

Nos. 18-2103 & 18-2217

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**OZBURN-HESSEY LOGISTICS, LLC
Petitioner/Cross-Respondent**

v.

**NATIONAL LABOR RELATIONS BOARD
Respondent/Cross-Petitioner**

and

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO, CLC**

Intervenor

**ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

**SUPPLEMENTAL APPENDIX
OF THE
NATIONAL LABOR RELATIONS BOARD**

ELIZABETH A. HEANEY
Supervisory Attorney

STEVEN A. BIESZCZAT
Attorney

**National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-1743
(202) 273-1093**

PETER B. ROBB
General Counsel

JOHN W. KYLE
Deputy General Counsel

DAVID HABENSTREIT
Assistant General Counsel

CASE Nos. 18-2103, 18-2217

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

OZBURN-HESSEY LOGISTICS, LLC)
) No. 18-2103
 Petitioner)
)
 v.) Board Case No.
) 15-CA-165554
 NATIONAL LABOR RELATIONS BOARD)
)
 Respondent)

**CROSS-APPLICATION FOR ENFORCEMENT
OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

The National Labor Relations Board hereby cross-applies to the Court for enforcement of its Order issued against Ozburn-Hessey Logistics, LLC on August 24, 2018, in Board Case No. 15-CA-165554, reported at 366 NLRB No. 173. The Board seeks enforcement of its Order in full.

On September 25, 2018, the Petitioner, Ozburn-Hessey Logistics, LLC, filed a petition with this Court to review the same Board Order. The Court has jurisdiction over this cross-application pursuant to Section 10(e) and (f) of the National Labor Relations Act, as amended (29 U.S.C. § 160(e) and (f)), because the Petitioner is aggrieved by the Board's Order. Venue is proper in this Circuit because the unfair labor practices occurred in Memphis, Tennessee.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570-0001
(202) 273-2960

Dated at Washington, DC
this 18th day of October 2018



Attendance Policy

Overview

Punctual and regular attendance on the job is an important part of the performance record of each employee and is vital in maintaining a successful operation. To maintain a productive work environment, OHL expects employees to be reliable and punctual in reporting for work. Absenteeism and tardiness place a burden on other employees at OHL, and can lead to disciplinary action up to and including termination. Additionally, an employee's attendance will be taken into consideration in job performance appraisals, promotions, transfers and bonus programs.

This policy applies to regularly scheduled shifts as well as overtime (mandatory and voluntary), scheduled meetings and scheduled training. Attendance points will remain on an employee's attendance record on a 52-week rolling basis. Points will fall off of the attendance record one year from the date they occurred.

Call Out Procedures

When it is necessary for an employee to be absent for reasons other than prescheduled and preapproved absences, the employee is required to contact his/her supervisor, the facility call out line or whomever the supervisor designates to report the absence within the first 30 minutes of the start of his/her shift.

Text messages, e-mails, other electronic communication methods, and voice messages left on answering machines, with co-workers, the operator, etc., are not an acceptable substitute unless previously authorized by the employee's direct supervisor. Failure to follow the proper call out procedures outlined above will be treated as a no call/no show.

Definitions and Assignment of Points

Absence	An employee's failure to report to work as scheduled after missing over two hours of the workday.	2 points
Late	An employee's late arrival up to two hours from the start of the scheduled shift and/or an employee's late return from breaks or lunch.	1 point
Leave Early	Leaving early from work without the supervisor's approval (including overtime)	1 point
No Call/No Show	Not reporting for work and not calling in for one workday. A workday is viewed as any day for which an employee is regularly scheduled to work, a scheduled overtime workday, or a day for which the employee is typically off but has volunteered to work (if an employee does not call out or report to work within the first 4 (hours) of their scheduled shift, the day will be treated as a NCNS).	4 points

Progressive Discipline

Disciplinary action will be issued when an employee receives the number of points listed below within a 52-week rolling calendar year.

1 st Written Warning	Accumulation of 4 (four) points
2 nd Written Warning	Accumulation of 8 (eight) points
Final Written Warning	Accumulation of 12 (twelve) points OR 1 (one) No Call/No Show (regardless of the total number of points)
Termination	Accumulation of 13 (thirteen) points OR 2 (two) No Call/No Shows (regardless of the total number of points)

Effective 10/1/13

SA055
1 of 3

GC Exhibit 7
3 PAGES

GC#7
0417
7/6/14
1 SPA

3 pages



Attendance Policy

If the employee fails to contact the Company for two consecutive workdays to report an absence, it will be considered a voluntary resignation.

Disciplinary action for attendance policy violations will follow a progression. Disciplinary steps cannot be skipped regardless of the number of points the employee has accumulated. An employee must accumulate 4 (four) additional points before moving to the next level of disciplinary action until reaching a Final Warning.

For example, if an employee has accumulated 12 points but has not received a 1st written warning, the employee will receive a 1st written warning. The next level of discipline will be administered at the accumulation of the next 4 points and would be a 2nd written warning.

Consecutive Absences

Consecutive days of absence for an illness will be charged as only one absence. Supporting documentation may be required for absences of three consecutive days or more. If an employee leaves early and then is absent the next day, these points will not be bridged and will result in three (3) points.

Exceptions

The following appropriately scheduled absences will not be counted against an employee's attendance record (if properly documented and verified) for purposes of this attendance policy:

- Jury Duty
- Funeral leave
- Any pre-approved absence
- Time off to vote
- Military leave
- Absence due to a job related injury

Using Paid Time for Unexcused Absences

An employee who has paid benefit time available may use it to cover an absence; however, an employee will not be allowed to use paid benefit time for a no call/no show or suspension.

Even though an employee may use available paid benefit time for an absence, points will still be recorded on the employee's attendance record for the absence unless preapproved in writing. Receiving pay for an absence does not mean the absence is excused.

Requesting Time Off

Time off, whether paid or unpaid, should be requested as soon as possible. All time off must be pre-approved in writing (or through the Kronos timekeeping system) by the supervisor at least 24 hours in advance.

Introductory Period

During the first 90 days of employment, an employee who accumulates 6 (six) points may be terminated for excessive absenteeism.

Note: In the rare instance that an emergency situation occurs, OHL reserves the right to not assess points to an employee. Emergency situations must be reviewed and approved by the supervisor and/or manager as well as by Human Resources and supporting documentation may be required. The employee's attendance and performance records will also be considered.



Attendance Policy

My signature below acknowledges that I have received a copy of the OHL Attendance policy – effective date 10/1/13. I have read and understand the contents and agree to abide by the guidelines outlined in the policy. I understand that I may ask my supervisor or the Human Resources Department if I have questions about the policy.

Printed Name

Signature

Date



Employee Attendance Notice

EMPLOYEE NAME Jamaine Brown

DATE: 10-15-14

Please be advised that your attendance record has exceeded OHL's Attendance Policy standards as reflected below. As a result, it is necessary to take the following progressive disciplinary action:

<u>Disciplinary Step:</u>	<u>Number of Points to date:</u>	<u>Comments:</u> (List dates of points)
<u> </u> First Written Warning	<u> </u> 4 combined points	10/21/2013 2 unexcused
<u> X </u> Second Written Warning	<u> X </u> 9 combined points	1/27/2014 1 Tardy Lunch :03 3/6/2014 1 Tardy :01
<u> </u> Final Written Warning	<u> </u> 12 combined points	3/12/2014 1 Tardy :01 Lunch
<u> </u> Termination	<u> </u> 13 combined points	7/28/14 2 Leave early 1.75 hrs 10/10/14 2 Leave early 1.75 hrs
		<u>9</u> points total

Maintaining a consistently acceptable attendance record is of paramount importance. If you neglect to come to work on time or simply fail to show-up, your workload must be assumed by someone else. This then places an unfair burden on those employees who arrive as scheduled for work every day and also seriously impairs our ability to serve our customers' requirements in a professional and timely manner. Consequently, we expect you to consistently be at work every day and on time as scheduled.

If you would like to discuss any aspect of this notice or your attendance record, you are encouraged to contact your supervisor, manager or Human Resources representative at you earliest convenience.

Comments:

I acknowledge having received, read, and understood the contents of this letter.

 Employees' Signature
Verdine Jones
 Supervisor's or Manager's Signature

 Date
10-15-14
 Date

Refuse to sign
 GC#11
 OHL
 7/6/16
 SPA
 GC Exhibit 11
 10/1



Employee Attendance Notice

EMPLOYEE NAME Jermaine Brown

DATE: 12-12-14

Please be advised that your attendance record has exceeded OHL's Attendance Policy standards as reflected below. As a result, it is necessary to take the following progressive disciplinary action:

<u>Disciplinary Step:</u>	<u>Number of Points to date:</u>	<u>Comments:</u> (List dates of points)
<input type="checkbox"/> First Written Warning	<input type="checkbox"/> 4 combined points	1-27-14 103 Tardy (lunch) 1 3-6-14 .01 Tardy 1
<input type="checkbox"/> Second Written Warning	<input type="checkbox"/> 8 combined points	3/12-14 .01 Tardy (lunch) 1 7/28-14 worked 1.75 hrs 2 10/10-14 " " 2
<input checked="" type="checkbox"/> Final Written Warning	<input checked="" type="checkbox"/> 13 combined points	10/10-14 " " 2 10/1-28/14 unexpected absence 2 12-4-14 " " 2 12-11-14 " " 2
<input type="checkbox"/> Termination	<input type="checkbox"/> 13 combined points	

13 points

Maintaining a consistently acceptable attendance record is of paramount importance. If you neglect to come to work on time or simply fail to show-up, your workload must be assumed by someone else. This then places an unfair burden on those employees who arrive as scheduled for work every day and also seriously impairs our ability to serve our customers' requirements in a professional and timely manner. Consequently, we expect you to consistently be at work every day and on time as scheduled.

If you would like to discuss any aspect of this notice or your attendance record, you are encouraged to contact your supervisor, manager or Human Resources representative at you earliest convenience.

Comments: I HAVE ISSUES WITH THESE POINTS (13) BECAUSE MY POINTS SUPPOSE TO BE (11) BECAUSE IT CLEARLY STATES IN THE ATTENDANCE POLICY THAT YOU ONLY CAN RECEIVE (1) POINT FOR LEAVING EARLY!
Jermaine Brown

I acknowledge having received, read, and understood the contents of this letter.

Employees' Signature Date
Verdine Jones 12/12/14

Supervisor's or Manager's Signature Date

GC#12
~~GC#12~~
OHL
7/6/16
SPA
Page 1 of 1

Jermaine will have work until 1-27-15 before the 1st point drops off. If he receive another one before that time may result in termination.
LH 12/12/14 SPA Refuse to sign

GC Exhibit 12



Employee Attendance Notice

EMPLOYEE NAME Jermaine Brown

DATE: 4/27/15

Please be advised that your attendance record has exceeded OHL's Attendance Policy standards as reflected below. As a result, it is necessary to take the following progressive disciplinary action:

<u>Disciplinary Step:</u>	<u>Number of Points to date:</u>	<u>Comments:</u> (List dates of points)	
<input type="checkbox"/> First Written Warning	<input type="checkbox"/> 4 combined points	7/28/14 Early out 1.75	2
<input type="checkbox"/> Second Written Warning	<input type="checkbox"/> 8 combined points	10/10/14 " " 1.75	2
<input checked="" type="checkbox"/> Final Written Warning	<input checked="" type="checkbox"/> 12 combined points	10/28/14 UA	2
<input type="checkbox"/> Termination	<input type="checkbox"/> 13 combined points	12/4/14 UA	2
		12/11/14 UA	2
		4/9/15 UA	2
			<u>12</u>

Maintaining a consistently acceptable attendance record is of paramount importance. If you neglect to come to work on time or simply fail to show-up, your workload must be assumed by someone else. This then places an unfair burden on those employees who arrive as scheduled for work every day and also seriously impairs our ability to serve our customers' requirements in a professional and timely manner. Consequently, we expect you to consistently be at work every day and on time as scheduled.

If you would like to discuss any aspect of this notice or your attendance record, you are encouraged to contact your supervisor, manager or Human Resources representative at you earliest convenience.

Comments:

I REFUSED to sign BECAUSE OF THE DATES OF 7-28-14 + 10-10-14. from my understanding of "EARLY out" is 1 point! Jermaine Brown 4-27-15 Thank you

I acknowledge having received, read, and understood the contents of this letter.

 Employees' Signature

 Supervisor's or Manager's Signature

 Date
4/27/15

 Date

GC 13
 OHL
 7/10/14
 SPA

page 1 of 1



Employee Attendance Notice

EMPLOYEE NAME Jarmaine Brown DATE: 7/1/15

Please be advised that your attendance record has exceeded OHL's Attendance Policy standards as reflected below. As a result, it is necessary to take the following progressive disciplinary action:

<u>Disciplinary Step:</u>	<u>Number of Points to date:</u>	<u>Comments: (List dates of points)</u>
<input type="checkbox"/> First Written Warning	<input type="checkbox"/> 4 combined points	7/1/15 - T - 1 pt.
<input type="checkbox"/> Second Written Warning	<input type="checkbox"/> 8 combined points	4/9/15 - UA - 2 pts
<input type="checkbox"/> Final Written Warning	<input type="checkbox"/> 12 combined points	12/11/14 - UA - 2 pts
<input checked="" type="checkbox"/> Termination	<input checked="" type="checkbox"/> 13 combined points	12/4/14 - UA - 2 pts 10/28/14 - UA - 2 pts

Maintaining a consistently acceptable attendance record is of paramount importance. If you neglect to come to work on time or simply fail to show-up, your workload must be assumed by someone else. This then places an unfair burden on those employees who arrive as scheduled for work every day and also seriously impairs our ability to serve our customers' requirements in a professional and timely manner. Consequently, we expect you to consistently be at work every day and on time as scheduled.

If you would like to discuss any aspect of this notice or your attendance record, you are encouraged to contact your supervisor, manager or Human Resources representative at you earliest convenience.

Comments:

10/10/14 - 2 pts - T
7/28/14 - 2 pts. - T

I acknowledge having received, read, and understood the contents of this letter.

Employees' Signature

Supervisor's or Manager's Signature

Date
7/1/15

Date
7/1/15

GC 14
OHL
7/30/16
SPA

Page 1 of 1

STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT ■ DIVISION OF EMPLOYMENT SECURITY
SEPARATION NOTICE



1. Employee's Name: Jermaine Brown 2. SSN [REDACTED]
First Middle Initial Last

3. Last Employed: From: 04/22/13 to 07/01/15 Occupation: Operator
(mm/dd/yy) (mm/dd/yy)

4. Where was work performed? 5510 E Holmes Road, Memphis, TN 38118

5. Reason for Separation: Lack of Work Discharge Quit

If lack of work, indicate if layoff is Permanent Temporary - Recall Date _____
(mm/dd/yy)

If temporary, report any vacation pay that will be paid. Week Ending Date _____ Amount \$ _____
(mm/dd/yy)

If layoff is indefinite vacation pay should not be reported.

6. Employee received: Wages in Lieu of Notice Severance Pay

In the amount of \$ _____ for period from _____ to _____
(mm/dd/yy) (mm/dd/yy)

If other than lack of work, explain the circumstances of this separation:

Violation of OHL Attendance Policy

Employer's Name: <u>OHL</u>	
Address where additional information may be obtained: <u>7101 Executive Center Drive, Suite 333 Brentwood, TN 37027</u>	Employer's Telephone Number: <u>(615) 401-6425</u> Employer's E-Mail Address: <u>ljohnson2@ohl.com</u>

Employer's Account Number: 04506196 (Number shown on State Quarterly Wage Report (LB-0851) and Premium Report (LB-0456))

I certify that the above worker has been separated from work and the information furnished hereon is true and correct. This report has been handed to or mailed to the worker.

Signature of Official or Representative of the Employer who has first-hand knowledge of the separation 	Title of Person Signing <u>Regional HR Manager</u>	Date Completed and Released to Employee <u>7/1/15</u> <small>(mm/dd/yy)</small>
--	---	---

NOTICE TO EMPLOYER
Within 24 hours of the time of separation, you are required by Rule 0800-09-01 of the Tennessee Employment Security Law to provide the employee with this document, properly executed, giving the reasons for separation. If you subsequently receive a time sensitive request for separation information for the same information please give complete information in your response.

NOTICE TO EMPLOYEE
IF YOU ARE FILING A CLAIM FOR UNEMPLOYMENT INSURANCE BENEFITS BY TELEPHONE OR INTERNET YOU MAY BE INSTRUCTED TO MAIL OR FAX THE SEPARATION NOTICE TO THE TENNESSEE CLAIMS CENTER. IF YOU ARE FILING A CLAIM FOR UNEMPLOYMENT INSURANCE BENEFITS IN-PERSON PLEASE TAKE THIS NOTICE TO THE LABOR AND WORKFORCE DEVELOPMENT OFFICE.

GC 15
OHL
7/6/15
SPA

Johnson, Lisa

From: Tidwell, Andrew
Sent: Tuesday, October 08, 2013 3:14 PM
To: Miles, Shannon; Adams, Jennifer; Ball, Sarah; Bellm, Andrew; Bosancic, Janine; Boshers, Christie; Boyd, Karen; Bushati, Sandra; Camarata, Greg; Carlson, Lindsey; Castillo, Melissa; Chesley, Crystal; Colom, Gina; Daigneault, Joe; Escamilla, Teresa; Ferrone, Megan; Gonzalez, Dee Dee; Holloway, Shannon; Hubbard, Madelyn; Johnson, Julie; Johnson, Lisa; Jones, Joshua; Karrigan, Amy; Katona, Glenda; Lamb, Denise; Leffler, Shannon; Lewis, Lisa; Luellen, Laura; Logel, Jamie; McCaslin, Peggy; Melendez, Maria; Nolan, Erica; Pollard, Savannah; Rico, Ana; Roberson, Lisa; Robinson, Ben; Savage, Darron; Silva, Israel; Smith, Chris; Smith, Tia; Stader, Denise; Standley, Deborah; Staten, Jennifer; Tucker, Shamekia; Van Kirk, Elaine; Veintimilla, Ana; Wheeler, Debbie; White, Pam; Williams, Corey; Williams, Sarah; Wright, Sara; Yates, Jan
Cc: Honious, Mike; Fitzsimmons, Hoyt
Subject: RE: New Policies

Team –

It's time to send out the new handbook and distribute our updated policies. By now you have received your handbook shipment. The plan is below:

HANDBOOK

We are testing the Halogen assignment for our handbook acknowledgment today. Tomorrow (9 OCT), we will open the assignment to Review and Acknowledge the Handbook for the following groups of employees:

- All Employees North America (all business units) – except CL hourly employees, or hourly employees who do not have a company email account.

A printed copy of the handbook will be distributed by HR to CL hourly employees, and to any hourly employees in other business units who do not have a company email account. Please collect and file the perforated acknowledgment forms for these employees.

ATTENDANCE POLICY

Our updated attendance policy will be distributed in Halogen. An assignment will be opened 9 OCT for managers which includes a summary of the policy. An assignment will be opened for hourly employees to acknowledge the policy. These assignments will be opened for the following groups of employees:

- All Supervisors and above, North America
- All hourly employees, CORP and OHLI North America

A printed copy of the policy will be distributed by HR to CL hourly employees, and to any hourly employees in other business units who do not have a company email account. Please collect and file the acknowledgment page for these employees.

DRUG FREE WORKPLACE POLICY

Our updated attendance policy will be distributed in Halogen. An assignment will be opened 9 OCT for all employees to acknowledge the policy. These assignments will be opened for the following groups of employees:

- All Supervisors and above, North America (excluding California)

GC 16
OAL
7/6/14
SPA

Page 1 of 4

- All hourly employees, CORP and OHL North America (excluding California)

A printed copy of the policy will be distributed by HR to CL hourly employees (excluding California), and to any hourly employees in other business units who do not have a company email account (excluding California). Please collect and file the acknowledgment page for these employees.

PLMSSupport@ohl.com will be sending an "all employees" notice shortly to make the announcement.

Thanks and have a great week!

Andrew Tidwell
Vice President, Human Resources

OHL
7101 Executive Center Drive, Suite 333
Brentwood, TN 37027
ph: (615) 524-3688
fax (615) 377-8551
atidwell@ohl.com
www.ohl.com

From: Miles, Shannon
Sent: Monday, September 30, 2013 6:38 PM
To: Adams, Jennifer; Ball, Sarah; Belim, Andrew; Bosancic, Janine; Boshers, Christie; Boyd, Karen; Bushati, Sandra; Camarata, Greg; Carlson, Lindsey; Castillo, Melissa; Chesley, Crystal; Colom, Gina; Dalgneault, Joe; Escamilla, Teresa; Ferrone, Megan; Gonzalez, Dee Dee; Holloway, Shannon; Hubbard, Madelyn; Johnson, Julie; Johnson, Lisa; Jones, Joshua; Karrigan, Amy; Katona, Glenda; Lamb, Denise; Leffler, Shannon; Lewis, Lisa; Lluelyn, Laura; Logel, Jamie; McCaslin, Peggy; Melendez, Maria; Nolan, Erica; Pollard, Savannah; Rico, Ana; Roberson, Lisa; Robinson, Ben; Savage, Darron; Silva, Israel; Smith, Chris; Smith, Tia; Stader, Denise; Standley, Deborah; Staten, Jennifer; Tidwell, Andrew; Tucker, Shamekia; Van Kirk, Elaine; Veintimilla, Ana; Wheeler, Debbie; White, Pam; Williams, Corey; Williams, Sarah; Wright, Sara; Yates, Jan
Cc: Honious, Mike; Fitzsimmons, Hoyt
Subject: RE: New Policies

We would like to issue a clarification based on some feedback received today. It is our intention to distribute new policies for an 11/1/13 effective date.

The main difference in the Attendance policy is the change in points assigned for a "Leave Early". Normally, our procedure would be to notify everyone in advance of a policy change allowing time to distribute, review and answer questions. In the case of the programming change required in Kronos to make the new rule effective, we needed to leverage our remaining implementation hours to accomplish this before they expired. So, as not to delay this improvement, which is a benefit to our people and to avoid any further costs, the rule in the system has been changed and is effective 10/1/13.

Our Drug Free Workplace Policy is summarized in the Handbook. It is being issued as a full policy document in order to obtain a separate acknowledgement.

As stated earlier, our updated Anti-Discrimination and Workplace Violence policies are contained in the Handbook and they are also available on the O-Drive. These do not require a separate acknowledgment form.

Therefore, the Attendance Policy and our new Handbook are being distributed on 10/1/13 giving adequate time to socialize, review and obtain acknowledgement by 11/1/13.

I am happy to answer any questions you may have, and we regret any parts of the earlier message that were unclear. It's our job to be "perfect with our people".

Shannon Miles
Senior Employee Relations Manager

OHL
7101 Executive Center Drive, Suite 333
Brentwood, TN 37027
ph: (615) 880-4863
mobile: (615) 426-5040
IP: 3790
smiles@ohl.com

From: Miles, Shannon

Sent: Monday, September 30, 2013 2:26 PM

To: Adams, Jennifer; Bail, Sarah; Bellm, Andrew; Bosancic, Janine; Boshers, Christie; Boyd, Karen; Bushati, Sandra; Camarata, Greg; Carlson, Lindsey; Castillo, Melissa; Chesley, Crystal; Colom, Gina; Daigneault, Joe; Escamilla, Teresa; Ferrone, Megan; Gonzalez, Dee Dee; Holloway, Shannon; Hubbard, Madelyn; Johnson, Julie; Johnson, Lisa; Jones, Joshua; Karrigan, Amy; Katona, Glenda; Lamb, Denise; Leffler, Shannon; Lewis, Lisa; Lluelyn, Laura; Logel, Jamie; McCaslin, Peggy; Melendez, Maria; Miles, Shannon; Nolan, Erica; Pollard, Savannah; Rico, Ana; Roberson, Lisa; Robinson, Ben; Savage, Darron; Silva, Israel; Smith, Chris; Smith, Tia; Stader, Denise; Standley, Deborah; Staten, Jennifer; Tidwell, Andrew; Tucker, Shamekia; Van Kirk, Elaine; Veintimilla, Ana; Wheeler, Debbie; White, Pam; Williams, Corey; Williams, Sarah; Wright, Sara; Yates, Jan

Subject: New Policies

Importance: High

All,

The new Attendance policy which is effective 10/1/13 is attached. Please note the most significant changes:

- Employees will only receive one (1) point for a "Leave Early".
- Employees will be allowed to leave messages, text or email, etc. when calling out for a shift if preapproved by their supervisor.
- An Introductory Period has been added to the policy - During the first 90 days of employment, an employee who accumulates 6 (six) points may be terminated for excessive absenteeism.

Kronos has been changed to only assign one point for a leave early. This will not affect points assigned prior to 10/1/13.

Additionally, the Anti-Discrimination and Harassment policy and the Workplace Violence policy have been updated. It is not necessary to have employees sign off on these two individual policies as the entire policy is in the new handbook. All of these policies as well as the new Handbook are located on the O:\HR-Resources drive.

Please let me know if you have any questions.

Thank you,

Shannon Miles
Senior Employee Relations Manager

OHL
7101 Executive Center Drive, Suite 333
Brentwood, TN 37027
ph: (615) 880-4863
mobile: (615) 426-5040
IP: 3790
smiles@ohl.com

Johnson, Lisa

From: Miles, Shannon
Sent: Friday, October 11, 2013 5:04 PM
To: Johnson, Lisa
Cc: Smith, Phil
Subject: RE: New Attendance Policy

There is nothing in the old policy about the time frame for a leave early. If someone comes in and then leaves after 5 minutes, it would be an absence. Has this ever happened? As long as we are consistent in how we enforce the policy, we will be okay.

Shannon

From: Johnson, Lisa
Sent: Friday, October 11, 2013 3:33 PM
To: Miles, Shannon
Cc: Smith, Phil
Subject: Fwd: New Attendance Policy

Shannon,

Can you clarify this point? See below.

Thanks!

Lisa

Sent from my iPhone. Lisa

Begin forwarded message:

From: "Smith, Phil" <pgsmith@ohl.com>
To: "Johnson, Lisa" <ljohnson2@ohl.com>
Subject: FW: New Attendance Policy

Lisa we need to get clarification on Leave Early I think the old policy stated if you had worked 4 hours it was a leave early this new policy makes no mention of time so a employee that starts at 8 am could leave at 8:05 and only get 1 point? Is that the way it will be enforced?

Phil Smith
Director of Operations

OHL Contract Logistics
5510 East Holmes Road
Memphis, TN 38118
ph: (901) 433-2687
mobile: (901) 340-2088
fax: (901) 366-6246
pgsmith@ohl.com <<mailto:pgsmith@ohl.com>>

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From: Steele, Jim
Sent: Friday, October 11, 2013 3:21 PM
To: Smith, Phil
Subject: FW: New Attendance Policy
Importance: High

Jim Steele
Assistant Operations Manager
OHL
5540 Holmes Rd.
Memphis Tn. 38118
Cell:901-340-2412
Fax:901-366-6246
isteele@ohl.com<<mailto:isteele@ohl.com>>.
www.ohl.com<<http://www.ohl.com>>

From: Johnson, Lisa
Sent: Monday, September 30, 2013 3:23 PM
To: memphis_management
Subject: New Attendance Policy
Importance: High

All,

We will discuss this in the Ops Meeting in the morning and make a decision on the roll out to the employees.

The new Attendance policy which is effective 10/1/13 is attached. Please note the most significant changes:

- Employees will only receive one (1) point for a "Leave Early".
- Employees will be allowed to leave messages, text or email, etc. when calling out for a shift if preapproved by their supervisor.
- An Introductory Period has been added to the policy - During the first 90 days of employment, an employee who accumulates 6 (six) points may be terminated for excessive

absenteeism.

Kronos has been changed to only assign one point for a leave early. This will not affect points assigned prior to 10/1/13.

Please let me know if you have any questions.

Thank you,

Lisa

Johnson, Lisa

From: Johnson, Lisa
Sent: Wednesday, September 03, 2014 12:02 PM
To: memphis_management
Subject: Attendance Policy

Importance: High

Let me make this clear one more time, if an employee comes in to work and is sick or whatever, if that employee asks to go home or if you feel it necessary to send that employee home for health/illness reasons, you **MUST** make it clear that the employee will still receive points.

WE DO NOT MAKE EXCEPTIONS!

You **MUST** also make it clear by stating to that employee the number of points they will receive for leaving work.

If the employee works for at least 2 hours, then the employee will receive 1 point for leaving early.

If the employee leaves before working a full 2 hours, then the employee will receive 2 points.

Am I clear? Are there any questions? You do not need to hesitate when quoting what the point policy is, nor do you need to give the impression that you will be excusing the employee from work.

We **DO NOT** have 'Time off Without Pay' unless it is FMLA.

Call me if you have any questions.

Thanks,

Lisa

Lisa Johnson
Regional Human Resources Manager

OHL
5510 East Holmes Road
Memphis, TN 38118
Direct: (901) 541-6742
Cell: (901) 208-9153

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Page 1 of 1



Attendance Policy

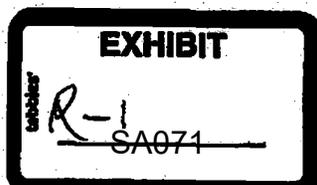
My signature below acknowledges that I have received a copy of the OHL Attendance policy – effective date 10/1/13. I have read and understand the contents and agree to abide by the guidelines outlined in the policy. I understand that I may ask my supervisor or the Human Resources Department if I have questions about the policy.

TERMAINE BROWN
Printed Name

Termaine Brown
Signature

10-16-13
Date

Effective 10/1/13



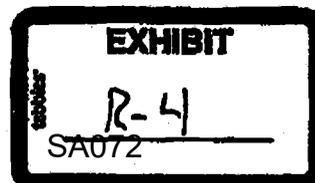
R-1
OHL
7/6/16
SPA

INTRODUCING OHL'S NEW HANDBOOK

MANDATORY MEETING FOR ALL FULL TIME OHL EMPLOYEES

MONDAY, OCT. 14-	5540 10:00/10:45AM
TUESDAY, OCT. 15-	REMINGTON 10:00/10:45AM HP A 1:45PM
WEDNESDAY, OCT. 16-	5510 10:00AM FISKARS 2:00PM MPS/NG/CEVA AND 3:00PM MPS 2ND
THURSDAY, OCT. 17-	HICKORY HILL 10:30AM AND WP AT 11:15AM
FRIDAY, OCT. 18-	HP B SHIFT 11:30AM

R-4
OHL
7/7/16
SPA



Bodzy, Ben

From: Hearne, William T. <William.Hearne@nlrb.gov>
Sent: Tuesday, March 01, 2016 3:15 PM
To: Bodzy, Ben
Cc: Goodwin, Steve
Subject: RE: Ozburn-Hessey Logistics, LLC 15-CA-165554

Ben:

In response to your questions:

1. The unilateral change is the change to the attendance policy on October 1, 2013, including the later decision to assess two attendance points to employees who leave work within the first two hours of the employees' shift. The change will likely be alleged to have occurred in or around October 1, 2013;
2. The Union acknowledges a general awareness of the new attendance policy beginning in 2014 but that it was not aware that employees were being assessed two points for leaving within the first two hours of a shift until following Jermaine Brown's discharge on July 1, 2015. I would note that, even assuming the Union was fully aware of the new attendance policy, the policy itself only specifies that employees will receive one point for leaving early without reference to the interpretation that employees will receive two points for leaving within the first two hours of a shift. I would further note that, while the Union may have gained constructive knowledge of the new attendance policy as written, the evidence establishes that the Union was never provided notice by the Employer concerning the new written attendance policy.
3. If the case proceeded to hearing, the General Counsel would argue that all employees who were disciplined or discharged pursuant to the unilaterally implemented attendance policy, most specifically those employees who were assessed two points for leaving early within the first two hours of a shift, would be entitled to have discipline removed or reduced or have a discharge rescinded as a result of the implementation and application of the policy. This remedy is commonly sought when litigating unilateral change allegations which adversely affect employees. I cannot be more specific as to the affected employees at the present time; the determination of affected employees would be done through a compliance investigation following a Board order if a violation is found.
4. I can prepare a draft settlement agreement and notice for your client's review if you desire. The settlement would consist of our standard settlement and notice provisions, including notice provisions which provide that the Union is the certified bargaining representative of the unit of employees (the unit description would be included in the notice), provisions where your client agrees to refrain from unilaterally changing the attendance policy or other policies without providing the Union with notice and an opportunity to bargain, and affirmative provisions where the Employer would agree to rescind all or part of the attendance policy upon request by the Union, offer unconditional reinstatement to Jermaine Brown, make Brown whole for his loss of earnings since his discharge and remove Brown's discharge from his personnel file and agree not to use this discharge as a basis for future discipline. Please let me know if you want me to prepare a draft settlement for review.

If you have other questions, please let me know.

Very Truly Yours,

William T. Hearne
Field Attorney
National Labor Relations Board
Region 15
80 Monroe Ave., Ste. 350

R-19
OHL
7/7/16
SPA
Rejected



Memphis, TN 38103

Phone: (901) 544-0028

Fax: (901) 544-0008

From: Bodzy, Ben [mailto:bbodzy@bakerdonelson.com]

Sent: Tuesday, March 01, 2016 12:59 PM

To: Hearne, William T. <William.Hearne@nlrb.gov>

Cc: Goodwin, Steve <sgoodwin@bakerdonelson.com>

Subject: RE: Ozburn-Hessey Logistics, LLC 15-CA-165554

Bill – A few questions:

1. What specifically is the alleged unilateral change to the attendance policy, and when is the Region claiming that it occurred?
2. When is the Union claiming that it obtained knowledge of the alleged unilateral change and how?
3. What do you mean by “and possibly other currently unknown employees?” Who? That was not part of the charge to which we were asked to respond.
4. Is there a settlement offer on the table? If not, what is your question about settlement?

Thanks,

Ben

Ben Bodzy

Shareholder

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

211 Commerce Street

Suite 800

Nashville, TN 37201

Direct: 615.726.5640

Fax: 615.744.5640

E-mail: bbodzy@bakerdonelson.com

www.bakerdonelson.com

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From: Hearne, William T. [mailto:William.Hearne@nlrb.gov]

Sent: Tuesday, March 01, 2016 12:31 PM

To: Bodzy, Ben

Subject: Ozburn-Hessey Logistics, LLC 15-CA-165554

Ben:

I am writing to inform you and your client that the Regional Director has reviewed the case and found merit as to the allegations that the Employer made an unlawful unilateral change concerning the attendance policy and discharged employee Jermaine Brown and possibly other currently unknown employees as a result of this

SA074

unlawful unilateral change. The Region is requesting your client's position concerning settlement of the allegations in this case. Please let me know prior to the close of business on Wednesday, March 2, 2016 if your client is interested in pursuing settlement of the allegations in this case. Please be informed that, absent settlement, the Region will issue a Complaint and Notice of Hearing encompassing the allegations in this case later this month. If you have any questions, please let me know.

Very Truly Yours,

William T. Hearne
Field Attorney
National Labor Relations Board
Region 15
80 Monroe Ave., Ste. 350
Memphis, TN 38103

Phone: (901) 544-0028

Fax: (901) 544-0008

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1 There's the Board's decision, their initial decision
2 upholding Judge Ringler's decision to -- ordering that the
3 ballot count, that the certain ballots, challenged ballots
4 be opened and certain ones be excluded. That led to the
5 conclusion of the election, of the tally of ballots, which
6 reflected that the Union had prevailed in the election.

7 There was the Region's certification.

8 And then after the Board's first decision was set aside,
9 the Board's later reaffirmation of that decision and the
10 issuance of a new certification certifying the Union, those
11 are the documents that we would ask to be introduced on the
12 record.

13 JUDGE SANDRON: Well, I would assume that we can
14 probably get a stipulation as to what occurred. The
15 Respondent may disagree as far as their relevance, but I
16 assume that we could get -- probably we don't need all those
17 documents in the record. We could probably get a
18 stipulation, either a summary description of what happened,
19 or else orally. So why don't we go off the record? Why
20 don't you just try to reach that, because I don't think we
21 need to encumber the record with full decisions. So we'll
22 go off the record.

23 MR. HEARNE: Okay.

24 (Off the record from 9:53 a.m. to 9:57 a.m.)

25 JUDGE SANDRON: Mr. Hearne, with the proposed

1 stipulations?

2 MR. HEARNE: Yes, Your Honor. The proposed -- proposed
3 stipulation number 1 is the Board in Ozburn-Hessey
4 Logistics, LLC, 359 NLRB No. 109, decided on May 2, 2013.
5 In this decision, the Board affirmed the decisions of
6 Administrative Law Judge Robert Ringler, including decisions
7 concerning the disposition of challenged ballots to the
8 election held in -- this case, or in case 26-RC-008635.
9 This decision resulted in certain challenged ballots being
10 included and certain challenged ballots being excluded.

11 The Board further ordered that the election be concluded
12 and that the challenged ballots to be included be opened and
13 counted as part of a revised tally of ballots to be held at
14 a time following the issuance of the decision.

15 MR. BODZY: It's so stipulated.

16 JUDGE SANDRON: All right. The stipulation is received.

17 MR. HEARNE: Stipulation number 2 -- proposed
18 stipulation number 2, I'm sorry. On May 14, 2013, the
19 Region concluded the election in case 26-RC-008635, and a
20 revised tally of ballots was issued that day. The revised
21 tally of ballots reflected that the number of votes cast for
22 the United Steelworkers was 169 votes, and the number of
23 votes cast against the United Steelworkers was 166 votes.

24 MR. BODZY: It's so stipulated, without conceding the
25 validity of that count.

1 JUDGE SANDRON: So you object on relevance?

2 MR. BODZY: Yeah.

3 JUDGE SANDRON: Or not concede?

4 MR. BODZY: Right. I don't object to the relevance of
5 that stipulation.

6 JUDGE SANDRON: And just for the record, since I know
7 the spelling, Ringler is R-i-n-g-l-e-r.

8 MR. HEARNE: Yes. I'm sorry, Your Honor.

9 JUDGE SANDRON: And that's number two.

10 MR. HEARNE: Proposed stipulation number 3, on May 24,
11 2013, Region 15, by Acting Regional Director Susan Crochet,
12 C-r-o-c-h-e-t, issued a certification of representative in
13 case 26-RC-008635, certifying the United Steelworkers as the
14 representative of the unit of employees requested in that
15 case.

16 MR. BODZY: It's so stipulated, without conceding the
17 validity of the certification.

18 JUDGE SANDRON: Just to make sure I have it right, that
19 was the same RC number?

20 MR. HEARNE: Yes.

21 JUDGE SANDRON: Okay. Stipulation is received. And did
22 I receive 2? I'll receive it now, if I didn't.

23 MR. HEARNE: Oh, yeah. I'm sorry. We proposed the
24 stipulation, proposed stipulations 1, 2, and 3 be received
25 by the Court.

1 JUDGE SANDRON: They are received.

2 MR. HEARNE: And proposed stipulation number 4,
3 following the decision of the United States Supreme Court in
4 NLRB v. Noel, N-o-e-l, Canning, C-a-n-n-i-n-g, the Board
5 withdrew its prior decision reported at 359 NLRB No. 109.
6 The Board subsequently, in Ozburn-Hessey Logistics, LLC, 361
7 NLRB No. 100, decided -- or issued November 17, 2014,
8 reaffirmed the Board's prior decision in 359 NLRB No. 109,
9 and issued a new certification of the Union as the
10 representative of the requested unit of employees, with the
11 certification being effective the date of issuance, November
12 17, 2014.

13 JUDGE SANDRON: And do you have the date that the Board
14 withdrew the prior decision? If you have it there? So we
15 have all the dates complete?

16 MR. HEARNE: The Board withdrew the decision in 359 NLRB
17 No. 109 on June 27, 2014.

18 JUDGE SANDRON: Okay. And I believe we have all the
19 dates.

20 Mr. Goodwin, do you so stipulate?

21 MR. BODZY: We so stipulate, without conceding the
22 validity of that decision referenced on the stipulation.

23 JUDGE SANDRON: All right. The stipulation was
24 received.

25 MR. BODZY: Your Honor, I'm Ben Bodzy, for whatever --

1 JUDGE SANDRON: Oh. I'm sorry, I --

2 MR. BODZY: You're referring to me as Goodwin. Not a
3 big deal. Just --

4 JUDGE SANDRON: Okay. We'll correct that. So the one
5 who has been doing all the speaking for the Employer is
6 Mr. Bodzy. Thank you for pointing that out.

7 MR. BODZY: Sure.

8 JUDGE SANDRON: So I know our very efficient court
9 reporter will make the corrections.

10 MR. BODZY: Your Honor, before we start with witnesses,
11 may I raise one other preliminary issue?

12 JUDGE SANDRON: Yes. Are there any other stipulations
13 that you know --

14 MR. HEARNE: No, Your Honor. That concludes the
15 stipulations. And I move that the proposed stipulation
16 number 4 be admitted -- or be accepted. Pardon me.

17 JUDGE SANDRON: The stipulation is -- I believe you
18 already said there's no --

19 MR. HEARNE: I wasn't sure. I wanted to make sure I
20 actually offered it. So --

21 MR. BODZY: And it's so stipulated, without conceding
22 the validity of the decision referenced.

23 JUDGE SANDRON: Oh, you mean the relevance. You said
24 validity?

25 MR. BODZY: The validity, meaning we're testing the

1 (Whereupon,

2 JERMAINE BROWN

3 was called as a witness by and on behalf of the General
4 Counsel and, after having been duly sworn, was examined and
5 testified as follows:)

6 JUDGE SANDRON: Okay. And kindly be seated. Just
7 remember to speak up a little bit so --

8 THE WITNESS: Okay. Okay.

9 JUDGE SANDRON: -- we make sure your answers are
10 recorded. If you could state and spell your full and
11 correct legal name for the record and provide us with an
12 address, either home or employment, whichever preferred.

13 THE WITNESS: My name is Jermaine Brown,
14 J-e-r-m-a-i-n-e, Brown. My address is 88 Pressie Road,
15 Holly Springs, Mississippi 38635.

16 JUDGE SANDRON: And could you spell the street name?

17 THE WITNESS: Pressie, P-r-e-s-s-i-e.

18 JUDGE SANDRON: Thank you.

19 Okay. Mr. Hearne?

20 DIRECT EXAMINATION

21 Q. BY MR. HEARNE: Okay. Mr. Brown, were you formerly
22 employed by Ozburn-Hessey Logistics?

23 A. Yes.

24 Q. When did you start working for the Employer?

25 A. Full-time or part-time?

1 JUDGE SANDRON: -- referred by that agency?

2 THE WITNESS: Yeah. But OHL wasn't paying me when I was
3 a temp. SMX was. But I worked in their building.

4 JUDGE SANDRON: What was the name of the other company?
5 S?

6 THE WITNESS: SMX.

7 JUDGE SANDRON: SMH?

8 THE WITNESS: X.

9 JUDGE SANDRON: Oh, SMX?

10 THE WITNESS: It's a temp service in our building, in
11 the 5540 building.

12 JUDGE SANDRON: And when you were hired full-time, did
13 you have a position for which you were hired?

14 THE WITNESS: Yes, sir. Yes.

15 JUDGE SANDRON: What was the name of your position?

16 THE WITNESS: Special labeling.

17 JUDGE SANDRON: Special?

18 THE WITNESS: Special labeling.

19 JUDGE SANDRON: Special labeling?

20 THE WITNESS: Yes, sir.

21 Q. BY MR. HEARNE: And what account were you assigned to?

22 A. Fiskars.

23 Q. Fiskars? And --

24 JUDGE SANDRON: Which one? You've got to speak up just
25 a little bit.

1 THE WITNESS: Fiskars.

2 JUDGE SANDRON: Can you spell that?

3 THE WITNESS: That's F-i-s-k-a-r-s.

4 JUDGE SANDRON: Okay.

5 Q. BY MR. HEARNE: And the Fiskars account, is that -- do
6 you remember the name of the warehouse that that was in, or
7 which warehouse, what the name of the warehouse was where
8 the Fiskars account was located? Or what that building was
9 called? Was it the -- did you work at the main OHL campus?

10 A. Yes.

11 Q. But there's a 55 --

12 JUDGE SANDRON: Well, but I think we're -- maybe we --
13 before you -- maybe we should try to get just kind of
14 stipulation about some of this background information --
15 testimony is going to come in kind of piecemeal and be hard
16 to assimilate without some kind of context. So --

17 MR. HEARNE: Okay. I guess --

18 JUDGE SANDRON: I mean, can we get like a stipulation as
19 to where he worked as far as the facility?

20 MR. HEARNE: Let's see, the -- well, that's why I was
21 just -- does that mean there's --

22 JUDGE SANDRON: Yeah, I --

23 MR. HEARNE: -- I mean, there's two warehouses on their
24 main campus, and I was just establishing what there's -- and
25 they're referred to by numbers. I was going to have him

1 establish which of those two warehouses --

2 JUDGE SANDRON: Well, this is preliminary --

3 MR. HEARNE: Right.

4 JUDGE SANDRON: -- so you can lead him into that. You
5 can ask him leading questions on that as a preliminary --

6 MR. HEARNE: Okay.

7 Q. BY MR. HEARNE: Was the Fiskars account in the 5510
8 building at OHL's campus?

9 A. Yes.

10 JUDGE SANDRON: And which -- number is that? You said
11 that --

12 MR. HEARNE: 5510.

13 JUDGE SANDRON: But you said there were two?

14 Q. BY MR. HEARNE: And the other is, there's also a
15 building called the 5540 building?

16 A. Yes, sir.

17 Q. Okay. And those are two warehouses situated on the same
18 campus?

19 A. Yes.

20 Q. Okay.

21 JUDGE SANDRON: And maybe just give us a brief
22 description of your job duties, you know, what you did?

23 THE WITNESS: Well, I put, I was responsible for putting
24 barcodes and price tags and assembling different cases that
25 would go in stores, you know, with their product on it to

1 sell.

2 JUDGE SANDRON: From the Fiskars -- how do you --

3 THE WITNESS: Fiskars, F-i-s-k-a-r-s.

4 JUDGE SANDRON: Fiskars? So that was your sole --

5 THE WITNESS: Yes, sir.

6 JUDGE SANDRON: -- responsibility?

7 THE WITNESS: Yes, sir. Well, when I first started, I
8 was, so --

9 JUDGE SANDRON: Right.

10 THE WITNESS: Yeah.

11 JUDGE SANDRON: Well, since you started that, did that
12 change at a later point?

13 THE WITNESS: Yes, sir, it did.

14 JUDGE SANDRON: When did it change?

15 THE WITNESS: It's -- I'd say maybe 4 or 5 months after
16 I worked, you know, they start sending me to other different
17 little jobs to do, load the trucks and wrapping pallets, and
18 also picking. And they would send me to other buildings
19 too.

20 JUDGE SANDRON: So did you still do the special labeling
21 or not?

22 THE WITNESS: Yeah, I was doing that. I would do two or
23 three jobs in one day.

24 JUDGE SANDRON: And that was for other companies as
25 well, or just for the same company?

1 JUDGE SANDRON: Thank you.

2 Q. BY MR. HEARNE: So, Mr. Brown, at the time that you were
3 hired as a full-time employee by OHL, were you provided with
4 copies of the Company's handbook and its policies?

5 A. I was.

6 Q. Did you receive a copy of the Company's attendance
7 policy when you started in April of 2013?

8 A. I did.

9 MR. HEARNE: Your Honor, if I might approach?

10 JUDGE SANDRON: Yes.

11 (General Counsel's Exhibit 6 marked for identification.)

12 Q. BY MR. HEARNE: Mr. Brown, I'm going to show you a
13 document that's been marked as General Counsel Exhibit 6.

14 JUDGE SANDRON: Oh, you have it pre-numbered?

15 MR. HEARNE: Yes.

16 JUDGE SANDRON: Yeah. I think, as I said in my
17 prehearing guidelines, I usually don't prefer pre-numbering,
18 as in when you withdraw like I guess 2 to 5, then we have a
19 document out of order. But since you've already done
20 that --

21 MR. HEARNE: Hopefully we'll follow along --

22 JUDGE SANDRON: Right. All right.

23 Q. BY MR. HEARNE: Mr. Brown, did you take a look at this
24 document?

25 A. Yes.

1 Q. Do you recognize this document?

2 A. I do.

3 Q. Is this the attendance policy you were provided at the
4 time that you were hired as a full-time employee in April of
5 2013?

6 A. Yes.

7 JUDGE SANDRON: All right. And Mr. Hearne, remember
8 you've got to paginate --

9 MR. HEARNE: Well, actually, the numbers are -- they're
10 numbered.

11 JUDGE SANDRON: Where are they? On the bottom here?

12 MR. HEARNE: Yes, on the bottom.

13 JUDGE SANDRON: Well, but see, I still like the document
14 to say how many pages there are, because sometimes a page
15 gets detached and then we don't have the full copy. So I
16 ask that on at least the court reporter's copies, you put 1
17 of 3, 2 of 3, and 3 of 3. But you can do that later. But
18 that should be done for all documents. Because I have had
19 cases in the past where even the court reporter's version
20 was incomplete because some of the pages were missing. So
21 that avoids any problem.

22 MR. HEARNE: I will ensure that the -- the rest of the
23 exhibits reflect that.

24 JUDGE SANDRON: Thank you. That would be helpful.

25 MR. HEARNE: Your Honor, I would move for the admission

1 A. Well, after Verdia made her, you know, her morning
2 speech, you know, addressing issues for the day,
3 Mr. Windisch told us that he had some good news for us, and
4 he told us that we are no longer receiving three points for
5 leaving early. We're receiving one point from now on for
6 leaving early.

7 JUDGE SANDRON: And did he say anything else --

8 THE WITNESS: No, sir.

9 JUDGE SANDRON: -- at that time?

10 THE WITNESS: No, sir.

11 JUDGE SANDRON: Did anybody else say anything on the
12 subject?

13 THE WITNESS: No. Everybody was just happy -- because
14 we normally receive three points for leaving early. Now it
15 was going to be one point.

16 Q. BY MR. HEARNE: So -- all right. Now, after this
17 meeting where Mr. Windisch talked about the employees would
18 only be receiving one point for leaving early instead of
19 three, based on your testimony, did you later become aware
20 of situations where employees could receive more than one
21 point for leaving early?

22 A. I did.

23 Q. When did you find out, or when did you discover this?

24 A. About October of 2014.

25 Q. How did you find out about this?

1 A. Because I was asked to sign a written -- another written
2 warning, you know, because you get, you know, points for
3 four, eight, you know, eight points, and I was asked to sign
4 those papers because they stated I had accumulated enough
5 points to sign a written warning.

6 JUDGE SANDRON: Who asked, who asked you --

7 Q. BY MR. HEARNE: Oh, I was going go to say, who told you
8 about that you were receiving a warning notice?

9 A. Verdia Jones.

10 JUDGE SANDRON: And do you want to just finish the
11 foundational aspects for that? Where they were --

12 MR. HEARNE: Right.

13 JUDGE SANDRON: -- and anybody else?

14 Q. BY MR. HEARNE: Where were you when she first told you
15 that you were receiving a warning notice?

16 A. In my workstation.

17 Q. Okay. And when she came to your workstation, what did
18 she tell you?

19 A. She said J, you got to -- she said J, I need to see you
20 after work, because they call me J.B. She said, J, I need
21 to see you after work; you need to sign these papers.

22 Q. Did she have the papers with her when she came to your
23 workstation?

24 A. No. This is a matter you have to do it in her office,
25 to sign a written warning.

1 Q. Okay. She said you need to come --

2 A. Yes.

3 Q. -- did she say when you needed to come see her?

4 A. She said I need to come to her office after work.

5 Q. Okay. Did she tell you anything else at that time?

6 A. No, she just told me that --

7 JUDGE SANDRON: All right. We don't want to get mixed
8 up here on --

9 THE WITNESS: Okay.

10 JUDGE SANDRON: -- so when she came to -- do you
11 remember what time she came to you at the workplace?

12 THE WITNESS: Maybe 9:00 or so, 9:30 that morning,
13 maybe.

14 JUDGE SANDRON: And she told you to come to her office
15 later?

16 THE WITNESS: After work.

17 JUDGE SANDRON: After work? And did you go there that
18 day?

19 THE WITNESS: I did.

20 JUDGE SANDRON: And what time, about, did you see her?

21 THE WITNESS: Maybe 4:50, because we clock out at 4:45.

22 JUDGE SANDRON: And you said that was her office?

23 THE WITNESS: Yes, sir.

24 JUDGE SANDRON: Was anybody else there but the two of
25 you?

1 THE WITNESS: Just me and her.

2 JUDGE SANDRON: And what did she say?

3 THE WITNESS: She just told me I need to sign them
4 papers, and I refused.

5 JUDGE SANDRON: Do we have that document?

6 MR. HEARNE: Yes, Your Honor. I was going to -- I
7 can -- it would be out of sequence. I was going to
8 introduce --

9 JUDGE SANDRON: Well, it's up to you. If you want to --

10 THE WITNESS: Yeah.

11 JUDGE SANDRON: -- introduce it later, that's fine, as
12 long as we --

13 MR. HEARNE: Okay. I'll go -- I can go ahead and
14 introduce this particular warning.

15 JUDGE SANDRON: As long as we get it in the record.

16 MR. HEARNE: Yes.

17 JUDGE SANDRON: We're out of order anyway already.

18 MR. HEARNE: Right. Yes, Your Honor.

19 I'm showing you a document that's marked General Counsel
20 Exhibit 11.

21 (General Counsel's Exhibit 11 marked for identification.)

22 JUDGE SANDRON: And again, I think you need to say 1 of
23 1.

24 MR. HEARNE: I'm sorry.

25 JUDGE SANDRON: But we'll let you do that later.

1 Q. BY MR. HEARNE: Mr. Brown, take a look at this document.
2 Do you recognize this document?

3 A. I do.

4 Q. And is this the Employee Attendance Notice, Second
5 Written Warning that you were shown by Verdian Jones on the
6 day you're discussing?

7 A. Yes, it is.

8 Q. And this is dated 10/15/2014?

9 A. Yes, sir.

10 MR. HEARNE: Your Honor, I'd move for the admission of
11 General Counsel Exhibit 11.

12 JUDGE SANDRON: Any objections?

13 MR. BODZY: No objection.

14 JUDGE SANDRON: General Counsel Exhibit 11 is received.
15 (General Counsel's Exhibit 11 received in evidence.)

16 JUDGE SANDRON: Did you ever receive a first written
17 warning for attendance? Because it says second written
18 warning.

19 MR. HEARNE: I was going to be --

20 JUDGE SANDRON: All right.

21 MR. HEARNE: There is a sequence I was going to have him
22 go through.

23 JUDGE SANDRON: All right. Go ahead. I'll let you
24 cover that. Go ahead.

25 MR. HEARNE: I was going to come back, I was going to

1 come back to those.

2 JUDGE SANDRON: That's fine. Go ahead.

3 MR. HEARNE: I'm sorry, Your Honor.

4 JUDGE SANDRON: No, you go ahead with your presentation,
5 as long as we --

6 MR. HEARNE: Okay.

7 JUDGE SANDRON: -- get a full record.

8 MR. HEARNE: Okay. Was General Counsel Exhibit 11 -- I
9 had moved for it to be admitted?

10 MR. BODZY: No objection.

11 JUDGE SANDRON: I think it's already been admitted.

12 MR. HEARNE: Okay.

13 JUDGE SANDRON: Did you have any other discussion with
14 her that you recall on that date?

15 THE WITNESS: I did.

16 JUDGE SANDRON: Okay. What did you say, and what did
17 she say?

18 THE WITNESS: Well, when she came to my workstation at
19 around 9:30 and told me that I would have to meet with her
20 after work, I finished doing my work at my station and then
21 I went to her desk, not her office. I went to her desk in
22 the building and asked, you know, now I could talk to her
23 because I was through doing my work. So I asked her what
24 was going on with this, and she told me that Ms. Lisa
25 Johnson in HR told her that she would have to give me four

1 points for those 2 days. And I asked her could I go and
2 talk with Ms. Lisa, and she gave me permission to.

3 JUDGE SANDRON: All right --

4 Q. BY MR. HEARNE: And did you go speak with Ms. Johnson
5 that day?

6 JUDGE SANDRON: All right. Well, I think we got to
7 cover these intervening discussions. So, and for the record
8 Johnson is in the complaint, J-o-h-n-s-o-n.

9 THE WITNESS: Yes, sir.

10 JUDGE SANDRON: And L-i-s-a, first name. So when you
11 spoke to Ms. Jones at her desk, not her office, about what
12 time did you see her?

13 THE WITNESS: That was about maybe 10:15 maybe.

14 JUDGE SANDRON: And was anyone else in the immediate
15 area when you spoke to her?

16 THE WITNESS: Yeah, they was, but not, no -- they wasn't
17 tuned in, you know, they wasn't listening.

18 JUDGE SANDRON: And then when she came to your desk, was
19 anybody -- when she came to your workstation originally that
20 day, was anyone else in the immediate vicinity?

21 THE WITNESS: Maybe one other person, because that's
22 my -- I'm like the only person that does the special
23 labeling. Every now and then, they have somebody else that
24 work with me.

25 JUDGE SANDRON: Do you recall anybody specifically?

1 THE WITNESS: No, I don't.

2 JUDGE SANDRON: And you said you went to see
3 Ms. Johnson?

4 THE WITNESS: Yes, sir.

5 JUDGE SANDRON: And what time did you go see her?

6 THE WITNESS: About 10:15. Oh, you know, Ms. Johnson.
7 That was about 10:20 because it didn't take me long to get
8 permission from Ms. Jones to see Ms. Johnson.

9 JUDGE SANDRON: All right. Do you want to cover that
10 then, Mr. Hearne?

11 MR. HEARNE: Right.

12 Q. BY MR. HEARNE: That when you went to Ms. Johnson's
13 office, is that -- which of the buildings is her office in?

14 A. The same building Fiskars in.

15 Q. 5510 building?

16 A. 5510, yeah.

17 Q. When you went up to her office, were you able to meet
18 with her that day?

19 A. I was.

20 Q. And when you met with her, where did you meet with her?

21 A. In her office.

22 JUDGE SANDRON: All right. Was anybody else there but
23 the two of you?

24 THE WITNESS: No, sir. Just me and her.

25 JUDGE SANDRON: And --

1 Q. BY MR. HEARNE: When you went in to speak with her, did
2 you tell her -- what did you tell her? Did you ask if she
3 would speak with you?

4 JUDGE SANDRON: Well, maybe starting from the beginning,
5 can you tell us who said what once you were in there?

6 THE WITNESS: I walked right in there, asked her, you
7 know, what was going on with these, with the points. Well,
8 I go ahead and ask, and I said when did they change leaving
9 early to two points -- I mean, from one point to two points.

10 Q. BY MR. HEARNE: And what was her response?

11 A. She said they stated it to us in some United Way meeting
12 or something, you know, some meeting we had in the break
13 room. And I --

14 JUDGE SANDRON: Go ahead.

15 THE WITNESS: -- I said I don't remember that. I said,
16 I can go down on the floor and get every employee on that
17 floor down there, and they'll tell you that nobody knows
18 about -- you know, because they changed it from one point --
19 I mean, from three points to one point in April. In just
20 that same year in October, all of a sudden it's two points.
21 And I told her that nobody's aware of that. And so when she
22 told me that they stated that in a meeting, and she said we
23 have it on paper. And I said, well, show that to me.

24 Q. BY MR. HEARNE: Did she show you -- did she show you any
25 document at that time?

1 A. She went to a file cabinet and she pulled up the, she
2 pulled up the attendance policy, and she said it says right
3 there. And I was sitting over there in a chair.

4 JUDGE SANDRON: All right.

5 Q. BY MR. HEARNE: But did she show it to you in that
6 meeting?

7 A. She showed me an attendance policy, yes.

8 Q. Okay.

9 MR. HEARNE: And I'm going to ask -- if I may approach?

10 JUDGE SANDRON: Yes.

11 (General Counsel's Exhibit 7 marked for identification.)

12 Q. BY MR. HEARNE: I'm going to show you a document that's
13 marked as General Counsel Exhibit 7, and this is a three-
14 page document.

15 JUDGE SANDRON: And remember you got to put 1 of 1, 1 of
16 3 --

17 MR. HEARNE: I got to --

18 JUDGE SANDRON: -- 2 of 3. It's just better to have
19 that done.

20 MR. HEARNE: Okay. I thought since it was -- I did the
21 three pages on the front, but the pages are actually
22 numbered on here. I can get those corrected for the --

23 JUDGE SANDRON: Yes. For the official version. Like I
24 said, it's good to have it just --

25 MR. HEARNE: Right.

1 JUDGE SANDRON: -- routinely done.

2 MR. HEARNE: Yes, Your Honor. I apologize. I think I
3 misunderstood when, how much detail I needed to put on
4 there. I apologize for that.

5 JUDGE SANDRON: I like to -- I think it's in my
6 prehearing guidelines, but --

7 MR. HEARNE: Right. I think I misunderstood what --

8 JUDGE SANDRON: That's all right.

9 MR. HEARNE: -- what it was.

10 JUDGE SANDRON: You can do that at a later time.

11 MR. HEARNE: Okay.

12 Q. BY MR. HEARNE: Mr. Brown, if you can take a look at
13 this document that's labeled OHL attendance policy? Do you
14 recognize this document?

15 A. I do.

16 Q. Is this the document Ms. Johnson showed you on that day
17 you went to, you spoke with her in her office?

18 A. It is.

19 MR. HEARNE: Your Honor, I would move for the admission
20 of General Counsel Exhibit 7.

21 MR. BODZY: No objection.

22 JUDGE SANDRON: General Counsel Exhibit 7 is received.
23 (General Counsel's Exhibit 7 received in evidence.)

24 JUDGE SANDRON: Did you have any further discussion with
25 Ms. Johnson concerning this?

1 THE WITNESS: I did.

2 JUDGE SANDRON: Go ahead and tell us what you said and
3 what she said.

4 THE WITNESS: Well, when she pulled this paper up out of
5 the file cabinet and she said it says it right here, and I
6 was sitting over there, and she took it to put the paper
7 back in the file cabinet, and I asked for that paper.
8 That's how I got the attendance policy.

9 JUDGE SANDRON: So you asked for a copy?

10 THE WITNESS: I asked for it. And she gave me the one
11 she had in her hand. But when I -- so when I sat there and
12 read it, I said, Ms. Lisa, I said it says right here clear
13 as day, if you leave early without supervisor approval, it
14 says one point. And she would not acknowledge that. She
15 kept reading the absent part, the first line, about where it
16 says you receive two points for, you know, for leaving
17 early. And she never would read the leave early line; she
18 just kept reading the absent line.

19 Q. BY MR. HEARNE: And when you say the absence line, which
20 words are you, which words are you saying that she was
21 reading to you?

22 A. A absence is an employee's failure to report to work as
23 scheduled after missing over 2 hours of the workday is two
24 points.

25 Q. Is that the specific language she read to you?

1 A. It is.

2 Q. And when she read, after -- when Ms. Johnson read that
3 language to you, did you say anything in response to her?
4 And if so, what did you say?

5 A. I did. I was in disbelief, and I went back in my -- and
6 I just kept saying to her, I said, Ms. Lisa, I said, I said
7 read this line, the third line. And she would not read it
8 at that time. So at that time, that's when I asked can I go
9 and talk to Mr. Phil.

10 Q. And when you say Mr. Phil, who are you referring to?

11 A. Phil Smith.

12 Q. Okay. And why were you asking to speak with Phil Smith?

13 A. Because me and him have a good relationship, and he's
14 over them.

15 MR. HEARNE: And for the record, Phil Smith, as it's
16 listed in the complaint, his first name is P-h-i-l, last
17 word -- the last name is S-m-i-t-h.

18 Q. BY MR. HEARNE: And when you asked to speak with Phil
19 Smith, did Ms. Johnson permit you to do that?

20 A. She did.

21 Q. Did you attempt to speak with Mr. Smith that day?

22 A. I did.

23 Q. Did you speak with him?

24 A. I did.

25 Q. Where were you when you spoke with him?

1 A. I was coming to his building, and he was coming to our
2 building, and we crossed paths in the parking lot.

3 Q. And when you say he?

4 A. Mr. Phil was coming to --

5 Q. To --

6 A. -- to my building, to the --

7 Q. Is his office in the 5540 building?

8 A. It is.

9 Q. So you encountered him in the parking lot?

10 A. I did.

11 Q. And this is a parking lot that's in between the two
12 warehouses?

13 A. It is.

14 Q. And when you spoke with --

15 JUDGE SANDRON: All right. What time did you run into
16 him in the parking lot?

17 THE WITNESS: I was up at Ms. Lisa's office maybe 10 or
18 15 minutes going back and forth with her, so it might've
19 been 10:40, about 10:40 when I crossed his path.

20 JUDGE SANDRON: So all of these conversations about
21 which you're talking, they occurred before you saw Ms. Jones
22 in her office later in the day?

23 THE WITNESS: Yes, sir.

24 Q. BY MR. HEARNE: And when you spoke with Phil Smith, was
25 anybody else present for that conversation or around?

1 A. No, sir.

2 Q. Okay. And when you encountered Mr. Smith, did you ask
3 to speak with him?

4 A. Yes, I did.

5 Q. And did he agree to --

6 JUDGE SANDRON: Well, who said what when you encountered
7 him?

8 THE WITNESS: I immediately walked up to him. I said,
9 Phil, I said I got a issue here. I said, you know, they
10 changed the policy, they changed the policy from three
11 points to one point, and I said I have this attendance
12 policy right here, and it states clear as day, you know,
13 what it says right here. So at that time, Mr. Phil, he read
14 it just as I was reading it. And you know, no disrespect to
15 him, but he looked at me and with a smile, and he said,
16 well, Jermaine, I know it doesn't really say that, but
17 that's what it means.

18 Q. BY MR. HEARNE: And when he said that, what was your
19 response?

20 A. Well, like I said, I didn't want to be confrontational
21 or anything like that, and so I just, I had to take that
22 what he said, and I just, in my mind I said, well, I just --

23 JUDGE SANDRON: Well, again, just tell us what you --
24 what he said.

25 THE WITNESS: I said I'll deal with it later. That's

1 what I said to myself. I didn't say anything to him. I
2 said okay. That's what I said. I said okay.

3 JUDGE SANDRON: All right. Yeah, now it's important
4 that you just tell us, you know, what was actually said --

5 THE WITNESS: Okay.

6 JUDGE SANDRON: -- because otherwise it can be a little
7 bit confusing --

8 THE WITNESS: Okay.

9 JUDGE SANDRON: -- as to whether it was something you
10 were thinking or whether you actually said it.

11 THE WITNESS: Okay. Well, when he said that, I just
12 kind of paused for a minute, and I said okay.

13 Q. BY MR. HEARNE: Okay. And did you and Mr. Smith, did
14 you have any more conversation after that?

15 A. We did.

16 Q. Okay. Was that at the same time?

17 JUDGE SANDRON: But at the same time or later?

18 THE WITNESS: No. It was a few minutes later I saw him
19 in the break room upstairs.

20 Q. BY MR. HEARNE: Okay. So after speaking with -- in that
21 specific conversation with Mr. Smith, after you said okay, I
22 mean, and that conversation ended, where did you go then?

23 A. I went back to the, back to HR, back to Ms. Lisa's
24 office, Ms. Lisa Johnson's office.

25 Q. Okay. And why did you go back to her office?

1 A. To get back into this conversation again.

2 Q. Okay. Was that immediately after speaking with
3 Mr. Smith?

4 A. It was.

5 Q. Was Ms. Johnson still in her office?

6 A. She was.

7 Q. Were you able to speak with her?

8 A. I was.

9 Q. And what happened? Was anybody else there when you
10 spoke with her?

11 A. No. No.

12 Q. Okay. And was this like about how long after you spoke
13 with Mr. Smith? About how many minutes had passed before
14 you went back to speak with her?

15 A. Maybe 4 minutes.

16 Q. Okay. So when you spoke with Ms. Johnson a second time,
17 what did you ask her?

18 JUDGE SANDRON: Well, why? Who said what?

19 THE WITNESS: I was just, I just went to go see because
20 was she going to reconsider?

21 Q. BY MR. HEARNE: Okay. But what did you ask her?

22 JUDGE SANDRON: Okay. But what did you say to her?
23 Right.

24 THE WITNESS: I just basically walked in. I said,
25 Ms. Lisa, I said, you know, are you really going to give me,

1 you know, four points instead of two points, you know, for
2 me leaving early? And she said that's what she has to do.

3 Q. BY MR. HEARNE: And did you have, did you discuss
4 anything else with her in that time?

5 A. No, I didn't.

6 Q. And after you finished speaking with Ms. Johnson, where
7 did you go?

8 A. I was heading back to my workstation.

9 Q. Okay.

10 JUDGE SANDRON: What was that? I don't know -- you
11 know, remember each separate conversation needs a
12 foundation. Did you ask him if anybody else was there?

13 MR. HEARNE: Yes. Yes, Your Honor, I did.

14 JUDGE SANDRON: All right.

15 MR. HEARNE: I did.

16 Q. BY MR. HEARNE: So after you left Ms. Johnson's
17 office -- is her office in -- is there a human resources
18 area?

19 A. It is.

20 Q. Okay. Is that area near the break room in the 5510
21 building?

22 A. It is.

23 Q. Do you actually have to go through the break room in the
24 5510 building after you leave HR?

25 A. You do.

1 Q. Okay. You had testified earlier that you had a second
2 conversation with Phil Smith?

3 A. I did.

4 Q. Where was that conversation?

5 A. In the break room.

6 Q. When did that conversation take place?

7 A. Immediately after I talked with Ms. Johnson and came out
8 of HR into the break room.

9 Q. Was Mr. Smith was in the break room?

10 A. He was.

11 Q. Okay. Did you speak with Mr. Smith?

12 A. I did.

13 Q. Was anybody else there for that conversation?

14 A. No, not -- no, we talked, you know, just only where me
15 and him could hear.

16 Q. Okay. What did you discuss with Mr. Smith?

17 A. I just point out something to him real quick that I
18 hadn't noticed at first. I just said to him, I said, Phil,
19 I said, now how does an employee get two points for missing
20 a day's work and another employee -- at least he came to
21 work. So I said, I was asking him, I said how do you get,
22 what sense does that make for you to come to work and
23 receive two points, and then you don't, you receive two
24 points for not coming to work?

25 And I was just telling him, I said at least the person

1 that came to work and left early, they came to work. And
2 Phil looked at me and he kind of looked at me like, yeah,
3 that doesn't make sense.

4 JUDGE SANDRON: All right. Just --

5 Q. BY MR. HEARNE: You want to -- did he actually --

6 JUDGE SANDRON: -- yeah, just tell us what he said.

7 THE WITNESS: Yeah.

8 Q. BY MR. HEARNE: Did he actually say anything to you in
9 response?

10 A. No. He just kind of gave me a look and a smile like,
11 you know, like that doesn't make sense.

12 JUDGE SANDRON: All right. Well, that --

13 Q. BY MR. HEARNE: That's how you interpreted his look?

14 A. That's how I interpreted. That's how I interpreted.

15 JUDGE SANDRON: All right. You can only tell us what he
16 actually said.

17 MR. HEARNE: Right.

18 THE WITNESS: Okay. Okay.

19 Q. BY MR. HEARNE: So after Mr. Smith did not verbally
20 respond to you, did you say anything else to him?

21 A. No.

22 Q. Okay. Where did you go then?

23 A. Back to my workstation.

24 Q. Okay. Who did you speak with next about your, about
25 this attendance notice, the second written warning?

1 A. Verdia Jones.

2 Q. When did you speak with her about this?

3 A. It was before lunch. Lunch is at 12:00. When I came
4 back to my workstation, I might was in my workstation about
5 20 minutes before I walked back to her desk and then back
6 with this attendance policy now.

7 Q. Okay. So you went back to speak to Ms. Jones, and where
8 was it that you spoke with her?

9 A. At her desk in the back.

10 Q. Okay. When you went back to speak with her at her desk,
11 was anybody else other than you and Ms. Jones present?

12 A. No.

13 Q. And you said this was about 20 minutes after your
14 conversation with Mr. Smith in the break room?

15 A. Yes.

16 Q. When you --

17 JUDGE SANDRON: So this is about 11:00 a.m. roughly?

18 THE WITNESS: Yes, sir.

19 Q. BY MR. HEARNE: So when you went to speak with
20 Ms. Jones, what did you discuss with her? What was said?

21 A. Now I have this attendance policy, and I showed her, you
22 know, what, you know, you know what sense does it make and,
23 you know, at that time, you know, I said -- I told her I was
24 going to fight it. And she said she don't see no reason why
25 I shouldn't fight it.

1 JUDGE SANDRON: Anything else that either you or she
2 said at that time?

3 THE WITNESS: No, sir.

4 Q. BY MR. HEARNE: All right. Did she ask you, in this
5 conversation with her, did she ask you to review and sign
6 the attendance notice?

7 A. No, sir.

8 Q. Okay.

9 JUDGE SANDRON: And I believe he said she presented him
10 in the afternoon.

11 THE WITNESS: Yeah.

12 MR. HEARNE: Oh, okay. I didn't know. I just wanted to
13 make sure just -- whether it was brought up to him at that
14 time.

15 Q. BY MR. HEARNE: So after this conversation with
16 Ms. Jones at her desk, where did you go?

17 A. Back to my workstation.

18 Q. And when was the next conversation you had with someone
19 about the attendance notice?

20 A. Later that day.

21 Q. Okay. Who did you talk to?

22 A. Ms. Jones. Ms. Verdina Jones.

23 Q. And where was this conversation?

24 A. In her office.

25 Q. And about what time was it that this conversation took

1 place?

2 A. About 4:50.

3 Q. Okay. This was after your workday had ended?

4 A. Yes, sir.

5 Q. Okay. And in this conversation, was anybody else
6 present?

7 A. No, sir.

8 Q. Okay. When you spoke with her, what was said in this
9 conversation?

10 A. Pretty much the same thing we was saying at first. I
11 mean, I just told her that I wasn't, I refused to sign

12 JUDGE SANDRON: So when you went in, who started the
13 conversation when you went into her office?

14 THE WITNESS: She did. She handed me the papers.

15 JUDGE SANDRON: This is General Counsel Exhibit 11?

16 THE WITNESS: Yes, sir.

17 Q. BY MR. HEARNE: And this is, she showed you General
18 Counsel Exhibit 11?

19 A. Yes, sir.

20 Q. And did you have a chance to review that?

21 A. I did.

22 Q. And did you agree to sign this document?

23 A. No, I refused.

24 JUDGE SANDRON: I'm going to, for the General Counsel,
25 Mr. Hearne, I just wanted to clarify. In terms, there are a

1 MR. BODZY: -- September or October. I don't know
2 which.

3 MR. HEARNE: Okay. My --

4 JUDGE SANDRON: Well, we can get that later if it's
5 important, the exact date.

6 Q. BY MR. HEARNE: Okay. So you're not sure whether
7 Mr. Brawley was working there --

8 JUDGE SANDRON: Well, I think he's already --

9 MR. HEARNE: Okay then.

10 JUDGE SANDRON: -- said he wasn't sure.

11 MR. HEARNE: Okay.

12 Q. BY MR. HEARNE: Did you ever speak with Mr. Brawley
13 about this second written warning?

14 A. I did.

15 Q. Do you remember what date it was that you spoke with him,
16 about General Counsel 11?

17 A. Not particular, not the date, no.

18 Q. Okay. Do you remember approximately how long after you
19 got General Counsel, after you received General Counsel 11
20 that it was you spoke with him?

21 A. It was less than 2 weeks.

22 JUDGE SANDRON: Okay. So it would've been sometime in
23 October?

24 THE WITNESS: Yes, sir. It's like about 10, probably
25 about 10 days after that situation happened.

1 Q. BY MR. HEARNE: And when you, if you can recall, when
2 you spoke with Mr. Brawley, about how long did you, about
3 how long were you or -- based on your knowledge, how long
4 had he been working for OHL?

5 JUDGE SANDRON: Well, I think --

6 THE WITNESS: I can't say.

7 JUDGE SANDRON: -- well, he said he's not sure, so --

8 THE WITNESS: That was the first day I saw him.

9 JUDGE SANDRON: Right. I don't -- I think he's
10 indicated he can't really say.

11 MR. HEARNE: Okay.

12 Q. BY MR. HEARNE: So when you spoke with Mr. Brawley about
13 this, where was it that you spoke with him?

14 A. Back by the bathrooms in the MacLean account.

15 Q. MacLean account? Okay. And why did you, why were you
16 speaking -- why did you go speak with Mr. --

17 JUDGE SANDRON: Well, I'm not sure that he's -- you're
18 assuming that he went to go see him.

19 MR. HEARNE: Oh, okay.

20 Q. BY MR. HEARNE: The bathrooms, is that MacLean account,
21 is that in the same building as the Fiskars account?

22 A. It is.

23 Q. And how far away from the Fiskars account is the MacLean
24 account?

25 A. Not far. Fifty feet.

1 Q. So when you spoke with Mr. Brawley, were you on your way
2 to the bathroom, or did you go specifically to speak with
3 him?

4 A. No. He was walking around, and somebody pointed him
5 out, then said he's the guy that replaced Ken Ball.

6 Q. And who is Ken Ball?

7 A. He was the operation of, I mean director of operations
8 for --

9 JUDGE SANDRON: And what was --

10 THE WITNESS: -- to my knowledge.

11 JUDGE SANDRON: -- and what was his name?

12 THE WITNESS: Ken Ball. It's --

13 MR. HEARNE: First word is K-e-n. Last name is B-a-l-l.

14 JUDGE SANDRON: So you went to go see him?

15 THE WITNESS: Yes. Somebody pointed him out. He was
16 just making his --

17 JUDGE SANDRON: Yes.

18 THE WITNESS: -- rounds, trying to get familiar with
19 people, and somebody said that's the guy who replaced Ken
20 Ball, so I kind of timed him and waited until he got out of
21 the area of Verdia Jones and Jim Windisch.

22 JUDGE SANDRON: Okay. When you approached him?

23 THE WITNESS: Yes, I did --

24 JUDGE SANDRON: About what time was that?

25 THE WITNESS: I can't -- it was during the workday. I

1 can't think --

2 JUDGE SANDRON: Do you remember morning or afternoon?

3 THE WITNESS: It was morning.

4 JUDGE SANDRON: Anybody else there but the two of you?

5 THE WITNESS: Just me and him.

6 JUDGE SANDRON: All right. And he said what?

7 THE WITNESS: Right. Well, I approached him with this,
8 because I had time to get -- I had one of these in my
9 workstation at this time. The attendance policy --

10 JUDGE SANDRON: You have to say --

11 THE WITNESS: -- the attendance policy.

12 JUDGE SANDRON: Policy.

13 Q. BY MR. HEARNE: You're referring to General Counsel
14 Exhibit 7?

15 A. Yes.

16 JUDGE SANDRON: You remember you got to make sure the
17 record shows what --

18 THE WITNESS: Okay.

19 JUDGE SANDRON: -- you're talking about.

20 THE WITNESS: Well, at this time, like I said, I was the
21 only one who had one of these from the start. Nobody else
22 even had one of these. When I came out of Ms. Lisa --

23 JUDGE SANDRON: All right. Yeah, why don't you just
24 tell us --

25 MR. HEARNE: Right, just --

1 THE WITNESS: Okay. Okay. Anyway, I --

2 JUDGE SANDRON: -- what you said and he said?

3 THE WITNESS: -- I had time to get my attendance policy,
4 and then that's when I caught him back there by the
5 bathroom, and I walked up and I start telling him about my
6 situation.

7 JUDGE SANDRON: All right. What did you say?

8 THE WITNESS: I was telling him that I had received some
9 points for leaving early that I don't supposed to have, and
10 so I pointed it out to him about the leave early line, and
11 that's when he stated to me about, he said he would get back
12 with me, he would see what he can do.

13 Q. BY MR. HEARNE: Did he say who he -- I'm sorry.

14 JUDGE SANDRON: All right. Did you or he say anything
15 else?

16 THE WITNESS: Well, no, not really, just that he'll get
17 back with me.

18 Q. BY MR. HEARNE: And where -- was anything else said in
19 that conversation?

20 A. I mean, he asked me about the points that led up to
21 that, and I told him, I said, well, yeah, you know, I've had
22 previous points before this, but I explained to him that
23 that wasn't, you know, that wasn't the issue. You know, we
24 get points but -- and I explained to him that I'm disputing
25 two points that I don't supposed to have according to this

1 JUDGE SANDRON: Were they involved in the conversation
2 with him --

3 THE WITNESS: No. No, sir.

4 JUDGE SANDRON: -- or just you?

5 THE WITNESS: No, sir. Yes.

6 JUDGE SANDRON: And then after, right after that, he
7 made an announcement he wanted to talk to everybody?

8 THE WITNESS: Yes.

9 JUDGE SANDRON: So -- okay.

10 Q. BY MR. HEARNE: Okay. Were the Fiskars account
11 employees, were they all still in that area from the morning
12 meeting?

13 A. Yeah, they was. This was immediately after the meeting.

14 Q. Okay. What did Mr. Brawley say when he announced that
15 he had wanted to speak with the employees?

16 A. He said, I know everybody has issues about this
17 attendance policy. He said, but we're not going to go on
18 what was previously going on about the one point leaving
19 early. He said we're going to start right now, today, and
20 as of today, from now on, you guys got to stay here for 2
21 hours of the day to receive one point. If you leave before
22 2 hours, you will receive two points. If you stay 2 hours
23 and 1 minute, you'll receive one point.

24 Q. And then when he finished making that statement, did he
25 say anything else?

1 Q. October 21, 2013?

2 A. Okay.

3 Q. Can you see that?

4 A. Yes, I do.

5 Q. Okay. And then there's three -- one January 27, 2014,
6 March 6, 2014, and March 12, 2014 -- where you received one
7 point, and it says late lunch. Do you know what those were
8 for?

9 A. Yes. If you clock in 1 minute after your 45 minutes,
10 you will receive a point for that.

11 MR. HEARNE: Your Honor, I move for the admission of
12 General Counsel Exhibit 10.

13 MR. BODZY: No objection.

14 JUDGE SANDRON: All right. General Counsel Exhibit 10
15 is received.

16 (General Counsel's Exhibit 10 received in evidence.)

17 JUDGE SANDRON: Were you -- did anybody explain to you
18 why -- and this may come up later -- but why you got a final
19 written warning on April 28, 2014 and a second written
20 warning for attendance on October 15th, which was later?

21 THE WITNESS: Well, that's because the points roll off
22 the date that you get them. So if I got points April the
23 20th, they wouldn't roll off until April the 20th the next
24 year.

25 JUDGE SANDRON: All right. So you had more points back

1 in April 28th, you had 13, and then you had 9 later?

2 THE WITNESS: Because some of them fell off and then it
3 -- yeah.

4 JUDGE SANDRON: Yeah, I see.

5 Q. BY MR. HEARNE: Yeah, I was going to ask you -- I'm
6 going to have you look at -- because you still have General
7 Counsel Exhibit 11. That's the October 5, 2015 warning?

8 A. Okay.

9 Q. And that, on this document, it has in the comment
10 section, it has a listing of your points. The first date
11 listed was October 21, 2013 --

12 JUDGE SANDRON: Right. Well, I think the documents
13 speak for themselves. I think we can see that on the
14 General Counsel Exhibit 11, it starts with the one
15 October 21, 2013 on GC-10. But again, the only ones at
16 issue, as I understand, are July 28, 2014 and October 10,
17 2014, for the leaving early, correct?

18 THE WITNESS: Yes.

19 (General Counsel's Exhibit 12 marked for identification.)

20 Q. BY MR. HEARNE: I'm now going to show you a document
21 that's marked as General Counsel Exhibit 12. This is a one-
22 page document entitled Employee Attendance Notice, Jermaine
23 Brown, December 12, 2014. It's a final written warning, 13
24 points. Mr. Brown, do you recognize this document?

25 A. I do.

1 Q. And do you see your handwriting anywhere on this
2 document?

3 A. Yes, in the comments.

4 Q. You're talking about the comments immediately above "I
5 acknowledge having received"?

6 A. Yes.

7 Q. Okay. And is that your signature by those comments?

8 A. Yes.

9 Q. Okay. The comments, there's some additional writing at
10 the bottom of the page under supervisor or manager
11 signature. Is that your handwriting?

12 A. No, it's not.

13 Q. Okay.

14 MR. HEARNE: Your Honor, I move for the admission of
15 General Counsel Exhibit 12.

16 MR. BODZY: No objection.

17 JUDGE SANDRON: General Counsel Exhibit 12 is received.
18 (General Counsel's Exhibit 12 received in evidence.)

19 JUDGE SANDRON: So, again, from what your comments were
20 saying, you disputed the two points on July 28, 2014 and the
21 two points on October 10, 2014?

22 THE WITNESS: Yes, sir.

23 JUDGE SANDRON: And that was your dispute with this
24 warning?

25 THE WITNESS: Yes, sir. According to the attendance

1 policy.

2 (General Counsel's Exhibit 13 marked for identification.)

3 Q. BY MR. HEARNE: And Mr. Brown, I'm going to show you a
4 document marked as General Counsel Exhibit 13.

5 A. Yes.

6 Q. And this is a one-page document entitled Employee
7 Attendance, Jermaine Brown, April 27, 2015, final written
8 warning. Mr. Brown, do you recognize this document?

9 A. I do.

10 Q. And is your handwriting anywhere on this document?

11 A. In the comments section.

12 Q. And this is the comment section -- are you talking about
13 the handwriting above the "I acknowledge having received"?

14 A. Yes, sir.

15 Q. And is that your signature next to it?

16 A. It is.

17 Q. In the comments, you refer to the reason why you're
18 refusing to sign?

19 A. Yes, sir.

20 Q. And it's --

21 JUDGE SANDRON: Well, it speaks for itself.

22 MR. HEARNE: Okay. Your Honor, I move for the admission
23 of General Counsel Exhibit 13.

24 MR. BODZY: No objection.

25 JUDGE SANDRON: General Counsel Exhibit 13 is received.

1 Q. BY MR. HEARNE: Do you remember if you were asked to
2 sign this document?

3 JUDGE SANDRON: Well, maybe you should cover it in the
4 termination interview.

5 MR. HEARNE: Okay. I'll --

6 JUDGE SANDRON: But General Counsel 14 is in the record.

7 Q. BY MR. HEARNE: Mr. Brown, the --

8 JUDGE SANDRON: Well, who told you you were terminated
9 -- or separated?

10 THE WITNESS: It was Jim Windisch, Chris Brawley, and
11 Ms. Lisa Johnson sit in there. I think Chris, it was Chris
12 Brawley.

13 JUDGE SANDRON: And where did you meet with them?

14 THE WITNESS: Well, after being stuck on the highway for
15 about 3 hours, you know, because a 18-wheeler had turned
16 over. When I got to work -- I took like 16 pictures of the
17 traffic backup for like 10 miles. So when I got there, I
18 immediately walked in -- I didn't even clock in. I walked
19 in, and I just showed Ms. Lisa, tried to show her those
20 pictures.

21 JUDGE SANDRON: And what time was that, about?

22 THE WITNESS: It was about 9:45 or 10:00. I was
23 supposed to be into work at 8:00.

24 JUDGE SANDRON: 8:00 a.m.?

25 THE WITNESS: Yes, sir.

1 points that were -- that if he remembers or if he's
2 disputing the other points.

3 JUDGE SANDRON: All right. Well, I think, well,
4 actually I think he already said UA was unexcused absence.
5 That would be for a whole day, right?

6 THE WITNESS: Yes, sir.

7 JUDGE SANDRON: So that covers all of them, but the July
8 1st, where he's testified T, and that's tardy, that you came
9 in late on July 1st?

10 THE WITNESS: Yes.

11 JUDGE SANDRON: Now, all right, well, we have to ask the
12 person who wrote it why -- because there's also by the two
13 points on 10/10 -- it also has T. But he didn't write that.
14 We have to ask --

15 Q. BY MR. HEARNE: Well, Mr. Brown, do you know who wrote
16 out this document, or did you see the person fill out this
17 document?

18 A. Not that I can remember.

19 JUDGE SANDRON: All right. I think just for purpose,
20 for the record, were you called into that meeting or --

21 THE WITNESS: I was.

22 JUDGE SANDRON: And once you were in that meeting, who
23 said -- and about what time was this roughly?

24 THE WITNESS: It's about 10:15, maybe, at this time.

25 JUDGE SANDRON: All right. And just so we have the full

1 record, who said what when you were in the meeting?

2 THE WITNESS: Well, when I walked down and got Chris
3 Brawley, because Lisa told me that she couldn't excuse me
4 unless I talked to a director --

5 JUDGE SANDRON: All right. Why don't you just go right
6 to the termination meeting?

7 THE WITNESS: Okay. So me and Mr. Chris Brawley, we
8 walked upstairs.

9 JUDGE SANDRON: Oh, I see. You got --

10 THE WITNESS: I went downstairs -- I was upstairs before
11 I was talking to Ms. Lisa Johnson. She told me I had to
12 talk to a director to get excused, so I went downstairs and
13 got Chris. Me and him walked back upstairs. He told me to
14 sit in the -- just wait in the break room while he talked to
15 Ms. Lisa. And while I was sitting in the break room, about
16 10 minutes later, Mr. Jim Windisch walked in and went in
17 there, you know, where they were. And so they talked for a
18 minute, and then they called me in there.

19 JUDGE SANDRON: And about what time did they call you
20 in?

21 THE WITNESS: Maybe about 10:30.

22 JUDGE SANDRON: And where was this? This was in the --

23 THE WITNESS: This was in the -- HR office.

24 JUDGE SANDRON: Okay.

25 THE WITNESS: Human resource office.

1 JUDGE SANDRON: Do they have like a conference room or
2 was it her, around her desk area?

3 THE WITNESS: In her desk area, in her office.

4 JUDGE SANDRON: And once you were in there, who said
5 what once you were all there?

6 THE WITNESS: Chris, they just, when I sat down, they
7 just, Chris went to telling me about, you know, the points
8 that I have and that unfortunately they're going to have to
9 let me go. And at that time, I stated to them that I had
10 previously thought about taking this issue to the Union, but
11 I didn't because I thought they was going to reconsider.
12 And I was letting them know that I should have did this, and
13 at that time Jim really just didn't want to talk about
14 anything else. And I was bringing this up about the points.
15 I told him, I said, well, you, I said Chris, you know that I
16 have points that I don't supposed to have. And Jim cut him
17 off and said, well, you know, we're not going to talk about
18 all that today and -- pretty much, you know, you're out of
19 here.

20 JUDGE SANDRON: All right. Well, do you remember
21 anybody else, including you, saying anything?

22 THE WITNESS: Yes. Yes, I was telling --

23 JUDGE SANDRON: Well, tell us, sir --

24 THE WITNESS: Yes. I was telling Chris and Jim about
25 Lisa's behavior about this attendance policy, you know, what

1 previously me and her had been through about this. And I
2 was saying she knows that I don't supposed to have two extra
3 points. And I said, Chris, you know that I don't supposed
4 to have these points, and that's when Jim said, well, we're
5 not going to sit here and talk about any points and
6 attendance policies and things like that. You know, he said
7 it is what it is. That's what he said. That's was his last
8 words. He said it is what it is.

9 And at that time, Chris said, you know, well, Jermaine,
10 you know, we appreciate the work you've done, and he told me
11 a second time, you can take this up with the U.S. Gov if you
12 want to. I won't lose any sleep over it. And that's what
13 he said. And I -- Ms. Lisa handed me my separation papers,
14 and in my mind, well, I was going to take it higher.

15 JUDGE SANDRON: Right.

16 THE WITNESS: So I didn't dispute or argue or nothing --

17 Q. BY MR. HEARNE: Okay. After you were given the
18 separation papers, where did you -- did you speak with
19 anybody else?

20 JUDGE SANDRON: All right. Well, wait. Was that the
21 end of the conversation?

22 THE WITNESS: That was the end of the conversation.

23 JUDGE SANDRON: Now, and you don't remember whether this
24 General Counsel Exhibit 14 was with the separation papers
25 because you said you weren't sure?

1 Ben Brandon?

2 A. Yes, he did.

3 JUDGE SANDRON: And go ahead. You were saying you --

4 THE WITNESS: I was letting him know the issue of me
5 getting stuck on the highway, and I felt like that I
6 shouldn't have got any points that morning for, you know,
7 because, like I said, there was 10 miles, 10 miles worth of
8 traffic backed up. And that was my main issue right there,
9 about not getting those points that day for being stuck on
10 the highway.

11 And he told me he would get back with me, and he never
12 got back with me. And he never got back with me until after
13 I had two hearings with the unemployment office --

14 JUDGE SANDRON: All right. Well, why don't you just --
15 do you remember any -- in that particular conversation?

16 THE WITNESS: Well, yeah. He listened to me, and I
17 guess I addressed my situation wrong because he, you know --

18 JUDGE SANDRON: No, no, no. Don't speculate --

19 Q. BY MR. HEARNE: Just specifically, what you said, what
20 he said.

21 JUDGE SANDRON: Yeah. Do not --

22 Q. BY MR. HEARNE: Not what you think, what you thought he
23 was saying.

24 A. Well, basically he just told me, you know, he'll look
25 into it. You know, he wasn't too excited or nothing. He

1 (Off the record from 12:06 p.m. to 12:23 p.m.)

2 JUDGE SANDRON: Okay. Back on the record for cross-
3 examination.

4 CROSS-EXAMINATION

5 Q. BY MR. BODZY: Mr. Brown, I'm Ben Bodzy. I represent
6 OHL. I have some questions for you. You began working at
7 OHL in April of 2013, right?

8 A. Yes, sir.

9 Q. And when you started in OHL, you were given the
10 attendance policy, right?

11 A. Yes, sir.

12 Q. And the attendance policy says that once you accumulate
13 a certain number of points, your attendance points, your
14 employment would be terminated, right?

15 A. Yes, sir.

16 Q. So you knew that from the beginning of your employment?

17 A. Yes.

18 Q. Okay. And that attendance policy changed in October of
19 2013, didn't it?

20 A. I'm not sure when -- that's what it said on the date,
21 that it changed in -- October '13.

22 Q. Okay. Well, you attended a meeting where the new
23 attendance policy was rolled out or announced to employees,
24 didn't you?

25 A. In '14 of October.

1 Q. BY MR. BODZY: Okay. So it's your testimony then that
2 the change in the attendance policy was conveyed to you
3 verbally in October '13 before you signed the
4 acknowledgement?

5 A. Nope. They didn't -- in October '13, they didn't say
6 anything about one points, the leaving early, from three
7 points to one point. I really don't know what they
8 discussed that morning about attendance policy, but all I
9 know, we signed that right there in October.

10 Q. You don't recall what was discussed about the attendance
11 policy in that date?

12 A. In October, no.

13 JUDGE SANDRON: Did you sign this on the date of that
14 meeting or --

15 THE WITNESS: Yes -- yes, sir.

16 JUDGE SANDRON: But you don't remember what was said?

17 THE WITNESS: No, sir.

18 Q. BY MR. BODZY: Do you recall if Mr. Verdia Jones was at
19 that meeting?

20 A. She was.

21 Q. And she's commonly referred to as Ms. V, right?

22 A. Yes, sir.

23 Q. Okay. So on July 28, 2014, you got two points for
24 leaving early, right?

25 A. Yes, sir.

1 Q. Okay. And you don't dispute that you left within the
2 first 2 hours of the workday that day, do you?

3 A. An hour and 45 minutes I stayed.

4 Q. Okay. That's how long you were there that day, right?

5 A. Yes, sir.

6 Q. Okay. And on October 10th you got two points for
7 leaving early that day, right?

8 A. Yes. Yes.

9 Q. Okay. And you don't dispute that you left before you'd
10 worked 2 hours that day, do you?

11 A. No.

12 Q. Okay. And in fact, in October, you were feeling sick,
13 right? Isn't that the reason you left?

14 A. Yes. Yes.

15 Q. Okay. You had some type of stomach bug?

16 A. Yes.

17 Q. Okay. And you told Ms. V that you had this stomach bug,
18 right?

19 A. Yes.

20 Q. Okay. And she told you to try to make it to 10:00,
21 didn't she?

22 A. Nope.

23 Q. Okay. She never said that?

24 A. No. And I wasn't aware of those points that I
25 had gotten.

1 JUDGE SANDRON: Well, yeah, that's fine, but just move
2 on to your --

3 THE WITNESS: Okay. Okay.

4 JUDGE SANDRON: Mr. Hearne will have an opportunity to
5 ask you --

6 THE WITNESS: Okay.

7 JUDGE SANDRON: -- additional questions on redirect if
8 he feels they're --

9 THE WITNESS: Okay.

10 JUDGE SANDRON: -- warranted.

11 Q. BY MR. BODZY: All right. So when, in October when you
12 first became aware that you were going to get written up for
13 attendance points, I think you testified that one of the
14 people you spoke with that day was Ms. Johnson, right?

15 A. Yes, sir.

16 Q. Okay. And when you spoke with Ms. Johnson, I think on
17 direct you said that she mentioned something about a United
18 Way meeting?

19 A. Yes. A United Way meeting, yes.

20 Q. Okay. Tell me again what she said about the United Way
21 meeting?

22 A. She told me that they announced to us about the two
23 points for leaving early in that meeting.

24 Q. Okay. And she said it was a United Way meeting?

25 A. I'm not for sure what meeting she said, but it was one

1 of those meetings we had in the break room.

2 Q. Did you give an affidavit to the NLRB in this case, to
3 Mr. Hearne?

4 A. An affidavit?

5 Q. A written statement that you signed?

6 A. Did I sign about what?

7 Q. A typed -- here, I'll show it to you.

8 A. Okay. Yeah, yeah. Yes. Yes.

9 Q. Okay.

10 JUDGE SANDRON: And since I think there were more than
11 one, so maybe --

12 MR. BODZY: Oh, okay.

13 JUDGE SANDRON: -- you should specify which of the ones
14 you're showing? We don't need to mark it yet, but --

15 MR. BODZY: Okay.

16 JUDGE SANDRON: -- just so we have it, clear which
17 affidavit it is?

18 MR. BODZY: Sure. So may I approach the witness?

19 JUDGE SANDRON: Yes.

20 Q. BY MR. BODZY: Mr. Brown, did you give a confidential
21 witness affidavit to the NLRB that you signed on December
22 14, 2015?

23 A. Yes.

24 Q. That's your signature?

25 A. Yes.

A F T E R N O O N S E S S I O N

JUDGE SANDRON: Back on the record.

Mr. Hearne, do you have your next witness?

MR. HEARNE: Yes, Your Honor. Troy Hughlett.

JUDGE SANDRON: Hi, sir. If you'll please come up, I'll swear you in. Please raise your right hand.

(Whereupon,

TROY HUGHLETT

was called as a witness by and on behalf of the General Counsel and, after having been duly sworn, was examined and testified as follows:)

JUDGE SANDRON: If you'll come up to the witness stand to be seated? If you could state and spell your full and correct legal name and provide us with an address, either residence or work, whichever one you prefer.

THE WITNESS: My full name is Troy Hughlett. Troy is T-r-o-y, Hughlett, H-u-g-h-l-e-t-t. My residence 1885 Cloverdale Drive, Memphis, Tennessee 38114.

JUDGE SANDRON: Thank you.

DIRECT EXAMINATION

Q. BY MR. HEARNE: Okay. Mr. Hughlett, are you currently employed by Ozburn-Hessey Logistics?

A. Yes, sir.

Q. And how long have you worked for the Employer?

A. It'll be 8 years September.

1 Q. And to which account are you currently assigned to work?

2 A. Fiskars.

3 Q. How long have you worked in the Fiskars account?

4 A. Since I've been there. Eight years.

5 Q. What is your position in Fiskars?

6 A. Operator 2.

7 Q. And as operator 2, what do you do?

8 A. It's multiple --

9 JUDGE SANDRON: Can we go off the record just a minute?

10 (Off the record.)

11 Q. BY MR. HEARNE: What do you do as an operator 2?

12 A. Operator 2 consists of many things that -- any job
13 function that they need me to do, really, but my main thing
14 I do now, at this time, is replenishments.

15 Q. Replenishments? What does that mean?

16 A. Pull a product down from reserve locations.

17 Q. And what do you do with the product?

18 A. Put them in a active location so the material handlers
19 will be able to pick the product.

20 Q. So when they run low of the product where the pickers
21 work, you bring more --

22 A. Yes.

23 Q. -- to use?

24 A. Um-hum.

25 Q. And who is the supervisor over the Fiskar account?

1 JUDGE SANDRON: And Mr. Brown has testified about the
2 details.

3 Q. BY MR. HEARNE: Did you ever hear, were you ever told by
4 any manager or supervisor with OHL that employees can
5 receive more points in certain situations if they -- when
6 leaving early?

7 A. It wasn't until after the situation with Jermaine, and
8 my supervisor at the time, Verdiana Jones, she said that we
9 could receive that, which she wasn't informed at all about
10 the --

11 MR. GOODWIN: Object to this speculation --

12 JUDGE SANDRON: Is that what she said? I mean --

13 THE WITNESS: Yes.

14 JUDGE SANDRON: Is this in a group meeting, or how did
15 you happen to talk --

16 THE WITNESS: No. It was me, Jermaine Brown, I got a
17 another partner Quin Waller. We was all working in the
18 back. We got a labeling our account -- I mean, our area and
19 our account that we do special labeling.

20 JUDGE SANDRON: Yeah.

21 THE WITNESS: It's like a table, and there'd be multiple
22 guys standing around, and it was brought up back then.

23 JUDGE SANDRON: Well --

24 MR. HEARNE: Well --

25 JUDGE SANDRON: -- why don't you lay a foundation for

1 MR. HEARNE: Well, let me --

2 JUDGE SANDRON: Because if he's just talking to other
3 employees, then it really doesn't --

4 MR. HEARNE: Let me back up for a moment, and I want to
5 ask these questions.

6 Q. BY MR. HEARNE: Before you had received any information
7 from Jermaine Brown --

8 A. Yes.

9 Q. -- had you ever had a situation where you had left work
10 early within the first 2 hours after reporting for work?

11 A. Yes.

12 Q. Do you recall approximately when those -- was there more
13 than one occasion?

14 A. It was twice.

15 Q. Twice. Do you remember approximately when those took
16 place?

17 JUDGE SANDRON: Well, are we -- you're going to get into
18 his -- I mean, he's not alleged.

19 MR. HEARNE: No.

20 JUDGE SANDRON: And you're not claiming discrimination
21 or protective --

22 MR. HEARNE: No, no.

23 JUDGE SANDRON: So I'm not sure it makes any difference.

24 MR. HEARNE: It's a question about whether there, the
25 question about when the, when this particular rule actually

1 was implemented as opposed to the actual attendance
2 policy --

3 JUDGE SANDRON: Okay.

4 MR. HEARNE: -- is in question.

5 JUDGE SANDRON: * All right. Go ahead. For that purpose,
6 I'll allow it.

7 Q. BY MR. HEARNE: Do you remember approximately when these
8 two occasions, when those happened?

9 A. Not a exact time or date, but it was after the change
10 was --

11 Q. You're talking about after the new attendance policy
12 went into effect?

13 A. Yes.

14 JUDGE SANDRON: The announcement?

15 THE WITNESS: Yeah. It was way after that.

16 JUDGE SANDRON: The announcement, you indicated, was
17 October 1st approximately --

18 THE WITNESS: Yeah.

19 JUDGE SANDRON: --- or October 2013?

20 THE WITNESS: Um-hum.

21 JUDGE SANDRON: So was this, would you say, was it still
22 in 2013 or --

23 THE WITNESS: No, it was in '14.

24 JUDGE SANDRON: You remember what times of year they
25 were?

1 JUDGE SANDRON: So you found out later that you got a
2 point for that incident?

3 THE WITNESS: Um-hum.

4 JUDGE SANDRON: You got to say yes.

5 THE WITNESS: Yes.

6 Q. BY MR. HEARNE: Who provided you with that information?

7 A. My supervisor, Verdiana Jones.

8 Q. And are you familiar with an individual by the name of
9 Chris Brawley?

10 A. Yes.

11 Q. And do you know what his position is?

12 A. He's the director, I think, is --

13 Q. Do you recall ever hearing Mr. Brawley talk about points
14 employees can receive for leaving early?

15 A. Yes.

16 Q. Where was this that you heard him speak?

17 A. It was in a meeting, a morning meeting we had. We
18 always have them. When we have a meeting, be back by our
19 receiving area in our account, and that's where we hold all
20 our meetings at right there, and he was at that, in that
21 area, him and -- they were standing there waiting for
22 everybody to get back, so they had a meeting.

23 Q. These morning meetings, are they held every workday?

24 A. We have pre-shift every day.

25 Q. Every day?

1 A. Every day, yeah.

2 Q. Was the meeting you're talking about a pre-shift meeting
3 or a morning meeting?

4 A. It was a morning meeting.

5 Q. What's the difference between a pre-shift and a morning
6 meeting?

7 A. I consider anything before 12:00 a morning meeting.
8 Pre-shift is just before we get the work, let us know about
9 what all we have for that day, which is in work. And
10 basically that's it, and how we're doing at work.

11 JUDGE SANDRON: So just to clarify, so the regular --

12 THE WITNESS: Pre-shift.

13 JUDGE SANDRON: -- pre-shift meeting is held daily?

14 THE WITNESS: Daily, yeah.

15 JUDGE SANDRON: And you say there's sometimes other
16 morning meetings, but they're not pre-shift?

17 THE WITNESS: This wasn't no mandated or regular meeting
18 that we had. It was just like another popup meeting. He
19 just --

20 JUDGE SANDRON: Oh, I see.

21 THE WITNESS: Yeah. It just some popup that we're going
22 to have a meeting.

23 JUDGE SANDRON: And they call a meeting --

24 THE WITNESS: Yeah.

25 Q. BY MR. HEARNE: How did you find out about this meeting?

1 A. We came back there -- I want to say it was after my --
2 we have a 10:30 break, and after our 10:30 break, we came
3 back on the floor, and they was waiting in the area, like we
4 could have a meeting.

5 Q. Who is they?

6 A. Verdia, Jim, and Chris.

7 Q. Did any of them say they wanted to meet with the
8 employees?

9 A. Verdia -- Ms. Jones said, okay, we could have meeting.
10 Just like we all -- as we walking back, she stopped us right
11 here where we usually have our meeting and waited until
12 everybody got there so we can have the meeting.

13 Q. Who --

14 JUDGE SANDRON: What was, and as best as you remember,
15 when was this meeting? When?

16 THE WITNESS: Month, time, day?

17 JUDGE SANDRON: Day, as best as you remember, when did
18 this take place?

19 THE WITNESS: I can't recall, sir.

20 JUDGE SANDRON: Well, was this before -- you mentioned
21 you spoke with -- let's see, I think it was Ms. Jones. You
22 spoke with her twice about your leaving early?

23 THE WITNESS: Um-hum.

24 JUDGE SANDRON: Was this meeting with Mr. Brawley --

25 THE WITNESS: Oh, it was after that.

1 JUDGE SANDRON: After your conversations with her?

2 THE WITNESS: Yeah. After my situation.

3 JUDGE SANDRON: And was this before or after you talked
4 to Mr. Jones --

5 THE WITNESS: Mr.?

6 JUDGE SANDRON: Oh, Brown, excuse me. Mr. Brown?

7 THE WITNESS: Was it before?

8 JUDGE SANDRON: This meeting with Mr. Brawley, where you
9 say that he made these, there were statements about the
10 attendance, was that before or after Mr. Brown told you
11 about his getting --

12 THE WITNESS: Oh, that was after.

13 JUDGE SANDRON: This meeting with Mr. Brawley?

14 THE WITNESS: Yeah, the meeting with Mr. Brawley?

15 JUDGE SANDRON: Yes.

16 THE WITNESS: It was after the situation with Mr. Brown.

17 Q. BY MR. HEARNE: And when the meeting started, which of
18 the managers spoke?

19 A. Only person that spoke was Chris Brawley, the director.

20 Q. Well, to the best of your recollection, what do you
21 remember him saying?

22 A. He was stating something about the leave early, before 2
23 hours, was two points, we was talking about. And I was
24 like, no, that wasn't in the handbook.

25 Q. Hold on. Let me -- so --

1 JUDGE SANDRON: Just make sure you tell us what was
2 said.

3 THE WITNESS: Well, he said, okay --

4 JUDGE SANDRON: Yeah, and if you said anything.

5 THE WITNESS: Okay.

6 JUDGE SANDRON: Or anybody else said anything, you can
7 tell us.

8 THE WITNESS: Okay.

9 Q. BY MR. HEARNE: So what, specifically, do you remember
10 him saying?

11 A. That the leave early would be two points and that he had
12 a talk with Ms. Johnson, our HR lady, about the situation.

13 Q. Did he say that --

14 JUDGE SANDRON: Well, did he say anything else?

15 Q. BY MR. HEARNE: Did he say anything else beyond that?

16 A. No. Not that I recall.

17 JUDGE SANDRON: Did anybody -- any employees say
18 anything?

19 THE WITNESS: We, yeah, me and a couple other my
20 employees -- coworkers --

21 Q. BY MR. HEARNE: Well, what did you say?

22 A. I said, no, that's not right because it isn't in the
23 handbook, which is I'm looking at right here. It says leave
24 early is one point. That was it.

25 Q. When you say -- you're pointing to a document.

1 A. Yeah.

2 Q. Is that a document that's marked General Counsel
3 Exhibit 7?

4 A. Yeah. GC?

5 Q. GC --

6 A. Yeah.

7 Q. -- GC-7?

8 A. Yes.

9 Q. And that's the --

10 JUDGE SANDRON: Well, I --

11 Q. BY MR. HEARNE: -- attendance policy dated October 1,
12 2013?

13 A. Yes.

14 Q. All right. Okay. When you made that comment, did
15 Mr. Brawley or any of the other managers respond?

16 A. No.

17 JUDGE SANDRON: And you said someone else made a
18 statement?

19 THE WITNESS: A couple more of my coworkers. They were
20 saying the same thing I was saying.

21 JUDGE SANDRON: Do you remember who they were?

22 THE WITNESS: Quin Waller, and we got another -- we call
23 Jermaine Brown J.B., but we have two J.B. The other J.B. is
24 name James Bailey.

25 JUDGE SANDRON: What's his last name?

1 THE WITNESS: Bailey.

2 JUDGE SANDRON: Oh, Bailey?

3 THE WITNESS: Bailey.

4 JUDGE SANDRON: I think we already have that on the
5 record. And what -- do you recall what they said?

6 THE WITNESS: No, they said the same thing I said. No,
7 that's not right, you know, because it ain't in the
8 handbook.

9 JUDGE SANDRON: And did Mr. Brawley reply to them?

10 THE WITNESS: Not that I remember. I can't recall.

11 Q. BY MR. HEARNE: Did Ms. Jones or Mr. Windisch say
12 anything in response to them?

13 A. No.

14 Q. Do you remember anything else that was said in the
15 meeting?

16 JUDGE SANDRON: By anyone at that meeting?

17 THE WITNESS: No. Not that I remember.

18 Q. BY MR. HEARNE: After this meeting -- strike that.
19 Actually, I want to back up for a second.

20 Earlier, you started to talk about a conversation you
21 had with Verdia Jones about the days that you had left
22 early, you had clocked out early?

23 A. Yes.

24 Q. Do you remember when that conversation took place?

25 A. Like what date or --

1 MR. HEARNE: Okay. With that, the General Counsel does
2 not have any additional questions at this time.

3 MR. GOODWIN: Your Honor, can we see the Jencks
4 statements, please?

5 MR. HEARNE: Yes. We have one affidavit dated July 1,
6 2016, and it's three pages of text and a fourth page, which
7 is a signature page.

8 MR. GOODWIN: Okay.

9 JUDGE SANDRON: We'll give counsel for the Respondent a
10 few minutes to look at that over.

11 We'll go off the record for a few minutes.

12 (Off the record from 2:33 p.m.)

13 JUDGE SANDRON: Cross-examination.

14 CROSS-EXAMINATION

15 Q. BY MR. GOODWIN: Mr. Hughlett, Mr. Goodwin. I'm an
16 attorney for OHL.

17 A. How you doing?

18 Q. Let's go back and talk about the rollout meeting called
19 in October 2013, where there was discussion of a new
20 attendance policy.

21 A. Okay.

22 Q. The employees were handed the new attendance policy at
23 that time, weren't they?

24 A. Yeah. Yes, sir.

25 Q. That's GC Exhibit 7, the new handbook policy. All the

1 Q. Did she allow for questions from the employees at the
2 rollout meeting?

3 A. Not that I recall. I can't remember.

4 Q. You don't recall any --

5 A. At the meeting?

6 Q. At the rollout meeting, when she hands out the new
7 policy?

8 A. Oh, I can't recall, no.

9 Q. You didn't ask any questions at that meeting?

10 A. Did I ask any questions?

11 Q. Yeah. Did you ask any questions at that, in that
12 meeting?

13 A. No, I didn't ask any questions.

14 Q. Okay. You didn't hear anybody ask any questions?

15 A. Not that I recall.

16 Q. And you say there was no mention of the fact that if you
17 left early, before 2 hours, you'd get two points?

18 A. Not at all.

19 Q. Now, I wasn't clear on your testimony about your
20 situation of having left early. But did you do that once or
21 twice?

22 A. I did it twice.

23 Q. Okay. And what time spans, do you recall?

24 A. I can't recall. It was a couple months apart though.

25 Q. I'm sorry.

1 JUDGE SANDRON: Well, give me time of his conversations
2 or times that he left early.

3 Q. BY MR. GOODWIN: I'm sorry. The times you left early,
4 do you remember when they were?

5 A. I don't remember the exact times.

6 JUDGE SANDRON: Do you mean the times of day or the
7 times of --

8 MR. GOODWIN: No.

9 JUDGE SANDRON: -- dates?

10 Q. BY MR. GOODWIN: No, what days they were?

11 A. No, I can't recall.

12 Q. And the first time you say you spoke to Ms. V?

13 A. Yes, sir.

14 Q. And you told her what?

15 A. That I was leaving, would clock in and leave because I
16 wasn't feeling well that day.

17 Q. Okay. You told her before you clocked in that you were
18 feeling bad and didn't want to stay?

19 A. Yes, sir.

20 Q. Okay. And she said what?

21 A. Okay.

22 Q. Any discussion about points?

23 A. No.

24 Q. No?

25 A. No, sir.

1 Q. And then the second time was -- do you have a rough time
2 span for that?

3 A. No. It wasn't close. It was months apart too.

4 Q. Okay. And did you -- tell me again what you -- was that
5 another situation where you weren't feeling well and didn't
6 plan to stay?

7 A. Oh, I can't recall what happened that exact day or why
8 that I was going to do that. I can't recall what happened.
9 But I went in the same way I did the first time.

10 Q. And what did she say this second time?

11 A. She was like okay.

12 Q. But again, I think you've already testified there was no
13 discussion of points?

14 A. No. Not at all.

15 Q. All right. Thanks. Now, at the meeting with
16 Mr. Brawley?

17 A. Yes, sir.

18 Q. Okay. I think were only talking about one meeting on
19 this one, right --

20 A. Yeah, one. One time.

21 Q. I'll call it the Brawley meeting.

22 A. Okay. Yes.

23 Q. And I think you mentioned that Mr. Brawley said that
24 leaving before 2 hours' work was two points?

25 A. Yes, sir.

1 Q. Is that what he told you?

2 A. Yes, sir.

3 Q. And you and some others spoke up about that, correct?

4 A. Yes, sir.

5 Q. And what your point was is that that's not what the --
6 that's not what the policy says, correct?

7 A. Exactly.

8 Q. So what he was telling you was not what was in the
9 policy?

10 A. Yes.

11 Q. But you didn't know what, in fact, the policy was at
12 that time?

13 A. This was the policy, right --

14 Q. No, I'm asking you were you ever informed about what,
15 about the 2 hours for leaving early?

16 A. I did -- no, sir.

17 Q. Never --

18 A. Never --

19 Q. Now, you mentioned that you never contacted the Union
20 nor Mr. Brandon; is that your testimony?

21 A. Yes, sir.

22 Q. And you know who Mr. Brandon is, I guess?

23 A. Yes, sir.

24 Q. You knew who he was before --

25 A. Well --

1 MR. BRANDON: Okay.

2 JUDGE SANDRON: Please raise your right hand.

3 (Whereupon,

4 BENJAMIN BRANDON

5 was called as a witness by and on behalf of the General
6 Counsel and, after having been duly sworn, was examined and
7 testified as follows:)

8 JUDGE SANDRON: If you'll kindly be seated? And if you
9 could state and spell your full and correct legal name for
10 the record, and provide us with either your office address
11 or residence address, whichever you prefer?

12 THE WITNESS: Okay. Name is Benjamin Brandon,
13 B-e-n-j-a-m-i-n, last name Brandon, B-r-a-n-d-o-n. Address,
14 P.O. Box 44, Henrico, Virginia 23075.

15 JUDGE SANDRON: Okay.

16 DIRECT EXAMINATION

17 Q. BY MR. HEARNE: Mr. Brandon, who is your employer?

18 A. United Steelworkers.

19 Q. And what is your position with the United Steelworkers?

20 A. International organizer.

21 Q. And how long have you worked for the Steelworkers?

22 A. Over 20-some years.

23 Q. How long have you served as international organizer?

24 A. Over 20-some years.

25 Q. And you're aware, are you aware about the organizing

1 campaign going on at Ozburn-Hessey Logistics?

2 A. Yes.

3 Q. And what has your involvement with that campaign been?

4 A. I was the initial organizer for that campaign back in
5 2009.

6 Q. Okay. Has any other organizer or union official been
7 involved with the -- have they been involved locally with
8 the organizing campaign?

9 A. No.

10 Q. And during the organizing campaign, have any employee
11 union supporters been on the payroll of the United
12 Steelworkers while they were employed by Ozburn-Hessey
13 Logistics?

14 A. No.

15 Q. Now, in or around October of 2013, were you contacted by
16 anyone with OHL about a new attendance policy?

17 A. What's the date again?

18 Q. Around October of 2013?

19 A. Oh, no.

20 Q. And is it possible you received, you receive
21 something -- you didn't receive anything in writing?

22 A. No.

23 JUDGE SANDRON: Well --

24 MR. HEARNE: Okay.

25 Q. BY MR. HEARNE: Did you receive anything in writing?

1 A. No, I didn't receive anything.

2 Q. Were you contacted by telephone or e-mail?

3 A. No.

4 JUDGE SANDRON: You're saying by -- by the Company?

5 Q. BY MR. HEARNE: By anyone with OHL about this new
6 attendance policy?

7 A. Oh. No.

8 Q. How did you find out that a new attendance policy had
9 been put in place in or around October of 2013?

10 A. I think it was after I had got a call from Jermaine that
11 it was terminated, and it was terminated because the Company
12 had changed the absentee policy.

13 Q. When you say Jermaine, are you referring to Jermaine
14 Brown?

15 A. Jermaine Brown. I'm sorry.

16 Q. And do you remember approximately what the date was when
17 you had this conversation with Mr. Brown?

18 A. It had to be probably about a year ago, I guess.
19 Probably back in July of 2015 probably, of last year.

20 JUDGE SANDRON: And do you remember what was said in
21 that conversation?

22 THE WITNESS: What was said --

23 JUDGE SANDRON: Just as you remember it?

24 THE WITNESS: Okay. If memory serve me correctly, I
25 think what was said was that it was terminated due to his

1 points and that the points that was, he had accumulated, it
2 was two too many points because of the way that the Company
3 had come in and changed on the absentee policy. And said,
4 well, I wasn't aware of any change in the absentee policy
5 because we hadn't been notified of that. But he said, well,
6 they changed it, and when they changed it, it bumped it up
7 of two extra -- points on the leave early, or something like
8 that he was telling me. So I told him, I would have to
9 check into it and get back with him. I wouldn't give him no
10 answer over the phone right then and there.

11 Q. BY MR. HEARNE: Did you have any further conversations
12 after that first conversation with Mr. Jones [sic]?

13 A. Well, I know a e-mail came from headquarters, where he
14 had called and talked to, I think, the secretary and try to
15 get in touch with me because I think he had made some
16 attempts to get in touch with me and I hadn't responded
17 back. So somehow he must've got the international number
18 and called there. And they sent me an e-mail to that
19 effect.

20 And I think, if memory serve me correctly -- because I
21 was on another campaign -- if memory serve me correctly, I
22 may have gotten back with him at that point and proceeded on
23 to do what I need to do to find out whether or not that
24 policy had been changed, and if it had been changed, then
25 get a little more clarification on it -- on what I was going

1 to do as far as -- because we had already requested to
2 bargain. I know the Company was contesting the election, so
3 I had to get a little more clarification on what was going
4 on before we filed a charge.

5 JUDGE SANDRON: When was that conversation, as best that
6 you can recall, that you had with Mr. Brown?

7 THE WITNESS: I'm -- I'm thinking, because they had so
8 many different numbers calling me, but I'm thinking it had
9 to be, I would think it had to be in September or October or
10 somewhere like that, I would imagine, of last year.

11 JUDGE SANDRON: And how many conversations do you recall
12 with him?

13 THE WITNESS: I don't remember having but maybe one, two
14 at the most, at the most, I'm thinking. There wasn't a
15 whole lot of conversation going on. I think it was -- to
16 get to the fact, to see whether or not that policy had been
17 changed, and if he was caught up in that change where, you
18 know, the Company, you know, they notified us of any change
19 in the absentee policy, then just go ahead and, you know,
20 file the Board charge and proceed from there.

21 JUDGE SANDRON: And do you remember anything
22 specifically that he said in those one or two other
23 conversations?

24 THE WITNESS: He did mention that one, about some
25 unemployment or something like that. And I do recall him

1 mentioning something about he had a unemployment hearing or
2 something scheduled, but I told him I hadn't, at that point,
3 I had to get a little more clarification because I wanted to
4 make sure that if we file a Board charge, that we, you know,
5 we do it right. I don't want to just up and file a charge
6 and the Company hadn't done anything.

7 So he just mentioned about the unemployment. I told him
8 I'd get back -- that's normally what I tell them, I'll get
9 back to them.

10 Q. BY MR. HEARNE: Do you recall any conversation,
11 telephone conversation with Mr. Brown where you had a
12 conference call with a third party?

13 A. Oh -- what he meant, I think I know what that is. What
14 he's talking about, at that point, I thought that probably
15 what happened -- if OHL had changed the absentee policy
16 without giving us the opportunity to bargain on it, I think
17 that it was a unilateral change, but I wanted to make sure.
18 So what I think I did was I may have had a three-way call
19 with the Labor Board, with the National Labor Relation
20 Board, and I had the officer of the day to get on the phone.

21 And at that point, I had Brown, I think, to explain his
22 situation to him, as far as how he was terminated. Yeah, I
23 think that's what he's talking about, but I don't record
24 that --

25 Q. And just for clarification, when you talk about the

1 officer of the day, did you contact the Memphis office?

2 A. Yes, I did.

3 Q. And for clarification, the person with the NLRB you
4 spoke with that day, was that me?

5 JUDGE SANDRON: Well --

6 MR. HEARNE: I'm just, I'm -- I didn't want, I don't
7 want to mention specific names.

8 THE WITNESS: Yeah, no.

9 MR. HEARNE: I just want to --

10 JUDGE SANDRON: Well, you can --

11 THE WITNESS: No, it wasn't you.

12 Q. BY MR. HEARNE: Okay. That's all -- I'm not going to
13 get into it with -- but anyway. I just wanted to clarify
14 that.

15 A. Okay. Yeah.

16 Q. I'm not, I don't want to -- I'm not --

17 JUDGE SANDRON: You're not, you wouldn't be a witness.

18 MR. HEARNE: And I would not be a witness.

19 JUDGE SANDRON: No.

20 MR. HEARNE: Okay. Now --

21 JUDGE SANDRON: And that call, how long after you had
22 that call did you file the charge?

23 THE WITNESS: Probably, that charge probably would file,
24 I would think probably -- I would think probably within a
25 few weeks or so. So that call had -- yeah, I would say

1 probably within a few weeks or so.

2 Q. BY MR. HEARNE: After being contacted by Mr. Brown, did
3 he provide you with a copy of the new attendance policy he
4 was talking about?

5 A. No.

6 JUDGE SANDRON: Do you recall how you first saw that
7 policy?

8 THE WITNESS: Yes. Today.

9 Q. BY MR. HEARNE: Well, actually, I'm going to ask you to
10 look. There's a General Counsel Exhibit 7.

11 A. Yeah. This is the first time I've seen it.

12 Q. Had, I guess, the question was had you ever seen this
13 before today --

14 A. No.

15 Q. -- July 6, 2016?

16 A. No. No, sir.

17 Q. Did any other employee of OHL contact you before
18 Jermaine Brown about the October 2013 attendance policy?

19 A. Oh, no.

20 MR. HEARNE: General Counsel has no additional questions
21 at this time.

22 MR. BODZY: Is there a Jencks statement?

23 MR. HEARNE: There is not.

24 MR. BODZY: May I have 5 minutes?

25 JUDGE SANDRON: Yes.

1 as we need to. It's ours.

2 JUDGE SANDRON: Well --

3 MR. HEARNE: So but, so that's not an issue.

4 JUDGE SANDRON: Well, Ms. Jones -- okay, is everybody
5 back? No? Okay.

6 Ms. Jones, I'll swear you in. So if you'll please raise
7 your right hand?

8 (Whereupon,

9 VERDIA JONES

10 was called as a witness by and on behalf of the Respondent
11 and, after having been duly sworn, was examined and
12 testified as follows:)

13 JUDGE SANDRON: If you'll be seated, please? Kindly
14 state and spell your full and correct legal name for the
15 record, and provide us with an address, either residence or
16 business, whichever one you prefer.

17 THE WITNESS: Verdiana Jones, V-e-r-d-i-a J-o-n-e-s.

18 JUDGE SANDRON: And an address?

19 THE WITNESS: I am. I'm going to give you mine or
20 OHL's.

21 JUDGE SANDRON: What's --

22 THE WITNESS: Yeah. I can give you my personal home
23 address.

24 JUDGE SANDRON: It's either one.

25 THE WITNESS: 767 South Pocahontas Street, Sardis,

1 Mississippi 38666. Pocahontas is spelled

2 P-o-c-a-h-o-n-t-a-s.

3 JUDGE SANDRON: Thanks.

4 THE WITNESS: You're welcome.

5 DIRECT EXAMINATION

6 Q. BY MR. GOODWIN: Ms. Jones, good afternoon.

7 A. Good afternoon.

8 Q. You're employed by OHL?

9 A. That's correct.

10 Q. All right. You're sometimes referred to as Ms. V?

11 A. That is correct also.

12 Q. All right. What's your position with OHL?

13 A. I'm the operations supervisor.

14 Q. In which account?

15 A. Gerber Legendary Blades.

16 JUDGE SANDRON: What was the --

17 MR. GOODWIN: I'm sorry?

18 THE WITNESS: You -- it's Fiskars F.A.S.T Gerber
19 Legendary Blades.

20 JUDGE SANDRON: Okay.

21 THE WITNESS: It's the same thing. They brothers and
22 sisters, whatever you call it. We call it Gerber Legendary
23 Blades, but it's Fiskars.

24 Q. BY MR. GOODWIN: But there's been reference to the
25 Fiskars account.

1 talk about?

2 A. She talked about the new attendance policy that was
3 going in effect -- in October, the month that she had the,
4 the day that she had the meeting. She was explaining to us
5 that some things had changed. To her, the way she explained
6 it, it was to the better. It was going to be better than
7 the old policy was because she went over everything, and it
8 was explaining to us the differences between the old and the
9 new.

10 Q. All right. And was one of those differences the policy
11 for points for leaving early?

12 A. That is correct. It was.

13 Q. And what was the change that she explained to the
14 employees at this meeting?

15 A. She told us that if we, that points had changed from
16 being three for leaving at any point in time in any given
17 work scheduled, to two points if you left prior to the start
18 of your shift. It would be two points if you left early.
19 And if you left prior -- 2 hours after your start time, it
20 would be one point.

21 Q. All right. So the explanation was -- under what
22 conditions would you get two points for leaving early?

23 A. The two points, you would get two points if you left
24 before the 2 hours allotted for the time, your start time.

25 Q. I see.

1 A. Um-hum.

2 Q. So if you didn't work for at least 2 hours of your
3 shift, it was two points?

4 A. That's correct.

5 Q. And if you worked 2 hours of your shift --

6 A. And you left, it was one.

7 Q. One point? All right. Did she hand out anything?

8 A. Yes, she did.

9 Q. What did she hand out?

10 A. She hand out the printout that was explaining to us
11 about the new policy, the procedures, everything that was on
12 there.

13 Q. Did she hand out the new attendance policy?

14 A. Um-hum. Yes, she did. Yes, she did. Yes, she did.

15 JUDGE SANDRON: Maybe we should, just so we have it
16 clear on the record, I'm showing you General Counsel's
17 Exhibit 6.

18 MR. GOODWIN: Your Honor, that's the old one.

19 THE WITNESS: Let's see. This is the --

20 JUDGE SANDRON: Right, right. I'm --

21 THE WITNESS: Yeah, I was going to tell him in a
22 second --

23 JUDGE SANDRON: Yeah, I wanted to just identify it,
24 so --

25 THE WITNESS: Yeah, this is old. I was going to tell

1 him.

2 Q. BY MR. GOODWIN: This is the old one, though --

3 A. Um-hum. I know.

4 JUDGE SANDRON: Okay. All right.

5 Q. BY MR. GOODWIN: Yeah. And now, if I can find -- I'm
6 going to show you GC --

7 JUDGE SANDRON: It's right there. Oh, you have this
8 one?

9 THE WITNESS: This one?

10 Q. BY MR. GOODWIN: Okay. I'll take this one back then.
11 And can you tell us what that one is, just so we -- that's
12 GC Exhibit 7?

13 A. Yes. This is a new policy that she handed out to
14 everybody that was in the meeting.

15 Q. All right. And were employees given the opportunity to
16 ask questions?

17 A. Yes, they were.

18 Q. Did some ask question?

19 A. Yes, they -- yes, they did.

20 Q. Were there questions specifically about the distinction
21 between leaving early, having worked less than 2 hours, as
22 opposed to working more than 2 hours?

23 A. It was a combination of both. They had -- the course --
24 and generally, going all away around the room. One person
25 want to know about the leave early for the two points, if

1 you left 2 hours prior, before your 2 hours was done, and
2 the others want to know -- because they weren't really
3 hearing, so they was getting all confused and not really
4 paying -- not really listening to Lisa when she was doing.
5 And so she would ask them, listen to what I'm saying.

6 Q. So she said it more than once?

7 A. Um-hum. She said it more than once.

8 Q. And what did she say?

9 A. She had to. And she said listen what I'm saying. If
10 you leave earlier than 2 hours before your start time, you
11 will receive two points. If you work 2 hours --

12 Q. You said before your start time?

13 A. Uh-huh.

14 Q. But --

15 A. No, after your start time.

16 Q. Okay.

17 A. If your start time was 8:00, 2 hours from that, it would
18 be 10:00. So if you left anywhere between that time, you
19 were going to get two points. If you worked your 2 hours
20 and you left after 10:00 -- 10:01, 10:04 -- you were going
21 to get one point.

22 Q. And were employees asking about that 10:00 difference?

23 A. They did.

24 Q. And what's the significance of 10:00?

25 A. The 10:00 is your 2 hours. The 10:00 is basically your

1 JUDGE SANDRON: More or less?

2 THE WITNESS: More or less. More or less.

3 JUDGE SANDRON: Whatever --

4 THE WITNESS: But this one -- may I say, may I speak, if
5 it's okay with the Court?

6 JUDGE SANDRON: Go ahead.

7 THE WITNESS: This one, for the leave earlies, for me
8 was more important -- everything is important. But because
9 there was so much when they talked, when Lisa talked about
10 it, I wanted them to make sure that I, that it was my record
11 that I could show them, and then plus I could go on Kronos
12 and show them the actual time that they clocked out. But I
13 pinpointed on this document too, for my record.

14 Q. BY MR. GOODWIN: So there was a lot of talk in the
15 rollout meeting about the importance of working 2 hours?

16 A. Yes, there was.

17 JUDGE SANDRON: But be careful not to lead her, though.

18 MR. GOODWIN: Okay.

19 THE WITNESS: Yeah.

20 Q. BY MR. GOODWIN: When he left early on July 28th, did
21 you tell him he would get two points?

22 A. Yes, sir.

23 Q. Okay. Now, let's look at October 10th. Again, on the
24 front page of this R-2 exhibit on October 10th, have you --

25 I see the notation LE 1.75?

1 because he worked some. He worked. He was taking --
2 emptying my, what I call my blasting station, taking boxes
3 off the line. So he would work and go to the bathroom and
4 walk back and go to work, and then he'd come back to me.
5 And then he came to me -- about 45 minutes, went through
6 that.

7 JUDGE SANDRON: And so he left about, what, 9:45
8 approximately?

9 THE WITNESS: Something like that, 9:47 or something
10 like that, um-hum, because my shift starts at 8:00.

11 Q. BY MR. GOODWIN: And you may have mentioned this --
12 forgive me. If you mentioned it, I missed it. Did you tell
13 him he would get two points?

14 A. Yes, I did.

15 Q. Okay.

16 MR. GOODWIN: Your Honor, I'd move R-2 into evidence.

17 JUDGE SANDRON: R-3, you mean?

18 MR. GOODWIN: R-3 into evidence.

19 JUDGE SANDRON: Any objection?

20 MR. HEARNE: No objection, Your Honor.

21 JUDGE SANDRON: Respondent's Exhibit 3 received.

22 (Respondent's Exhibit 3 received in evidence.)

23 Q. BY MR. GOODWIN: Ms. Jones, I'm going to -- did you
24 find --

25 A. Can I have some water, please?

1 P R O C E E D I N G S

2 (Time Noted: 9:10 a.m.)

3 ADMINISTRATIVE LAW JUDGE SANDRON: On the record.

4 I understand from off-the-record discussions that
5 Mr. Brandon has furnished the Respondent's counsel with
6 additional information. And I understand, Mr. Bodzy, that
7 you no longer want to pursue that matter; is that correct?

8 MR. BODZY: That is correct.

9 JUDGE SANDRON: We are ready for the Respondent's next
10 witness.

11 MR. BODZY: Chris Brawley.

12 JUDGE SANDRON: Mr. Brawley, if you will please come up,
13 I will swear you in. Please raise your right hand.

14 (Whereupon,

15 K. CHRISTOPHER BRAWLEY

16 was called as a witness by and on behalf of the Respondent
17 and, after having been duly sworn, was examined and
18 testified as follows:)

19 JUDGE SANDRON: If you will go up to the witness stand
20 and be seated? If you'll kindly state and spell your full
21 and correct legal name for the record, and provide us with
22 an address, either residence or business, whichever you
23 prefer.

24 THE WITNESS: All right, sir. My name is Kenneth
25 Christopher Brawley. My colleagues call me Chris. My

1 address is 3790 Old Orchard Place, in Southaven, Mississippi
2 38672.

3 JUDGE SANDRON: Christopher and Kenneth are spelled the
4 normal way?

5 THE WITNESS: Yes, sir.

6 JUDGE SANDRON: Brawley, B-r-a-w-l-e-y?

7 THE WITNESS: That's correct.

8 JUDGE SANDRON: As I said yesterday, it's better not to
9 assume spellings. Please proceed.

10 DIRECT EXAMINATION

11 Q. BY MR. BODZY: Good morning, Mr. Brawley.

12 A. Good morning.

13 Q. By whom are you employed?

14 A. Ozburn and Hessey Logistics.

15 Q. How long have you been employed by Ozburn-Hessey
16 Logistics?

17 A. Since October 2014, so just a little short of 2 years.

18 Q. What is your position with OHL?

19 A. Director of operations.

20 Q. Have you had that position the entire time you've worked
21 for OHL?

22 A. I have.

23 Q. Do you have a particular area of responsibility or
24 certain buildings that you're responsible for within the OHL
25 operations in Memphis?

1 A. I do. My primary office is in the 5510 building.
2 That's what we call it. That's the address of the building.
3 I also have another building down the road at 6225 Global
4 Drive, so I manage two of our DCs.

5 Q. The 5510 building, which accounts are in that building?

6 A. Hewlett-Packard, MacLean Power Systems, National
7 Geographic, and Fiskars/Gerber.

8 JUDGE SANDRON: Could you spell MacLean just to make
9 sure we have it in the record?

10 THE WITNESS: Yes, sir. It's M-a-c-L-e-a-n Power
11 Systems.

12 Q. BY MR. BODZY: Is there a manager that reports to you
13 for the Fiskars account?

14 A. Yes, sir. His name is Jim Windisch.

15 Q. Is there a supervisor that reports to Mr. Windisch for
16 the Fiskars account?

17 A. Yes, sir. We call her Ms. V or Verdia.

18 Q. Since you arrived in OHL, has the attendance policy
19 changed at any point?

20 A. No.

21 Q. At some point after you arrived at OHL, were you
22 approached by an employee named Jermaine Brown?

23 A. Yes, sir.

24 Q. Do you recall approximately when that was?

25 A. Well, it was probably within the first couple of weeks

1 of my employment, so it would more than likely had to have
2 occurred at least at the first in early October.

3 Q. You started I think you said in October 2014. Do you
4 recall when in the month you started?

5 A. I don't, to be honest with you. My apologies.

6 Q. That's all right. You said he approached you within the
7 first few weeks of your employment?

8 A. Yes.

9 Q. Where did he approach you?

10 A. On the floor.

11 Q. Do you recall approximately what time of day it was?

12 A. I don't recall the specific time of day, but it would
13 have had to have been during normal business hours.

14 Q. Was there anyone else present when he approached you?

15 A. No, although other employees approached me in a similar
16 time frame.

17 Q. In terms of the conversation that you were having with
18 him, was anyone else present for that conversation?

19 A. No.

20 Q. What do you recall being said during that conversation?

21 A. He questioned the attendance policy.

22 JUDGE SANDRON: I think it's better if you try to say
23 word for word what he said instead of summarizing it, I mean
24 as best you can remember.

25 THE WITNESS: Okay. Well, if I could paraphrase, he --

1 JUDGE SANDRON: Try to be as specific as you can as to
2 what he said.

3 THE WITNESS: He said that he had been given two points
4 for a leave early at one point prior to my arrival, and he
5 felt it was unfair and not according to policy.

6 Q. BY MR. BODZY: How did you respond to Mr. Brown?

7 A. I told him that I would -- obviously, I'm still trying
8 to get on my feet at that point, learning all the new
9 procedures and policies for the Company. I told him that I
10 would counsel with our HR department and get a clarification
11 or I would read over the policy myself so that I understand
12 it, and then I would get back with him at the most
13 convenient time to give him an answer to his question.

14 Q. Was there anything else to that conversation?

15 A. No.

16 Q. What steps did you take to follow up with him?

17 A. The next day I had a session with all of the employees
18 on the floor in Fiskars. That's the department in which
19 Jermaine worked.

20 Q. Let's just get some background foundation information.
21 The meeting with all the Fiskars employees, approximately
22 what time of day was that?

23 A. It would have had to have been at the startup session,
24 early in the morning.

25 Q. You said all the Fiskars employees. So the whole

1 account was there?

2 A. That's correct.

3 Q. Where within the Fiskars account would this be held?

4 A. In the Fiskars account, it would have been in their
5 receiving area.

6 JUDGE SANDRON: Was this what is called like a normal
7 morning meeting?

8 MR. BODZY: Yes, sir.

9 Q. BY MR. BODZY: It's one of the daily meetings; is that
10 right?

11 A. Yeah, we do have startup sessions and after-break
12 sessions.

13 Q. Do you attend those every day?

14 A. No.

15 Q. Was there a particular reason you attended this one?

16 A. To give them clarification or reiteration of the policy.

17 Q. Let me ask you this: Who spoke first at the meeting?

18 A. It would have started normally, so Ms. V would have
19 opened up with normal operational information. It would
20 have likely gone Ms. V and then me afterwards, after the
21 normal stuff was taken care of.

22 Q. So when Ms. V finished, what did you say to the people?

23 A. I just announced to the team that I had had the dialogue
24 with HR. I read the policy, and the HR group confirmed to
25 me specifically what the policy means. I just reiterated

1 that to the group.

2 JUDGE SANDRON: Could you tell us specifically what you
3 told them about the policy?

4 THE WITNESS: Yeah, I told them that leave earlies are
5 defined as if you leave earlier than 2 hours in the day,
6 it's a two point violation. If you leave after that, it's a
7 one point violation.

8 Q. BY MR. BODZY: Any employees respond when you made this
9 announcement?

10 A. No. There was just general discussion, but no one
11 specifically responded. I don't recall having any dialogue
12 with any particular employee.

13 Q. Did Jermaine Brown approach you individually after the
14 meeting?

15 A. No, not after that session, although he has approached
16 many times over the course of his employment. I've
17 regularly spoken with Jermaine.

18 Q. Did he ever approach you again about attendance points
19 for leaving early?

20 A. No.

21 Q. Let me fast-forward a little bit to July of 2015. Did
22 Mr. Brown approach you on July 1st of 2015?

23 A. Yeah. He was late for work, and he did ask for
24 forgiveness for being late for that day because he was
25 involved in a backup for a traffic accident.

1 JUDGE SANDRON: Did he tell you that?

2 THE WITNESS: Yes, sir.

3 JUDGE SANDRON: Why don't you just lay the foundation
4 where it happened?

5 MR. BODZY: Sure.

6 Q. BY MR. BODZY: The conversation you were just referring
7 to, where did it take place?

8 A. I don't recall. My apologies.

9 Q. Do you remember approximately what time of day it was?

10 A. It would have been early in the morning.

11 Q. Was this a one-on-one conversation, or were there other
12 people, if you recall?

13 A. I don't recall. I do know that I had a session with
14 Jermaine and Lisa Johnson that day.

15 Q. Let's stay on the initial conversation. Sorry, I
16 interrupted you, Mr. Brawley. I think you said you don't
17 recall if anyone else was in that initial conversation,
18 right?

19 A. I don't think there would have been. Jermaine
20 approached me, and he actually showed me pictures of the
21 traffic accident. As a matter of fact, I went through the
22 same backup, so I know exactly what he was going through
23 that day.

24 JUDGE SANDRON: Why don't you just start with what he
25 first said?

1 THE WITNESS: He mentioned that he was late, and this is
2 the reason why, and he showed me the pictures. He said I
3 don't feel like -- or I'd like you to help me out in this
4 regard.

5 JUDGE SANDRON: Do you remember about what time that was
6 when you first spoke to him?

7 THE WITNESS: It would have been in the morning because
8 he caught me right away. I don't know exactly what time it
9 was. Obviously, he came in some period late, and so it
10 would have had to have been after 8 o'clock. My presumption
11 would be between 8:00 and 9:00 a.m. in the morning.

12 Q. BY MR. BODZY: When he showed you the pictures of the
13 traffic accident, what was your response?

14 A. What I told him was there is not really anything that
15 I -- I can't do anything about this particular circumstance,
16 and although I sympathized with him because I went through
17 the same section myself, it's not something that I would
18 feel comfortable granting a reprieve for points because if I
19 did it for Jermaine, I'd have to do it for everyone else.

20 Q. Was there anything else to that conversation?

21 A. No.

22 Q. What were your next steps with regard to Mr. Brown's
23 attendance?

24 A. We went through the procedures of noting his cumulative
25 points. It was brought to my attention that this put him

1 over the threshold for termination. Lisa arranged a session
2 I think with Jermaine and myself, and we had a meeting in
3 her office, and we talked about it for a little while.

4 JUDGE SANDRON: With whom did you talk in determining
5 that he had the points that would lead to termination?

6 THE WITNESS: That would have been Lisa.

7 Q. BY MR. BODZY: Lisa Johnson?

8 A. Yes, sir.

9 JUDGE SANDRON: Did you initiate the discussion with
10 her, or did she initiate with you?

11 THE WITNESS: No, because I mean I have up to 500
12 employees and I don't know their point situation. It would
13 have been brought to my attention.

14 JUDGE SANDRON: And then you discussed it with her
15 during the day?

16 THE WITNESS: No, I only discussed it with her at that
17 time at the session that she had arranged with Jermaine as I
18 recall.

19 JUDGE SANDRON: Oh, I see.

20 THE WITNESS: No, sir.

21 Q. BY MR. BODZY: How long after Jermaine originally
22 approaching you was that session with Lisa Johnson?

23 A. To be honest with you, I don't recall. The same day.

24 JUDGE SANDRON: How many employees do you supervise?

25 THE WITNESS: My full-time staff is around 200, in that

1 range, and during the peak season we'll flex up to around
2 500.

3 Q. BY MR. BODZY: So eventually you met with Lisa Johnson
4 and Jermaine on that day, that day being July 1st, right?

5 A. Yes, sir.

6 Q. Where did that meeting occur?

7 A. In Lisa's office.

8 Q. Was there anyone else present besides you, Lisa, and
9 Jermaine?

10 A. No.

11 Q. What do you recall being said?

12 JUDGE SANDRON: What time was that meeting?

13 THE WITNESS: It feels like it would have been in the
14 morning. I don't recall it was in the afternoon. So if I
15 had to guess in terms of a time frame --

16 JUDGE SANDRON: Well, don't guess if you don't know.

17 THE WITNESS: I don't remember specifically, but it was
18 in the morning.

19 JUDGE SANDRON: You think it was in the morning.

20 THE WITNESS: I really don't want to speculate.

21 JUDGE SANDRON: All right, then don't.

22 THE WITNESS: Sorry.

23 JUDGE SANDRON: As counsel asks what was said, you might
24 remember.

25 THE WITNESS: Well, Jermaine again mentioned that he

1 didn't feel the policy was fair. He had brought up again
2 the situation again where prior to my tenure, he was in his
3 mind penalized an additional point for leaving early prior
4 to 2 hours. What I told him, and Lisa had the same
5 conversation with him, was that the policy was clearly
6 articulated to him at the time that it was rolled out. I
7 reinforced that during the session not more than 2 weeks or
8 so after my arrival. I told him that while I sympathize
9 with this particular scenario of him being late for work
10 because I went through it as well, I wasn't prepared to
11 offer him a reprieve for today's points, not the ones prior,
12 I had no knowledge of those, but again -- and what I told
13 him was that it's not this circumstance that's leading to
14 your termination; it's all of the preceding points that have
15 accumulated up till this point.

16 Q. BY MR. BODZY: Do you recall anything else being said
17 during that meeting?

18 A. We had at least a 10-minute conversation, so there was a
19 lot more dialogue back and forth. I don't recall -- I
20 couldn't repeat verbatim what we talked about that day, but
21 that was the general conversation.

22 Q. Did you tell Mr. Brown to go to the USW over --

23 JUDGE SANDRON: You know you're leading a little too
24 much.

25 MR. BODZY: What's that?

1 A. No, sir.

2 Q. You started -- that was a year later that you started?

3 A. Yes, sir.

4 Q. In October of 2014.

5 A. That's correct, sir.

6 Q. So you don't have any personal knowledge of what was
7 said to employees or not said to employees at the time that
8 this policy was first communicated to them?

9 A. No, sir. The only information I have is what was told
10 to me by the HR department.

11 MR. HEARNE: General Counsel doesn't have any additional
12 questions at this time.

13 MR. BRANDON: No further questions.

14 JUDGE SANDRON: Mr. Brawley, thank you.

15 THE WITNESS: Thank you, sir. I appreciate it.

16 (Witness excused.)

17 JUDGE SANDRON: Off the record.

18 (Off the record from 9:51 a.m. to 10:02 a.m.)

19 JUDGE SANDRON: Back on the record.

20 MR. BODZY: Respondent calls Lisa Johnson.

21 JUDGE SANDRON: Ms. Johnson, please come up to the
22 witness stand. Raise your right hand.

23 (Whereupon,

24 LISA JOHNSON

25 was called as a witness by and on behalf of the Respondent

1 and, after having been duly sworn, was examined and
2 testified as follows:)

3 JUDGE SANDRON: If you will come up to the witness stand
4 and be seated. If you will please state and spell your full
5 and correct legal name? And provide us with an address,
6 either residence or business.

7 THE WITNESS: Yes, sir. Lisa R. Johnson. My address,
8 business address is 5510 East Holmes Road.

9 JUDGE SANDRON: Could you just spell your name?

10 THE WITNESS: Oh, I'm sorry. L-i-s-a J-o-h-n-s-o-n.

11 JUDGE SANDRON: Thank you.

12 DIRECT EXAMINATION

13 Q. BY MR. BODZY: Ms. Johnson, by whom are you employed?

14 A. Ozburn-Hessey Logistics.

15 Q. How long have you been employed by Ozburn-Hessey
16 Logistics?

17 A. September 20, 2012.

18 Q. Is that the date? I'm sorry.

19 A. Yes.

20 Q. What is your position?

21 A. Regional human resources manager.

22 Q. Have you held that position the entire time you've
23 worked for OHL?

24 A. Yes.

25 Q. As the regional human resources manager, what is the

1 the employees?

2 A. I scheduled employee meetings for October 14th that week
3 and sent the schedule to the Memphis management as well.

4 (Respondent's Exhibit 4 marked for identification.)

5 Q. BY MR. BODZY: Ms. Johnson, you've been handed what's
6 been marked as Respondent's Exhibit 4. Do you recognize
7 that document?

8 A. Yes.

9 Q. What is that document?

10 A. That's the schedule for the employee meetings.

11 Q. Are those the meetings where the attendance policy was
12 communicated?

13 A. Yes, it was.

14 MR. BODZY: Move the admission of Respondent's 4.

15 MR. HEARNE: No objection.

16 JUDGE SANDRON: Respondent's Exhibit 4 is received.

17 (Respondent's Exhibit 4 received in evidence.)

18 JUDGE SANDRON: Were there any changes other than with
19 respect to the attendance when you had these meetings? When
20 you handled these meetings, were there other changes in the
21 handbook?

22 THE WITNESS: Yes, there were.

23 JUDGE SANDRON: The attendance policy was one of those?

24 THE WITNESS: Yes, sir.

25 Q. BY MR. BODZY: Ms. Johnson, after you e-mailed the

1 policy to the Memphis management and before the meetings
2 that are listed on Respondent's Exhibit 4, did any of your
3 management team raise questions?

4 A. Yes.

5 Q. Who raised a question?

6 A. Phil Smith.

7 (Respondent's Exhibit 5 marked for identification.)

8 Q. BY MR. BODZY: Ms. Johnson, you've been handed what's
9 been marked Respondent's Exhibit 5. Do you recognize that
10 document?

11 A. Yes.

12 Q. What is that document?

13 A. This is the e-mail that I forwarded to Shannon Miles in
14 response to Phil Smith's question for clarification of the
15 leave early policy.

16 MR. BODZY: I'd move the admission of Respondent's 5.

17 MR. HEARNE: I would just note that this e-mail, the
18 three pages have already been entered into evidence as
19 General Counsel Exhibit 20.

20 MR. BODZY: I didn't realize it had previously been
21 admitted. I'll withdraw it.

22 (Respondent's Exhibit 5 withdrawn.)

23 MR. HEARNE: If you want to confirm, here's what we
24 received.

25 Q. BY MR. BODZY: So, Ms. Johnson, I'll refer to it as

1 General Counsel 20.

2 A. Yes, sir.

3 Q. It's the Respondent's Exhibit 5.

4 JUDGE SANDRON: Respondent's Exhibit 5 is withdrawn as
5 such?

6 MR. BODZY: Withdrawn, yes, sir.

7 Q. BY MR. BODZY: Ms. Johnson, in the e-mail string that is
8 General Counsel Exhibit 20, what was the issue that Phil
9 Smith was raising about the new attendance policy?

10 JUDGE SANDRON: I think that speaks for itself, doesn't
11 it, the document?

12 MR. BODZY: Okay.

13 JUDGE SANDRON: For the record, Shannon is
14 S-h-a-n-n-o-n.

15 Q. BY MR. BODZY: Who is Shannon Miles?

16 A. She's director of human resources.

17 JUDGE SANDRON: Is she at the headquarters?

18 THE WITNESS: Yes, sir, she is.

19 Q. BY MR. BODZY: To whom do you report?

20 A. I report to Shannon Miles.

21 Q. Why did you forward Mr. Smith's e-mail to Shannon Miles?

22 A. I, too, wanted clarification of the leave early point.

23 Q. When you received Shannon Miles's response, that
24 resolved your request for clarification?

25 A. No.

1 Q. Why not?

2 A. I wanted to talk to her verbally about it because I
3 still wanted to say what is that time frame that an employee
4 has to work before they're administered either one point or
5 two points.

6 Q. This e-mail that Ms. Miles sent you back at 5:04 p.m. on
7 October 11th, was that after your regular business hours on
8 the Friday?

9 A. Yes.

10 Q. You were scheduled to start rolling this out when?

11 A. On Monday the 14th at 10:00 a.m.

12 Q. Did you have any further communication with Ms. Miles
13 regarding this issue between the e-mail at the top of
14 General Counsel Exhibit 20 and the start of the meetings
15 that are reflected in Respondent's Exhibit 4?

16 A. Yes.

17 Q. When did that further communication occur?

18 A. After I came into work on Monday morning. I come in
19 usually at 8:00. The meeting started at 10:00, so sometime
20 between 8:00 and 10:00 that morning on the 14th.

21 Q. How did you communicate with Ms. Miles?

22 A. I called her.

23 Q. Was anyone else on the call?

24 A. No.

25 Q. Tell us what you recall about that telephone

1 conversation.

2 A. I asked her to clarify her e-mail, and she said it was
3 her intent that the leave early be after -- leave early was
4 two points if they worked less than 2 hours, the same way if
5 somebody came in tardy for more than 2 hours, it was two
6 points as well.

7 Q. Did you discuss how that would be communicated to
8 employees?

9 A. Yes.

10 Q. How is that?

11 A. I reminded her that I was having employee meetings and
12 that I would be communicating that to them in each of the
13 meetings.

14 JUDGE SANDRON: Did you ever discuss with her why that
15 wasn't put in writing in the policy? This is General
16 Counsel Exhibit 20. Did you ever discuss with her why it
17 wasn't stated actually in writing?

18 THE WITNESS: No, sir. I didn't write it, but I didn't,
19 no.

20 JUDGE SANDRON: And this was prepared by headquarters,
21 this document?

22 THE WITNESS: Yes, sir.

23 JUDGE SANDRON: So that distinguishment was communicated
24 orally but not in writing?

25 THE WITNESS: That's correct.

1 Q. BY MR. BODZY: So, Ms. Johnson, did you proceed to have
2 the meetings that are reflected on Respondent's Exhibit 4
3 with each of the accounts?

4 A. Yes, I did.

5 JUDGE SANDRON: Did you attend those meetings yourself?

6 THE WITNESS: I conducted them. And I attended every
7 one of them and did the speaking.

8 Q. BY MR. BODZY: When you did the speaking at these
9 meetings, did you cover anything regarding leave earlies and
10 how that would be handled?

11 A. Yes.

12 Q. What did you convey during these meetings?

13 A. I actually read the definitions and assignment of points
14 to the employees. The leave early had previously been three
15 points. I pointed out that now it was one point as long as
16 they worked a minimum of 2 hours. Otherwise, it would be
17 treated as an absence if they left under 2 hours and they
18 would receive two points.

19 JUDGE SANDRON: So you're saying in a way that -- so if
20 they passed the 2-hour point, then it was going to one?

21 THE WITNESS: Yes.

22 JUDGE SANDRON: And if not, it would be considered an
23 absence, two points.

24 THE WITNESS: And would be two points, yes.

25 Q. BY MR. BODZY: Did you convey that in each of the

1 meetings?

2 A. Every single one.

3 Q. Including the Fiskars meeting?

4 A. Including the Fiskars meeting.

5 Q. Was Jermaine Brown present at the Fiskars meeting?

6 A. Yes.

7 Q. At the meeting where you communicated this to Fiskars,
8 do you remember whether employees asked questions about the
9 leave early policy?

10 A. Yes.

11 Q. Who do you recall asking questions?

12 A. Clinton Waller, James Bailey.

13 Q. What do you recall them asking?

14 A. That it doesn't state that specifically. I communicated
15 once again that we would treat anything under 2 hours as an
16 absent, if they left before 2 hours was up. And anything
17 after 2 hours would be one point leave early.

18 Q. So how many times total did you cover that concept in
19 the Fiskars meeting?

20 A. At least twice.

21 Q. Was there any supervisor or manager of OHL present at
22 that meeting?

23 A. Yes.

24 Q. Who?

25 A. Ms. V. Ms. Verdiana Jones, sorry.

1 JUDGE SANDRON: I guess what you're saying is that that
2 distinction is not expressly stated here but by implication
3 it was in there?

4 THE WITNESS: It was communicated, the way I
5 communicated it, yes, sir.

6 JUDGE SANDRON: But just in a different term for the
7 reporting when it was over 2 hours.

8 THE WITNESS: Yes.

9 JUDGE SANDRON: And that became an absence?

10 THE WITNESS: That's correct.

11 Q. BY MR. BODZY: Ms. Johnson, will you refer to General
12 Counsel Exhibit 21? It should be in the stack.

13 A. Okay.

14 Q. Ms. Johnson, General Counsel 21 is an e-mail that you
15 sent to Memphis management. Who is Memphis management?

16 A. The Memphis management team.

17 Q. Who would that include?

18 A. That would include RVP, directors, senior operations
19 managers, operations managers, assistant operations mangers,
20 operations supervisors, T-support, financial analyst, HR.
21 That would be it.

22 JUDGE SANDRON: About how many people total?

23 THE WITNESS: Right now we have 34.

24 Q. BY MR. BODZY: In this e-mail you make reference to make
25 this clear one more time. What did you mean by that?

1 A. Just wanted to repeat the policy for the attendance
2 policy.

3 Q. When was that first announced?

4 A. In October of 2013.

5 Q. When in October 2013?

6 A. Between the 14th and the 18th.

7 Q. In the meetings reflected on --

8 A. In the meetings reflected, yes.

9 Q. Let me just finish the question for the record so it's
10 clear. In the meetings reflected on Respondent's Exhibit 4?

11 A. Yes.

12 Q. Why did you send this e-mail, General Counsel
13 Exhibit 21?

14 A. I had had a couple of employees call questioning the
15 attendance policy and the communication with their
16 supervisor.

17 Q. What were they questioning?

18 A. The two points for leave early or one point for leave
19 early.

20 Q. Did they raise any issues -- what specifically do you
21 recall them raising?

22 A. Just that it wasn't specifically spelled out in the
23 attendance policy.

24 Q. When that happened, what was your response?

25 A. That we communicated it, and we communicated it in the

1 introduction meetings and during orientation that you
2 receive two points if you leave less than 2 hours; you
3 receive one point if you work at least 2 hours and then
4 leave early.

5 JUDGE SANDRON: Do you by chance remember who were the
6 employees?

7 THE WITNESS: No, sir, I don't.

8 JUDGE SANDRON: Do you remember if they were Fiskars?

9 THE WITNESS: I don't, I don't.

10 Q. BY MR. BODZY: Ms. Johnson, let me turn your attention
11 to an employee named Jermaine Brown.

12 A. Yes, sir.

13 Q. Did Mr. Brown ever approach you regarding attendance
14 points for leaving early?

15 A. Yes.

16 Q. When did he first approach you?

17 A. July. He had received two points for a leave early in
18 July of 2014.

19 Q. Where did he approach you?

20 A. In my office.

21 Q. Do you recall what time of day it was?

22 A. No, I don't.

23 Q. Was anyone else present in your office?

24 A. No.

25 Q. Tell me what you recall being said when he came to your

1 A. No, sir.

2 Q. Ms. Johnson, did you ever have further discussion with
3 Jermaine Brown about his attendance points?

4 A. Yes.

5 Q. When was that?

6 A. July 1, 2015.

7 Q. What caused you to interact on that day?

8 A. He and Chris Brawley came to my office. Jermaine was
9 late getting to work that day. He came up, and they asked
10 me about his points.

11 Q. Well, let's break this down a little bit. July 1st of
12 what year?

13 A. '15.

14 Q. You said that he and Chris Brawley came to your office?

15 A. Yes.

16 Q. Do you recall approximately what time of day it was?

17 A. No. He was late that morning. He didn't punch in, so I
18 don't know what time of day, but it was after 8:00 a.m., and
19 I would say it was probably before 9:00 a.m.

20 JUDGE SANDRON: So you recall they came together to see
21 you?

22 THE WITNESS: Yes.

23 Q. BY MR. BODZY: They came to your office, and what were
24 your next steps at that point -- or let me back up. What
25 was said when they came to your office, by whom?

1 A. Chris or Jermaine asked me one, but it was pointed out
2 that he was late, he was just getting there. I knew he was
3 on a final written warning, and I said I would need to take
4 a look at Kronos, verify all his points before a decision
5 would be made.

6 Q. Did you, in fact, do that?

7 A. I did.

8 JUDGE SANDRON: Anything else at that meeting?

9 THE WITNESS: No.

10 JUDGE SANDRON: So you say you looked at Kronos after
11 he --

12 THE WITNESS: I pulled up the time clock and started
13 going through all his points.

14 JUDGE SANDRON: After they had left?

15 THE WITNESS: Yes.

16 Q. BY MR. BODZY: When you said you looked at Kronos, what
17 were you looking at?

18 A. I was verifying tardies and leave earlies to make sure
19 that since his final written warning, nothing had fallen
20 off, and if nothing had fallen off, did he in fact warrant
21 termination.

22 Q. Did you reach a conclusion as to whether he did, in
23 fact, warrant termination?

24 A. Yes.

25 Q. What was that conclusion?

1 A. He was tardy on July 1st, and he was on a final written,
2 and one additional point meant he was terminated.

3 Q. Did you make the decision to terminate?

4 A. Yes, I did.

5 Q. Once you made the decision to terminate him, how did you
6 go about doing that?

7 A. I got Jermaine and terminated him.

8 Q. During that meeting, was anyone else present?

9 JUDGE SANDRON: Does that mean the same day?

10 THE WITNESS: Yes, quickly.

11 JUDGE SANDRON: So it was still in the morning?

12 THE WITNESS: Yeah, it was still that morning.

13 Q. BY MR. BODZY: Was anyone else present?

14 A. Chris Brawley.

15 Q. For the termination?

16 A. Yes.

17 Q. Anyone else other than you, Chris, and Jermaine?

18 A. No.

19 Q. When they arrived in your office, what do you recall
20 being said?

21 JUDGE SANDRON: Did they arrive together, do you recall?

22 THE WITNESS: I believe they arrived together. I asked
23 them to have a seat. I told Jermaine that I had gone
24 through Kronos and confirmed that due to his tardiness, we
25 would be terminating his employment with OHL. I handed him

1 look at General Counsel Exhibit 7, which should be up there?

2 A. Okay.

3 Q. It's a three-page document.

4 A. Yes, sir.

5 Q. When you conducted the meeting, did you do anything with
6 that document or distribute it in any way?

7 A. Each employee that attended the meeting got all three
8 pages. They were -- they took this page off at the end of
9 the meeting, signed it --

10 Q. When you say this page?

11 A. The very last page where it required their signature.
12 They signed off on it that they had attended the meeting and
13 had heard the policy. They kept page 1 and 2 for their
14 records.

15 Q. Ms. Johnson, since the meeting in October -- the
16 meetings in October when you rolled out the policy to the
17 employees, has OHL's attendance policy changed?

18 A. No.

19 MR. BODZY: That's all the questions I have.

20 MR. HEARNE: Can we take maybe just a 10-minute recess?

21 JUDGE SANDRON: That's fine. Off the record.

22 (Off the record from 11:25 a.m. to 11:34 a.m.)

23 JUDGE SANDRON: Back on the record.

24 Cross-examination?

25 MR. HEARNE: Thank you, Your Honor.

1 MR. BODZY: Object to the relevance.

2 JUDGE SANDRON: Sustained. The policy is what's
3 important. What she recommended or wasn't put into
4 effect --

5 MR. HEARNE: I think it's just in terms of -- because
6 there is at least a factual dispute concerning when the two-
7 point rule was actually communicated to employees. We've
8 had the testimony from Respondent's witnesses about it
9 happened in October of 2013. There has been testimony from
10 GC witnesses that it was at a later --

11 JUDGE SANDRON: Yes.

12 MR. HEARNE: Well, it was not clarified until later.
13 I'm merely trying to explore whether or not there was ever
14 any recommendation that the policy be revised to clarify the
15 rule for the employees.

16 JUDGE SANDRON: But if the recommendation was never
17 effectuated, then it has no bearing on when the policy is
18 effective.

19 MR. HEARNE: I'm just trying to find out whether she
20 actually made the recommendation and it was rejected, or did
21 she just never do it.

22 JUDGE SANDRON: How would it make a difference?

23 MR. HEARNE: I want to know when she made that
24 clarification.

25 JUDGE SANDRON: The objection is sustained.

1 time when it was asserted this unwritten -- I'm merely
2 trying to establish when it was done. But if you believe
3 it's not -- I don't need to pursue it, then I'll withdraw
4 the questions and we can move on.

5 JUDGE SANDRON: I mean the parties will certainly be
6 able to argue the 10(b), and I haven't made any decision on
7 it. I would just say offhand, though, the fact that the
8 termination on July 1, 2015, was based in part on the
9 alleged changes, then that might be the starting date for a
10 6-month ending bar. But like I said, I haven't made any
11 determination on that, and the parties can argue that. But
12 inasmuch as that was actually a date, the last date when
13 there was change and it had an impact, that might be the
14 start of the 10(b) period, in which case it wouldn't be a
15 bar. But the parties can argue that. I haven't made a
16 decision, so go ahead. I think you've exhausted pretty much
17 the internal magnitude discussions about this. And General
18 Counsel, you're still claiming it was about October 1, 2015.

19 MR. HEARNE: That's based on what the documents assert
20 as the earliest possible thing, that's true, yes. We are
21 asserting that. But there is some confusion about -- at
22 least a dispute and the testimony concerning the two-point
23 rule, when it was communicated to employees or we indicated
24 to employees in the Fiskars account. I'm not saying it may
25 have been communicated to other employees, but we're just

1 merely -- I'm merely trying to ensure that we've explored
2 that issue.

3 JUDGE SANDRON: That wouldn't make a difference on what
4 you're contending as violations.

5 MR. HEARNE: Then I'm prepared to move on from that
6 document.

7 Q. BY MR. HEARNE: You testified that Jermaine Brown in
8 2014, he came to the HR department area and spoke with you
9 on two separate occasions about receiving points for a leave
10 early: One you said was in July of 2014 or the point he
11 received was in July 2014, and he spoke with you about that.
12 Then he came back in October of 2014 and spoke with you
13 again about that? That's not on the specific document.

14 JUDGE SANDRON: Right, that wouldn't be in the document.

15 Q. BY MR. HEARNE: It's not a document that I'm talking
16 about.

17 A. Right. I'm just looking at my dates.

18 JUDGE SANDRON: That's all right. You just -- I think
19 he's asking about --

20 Q. BY MR. HEARNE: He actually came and had conversations
21 with you about that.

22 A. Yes.

23 Q. You were asked on direct whether you referred Mr. Brown
24 to any other manager or supervisor to talk to about -- in
25 the October 2014 conversation, you were asked did you refer

1 JUDGE SANDRON: Yes.

2 (Pause.)

3 MR. BODZY: No further questions.

4 JUDGE SANDRON: Ms. Johnson, thank you. You're done.

5 (Witness excused.)

6 JUDGE SANDRON: I'm going to swear you in, so if you'll
7 raise your right hand?

8 (Whereupon,

9 KYLE PERKINS

10 was called as a witness by and on behalf of the Respondent
11 and, after having been duly sworn, was examined and
12 testified as follows:)

13 JUDGE SANDRON: If you will kindly be seated? Please
14 state and spell your full and correct legal name for the
15 record, and provide us with an address, either residence of
16 business address.

17 THE WITNESS: Okay. Kyle Perkins, K-y-l-e
18 P-e-r-k-i-n-s. I reside at 169 South Humes, H-u-m-e-s,
19 Memphis, Tennessee.

20 JUDGE SANDRON: And your zip code?

21 THE WITNESS: 38111.

22 DIRECT EXAMINATION

23 Q. BY MR. BODZY: Mr. Perkins, who do you work for?

24 A. OHL.

25 Q. What is your job at OHL?

1 A. I'm the operations manager.

2 Q. You're operations manager of which account?

3 A. None currently. I'm currently working on special
4 projects and stuff like that.

5 Q. In October of 2013, were you manager in an account?

6 A. Yes, HP.

7 Q. HP. What account -- where is that account located?

8 A. 5510 building.

9 JUDGE SANDRON: What was the account, HP?

10 THE WITNESS: HP, Hewlett-Packard.

11 Q. BY MR. BODZY: Was Hewlett-Packard running two shifts at
12 that time?

13 A. Yes, they were.

14 Q. Which shift were you?

15 A. I was on the B shift.

16 Q. B shift, all right. Did you attend the meeting of the
17 HP, B shift, where it was conducted by Lisa Johnson and
18 discussed among other things --

19 JUDGE SANDRON: I think it's better if you don't put too
20 much into the question as far as leading. Maybe you can ask
21 a little more --

22 Q. BY MR. BODZY: Did you attend a meeting where Lisa
23 Johnson discussed the new attendance policy?

24 A. Yes, sir.

25 Q. When was that?

1 A. Sometime in October. I don't recall an exact date.

2 Q. 2013?

3 A. Yes, sir.

4 Q. Where was that conducted?

5 A. HP, upstairs break room.

6 Q. Who attended the meeting that you attended?

7 A. All my shift, and then Lisa was there as well.

8 Q. What do you recall being discussed at that meeting?

9 JUDGE SANDRON: Well, do you remember the time of day
10 that meeting was?

11 THE WITNESS: I think it was 11:30-ish, somewhere around
12 there if I recall. I remember it was right after our shift,
13 the start of shift.

14 JUDGE SANDRON: Did your department have regular morning
15 meetings?

16 THE WITNESS: Yes, we had a pre-shift meeting every
17 morning, and then that was followed up by this particular
18 meeting that we are referencing.

19 JUDGE SANDRON: So this was a specially called meeting?

20 THE WITNESS: Yes, sir.

21 Q. BY MR. BODZY: Thank you. What do you recall was
22 discussed by Ms. Johnson at that meeting?

23 A. The new attendance policy.

24 Q. What did she discuss about the new attendance policy?

25 A. The main emphasis was on the fact that there was a

1 change to the leave early policy, so if you left early
2 before 2 hours, then you would get two points, and if you
3 left early after working 2 hours, you would get one point.

4 Q. Has that policy changed at OHL --

5 A. No, sir.

6 Q. -- since that day?

7 A. No, sir.

8 MR. BODZY: I have nothing further, Your Honor.

9 JUDGE SANDRON: Cross-examination?

10 MR. HEARNE: We don't have any questions of this
11 witness, Your Honor.

12 JUDGE SANDRON: Was anything distributed to employees
13 that day?

14 THE WITNESS: Not that I recall, no, sir.

15 JUDGE SANDRON: Did anybody ask any questions?

16 THE WITNESS: No, sir.

17 JUDGE SANDRON: Any follow-up questions to my questions?

18 Q. BY MR. BODZY: Maybe this follow-up, what was it about
19 two points and one point that -- why does that stick out in
20 your memory?

21 A. Just because that was the biggest change to the overall
22 meeting was the fact that -- I mean that was going to have a
23 direct effect on the employees that I managed at the time.

24 JUDGE SANDRON: Were any other subjects discussed at
25 that time that you recall?

A F T E R N O O N S E S S I O N

(Time Noted: 1:10 p.m.)

JUDGE SANDRON: On the record.

The Respondent's next witness?

MR. BODZY: Shannon Miles.

JUDGE SANDRON: Ms. Miles, if you will please stand and would you raise your right hand?

(Whereupon,

SHANNON MILES

was called as a witness by and on behalf of the Respondent and, after having been duly sworn, was examined and testified as follows:)

JUDGE SANDRON: If you will be seated, please. Kindly state and spell your full and correct name, and provide us with an address, either residence or business, whichever you prefer.

THE WITNESS: Shannon Miles, Shannon, S-h-a-n-n-o-n, Miles, M-i-l-e-s. My work address is 7101 Executive Center Drive, Suite 333, Brentwood, Tennessee 37027.

JUDGE SANDRON: Thank you.

DIRECT EXAMINATION

Q. BY MR. BODZY: Good afternoon, Ms. Miles.

A. Hello.

Q. By whom are you employed?

A. OHL.

1 Q. Where do you work for OHL?

2 A. At the corporate office in Brentwood.

3 Q. What is your position?

4 A. Director of human resources.

5 Q. When did you start working for OHL?

6 A. Five years ago, May 2011.

7 Q. When you started working at OHL, what was your title?

8 A. Senior manager of employee relations.

9 Q. When did you get promoted from that position?

10 A. My title changed to senior manager of HR at the end of
11 that year and then promoted to director in February of '14.

12 JUDGE SANDRON: Excuse me. General Counsel, do you want
13 to change the title in the complaint?

14 MR. HEARNE: I guess we can make a motion to amend the
15 complaint. It's paragraph 5 of the complaint for
16 Ms. Miles's title to read director of human resources and
17 replacing senior employee relations manager.

18 JUDGE SANDRON: Any objection to that amendment?

19 MR. BODZY: Clarification. During the time period -- it
20 says at all material times, and so during the time period at
21 issue in this case --

22 JUDGE SANDRON: Why don't you just move to amend it, put
23 a slash, director of human resources.

24 MR. HEARNE: Then General Counsel would move to amend
25 paragraph 5 of the complaint to read after Shannon Miles,

1 Q. Prior to rolling out the policy, did you distribute it
2 to anybody?

3 A. You mean --

4 Q. I'm sorry. Prior to it being rolled out to the
5 employees, did you distribute the policy?

6 A. I showed it to other HR senior managers to get their
7 input.

8 Q. And prior to the policy being rolled out to the
9 employees, did anyone raise any questions or issues with the
10 policy?

11 A. Yes.

12 Q. Who do you recall raising a question?

13 A. There was one I think right after the policy was rolled
14 out about bridging time for leaving early and then absences,
15 and I don't remember who brought that up. But then there
16 was another one, another week and a half or so later about
17 the points for leave early.

18 Q. When you say after the policy was rolled out, what do
19 you mean by that?

20 A. After it was sent out to everybody, so it was -- oh, I'm
21 sorry, to human resources.

22 JUDGE SANDRON: That's internal at that point?

23 THE WITNESS: Yes, sir. I'm sorry.

24 Q. BY MR. BODZY: You said there was a question about
25 bridging absences, and then what was the second issue that

1 was raised?

2 A. About leave early. There was an e-mail that I received
3 and asking a question if somebody came in and worked 5
4 minutes and then left early, would they receive only one
5 point.

6 Q. Is that e-mail you're referring to General Counsel
7 Exhibit 20?

8 A. Yes, sir.

9 Q. Your response to Ms. Johnson is Friday afternoon or
10 Friday, October 11, at 5:04 p.m., correct?

11 A. Yes.

12 Q. Subsequent to your e-mail to her, did you have another
13 discussion or communication with her regarding the issue
14 raised in General Counsel Exhibit 20?

15 A. Yes.

16 Q. When did you have that communication?

17 A. It was the following Monday morning.

18 Q. So that would be the 14th of October?

19 A. Yes, sir.

20 Q. Do you recall approximately what time?

21 A. I know it was early in the morning because she was going
22 to start having meetings to talk to the employees about the
23 policy, so she had some questions.

24 Q. When you say "she," who are you referring to?

25 A. I'm sorry, Lisa Johnson.

1 Q. Did you call Ms. Johnson, or did she call you?

2 A. She called me.

3 Q. Was there anyone else on the phone?

4 A. No.

5 Q. Tell us what you recall about that conversation, what
6 you recall being said during the conversation.

7 A. She referred to the e-mail and said that there had been
8 some questions of the 5 point -- sorry, 5 minutes, and she
9 wanted to know if there was a particular time because she
10 knew she would get questions, say 5 minutes, 10 minutes, or
11 whatever the case may be. When I received this e-mail from
12 her, I responded back like that day, and then I thought
13 about it all weekend. It was a good point somebody had
14 raised and thought about how we should handle those --
15 handle that specific situation.

16 Q. In the phone call, did you tell Ms. Johnson how to
17 handle that situation?

18 A. Yes. I told her that we would treat the leave earlies
19 like we did the lates. There would be a 2-hour window. And
20 so if a person came in -- if a person worked less than 2
21 hours, it would be two points, but more would be one point.

22 Q. Did you give Ms. Johnson the instructions about how to
23 communicate that to employees?

24 A. Yes. I told her that she should make sure she talked to
25 all the employees in the meeting she was holding that week

1 so they would understand the policy.

2 Q. Did you ever issue a written correction or a
3 clarification to the policy?

4 A. About the leave earlies?

5 Q. About the leave earlies.

6 A. No, sir.

7 Q. Why not?

8 A. At that point when it was brought up on that Friday, the
9 policy had already gone out to all of HR and operations, and
10 we had also put it in our Halogen system, which is our PLMS,
11 personal learning management system. So when we roll out a
12 new policy, we put it in that system, and then the e-mail
13 goes to everybody that you need to take the training or you
14 have to review the policy and sign off that you've reviewed
15 it. So that had already been put in the system earlier that
16 week, and it would have caused us to redo all of that and
17 have everybody go back and take it. My boss at the time,
18 the vice president, was you can't account for every
19 situation, you can't or you'd have to change the policy
20 every day. It's gone out; just make sure everybody talks
21 about it.

22 JUDGE SANDRON: Who is the vice president then?

23 THE WITNESS: Andrew Tidwell.

24 JUDGE SANDRON: Can you spell his name?

25 THE WITNESS: Andrew, the normal spelling, and then

1 Tidwell, T-i-d-w-e-l-l.

2 JUDGE SANDRON: To about how many employees did this new
3 policy apply?

4 THE WITNESS: It was all of them. I think about 8,000
5 or so at that time.

6 Q. BY MR. BODZY: Ms. Miles, since the attendance policy
7 that you've been referring to -- the attendance policy
8 change you've been referring to in October 2013, has OHL's
9 attendance policy changed at all?

10 A. No, sir.

11 Q. Up to today?

12 A. No, sir.

13 (Respondent's Exhibit 18 marked for identification.)

14 Q. BY MR. BODZY: Ms. Miles, I've handed you what's been
15 marked as Respondent's Exhibit 18. Do you recognize what
16 that document is?

17 A. Yes, sir.

18 Q. What is it?

19 A. It's a screen shot in Kronos.

20 Q. Does it contain information about a particular employee?

21 A. Yes.

22 Q. Who is that?

23 A. Megan Ferrone.

24 JUDGE SANDRON: Can you spell her name if you have it,
25 the name?

CERTIFICATION

Pursuant to 6th Cir. R. 30(b)(4)(E), I certify that all documents included in the Supplemental Appendix are copies of documents that are properly part of the record.

/s/David Habenstreit

David Habenstreit

Assistant General Counsel

National Labor Relations Board

1015 Half Street, SE

Washington, DC 20570

Dated at Washington, DC
this 11th day of March, 2019

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OZBURN-HESSEY LOGISTICS, LLC)	
)	
Petitioner/Cross-Respondent)	
)	
v.)	
)	
NATIONAL LABOR RELATIONS BOARD)	
)	Nos. 18-2103
Respondent/Cross-Petitioner)	18-2217
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY,)	
RUBBER, MANUFACTURING ENERGY, ALLIED)	
INDUSTRIAL AND SERVICE WORKERS)	
INTERNATIONAL UNION, AFL-CIO, CLC)	
)	
Intervenor)	

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all those parties or their counsel of record through the CM/ECF system.

/s/David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 11th day of March, 2019