

Tom Curran (TM) / field staff

**IN THE MATTER OF THE NON-PRECEDENTIAL EXPEDITED
ARBITRATION PROCEEDINGS BETWEEN**

JANENE DUDLEY, LOCAL 2748, AFSCME
COUNCIL 24, AFL-CIO,

vs.

Arbitrator's Award
Case No. 21670

DEPARTMENT OF CORRECTIONS—GORDON
CORRECTIONAL CENTER.

Involving Suspension
Of Janene Dudley

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Bert St. Louis, Chief Labor Relations Specialist
Office of State Employment Relations

For the Union: Carolyn Kaiser, Field Representative
Wisconsin State Employees Union
AFSCME Council 24

I. BACKGROUND

This matter was heard by Arbitrator Jay E. Grenig on October 2, 2006, in Spooner, Wisconsin, pursuant to the Expedited Arbitration Procedure provided in Article IV, Section 12, of the parties' collective bargaining agreement. The parties were given full opportunity to present all relevant evidence and arguments. The hearing was declared closed on October 2, 2006.

II. ISSUE

The issue before the Arbitrator is as follows:

Did the Employer have just cause for the suspension of the Grievant? If not, what is the appropriate remedy?

III. PERTINENT CONTRACT PROVISIONS

ARTICLE III

Management Rights

3/1/1 It is understood and agreed by the parties that management possesses the sole right to operate its agencies so as to carry out the statutory mandate and goals assigned to the agencies and that all management rights repose in management, however, such rights must be exercised consistently with the other provisions of this Agreement. Management rights include:

(1) To utilize personnel, methods, and means in the most appropriate and efficient manner possible as determined by management.

(2) To manage and direct the employees of the various agencies.

(3) To transfer, assign or retain employees in positions within the agency.

(4) To suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause.

* * *

(6) To determine the mission of the agency and the methods and means necessary to fulfill that mission including the contracting out for or the transfer, alteration, curtailment or discontinuance of any goals or services. However, the provisions of this Article shall not be used for the purpose of undermining the Union or discriminating against any of its members.

ARTICLE IV

Grievance Procedure

* * *

Section 3: Arbitration Panel Procedures

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4/3/2 . . . The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and shall not make any award which in effect would grant the Union or the Employer any matters which were not obtained in the negotiation process.

* * *

Section 9: Discipline

4/9/1 The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate corrective disciplinary action against employees for just cause. An employee who alleges that such action was not based on just cause may appeal a demotion, suspension or discharge taken by the Employer beginning with the Second Step of the grievance procedure.

* * *

Section 12: Special Arbitration Procedure

4/12/1 In the interest of achieving more efficient handling of routine grievances, including grievances concerning minor discipline, the parties agree to the following special arbitration procedures. These procedures are intended to replace the procedure in Subsection 4/3/1-7 for the resolution of non-precedential grievances as set forth below. If either of the parties believes that a particular case is precedential in nature and therefore not properly handled through these special procedures, that case will be processed through the full arbitration procedure in subsection 4/3/1-7. Cases decided by these methods of dispute resolution shall not be used as precedent in any other proceeding.

Two arbitrators will be mutually agreed to by District Council 24, WSEU, and the State Division of Collective Bargaining for both of these procedures during the term of the contract.

A. Expedited Arbitration Procedure

(1) The cases presented to the arbitrator will consist of local institution or work site issues, short-term disciplinary actions (five day or less suspensions without pay), denials of benefits under 230.36, Stats., and other individual situations mutually agreed to.

(2) The arbitrator will normally hear at least four (4) cases at each session unless mutually agreed otherwise. The cases will be grouped by institution and/or geographic area and heard in that area.

(3) Case presentation will be limited to a preliminary introduction, a short reiteration of facts, and a brief oral argument. No briefs or transcripts shall be made. If witnesses are used to present facts, there will be no more than two (2) per side. If called to testify, the Grievant is considered as one of the two witnesses.

(4) The arbitrator will give a bench or other decision within five (5) calendar days. The arbitrator may deny, uphold, or modify the action of the Employer. All decisions will be final and binding.

(5) Where written decisions are issued, such decisions shall identify the process as non-precedential in the heading or title of the decision(s) for identification purposes.

(6) The cost of the arbitrator and the expenses of the hearing will be shared equally by the parties.

(7) Representatives of DER and AFSCME Council 24 shall meet and mutually agree on an arbitrator.

IV. FACTS

On July 12 and July 14, 2004, the Grievant, a social worker at GCC, and a captain at GCC escorted two inmates to off-ground activities at a church. On July 12 the Grievant and the captain took two of the inmates to a pizza restaurant in Hayward. The captain paid for the inmates' meals.

On May 16, 2005, the Employer suspended the Grievant for 30 days for violation of the fraternization policy and for failing to report that the captain had paid for the inmates' meals. On May 23, 2005, a grievance was filed contending the suspension was

not for just cause. The grievance was denied and the matter submitted to arbitration in this proceeding.

At the arbitration hearing, the Grievant testified that she and the captain requested and received permission from the GCC Superintendent for the off-grounds activity. She testified that the captain asked the Superintendent if it was permissible for him to provide the inmates with a meal during the return trip. She said the superintendent approved this. The written records relating to these trips and this time period were unavailable. The Grievant's testimony at the arbitration hearing was consistent with the statement she made during the investigatory interview that she had received permission to take the inmates to the church. The record also shows that the captain who was responsible for security on the trip occasionally signed other Temporary Release forms for off grounds activity on behalf of the superintendent.

V. POSITIONS OF THE PARTIES

A. THE EMPLOYER

The Employer argues there was just cause for the suspension of the Grievant. It says the Grievant should have taken steps to be sure that the Temporary Release forms had been properly completed. The Employer also says that the Grievant knew that employees cannot pay for inmate meals. The Employer asks that the grievance be denied.

B. THE UNION

The Union contends there was not just cause for the suspension. According to the Union, the Grievant was given permission to take the inmates off grounds to speak at the church. The Union also says the Grievant was given permission to provide the inmates with a meal while on the off-grounds activity. The Union points out that the captain was responsible for security on the trip, and that the captain was the person who signed Temporary Release forms. The Union asks that the grievance be sustained and the Grievant be made whole.

VI. DISCUSSION

A. INTRODUCTION

Under the arbitral standard of just cause, each disciplinary action involves two issues: (1) whether there was cause for the imposition of discipline for wrongful conduct, and (2) whether there was cause for the penalty (quantum of discipline) imposed. The essence of the just cause principle is the requirement that an employer must have some demonstrable reason for imposing discipline, including violations of reasonable work rules. *COMMON LAW OF THE WORKPLACE: THE VIEW OF ARBITRATORS* § 6.5 (St. Antoine ed. 1998). It is unfair to punish an employee for conduct the employee has no reason to know would be unacceptable. *COMMON LAW OF THE WORKPLACE: THE VIEW OF ARBITRATORS* § 6.5, Comment c (St. Antoine ed. 1998).

An employer has the burden of proving the misconduct charged. Koven & Smith, *JUST CAUSE: THE SEVEN TESTS* 243 (2d ed. 1992). All elements of the misconduct must be established before the charge can be considered proved. Without misconduct, there can be no violation and no punishment. See *Arizona Aluminum Co.*, 82-1 ARB ¶ 8212, 3975 (Sass 1982).

An arbitrator's responsibility in discipline cases includes determining whether there was just cause for the quantum of discipline imposed. The credibility of the entire grievance and arbitration procedure hinges on a review of the penalty to assure that it is in conformity with the guiding precept of progressive or corrective, rather than, punitive discipline.

B. ANALYSIS

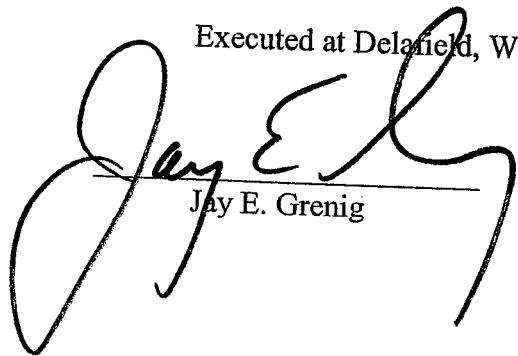
The captain, not the Grievant (a social worker) was responsible and in charge of issues relating to security on the trips in question. The Grievant understood that permission had been obtained for the trips and for the meal. The captain was responsible for security on the trip, and the captain paid for the meal with his credit card. Given that the

Grievant apparently understood that the captain was in charge and that all necessary approvals had been obtained, there was nothing for the Grievant to report. Furthermore, the Grievant cannot be disciplined for violations of the rules that the captain may or may not have committed.

VII. AWARD

Having considered all the relevant evidence and the arguments of the parties, it is concluded that the Employer did not have just cause for discipline of the Grievant. Accordingly, the Employer is directed to expunge the suspension from the Grievant's records and to make her whole for lost wages, benefits, and seniority.

Executed at Delafield, Wisconsin, this ninth day of October, 2006.



Jay E. Grenig