

#1971

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

AND

SEIU/DISTRICT 1199

Grievant: Michael Blevins

Case No. 29-02-20070801-759-02-12

Date of Hearing: January 31, 2008

Place of Hearing: SEIU – 1199 Office – Columbus, Ohio

APPEARANCES:

For the Union:

Advocate: Khalid Jalil, SEIU Administrative Organizer

2nd Chair: Jim Tudas, SEIU State Coordinator

Witnesses:

Grievant: Michael Blevins

Barbara Cole – Vocational Rehabilitation Counselor

Rebecca Bates – Vocational Rehabilitation Counselor

Gary Hontz – Vocational Rehabilitation Counselor

Barbara Wilson – Vocational Rehabilitation Counselor

For the Employer:

Advocate: Kimberly Z. Hudak, Assistant Legal Counsel

2nd Chair: Dave Long, Office of Collective Bargaining

Witnesses:

George Platounaris – Supervisor

Pam Laing – HR Coordinator Southeast Area

OPINION AND AWARD

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: March 28, 2008

INTRODUCTION

The matter before the Arbitrator is a Grievance pursuant to the Collective Bargaining Agreement ("CBA") in effect June 1, 2006 through May 31, 2009, between the State of Ohio Department of Rehabilitation Services Commission ("RSC") and SEIU/1199 Chapter ("Union").

The issue before the Arbitrator is whether just cause exists to support the removal of the Grievant, Michael Blevins ("Blevins"), for violating the Performance Management Policy Grid 4.8 – failure to follow directives; carry out an assignment, policies and/or procedures; 4.20 – general failure of good behavior; 6.3 – theft of employer's . . . property or money; 6.4 – theft of state time, which may include recording/claiming more time than actually worked; and 6.10 – falsification or misrepresentation of documents, records or forms.

The removal of the Grievant occurred on July 20, 2007, and was appealed in accordance with Article 7 of the CBA. The matter was heard on January 31, 2008, and both parties had the opportunity to present evidence through witnesses and exhibits. Post-hearing briefs were submitted by both parties on or about February 22, 2008.

BACKGROUND

Blevins was hired in January 2001 and worked as a Vocational Rehabilitation Counselor ("VRC") until his removal on July 20, 2007. Blevins' duties required providing direct services to individuals with disabilities living in southeast Ohio. Services included employment opportunities, training, medical assistance and providing of financial support. Blevins was required to visit clients and prospective employers, and this involved weekly travel in his automobile. All VRCs submit a weekly itinerary to

their supervisor which contains their activities for that week. VRCs also submit pay and expense reimbursement forms, detailing primarily hours worked and mileage expenses for that week.

Beginning in January 2007, Blevins for personal reasons, relocated from the City of Wheelersburg to Nelsonville. After his relocation to Nelsonville, the Grievant continued to list his former residence for mileage reimbursement and for calculating actual hours worked.

Article 21.01 of the CBA provides in part (Joint Exhibit (JX) 1) the following:

Travel time as required by the agency is considered work time if the travel is between work sites or . . . the employee's place of residence and a work site other than the assigned work site **before**, during or after the regular day.

[Emphasis added]

RSC contends that by listing Wheelersburg as his residence, the Grievant claimed additional travel hours and mileage reimbursement totaling \$420.37 between January 2007 and April 2007. George Platounaris ("Platounaris"), the Grievant's supervisor, indicated that he was unaware that the Grievant had relocated from Wheelersburg and that, upon obtaining actual knowledge that Blevins resided in Nelsonville, he commenced the investigation which led to Blevins' removal.

During the investigation, the Grievant was reassigned to the Athens office where his work day began and ended. Also, during the investigation, the Grievant was required to re-submit his reimbursement forms for the months at issue to reflect his actual mileage and work hours calculated from Nelsonville as opposed to Wheelersburg. The Grievant further had two (2) investigatory interviews, the first on April 30, 2007 and the second on May 8, 2007. The investigation convinced the Employer that from January 2007 until April 2007, the Grievant had engaged in a pattern of misconduct

regarding his hours worked and mileage incurred that required his removal. Simply stated, the Employer felt it could no longer trust the Grievant.

The Union contends that the Employer only looked at a small period of time, i.e., four months, although the Grievant had been submitting similar expense reports with full knowledge of Platounaris since 2001. According to Blevins, Platounaris instructed the Grievant to use Wheelersburg as his residence even though Platounaris was aware that Blevins spent several days per week in Nelsonville for personal reasons.

The approval by the Employer of the expense reports, according to the Union, without prior warnings or corrective instruction is tantamount to acknowledgement under Ohio Administrative Code 126-1-02 which states, in part, “. . . The approval of a state agent’s completed OBM 7148 . . . constitutes certification by the head of a state agency of the propriety of the reimbursement of such state agent’s travel expense.” The Employer, by failing to notice to enable the Grievant to correct this behavior, was in violation with the corrective behavior model the parties have in their CBA, Article 8.02.

The Union opines that the principle of progressive discipline is absent in this case and the theft charges, based upon falsification of the expense reports, are not supported by the facts. It asserts that the use of the Wheelersburg address resulted in no financial gain to Grievant, and, in fact, the Grievant would be owed money for mileage and overtime hours incurred if RSC had reviewed all of his reimbursement forms between 2001 and 2007. Finally, the Union points out that the Grievant was never charged “officially” with theft which is a criminal offense, and that no investigation was conducted by the Ohio Highway Patrol (“OHP”).

The Grievant’s removal, from the Employer’s perspective, had as much to do with honesty and loss of trust in the Grievant than the discrepancies in the expense reports

identified in Management Exhibits (MX) 5, 6, 7 and 8. The Employer contends that multiple examples were presented which support each asserted violation of the grid.

Consequently, RSC removed Blevins for the following reasons:

1. Failure to follow directives, carry out an assignment, policies and/or procedures (Rule 4.8).
2. General failure of good behavior (Rule 4.20).
3. Theft of employer's or another employee's property or money, or a vendor/operator or a client's property or money (Rule 6.3).
4. Theft of state time, which may include recording/claiming more time than actually worked (Rule 6.4).
5. Falsification or misrepresentation of documents, records or forms (Rule 6.10).

The Employer seeks affirmance of its actions, whereas the Union seeks reinstatement, back pay and any other economic remedy related to the Grievant's removal.

ISSUE

Was the Grievant removed for just cause?

RELEVANT PROVISIONS OF THE CBA, POLICIES AND OHIO ADMINISTRATIVE CODE

ARTICLE 8 DISCIPLINE

8.01 STANDARD

Disciplinary action may be imposed upon an employee only for just cause.

8.02 PROGRESSIVE DISCIPLINE (in part)

The principles of progressive discipline shall be followed. These principles usually include:

- A. Verbal Reprimand
- B. Written Reprimand
- C. A fine in an amount not to exceed five (5) days pay
- D. Suspension
- E. Reduction of one step. This shall not interfere with the employee's normal step anniversary. Solely at the Employer's discretion, this action shall only be used as an alternative to termination.
- F. Removal

The application of these steps is contingent upon the type and occurrence of various disciplinary offenses.

ARTICLE 21.01 TIME

Travel time as required by the agency is considered work time if the travel is between work sites or between the employee's place of residence and a work site other than the assigned work site before, during or after the regular work day. However, travel time from an employee's house to a work location, which is other than the normal report in location, shall not be paid for the first twenty (20) miles to and from such location or the distance from the employee's house to the normal report in location, whichever is less. Travel time after this exception shall be considered as work time with pay. Time spent in traveling from an employee's place of residence to and from his/her headquarters shall not be considered work time. Overnight stay shall not be considered as travel time or hours worked. There shall be no standard travel time from place to place. Actual mileage shall be paid, and there shall be no standard mileage from place to place.

HR 2007.01 PERFORMANCE MANAGEMENT POLICY (in part)

4.8 Failure to follow directives, carry out an assignment, policies and/or procedures

1 st	2 nd	3 rd	4 th	5 th
Oral -	Written -	Low level	High level	Removal
removal	removal	suspension -	suspension -	
		removal	removal	

4.20 General failure of good behavior

1 st	2 nd	3 rd	4 th	5 th
Oral -	Written -	Low level	High level	Removal
removal	removal	suspension -	suspension -	
		removal	removal	

- 6.3 Theft of employer's or another employee's property or money, or a vendor/operator or a client's property or money. (Note: Theft is a criminal offense and may be investigated by the State Highway Patrol and may result in criminal charges.)

1 st	2 nd	3 rd	4 th	5 th
Oral -	Written -	Low level	High level	Removal
removal	removal	suspension -	suspension -	
		removal	removal	

- 6.4 Theft of state time, which may include recording/claiming more time than actually worked. (Note: Theft of time is a criminal offense and may be investigated by the State Highway Patrol and may result in criminal charges.)

1 st	2 nd	3 rd	4 th	5 th
Oral -	Written -	Low level	High level	Removal
removal	removal	suspension -	suspension -	
		removal	removal	

- 6.10 Falsification or misrepresentation of documents, records, or forms.

1 st	2 nd	3 rd	4 th	5 th
Oral -	Written -	Low level	High level	Removal
removal	removal	suspension -	suspension -	
		removal	removal	

HR 2007.02 ATTENDANCE POLICY (in part)

PERFORMANCE OF WORK DURING WORKING HOURS

Under state law, each RSC employee, regardless of whether he/she is full or part-time, must be performing work for RSC or be on approved leave during his/her assigned working hours unless engaged in approved union activity under a collective bargaining agreement.

POSITION OF THE PARTIES

EMPLOYER'S POSITION

The Grievant was required to provide employment opportunities to individuals with disabilities on behalf of the state. A significant part of the Grievant's obligations

required him to provide services to clients in their homes, at an employment site, or at a County One-Stop location.¹

To record hours worked and expenses associated with the job, all VRCs completed timesheets and mileage reimbursement forms. The Grievant also completed an itinerary listing his travel obligations and planned activities for that week. All of the forms were then submitted to Platounaris for approval. Platounaris testified that VRCs work independently and travel extensively and that he relies on the truthfulness and accuracy of the VRCs in recording their actual work hours and mileage traveled. "This case is about trust and the Grievant's egregious actions that irreparably severed the trust relationship" (Employer's Opening Statement, p. 1). It is undisputed that, beginning in January 2007, the Grievant began to live in Nelsonville as opposed to Wheelersburg.

The residence change altered the required time spent and distance traveled by the Grievant in doing his job. Although he resided in Nelsonville, the Grievant continued to list Wheelersburg on his reimbursement forms, resulting in an overpayment of \$420.37 to him between January 2007 and April 2007. Pam Laing ("Laing"), Human Resources Coordinator, testified that by falsely recording Wheelersburg, the Grievant claimed work hours as if he actually accrued such work hours and mileage as if he actually lived in Wheelersburg. (EX 11, 12 and 13). Laing further added that the time period reviewed by the Employer was from January 2007 until April 2007. The Grievant's actions resulted in a profit to him of \$98.80 in mileage reimbursement and \$321.57 for hours worked.

¹ County One-Stop offices provided a myriad of public assistance programs for consumers. The Grievant visited One-Stop offices in Jackson County located in Jackson, Ohio and Meigs County located in Middlepoint, Ohio as part of his duties.

During the investigatory process, the Grievant somehow asserted that Wheelersburg was still technically his residence, even though the Grievant admitted that he had lived in Nelsonville since late January. A review of Art. 21.01(d) reveals that reimbursement is for "actual miles", not hypothetical miles. Another credibility issue stems from the false statements by the Grievant that Platounaris was not only aware that he lived in Nelsonville, but that he directed the Grievant to continue to use Wheelersburg as his place of residence. Platounaris denies having any actual knowledge of the residence change until March 2007 and also denies any knowledge of the Grievant's falsification of actual hours worked.

In March and April 2007, the Grievant's previously submitted timesheets were revised because the actual hours worked and mileage incurred was questioned by Platounaris due to Nelsonville being the Grievant's residence. The review of the re-submitted timesheets and travel reimbursement forms could not be approved by Platounaris due to the variance in the amount of travel time between locations and the discrepancies in the actual hours worked. As an example, on April 3rd, 5th and 10th (JX 5, pp. 10-11), the Grievant provided inconsistent answers regarding the actual hours he worked and the actual time he traveled from the Athens office to the Jackson County One-Stop location.

The evidence is undisputed that all of the VRCs² who testified agreed on several facts: (1) they reported hours actually worked and (2) they reported their mileage actually incurred. Also, all VRCs were required to inform Platounaris when a modification in the itinerary or timesheets was required. All Union witnesses, including

² Barbara Cole ("Cole"), Garry Hontz ("Hontz"), Rebecca Bates ("Bates"), and Barbara Wilson ("Wilson") all testified as VRCs on behalf of the Grievant.

the Grievant, were aware of the policies and procedures they were expected to follow regarding their work schedule and expense reimbursement.

The Grievant intentionally violated the procedure, was less than candid during the investigatory process and has demonstrated no mitigating factors to lessen or reduce the meted discipline. The Grievant's trustworthiness is non-existent and his inappropriate conduct, which resulted in personal gain, is theft. As a result, the discipline should be upheld.

UNION'S POSITION

The Grievant was employed for six (6) years and had an exemplary work record as reflected by his performance evaluations. The Grievant had no discipline of record and, as a long term employee, his good service required different treatment than removal. The Union asserts primarily that the Employer failed to follow the CBA by not utilizing the steps of progressive discipline under Article 8 and that Platounaris was not only aware of the dual "residence" issue but also instructed the Grievant on how to complete the reimbursement forms prior to 2007.

Since 2001 the Grievant has stayed in Wheelersburg as well as Nelsonville. The Grievant's father lived in Nelsonville, and the Grievant participated in some social activities in that area on a weekly basis. According to the Grievant, in 2001 he used to list Wheelersburg and/or Nelsonville on the reimbursement forms until he was instructed by Platounaris to only use one location – Wheelersburg. Thereafter, Blevins only used Wheelersburg even though his supervisor was aware of the Grievant's two residences. Moreover, by the supervisor "signing off" on these forms for over six (6) years, the Employer authorized this conduct.

Regarding the theft allegations, the Grievant traveled more frequently to the Jackson One-Stop than the Meigs location. As demonstrated by Union Exhibit (UX) E, the Grievant was losing twenty-one (21) miles and thirty-two (32) minutes of work hours by utilizing Wheelersburg rather than Nelsonville as his residence when he traveled to the Jackson One-Stop. Even though the January-March 2007 timeframe indicates the Grievant may have benefited for mileage reimbursement, a review of the records since 2001 indicates that the Employer owes funds to the Grievant (UX D). Also, if an actual theft occurred, why didn't the Employer pursue an investigation through the Ohio Highway Patrol?

The discipline issued under Article 8.02 must be progressive and commensurate with the offense in question. The Union contends that each of the charges carries a range of discipline from an oral reprimand to removal. A review of each of the charges demonstrates that RSC lacks the level of evidence necessary to support removal as the Grievant's discipline. As examples: 4.08 – the Grievant followed his supervisor's directives regarding modifying his timesheet itineraries; 4.20 – no evidence to support this "catch-all" charge; 6.3 and 6.4 – the Grievant was actually losing time by traveling to Jackson and he was losing time by using Wheelersburg, as opposed to Nelsonville as his residence. All of the above charges require mandatory removal after five (5) violations, not after one (1). The level of discipline imposed is punitive and not commensurate with the alleged conduct.

The Grievant worked extremely hard and served the citizens of Ohio well. His conduct is no different than other VRCs in that schedule adjustments occur. The Grievant has never intentionally falsified a document, and this discipline should be overruled resulting in reinstatement and back pay.

DISCUSSION AND CONCLUSIONS

Based upon the sworn testimony at the arbitration hearing, the exhibits and the post hearing statements, the grievance is granted in part and denied in part. My reasons are as follows:

Travel is a key component of a VRC's duties as testified to by all witnesses. Due to the independent nature of the job, self restraint and exercise of good judgment is required. The Employer's need for accuracy associated with hours worked and mileage reimbursement by the VRCs is reasonable to maintaining accountability and fiscal control among the VRCs.

The Grievant, a six (6) year employee, acknowledged his understanding of Article 21.01(d) as mandating that only "actual" mileage was reimburseable and pay was based upon "actual" hours worked. No evidence indicates that the Grievant was unaware of the policies at issue regarding completion of the weekly itineraries, time sheets or travel expense reports. The parties also agreed that on a weekly basis the Grievant traveled three-four days from his residence to the Jackson and/or Meigs One-Stop offices.³ Depending on the number of the weekly trips to the One-Stops, the mileage reimbursement and hours worked would be impacted by the Grievant's starting point, i.e., his residence.

The centerpiece of the charges against the Grievant involves the two (2) theft allegations. The Employer's position is twofold: (1) the Grievant failed to accurately list his residence, thereby financially benefiting from the mileage reimbursement he received from late January 2007 through March 2007; and (2) the Grievant failed to

³ Actual mileage from Wheelersburg to Jackson was 31 miles and from Wheelersburg to Middleport (Meig's office) was 65 miles. Actual mileage from Nelsonville to Jackson was 52 miles and from Nelsonville to Middlepoint was 38 miles.

accurately record his work hours on several occasions, resulting in financial gain from late January 2007 through April 2007.

The evidence is clear that the Grievant used his Wheelersburg address, even though he resided in Nelsonville after January 2007. The Employer relies on Article 21.01(d), which required the Grievant to seek reimbursement for actual miles traveled regardless of his residence. The Union argues, but not convincingly, that the Grievant did not violate the CBA in a technical sense, because his permanent residence remained in Wheelersburg, not Nelsonville. Once the Grievant's residence changed to Nelsonville, he was required to accurately list Nelsonville on the forms, not Wheelersburg. The fact that the Grievant stayed in Nelsonville a couple of times a week over the years does not provide actual notice to RSC that a change of residence occurred.

Another credibility issue involves whether the Grievant was instructed by Platounaris to only list Wheelersburg even though the periodic stays in Nelsonville were common knowledge. Platounaris denied this allegation but does admit it wasn't uncommon for the Grievant to stay in Nelsonville for bowling events or to visit his father. It's not in contention that the Grievant since 2001 visited Nelsonville – the issue is whether the Grievant resided in Nelsonville at any time with full knowledge of the Employer. No credible evidence indicates that Platounaris instructed the Grievant to list Wheelersburg on the reimbursement forms with knowledge that the Grievant had moved to Nelsonville. In fact, when the Employer became aware of this fact in March 2007, the investigation regarding this matter commenced. Therefore, I find that beginning in late January 2007, the Grievant failed to list Nelsonville as his proper residence on the various reimbursement forms, as required.

The Employer presented evidence that the reason for the wrong listing of the address was to profit, thereby committing theft. Both parties presented travel data to justify their positions. The Employer's investigation, covering approximately twelve weeks, resulted in a mileage reimbursement gain of \$98.80. The Union's analysis, extending back to 2001 (UN Ex. C), resulted in RSC owing the Grievant \$854.40 if these forms were resubmitted to reflect the actual residence from which he started each work day. This argument, although creative, is not relevant or probative to this matter.

On the other hand, the totality of the Employer's evidence is not convincing regarding the theft charges alleged of the state and the money received by the Grievant due to his reimbursement faults. The conduct of the Grievant when analyzed fails to demonstrate that he intentionally falsified his travel miles, for personal gain. A review of the testimony of Laing, Platounaris and the Grievant all admit that on a weekly basis, the Grievant was required to visit both the Jackson and Meigs County One-Stop offices. The Union credibly points out that by listing Wheelersburg – the actual mileage reimbursement is **less** due to the miles to the Jackson One-Stop.⁴ The Union further argued, and Laing concurred, that the Grievant visited the Jackson One-Stop more frequently than the Meigs location. Where's the incentive to falsify the mileage reimbursement if the actual work locations fail to provide the financial gain and the One-Stop he visits the most results in a net loss of funds? Granted, for the time period investigated, a gain resulted but a closer look suggests no substantial financial benefit existed for the Grievant to list Wheelersburg for mileage reimbursement purposes.

⁴ Management Exhibit 1- indicates that 65 miles are claimed by listing Wheelersburg to Jackson, as opposed to 40 miles which would have been claimed if Nelsonville was listed.

The Grievant's conduct regarding the mileage reimbursement is a violation of policies and procedures and contrary to Article 21.01(d) – but not theft as charged under either 6.3, 6.4 or 6.10 regarding the mileage claim. The evidence as a whole fails to rise to the level of theft regarding his mileage reimbursement.

The other theft allegation involves the hours worked by the Grievant in that he claimed work hours he would have worked if the Grievant had been traveling to and from Wheelersburg as opposed to Nelsonville. The Grievant claimed, and was paid, \$321.57 that the Employer argues was unsubstantiated even though the Grievant was given several chances to submit correct timesheets. During the investigatory interviews, the Employer points out unrefuted testimony that the Grievant understood that his timesheets were to reflect an accurate account of hours actually worked. It must also be noted, that the Grievant was instructed to resubmit certain timesheets to accurately reflect **work hours** during the period he resided in Nelsonville. (EXs 2, 5). A typical example of the confusion surrounding the Grievant's resubmitted timesheets involves the day of April 18, 2007. The following exchange occurred during the second investigatory interview dated May 8, 2007 between Laura Stehura ("Stehura"), HR representative, and the Grievant:

"#2 According to your itinerary, on Wednesday, April 18th you worked in Rio Grande. Is that correct:

Response: No. That's incorrect. I worked in Jackson. Is that the date of the start of the conference? I was scheduled to go to Rio Grande. On the way down the highway I called them and they said the IPE meetings had been cancelled so I went to the Jackson one-stop that day. I called or emailed the support staff that day.

Is this an accurate summary of your response?

Response: Yes.

3. On April 18th you traveled to Mohican at the end of the day with the intention of staying the night for a meeting the next day. Is that correct?

Response: Correct.

Is that an accurate summary of your response?

Response: Yes.

4. You submitted a travel expense report which reflected that you traveled to Mohican on Wednesday, April 18th, leaving from Jackson at 1:20 and arriving at Mohican at 4:20. On your original timesheet you indicated that you stopped work at 4:00 that day. Presumably, taking into account, the language in the contract that specifies you need to deduct the amount of time it would take you to travel the first 20 miles which in this case translated to 20 minutes, is that correct?

Response: Correct.

Is this an accurate summary of your response?

Response: Yes.

5. After our first investigatory review, you were directed to resubmit your timesheet for the pay period of 4/14/2007 to 4/28/2007. You were directed to resubmit this timesheet because it was not an accurate reflection of the hours you worked and based on the fact that you stated you haven't been living in Wheelersburg. Your original timesheet for April 18th reflected a starting time of 7:30 and an ending time of 4:00 with a 30 minute lunch. Your resubmitted timesheet showed a starting time of 7:30 and an ending time of 5:00 with a 30 minute lunch. Why did you change your ending hour change from 4 to 5 on your resubmitted timesheet?

Response: Because that's what time I arrived at Mohican.

Laura: You just stated that you arrived at 4:20.

Response: No, I didn't. I said that that's what I put on my travel. I didn't get to Mohican until 5:00. From what I understand, I'm one of the few that puts times down.

Laura: You did put you arrived at 4:20 but that's because you arrived at 4:00 and you needed to deduct the 20 minutes. Now you're saying you arrived at 5:00.

Response: I didn't get to Mohican until 5:00 or after.

Laura: Why would you originally say you ended your work day at 4:00?

Response: Because that's what my itinerary said. I filled out my timesheet to match my itinerary. We routinely work over and I may take it the next day or something. I don't go making changes, adding a half hour there. If we spent all the time changing our timesheets, I wouldn't get any work done.

Laura: Did you leave Jackson at 1:20?

Response: Yes.

Laura: So you're saying it took from 1:20 to 5:00?

Response: Yes, because I was lost. I had to go into a general store and ask for directions. I had to go to another town and ask an old lady for directions. I followed the lady's car to get there.

Is this an accurate summary of your response?

Response: Yes.

6. Did you receive supervisory approval to deviate from your approved itinerary which showed 7:30 to 4:00 for April 18th?

Response: I didn't have cell phone service.

Laura: So you didn't talk to your supervisor about it?

Response: No.

Laura: Did you talk to him about it any time after the fact?

Response: No." (EX 5, pp. 3-5 in part).

The above exchange is confusing and difficult to follow, due in great part to the Grievant's inability to state clearly what occurred. The Grievant's conduct on April 18 is illustrative of his behavior in not complying with the submittal of actual work hours or itineraries. His recording of hours worked is less than stellar, and in violation of Art. 21.01(d), 4.20 and 4.80.

Platounaris reviewed the original timesheets as well as the resubmitted versions and remained unable to determine the accuracy of the Grievant's travel activity due to the confused state of his timesheets. I agree. The variance of factors that affects a VRC's travel status could include: weather; directions; accidents; cancellations; and other factors not controlled by the VRC. Given the uncertainty of factors not controllable by the VRC, the Employer seeks accurate recording of expenses and hours worked which are controlled by the VRC.

If a change in the weekly itinerary is required, Platounaris and the Grievant testified that the supervisor was required to be informed. No evidence exists that the Grievant informed Platounaris of significant changes of the weekly itinerary and/or sought his approval. Since VRCs' work is independent and unsupervised due to the nature of their job, trust and credibility are required. Simply, the system could not function if the VRCs failed to accurately report their expenses and work hours. The April 18, 2007 exchange highlighted above is an example of the results when a VRC fails to comply and creates his own accountability morass.

The work hours paid versus what should have been claimed from February 2, 2007 until April 27, 2007 resulted in \$321.57 paid to the Grievant that he was not entitled to receive. The Union did not refute the analysis – but argues that the Grievant has not been reimbursed for past times he lost money while traveling to Jackson. The Union fails to address not only the April 18th hours worked issue but also other dates where the travel reimbursement submittals did not correlate with either the Grievant's start time, adjustments for the lunch hour, meeting times/location changes, hours worked after 5:00 p.m. and claimed time after signing out on March 30th and April 4th.

The weight of the evidence convinces this Arbitrator that the Grievant clearly violated rules 4.20, 4.8 and 6.10, but not 6.3 and 6.4.

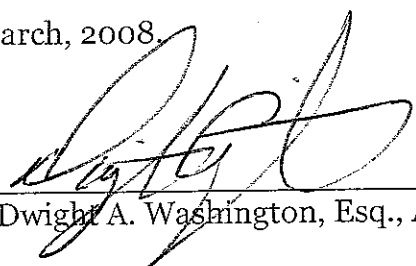
The use of Wheelersburg on the reimbursement forms serves as the foundation of the theft charges. The factual problem is that although he netted a gain when traveling to Middlepoint, he lost money when traveling to Jackson. Therefore, the alleged motive and intent of the Grievant is weakened by the actual facts as contained in Employer's Exhibit 12.

The Grievant's conduct in causing the overall confusion and violating Rules 4.20, 4.8 and 6.10 warrants discipline – but not removal. I do not find a violation of Rules 6.3 and 6.4. As a consequence the Grievant shall be reinstated with the following conditions:

1. Reinstatement to occur within thirty days of the receipt of the decision.
2. Reimbursement of \$421.94 to RSC by Grievant, prior to his reinstatement.
3. Six (6) month period upon reinstatement with no violations of Article 21.01(d), policies/procedures relating to travel hours worked, and/or reimbursement. If a violation occurs, the removal shall be reinstated immediately.
4. Residence is defined where the Grievant is currently living.
5. No back pay and/or any other economic benefit to the Grievant.

I will retain jurisdiction over this matter for six (6) months.

Respectfully submitted this 28th day of March, 2008.


Dwight A. Washington, Esq., Arbitrator