

IN THE MATTER OF ARBITRATION

BETWEEN

**OHIO DEPARTMENT OF
JOBS AND FAMILY SERVICES**

AND

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
LOCAL 11
AFSCME. AFL-CIO**

Arbitration Dates: May 23, June 13 & July 17, 2013

Grievant Lloyd Clark: # 16-11-121015-1088-01-14

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Jason Hovance
The Ohio Dept. Of Job & Family Services
30 East Broad Street
Columbus, Ohio 43215

Advocate for the Union:

Jamecia Little
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082

I. HEARING

The hearing was held at the Ohio Civil Service Employees Association May 23, June 13, and July 17, 2013. The joint issue before the arbitrator is “Did the Ohio Department of Jobs and Family Services have just cause to remove the Grievant, Lloyd Clark? If not, what shall the remedy be?”

Testifying for the Ohio Department of Jobs and Family Services were Medhi Araghi, the IT Manager, Sylvan Wilson, Assistant Deputy Director, Jennifer Demory, Chief Inspector for Medicaid and Steven Johnson, Investigation Supervisor for the Office of the Chief Investigator.

Testifying for the Ohio Civil Service Employee’s Association, Local 11 AFSCME were Steven Jones, Administrative Officer I, ODJFS Security Manager, Kathleen Martin, Management Analyst I/Policy Administrator, James R. Benedict, Infrastructure Specialist 3 and Steward of Record, Tiffany Richardson, Deputy Director, and Lloyd Clark, the Grievant, Systems Developer 2.

II. STATEMENT OF THE CASE

The Grievant, Lloyd Clark was removed October 12, 2012. The Grievant is charged with violations of the following rules.

F1 Failure to carry out and/or follow directions, assignments, written policies, procedures, and/or work rules.

F11 Purposeful carelessness, or unauthorized use or abuse of State equipment, property, State paid time, or the property of another.

The Union timely filed a grievance and the case is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Employers' first witness was Mehdi Araghi. Mr. Araghi was the IT Manager at ODJFS during this time. Mr. Araghi manages Staff and Projects. He works at ODJFS, 4200 East 5th Avenue, Columbus, Ohio on the second floor, Row Five, Cubicle 8. Mr. Araghi works with all information sources, networking, and production.

Mr. Araghi testified he has known the Grievant for awhile and first met him when the Grievant was a Contractor. In 2008 the Grievant went to Mr. Araghi's unit as a software developer. The Grievant wrote codes and did software for SETS and Criss-E. These are client registry and information system enhancements concerning Medicaid.

Mr. Araghi testified that the Grievant had a flex schedule from 7 A.M. to 6 P. M. The Grievant was required to do eight (8) hours of work per day and had one-half hour for a lunch break. The pay period is every two weeks. Mr. Araghi also testified that there is no pay for no work.

Mr. Araghi then testified that while the operation is twenty-four (24) hours this unit rarely worked other hours. He then said employees could work from home if on call on a weekend. The Grievant worked on SETS and was on call once a month. When an employee is on call there is no pay but the employee has to be available. Mr. Araghi said there is no work from home for regular job duties. He said the Grievant's job duties were all at one location.

Mr. Araghi testified that to enter the area the employees have to run their badge through a scanner which keeps time. Failure to swipe the badge causes an alarm to go off.

Mr. Araghi testified that he had meetings with all staff monthly. These meetings were

held at the office in a meeting room on the second floor. Mr. Araghi testified the Grievant works on the second floor.

Mr. Araghi testified that the Grievant is under him on the Table of Organization and Equipment. He then testified that the SETS and Criss-E Managers were the Grievant's direct supervisors. Mr. Araghi testified that the Grievant's job did not require the Grievant to go outside the building. Mr. Araghi testified the Chief Inspector found one hundred ninety-one (191) hours outside the building.

Mr. Araghi testified that he was disciplined. He was written up over Grievant's unaccounted for absence.

On Cross-Examination Mr. Araghi was asked when he received his written reprimand. He replied, "About a month ago". Mr. Araghi testified his duties included approving the Grievant's time. He said the functional managers assigned work to Grievant.

Mr. Araghi testified that he was not responsible for all Grievant's meetings. He said he did not schedule Project meetings.

Mr. Araghi testified that functional managers might have scheduled meetings in other rooms. There is one conference room in the building that is outside of security.

Mr. Araghi was asked "Did any functional manager have a question about Grievant's time?" He said "A few times."

Mr. Araghi was then given Exhibit Union 1 which is his interview with the Chief Inspector. Mr. Araghi read page 2 of Exhibit Union 1 and said he had recommended Grievant's time sheets. He testified he had talked to the functional managers about Grievant's overtime.

Mr. Araghi testified that he checked on the Grievant some times. If the Grievant was not there he sent an E-mail. He was asked "How often did you notice the Grievant was missing?" He said "Not there sometime, I sent an E-mail as to why."

Mr. Araghi testified he never had any complaints about the Grievant's time, either early or late. He also testified he never had complaints from the functional managers about Grievant's time. He did complain about Grievant leaving during the day. Mr. Araghi then read Exhibit Union 1, Page 3 and testified that when Grievant worked from home he would fill out a call back form and give it to the manager. The Grievant was only to work from home if on call.

Mr. Araghi testified that he had consulted with the Grievant about his time problem. He said the Grievant had no prior discipline.

Mr. Araghi testified there is a Kiosk machine at the front of the building and as employees enter the door they swipe their badge through the Kiosk. The machine dings and has a green light. Mr. Araghi testified he doesn't recall the Kiosk malfunctioning. He said the C125 meeting room is outside security. He said Glen Hill is supervisor of Criss-E.

Mr. Araghi testified the Grievant said he went to the Lazarus building for meetings. The Child Support Office is in the Lazarus building. He said the Grievant was to manually enter time. He said he sometimes checked with the Functional Manager.

On Re-Direct Mr. Araghi testified that you are not allowed to use the swipe system for time keeping. Mr. Araghi then read Exhibit Union 1 Page 3 Question 13 and said time was entered in Time Keep. He was then shown Management 1 which is the floor plan of the second floor. The Grievant's cubicle is R4-04 and R4-05. Mr. Araghi testified there are seventeen rooms

and conference rooms for meetings. Mr. Araghi said the left of the drawing is the front of the building. Mr. Araghi then testified that staff meetings were by the Grievant's cubicle.

On Re-Cross Examination Mr. Araghi was asked "Do functional managers have to use the same rooms?" He answered "No".

The employer's next witness was Sylvan Wilson. Mr. Wilson is the Assistant Deputy Director and is in charge of SETS and Chris-E. Mr. Wilson testified he had been a Section Chief and managed employees. He has also been a Line Staff Manager and has been involved with support and development applications. During time as Section Chief and then Assistant Deputy Director he has worked on infrastructure development, system testing, etc.

Mr. Wilson testified that employees are to work forty (40) hours a week. He said it is a 24/7 shop. Mr. Wilson testified that if off duty employees are called they received call back pay if they come in. Mr. Wilson was asked about flex time. Mr. Wilson testified "If an employee worked seven (7) hours in one day they could move the extra hour within the same week." He said the prior flex time rule was to flex within the two (2) week pay period. Mr. Wilson also said you could flex if you worked all night. He then said an employee has to work or use leave to have eighty (80) hours in a pay period.

Mr. Wilson testified that the Grievant is in his chain of command and is a good programmer. He said the Grievant may go out for training but his job duties are all in one building.

Mr. Wilson then testified about working from home. He testified that when employees are called they can log in from home or come in. The calls come from Production Control. The calls

are logged.

Mr. Wilson testified he tries to have monthly meetings and meets in room 179 inside the building. C-120 is outside the Kiosk.

Mr. Wilson was given Exhibit Management 1 and asked to highlight rooms. He said there is a huddle room for small meetings. Room C-120 is on the first floor under J-208 on Management 1.

Mr. Wilson testified that Grievant was out fifty (50) minutes. Long lunches are not part of the job. He said there was no reason for the Grievant to be out One hundred and ninety-one (191) hours. He said supervision thought the hours were accurate and got disciplined.

On Cross-Examination Mr. Wilson testified that Administrative Supervision approves leave. Time records are kept in Time Keep. He then said the Functional Supervisor gives work assignments.

Mr. Wilson then testified that during this time he was Section Chief and the Grievant and Mr. Araghi were in his chain of command. He said there were no complaints about Grievant's time. Mr. Wilson then testified that Conference rooms are usually reserved. He said he couldn't say that the Grievant never had meetings in C-120. Child Support was in the Lazarus building. Mr. Wilson testified he doesn't know of any meetings the Grievant went to in the Lazarus building.

Mr. Wilson then testified that the Kiosk documents when you go through it. You can't be in the building without going through the Kiosk. He said the Kiosk is back fifteen (15) to twenty(20) feet from the Door. Conference Room C-120 is outside the Kiosk.

Mr. Wilson was asked about the Grievant being on call. He said work from home is not on Kiosk record, you fill out a Call Sheet. Mr. Wilson testified he was not Grievant's Functional Manager.

Mr. Wilson testified he met with the Section Chiefs on a monthly basis. He then said he was not aware of the Grievant having any Discipline.

On Re-Direct Mr. Wilson was asked about On Call. He testified that Production Control calls and explains the problem. Production Control logs in the problem and who they call and when. If on call and paid the employee fills out a time sheet. If the employee comes in they fill out a Call Back form.

Mr. Wilson testified there were no weekly meetings for Grievant in the Lazarus building. The Lazarus building is 8.1 miles away. Parking is in the State House garage or the City Center. The walk is either seven (7) minutes or ten (10) to twelve (12) minutes depending upon where you park the car.

Mr. Wilson was asked "If the Grievant was out forty (40) minutes could he be at Lazarus?" He said "Yes." Can't do it in thirty (30) minutes." He then said One Hundred Ninety-One (191) hours is egregious.

On Re-Cross Examination Mr. Wilson was asked "Are there any SETS Projects?" He said "Yes." "Are there regular meetings?" He said "There can be." Mr. Wilson said he was not aware of ODJFS travel time being thirty (30) minutes. Mr. Wilson said he had direct approval if Grievant's Manager was not available. Time had to be recommended by the Manager.

Mr. Wilson then testified that the 4020 building is across the parking lot. Outside

Contractors do training there. Mr. Wilson testified there is no swipe required to get into the 4020 building. There is also no swipe at Lazarus. Mr. Wilson testified there are sign in sheets for training. He was asked "Could Lazarus meetings be longer than two (2) hours?" He answered "Yes".

The employer's next witness was Jennifer Demory. Ms. Demory, is the Chief Inspector for Medicaid. She oversees internal investigations for Medicaid. Ms. Demory was the Investigative Superintendent for ODJFS. She had also worked for BWC Internal Affairs.

Ms. Demory was Investigative Superintendent for ODJFS during this time. Ms. Demory has a BA in Criminal Justice and a Masters in Forensics.

Ms. Demory got an anonymous complaint about the Grievant which was sent to her by the Ohio Inspector General. She read Tab 7 of the Joint Exhibits (JX). This is the letter from the Inspector General dated September 17, 2009. Ms. Demory then read Tab 7JX which is the list of employees on the complaint. The complaint said some were late, some left early and some would disappear. The Grievant was one of six (6) employees on the list. Ms. Demory said all employees work in card swipe areas. She said thirty (30) days of time swipes were pulled.

Ms. Demory testified that Kathleen Martin was the first investigator on the case but left in 2011 before the case was finished. Ms. Martin did do a draft report. Ms. Demory said the hours were egregious and referred the case to the Ohio State Patrol to work with the Prosecutor.

Ms. Demory checked the card swipes to see if the employee was in the building. If not, was there any paper work on them being out of the building? The Patrol referred the case back to her office with twelve (12) months of data. She had to review all of this data.

Ms. Demory testified that she had three (3) investigators. A spread sheet was created to try to match reported time against where employees were. She then read Tab B JX which is the Report of Investigation. Tab B Page 23 JX shows the Investigators to be Katharine DuMond, Paul Vitale and Steve Johnson. The report was reviewed by Ms. Demory and approved by the Chief Inspector.

On Cross-Examination Ms. Demory was asked to describe the process when a Complaint is received. Ms. Demory testified that employees had to swipe in and out. She referred to management to review for on time issues. She said card swipe was used to see if employees were in the building. The conference room is in the building and you had to swipe to go to this conference room.

Ms. Demory testified that there are conference rooms on the second floor of the 4020 building and no card swipes are required. Ms. Demory testified that at the State Office Tower it depends on the job as to whether you had to swipe.

Ms. Demory testified that E-mails, Calenders and Training Schedules were reviewed. It was a thorough and fair investigation. The original complaint was September 2009. Investigator Martin started in March 2010. The office sent the case to the Ohio Highway Patrol in September or October 2010. Investigator Martin left prior to the case being sent to the Patrol. The Patrol returned the case in December 2011.

Ms. Demory testified that she had three (3) new investigators. Investigator Martin did not pull E-mail accounts. She had no problem with Martin's investigation. Ms. Demory testified additional records were pulled.

Ms. Demory testified that discipline is to be commensurate with the offense. She said the investigation was looking for the truth. The Ohio State Patrol asked for six (6) months of data.

Ms. Demory read Exhibit Union 2 which is a trail of E-mails between her and Eric Smith. Eric Smith checks the network for Ms. Demory. Ms. Demory said she didn't ask for C Drive because all the data should be on the P Drive. She said there could be some information on the C Drive but didn't pull it. The employee was asked to provide information as to the problems. The C Drive is on the computer. Ms. Demory testified she didn't know if the computers were replaced.

Ms. Demory testified the Grievant was interviewed in 2012 about 2010. There were six (6) employees named and one (1) retired. Ms. Demory made recommendations to Labor Relations. Three employees were removed and two are still removed.

Ms. Demory read Tab b JX Pages 10, 11, 12. This refers to the Grievant. It also shows Meir Avitan with 84 hours and 19 minutes unaccounted for time, Sharon Sloan with 13.5 hours 49 minutes and Noel Pink with 293 hours and 18 minutes.

Ms. Demory then read Tab C JX which is the spread sheet on Grievant prepared by Investigator DuMont. Tab C JX Page 54 shows notes for information that explains absences.

Ms. Demory was given Exhibit Union 3 which is her interview with Grievant at her office at 30 East Broad Street, Columbus, Ohio.

Ms. Demory was asked "If E-mails are deleted, how can they be accessed after three (3) years?" She said; "They can't."

Ms. Demory was then shown Exhibit Union 4 which is an E-mail to Jameica Little at the

Union from James Benedict, Chief Steward. The E-mail says there are new machines between September 2010 and July 2011 so records may not be available. The Grievant got a new computer July 1, 2011. Ms. Demory testified the Techs are to try to save data. It is possible some documents are not available. She also said Trooper Hodson did the investigations.

Ms. Demory read Exhibit Union 5 and said she did not try to influence the Patrol. She then read Exhibit Union 5 Page 2 which is an E-mail from her to Trooper Hodson. Employees are to enter time on Time Keep.

Ms. Demory testified she began the Investigation again in January 2012 and began interviewing in March. She said she found problems with supervisors and referred them to Management. She said there was a pervasive problem with many employees not using Time Keep correctly.

Ms. Demory was then given Exhibit Union 6. This is an interview with Catherine Cinciatta April 29, 2010. She testified she was there at the interview. Ms. Demory then read Exhibit Union 6 Page 2 and said it is about an E-mail to supervision about Flex time. The Time Keep system doesn't know if the agency took money back from the employees. She said the employees were still working during the investigation. Ms. Demory testified that employees were usually only placed on Administrative Leave if they are a danger to themselves or to the System.

On Re- Direct Examination Ms. Demory testified that the State Office Tower is near Lazarus building. Ms. Demory said she over saw the final report and that three (3) Investigators are more fair than one (1).

Ms. Demory testified that the VPN records are the outside work log. Ms. Demory read

Exhibit Union 3 and said it is the interview with the Grievant, Lloyd Clark. The Grievant said he had no VPN access. This interview was March 29, 2010.

Ms. Demory then read Exhibit Union 2. This is an E-mail from Eric Smith to Ms. Demory. Ms. Demory said archives were to be pulled from the P Drive. If there were no archives on P Drive go to the C Drive. Ms. Demory then testified that when cases are referred to the Ohio State Patrol she has to wait until they are finished. Ms. Demory said Exhibit Union 3 is dated March 29, 2010.

Ms. Demory then read Exhibit Union 4 which shows the installation date for the new computers. Ms. Demory testified the Grievant should have saved the C Drive information. The Grievant could have printed it out in 2010 when he was asked for it.

On Re-Cross Examination Ms. Demory testified that if there was no information on P Drive she would have contacted OIS about the C Drive. She said if E-mails were not in P Drive they probably were not there.

Ms. Demory then read Exhibit Tab B Pages 11 & 12. This is the Report of Investigation. She testified there is no explanation for unaccounted for time. Ms. Demory testified that almost no information could be gleaned from Group Wise. There were large gaps. Ms. Demory was asked; "Since the report shows large gaps did you go to C Drive?" She said; "No".

Ms. Demory then read Exhibit Union 7 which is an E-mail from her to James Benedict. She testified she never told James Benedict about the case being referred to the Ohio State Patrol because she doesn't have to.

Ms. Demory testified Investigator Martin gave her the report before she left. Ms. Du

Mond was the Chief Investigator on the Grievant's case.

On Re-Direct Examination Ms. Demory testified there is no contractual duty to maintain updates for employees. She also said the Grievant never said he couldn't access the C Drive.

The Employer's next witness was Steven Johnson. Mr. Johnson is the Investigation Supervisor for the Office of the Chief Investigator at ODJFS. Mr. Johnson testified he investigates employee misconduct.

Mr. Johnson testified he was an Investigator of ODJFS. Prior to that he was an Investigator in the Criminal Fraud Department in the Bureau of Worker's Compensation (BWC). He said he was the Lead Worker for BWC Investigation Teams and then Director of Internal Affairs at BWC.

Mr. Johnson testified that he knows Grievant from the Investigation. Mr. Johnson then read Exhibit Tab 7 and said it was the referral from the Inspector General's Office dated September 10, 2009. The second page of the Exhibit is the Complaint about ODJFS employees. Mr. Johnson testified that the Complaint said the employees came in late, left early and were absent for long periods of time. There were six (6) names on the list including the Grievant. Mr. Johnson said the Complaints were reviewed to see if they were true. Kathleen Martin was the original Investigator. Mr. Johnson testified the case was started at ODJFS in December 2011. He said the Draft Report did not have all the information included in the final report. Mr. Johnson testified he reviewed the entire year from April 2009 to March 2010.

Mr. Johnson testified the Grievant arrived later than start time and was away for long periods of time during the day.

Mr. Johnson read Exhibit Tab b Page 23 and said he had signed the Final Investigation Report. The Grievant had a Question and Answer session with him present. Mr. Johnson said he prepared a spread sheet.

Mr. Johnson then read Exhibit Tab I which is IPP 5203 the Policy on work hours. On March 21, 2012 the Grievant had a chance to review the Policy. Mr. Johnson testified the Grievant did not feel he had violated Policy. The Standard Work Day is eight (8) hours. The Grievant did not comply. The Standard Work Week is forty (40) hours not counting meals. The Grievant did not comply.

Mr. Johnson testified that there is Flex Time but the employee has to work eighty (80) hours per pay period. He said the Grievant did not comply.

Mr. Johnson testified there weren't to be late arrivals, you were supposed to be present and ready for work. He said the Grievant was to work from 7:30 A.M. to 4:00 P.M. with a thirty (30) minute meal break. He testified the Grievant would return later than thirty (30) minutes. If Grievant was late in the morning he could make that up at the Manager's discretion.

Mr. Johnson then read Exhibit Tab J IPP 5101 which is the Employee Leave Policy. The Grievant reviewed this on March 21, 2013 but did not agree he violated it. Mr. Johnson testified that all leave must be documented. Mr. Johnson read Page 3 of Exhibit Tab J IPP 5101 which concerns employee leave. The Grievant reviewed this on March 21 but did not agree he violated it. Mr. Johnson testified that all leave must be documented. All employees must timely request leave and the Grievant is in non-compliance.

Mr. Johnson then read Exhibit Tab b which says the Grievant listed as a subject of

Investigation. He then read Page 4 of the Exhibit and testified he reviewed Time Keep records from April 2009 through September 30, 2009. He also reviewed the VPN logs, swipe card logs, Production logs, etc. VPN is Virtual Privacy Network where you can remotely log in via computer. Mr. Johnson testified that the Swipe Card logs show a register of the comings and goings of employees at 4200 East 5th Ave., Columbus, Ohio. These show the date and time.

Mr. Johnson said the Production Logs track On Call employees. The logs show who was called, the time of the call and the issue. Mr. Johnson said the Temporary Badge Log is where the Security Guards record issuing badges for lost or forgotten cards. The Visitor's Log is where visitors sign in to get a Visitor Badge.

Mr. Johnson said Group Wise is the E-mail System. This shows employee training records.

Mr. Johnson testified he met with the Grievant to give him an opportunity prior to the interview to provide any evidence to explain. He was also given a chance after the interview.

Mr. Johnson then read Exhibit Tab c which is a summary sheet showing the Grievant's total unaccounted for time. This shows entire pay periods. This also runs past the year in question.

Mr. Johnson testified that Paul Vitale created the template and the report shows 191.12 hours unaccounted for.

Mr. Johnson then read Page 2 of the Exhibit which shows one week of time reporting. The data is posted manually. The location is the swipe card line which has a summary at the bottom.

Mr. Johnson said the VPN Log is not applicable to the Grievant.

Mr. Johnson testified that the Temporary Badge Log which is Exhibit Tab E May 13, 2009 compares to Exhibit Tab 2 Page 8 was Credited because of the Badge Log. The Grievant claimed forty-two (42) hours but only had twenty-five (25).

Mr. Johnson read Exhibit Tab E which is the Temporary Badge Log. Mr. Johnson testified that on May 13 the Grievant was thirty-five (35) minutes late. The Grievant signed out at 4:05 and was short sixteen (16) minutes. He gave him eight (8) hours. On May 21, 2009 the Grievant was listed on the Spread Sheet for May 21, 2009. There were no swipes on the Temporary Badge Log. Mr. Johnson testified the Grievant signed in at 8:07 A.M. but he was to start at 7:30 A.M. and the Grievant did not sign out that day. On July 1, 2009 the Grievant was on the Temporary Badge Log. The Grievant signed in at 9:00 A.M. one and a half hours late. On July 22, 2009 the Grievant was on the Temporary Badge Log. There were no swipes on the Badge Log. The Grievant logged in after 8:00 A.M. and he gave Grievant eight (8) hours.

Mr. Johnson testified that the Swipe Card Logs show when an employee swipes their badges over the turnstile while going in and out. He said the 4200 facility is the data center and is high security. Mr. Johnson said the swipe is not the time clock and it is rare for it to malfunction.

On June 15, 16, and 17, 2009 the swipes were not catching times so the Grievant got full credit. The swipe is accurate.

Mr. Johnson testified the Grievant has one hundred ninety one hours unaccounted for. The Grievant provided no documents and never said anything about meetings or training.

Mr. Johnson testified the Grievant was late and took extended lunch breaks.

Mr. Johnson read Exhibit Tab C which is the Time Accounting Spread Sheet. He testified on March 31, 2009 the Grievant arrived at 7:38 A.M. and left at 3:25 P.M. and was at work six (6) hours and forty (40) minutes. On April 6, 2009 the Grievant was there six (6) hours and forty-six (46) minutes. April 9, 2009 the Grievant arrived at 7:57 and worked six (6) hours. On April 24 the Grievant arrived at 7:28 A.M. and worked six (6) hours and fifteen (15) minutes. On April 28, the Grievant arrived at 7:50 A.M. and left at 3:19 P.M. On May 14 the Grievant arrived at 8:27 and was short. On May 20 the Grievant worked five (5) hours and thirty-four (34) minutes. On June 5 the Grievant worked five (5) hours and twenty-one (21) minutes. On June 18 the Grievant worked five (5) hours and forty-nine (49) minutes. On June 30 the Grievant worked five (5) hours and fifty-three (53) minutes. On July 8 the Grievant worked five (5) hours and thirty-two minutes. On August 3, 2009 the Grievant worked six (6) hours and forty-nine (49) minutes. On September 25 the Grievant worked six (6) hours and ten (10) minutes. On October 2 the Grievant worked six (6) hours and seven (7) minutes. On November 25 the Grievant worked five (5) hours and fifty nine (59) minutes while claiming he had worked eight (8) hours. December 7 the Grievant worked six (6) hours and fifty-four (54) minutes. On February 5, 2010 the Grievant worked seven (7) hours and two (2) minutes. On February 26, 2010 the Grievant worked six (6) hours and twenty-nine (29) minutes. On March 12 the Grievant worked six (6) hours and twenty (20) minutes. On March 17 the Grievant worked six (6) hours and twenty (20) minutes. On April 5 the Grievant worked six (6) hours and fifty-five (55) minutes.

Mr. Johnson read Management 2 which is Swipe Card Data for the Grievant. This is raw data generated from the turn stile. This shows the in and out times.

Mr. Johnson testified he matched the raw data with the Management Spread Sheet. He said this establishes lengthy lunch times and over long breaks. Mr. Johnson testified the Grievant is to have a one half hour lunch break, and a fifteen minute break in the morning and a fifteen minute break in the afternoon.

Mr. Johnson testified that the Grievant is consistently late for work and takes extended lunches and breaks. The Grievant is not in compliance with ODJFS Policies. Employees are to report their time accurately. Mr. Johnson testified the Grievant reported one hundred ninety-one (191) hours but did not work them.

On Cross-Examination Mr. Johnson testified that he started in November 2011 with ODJFS as an Investigator. He said he was not the Lead Investigator on the Grievant's Case. Investigator DuMond was the Lead Investigator. Mr. Johnson read Exhibit Tab C which is the Spread Sheet Duration Line which was calculated by a formula written by Paul Vitale. Mr. Vitale has Excel Training.

Mr. Johnson testified that there was Raw Data included in the Spread Sheet. The duration shows in and out per the Kiosk.

Mr. Johnson testified that on April 29, 2009 he credited the Grievant with a full eight (8) hours. On May 1, 2009 the Grievant's duration for the day is six (6) hours and nineteen (19) minutes. Mr. Johnson testified that breaks are paid but lunch time is not. If the Grievant took breaks outside the turn stile it would affect the total amount of time.

On April 28 there were twenty-one (210 minutes unaccounted for. On May 4 the Grievant was out for thirty (30) minutes.

Mr. Johnson was asked, "If the Grievant's fifteen (15) minute breaks were not accounted for, how do you know he was not on break?" He replied, "Not on the job, outside of work area".

Mr. Johnson testified that the Grievant was given a chance in the March Interview to provide information in his defense. Mr. Johnson then read Exhibit Union 8 which is the Question and Answer with the Grievant. The Grievant says he sometimes has status meetings. The Grievant says his schedule was wiped out for that period. On Page 11 of the Exhibit the Grievant was asked to justify time. The Grievant said he signed Time Keep and his schedule was wiped out for that period.

Mr. Johnson testified that he had pulled the P Drive, not the C Drive. To pull the C Drive would be intrusive. Mr. Johnson testified he did not pull the hard drive as it would shut down the computer. He asked the Grievant to provide information from the hard drive.

Mr. Johnson was given Exhibit Union 2 which is his E-mail pulls. There is an E-mail from Demory to Eric Smith. The E-mails are archived on the P Drive.

Mr. Johnson read Exhibit Tab B and testified there is no accounting for time in Grievant's Group Wise. There are large gaps in data from Group Wise for the time period.

Mr. Johnson then read Exhibit Union 4 which is an E-mail from the Chief Steward to Jameica Little which says on July 6, 2011 the Grievant got a new computer. He said you download information from the old computer to the new one. Mr. Johnson testified he can't say whether the Grievant did this or not. He said there is no eyewitness testimony that the Grievant wasn't working. The Grievant worked on Child Support SETS. Child Support is in the Lazarus Building.

Mr. Johnson testified that the assumption was the Grievant was not working when he left at the end of the day. He said the Grievant had no prior discipline. Mr. Johnson testified no supervisors told him the Grievant was missing for extended periods of time.

On Re-Direct Examination Mr. Johnson read Exhibit Union 8. The Grievant said there were regular meetings in my building. He doesn't say Lazarus or the State Office Tower. Mr. Johnson read Page 3 of the Exhibit and said the Grievant said he was late coming back from lunch by about a minute.

Mr. Johnson testified the Grievant provided no evidence on time. Mr. Johnson read Exhibit Union 3 Page 6 #23 and said the Grievant was given the Spread Sheet with specifics to defend – show meetings, list witnesses. This was on March 29, 2010. The C Drive was replaced July 1, 2012.

On Re-Cross Examination Mr. Johnson read Exhibit Union 3 and said the Grievant added some meetings required him to meet downtown. Mr. Johnson then read Exhibit Union 8 and said the Grievant says most meetings are at 4200. There is one Conference Room C-120 which is outside the Kiosk.

The hearing concluded at 4:45 P.M. The parties agreed to re-convene at 9:00 A.M. June 13, 2013.

The hearing re-convened at 9:25 A.M. June 13, 2013.

The Employer's last witness was Katherine DuMond. Ms. DuMond is now an Administrative Assistant III at ODJFS. Prior to that she was a Management Supervisor II in the Office of Medicaid Assistance. During her investigation of this case she was an Administrative

Assistant I at Child Support on loan to the Chief Inspector's Office because of a medical condition. Ms. DuMond said her duties were to investigate cases of fraud, waste, and abuse. She testified she does administrative investigations now.

Ms. DuMond testified that she knows the Grievant because of this investigation. The investigation started as a result of an anonymous Complaint. Ms. DuMond read Exhibit Tab 7 which is the letter from the Ohio Inspector General dated September 17, 2009. Page 2 of the letter has a list of the employees the Complaint was about.

Ms. DuMond testified that she was not the original Investigator; Kathleen Martin was. Ms. DuMond testified that she got the case at the end of 2011. The Investigation covered the time period from March 2009 until April 2010. The findings were one hundred ninety-one (191) hours unaccounted for.

Ms. DuMond read Exhibit Tab I and testified that she reviewed this Policy with the Grievant. The Grievant was to work from 7:30 A.M. to 4 P.M. She testified that the Grievant was to work eight (8) hours a day, five (5) days a week. Ms. DuMond testified there are eighty (80) hours in a pay period, and that the Grievant did not comply with the standard work week.

Ms. DuMond then read the Flex Time rules and said the Grievant did not comply. Ms. DuMond then read the rules on Late Arrival which says employees are to be at work at Start Time. She testified she saw no RFLs for the Grievant being late for work. Ms. DuMond then testified that making up time is discretionary with the employer. Ms. DuMond then testified that make up time must be during the pay period and meal time may not be used for this.

Ms. DuMond then read Exhibit Tab K. This is the Employee Leave Policy. She testified

that employees are accountable for all hours. Ms. DuMond then read Page 2 Section 7 of the Exhibit which says all leave must be documented. The Grievant was not in compliance. Ms. DuMond then read Page 3 of the Exhibit and testified employees are to ask for leave to cover absences. The Grievant was not in compliance.

Ms. DuMond then read Exhibit Tab I which is the Standards of Employees Conduct. She testified that employees are to know Policies and Procedures. Ms. DuMond testified that Grievant did not adhere to Policy and Procedures.

Ms. DuMond then read Exhibit Tab B which is the Report of Investigation. It is signed on page twenty three (23) by her. Ms. DuMond testified that Paul Vitale and Steve Johnson were also involved in the Investigation. She said all three (3) Investigators were at all the Interviews and all were involved in checking time. Ms. DuMond testified that Grievant was listed on Page 1 of the Report and Action Taken is on Page 4.

Ms. DuMond was asked to list what was done in the Investigation. She testified that Time Keep was reviewed which has data for electronic payroll; the VPN Log was reviewed which shows calls to Staff for Call Back. The Swipe Card Logs were reviewed which is information generated by the Kiosk. The Production Log was reviewed which shows Call Back to resolve issues. The Temporary Badge Log was reviewed to see which employees got temporary badges. The Visitor Logbook was also reviewed. This Log shows badges given to Visitors. It was reviewed to see if Grievant signed the wrong Log.

Ms. DuMond then testified that the E-mail system, Group Wise, was reviewed. In addition the Training Log was also reviewed.

Ms. DuMond then read Exhibit Tab C which is the Grievant's Spread Sheet. She testified that Paul Vitale created the Sheet and she entered the Data. The first page is the summary. Ms. DuMond testified the Grievant reported 1691.48 hours in Time Keep but 191 hours 12 minutes were unaccounted for.

Ms. DuMond said the information came from all documents reviewed. She testified that the VPNs show work from home and there were none for the Grievant. The Production Logs did not show a lot of activity for the Grievant. Ms. DuMond read Exhibit Tab E which is the Temporary Badge Log. On May 13, 2009 the Grievant was on the Log as in at 8:05 and out at 4:19. She then read Exhibit Tab C and testified that May 13 shows eight (8) hours credit. Ms. DuMond returned to the Temporary Badge Log and testified on May 13, 2009 the Grievant was thirty five (35) minutes late and worked until 4:19 and was sixteen (16) minutes short. Ms. DuMond said the Grievant was not on the Visitors Log which is Exhibit Tab E.

Ms. DuMond then testified that on May 21, 2009 the Grievant is on the Log as signing in at 8:07 A.M. and never signed out. The Grievant was credited with eight (8) hours. Ms. DuMond read the Temporary Badge Log for July 1, 2009 and testified that the Grievant was in at 9 A.M. and out at 5:40 P.M. On July 22 the Temporary Log Book shows the Grievant was in at 8:30 A.M. and out at 4:56 P.M. September 10, 2009 the Grievant was in at 7:30 A.M. and out at 4:18 P.M.

Ms. DuMond testified that the Grievant's E-mail account and archives were reviewed in Group Wise. She testified she was looking for information on unaccounted for time. Ms. DuMond read Exhibit F which concerns Travel Reimbursement. She said the Grievant had only

asked for reimbursement one time. Ms. DuMond said she had checked the ODJFS Travel Log for the time period. She testified the Travel Expense Report is filled out when you go elsewhere and concerns mileage, meals, parking, etc.

Ms. DuMond then read Exhibit Tab C Page 5 and testified on April 23 the Grievant showed a 7:30 A.M. start time on his travel sheet but shows a Swipe at 8:06 A.M. She said the Grievant got full credit. She then said the Swipe Card information comes from the Kiosk. Ms. DuMond said the Union Contract says the Time Clock has to be discussed with the Union. Swipes are not “time”. Ms. DuMond then testified that it is easy to identify when the Swipe System isn’t working. Ms. DuMond then testified that the Grievant was given credit when the Kiosk didn’t work.

Ms. DuMond testified that she gave the Grievant a chance to provide information as to the discrepancies in time but the Grievant provided no information. She testified the Grievant did not start or end on time. The Grievant frequently took extended lunch breaks.

Ms. DuMond read Exhibit Tab C Page 2 and testified that on March 31, 2009 the Grievant was in at 7:58 A.M. and out at 4:17 P.M. The Grievant worked six (6) hours and forty (40) minutes and reported eight (8) hours. Page 3 of the Exhibit shows six (6) hours and forty three (43) minutes April 9, in at 7:55 A.M., out at 4:07 P.M. April 24 in at 7:30 out at 4:09. Ms. DuMond testified the Grievant claimed eight (8) hours for the days he was short. She testified the Grievant worked on the second floor.

Ms. DuMond testified that on June 15 and 16 the Swipe System was down and the Grievant received full credit. Ms. DuMond was asked to summarize the time period from March

2009 to April 2010. She testified the Grievant was late in and early out. The Grievant took long lunches and extended breaks. The Grievant was not in compliance with Policy and Procedure nor Employee Standards of Conduct. Ms. DuMond testified the Grievant's Conduct was egregious.

On Cross-Examination Ms. DuMond read Exhibit Tab 5 which is the Report of Investigation. She had completed the Investigation on the Grievant and Avitan. She testified she didn't find E-mails to account for time. Ms. DuMond testified she doesn't recall pulling the Grievant's P Drive. She said she couldn't find Grievant's records that far back.

Ms. DuMond was asked: "Since ODJFS had no records how could Grievant give you any information?" She replied: "He could get witnesses and any hard copy he may have". The Grievant sent her one E-mail in September.

Ms. DuMond was given Exhibit Union 9 which is her case notes. She said if others have entries in the case notes they will have their initials beside the entries. Ms. DuMond testified the Grievant said he had no VPN access.

Ms. DuMond was asked: "Are employees required to submit Travel Reports?" She answered: "Only if you want paid." She said if an employee rode with another they may not have expenses. Ms. DuMond then said she was not 100% sure employees always sign the Badge Log.

Ms. DuMond then testified raw data from the Kiosk shows in and out. She then read Exhibit Tab C which is the Time Accounting Breaks can be taken outside the building. Ms. DuMond testified that she did not account for "breaks" in the time spread sheet. She said if the Grievant was out for half an hour she did not credit him with a fifteen minute break.

On March 31, 2009 the Grievant was in at 7:58 A.M., out at 11:13 A.M. and back at 1:32

P.M. She doesn't know what Grievant was doing. Ms. DuMond was asked if there was a conference room outside the Kiosk. She said C-120 was outside the Kiosk. Ms. DuMond said if Grievant was in a meeting in C-120 he could leave the building without going through the Kiosk.

Ms. DuMond testified that she interviewed the Grievant in March 2012. This was about three (3) years after the investigation started. She read Exhibit Tab C Page 11 and said the Grievant said he can't recall everything. Ms. DuMond then read Exhibit Tab C Page 18 which is her interview with Mehdi Araghi. Mr. Araghi said he checks on employees by walking by. Ms. DuMond then testified that there are no witnesses or video about Grievant's "time". There is only an Anonymous Complaint. Ms. DuMond testified that she had no training on the Kiosk.

Ms. DuMond testified that she went to the Chief Inspector's Office in June of 2010. She said she did work in the Medicaid Office and worked in Labor Relations. Ms. DuMond testified that she had meetings and was involved in Disciplinary Proceedings. She also was the Management Representative at Pre-Disciplinary hearings.

Ms. DuMond said that Medicaid is in the Lazarus building. She left Medicaid in 2012 and went to the Chief Inspector's Office in the State Office Tower. Ms. DuMond was there twice. Ms. DuMond testified that she was still doing Medicaid work while at the Chief Inspector's Office. She said it was not a conflict to do this while in the Chief Inspector's Office. Ms. DuMond testified she would have had access to employees from the Medicaid Office while in the Chief Inspector's Office.

Ms. DuMond then testified that she had eight (8) or nine (9) years doing investigations at Child Support. She said she had attended a three (3) day training school sponsored by the Ohio

Investigator's Association and training at the Columbus Police Department Academy. This training was after this case.

Ms. DuMond testified that the Grievant told her he didn't take breaks all the time. She then read Exhibit Tab C Page 2 and said it shows one and one half (1 ½) hours of Comp time. The Grievant was in at 10:39 and out at 4:17. Ms. DuMond testified that the Grievant routinely left after 4 and routinely came in late. Ms. DuMond then read Exhibit Tab B Page 11 and said the Grievant said he tried to make up time when needed.

Ms. DuMond then read Exhibit Tab C Page 5. She was asked about Grievant being given credit for a break on April 22. Ms. DuMond said there was no credit for a fifteen (150 minute break on April 22. She said there was no RFL to cover time. The Grievant was late.

IV. UNION'S CASE

The Union's first witness was Steven Jones. Mr. Jones is an Administrative Officer I at ODJFS. He is the Security Manager and oversees fifteen (150 Security Officers. He is responsible for the Security Systems in the ODJFS building. Mr. Jones testified that ProWatch is the system. Mr. Jones testified that the Kiosk went in the 4200 building about eleven years ago.

Mr. Jones testified that maintenance on the Kiosk system is his responsibility. He said he has had no training on the system. Mr. Jones testified he had asked twice for training and was refused. Mr. Jones testified that previous employees had asked for training and they were also refused. He said he was the Security Manager during this time period. Mr. Jones testified that no employees had training from the manufacturer on Pro Watch. The vendor Commercial Controls does the maintenance.

Mr. Jones then testified that Officers were made aware of issues as they arose. All machine issues do not make a sound. Mr. Jones testified that an Anti-Pass back error doesn't show swipes for going in and out. If the swipe doesn't register it is Anti-Pass back. If there is no swipe an alarm goes off and it can be reset. Mr. Jones then testified that an Anti-Pass back error is reported by the system. This doesn't affect other employees going through the system.

Mr. Jones testified that the purpose of the Kiosk machine is an audio issue. He said there are three (3) barriers required to get into the building.

Mr. Jones then testified that reports on the Kiosk are pulled every quarter. The data is analyzed by himself and others. Mr. Jones said he looks for who has access to the building. He said he may get a request from a supervisor to pull time swipes on an employee. Mr. Jones testified that only he and the Security Supervisor can pull reports. Mr. Jones then testified he doesn't look for swipe errors when doing Quarterly Reports. All employees in the 4200 building have to swipe. Mr. Jones testified that six hundred (600) to eight hundred (800) employees swipe every day. The building is locked down 24/7.

Mr. Jones testified that one employee can piggy back on another while going through the Kiosk.

Mr. Jones then said there are video cameras in the front lobby of the 4200 building which show the Kiosk. No videos were provided to the Chief Inspectors Office. Mr. Jones testified that the information is kept about two (2) months before it is looped over. The tape is sixty (60) days long.

Mr. Jones testified that the door to the cafeteria has been left open a time or two. The

door should be closed. There is no card swipe or alarm there. Mr. Jones testified that an employee could leave through the door without a swipe. He said he doesn't pull reports on Anti-Swipe back

On Cross-Examination Mr. Jones testified that there are many different ways to pull a report. He said he pulls the report to see who has access to the building. Mr. Jones testified that he has never seen a piggy back.

Mr. Jones said if an employee tries to get in without a swipe there is a noise to alert the Security Officer. He said an employee swipes to get a green light to go through. He said in a piggy back situation it won't show so when the employee leaves there will be an Anti- Pass back because the system will show only one (1) swipe, not two (2).

Mr. Jones testified that the cafeteria door is left open for large conferences so they do not have to issue swipe cards to all of them. Employees are told not to use this door. Mr. Jones said the Grievant had one (1) Anti-Pass back error in twelve (12) months and that this is normal.

On Re-Direct Mr. Jones testified that he can pull reports that show swipes and he only does this upon request. He said he can't say, except for the report about Grievant's Anti-Pass back. Mr. Jones testified the Guards first check to see if there was a swipe. If not it is re-set. Mr. Jones testified he was not aware of Officers just waiving someone through.

Mr. Jones testified he doesn't remember being asked about days with no swipes and he cannot explain a day with no swipes. Mr. Jones read Exhibit Union 10 which is an E-mail to him from Jennifer Demory. The E-mail asks for swipes for June 15 and 16, 2009. Mr. Jones says he doesn't recall this but doesn't doubt the E-mail.

Mr. Jones read Exhibit Tab C Page 13 of the Spread Sheet. This shows no swipes for June 15 and 16, 2009. Mr. Jones said it had to be an issue with the server or one of the panels. He testified the error was brought to his attention by the Chief Inspector's Office.

On Re-Cross Examination Mr. Jones reads entire Exhibit Tab C to see if there are "no swipes" registered and said the only dates are June 15 and 16.

On Re-Direct Examination Mr. Jones was asked if Exhibit Tab C was the report he submitted to the Chief Inspector? Mr. Jones said "Pretty Much". Mr. Jones said his report is an Excel Spread Sheet and the data in Exhibit Tab C is not the report he supplied. Mr. Jones then said the Kiosk is not for time keeping. Time Keep is for payroll time.

The Union's next witness was Kathleen Martin. Ms. Martin is a Management Analyst I / Policy Administrator. Prior to that she was a Management Analyst I. Ms. Martin testified that she has been an Investigator for five (5) years. She testified she has five (5) years training in Computer Forensics. She has attended the Ohio Police Officer Training Academy, the Columbus Police Officer Training Academy and the Ohio Investigator's Association.

Ms. Martin testified she has a Degree in Criminology from Capital University and a Masters Degree from Franklin University. Ms. Martin said the Investigation was prompted by a letter from the Ohio Inspector General's Office. Ms. Martin read Exhibit Tab 7 which is the letter from the Inspector General's Office. Page 2 is the Complaint with the list of names.

Ms. Martin then read Exhibit Union 11 which is the case notes for the Investigation of the six (6) employees. Her initials by the notes show they are hers. Ms. Martin testified she began the Investigation in November 2009. She looked at the Swipe Card Data on Exhibit Union 11 for

September 9, 2009 to November 3, 2009 and reviewed Card Swipes. She reviewed Card Swipes for November 3, 2009 to November 23, 2009.

Ms. Martin testified the original investigation covered the six (6) month period from April 1, 2009 to September 1, 2009. Ms. Martin testified that in the first six (6) months of the time period she did not find that the Grievant had stolen time from the Agency. Ms. Martin testified that first she got the data, interviewed witnesses and then determined the accuracy of the Data. She testified the Ohio State Patrol has findings in their documents and that the data kept changing.

Ms. Martin said she talked to the supervisors and they all had different ideas about Policy. The supervisors had to approve time. Ms. Martin testified that this was an issue.

Ms. Martin read Exhibit Union 1 which is the interview with Mehdi Araghi. She said Mr. Araghi recommended time based on the Grievant's supervisor and his functional supervisor. Ms. Martin testified they never said he didn't work the hours. Mr. Araghi did check on Grievant. Mr. Araghi would send an RFL or send E-mail.

Ms. Martin testified Mr. Araghi approved all of the Grievant's time sheets and never questioned his time. She said there are no videos or eyewitness reports on the Grievant. Ms. Martin testified that she had taken videos of employees to prove cases.

Ms. Martin testified that Jennifer Demory was in charge of the case and laid out job duties. Ms. Martin testified that there is no other proof that the Grievant stole all these hours.

Ms. Martin did submit a draft report. After she left the Chief Inspector's Office she did not work on the case. Ms. Martin testified that her draft report said "may be substantiated".

Ms. Martin read Exhibit Tab I and was asked; “Did you find that Managers and Supervisors did not require employees to follow Policy?” She answered: “Yes”. Ms. Martin testified there was a policy violation on split shifts. The employees said it was to avoid overtime. Ms. Martin said Union employees can’t work split shifts. She said Time Keep can’t record a split shift and the employees couldn’t follow the rules to keep time.

Ms. Martin testified she had allegations about the Kiosk but the Union Contract says you can’t use swipes as a time record. She said she had never used VPN or Swipes before. This case is unique.

Ms. Martin was shown Exhibit Tab C and said she hadn’t seen this before except in other arbitrations.

Ms. Martin said from March to September 1 the agency says the Grievant stole one hundred eleven (111) hours. Ms. Martin was asked, “Did you find any proof in your investigation that the Grievant had stolen one hundred eleven (111) hours?” She answered: “No.”

On Cross-Examination Ms. Martin read Exhibit Management 3 which is the Draft report of Investigation submitted by her and others before she left. The report is not signed. Ms. Martin testified that she left in July 2010. She said the report was put together by herself, Jennifer Demory and Robert L. Ferguson. Ms. Martin testified that Ms. Demory always made changes to the report when she reviewed it. Mr. Ferguson did the same. So this is a three (3) person report.

Ms. Martin met with Ms. Demory and Mr. Ferguson during the Investigation. She then testified she had information from employees interviewed who said other employees were doing the same thing. The employees worked with the On Call Sheet. Ms. Martin testified that one

employee never adjusted Time Keep. Other witnesses said they came in late and left early and were told to just enter their time in Time Keep. Ms. Martin said this person violated Policy by her own admission. Ms. Martin testified that Ms. Demory changed findings and consolidated these witness statements. Ms. Martin said the Investigation was over theft of time.

Ms. Martin read Exhibit Management 3 and said the Investigation was also over Policies and work hours. She then said Page 9 of the Exhibit is the Grievant's report. Ms. Martin reviewed documentation submitted by the Grievant. She found no Call Back Sheets or VPN Logs submitted by the Grievant. Ms. Martin testified that accounted for time is based upon the swipe cards. The unaccounted for time here is One Hundred Thirty (130) hours and fourteen (14) minutes. She said this is for a six (6) month period. On Page 10 of the Exhibit it says "reasonable cause to believe wrongful acts occurred". Ms. Martin testified "it doesn't come from me". She said she couldn't substantiate anything. Ms. Demory found reasonable cause.

Ms. Martin testified that Page 14 of the Exhibit says "may have been violated" and that was hers. She said she didn't believe we could substantiate. Ms. Martin testified this is an entire other version of the report after I left.

Ms. Martin then read Exhibit Management 4 and testified this is a version of the time sheet she had worked on in April 2009 to September 2009. This is Grievant's Time Keep Schedule. She testified that Exhibit Management 4 says no VPNs located for the Grievant. This Exhibit is based on Kiosk swipes. Ms. Martin said on April 4, 2009 the Grievant was thirty-three (33) minutes late and left at 4:08 which was twenty-five (25) minutes short.

Ms. Martin testified that she looked for E-mails concerning training and meetings with

supervisors. She testified she interviewed the Grievant on March 29 and asked for E-mail and Calenders to show his time. Ms. Martin read Exhibit Management 3 and said it shows the total that the Grievant got. The Grievant had fifty-four (54) hours and thirty-six (36) minutes and claimed sixty-four (64) hours.

Ms. Martin read the last page of Exhibit Management 3 and testified it shows One Hundred Thirty (130) hours and fourteen (14) minutes unaccounted for. This is based from the swipe information. The total is hers.

Ms. Martin then read Exhibit Union 11 which is her case notes. Ms. Martin testified she disputes the findings in the report. She said Ms. Demory did things not covered in this report. Ms. Martin testified that Robert Ferguson told her not to put in her reports that she did not agree with the conclusion.

On Re-Direct Examination Ms. Martin testified that the Kiosk doesn't show the employee work action. It doesn't document work outside the building. Ms. Martin then testified that unaccounted for doesn't mean stolen.

Ms. Martin testified she never pulled the Grievant's hard drive. Ms. Demory was in charge and never told her to do it. She said she has pulled the hard drive in other cases. Ms. Martin testified that she is not 100% sure that Exhibit Management 3 is her report. Ms. Martin then testified that the report was on her I Drive so anyone could have added to it.

Ms. Martin testified she had interviewed an employee who said you didn't add time right. She said she has many times uncovered other wrong doing and expanded the case. Ms. Martin testified she did not do it in this case.

Ms. Martin then read Exhibit Union 3 and said this was the interview she did with the Grievant on March 29, 2010. She said the Grievant said he was told not to change time on Time Keep. She read Page 3 of the Exhibit and said the Grievant said he had tried to make up time. Mr. Araghi never said the Grievant was gone. Ms. Martin said Jennifer (Demory) changed things she didn't agree with.

Ms. Martin testified she did not find that the Grievant stole One Hundred Thirty (130) hours. She said the Grievant was interviewed six (6) months or a year after the time frame and the Grievant was cooperative.

On Re-Direct Examination Ms. Martin testified that Ms. Cinciatta said she was violating policy the office did nothing about it. Ms. Martin testified that she usually would have started an investigation on that person right away.

Ms. Martin said she would start her report when near the end of the Investigation. In this case she was told to do a Draft Report and she thought the Investigation was Concluded. She testified Ms. Demory wanted to get the case over with.

On Re-Cross Examination Ms. Martin testified that other Investigators came after she left so she never told them her thoughts.

On Re-Direct Ms. Martin was asked about documenting her concerns that the case was unsubstantiated. She said she has no say-so as to discipline. Ms. Martin testified there is no procedure for an employee to disagree on a case.

The Union's next witness was James Benedict. Mr. Benedict is an Infrastructure Specialist 3 at the Office of Information Services (OIS). Mr. Benedict was the Steward of

Record. Mr. Benedict testified that he filed the Grievance and was to collect as much evidence as possible. Mr. Benedict said he was to try to refute the charges. Mr. Benedict said he has been a Steward for six and a half (6 ½) years.

Mr. Benedict read Exhibit Union 4 and testified it was an E-mail he sent to Jamecia Little and the Grievant. The e-mail said the machines were installed between September 2010 and July 2011. Mr. Benedict said in 2012 Group Wise may not have had information. The Grievant's machine was installed in July 2011. Mr. Benedict testified the Grievant was re-interviewed in March 2012 and the Grievant was asked to provide documents. Mr. Benedict said the hard drives were gone by then and the information was no longer available.

Mr. Benedict then read Exhibit Tab B which is the Report of the Investigation. Page 11 of the Exhibit is the Grievant's Calendar which goes back to November 14, 2011. He said the Report is dated April 30, 2012. Mr. Benedict testified the Investigators only checked the C Drive to use the E-Mail System. The information on the P Drive is gone after the change of machine.

Mr. Benedict is on the Labor-Management Committee. He said there was a discussion about employees reporting "straight 8". The Union thought this was done to avoid over-time. Mr. Benedict testified that Management was aware of reporting "straight 8."

Mr. Benedict testified that the initial interview was in March 2010. The Grievant was interviewed by the Ohio State Patrol and by the Chief Inspector's Office in March of 2012. The Pre-Disciplinary hearing was in August 2012. Mr. Benedict said the Management Representatives were Sylvan Wilson and Tiffany Richardson.

Mr. Benedict testified that the Grievance was heard at Step 3 by Hearing Officer Tiffany

Richardson. Ms. Richardson also did the Mediation.

On Cross-Examination Mr. Benedict testified he attended most of the initial interviews in 2010. He said the C Drives were moved March of 2011. He said he asked the Grievant to supply information to the best of his ability. Mr. Benedict testified there was a reasonable amount of time to get information.

Mr. Benedict was asked: "If you were asked to provide information would you try to get it immediately?" He answered: "Yes".

On Re-Direct Examination Mr. Benedict was asked if there was dead time in the Investigation. He said from the Fall of 2010 everything went cold. Mr. Benedict said he wanted to let sleeping dogs lie. Ms. Demory said the case was referred to the Ohio State Patrol.

Mr. Benedict read Exhibit Union 7 which is an E-mail from him to Ms. Demory asking the status of the case. Ms. Demory said still working on it. He said Ms. Martin asked for E-mails, Calendars and other information.

On Re-Cross Examination Mr. Benedict read Exhibit Union 7 where Ms. Demory says "not released".

On Re-Direct Examination Mr. Benedict was asked; "Had you reached out to Ms. Martin prior to contacting Ms. Demory?" He answered; "Probably and then I found out Ms. Martin was gone."

The hearing was adjourned at 4:05 P.M. The parties agreed to reconvene July 17, 2013 at 9:00 A.M.

The hearing reconvened July 17, 2013 at 9:00 A.M. The Union's next witness was

Tiffany Richardson. Ms. Richardson is now the Deputy Director. Ms. Richardson was the Labor Relations Officer during this case.

Ms. Richardson was the Hearing Officer at the Pre-Disciplinary Hearing. She made a recommendation to the Director and the Grievant was terminated.

Ms. Richardson said she was the Step 3 Hearing Officer. She then testified there was one other Labor Relations Officer on Staff at the time of the mediation. Ms. Richardson testified she passed the case to Mr. Hovance because he had more Staff. Ms. Richardson then testified that Ms. DuMond was present at the Pre-Disciplinary hearing. She said others were present but she doesn't recall who they were. Ms. Richardson said it is the practice to have the Labor Relations Officer as the Pre-Disciplinary Officer. She said she is not sure if it is an OCB Rule but it is the ODJFS practice. Ms. Richardson then testified there were only two staff and she had to do both the Pre-Disciplinary and the Step 3 hearings. The Grievant was removed.

Ms. Richardson then testified that there were five (5) employees involved in the investigation and three (3) employees were removed. She said the charges were egregious because of the number of hours involved. Ms. Richardson said the Grievant had no discipline on file at the time of Removal. She said she didn't know if the Grievant was still abusing hours at the time of his removal. Ms. Richardson said the Director makes the decision but the Deputy Director may make it. Ms. Richardson read the Joint Exhibit which is the Removal Letter and testified it was signed by the Deputy Director for the Director.

Ms. Richardson testified that the Deputy Director is at the top and all roads lead to her. She said she talked to the Deputy Director about the discipline.

Ms. Richardson was asked: "Do you think the Grievant could have a fair hearing at Step 3?" She replied: "Absolutely". Ms. Richardson said the Grievant was asked for mitigation and provided none.

Ms. Richardson read the Joint Exhibit Time and Accounting Spread Sheet and testified it showed One Hundred Ninety-one (191) hours, twelve (12) minutes and twenty-seven (27) seconds. She said she used this and the Report from the Chief Inspector's Office. Ms. Richardson testified she looked at hours plus salaries. There were five investigated and three (3) discharged.

Ms. Richardson says there was no specific number for Removal. The two (2) who stayed had less hours. She read Page 5 of the Time and Accounting Spread Sheet and testified it shows in and out swipes for April 20. The Grievant enters swipes.

Ms. Richardson said she doesn't know if Grievant's break was outside the building. She said if the Grievant is outside the building breaks don't show as swipes. Ms. Richardson said if there was no credit for breaks the time may be inaccurate. She doesn't know if the Grievant was given credit for breaks. Out of office may be in the note section.

On Cross Examination Ms. Richardson testified she doesn't know Grievant's hours. She said Page 5 of the Time and Accounting Spread Sheet shows in and out swipes. Ms. Richardson said she doesn't know if Grievant took breaks outside.

Ms. Richardson testified at this time there were two (2) Labor Relations Officers. The Chief Inspector did an Investigation Report and it was given to her for the Pre-Disciplinary Hearing. At the time she gave the case to Mr. Hovance there were three (3) Labor Relations Officers at ODJFS.

Ms. Richardson testified at the Pre-Disciplinary and Step 3 Hearings she doesn't recall any mitigation presented. She then said it wasn't the amount the employees were making that decided the case.

On Re-Direct Examination Ms. Richardson testified that if Grievant took breaks outside he gets two (2) fifteen (150 minute breaks.

Ms. Richardson testified that if the breaks were taken outside it would give the Grievant thirty (30) minutes. If there were several days it would reduce the total. Ms. Richardson was asked: "If his hours come down to One Hundred twenty Hours, would the case change?" She replied: "Would consider other options."

On Re-Cross Examination Ms. Richardson testified the Grievant had all the information at the Pre-Disciplinary Hearing. She was asked: "Did he indicate outside breaks?" She said: "No".

On Re-Direct Examination Ms. Richardson testified that lunch times were taken into account by the Chief Inspector. She said the spread sheet came from the Chief Inspector.

The Union's last witness was the Grievant Lloyd Clark. Mr. Clark is a Systems Developer 2. Mr. Clark started with the employer in March 2004 and prior to that was a Contractor with ODJFS for five (5) years. Mr. Clark has no prior discipline. He said he received no counseling memo.

Mr. Clark testified that Mr. Araghi was his Supervisor and he had no conversation with Mr. Araghi about incorrect time. Mr. Clark denies the Charge. Mr. Clark testified he took breaks outside the building.

Mr. Clark testified his hours were 7:30 to 4:30 with a half an hour for lunch. He said he would call Mr. Araghi if he was going to be late. Mr. Clark testified that if you called Mr. Araghi about a Doctor's appointment you put in an RFL if you were a few minutes late it was the Supervisor's call

Mr. Clark read the Joint Exhibit Spread Sheet. He looked at April 20 and said he was in at 8:27 and out at 5:06. Mr. Clark testified he came in an hour after Start time and stayed an hour late. He said if he came in late Mr. Araghi had to approve. Mr. Clark testified that if there were no RFL he had to stay and make it up. He said Mr. Araghi was very vigilant about time.

Mr. Clark testified he had up to five (5) functional supervisors. He said he had no conversation with them about time. Mr. Clark testified his work was always current.

Mr. Clark testified that the Child Support Office is in the Lazarus Building. He said there were many meetings in the Lazarus Building. Mr. Clark testified he went to the DAS building on Integrity Drive. Mr. Clark said he usually drove and sometimes rode to the Lazarus Building with Others. He did not file an Expense Sheet. Mr. Clark testified there were both afternoon and morning meetings. He said there are no swipes at the Lazarus Building but that you had to swipe out to go.

Mr. Clark testified that he tried to check his calendar for the Chief Inspector but all records were erased. The machines were changed. Mr. Clark said he did not always use Group Wise Calendar to record meetings. Mr. Clark testified there were conferences outside the Kiosk in Room C-120. You had to swipe out and in to go.

Mr. Clark testified he had weekly status reports and quarterly and annual reviews. He said

he got calls at home and he would drive to the 4200 building and swipe in and out. Mr. Clark testified he would turn in his Call Back Sheet to the Supervisor and that he was sometimes back all weekend.

Mr. Clark said he would baby sit Production for twelve (12) hours. He said he would have to solve problems in a fixed period of time. Mr. Clark testified when he was called in he sometimes took Comp Time. If it was over two and a half (2 ½) hours he took overtime. All knew he was told to take a straight eight. He said he was told to take a straight eight (8) by his Supervisor to avoid overtime. Mr. Clark testified Supervisors had different ways to do this. He said he never worked less than forty (40) hours a week.

On Cross-Examination he testified he can't tell for sure what he did about RFLs three (3) or four (4) years ago.

Mr. Clark was shown the building map Management 1. His Cubicle is R-405 on the second floor. The Conference rooms are hi-lighted. He said conference room C-120 is on the first floor.

Mr. Clark said there was an investigation for the first six (6) months. Mr. Clark was shown Exhibit Union 3 dated March 29, 2010 and testified this was the first knowledge he has of the investigation. He initialed the Report. Mr. Clark testified he couldn't use VPN.

Mr. Clark again read Exhibit Union 3 and said there were some meetings down town. He said he was told not to change time in Time Keep. Mr. Clark said he put in for overtime. He said Time Keep wouldn't show a split shift and he was sometimes told to do a "straight eight". Mr. Clark testified he did the Call Back Sheet.

Mr. Clark then looked at the spread sheet. The first six (6) months were March to September. He read Pages 2,3 and 4. Mr. Clark testified on April 17 he arrived an hour and a half (1 ½) late. There is no RFL. He said there is no RFL for April 20 or 21. Mr. Clark said there are no RFLs on Pages 6 & 7. There is an RFL on Page 8. There are some RFLs on Page 9 and Page 10. There are no RFLs on Page 11.

Mr. Clark read Pages 2 to Page 28 and testified there are 10 or twelve RFLs in this time frame. Mr. Clark then read Exhibit Union 3 and testified Call Backs are not reflected in Time Keep. Mr. Clark then read Exhibit Union 4 Page 2 and said it shows new machines July 1, 2011. Mr. Clark then testified that the C drive was changed eleven (11) months later than his interview in March 2010. He said the data was gone and he could not get the information.

Mr. Clark testified he doesn't think he told Management at the Pre-Disciplinary hearing that the information was gone. The machines were switched in July 2011.

Mr. Clark read Exhibit Management 5 which is the Pre-Disciplinary Report. He said the fact that he couldn't find information was not raised at the Pre-Disciplinary Hearing.

Mr. Clark then read the Grievance which is a Joint Exhibit. He said the Grievance doesn't say that the information is gone. Mr. Clark then read the addendum to the Grievance and this does say that the records were gone. Mr. Clark then read Exhibit Union 4 which shows the machine changes in July 2011.

Mr. Clark then read Joint Exhibit F which is his Travel and Expense Report. The report shows only one entry as he usually rode with others. Mr. Clark testified he contacted his Supervisor Glen Hill and he reused to testify. He then said he didn't know he was to produce

expense reports for others. Mr. Clark then testified that Mr. Hill gave him no documents.

Mr. Clark then read Exhibit Management 4. This is his Time Keep for the first six (6) months of the Investigation. He read the last page which shows one hundred thirty (130) hours and fourteen (14) minutes unaccounted for.

Mr. Clark then read Exhibit Union 8 which is the Chief Inspector's Interview with him. Mr. Clark testified the Interview was March 21, 2012. Mr. Clark read Page 2 and said he had no VPN access. Mr. Clark then read Page 5 and testified that he worked from home and provided phone support. He said he got paid for all the time in Time Keep.

On Re-Direct Mr. Clark was shown Exhibit Management 4 and said he doesn't know who created this. Mr. Clark testified he had never seen it before. He said he doesn't know if it is accurate. Mr. Clark then testified he is not required to submit Travel Expenses.

Mr. Clark was then shown Exhibit Management 5 which shows the Union position. He said it is not verbatim and he could have mentioned documents. Mr. Clark testified he did not record all appointments in Group Wise. Group Wise is the E-mail system. Mr. Clark testified if information was archived in Group Wise he couldn't find it.

Mr. Clark then read Exhibit Union 11 and said it is Records Management revised February 27, 2009. He read Page 5 which is E-mail Records Management. Mr. Clark then read Page 6 which says some records are deleted after ninety (90) days. Mr. Clark then read Exhibit Union 3 which is his work schedule. He said he was not asked a time frame. Mr. Clark testified this was his work schedule during the Investigation. He said if the schedule changed he would have changed the time sheet.

Mr. Clark then read the Joint Exhibit which was his Time Sheet. Mr. Clark testified that he was aware of Kiosk problems and he did not always get a green light when using the Kiosk. He said this was a frequent problem. Mr. Clark testified he was never told by Management that the Kiosk would be a time clock. Mr. Clark testified that during this time there were no straight eights and his actual time was recorded.

Mr. Clark testified that contractors used conference rooms up and down stairs. He said Mr. Araghi knew his whereabouts at all times. Mr. Clark then testified that Functional Managers in his area were on his floor. He said he attended meetings not scheduled by the functional Managers. Mr. Clark then testified that all down town meetings are not on the spread sheet. He said the Kiosk does not show outside activity. Mr. Clark testified he had training in the 4020 building. Mr. Clark testified the Investigation was from March 2009 to April 2010.

On Re-Cross Examination Mr. Clark read Exhibit Union 12 and said E-mail was not always deleted. Mr. Clark then read Exhibit Union 8 and testified he had Section meetings once a month.

On Re-Direct Examination Mr. Clark read Joint Exhibit Tab B which is the Report of Investigation and said the Chief Inspector could not locate his E-mail or Calendar.

The hearing adjourned at 11:25 A.M. The parties agreed to submit Post Closing Briefs by the close of business August 19, 2013.

The parties requested an extension for submitting Post Closing Brief to August 26, 2013.

V. OPINION OF THE ARBITRATOR

Evidentiary Hearings were held at the OCSEA Headquarters in Westerville, Ohio on May 23, 2013, June 13, 2013 and July 17, 2013.

The Employer points out in its argument the Grievant, Lloyd Clark was employed as a Software Development Specialist 2 (SDS2) with ODJFS in the Office of Information Services (OIS) for eight (8) years. For the period of March 2009 to April 2010 the Grievant's work hours were 7:30 A.M. to 4:30 P.M. The work day included a half hour lunch and two (2) fifteen (15) minute breaks. He worked at the Air Center Building at 4200 East 5th Avenue.

On August 24, 2009 the Office of the Inspector General received an anonymous letter stating that "JFS employees have been observed coming in late on a regular basis, leaving early, and disappearing for long periods during the day." The Grievant was first on the letter and five (5) other employees were also named. The letter was sent to ODJFS Office of the Chief Inspector (OCI) on September 17, 2009.

OCI began an investigation of all six employees. The initial investigation was handled by Kathleen Martin, OCJ Investigator and Jennifer Demory, OCI Investigations Supervisor. The initial investigation focused on the time period of April 1, 2009 to September 30, 2009. OCI began collecting Time Keep schedules and identification badge swipe logs. The identification badge logs showed when the employees physically entered and exited the 4200 East 5th Ave. Building. This information was entered on a spread sheet.

All the employees, including the Grievant were interviewed by OCI. The Grievant was given the opportunity to respond to the discrepancies and given a copy of the data that showed the discrepancies in hours. The Grievant was also given the opportunity to locate any

documentation or witnesses on his behalf.

OCI had identified 130 hours and 14 minutes of unaccounted for time in a six month period. OCI notified the Governor's Office and the Ohio State Highway Patrol (OSHP) of potential Criminal Activity. The Franklin County Prosecutor's Office declined to prosecute. OSHP then advised OCI that the agency could proceed in December 2011. The OSHP requested an additional six months of data.

OCI then initiated a full review of the period March 29, 2009 to April 2010. OCI completed a spread sheet for the entire year and all six employees were again interviewed by OCI. The three investigators from OCI were Katherine DuMond, Paul Vitale, and Steve Johnson.

The Grievant was again provided a copy of the spread sheet showing discrepancies between Time Keep and the swipe logs showing the times the Grievant physically entered 4200 East 5th Avenue between March 29, 2009 to April 10, 2010. The Grievant was again given the opportunity to provide any mitigating evidence but he supplied none.

The Grievant reported in Time Keep 1,691 hours for the period March 29, 2009 to April 10, 2010 but OCI could only account for 1,500 hours. The Employer argues the Grievant had over 191 hours of unaccounted for time.

The Grievant was charged with violations of ODJFS Standards of Employee Conduct F1-Failure to carry out and/or follow directions, assignments, written policies, procedures, and/or work rules and F11 - Purposeful carelessness, or unauthorized use or abuse of state equipment, property, state paid time, or property of another.

The Employer argues that it had Just Cause to remove the Grievant. The Employer asserts that it has met the generally accepted tests of Just Cause set forth in Enterprise Wire Company.

The Employer argues that the Grievant had notice of “disciplinary consequences that may arise from the employee’s conduct.”

The Employer says ODJFS provided forewarning by its Standard of Employee Conduct. This Standard provides employees a clear understanding of what is expected of them and their responsibility. The Discipline Grid for a violation of F11 ranges from a written reprimand to removal. The Employer contends the Grievant never said he was not forewarned.

The Employer then argues that its Standard of Employee Conduct is reasonable and that it is a reasonable expectation that an employee should only be paid for the time he or she worked.

The Employer argues that it did a lengthy and comprehensive investigation from receipt of the anonymous letter from the Office of the Inspector General through the OCI’s final report on April 30, 2012.

The Employer says the investigation included the Grievant and the other 5 employees for a period from March 29, 2009 to September 30, 2009. There were also interviews with numerous managers and other OIS employees and the collection of extensive data and documentation. After the initial investigation the Agency forwarded its findings to the OSHP which asked for an additional six months of data and documentation after the Prosecutor declined to proceed. OSHP advised the Agency to proceed and a final comprehensive review of the period from March 29, 2009 to April 10, 2010 was completed.

The Employer also argues that its investigation was timely and thorough and allowed the Grievant to tell his side of the story.

The Employer also argues that the investigation was a fair and objective investigation. The investigation included all six employees. The OCI Investigators reviewed ODJFS Policies,

the Collective Bargaining Agreement and Data from Time Keep, VPN Logs, Swipe Card Logs, etc. The Employer compiled a spreadsheet and compared with Grievant's Time Keep Data.

The Employer argues that the Grievant was interviewed twice with Union Representation and given an opportunity to respond to charges at the pre-disciplinary meeting.

The Employer argues that it has proved its case by a "preponderance of the evidence". It also argues that it has met the "clear and convincing" level of proof as well.

The Employer says the Union argues the Kiosk for swiping to enter and exit is not always accurate, but says the Union had no evidence the Kiosk was registering incorrectly. The Employer says on the two days the Kiosk was not operating correctly the Grievant was given full credit for eight hours per day.

The Employer then argues that the Union's "no anti-passback error" argument is invalid. This is when an employee passes through the Kiosk when entering the building and the Kiosk doesn't register. When the employee swipes to exit the alarm goes off and the "no anti-passback error" registers. The employer argues that the grievant received this error on June 17, 2009 and was given full eight hour credit. The employer argues that the evidence from Steve Jones was that these errors are rare. The Employer argues the Union did not provide any evidence that there were errors in the Kiosk Swipes.

The Employer then argues that the Union's argument that the Kiosk does not account for time spent outside the building does not explain the Grievant's discrepancies.

The Grievant testified he participated in training and/or meetings at 4020 East 5th Avenue or the Lazarus Building downtown at 50 East Town Street. The Grievant said he usually rode with others and therefore only had one request for reimbursement. The Employer argues that the

Grievant has presented no witnesses or documentation to support his contentions. The Employer argues that the Grievant did not provide this evidence because it does not exist.

The Employer also disbelieves the Grievant's Claim that the employer is to blame for this lack of evidence because it replaced his computer. The Employer argues the Grievant was made aware of this unaccounted for time March 29, 2010. The Grievant's computer was replaced July 1, 2011 which is one year, three months, and two days later. The Employer says it is a false claim that it took away his ability to access information.

The Employer also argues that the Grievant is inconsistent in his testimony of when he has attended meetings. The employer points out that in the Grievant's interview on March 21, 2012 he said the majority of his meetings were held in the 4020 building. In the arbitration he testified that the majority of his meetings were in Room C-120 of the 4200 building which is outside the Kiosk. The Employer argues that the Grievant failed to mention this in two prior interviews and has provided no evidence of these meetings.

The Employer points out that Grievant's supervisor, Mehdi Araghi, testified he did not use C-120 to hold his meetings. The Grievant was located on the second floor of the 4200 building and there were multiple meeting rooms in close proximity.

The Employer argues the Grievant is not a credible witness. The Employer points out that the Grievant testified that during the period from April 1, 2009 to September 30, 2009 if he was arriving after 8:00 A.M. he would file a Request for Leave (RFL). The Grievant arrived after 8:00 A.M. fifty-three (53) times and filed one (1) RFL.

The Employer then argues that Grievant was often late returning from his lunch breaks. For the time period of October 1, 2009 to April 10, 2010 the Grievant was late 68 times. The

Employer says the evidence shows the daily average was double the lunch break assigned to the Grievant. The Employer says the Grievant also often left work early according to the evidence.

The Employer says the evidence is it has treated its employees in a consistent manner. The Employer investigated all six (6) employees and the three (3) most egregious employees were removed.

The Employer concludes its argument by saying the penalty was appropriate. The employer says claiming 191 hours in Time Keep for which you do not work and collect \$7,600.00 is grounds for removal.

The Union argues that the Grievant was a 12 year employee who received average to above average performance evaluations. The Union says the Grievant had never received any discipline during his ODJFS Career.

The Union argues there are at least three major issues with the employer's case. The first issue is failure to meet all seven tests of Just Cause. The second issue is a flawed investigation. The third issue is that the Kiosk the Employer used for evidence is not reliable. The Union asserts that the Employer failed on many of the tests of Just Cause.

The Union says one of the charges against the Grievant involves his electronic time sheet not accurately reflecting the hours that he worked. The only approved system is Time Keep which requires each employee to input a standard schedule, including start time, end time and lunch time. The standard schedule is the approved schedule the employee is required to work. The Union argues that the Grievant was often required to work outside of his approved schedule.

The Union says that several years prior to the time in question the Grievant's direct manager told Grievant to report straight 8s regardless of time worked. Sylvan Wilson, the

Section Chief testified as to this instruction. The Union argues that at no time was the Grievant put on notice that he would be disciplined for Time Keep not accurately reflecting his time.

The Union says the Employer is required to have reasonable work rules. The Union says discipline is to be commensurate with the offense and this discipline was punitive in violation of the CBA.

The Union argues that Medhi Araghi testified that from 3/09/ – 4/10 he had no reason to believe the Grievant was missing from work. Further Mr. Araghi said all the Grievant's work assignments were completed.

The Union argues that Mr. Araghi never questioned the time the Grievant listed on his time sheet and Grievant was never warned of any issues with reporting.

The Union argues that if the Employers allegations are true Mr. Araghi allowed the Grievant to steal thousands of dollars in state and federal funds. The Union says Mr. Araghi should be severely disciplined and not given a slap of the wrist written reprimand. The Union also argues that no discipline was issued to correct Grievant's behavior nor was he warned he was doing anything wrong. The Union submits it is not reasonable to remove an employee for an alleged violation that occurred 3 years prior to the removal. The Union contends the Grievant's direct chain of command told him his behavior was OK.

The Union argues that the Employer has an obligation to do a complete investigation and that it failed to do so. The Union contends the Employer ignored available data, has no eyewitnesses, and did not follow up on information.

The Union says the evidence is OCI investigator Johnson testified the employer pulled hard drive data from the P-Drive to attempt to prove Grievant was working. The Union argues

that Mr. Johnson did not pull the C Drive because there was too much information on it and therefore the investigation was complete. The Union argues the Employer was trying to shift the burden of proof to the employee.

The Union further argues that the Grievant advised the Employer he attended training outside his building where a Kiosk would not record a swipe. The Union says some of these meetings were organized by the Grievant's Chain of Command but the Chain of Command was never contacted. The Union argues that there had to be a record of these trainings but the Employer never attempted to look into this. The Union argues there was no full and fair investigation.

The Union also argues that there was no objective investigation. The Union says the Employer did not treat all 5 employees being investigated the same. The Union also says that OCI Investigator Martin testified that she encountered other employees who were reporting their time as Grievant but her supervisor, Jennifer Demory told her to stay with the original Complaint. The Union says this shows a clear lack of objectivity concerning the Grievant.

The Union contends there is no proof of infraction. The Union says the Kiosk has never been approved for time keeping purposes.

The Chief of Security, Steve Jones, testified the purpose of the Kiosk is to cover the agency's auditing requirements with the federal government. The building houses all of the agency's computer servers. The programs are federally funded and so security measures must be in place. Mr. Jones is the person responsible for the Kiosk but has not received any training concerning it. The Union argues that Mr. Jones can't explain system errors and cannot explain whether the errors had any effect on swipes.

The Union argues that the Kiosk information is unreliable because no one knows how it works and no one is trained on it. The Union also argues there is no regular maintenance nor software updates.

The Union then says the Kiosk swipes only account for time spent behind the Kiosk. The Union says room C-120 is outside the Kiosk. In addition the Union argues that the agency is spread over 4 other buildings, none of which required the Grievant to swipe in. The Kiosk data would not account for time spent in the other buildings.

The Union then says that per the Employer's policy the system can delete records without the employee knowing it. The Union argues that if the Employer couldn't locate old records how could the Grievant.

The Union says the Employer provided an excel spreadsheet. He Grievant testified that he often took his two fifteen minute breaks outside the building. The Union argues the Employer didn't credit the Grievant with any fifteen minute breaks on the spread sheet. The Union says Investigator Drummond had no authority to disregard the Grievant's break time if it ran over fifteen minutes.

The Union argues the Employer has no proof as there is no video nor any eyewitnesses. The Grievant's supervisor testified he never noticed him missing.

The Union refers to arbitration decisions 1046 and 1082. Opinion 1046 is Juvenile Correction Facility Case. In this case the Grievant said the delay caused him not to remember the incident or its details. Other witnesses had similar problems. The 1082 arbitration concerns Tiffin Developmental Center. In this case the Employer sent a report to the Nursing Board and then waited four months to do an investigation. There was no provision in the CBA for a delay of this

nature.

The Union argues that the Employer is to treat all employees the same and failed to do so here. The Union says the other 5 employees were treated differently. The Union also says the Employer failed to investigate the rest of the section.

The Union argues that if the Grievant's acts were egregious why did it take 3/5 months to hold a disciplinary meeting and then 60 days to remove him.

The Union also argues there is a conflict of interest with the Employer's labor relations officer. The Union says Tiffany Richardson was the pre-disciplinary officer who recommended discipline, the Step 3 officer and the representative at Mediation.

The Union argues that the Grievant is not guilty of the charges and the Employer has failed to meet its burden of proof.

The parties have done an excellent job presenting their case.

In this case the parties have in essence, argued about the tests of Just Cause.

As to the test of Notice, the Arbitrator finds the Grievant had Notice of the probable consequences of his action. The Standards of Employee conduct as well as the CBA addresses discipline. The Grievant had been employed long enough to know, or should have known what these standards were.

The Employer argues that its rules are reasonable. The Union doesn't argue that the rule is unreasonable. The Union instead, as stated in their argument, that the Grievant's supervisor is at fault for improper supervision and failure to warn the Grievant. The Arbitrator finds that the rule is reasonable.

As to Investigation, the Employer says its Investigation was lengthy and comprehensive.

The Union disputes this. The Union argues that the Employer failed to pull the Grievant's C Drive and to verify his attendance at out of the Kiosk or building meetings. The Union argues this shifts the burden to the employee. It is true that the Employer has the burden of proof. However, once the Employer focuses on discipline the Grievant is in peril if he doesn't defend himself. The Union argues the problem of delay. However the CBA provides for this when there is a criminal investigation. The Cases cited by the Union in support of this were reviewed earlier in this decision and do not apply here. The Arbitrator finds the investigation was lengthy and comprehensive.

On the test of Fairness and Objectivity the Union has considerable dispute with this also.

The evidence is that the Employer interviewed the other 5 employees listed in the letter of September 17, 2009. In addition the Employer reviewed Time Keep records, Kiosk swipes, and other records as well as interviewing the Grievant twice.

The Union argues that when OCI Investigator Martin discovered other possible wrong doing by other employees nothing was done. This by itself does not mean the investigation concerning the Grievant was improper.

The Union argues that there is a serious conflict of interest concerning Ms. Richardson. The Arbitrator understands a conflict of interest to be a betrayal or a breach of a duty owed to others for your benefit; usually money or to protect oneself from criminal charges. Ms. Richardson testified she was objective. The Union dislikes her participation at various levels of the disciplinary process and says her reputation is on the line. The Arbitrator has reviewed the CBA and finds no prohibition as to what Ms. Richardson has done. The grievance process has multiple steps which are not controlled by Ms. Richardson. She is a participant. The Director by

way of the Deputy Director made the Removal Decision. Ms. Richardson said she was involved in the conversation regarding Grievant's Discipline but there is no showing her influence was greater than any other Step 3 Officer with his or her recommendation. A conflict of interest is a serious matter but the Arbitrator finds the evidence insufficient.

The Arbitrator finds there is considerable objective evidence. The Investigation was fair and objective.

The Employer contends there was substantial proof the Grievant was guilty as charged. The question is was the charge proved by the preponderance of the evidence. The Union attacks the Kiosk system for a variety of reasons. However, the evidence is that the Grievant was given full credit for the days it wasn't working.

The Union also argues that time spent outside the Kiosk in room C-120 or outside the building is not shown by Kiosk swipes. The evidence is that the Grievant was given ample opportunity to provide information as to his whereabouts and failed to do so.

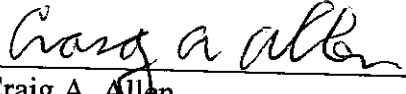
The Union says Ms. Drummond did not have authority to disregard an employee's break time if it ran over. In fact she did have authority. The evidence is clear that the lunch break was ½ hour and the other breaks were of 15 minutes duration each. The Union's argument that there is a lack of video or eyewitnesses is not dispositive. There is ample evidence of Grievant's absence from work. The Employer has proven its case.

The Employer says it has treated its employees equally. The Union denies this but presented only argument, not evidence as to the other 5 employees. Evidence of settlements is not admissible. There were other employees removed. The treatment of the Grievant was equal.

The Employer says its penalty was reasonable. The Union says the penalty is too severe.

Taking the Union's case at its best the Union may have shown some small amount of time for which the Grievant should have been credited. However, the amount of unaccounted for time is still substantial. The amount of time and money involved is so large that Removal is Justified. The Grievance is denied.

Issued at Ironton, Ohio this 23 day of September, 2013.



Craig A. Allen
Arbitrator

