IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL STEEL COMPANY
INDIANA HARBOR PLANT

And Mittal Award No. 28

UNITED STEELWORKERS, USW
LOCAL UNION 1011

OPINION AND AWARD

Introduction

This case from the West Side of the Indiana Harbor Plant involves the Union's claim that the Company discharged Grievant Kevin Billingsley without just cause. The case was tried in the Company's offices in East Chicago, Illinois on January 13, 2009. Robert Cayia represented the Company and Bill Carey presented the case for the Union. The parties agreed that the issue on the merits was whether there was just cause for discharge and, if not, what the remedy should be. There are no procedural arbitrability issues. However, the Union raised two issues that it argued should preclude a review of the merits. Both of those will be addressed below. The parties argued the just cause issue at the conclusion of the evidentiary portion of the hearing, and agreed to file post-hearing briefs limited concerning the applicability of the Indiana licensing statute for private investigators, and the applicability of the Fair Credit Reporting Act.

Background

This case concerns the discharge of Grievant Kevin Billingsley for allegedly falsifying his time reports to inflate his pay. The events at issue began following an anonymous telephone call to Gregory Racich, Manager of Security and Emergency Services. Racich said he received a call on January 9, 2008 from someone who told him there was a timekeeper at the West Mill House who was committing time fraud. The caller did not mention Grievant's name and did not identify himself. The call was made from a public telephone. Racich said he intended to establish surveillance on Grievant, but that he did not do anything immediately because the investigator he intended to use was involved in an investigation at another plant.

Racich said four or five weeks after the anonymous call he contacted Jerry Cook, the Division Manager over Grievant's department. Through Cook, Racich obtained Grievant's work schedule and initiated surveillance. The surveillance began on or about February 18 and continued through March 4, 2008.[1] The investigator reported that on ten occasions Grievant reported having worked either ten or twelve hours when he was never in the plant more than about eight and one-half hours. Once the surveillance was completed, Racich said he forwarded the results to Cook and Gayla DeArmond, who works in Labor Relations. Racich testified that he alone decided when surveillance would begin and that he did not share that information with anyone, although he did inform Cook about 2 days after surveillance began.

Gayla DeArmond, Labor Relations Representative, testified that she received a summary of the investigator's report on March 4, and that she had not been aware of the surveillance before that day. She said she set up a meeting with Grievant and his Union representative on March 7, 2009, which Cook also attended. DeArmond said at the meeting she showed Grievant copies of the time sheets he had submitted covering the period between February 14 and March

[1] The Company relies only on time sheets covering the period between February 20 and February 30.

1. The time sheets show the days of the week next to a column headed "hours." The procedure was for Grievant to mark the number of hours worked next to the days he worked, and then e-mail the completed weekly record to another timekeeper. The Company introduced an e-mail between Grievant and the other timekeeper forwarding the time sheets.

DeArmond said she quizzed Grievant about each day for which he had listed hours worked. On two of the days when Grievant reported having worked 8 hours, Grievant said he arrived for work at 7:00 a.m. and left at "5, 6, 7." His answers, DeArmond said, became increasing vague as she went through the list. However, she said Grievant affirmed that the hours shown on the sheets represented the number of hours he had worked each day. DeArmond said she then informed Grievant that he had been under surveillance and that for each day worked between February 20 and February 29, Grievant had not been in the plant for as many hours as he claimed. At that point, DeArmond said she thought Grievant was guilty of fraud, and she subsequently suspended him for 5 days pending discharge.

At the second step meeting on March 25, 2008, Grievant submitted telephone records to substantiate the fact that on February 19, Grievant called the plant and reported that he would not be in on February 20. The Company responded that it did not doubt the validity of Grievant's claim that he was sick, but its concern was that Grievant's time sheet indicated he had worked 12 hours on February 20 when he had not worked at all. DeArmond testified that at the second step she asked the Union to furnish the information it claimed would prove that Grievant had been set up by someone else.

On June 9, DeArmond said, the Union gave her two time sheets covering the period at issue, which Grievant claimed were the ones he had actually sent to the timekeeper. Those sheets are consistent with the investigator's report of the time periods Grievant was in the plant.

DeArmond said this was the first time the Company had heard Grievant's claim that the time sheets the Company relied on were inaccurate. On cross examination, DeArmond agreed that the second step minutes do not say that in his interview on March 7, Grievant affirmed the validity of the time sheets.

Jerry Cook, Division Manager of West Finishing, said he attended the March 7 meeting with Grievant. He said DeArmond covered each day on Grievant's time sheets and that Grievant said each entry was accurate. Cook said Grievant did not question the accuracy of the time sheets until he learned about the surveillance. Cook testified that there are no time clocks or similar devices at the West Side of the plant, and that employees submit hours on an honor system. Grievant's conduct was serious, he said, not only because he falsified his time, but because Grievant was a timekeeper, which is a position requiring trust and honesty.

At the third step meeting on September 3, 2008, Grievant alleged that someone had set him up, working either alone or with another employee. He identified suspects from both management and the bargaining unit. Cook was one of the managers Grievant named. At the arbitration hearing, Cook adamantly denied any role in falsifying Grievant's time records. Another manager Grievant listed was Jim Cross, Grievant's immediate supervisor. Like Cook, Cross denied involvement in any scheme to falsify Grievant's time records.

As noted above, the Company says Grievant sent the time records it relied on to the timekeeper by e-mail. On March 5, 2008, Cook sent an e-mail to the other timekeeper asking for all of the time sheets entered into the computer program (WorkBrain). Cook told the timekeeper he needed it to complete a required "year to date manpower and overtime report." That same day, the timekeeper e-mailed Grievant that, "I haven't seen your timesheet for last week." A few hours later Grievant responded "I gave it hayes but will attach it to this e-mail also." The

"hayes" mentioned in the e-mail was Kevin Hayes, who was Grievant's supervisor at that time. Hayes testified that Grievant had given him a copy of the his timesheet and that Hayes gave it to Cook a few minutes later. Cook testified that the e-mail Hayes gave him was identical to the one the Company relies on in this case. He said he faxed a copy to Racich and DeArmond, and that he still has the original. Hayes was not on Grievant's list of managers he suspected of conspiring against him. Hayes denied any involvement in altering Grievant's time sheets.

Grievant testified that he always made a copy of his time sheets for his own records. He tried to submit his copies in the second step hearing, Grievant said, but the Company would not take them. Grievant pointed to a comment in the Union's corrections to the second step minutes that "Grievant was not allowed to enter evidence."[2] Grievant said the time sheets submitted to the Company on June 9 were the ones he had prepared in February. Grievant said he prepared his time records by creating an Excel file which he saved and then sent to the other timekeeper. Excel, he said, is not tamper proof. Moreover, Grievant said his computer was used regularly by other employees and that other employees knew his password. The Union submitted a document signed by 12 employees that said Grievant's password was "common knowledge" in the 84-inch Hotstrip Warehouse Department.

Grievant adamantly denied affirming the times recorded on the time sheets DeArmond showed him in the March 7 meeting. Instead, he said, he told her the times were not accurate. Jesse Potter, the Griever who represented Grievant in the March 7 meeting, supported Grievant's claim that he did not say the time sheets were accurate. Potter said DeArmond went through the time sheets and asked about the days Grievant worked, and Grievant respond by giving her the

[2] The Company's response to this statement says: "The Company has repeatedly requested the Union to provide any additional evidence they have for this case as a part of full disclosure. The Company's position regarding additional evidence in this case is clear. If the Union has evidence that may impact the decision by the Company, it is incumbent upon the Union to provide that information to the Company. As of the date of this document, June 6, 2008, no further evidence has been presented by the Union."

approximate times. Potter also said Grievant did not say he filled out the time sheets DeArmond showed him.

Grievant said he maintained in both the second and third step hearings that someone had altered his time sheets. He did not know how they did it, but he pointed to a Union exhibit that showed someone had accessed his computer when he was not in the mill. The exhibit is a screen print of Grievant's access to a computer folder he created named "My Time." The exhibit lists 50 times the folder was accessed. Seven of the listings indicate access to the file during a 37 minute period between 5:58 a.m. and 6:35 a.m. on February 26, 2008. The report from the Company's investigator indicated that Grievant was not in the plant at that time. Moreover, Trevor Bruss, the Company's Systems Analyst for IT, testified that no one had accessed the file from outside the plant. None of the time sheets that were accessed covered dates involved in this case. Nor does the exhibit indicate that any of the files accessed were modified on February 26, 2008.

Grievant testified that there were people who had a motive to get him fired. Grievant was an assistant griever for 7 years and sometimes angered management with his advocacy. Grievant said he also had enemies from the Union. He was removed from his Union leadership position on December 14, 2007. Although the letter removing him says the decision was based on a "unanimous vote" at a regular membership meeting, Grievant testified that it was an executive decision. Grievant also testified that some of the newer employees were angry with him over schedule changes because they did not understand how the scheduling system worked. Grievant said he did not report the overpayment from the false timesheets because he did not receive it until February 28, one week before he was suspended. Grievant said he has direct deposit and his wife pays the bills. He gets paystubs at the plant, he said, but they sometimes stay in his

locker for 2 or 3 weeks before he takes them home. Grievant said he had worked for the Company for almost 8 years and had never before been disciplined.

Systems Analyst Bruss testified that he observed the retrieval of the screen print that showed the creation of Grievant's time sheets for the two weeks at issue in this case. This is the same exhibit the Union introduced that showed access to Grievant's time folder on February 26 when he was not in the plant. The two time sheets at issue in this case were not accessed on February 26. The record shows that Grievant created one time sheet on February 25, 2008 and the other one on March 3, 2008. The same dates are shown under "modified," which, Bruss said, means they had not been modified after they were created. If there was a modification, the time stamp in the "modified" column would have changed. Bruss also referenced a time sheet Grievant had sent to the other timekeeper at 7:52 a.m. on February 25, 2008. This was the same timesheet Grievant had created in his computer file at 7:49 a.m. that same day, and is one of the timesheets the Company relies on in this case.

On cross examination, the Union reminded Bruss that Hayes had testified he accessed the two files covering the period at issue on March 25. It was not possible to determine if he accessed one of the files that day because it had been accessed on November 5, 2008, and that date replaced any entry made in March. But the other entry shows that it was last visited on March 7, which was before Hayes testified he accessed the file. Bruss testified that he was not aware of any software that would allow someone to change an access date. However, the Union showed him an internet advertisement for a product known as Shareware Connection, which says it can be used to change "file attributes," like creation dates, last access codes, and the modification dates. On redirect, Bruss said not everyone who opens a file is able to modify it. Most computers in the mill, he said, have general user rights, but not administrative rights. Also

on redirect Bruss said the modification time stamp on a file does not change if someone attaches the file to an e-mail and sends it. This apparently was in response to the Union's attempt to impeach Hayes by showing that one of the files had not been modified or accessed after it was created, meaning that Hayes could not have accessed it on March 25, as he claimed. Hayes did not testify that he opened either file. Rather, he said he e-mailed the files to DeArmond and Woods.

Cook testified that he had the other timekeeper e-mail the two timesheets at issue to him after the March 25 second step hearing. He said the timesheets were the same ones the Company had used at the March 7 meeting. A Union witness, however, said that even though there is a printout of the e-mail with a timesheet attached, nothing on the e-mail can identify whether the attachment was the one the Company claims Grievant submitted, or the one Grievant claims he submitted.

Positions of the Parties

The Union argues that I need not reach the merits for two reasons. First, the Company's investigator's license had expired and was not in force at the time of the surveillance. The Union submitted documents indicating that an investigation in such circumstances is a misdemeanor under Indiana law, and it argues that the Company should not be able to rely on a report compiled as a result of a criminal act. The Union also argues that the investigation violated the Fair Credit Reporting Act because Grievant was not notified of the investigation before it began. I will deal with both issues below so I need not detail the arguments here.

On the merits, the Company stresses that Grievant occupied a position of trust and responsibility, and that he abused the Company's trust by inflating his hours worked in order to

receive pay for time he was not on the job. A review of both the investigator's report and the time sheets Grievant submitted, the Company says, indicates that all of Grievant's time entries in the period at issue were fraudulent. The Company also relies on DeArmond's testimony that she went over each day on the time sheets with Grievant and that he affirmed that each entry was correct. The Company acknowledges that the second step minutes do not say Grievant affirmed the accuracy of the time sheets, but it also says Grievant did not claim in the March 7 meeting that the time sheets were fraudulent. Grievant did not make that claim until later, the Company says, after he had time to coordinate a work schedule with the investigator's report. And it was not until June 9 that Grievant gave the Company what he claims were the real timesheets.

The Company also points to the timesheet file created at 7:49 a.m. on February 25, and e-mailed to the other timekeeper at 7:52 a.m. If that timesheet was modified, the Company says, it would have had to have been done in that three minute period. But even if that were possible, the print screen shows that no modification was made. The Company also relies on Grievant's claim in his March 5 e-mail to the other timekeeper that he gave a copy of his timesheet to Hayes. Hayes agreed that he received it, and he said it was the same timesheet the Company used in the March 7 meeting. The Company also questions how someone could have known about the surveillance in advance. If someone framed Grievant, then he would have had to know in advance when the investigator was watching Grievant so he could change the right time records. But Racich said he had not told anyone when the surveillance would start, and that he did not communicate with Woods until after it had already begun.

The Union points out that Grievant must have enemies because someone called anonymously to allege that he was falsifying time records. The Union also questions whether there was ever such a call since Cook did not respond to the Union's request for his phone

records. The Union says the Company has not been able to explain how someone other than Grievant got into his computerized time records. But there is no doubt that someone did, the Union says, because they were accessed when Grievant was not on the property. The Union argues that this fact calls all of the time sheet data into question, especially since there apparently are programs that allow alteration of time stamps. The Union also questions Company testimony that Grievant reaffirmed the accuracy of the time records at the March 7 meeting. There are "vastly different versions" of that meeting the Union says. But it argues that the most telling fact is that the second step minutes do not say that Grievant agreed with the entries on the time sheets. The Union also cited as mitigating factors other ArcelorMittal cases in which employees guilty of time fraud had been reinstated. The Union said this was not an admission of Grievant's guilt but, it says, the cases justify mitigation in this case if I determine that Grievant is guilty of the offense.

Findings and Discussion

Investigator's License

Although arbitrators typically do not interpret the law (unless requested by the parties), I can assume for purposes of this case that Indiana law requires a license for an individual to undertake the kind of investigation at issue in this case. I can also assume that working as an investigator without a license is a misdemeanor under Indiana law, as the Union argues. There appears to be no dispute that the investigator hired by the Company was not licensed. But even if all those things are true, in the circumstances of this case the Company did not forfeit its right to rely on the investigator's report.

The Company did not simply hire someone off the street to undertake surveillance. It hired a reputable firm that it had used in other investigations. In fact, the investigator who did the work was already engaged at another location when the Company received the telephone call alleging that Grievant was stealing time. Moreover, the investigator *had* been licensed and his license was not canceled for misconduct or similar reasons; rather, his license expired and his employer failed to renew it. One might question whether this circumstance actually violated Indiana law because a court might find that the investigator did not act "knowingly or intentionally", which is a requirement of IC 25-30-1-21.[3] But whatever criminal liability the investigator might have incurred, it is clear that the Company did not intentionally hire an unlicensed investigator. Nor did it hire someone who was incapable of meeting Indiana licensing standards. I find, then, that the Company acted in good faith and the investigator's failure to renew his license does not prejudice the Company's ability to rely on the investigation.

Fair Credit Reporting Act

The FCRA issue is more complex. As the Union points out, private investigators can qualify as a Consumer Reporting Agency under the Act. The FCRA regulates the manner in which such agencies can prepare and furnish consumer reports. Section 603(d) defines a consumer report to include a written communication "bearing on a consumer's ... mode of living[4] which is used or expected to be used ... for the purpose of serving as a factor in establishing the consumer's eligibility for ... (B) employment purposes...." There are, however,

[3] Courts sometimes say in circumstances like these that it is sufficient if an individual does the act itself – here, acting as an investigator – knowingly or intentionally. The investigator knowingly and intentionally acted as an investigator in this case. But it is just as reasonable to construe the statute to mean that he had to act as an investigator intentionally, knowing he did not have a license. I need not resolve that issue in this case.

[4] The Union argues that the report in this case concerned Grievant's "mode of living."

exceptions, one of which is central to this case. Section 603(d)(2)(A)(i) says the term "consumer report" does not include "any report containing information solely as to transactions or experiences between the consumer and the person making the report."

I can assume for proposes of this case that the report at issue here would be a consumer report, as that term is used in the Act, unless it meets the exception in Section 603(d)(2)(A)(i). If it does not meet the exception, then the Company failed to comply with the notification requirements of the FCRA and, presumably, that would prevent the Company from using the report for employment purposes. See e.g., Section 604. I need not make that determination in this case because I find that the exception detailed above applies here.

It is worth noting that I am not a judge and that I obviously have no power to render an authoritative interpretation of the law. However, the parties in this case have made arguments to me about the applicability of the notice requirements of the FCRA, and it is fair to infer from their positions that they recognize the possibility that a violation of the FCRA would prevent the Company from using the report to establish that it had just cause to discharge Grievant. Because the parties have used compliance with the statute as part of the contractual just cause requirement, they have assented to have me interpret the statute as a way of determining the contractual issue.

There are two court cases construing the exception language quoted above. In Salazar v. Golden State Warriors, 124 F. Supp. 2d 1155 (N. D. Cal. 2000), the court considered a case in which an investigator, at the employer's behest, had videotaped the plaintiff on and off company property for the purpose of determining whether he had used illegal drugs. The employer fired the plaintiff based on the videotape and a short written report from the investigator. The court said that under the Section 603(d)(2)(A)(i) exception noted above, the issue was whether the

report was based on "transactions and experiences" between the plaintiff and the investigator, not between the employer and the employee. The court held that the "transactions and experiences" exception did not require interaction between the investigator and the employee. All that was required was that the investigator have "first-hand knowledge of the information included in the report," a requirement that was satisfied in that case.

The other case – of less relevance to the instant case – is Warinner v. North American Security Solutions, 2008 U.S. Lexis 44315 (W.D. Ky 2008). That case involved an undercover investigation of drug use and sale in the workplace. Two investigators posed as employees and filed reports of their observations about drug activity by employees both on and off the employer's property. Several employees were discharged and filed suit on various theories, including violation of the FCRA notice requirement. The court summarily rejected the plaintiff's contention that the "transactions and experiences" exception did not apply because the investigators used deception to gather information. The court said the statute did not distinguish between "honest" interaction and those "involving deceit." The court also cited the Salazar holding that the statute requires that the report be generated as a result of firsthand knowledge.

There is no issue in this case that the investigator's report concerning the times Grievant was in the plant was generated as a result of his firsthand observation of Grievant. However, relying in part on an issue discussed in Salazar, the Union asserts that the "transactions and experiences" exception does not apply because the investigator gleaned some information from a source other than an interaction with Grievant. In Salazar, the Plaintiff claimed the exception was inapplicable because the investigator had gathered "second hand information," including a criminal background check and a listing of automobile registrations. The court said the automobile registration listing was secondhand information, but that did not affect the report

because none of the cars belonged to the plaintiff. The criminal background check was also secondhand information, but that information was not given to the employer. Thus, the court concluded that the report did not include secondhand information.

In this case, the Union relies on the fact that the report of observations on February 20, 2008, includes descriptions and plate numbers for two cars the investigator identified as belonging to Grievant. The Union says the investigator could only have received this information by a search of state registration records, either on his own or through a police contact. Unlike Salazar, this information concerned Grievant's cars and it was part of the report. Because it was secondhand information, the Union contends that the "transactions and experiences" exception does not apply.

There is no way of determining whether the investigator knew the license numbers of Grievant's cars before the first day of surveillance. He might simply have reported the license numbers of the cars he saw at Grievant's house, or he might have gotten car identity information from the Company, which presumably compiles such information for employees who drive or park on Company property. This factual issue was not addressed by either party at the arbitration hearing. The Union had raised the FCRA issue with the Company the day before the hearing.[5] The parties agreed to file post-hearing briefs on the Union's FCRA claim because neither was fully versed in the Union's FCRA argument at the hearing. In its brief, the Union raised the secondhand information argument and its claim that the investigator must have used a secondhand source to obtain car registration data. The briefs were exchanged contemporaneously, so the Company's brief did not address the issue.

[5] This is not meant to suggest that the Union had deliberately withheld the information. The Union representative said credibly that until two days before the hearing, he had thought a different case was to be tried on January 13.

In these circumstances, I am going to consider the record as the parties left it. It is at least as reasonable to assume that the Company gave the investigator the descriptions of Grievant's cars – or that the investigator compiled the identifying information through his own observations – as it is to assume he accessed the state's vehicle registration data base. Nothing in the record supports the Union's claim that the investigator already had the information by the time be began his surveillance. If the Company gave him the information, that presumably would not cause it to forfeit the "transactions and experiences" exception. The Company, after all, had to identify the subject of the investigation and furnish an address in order for the investigator to begin work. I find, then, that the "transactions and experiences" exception applies in this case and that the Company did not violate the FCRA by failing to notify Grievant in advance of the investigation.

The Merits

It may be that both parties exaggerated Grievant's conduct in the March 7 meeting. Perhaps Grievant did not affirm the accuracy of his timesheets as fervently as Company witnesses remembered Their testimony suggested that he gave some general answers, indicating on some occasions that he might have left the plant over a two or three hour range; thus, DeArmond said Grievant sometimes said he left at "3, 4, 5...." But it is equally likely that Grievant did not specifically allege that the timesheets they showed him were fraudulent; he was simply evasive about when he had worked.

Ultimately, the issue is whether it is fair to believe that the timesheets relied on by the Company were accurate, or whether they were more likely fabricated by enemies or someone who wanted to get Grievant in trouble. A principal problem with Grievant's claim is that he did

not tender what he says are the accurate timesheets until June 9, three months after he was suspended pending discharge. I recognize that the Union submitted corrections to the second step minutes alleging that Grievant was not allowed to enter evidence at the hearing, a contention the Company denied. The Company said that Grievant submitted the telephone records indicating he had called off on February 19, but not the timesheets. But even if were true that the Company would not accept the timesheets at the second step hearing, it is hard to fathom that someone who claimed to have original timesheets that could exculpate him would fail to submit them in some fashion to the Company prior to his discharge or, at the least, shortly after his discharge. Here, Grievant was suspended on March 7, but he was not discharged until March 31. Presumably nothing could have been more important to Grievant during that time than trying to prove his innocence. But Grievant did not give the time sheets to the Company and he did not testify that he had given them to the Union. It is significant that no Union witness said Grievant had given the Union the timesheets and that the Union, not Grievant, had delayed sending them to the Company.

Grievant claims that the timesheets the Company used were fraudulent, and the Union supports that claim by showing the screen print that shows someone gained access to Grievant's computer when he was not at the plant. But the same date stamps indicate that whoever did so did not tamper with the timesheets at issue in this case. Those entries had not been modified since their creation on February 23 and March 5. The Union's response is that someone could have accessed those files and then could have used software like Shareware Connection to change the date stamp. If that is what happened, then it is hard to understand why the culprit would not have used Software Connection to cover up access to the other files. Anyone who wanted to frame Grievant would surely have realized that it would not help their cause to leave

tracks in the date stamps. Nor does the Union's theory of the case explain the time sheet Grievant created at 7:49 a.m. on February 25 and then forwarded to his timekeeper at 7:52 a.m. This sheet was one of the ones the Company relied on in the March 7 meeting. It obviously could not have been altered before Grievant sent the e-mail. I agree with the Union's claim that the access to Grievant's time folder on February 26 is troubling. But even if it was illicit, there is no evidence that the intruder changed the time sheets of importance to this case. The evidence, in fact, is to the contrary.

In order to find that Grievant was framed, I would have to find that Woods, Racich, DeArmond and possibly Hayes were involved in the conspiracy. I would also have to find that one or more of them changed Grievant's timesheets and then uploaded a program that would allow them to cover their tracks. The record does not convince me that this scenario is plausible.[6] On the other hand, the Company tendered timesheets showing that Grievant claimed to have worked when he was not in the plant, and computer records that showed that even if someone had gained access to Grievant's time records, they had not changed the ones at issue here. Finally, Grievant did not produce what he calls the accurate records until three months after he was suspended. In these circumstances, I find that the Company has satisfied its burden to prove that Grievant submitted false time records as a way of receiving money that he had not earned.

I am aware of the fact that the Company has suspended other employees for stealing time, and that some discharged employees have been reinstated. Two of the reinstatements involved employees with 31 and 38 years of service, in contrast to Grievant's 8 years. Moreover, neither

[6] I also note that if the Company was anxious to implicate Grievant in fraud, then it seems odd that Racich would wait more than a month to act after having received the anonymous call. Moreover, if Racich lied about the call, which is what the Union suggests, then presumably he would have placed the time of the call closer to the time he actually initiated surveillance.

of those employees occupied a position of trust similar to Grievant's, who was responsible for keeping accurate time records for other workers. This is a significant fact, as indicated in Inland Award 994, where the arbitrator upheld the discharge of an employee who sometimes assisted his supervisor in the timekeeping function. Given Grievant's conduct and the nature of his responsibilities, I am persuaded that the Company had just cause for discharge. Thus, the grievance will be denied.

AWARD

The grievance is denied.

Terry A. Bethel
March 8, 2009