies:

1. The grievant's job was to service and maintain computers in the section. It was essential for him to know the agencies computer policies in order to perform his job.
2. The grievant was employed to assist in managing the Section Automation Resources and his job description requires that he have knowledge of Mn/DOT policies and procedures.
3. Mn/DOT regularly sends reminders of policies to employees and policies are easily accessible on the Mn/DOT intranet.
4. In 2004 the grievant was shown documentation of his excessive internet use and he said he would no longer use the internet at work. There is no evidence to support a claim that grievant obtained authorization to make personal use of the internet after he told his supervisor he does not take a lunch break.
5. Grievant previously received harsh discipline for misuse of the Mn/DOT computer policies. The discipline was intended to be corrective but the grievant did not change his behavior as a result of prior discipline.

The Employer established that the grievant engaged in egregious misconduct and grievant knew or should have known that his conduct violated agency policies. In this case the only reasonable remedy was discharge. Hence, the grievance should be denied.

SUMMARY OF UNION'S POSITION:

The Union argues that the Employer failed to establish just cause for the discharge of Jason Alman.

The method by which the Employer attempted to prove that Mr. Alman falsified his time sheets and claimed wages for hours not worked was unreliable and incomplete.

When an employee piggybacks through a controlled access point, he does not need to swipe his badge. The Employer did not account for time worked when Mr. Alman entered without a badge swipe. The last badge swipe is not necessarily an indication of the end of an employees work day. Computer logs show work that was performed after the last badge swipe of the day. Also, the Employer failed to consider routes Mr. Alman took where no badge swipe is needed to enter or exit the building. The Union demonstrated that the review of identification badge swipes did not accurately reflect Mr. Alman's hours at work.

Mr. Alman was not forewarned of the need to use his badge whenever he went through a controlled doorway. Grievant was not aware that starting and stopping time were an issue. He was told on or about February 9, 2007 that his time at work was being monitored and his badge access records reflected an abrupt shift. A gentle reminder, not severe discipline, was all that Mr. Alman needed to modify his conduct.

Mr. Alman completed his timesheets in the same manner for many years. He always filled out the form noting four (4) days of ten (10) hours. At times he would arrive late and would work late. Other times he worked on his day off to make up time and he would work from home. His supervisors were informed of his actions. Not only did Mr. Alman work the number of hours he claimed, he actually failed to take an alternative holiday for Martin Luther King Day, January 15, 2007 which was his normal day off. Mr. Alman actually shorted himself ten (10) hours of time. Any discrepancy that arose in Mr. Alman's time records was accidental not intentional. Grievant always used the same method to record his hours over a period of ten (10) years. It was his practice to work through lunch time and break time and make sure that he always met his obligations at

work. Mr. Alman received excellent job reviews and always got his job done, which he could not have accomplished, if he was away from work as much as the Employer alleges.

In order to perform his job Mr. Alman had to access the computers assigned to many individuals in the Design Group. He accessed other computers in the work group as he had been taught when he was trained into his position. The way in which he performed his job resulted in efficient operation and the prompt resolution of problems. Mr. Alman's co-workers were very satisfied with the manner in which he performed his work.

The Employer alleged that Mr. Alman entered and copied files from two (2) co-workers. However, KLai-Jergen Huot-Link informed the investigator that he did not download music files but he did share music files with Mr. Alman. The investigator never asked the other employee, Ms. Kautz, about music files.

Mr. Alman admitted that he opened all kinds of files on other computers. However, he explained that his actions were job related. In order to determine whether the files were hindering operations or had a malicious program attached, Mr. Alman needed to open many files. Grievant did not copy personal files to his own computer.

Mr. Johnson, the Computer Audit Manager, primarily reviewed computer records from May of 2007. He admitted that the review was not 100% accurate. Furthermore, the data review was not performed over the same period of time for which the misconduct was alleged.

Like many other employees Mr. Alman listened to music while he worked. Mr. Alman is perfectly capable of performing necessary tasks, while music plays in the

background. No other employee has been terminated for such activity and the activity is consistent with the following agency policy:

Limited and reasonable use of these tools for occasional employee personal purpose that does not result in any additional costs or loss of time or resources for their intended business purpose is permitted.

There is no specific policy that prohibits employees from sharing music files over the network.

The Employer has two hundred and sixteen (216) policies, procedures and guidelines covering a wide range of subjects. The documentation includes between three thousand five hundred (3,500) and nine thousand (9,000) pages. No employee could reasonably be expected to read and know all of the policies, procedures and guidelines. In fact, even the witnesses from the Human Resource Department admitted that they had not read all of the policies, procedures and guidelines. Mr. Alman testified that he had not seen nor had he been directed to review his position description. He was not directed to review nor was he trained on the policies which he allegedly violated. It is fundamentally unfair to discharge an employee based upon policies or procedures of which he has not been fully informed and over which he has not received training.

Mr. Alman was interviewed twice by the Employer. There is no evidence that he gave any false or misleading statements when interviewed. Mr. Alman was cooperative and offered explanations for his conduct which were consistent with the way he was trained to perform his job and consistent with the manner in which he recorded his time on the job over a period of ten (10) years. The Employer regularly approved Mr. Alman's time sheets. The grievant discussed the use of e-mail and internet during breaks. The

grievant responded to questions when he was asked about personal files he entered on agency computers including photos, music, games, software. The Employer knew that grievant freely exchanged music files with co-workers.

The Employer should have given greater consideration to Mr. Alman's fine work record. He was considered to be an efficient and effective employee. The claim that Mr. Alman was away from work or engaged in non work related activities on the internet for roughly forty percent (40%) of the time he was scheduled to be at work is completely at odds with the grievant's performance reviews. As Mr. Alman testified, if he missed that much time, he never would have been able to get his work done. The evaluations of his work were excellent.

Looking at Mr. Alman's employment history and the time period between February 9, 2007 and his discharge, it is clear that grievant would immediately and positively respond to directions given by his supervisor. In 2002 Mr. Alman received an off color e-mail, as did some other employees. He was disciplined and had no other problems for six years. Mr. Alman corrected his behavior when he was disciplined. The Employer discharged the grievant for alleged misconduct between December of 2006 and February of 2007. No consideration was given to the abrupt change in his time records after February 9, 2007, which continued until his administrative suspension in June of 2007. Clearly, when Mr. Alman was made aware of concerns about his arrival and departure times, he immediately responded to managements concerns. All that Mr. Alman needed to correct the situation was a direct comment. He did not require counseling, instruction or any form of discipline.

The Employer failed to meet its burden of proof. Furthermore, the grievant's right to a *Loudermill* hearing was violated. Mr. Alman was not shown all the evidence against him before he was discharged and he did not have a fair opportunity to respond to the charges made against him. The Employer did not have just cause to discharge the grievant. He should be reinstated with full back pay, benefits and accruals.

OPINION:

The Employer established by a preponderance of the credible evidence that between December of 2006 and February 9, 2007 Mr. Alman claimed payment of wages for at least 67 more hours than he worked. The analysis of identification badge swipes made in the investigation was fair, thorough and complete. Card swipe data that was incomplete was disregarded by the investigator. It is possible that Mr. Alman "piggybacked" into or out of work on some days. It is also possible that Mr. Alman may have entered and exited the building on some occasions by routes that are not controlled by electronic card swipes. However, there is no evidence in the form of testimony from those who may have entered or exited with him to explain the extraordinary number of hours for which Mr. Alman was unable to account. There is no record of Mr. Alman obtaining a temporary pass on days when he forgot his identification badge. No one who worked near or with Mr. Alman testified that he was at his work station or in the building at the times, when the Employer's data indicates he was not at work. No work logs computerized or otherwise were produced demonstrating that Mr. Alman spent time on Mn/DOT work between December 1, 2006 and February 9, 2007, when he was away from the office or during those times when the Employer determined he should have been at work but could not verify that he was at work. Mr. Alman did not have an agreement

with his employer that he could perform work from home. The evidence submitted by the Employer weighs heavily in favor of the Employers determination that Mr. Alman claimed wages for at least 67 hours of time that he did not work between December 1, 2006 and February 9, 2007.

The review of Mr. Alman's identification badge swipes made after he became aware of the fact that management was scrutinizing his attendance disclosed an abrupt improvement in punctuality. The fact that Mr. Alman passed through the doors at work earlier in the morning and later in the afternoon after February 9, 2007 does suggest that only a comment was necessary to change his behavior. Unfortunately, the badge swipe records following February 9, 2007 also give additional support to the Employer's determination that Mr. Alman was not at work for approximately 30% of the time claimed on his time sheets between December 1, 2006 and February 8, 2007.

The review of Mr. Alman's time spent on the internet browsing non work related sites and purchasing items does not support Mr. Alman's claim that he only used lunch and rest breaks for such activities. The analysis submitted at hearing demonstrated an average of more than one (1) hour per day of non work related computer activity by Mr. Alman on the internet. Since Mr. Alman justified his regular early departure times by saying that he did not take lunch breaks and rest breaks, he did not have a legitimate basis for spending break time on the internet. It is possible that the amount of time Mr. Alman appeared to be spending on the internet may to some degree be accounted for by running programs in the background, while he did other work related tasks. Nevertheless, Mr. Alman was taking some additional time away from work, when he was on the internet. Consequently, the arbitrator finds that Mr. Alman claimed wages for 80 hours every two

weeks between December 1, 2006 February 9, 2007 but actually worked only 60% to 70% of the amount of time claimed on his timesheets. There is no evidence that Mr. Alman was unaware of or uninformed of the fact that he was being compensated at an established hourly rate of pay for the amount of time he recorded on his time sheets.

The magnitude of the disparity between Mr. Alman's time sheet records and the actual hours Mr. Alman worked, together with the long period of time over which Mr. Alman over reported his time to the Employer is sufficient to support the Employer's argument that the grievant falsified his time records. The evidence is also sufficient to support the argument that Mr. Alman's conduct was so egregious that discharge was the only appropriate remedy.

The claims that Mr. Alman went into private files of co-workers and that Mr. Alman down loaded music and transferred music from the computers of his co-workers without authorization are supported by evidence. However, Mr. Alman gave some very reasonable explanations that strongly suggest that some, if not all, of the information that he was looking at on the computers of co-workers was within the scope of his job. Also, there is evidence that at least one co-worker authorized the copying of his music files by Mr. Alman. The evidence regarding copying files from the computers of co-workers is not sufficient to support Mr. Alman's discharge.

Mr. Alman did inappropriately make purchases using the Mn/DOT e-mail and did fail to remove some non work related e-mail subscriptions from his computer. Both circumstances were inappropriate and in violation of Mn/DOT policies. There is some question whether Mr. Alman was fully aware of the policies. The agency should provide more direct training in those areas where employees are likely to find it very easy to

stretch or evade the internet use policy and stress the importance of not engaging in actions, such as, purchasing items on line using a Mn/DOT e-mail address. The Employer did not establish by a preponderance of the evidence that Mr. Alman was on notice of policies relating to the claims that he misused Mn/DOT e-mail.

The Union challenged whether the Employer gave the grievant a pre-termination hearing that could fairly be characterized as a *Loudermill* hearing. The U.S. Supreme Court set the standard for pre-termination review as follows:

The essential requirements of due process, and all that respondents seek or the Court of Appeals required, are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. See Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267, 1281 (1975). The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. See Arnett v. Kennedy, 416 U.S., at 170-171 (opinion of POWELL, J.); id., at 195-196 (opinion of WHITE, J.); see also Goss v. Lopez, 419 U.S., at 581. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee. Cleveland Board of Education vs. Loudermill, 470 U.S. 532, 105 S. CT. 1487, (1985).

While the grievant felt that he was not given an adequate opportunity to prepare responses to the allegations of misconduct, the pre-termination hearing he received did meet the minimal requirements of a *Loudermill* pre-termination hearing. The grievant

was given notice and an opportunity to respond to the allegations on July 10, 2007. It should also be noted that during the course of the investigation Mr. Alman was interviewed twice. In response to questions about his conduct, he was given a number of opportunities to both explain his conduct and to request that the Employer look at other sources of information to verify his statements. Mr. Alman did not have a full evidentiary hearing prior to his discharge but the pre-termination hearing did meet the *Loudermill* standard.

The grievant attributed his attendance patterns to depression resulting from his service in the U.S. military in the Middle-East. The arbitrator has no reason to doubt the veracity of his testimony regarding depression and his military service. However, Mr. Alman did not inform the Employer of any problems he was experiencing. The Employer can not be expected to make adjustments to address an employee's difficulties, when the employee fails to inform the Employer of the problem he or she is having.

The Employer had just cause to discharge the grievant for claiming wages for time not worked. Hence, the grievance should be denied.

AWARD:

The Employer had just cause to discharge the grievant.

The grievance is hereby denied.

Dated: June 20, 2008

James A. Lundberg, Arbitrator