

FILED
December 17, 2025
State of Nevada
E.M.R.B.
5:31 p.m.

1 FISHER & PHILLIPS LLP
2 MARK J. RICCIARDI, ESQ.
3 Nevada Bar No. 3141
4 ALLISON L. KHEEL, ESQ.
5 Nevada Bar No. 12986
6 300 South Fourth Street, Suite 1500
7 Las Vegas, NV 89101
8 Telephone: (702) 252-3131
9 Facsimile: (702) 252-7411
10 E-Mail Address: mricciardi@fisherphillips.com
11 E-Mail Address: akheel@fisherphillips.com

12 *Attorneys for Respondent*

13 **STATE OF NEVADA**

14 **EMPLOYEE-MANAGEMENT RELATIONS BOARD**

15 JUSTIN DARLING, a Local Government)	Case No.: 2025-005
16 Employee,)	
17)	RESPONDENT'S NOTICE OF
18 Complainant,)	ARBITRATION AWARD
19)	
20 vs.)	
21)	
22 LAS VEGAS VALLEY WATER DISTRICT, a)	
23 Political Subdivision of the State of Nevada,)	
24)	
25 Respondent.)	
26)	

27 COMES NOW, Respondent Las Vegas Valley Water District ("LVVWD"
28 and/or "Respondent"), by and through its counsel, Fisher & Phillips, LLP hereby
29 submits its Notice of Arbitration's Award and Decision Regarding Arbitration, which
30 was issued by the Arbitrator on December 11, 2025.

31 Pursuant to the May 22, 2025 Notice of Entry of Order of the Employee
32 Management Relations Board ("EMRB" or the "Board"), granting the Motion for Stay
33 under the limited deferral doctrine, and deferring the matter pending the final resolution
34 of the related grievance arbitration, Respondent hereby notifies the Board of the
35 following:

1 The Arbitrator's Decision and Award Denying the Grievance was issued on
2 December 11, 2025. A copy is attached as Exhibit 1 for the Board's records.

3 Dated this 17th day of December, 2025.

4 FISHER & PHILLIPS, LLP

5 /s/ Allison L. Kheel, Esq.
6 MARK J. RICCIARDI, ESQ.
7 ALLISON L. KHEEL, ESQ.
8 300 South 4th Street, Suite 1500
9 Las Vegas, Nevada 89101
10 Attorneys for Respondent
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC SERVICE

This is to certify that on the 17th day of December, 2025, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **RESPONDENT'S NOTICE OF ARBITRATION AWARD** with the EMRB (emrb@business.nv.gov) and an electronic copy was provided to the following:

JUSTIN DARLING
1610 Rocking Horse Drive
Henderson, NV 89002
Jwdwj713@gmail.com

By: /s/ Darhyl Kerr
An employee of Fisher & Phillips LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

**BEFORE
PATRICK HALTER
ARBITRATOR**

In the Matter of Controversy Between

**Water Supervisors Association of Nevada
On Behalf of Justin Darling
(Association - Union)**

&

**Las Vegas Valley Water District
(District - Employer)**

FMCS Case No. 250228-03911

Appearances

For the Association:

Matthew L. Durham
King Scow Koch Durham LLC

For the District:

David B. Dornak
Fisher & Phillips LLP

Issue
Termination

Hearing
August 26-27, 2025

Briefs
October 31, 2025

Award
Grievance Denied

Date
December 11, 2025

INTRODUCTION

Las Vegas Valley Water District is a not-for-profit public agency providing water services to the City of Las Vegas, the metropolitan area thereof and some unincorporated areas in Clark County Nevada. Water services are carried out by approximately one thousand four hundred (1,400) employees in salaried and hourly positions. Eligible salaried positions are covered by a Collective Bargaining Agreement ("CBA") between the District and the Water Supervisors Association of Nevada effective July 1, 2021 - June 30, 2026. The Association represents a bargaining unit comprised of regular full-time and part-time employees in classifications listed in the CBA's Appendix A.

In October 2009 Justin Darling entered on duty with the Southern Nevada Water Authority ("SNWA") in the position Mechanical Systems Technician II assigned to the raw water unit. He transferred in 2014 to a technician position on the District's "booster crew" comprised of ten (10) technicians performing maintenance, repairs and upgrades at approximately fifty (50) pump stations located throughout the Valley. Effective April 2019 the District promoted Darling to the position Mechanical Supervisor with oversight duties and responsibilities of the crew.

Darling, a salaried employee, often performed his duties in the field using a District vehicle (pickup truck) and accompanied by hourly employee Tyler Gibson, the crew's scheduler/planner. Darling was Gibson's first-line supervisor and personal friend. Their positions are in different bargaining units, represented by different unions and covered by different agreements but their workday schedule and hours were the same - - ten (10) hours daily, Monday through Thursday.

Since April 2019 Maintenance Division Manager James Doubek has served as Darling's first-line supervisor. Manager Doubek reported to Buck Osborne, Director of Operations. Osborne's position encompassed oversight duties and responsibilities of four (4) divisions - - operations division, maintenance division, distribution crews and SNWA's maintenance division. Osborne reported to the District's Deputy General Manager.

CHRONOLOGY

On May 1, 2024, Director Osborne heard District employee Brittany Alas, an administrative assistant, crying and upset by a telephone discussion with Darling whether a technician accessed Alta Gate at Springs Preserve. Osborne wanted to talk with Darling; he checked the fleet tracking system GeoTab and located Darling in a District vehicle parked in front of a private residence and not parked at the nearby pump station. Osborne viewed the situation as odd; he checked the prior eight (8) days to see if this situation was repeated.

On or about May 1 Osborne contacted HR Manager Laura Ornelas; she met with Osborne on May 7 to hear his concerns about the telephone incident and vehicle use. Ornelas shared Osborne's concerns with HR Director Mary Madden whereupon Madden authorized an investigation led by Ornelas and assisted by HR staff. On the 7th Ornelas instructed HR Analyst Frank Gibase and HR Technician Brenda Perez to contact Alas; they reported to Ornelas that Alas was "over" the telephone incident and not pursuing it. No further investigative action was taken by HR.

As for use of District vehicles, HR checked vehicle use for the booster crew, Gibson and Darling for two (2) weeks leading up to May 1. The review showed vehicle use on Friday, a non-workday, with overtime hours claimed. HR determined to review vehicle use, work hours claimed, hours compensated as overtime, badge and key access records and credit card ("P-

Card”) purchases for the period January 1, 2024 up to May 7, 2024. In addition to collecting data, HR decided to interview Darling, Gibson and Manager Doubek.

On May 14, 2024, Manager Ornelas contacted Darling by e-mail stating as follows:

I have scheduled a meeting for us to meet at 2 pm tomorrow to discuss some concerns, including certifications among other things. We will meet here at HR and you can bring a WSAN representative if you choose to.

Please confirm your attendance to this meeting. We will meet in my office.

[Un. Exh. 2]

Manager Doubek requested clarification of the phrase “among other things” but received no response.

On May 15 Manager Ornelas interviewed Darling followed by a separate interview with Gibson. Darling attended the interview without a Union representative. Darling and Ornelas discussed certifications required by the Nevada Division of Environmental Protection (“NDEP”) for Darling’s position. The interview continued with Ornelas inquiring into Darling’s review and approval of hours worked and reported as overtime by Gibson as he had the most overtime hours in the maintenance division and the crew claimed 858 overtime hours. Darling explained how he reviews and approves time reports. Ornelas inquired into Darling’s review and approval of P-Card purchases with vendors Amazon and 6651 Automotive Customs and use of the District’s vehicle. At the end of the meeting the District placed Darling on administrative leave and HR continued to review GeoTab records and vehicle use, overtime, time block audit data, key entry data and vendor purchases.

On June 10, 2024, Manager Doubek, issued to Darling a pre-termination letter recommending his discharge. The letter states, in part, as follows:

In April 2024, the District conducted an investigation into multiple discrepancies that were found within your department and under your supervision. These items include, but are not limited to, approving unsanctioned District issued credit card (“P-Card”) purchases, approving overtime (“OT”) for hours not worked, misappropriation of District resources, and conducting personal business on District time. Furthermore, in April of 2023, the District updated the certification requirements for your position, as required by the Nevada Division of Environmental Protection (NDEP). Despite being provided ample notice and time to meet the certification requirements for a Maintenance Supervisor, you have failed to obtain the required certification for your position.

* * *

Here listed are some of the issues and concerns which have led to my decision:

- Lack of demonstrating personal and professional integrity to inspire confidence and trust within the organization.
- Allowing an employee to conduct non-work on work time.
- Theft of District work time by allowing an employee to charge non-work time as paid work time (Workday entries).
- Conducting non-work activities in a District vehicle during work time.
- Lack of you meeting continued professional development to obtain required certifications.
- Failure to demonstrate honest and ethical behavior in business transactions and management practices.

[Emp. Exh. 2]

On June 27, 2024, a pre-termination meeting convened. Attending for the District were HR Manager Ornelas, HR Analysts Frank Gibase and Steve Meyer, Director Osborne and Maintenance Manager Doubek. Present for the Union were Association President Rodney Carter, Chad Vaccarino and counsel Matthew Durham. Darling and Durham responded to issues in the pre-termination letter such as review and approval of work hours claimed and compensated as overtime, District vehicle use for non-work reasons and vendor purchases. A separate pre-termination meeting was held for Gibson. After the pre-termination meeting, the District issued written summaries of issues and findings to Darling and Gibson. [Emp. Exhs. 6, 7] With respect to Darling, the summary findings are - -

- (1) Darling conducted personal business on District time and charged the District for hours worked;
- (2) Darling approved payroll hours and P-card purchases that were inaccurate or lacked documentation;
- (3) Darling's 6651 Customs discrepancies; and
- (4) Darling's certification for position.

[Emp. Exh. 6]

On August 5, 2024, counsel for Darling met with HR Director Madden about Ornelas' bias against Darling based on her statements during the May 15 meeting that Darling was involved in a kickback scheme with 6651 Customs with criminal implications for law enforcement to investigate and Ornelas ambushed Darling with the vaguely worded notice. Madden did not agree with counsel's bias concerns but decided to remove Ornelas from the investigation and Madden presided over it.

By letter dated August 19, 2024, counsel followed up with Madden on the August 5 meeting and responded to the District's summaries of issues and findings such as Darling's use of the District vehicle. Counsel stated:

While the District appears to have abandoned all its other purported justifications for placing my clients on administrative leave and recommending that their employment be terminated, the District continues to maintain that my clients' use of a District vehicle was not in compliance with past and current practice. . . . Accordingly, you requested that my clients provide a written response to the

District's "Summary of Issues and Findings," which identifies dates when my clients are alleged to have misused the vehicle and/or improperly recorded time.

Counsel's letter stated, in essence, that (1) the summary of issues and findings is misleading because it includes drive time in the calculation of time alleged on personal errands; (2) Gibson suffers from gall bladder control and to avoid personal embarrassment took bio-breaks at his residence or parents' residence when in that vicinity; (3) included in the summary are multiple stops that were not work-related and should have been excluded; (4) stops involved meal and rest breaks consistent with current and past practice; (5) Gibson worked on May 5, 2024; and (6) the summary misrepresents Gibson's overtime work and availability such as standing by to work on certain dates. [Emp. Exh. 8]

On August 29, 2024, Maintenance Manager Doubek issued to Darling a letter terminating his employment effective August 30, 2024. The District reinstated Gibson. Darling's termination letter references his failure to review and approve accurate reporting of hours worked and claimed as overtime which "shows a severe and concerning lack of competency" as a supervisor. The letter states that on fifteen (15) occasions Darling "repeatedly entered time on your timecard inaccurately" which is "dishonest behavior and a misappropriation of company time" since "you did not work on those dates." Also, Darling "traveled with your subordinate to your home and their home which is a clear violation of AP11 - Misuse of District Vehicle and District Code of Ethics, Vision and Values Statements." The policy "clearly states this kind of personal travel is not permitted, especially with an hourly employee." Manager Doubek assessed termination as the appropriate discipline.

I do not find that the information you provided to have mitigated the egregiousness of your misconduct. As a supervisor, you are held to a higher standard of having a working knowledge of and upholding District policies, including for your subordinates. As a result of your failure as a supervisor to follow district policy, and your apparent willingness and knowing violation of those policies, I have lost confidence and trust in your ability to perform as a Mechanical Supervisor. On this basis, I uphold the recommendation to terminate your employment.

[Emp. Exh. 10]

On September 5, 2024, the Association filed a grievance on behalf of Darling. The grievance was not resolved at Steps 1 and 2 of the grievance process. [Emp. Exhs. 11-19]

On December 22, 2024, the Association invoked arbitration. [Emp. Exh. 20]

On August 26 and 27, 2025, an in-person hearing convened wherein each party presented evidence, examined and cross-examined witnesses, and argued contentions in support of its position. Aside from transcribed sworn testimony, the record includes forty (40) District exhibits and twenty-six (26) Association exhibits.

On October 31, 2025, the record in this proceeding closed with the Arbitrator's receipt of each party's post-hearing brief.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Employer have just cause to terminate Justin Darling and, if not, what should be the appropriate remedy?

[Tr. 8]

CBA

Article 3 - Retained Rights
Article 5 - Grievance Procedure
Article 6 - Arbitration
Article 7 - Discharge, Discipline and Personnel Files

DISTRICT POLICIES

PCARD Program Policies & Procedures Manual
Administrative Policy - Conflict of Interest
Administrative Policy - Vehicle Use and Work Related Use
Administrative Policy - Global Positioning & Telematics Systems
for District and SNWA Mobile Assets

Summary of the Association's Position and Argument

The Association's position and argument are set forth in its opening statement, examination and cross-examination of witnesses, exhibits and post-hearing brief.

Testifying for the Association were Tyler Gibson, Scheduler/Planner, Inspections Engineering Team; David Thompson, Large Meter Services Operations Manager; and Justin Darling. Present but not testifying were Richard McCann, McCann Consulting LLC, Rodney Carter, Association President and Tim Kelleher, Law Clerk.

Association's Position

Darling's Record

During fifteen (15) years of SNWA and District employment, Darling never received any level of discipline nor counseling. He loved his job providing fresh drinking water to the communities served by the District. [Tr. 328-329]

His demonstrated pride in performing his duties was recognized in annual performance reviews where he earned overall ratings of "Exceeds Full Performance" on eight (8) occasions and "Distinguished Performance" four (4) times. For the performance review ending in 2023, Manager Doubek evaluated Darling as "an effective and high performing supervisor" who exemplified District values. Doubek stated Darling conducted "himself in a truly professional manner" and maintained "the highest ethical behavior." [Un. Exh. 1 at 112]

Investigation - May 1, 2024

Notwithstanding an unblemished and exemplary record the District initiated an aggressive investigation against Darling under questionable circumstances. Director Osborne claimed that on May 1 he heard an upset and weeping employee tell Osborne's administrative assistant that she had been verbally attacked and belittled by Darling in a telephone conversation. Osborne claims he wanted to talk with Darling about this situation but did not know Darling's whereabouts.

Instead of contacting Darling by telephone to discuss the incident or discussing it with him when Darling returned to the office from the field, Osborne accessed GeoTab to locate Darling in a District vehicle "oddly parked down the street" from the pump station. There is nothing odd about parking in proximity of a pump station. Osborne used the "oddly parked" location to examine GeoTab data on Darling's locations during prior weeks. Osborne concluded Darling used the District vehicle to stop at locations where there was no apparent District business but the long-term practice allows employees to use a District vehicle for personal stops.

Osborne reported the telephone incident and his concern about vehicle use to HR on May 1st but Manager Laura Ornelas was unavailable to meet that day. Ornelas met with Osborne on May 7; she testified he did not report the weeping employee was attacked and belittled but upset because of a disagreement with Darling. Verbally "attacked and belittled" appeared in Osborne's written statement dated November 2024 which was six (6) months after the alleged incident occurred. [Un. Exh. 12]

Osborne's accessing GeoTab violates the District's written policy - - "Requests for review of GPS-related data shall be submitted to [HR], which will determine the necessity, propriety and scope of the release of GPS-related information". [Un. Exh. 19] This led to HR's expansive and unwarranted investigation instead of Osborne directly engaging Darling by telephone or meeting with him when Darling returned to the office on May 1.

Misconduct Allegations

On May 15, 2024, Darling met with Manager Ornelas. She ambushed him with allegations of misconduct that she refused to disclose prior to their meeting despite requests by Darling and Manager Doubek. Also undisclosed by Ornelas was that Darling was subject to an investigation initiated by HR on May 7, 2024. Darling attended the meeting without Union representation as he anticipated the discussion to deal with NDEP certifications. Prior to the meeting, Maintenance Manager Doubek advised Darling to "just ride it out and see what happens" as management was extending leeway to obtain certifications. Manager Ornelas testified that no employee has been terminated for failing to obtain certifications. [Tr. 185]

Once the meeting convened, discussing certifications passed and Manager Ornelas proceeded to accuse Darling of improper use of District vehicle, alleged Darling approved excessive overtime hours for Tyler Gibson on Fridays, a non-workday, and claimed Darling was involved in a kickback scheme with 6651 Automotive Customs, allegedly an unapproved vendor. [Tr. 337-338; Un. Exh. 3] Darling pointed out that Gibson worked on Fridays on the migration of data to a new computer system, Customs was an approved vendor in the District's Coupa system and Darling's supervisor Doubek had authorized use of the P-Card for payment to Customs. [Tr. 258, 342-345; Un. Exh. 3] After the meeting District security personnel met with officials at 6651 Customs and determined there was no kickback scheme. None of HR's allegations were meritorious but HR placed Darling and Gibson on administrative leave effective May 15, 2024.

Pre-Termination Letter

On June 10, 2024, Darling and Gibson each received a pre-termination letter. The District abandoned the kickback scheme allegation but presented new allegations. Manager Doubek's recommendation to terminate was based on the following:

1. Darling allowed Gibson to use the P-Card for purchases at 6651 Customs which is not an approved District vendor;
2. The thickness of items powder-coated by 6651 Customs did not meet District guidelines of 18-25 mm for coatings thereby posing potential liability for the District;
3. Darling approved Gibson's P-Card purchases for items supposedly available in various departments within the District but had no business purpose and should have been purchased through a local vendor instead of through Amazon;
4. Darling approved overtime for Gibson allegedly working full days of overtime when Gibson did not work;
5. Darling and Gibson misused the District vehicle for non-work stops; and
6. Darling had not obtained his NDEP certifications.

[Emp. Exh. 2]

Darling Refutes Misconduct Allegations

On June 27, 2024, a pre-termination meeting convened. During that meeting - - and in subsequent meetings and correspondence between HR Director Madden and Counsel Durham in July and August - - Darling refuted allegations lodged against him about NDEP certifications and 6651 Customs. With respect to Customs and the thickness of its powder-coatings, Manager Doubek acknowledged that the District's guidelines of 18-25 mm thickness applies to paint coating and not powder coating which is less thick. [Tr. 262] Regarding P-Card purchases, the District audited three (3) years of Gibson's purchases and found no improprieties. [Un. Exh. 10] Darling stated the items purchased were not available through other departments in the District at the time of purchase; the District did not prove otherwise. [Tr. 80, 271] Darling noted all items purchased were for a business purpose and the District conceded there was no requirement to purchase items from a local vendor rather than Amazon. Darling noted Amazon is less expensive, delivers items quickly and one of the initial options appearing in Coupa for purchasing. [Tr. 81, 364]

As for Darling's use of the District vehicle, he noted it was consistent with practice and de facto policy. Darling testified that Manager Doubek acknowledged as long as the job gets done vehicles can be used for personal errands. [Tr. 343] David Thompson, Large Meter Services Supervisor and 14-year District employee testified that "on a daily basis" employees use District vehicles for personal errands. He has observed his 18-member crew engage in personal use and observed employees from other departments. When Thompson reported a violation of the policy to his supervisor and HR, Thompson's manager advised "as long as they're getting their work done, he was not going to make a big deal out of it." Thompson testified employees are disciplined for use of a District vehicle when operating it intoxicated. [Tr. 382-386]

Darling reviewed GeoTab data he obtained by filing a request for public documents. [Un. Exh. 21] The data provided covers ten (10) District vehicles during the period January 1, 2024 through March 31, 2024 which is the same period of time covered by the District's review of Darling's vehicle use. The 10 vehicles made over 120 stops for non-business reasons or made an extended lengthy stop at a variety of commercial businesses and public locations (mall, stores). Numerous stops exceeded the 30-minute lunch break and that is not including travel time.

Manager Ornelas testified that HR reviewed GeoTab data from January 1, 2024 through May 7, 2024, and the review showed there were no stops that violated vehicle use policy. The District never disclosed the records or data it reviewed, thus, its claim of proper vehicle use cannot be verified. [Tr. 152-153] The District prepared a chart covering twenty-nine (29) days allegedly showing Darling making questionable stops during the period January 1, 2024 through May 10, 2024. Darling was in the District vehicle on six (6) of the 29 days. His stops were driving to his home to pick up lunch, picking up a prescription for wife and delivering it to her since she could not drive, bathroom stops for Gibson and his gall bladder problem, retrieving a pair of pants from his home to replace his ripped pants; stopping at an auto parts store; stopping at a convenience store and stopping at Sportsman's Warehouse to buy a water bottle,

As for the allegation Darling approved time for Gibson when Gibson performed no work, the day is May 5, 2024. Gibson responded to a work order. [Un. Exh. 22] Gibson spoke with operations and advised them to send a mechanic. Once the mechanic completed the work, Gibson confirmed it and logged 4 hour for a call out. Darling never advised Gibson he could receive pay simply by being available. Darling wanted Gibson to be available to pick up parts and deliver it to the crew in the field rather than remain in the office working on the migration data project. Gibson understood Darling was not telling him he would be paid for not working. [Tr. 320-321]

Darling reviewed time entries for his booster crew. He met with the crew every morning, knew their assignments and knew who was not working on a particular day. Darling was not required to review and approve time on a daily basis as Manager Ornelas claims. Rather, he can review and approve multiple days. When Darling is not at work Gibson tracked the crew's time using his projects calendar. Darling would discuss time with any crew member should there be a question about it. During the grievance process Darling discovered that HR Director Madden follows an approach on time reporting similar to Darling's approach. [Tr. 274-275]

Gibson Reinstated and Darling Terminated

On August 29, 2024, Manager Doubek notified Gibson that he was reinstated. Doubek "found no just cause supporting the recommendation of discipline forwarded by the District, let alone the termination of your employment." [Un. Exh. 23]

The allegations of misconduct lodged against Darling were the same as lodged against Gibson and Darling, like Gibson, refuted them but Darling was terminated on August 29, 2024, and not reinstated. [Un. Exh. 11]

The bases for Darling's termination set forth in Manager Doubek's letter are two (2) allegations previously asserted by the District that Darling (i) conducted personal business during normal work hours while using a District vehicle accompanied by Gibson in the vehicle and (ii) approved inaccurate time records for Gibson. These allegations have been rebutted and exposed as without merit.

The letter of termination presented a new allegation that Darling inaccurately reported his work time on March 26, 2024. On that date Darling reported for duty but left work around 10:30 to 11:00 a.m. as he was suffering from severe allergies. He mistakenly logged his work day as regular time (10 hours) whereas an accurate log would be 6 hours work and 4 hours sick time. This error did not result in Darling receiving additional compensation. This accounting error is readily correctable in the payroll system.

Another date presented in the new allegation is January 9, 2024. The District claims Darling did not perform any work that day but recorded hours for pay. On January 9, 2024, Darling worked from home with permission to do so granted by Manager Doubek. [Emp. Exh. 14] The new allegation is without substance and meritless.

Association's Argument

Just Cause Standard

Under a just cause standard, discipline assessed must be corrective in design and not punitive with discharge occurring after exhausting prior measures and assessing mitigating factors. The District's burden of proof is to establish the rules violated and demonstrate termination is the appropriate response given the proven misconduct and surrounding circumstances. Evidence of disparate treatment can be considered when determining discipline and an investigation showing a rush to judgement is a violation of just cause. Misstating evidence shows targeting to discharge. To strictly enforce rules not previously enforced, an employer must publish notice to employees of strict enforcement prior to acting on it. Under just cause the Arbitrator can modify discipline imposed and determine a lesser penalty or no penalty is appropriate. [Br. at 15-17]

No Cause

Darling was terminated without cause which is a perquisite in Article 7 of the CBA. No discipline was warranted because Darling did not violate any rules; however, should the Arbitrator find cause to discipline a level short of discharge would be in line with progressive discipline. Darling's 15-year unblemished work record and exemplary performance warrant reinstatement and retention. Any concerns about his use of the District's vehicle and review and approval of time could be addressed with counseling.

Bad-Faith Investigation

The District's investigation shows bad faith by Osborne with a rush to judgment displayed by misstating evidence. The alleged verbal mistreatment of a co-worker by Darling was not investigated in good faith. Osborne could have contacted Darling by telephone on the day of the incident (May 1) but he did not do so. He could have instructed Darling's first-line supervisor - - Manager Doubek - - to contact Darling but that did not occur. Instead, Osborne accessed GeoTab data to determine Darling's location and asserts he did so as a means to contact him. When Darling returned to the building on the afternoon of May 1 Osborne did not initiate any contact with him. Osborne nor any other official with the District never contacted Darling to investigate or hear his version of the incident. Grievant became aware of the alleged incident only after he requested investigative documents during the grievance process in September 2024.

During the HR investigation, Osborne reviewed three (3) months of P-Card purchases approved by Darling. Osborne's e-mail shows that none of the purchases were improper; he identified purchases as "probably" available locally and "probably" could be provided by IT or other

department. [Un. Exh. 18] Osborne insisted that Darling made improper P-Card purchases even though he knew there was no District policy requiring purchases from local vendors and he could not identify or determine any support available from other departments at the time of purchase by Darling. Osborne whole-heartedly approved suspending Darling's P-Card as of May 15, 2024, when Darling was placed on administrative leave. [Un. Exh. 17] While on leave Darling contacted Osborne by telephone as he was "feeling quite vulnerable" about the investigation. Without informing Darling, Osborne recorded their telephone conversation in violation of Nevada law.

HR Manager Ornelas acted in bad-faith. She notified Darling by e-mail dated May 14, 2024 to meet with her but failed to inform him, prior to meeting on the 15th, of the allegation she labeled as a "kickback" scheme between Darling and 6651 Customs. She did not inform Darling prior to the meeting that she would focus on whether he misused the District vehicle and authorized excessive overtime for Gibson. Darling pointed out that Gibson was working on the migration of data from the Avantis computer maintenance management system to the new Maximo system on Fridays. Prior to the meeting the District had determined to place Darling on administrative leave. Manager Ornelas ambushed him at the meeting using law enforcement interrogation tactics; she rushed to judgement and directed an investigation into all aspects of his employment hoping to find wrongdoing.

Maintenance Manager Doubek acted in bad faith. At the time Darling was under investigation, the District was investigating Doubek. He signed Darling's pre-termination and termination letters prepared by HR for his signature. The pre-termination letter identifies Darling's failure to obtain additional NDEP certifications as a reason for termination. Prior to the investigation Doubek told Darling that management probably was extending leeway on certifications and Doubek, with fewer certifications than Darling, was not pursuing certifications. The termination letter states a reason for termination was using unapproved vendor 6651 Customs and the P-Card to pay that vendor. On cross-examination Doubek acknowledged he approved Darling's use of and payment to 6651 Customs. [Tr. 269] Doubek also stated in the letter that the District tested the thickness of items powder-coated by 6651 Customs and the thickness did not meet District guidelines of 18-25 mm for coatings. Doubek acknowledged at the hearing that the thickness of items powder-coated by 6651 Customs was different than thickness for painted items and the guideline of 18-25 mm applies to paint, not powdered items.

Disparate Treatment - Vehicle Use Policy

The practice and de facto policy on vehicle use is it may be used for personal errands as long as the job gets done. Nevertheless, the District strictly enforced its more restrictive written vehicle use policy against Darling. This occurred even though Manager Ornelas' testimony disclosed that HR's practice is not to strictly enforce the vehicle use policy as written. The written policy states that use of District vehicles for anything other than "official company business" is prohibited. [Un. Exh. 5] Manager Ornelas testified "there's a lot of factors involved" when interpreting the policy. For example context is considered should an employee use a District vehicle to conduct personal banking. HR considers unspecified circumstances when interpreting the policy although there is no wording in the policy authorizing it to do so. [Tr. 154, 158]

The result is disparate treatment where co-worker Gibson used a District vehicle for personal errands but is not subject to any level of discipline whereas grievant used a District vehicle for personal errands on six (6) occasions over four and a half (4-1/2) months and was terminated. Another employee used a District vehicle to drop off and pickup his motorcycle with supervisor approval without retribution. HR Analyst Gibase testified that whether use of a District vehicle

for a personal errand with a supervisor's approval violates the policy "depends on the situation." Another example is employee Payne leaving work early and using the District vehicle for a personal errand with supervisor Merriman's approval; this was not cause for any discipline for the employee or supervisor even though Analyst Gibase testified "it's not typical that it's supposed to be used for personal errands." [Tr. 219-224]

Grievant cannot be held accountable for co-worker Gibson's use of a District vehicle on those days when grievant was not at work or at work but not physically present with Gibson. The District did not discipline Gibson and it is illogical to find that grievant's similar conduct warrants termination.

Different Treatment - Review of Subordinate's Time

Darling never approved time for days Gibson did not work; Gibson never received pay for days he did not work; the District terminated grievant for allegedly approving time when Gibson did not work even though grievant did not know Gibson had not, allegedly, performed any work.

The District applied a different standard when first-line supervisor Doubek reviewed Darling's time. The District alleges that he did not perform any work on January 9, 2024, but entered time for that day. For March 26, 2024, Darling mistakenly reported ten (10) hours of regular pay when he should have recorded six (6) hours of regular time and four (4) hours as sick time since he left work early due to allergies. Doubek reviewed and approved these entries; Doubek received no discipline for doing so but Darling was terminated. [Tr. 227, 284]

Doubek testified he was in the office and Darling was in the field, thus, he does not know what is going on in the field unless Darling informs him. The same arrangement applies to Darling and Gibson; when they are not working together Darling would not know what Gibson was doing unless Gibson told him. Doubek agreed he did not know how Darling knew what Gibson was doing unless Gibson told Darling yet Doubek recommended grievant's termination for not meeting this unreasonable standard that Doubek was not held to. [Tr. 291]

Based on the foregoing the Association concludes "there was no just cause to terminate Darling's employment" and it requests "that Darling be reinstated with full back pay and benefits and for such other relief as the arbitrator deems just." [Br. at 26]

Summary of the District's Position and Argument

The District's position and argument are set forth in its opening statement, examination and cross-examination of witnesses, exhibits and post-hearing brief.

Testifying for the District were Buck Osborne, Director of Operations; Laura Ornelas, HR Manager; Frank Gibase, HR Senior Analyst; James Doubak, Maintenance Manager; and Mary Madden, HR Director. Present but not testifying were Judy Sanderlin, Counsel, Fisher & Phillips LLC and Kendalee Works, Counsel, Cogburn Davidson Injury Lawyers on behalf of Director Osborne.

District's Overview

Darling was a supervisor for six (6) years and, as such, was expected to uphold and enforce District policies. Darling ignored policies when he violated them in an egregious manner such as knowingly condoning and approving Tyler Gibson's conducting personal business on work time

and approving overtime for hours not worked by Gibson. As a salaried employee Darling is accorded some discretion and liberty regarding his time but Gibson is an hourly employee without time flexibility accorded to a salaried position. Hourly employees are paid only for hours worked. By approving pay for Gibson while conducting personal errands which is time not worked, Darling violated District policies and public trust as to use of public funds. The same truth applies to Darling when he abused accounting for his time.

After a comprehensive investigation with multiple meetings and ample information, the District terminated Darling for multiple violations of policies and procedures. Three violations are major infractions warranting discharge. The first major infraction is Darling authorizing his subordinate Gibson to record overtime hours when Gibson did not work. Prior to Gibson's reinstatement, he informed HR that Darling instructed Gibson to record such hours as overtime whether or not he worked. Darling is required to confirm Gibson actually worked claimed hours. Darling acknowledged that he often approved time submitted weeks prior to employees performing any work. Undoubtedly Darling knew his actions were inappropriate but he repeatedly engaged in them.

The second major infraction is Darling routinely performed personal errands on work time with Gibson present in the District vehicle. Darling and Gibson, personal friends, shared a District vehicle which should have been used for work purposes. Instead Darling used it to stop at Sportsman's Warehouse, a bow and arrow establishment and multiple trips to their residences which are not on the way to or near any work locations. All trips occurred when they were on the clock. This misuse of the District vehicle is egregious because an hourly employee (Gibson) is paid only for hours worked but Darling approved pay for him when Gibson performed no work when in the vehicle accompanying Darling on personal errands. Darling approved Gibson's hourly pay when driving the District's truck to Gibson's residence for the sole purpose of Gibson using the bathroom. There is zero tolerance for theft of time; the District terminates employees for that misconduct.

The third major infraction is Darling falsifying his time records. He claimed hours worked on days that District records show him not working. The District accorded Darling the benefit of the doubt on some time entries but he was unable to provide a reasonable explanation for all days.

This grievance is straightforward despite Darling's attempt to play the victim by claiming Director of Operations Osborne conspired to terminate Darling as a means to replace him with someone from SNWA. This conspiracy theory is false. Evidence shows Darling engaged in significant violations involving public funds which were expended as pay for work not performed. The grievance should be denied.

District's Position

A. Background

Managers and supervisors must act in the best interest of the District, a public agency. Darling supervised the booster crew and reported to Maintenance Manager Doubek. Darling assigned work to the crew. He was responsible for reviewing and approving the crew's time records. To perform his duties the District issued a company vehicle to Darling which he shared with Gibson. The primary work location for them was the District's operations building.

B. Darling Berates Employee Which Starts An Investigation

On May 1, 2024, Director Osborne heard employee Brittany Alas crying. She was positioned directly outside of his office. She informed Osborne that Darling belittled and abused her during a telephone conversation. Osborne used GeoTab to locate Darling in the District's vehicle; it was "oddly" parked away from the pump station in front of a private residence in an affluent neighborhood. The District receives complaints from the public when its vehicles are parked on the street. To determine whether the booster crew frequented that location Osborne reviewed the prior week and discovered no similar situations. Osborne noticed Darling parked at locations where there was no apparent District business. [Emp. Exh. 21] Alas did not want Osborne to discuss the incident with Darling. Osborne intended to report his concerns to HR Manager Ornelas on or about May 1 but she was unavailable. She returned to the office on May 7 and Osborne met with her on that date.

C. HR Investigation

Manager Ornelas disclosed Osborne's concerns to HR Director Madden on the 7th. Madden authorized Ornelas to investigate the booster crew, Darling and Gibson. Manager Doubek was also investigated. Ornelas assembled a team of HR professionals to independently evaluate Osborne's information. HR Analyst Gibase contacted Alas; she was "over" the incident with Darling and not requesting or seeking an investigation.

From May 7 up to May 14, the HR investigative team reviewed GeoTab data, badge and key access entries and purchases. The team identified potential personal errands conducted on work time and noted concerns with P-Card purchases including online purchases with Amazon and 6651 Customs. Records showed Darling in the District vehicle at Customs and, when leaving Customs, proceeding directly to Darling's residence which raised concerns about conflict-of-interest and misuse of District vehicle. Gibson reported 10 hours overtime but GeoTab data showed him not working at any District location on the claimed day. Manager Ornelas notified Darling on May 14, 2024, of a meeting on the 15th to discuss his certifications "among other things". Ornelas also advised Darling to bring Union representation should he choose to do so.

D. Darling Meets With HR

Darling did not engage Union representation and attended the meeting by himself. Topics discussed were certifications, approval of overtime for the crew, P-Card purchases, 6651 Customs and vehicle use for personal errands. Darling acknowledged using the District's vehicle when driving to his residence and Gibson's residence during the workday, stopping at Sportsman's Warehouse to purchase a cooler for his son or daughter and stopping at Bow's & Aces to pick up a crossbow for his wife. He stopped at Bass Pro Shops but did not enter. [Tr. 120-124] HR Director Madden approved Manager Ornelas placing Darling on administrative leave. The usual process was followed with security escorting Darling to his vehicle and taking his parking tag. Following a separate interview with Gibson on the 15th he was placed on administrative leave. [Tr. 115-125]

E. Pre-Termination Letter

After the May 15 meeting HR continued its investigation of Darling, Gibson, the crew and Maintenance Manager Doubek. Regarding Doubek, HR informed him of the investigation after it determined he was not involved with Darling's rules violations. [Tr. 256]

Doubek reviewed information collected by HR - - time block audit data, badge and key entry data, GeoTab records, vehicle and equipment use data, purchases at 6651 Customs and overtime reports. Doubek issued a letter to Darling recommending his termination. [Emp. Exh. 2] The recommendation was based on (1) theft of time and resources with Darling's approval of overtime hours for Gibson when Gibson performed no work; (2) use and approval of purchases at 6651 Customs using the P-Card; (3) Darling's conflict of interest with his personal purchases of services and goods at Customs; (4) Darling's lack of supervisory oversight of subordinates; (5) Darling conducted personal errands on work time accompanied by Gibson in the District's vehicle; (6) Darling allowed Gibson to conduct personal errands on work time which was theft of time and District resources; and (7) Darling failed to obtain certifications required for his position. In short, Darling abused his status as an exempt, salaried employee by engaging in excessive personal errands using a District vehicle with hourly employee Gibson in the vehicle. Also concerning was Darling having his personal items worked on at Customs at the same time District items were worked on.

F. Pre-Termination Hearing

A pre-termination hearing convened on June 27, 2024. Regarding Gibson's overtime, Darling claimed he was not trained on the timekeeping process and approved time entries without verifying hours worked and claimed. [Tr. 140-141] Darling acknowledge that on occasions he used the District vehicle for personal errands but minimized personal use as insignificant. [Emp. Exh. 4] Darling would drive the vehicle to Gibson's residence so Gibson could use the bathroom due to a gallbladder issue. Gibson acknowledged, in a separate hearing, that Darling instructed Gibson to code 10 hours of pay when on standby. [Emp. Exh. 3] Gibson provided the same explanation - - code 10 hours overtime based on availability - - for the day Gibson did not work but entered 10 hours. This is troubling because Gibson's 10 hours of claimed overtime was significantly more than Gibson would be entitled to under the CBA that applies to Gibson and covers his position. [Tr. 138-139]

G. Darling's Termination and Gibson's Reinstatement

After the pre-termination hearing, HR Director Madden presided over the investigative process to placate the Union's concerns, unsubstantiated, that Manager Ornelas was biased. HR prepared summaries of issues and findings, compiled a list of comparators with similar incidents and overtime issues. [Emp. Exhs. 6, 7, 35, 36]

On August 19, 2024, counsel for Darling and Gibson responded. [Emp. Exh. 8] Darling and Gibson claimed additional information, including personal phone records, would establish they did not violate any policies. They did not submit additional information or records until the second day of the arbitration hearing (August 27, 2025). [Tr. 389]

The District determined to terminate Darling for policies violated and reinstated Gibson as Gibson claimed Darling instructed him to code overtime. Gibson followed his supervisor's directives on coding time. [Emp. Exh. 4] Since Gibson was present in the vehicle when Darling used it for personal errands, the District determined Gibson viewed his supervisor's conduct as appropriate and followed it.

Darling was terminated. [Emp. Exh. 10] His claim that he was not trained to review and approve time reports showed a lack of competency and dereliction of duties for a supervisor. The District found Darling violated the vehicle use policy; the violation was aggravated with an hourly employee in the vehicle. Darling was untruthful and dishonest with his own time records which

constituted a theft of time. These violations constitute just cause for termination. Under the CBA, progressive discipline applies only to minor offenses whereas Darling committed major infractions of rules and policies. [Br. at 16]

H. Grievance

On September 5, 2024, the Union filed a grievance. Darling provided several shifting explanations at Steps 1 and 2. [Emp. Exhs. 11-19] Darling provided a list of days in which he stated he was off work and not in the vehicle. In response thereto the District provided GeoTab data, badge swipes, Medeco key badge entries and workday records. Counsel for Darling presented a revised list of the original claims stating Darling worked on some of the days. [Emp. Exh. 14] Regarding his initial list of dates and days off, Darling created an excuse that he did not have access to District records when he provided his dates, thus, he submitted false information. [Tr. 351-358] Prior to Darling submitting his list he had the District's evidence because the pre-termination letter contained it including a detailed vehicle report.

Another shifting explanation and false excuse is April 11, 2024, when he stopped at Sportsman's Warehouse to, as he initially alleged, purchase a cooler. He changed his story during the pre-termination meeting to picking up a water bottle for another employee. His story changes again during the grievance meeting stating he stopped at Sportsman's Warehouse because Gibson wanted to purchase a water bottle for an employee at the Bermuda pump station. [Emp. Exhs. 12, 16, 17] After leaving Sportsman's Warehouse, Darling drove the District vehicle to Hotsy of Henderson, Darling's home, Gibson's home and then to the District. No vehicles at the Bermuda pump station belonged to District employees on April 11, 2024, and Darling never presented any evidence establishing the stop at Sportsman's Warehouse as work-related.

District's Argument

The seven tests of "just cause" are applicable for Darling's termination. The following narrative is the Employer's description of each test articulated in *Enterprise Wire Co.*, 46 BNA LA 359 (Daugherty, 1966).

1. Whether the employee had notice of the possible or probable disciplinary consequences of his misconduct.
2. Whether the rule is reasonably related to the orderly, efficient, and safe operation of the Employer's business and the performance the employer might properly expect of the employee.
3. Whether there was an investigation prior to the employee being discharged.
4. Whether the investigation was fair and objective.
5. Whether the investigation yielded substantial proof of the employee's misconduct.
6. Whether the employer applied its rules evenhandedly and without discrimination.

7. Whether the degree of discipline imposed is reasonably related to the seriousness of the proven offenses and the record of the employee in his service with the employer.

The District states it has demonstrated the seven tests showing there is just cause for Darling's termination. Each test is addressed in seriatim.

1. Darling Fully Understood the Rules He Violated and the Likely Consequences of His Actions

The District's rules and policies have been in place throughout Darling's tenure with the District. He was on notice of them and, in a unionized work environment, is presumed to know the terms of the CBA. On several occasions Darling signed for receipt of the P-Card Program Policies and Procedures Manual, Conflict of Interest Policy and Vehicle Use Policy. As a result of mandatory training to obtain a P-Card, Darling knew the Policies and Procedures prohibited "purchases from a business which create a conflict of interest, including those owned by relatives or friends."

Darling confirmed his understanding of the Vehicle Use Policy as restricting its use to "company and business purposes." [Tr. 342] The Policy states District vehicles are for official company business and "shopping or performing personal errands while operating a District vehicle are prohibited." [Emp. Exh. 2 at 20] Consequences for violating policies are clear - - discipline up to and including discharge.

Theft and dishonesty exhibited by Darling are behaviors recognized by arbitrators as egregious and destructive of the employment relationship warranting discharge even in the absence of a specific rule to that effect. [Br. at 20]

The District satisfied the first test, that is, Darling was on notice of the rules and the consequences for violating them.

2. Reasonable Rules

Rules requiring an employee to act in the best interest of a public agency's mission when performing duties and not engage in actions or behavior designed to steal work time and falsify public agency records or misuse public agency property are reasonable on their face.

Since 2019 Darling occupied a supervisory position. The District reasonably holds a heightened expectation that supervisors act in the District's best interests. "Higher pay and managerial status comes with higher responsibility and reasonable expectations associated with leadership positions." [Br. at 21] Expecting Darling to ensure correct accounting for public funds by verifying time records is reasonable. A supervisor should not participate with an hourly employee's conducting personal errands during work time.

3. Thorough Investigation Prior to Termination

The District afforded Darling multiple, substantive opportunities to present his side of the story prior to any decision on termination.

Director Osborne perceived some inconsistencies in Darling's use of the District vehicle and disclosed it to HR. An investigation of the booster crew ensued when HR viewed records showing potential violations of vehicle use, time reported and overtime. HR Manager Ornelas led

the investigation assisted by five (5) HR staff. She met with Darling on May 15, 2014. Although not required to do so Ornelas advised Darling on the 14th that he could bring a Union representative to the meeting but Darling elected no representation.

After the meeting the District placed Darling on administrative leave as discrepancies remained over vendor payment, time reports and vehicle use. The investigation continued with HR collecting GeoTab data, Medeco keys and badge entries and Workday time records on potential violations of policies by Darling and his responses thereto. Documents were exchanged with Darling during the investigation; Darling's documents addressed certain dates when he reported overtime. [Emp. Exh. 14 at 19-20] Every opportunity for Darling to present his side of the story resulted in him changing his story and explanations. After considering all investigative records the District issued a pre-termination letter to Darling. The District afforded Darling a full and fair opportunity to respond and rebut the allegations and explain his actions. The through investigative process and steps were detailed in his pre-termination letter, summary of issues and findings and termination letter.

4. Fair and Objective Investigation

The investigation encompassed information from multiple sources, interviews of multiple employees and reviewing four (4) months of GeoTab data, Medeco key swipes and badge entries. Darling was on notice as of May 14 to bring a Union representative to the interview on May 15 but he determined not to engage the Association. When Darling alleged bias by HR Manager Ornelas, the District assigned the investigation to HR Director Madden.

Darling alleges Director Osborne wanted to rid the workplace of Darling such that Osborne targeted Darling as a means to fill the position with an Osborne hire. There is no support for this allegation and the alleged targeting. Darling's position remains vacant with technicians from the booster crew and SNWA rotating through the position.

Darling's *Weingarten* rights were not violated as he never requested Union representation. In this regard, when the District becomes aware of potential misconduct in its operations, it is legally authorized to investigate. Darling understood the allegations presented to him and provided responses to each one.

Osborne recording the telephone call he received from Darling is embellished by the Union and not relevant. No information or comment in that conversation was relied on by the District in its investigation and decision to terminate Darling. HR conducted a fair, objective and neutral investigation extending the benefit of the doubt to Darling. For example, rather than rely on a few GeoTab discrepancies reported by Osborne as proof of vehicle misuse, HR collected data for several months to ensure a more complete view of Darling's vehicle use.

5. Investigation Establishes Misconduct

Evidence obtained during the investigation shows Darling knowingly violated the District's Policy on Vehicle Use and Work Related Vehicle Use wherein such vehicles "are to be used for official company business only" and "personal errands while operating a District vehicle are prohibited." There is an exception for "de minimis personal use" when an employee is assigned a 24-hour vehicle which was not Darling's arrangement. Darling shared a District vehicle with Gibson. There is some leeway for brief, short stops for a restroom break or beverage, snack purchases when traveling to and from a worksite but "excessive violations are unacceptable" such

as stopping at locations which direct the employee away from the travel route to and from the worksite. [Br. at 27]

Comparator data on thirteen (13) employees dating from March 2014 to June 2024 show that when an employee abuses the limited exception, such as Darling, they are subject to discipline including termination. [Emp. Exh. 35] Between January 29, 2024 and April 11, 2024, Darling used the District vehicle on nine (9) occasions in violation of the Policy; his personal use of the District vehicle totaled 17 hours and 43 minutes. [Tr. 125-127; Emp. Exhs. 6, 26, 27, 30] Often accompanying Darling on his personal errands was hourly employee Gibson. Darling states that supervisors commonly use District vehicles for personal errands during work hours but Darling was doing it with a subordinate in his vehicle thereby transforming vehicle misuse into wage theft. That is, Darling was actively authorizing Gibson to receive wages for time not worked which included situations where Darling was on a personal errand. Darling traveled to and from locations - - his residence and Darling's residence - - which are not near or on the way to and from any District worksite. Darling's misconduct is egregious and distinguished from the employee stopping at a convenience store in route to the next worksite. As for Darling driving the District vehicle to Gibson's residence for his gall bladder complications, that situation was not identified by Darling until after his termination.

The District extended its efforts to afford Darling the benefit of the doubt on every disputed item. For example during the grievance process Darling claimed Gibson and he used their personal cellphones to conduct District business. This was offered to address Gibson's hours approved by Darling. The District requested Gibson's personal cell phone records to substantiate hours worked but no records were submitted. The evidence shows situations - - conceded by Darling in his pre-termination response letter - - where he approved Gibson's hours entered and wages received for days off duty with no work performed and that constitutes wage theft. [Tr. 302-303; Emp. Exhs. 8, 15]

During the pre-termination meeting (June 27, 2024), counsel for Darling identified fifteen (15) dates wherein Darling was, allegedly, not at work due to illness or other personal reasons, thus, the District should not rely on those dates to support Darling's termination. [Emp. Exh. 6 at 2] Upon reviewing information provided during the grievance process the District accepted Darling's explanations for two (2) dates leaving four (4) dates as violations:

January 9, 2024

Darling claims he worked a full day from home. Workday records for January 8 and January 9 show no edits or activities in the system he claims to be working on and there are no badge or key access entries to substantiate that he worked a full day. [Emp. Exh. 16, pp. 4, 23]

March 5, 2024

Darling stated he attended the Supervisor Critical Conversations meeting but training logs confirm this meeting did not occur on the 5th. Workday records show some work activity on the 5th but no evidence of working a full day that he reported. [Emp. Exh. 16, p. 4]

March 7, 2024

Darling claims that text messages and a credit card statement prove he worked 100 hours on the 7th and, after work, he went to his tattoo appointment. Workday records show he logged in at 8:47 a.m. on the 7th and logged out at 10:18 a.m. with no other activity reported or established after he logged out. The tattoo receipt lacks a date stamp. [Emp. Exhs. 14 at p. 1 and 16 at p. 4]

March 26, 2024

Darling claims he left work early on the 26th due to an allergic reaction but his supervisor (Manager Doubek) has no record of approving Darling's absence. Darling coded the entire day as regular time, instead of using sick leave, despite his not working a full day. [Emp. Exh. 16 at 25]

These four (4) days total forty (40) hours of misappropriation, that is, falsifying timekeeping records by coding regular hours worked for time off. Darling claims he took calls on various days to conduct District business but District phone records do not support his claim and Darling refused to produce his own phone records. [Emp. Exhs. 15, 16]

Darling acknowledged that he regularly approved Gibson's time without any effort to verify whether the overtime hours claimed were actually worked. Darling relied on Gibson to maintain recordkeeping for Gibson and the booster crew. Darling did not rely on Gibson to track his time or the time reported by the crew. He acknowledged not monitoring time records nor reviewing and approving time entries daily as he allowed crew members to "put their time in four weeks in advance" or "wouldn't do it until the day it was required." [Tr. 373-374]

The District presented six (6) dates where there are issues with Darling approving Gibson's time. [Tr. 198-199, 204; Emp. Exh. 16 at 5-7; Emp. Exh. 30; Br. at 30]

January 12, 2024: 10 hours overtime

For 2 of the 10 hours Gibson conducted personal travel and errands with stops at his home, convenience store and auto parts shop unrelated to District business. AVANTIS records show 20 minutes of work performed with the total documented work for the day amounting to less than 3 hours. Darling approved 10 hours of overtime as hours worked.

January 19, 2024: 10 hours overtime

Gibson's activities were a visit to his home and to a welding supply Store where no District business was transacted. AVANTIS records show one hour of work. Darling approved 10 hours of overtime without any evidence or effort to confirm the hours.

May 3, 2024: 10 hours overtime

Gibson's activities were a visit to his home, a motorcycle shop with no District connection, and a restaurant with only 30 minutes of actual District work documented. Darling approved 10 hours overtime.

May 5, 2024: 4 hours overtime

No records - - vehicle tracking, badge swipes, phone logs or AVANTIS Entries - - that Gibson performed any District work. The only documentation Was an e-mail and a call received but no work performed. Darling approved 4 hours overtime.

May 10, 2024: 10 hours overtime

Gibson's activities were personal stops, lunch, and no AVANTIS work performed. Only 5 to 6 hours worked could be accounted for. Darling approved 10 hours overtime.

AVANTIS "Catch-Up" Overtime

On days Gibson claimed overtime to "catch up" on AVANTIS work, records document only a few minutes of actual work performed in the system for January 8, 29 and 31, 2024 which was far less than the hours claimed by Gibson and approved by Darling.

Gibson reported to the District that Darling instructed him to code time as overtime for "just being available" without regard to any work performed. In other words, overtime pay for not working but available to work should there be a call to do so. [Tr. 56, 211; Emp. Exh. 5, p. 3] Darling denied this instruction. After Gibson's reinstatement, Gibson changed his story when he testified at the hearing. Gibson supported his personal friend Darling and changed his story to coincide with Darling's denial. Darling's denial and numerous shifts and variations in an attempt to justify his misconduct are not credible.

There is inappropriate P-Card use at 6651 Customs which is a clear and definite conflict of interest and violates policy. Darling acknowledged the owner is a friend and Darling uses the shop to coat his personal items. Darling's supervisor - - Manager Doubek - - informed Darling he was not permitted to use the P-Card at Customs. [Tr. 267, 337-339]

The District submitted compelling evidence of Darling's policy violations of which some were intentional violations designed to directly benefit Darling. The District reasonably concluded termination was warranted.

6. Evenhanded Response to Offenses Without Discrimination

The District responded to Darling's misconduct in a consistent, evenhanded manner. Darling was not targeted or singled out for investigation. When the District became aware of his conduct on duty time, HR followed its procedures collecting information and conducting a comprehensive investigation on Darling as well as Gibson and the booster crew. Based on investigative findings and Darling's responses, the District assessed an appropriate disciplinary measure - - discharge - - for Darling's violations of policies and rules. The District did not act in an arbitrary or capricious manner, therefore, the decision to terminate Darling should remain undisturbed and sustained.

Any argument of disparate treatment presents an affirmative defense where the burden of proof resides with the Union to show (1) Darling was treated differently than another employee and (2) the circumstances for the comparator are substantially similar to Darling's circumstances. As noted in *Howard Industries*, 126 BNA LA 409, 414 (Cohen, 2008), the Union must establish that the offenses and relevant circumstances are alike in all material aspects. Different outcomes, standing alone, do not prove disparate treatment.

The Union may claim that Gibson's reinstatement is proof of disparate treatment. The District reinstated Gibson because he was not similarly-situated to Darling. Gibson is an hourly employee and subordinate to his first-line supervisor Darling. He followed Darling's instructions when claiming overtime and use of the District vehicle. In other words, he acted in response to his supervisor's instructions and directions.

Maintenance Manager Doubek is not a comparator; he served as Darling's first-line supervisor and did not engage in the kind of misconduct leading to Darling's discharge. There is no evidence that Doubek engaged in dishonest acts or misused District resources. But for Darling, everyone in the maintenance division obtained their NDEP certifications within acceptable deadlines.

There is no comparator employee for Darling's situation. No employee in a supervisory capacity such as Darling's position has engaged in the same kind of misconduct. Darling was not treated more harshly than employees discharged for similar offenses or less serious violations involving falsification of time cards, an egregious and intolerable offense. [Emp. Exh. 35]

As for any claim of age discrimination, Darling presented no evidence in testimony or documents and, thus, fails to carry the burden of proof on that issue.

7. Discharge Reasonably Related to Seriousness of Offense and Darling's Service Record with the Employer

Darling's misconduct warrants termination. As noted in *Stockholm Pipe Fittings Co.*, 1 BNA 160 (McCoy, 1945), the primary function of management when confronted with misconduct is to determine the penalty and the penalty assessed should remain unless there has been an abuse of discretion which is not shown by the Union in this proceeding. [Br. at 35]

Darling's misconduct warranted immediate discharge. The District acted in accordance with Article 7 where the parties agreed that "the concept 'for cause' includes the principal of progressive discipline for minor offenses." Theft of time is not a minor offense. Progressive discipline does not apply in this situation. Darling knowingly diverted public funds for personal benefit at the expense of taxpayers as he submitted and approved false time records. Summary discharge is warranted for this falsification resulting in personal gain.

Darling's extended service with the District does not mitigate his wrongdoing. Length of service does not excuse egregious violations. The District expects supervisors to act with integrity for subordinates to follow. As a supervisor Darling is held to a higher standard and knowledge of policies and applying them properly and legally to subordinates.

District's Conclusion

The District established the seven tests thereby demonstrating cause for Darling's termination. Should the Arbitrator determine to reinstate Darling no backpay should be awarded.

Findings and Conclusions

The Association filed a grievance on behalf of Justin Darling, the grievant, and advanced it to arbitration. The parties agree no procedural or substantive encumbrances intrude on the grievance and that the stipulated issue is before the Arbitrator for a decision on its merits.

To refresh, the issue for arbitration is - -

Did the Employer have just cause to terminate Justin Darling and, if not, what should be the appropriate remedy?

[Tr. 8]

Findings and conclusions on the stipulated issue are rendered in accordance with the CBA where the parties defined the function, purpose and authority for an arbitrator in Article 6 - Arbitration, paragraphs E and G:

- E. The decision of the Arbitrator shall be based solely upon the evidence and arguments presented to him by the respective parties in the presence of each other. The function and purpose of the Arbitrator is to determine disputed interpretation of terms actually found in the Agreement, or to determine disputed facts upon which application of the Agreement depends. The Arbitrator shall therefore not have authority nor shall he/she consider it his/her function to decide any issue not submitted, or to interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction. The Arbitrator shall not give any decision which in practical or actual effects modifies, revises, detracts from or adds to any of the terms or provisions of this Agreement. The Arbitrator shall not render any decision or award, or fail to render any decision or award, merely because in his/her opinion such decision or award is fair or equitable.

The Arbitrator retains jurisdiction for a period of 120 calendar days from issuance of an award for the limited purpose of clarifying or interpreting the award[.]

* * *

- G. The decision of the Arbitrator within the limits herein prescribed shall be final and binding upon the parties to the dispute.

The parties agreed in Article 7 - Discharge, Discipline and Personnel Files that (1) the District "shall have the right to discharge or discipline any employee for cause" and (2) the District "must be reasonable in determining 'cause' in any particular case." The parties further agreed that the "concept of 'for cause' includes the principles of progressive discipline for minor offenses."

The District advances numerous policy violations by grievant in its decision to terminate Darling but the primary focus is what the District describes as egregious misconduct where Darling (1) instructed Gibson to record overtime hours for being available, (2) performed personal errands on

work time with Gibson in the District vehicle and (3) falsified his time records. According to the District these examples of egregious misconduct involving theft of time constitute major offenses, not minor offenses. Article 7 requires use of progressive discipline for minor offenses. The District's position is Article 7 does not require the District to include principles of progressive discipline for major offenses.

Focusing on the three (3) non-minor, major offenses, the grievance is assessed following the customary apportioning on the burden of proof. That is, the burden of proof to establish termination for cause resides with the District whereas the burden of proof to establish disparate treatment resides with the Association. In an administrative civil proceeding such as this arbitration, the burden of proof is a preponderance of the evidence - - something more than a scintilla and substantial but something less than clear and convincing and beyond a reasonable doubt. The phrase "more likely than not" captures the preponderance of evidence standard.

As stated in grievant's termination letter,

In April 2024, the [District] received an allegation that you engaged in conduct that violated District policies. Specifically, the District was informed that you: allowed a subordinate to conduct personal business on District time, were approving inaccurate timekeeping records for subordinates, were approving purchases for unauthorized vendors, and were using the District's vehicle to conduct personal business in violation of AP11 - Vehicle Use and Related Vehicle Use, violation of the P-Card policy, not completed required training for your position, and violation of District Professional Code of Ethics, Vision and Values Statements. Thereafter the, the District initiated an internal investigation into these allegations.

[Emp. Exh. 10; Un. Exh. 11]

The allegation stems from Osborne's meeting with HR Manager Ornelas on May 7 and Ornelas' meeting with HR Director Madden on that date. Director Madden authorized an investigation led by Manager Ornelas with HR staff assistance. HR determined it would access information and data that is maintained in the regular course of District operations for the period January 1, 2024 to May 7, 2024. The CBA does not address HR internal investigations. Thus, the scope, shape and duration of an investigation resides with HR when examining the allegations. In this regard, there is no CBA requirement to notify an employee that his or her name surfaced in an investigation or that he or she is the subject of an HR investigation. As pointed out by the District, it was not required to inform grievant in the May 14 email notice that he could bring a Union representative to the May 15 meeting. The District states that the May 14 notice alerted grievant that matters beyond certifications would be discussed although it did not respond to Manager Doubek's request for clarification. At that time (May 14) HR was investigating Manager Doubek's role, if any, in the allegations.

The investigation which led to this grievance is described as "dubious" by the Association with "bad faith" overtones by Ornelas and Osborne. Given Ornelas statement to grievant at the May 15 meeting that he was involved in a kickback scheme with criminal implications and law enforcement investigation, counsel for grievant met with Madden and stated Ornelas was biased. Counsel informed Madden the May 14 notice did not identify overtime and purchasing which placed grievant at a disadvantage. Without agreeing with counsel about bias, Madden took over the investigation and removed Ornelas. This negated the bias concern and concerns about the

notice were cured with subsequent meetings between counsel and Madden over all matters in the allegation.

As for Osborne, he and grievant testified they had no prior working relationship over the course of their years with the District. [Tr. 35-36, 360] There is no evidence of ill-will between them as of March 2014 when Osborne became Director of Operations with oversight responsibilities of the maintenance division which included Darling, Gibson and the booster crew. Grievant's position is subject to Osborne's oversight. Osborne informed HR of his concern about vehicle use and HR assessed the concern.

The Association's bad faith concerns follow. Bad faith number one is Osborne never contacted grievant to discuss the May 1 telephone incident and violated policy when he did not request HR approval to use GeoTab to locate grievant's District vehicle. Osborne testified the employee (Brittany Alas) wanted him to "drop it" and not talk to Darling. Osborne informed HR of the incident and Ornelas directed HR staff to contact Alas which occurred on May 7; staff reported to Ornelas that she was "over it" and did not want to pursue the incident. HR took no further action; the matter was closed.

As for GeoTab to locate Darling and AP24, administration of the GPS system resides with fleet services in consultation with HR. Ornelas testified that managers are authorized to use the system to locate vehicles within the manager's span of control. Osborne's access encompasses the maintenance division which is subject to Osborne's oversight. Osborne testified that Darling parking on a private street seemed "odd" since the pump station was nearby and there was no apparent business on May 1. Osborne testified that the District receives complaints about its vehicles parked on streets and this was an affluent neighborhood. He checked vehicle locations for 8 days prior to see if this was repeated. On May 7 he reported his vehicle use concern to HR and HR indicated it would look into it. [Tr. 42-47] HR Director Madden testified that HR has a duty to look at GPS data when a concern is brought to HR. [Tr. 389] Osborne's accessing GPS on May 1 occurred within the parameters allowed by HR's administration of AP2; HR assessed GPS data in accordance with its authority in AAP24.

A second bad-faith overtone involves Osborne's recording the telephone conversation without grievant's consent. The Association states this violates Nevada law. In this regard, grievant testified that after the May 15 meeting he contacted Ornelas by telephone on 2 occasions for the purpose of discussing his situation and she directed him to the Association and instructed him not to contact any District employee. [Tr. 358-359] Grievant's pre-termination hearing occurred on June 27, 2024, with counsel for Darling presenting grievant's case. Osborne testified that the discussion was intense. Notwithstanding Ornelas informing grievant not to contact any District employee and grievant retaining counsel to represent him, Darling contacted Osborne on June 29. Osborne testified he recorded the conversation for safety reasons stemming from the intense pre-termination hearing whereas the Association claims Osborne sought to record unguarded admissions by grievant. The Association claims a violation of Nevada law and Osborne claims District policy makes Darling's telephone call to a District-issued phone subject to public disclosure with no expectation of privacy. [Tr. 53-57] The law and the policy are not in evidence. The recording is in evidence; Ornelas testified she never listened to it and it played no role in Darling's discharge. Also, the recording is not considered in the outcome of this arbitration.

Bad-faith overtone three is Osborne's one-word email response in capital letters approving an internal auditor suspending grievant's P-Card. The response is noted but inconsequential since the internal auditing group, not part of or subject to HR oversight, was directing and controlling

reviews of P-card purchases. Whether or not grievant had approval for P-card purchases after he was placed on administrative leave is not consequential in this award.

Number four is Ornelas e-mail on May 14 using the phrase “among other things” for discussion at the May 15 meeting, number five is Ornelas interview with grievant on May 15 where she used the word “kickback” in relation to grievant’s purchases and invoicing with 6651 Customs implying a criminal investigation and number six is a rush to judgement. Statements by Ornelas at the meeting were addressed by counsel with HR Director Madden which led to Ornelas removal from the investigation. Subsequent meetings over the course of months between Madden and counsel provided an ongoing exchange where grievant, assisted by counsel, presented his position with argument and documents on issues raised on May 15. There was no rush to judgement given the ongoing discussions between counsel and Madden.

As for purchasing by grievant at 6651 Customs, Customs is a vendor and its recourse is with procurement, contracting and invoicing system. Grievant used 6651 Customs for personal business and was a personal friend with the owner. He advocated for the District to do more business with Customs so it could stay afloat. Grievant actively advocating on behalf of vendor Customs to generate more business is an invitation for auditors to examine purchases and invoices.

Bad-faith overtones lodged by the Association have been assessed. They are not determinative of the outcome in this proceeding. The focus turns to the major infractions identified by the District as egregious misconduct warranting discharge: (1) instructing Gibson to record overtime hours for being available and not working, (2) performing personal errands in District vehicle on work time with Gibson present in the District vehicle and (3) falsifying his time records.

As for Darling instructing Gibson to record overtime hours for being available, a preponderance of evidence supports the District. Gibson reported to the District that Darling instructed him to code time as overtime for being available. [Tr. 56, 209-211; Emp. Exh. 5 at 3] HR Analyst Gibase’s notes from Gibson’s pre-termination meeting confirm Gibson’s statement; the notes accurately capture Gibson’s statement. Gibase is credited. His involvement with the investigation from the outset shows a measured analysis drawn from the documents and candor when testifying about the de facto vehicle use policy. Candor and thoroughness support finding his notes accurately report Gibson’s comments. Gibson’s testimony is not credited; his testimony contradicts what he told HR at the pre-termination hearing. Gibson is a personal friend with grievant; Gibson’s testimony is not reliable. The first major infraction is sustained.

As for Darling performing personal errands on work time using the District vehicle with Gibson in tow, that did occur. Nevertheless the Association established a de facto policy on vehicle use and personal errands as long as the work “gets done”. Operations Supervisor Thompson testimony confirmed the de facto policy and the lack of interest by supervisors and/or HR to enforce the policy as written. [Tr. 384-386] The rule, as written, is not enforced. The District claims it is but refused to disclose the documents it relied on for that position. This second major infraction is not sustained.

The third major infraction is whether Darling inaccurately coded his time. This is not a new allegation; Darling’s time reporting has been issue throughout the investigation and was noted in the pre-termination notice. There is a preponderance of evidence that grievant inaccurately reported time worked and, in doing so, falsified his time record. Doubek approved Darling’s request to work from home on January 9, 2024. Grievant maintains he worked on employee performance evaluations. Workday system shows no edits or activities by grievant on January 9.

There are no text messages, emails, telephone records or any other document to corroborate any work performed on the 9th. Grievant did not work in the field on the 9th. Grievant did not testify about any work he performed on the 9th. There are no log-in and log out times. [Exh. 16, pp. 4 and 23] Ten hours cannot be confirmed based on the evidence in the record. Drawing upon that record, more likely than not, grievant did not perform up to 10 hours work on the 9th. Ten hours are inaccurately reported.

For March 5, 2024, Workday records show some work performed on this date. Grievant asserts he attended the Supervisor Critical Conversations meeting but training records show no such meeting on the 5th. [Emp. Exh. 16, p. 4] He is credited for some hours worked but less than 10 hours.

Workday records for March 7, 2024, show grievant logged in for work at 8:47 a.m. and logged out at 10:18 a.m. with no other work activities reported on that date. The receipt from the tattoo parlor is offered by grievant to show he was there after work hours but there remains unconfirmed, undocumented work time after 10:18 a.m. Grievant is credited for 2 hours worked. [Emp. Exhs. 14, 16]

As for March 26, 2024, grievant incorrectly coded his time as 10 hours work when he left work early due to allergies. The District presented this as a time coding error only and not as no work performed. [Tr. 227-228] Manager Doubek did not approve grievant's early departure. [Tr. 228] The time coding error is correctable. This incident is credited for 10 hours - 6 work hours, 4 sick leave.

There are at least eighteen (18) hours misappropriated with inaccurate, falsified hours reported and compensated. These major offenses - - advising Gibson to report hours as overtime worked for being available and 18 hours falsely reported as work - - constitute cause for termination. Comparator data establish the District addresses this type of misconduct with termination for hourly and salaried personnel. From 2016 up to June 10, 2014, salaried and hourly employees were terminated for falsely recording 1 hour, 1.5 hours, 3.5 hours, 4 hours and 6 hours. [Emp. Exh. 35] Grievant inaccurately reported time worked of at least 18 hours.

Arbitral jurisprudence places falsifying time in the category of a capital offense recognized by discharge. Article 7 does not require progressive discipline for non-minor, major offenses but it does require the District to be "reasonable when determining cause." Based on 2 major offenses proven the District reasonably determined there was cause for discipline and such discipline is reasonably based on comparator data where discharge is assessed for inaccurate reporting of time. Grievant is not treated disparately for 2 major offenses. Assuming Article 7 allows progressive discipline for non-minor offenses, grievant's past performance does not immunize or insulate him from the consequences of his misconduct.

The District's decision to discharge grievant is based on the evidentiary record established by the parties in this proceeding where the short answer to the stipulated issue is answered in the affirmative. That is, there is cause for grievant's termination. The grievance is denied.

All arguments presented in the record have been considered in this award.

AWARD

The grievance is denied.

Patrick Halter /s/
Patrick Halter
Arbitrator

Signed on this 11th day
of December 2025

Justin Darling (Complainant)

Status Report

STATE OF NEVADA

EMPLOYEE-MANAGEMENT RELATIONS BOARD

JUSTIN DARLING, a Local Government Employee,
Complainant,

v.

LAS VEGAS VALLEY WATER DISTRICT,
a Political Subdivision of the State of Nevada,
Respondent.

Case No. 2025-005

COMPLAINANT'S STATUS REPORT

(Request to Lift Stay and Resume Proceedings)

COMES NOW, Complainant Justin Darling, pro se, and hereby submits this Status Report in response to Respondent's Notice of Arbitration Award, and states as follows:

1. On May 22, 2025, the Employee Management Relations Board ("Board") entered a Notice of Entry of Order granting Respondent's Motion for Stay under the limited deferral doctrine, deferring this matter pending final resolution of the related grievance arbitration. In that Order, the Board expressly retained jurisdiction and deferred ruling on Respondent's Partial Motion to Strike and Partial Motion to Dismiss until such time as the stay is lifted.
2. The grievance arbitration was conducted on August 26 and 27, 2025, before Arbitrator Patrick Halter. Post-hearing briefs were submitted on October 31, 2025.
3. On or about December 11, 2025, the Arbitrator issued an arbitration award. Respondent thereafter filed a Notice of Arbitration Award with the Board, confirming that the arbitration has concluded.

4. With the issuance of the arbitration award, the condition underlying the Board's stay has been satisfied.
5. Complainant respectfully notes that the matters raised in the pending EMRB complaint involve statutory and representational issues within the Board's jurisdiction that were not adjudicated in the grievance arbitration process. This Status Report is submitted to ensure that Respondent's Notice is not construed as reflecting consent, waiver, or resolution of the pending EMRB complaint.

WHEREFORE, Complainant respectfully requests that the Board lift the stay previously entered in this matter and resume adjudication of the deferred motions and the complaint, consistent with the Board's May 22, 2025 Order and the limited deferral doctrine.

DATED this 6th day of January, 2026.

Respectfully submitted,

/s/ Justin Darling

Justin Darling, Pro Se
1610 Rocking Horse Drive
Henderson, NV 89002
Email: jwdwj713@gmail.com

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on this 6th day of January, 2026, I electronically filed the foregoing Complainant's Status Report with the Employee Management Relations Board and served a true and correct copy upon the following by electronic mail:

Allison L. Kheel, Esq.
Fisher & Phillips LLP
300 South Fourth Street, Suite 1500
Las Vegas, Nevada 89101

Email: akheel@fisherphillips.com