

IN THE MATTER OF

**STATE OF WASHINGTON,
OFFICE OF THE INSURANCE COMMISSIONER**

AND

WASHINGTON FEDERATION OF STATE EMPLOYEES

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LABOR & PERSONNEL DIVISION

Grievance: Kehinde Ovbiebo – Dismissal

AAA No.: 75 390 00227 06 LYMC

Date Issued: September 26, 2007

ARBITRATION OPINION AND AWARD

OF

ALAN R. KREBS

Appearances:

**STATE OF WASHINGTON,
OFFICE OF THE INSURANCE COMMISSIONER**

Janetta Sheehan

WASHINGTON FEDERATION OF STATE EMPLOYEES

Christopher J. Coker

**IN THE MATTER OF
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WASHINGTON FEDERATION OF STATE EMPLOYEES

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

The Arbitrator was selected by the parties with the assistance of the American Arbitration Association. A hearing was held on April 20, 23, 24, and May 7, 2007 in Olympia, Washington. State of Washington, Office of the Insurance Commissioner was represented by Janetta Sheehan, Assistant Attorney General. Washington Federation of State Employees was represented by Christopher J. Coker of the law firm Younglove, Lyman & Coker.

At the hearing, witnesses testified under oath and the parties presented documentary evidence. A court reporter was present, and subsequent to the hearing, a copy of the transcript was submitted to the Arbitrator. The parties agreed upon the submission of post-hearing briefs. The parties' briefs were submitted in a timely manner.

ISSUE

The parties agreed upon the following stipulated statement of the issue:

Was there just cause to discipline the Grievant in accordance with Article 27.1 of the Collective Bargaining Agreement?

If not, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

* * *

ARTICLE 27 DISCIPLINE

27.1 The Employer will not discipline any permanent employee without just cause.

* * *

NATURE OF THE DISPUTE

This dispute concerns the termination of the Grievant, Kehinde Ovbiebo, on February 3, 2006. The termination letter contained six allegations of misconduct: (1) filing a false police report against her supervisor; (2) filing a false industrial insurance claim based on the same incident as the police report; (3) filing fraudulent claims for personal belongings; (4) making false accusations against agency staff; (5) sending threatening correspondence to supervisors and managers; and (6) insubordination and unprofessional conduct.

In October 1993, the Grievant was hired by the Employer, the State of Washington, Office of the Insurance Commissioner (01C), as an Insurance Examiner 2. The Grievant is a black female of Nigerian origin. The Employer is a state agency that regulates the insurance industry for the protection of policyholders and the public. The Grievant was part of a team that conducted on-site financial examinations of insurance companies. Each team was led by an

Insurance Examiner 3 who was considered the examiner in charge (EIC). The teams would report directly to the companies being examined, and were provided work space there. However, they were considered to be based at the Employer's field examination office in Seattle, Washington, where shared work stations were available for their use.

The Grievant's first performance evaluations were conducted in 1999 and 2000 by the Employer's chief examiner, Patrick McNaughton. They were satisfactory. Mr. McNaughton testified that before another evaluation was conducted, problems had developed involving the Grievant. The Grievant testified that she had been effectively working out of class as an Insurance Examiner 3 for more than 18 months. She testified that although she complained about this, Human Resources claimed they investigated and found nothing wrong. She testified that in 2002, she filed an action to have her job classification changed. The Grievant testified that during the course of a lawsuit which she filed against the Employer, it was discovered that other employees were going through her garbage cans and were sending emails to Mr. McNaughton about her actions. In this regard, the Union submitted a memo dated December 20, 2001 prepared by Deputy Insurance Commissioner Jim Odiorne indicating that an employee printed an organization chart at the Grievant's request. It also submitted an email dated April 15, 2002 from Charles Mitchell, another insurance examiner, to Mr. McNaughton, reporting that he had seen the Grievant "in Larry Cross' cubicle." Also submitted by the Union was an email dated April 19, 2002 from another insurance examiner, Peter Mendoza, to Mr. McNaughton, stating that he observed Tim Navaja, a supervisor, come into the cubicle Mr. Mendoza shared with the Grievant at the Safeco field examination site and deliver a letter to the Grievant, after which the Grievant read the letter and then tore it up and threw it into the wastebasket. Mr.

Mendoza further wrote that he retrieved some of the pieces of the torn letter and gave them to Mr. Navaja.

Mr. McNaughton testified that by 2002, he became concerned with the Grievant's inability to get along with coworkers, her unexplained absences, and deficiencies in her performance reported by her supervisor. Mr. McNaughton testified that Larry Cross was a contract examiner who was on loan to the Employer from the State of Delaware where he was regularly employed. Mr. McNaughton testified that the Grievant had previously complained to him about work disagreements she had with Mr. Cross, and he learned that the Grievant had sent an email to Mr. Cross' supervisor in Delaware asking that he be taken off the job. Mr. McNaughton testified that less than 24 hours before Mr. Mitchell's email, Mr. Cross' work station had been vandalized with a highly pungent chemical, so that it was understandable for Mr. Mitchell to report seeing the Grievant in Mr. Cross' cubicle. Mr. McNaughton testified further that the torn up letter that Mr. Mendoza retrieved was one Mr. McNaughton had written regarding the Grievant's unexplained absences, and that he had asked Mr. Navaja to deliver. Mr. McNaughton testified that he had not directed Mr. Mendoza to go through the Grievant's trash.

The Grievant was terminated in 2002. Former Deputy Commissioner of Operations, D.J. Mark, who recently retired, testified that the Grievant had a deteriorating relationship with her supervisor and a variety of coworkers, and escalating disagreements with Deputy Commissioner Odiorne. Mr. Odiorne testified that one of those disagreements concerned the Grievant alleging that he had stolen from her because he had authorized leave without pay for her for days she had not come to work and had not filed a leave request. In May 2002, the Grievant filed a complaint with the Washington State Bar Association alleging that Mr. Odiorne "has a known history of harassing, discriminating and intimidating women in the workplace." She further charged him

with theft, in that he “stole over \$400 from [her] account” by altering and forging payroll documents in her name. The Grievant requested that Mr. Odiorne’s license to practice law be revoked. Mr. Odiorne was a non-practicing attorney who maintained his membership with the Washington State Bar. In October 2002, the Washington State Bar Association notified the Grievant that it had completed its investigation and was dismissing her complaint. The Bar Association’s Senior Disciplinary Counsel found that it did not appear that Mr. Odiorne engaged in theft, but rather “approved documents for leave without pay which caused a deduction from [her] paycheck.” He also found no basis for the allegations of discrimination against Mr. Odiorne. Mr. Odiorne notified Michael Watson, the Employer’s chief deputy commissioner, of the Grievant’s Bar complaint. Mr. Watson testified that he decided to terminate the Grievant because of her false allegations of theft made against Mr. Odiorne. The Grievant appealed her dismissal. Mr. Watson testified that the Washington State Personnel Appeals Board overturned the Grievant’s termination because it was based on a Bar complaint, and such matters were deemed confidential and could not be considered. The Grievant returned to work in June 2004.

A matter related to the Grievant’s termination in 2002 continued to be a problem. While that termination was being considered, Mr. Watson directed that the Grievant be reassigned to her home. Ms. Mark and Mr. Odiorne delivered the reassignment letter to the Grievant at the Safeco Insurance worksite where the Grievant had been conducting an audit. The Grievant was escorted out of the building by Safeco security personnel. The Grievant was not provided the opportunity to collect her personal belongings from her work station there. Ms. Mark testified that photos were taken of the Grievant’s work station at Safeco, including the opened drawers of her desk. Mr. Odiorne and two Safeco security employees observed as Ms. Mark placed the Grievant’s personal belongings and State-owned equipment and supplies in boxes. She left a box

of State-owned property at Safeco, and brought the other boxes to her office in Tumwater. There, she made a list of the items that were in the boxes. Ms. Mark testified that the Grievant's personal belongings were consolidated in one box, which she maintained in her office until it could be returned to the Grievant. The Union presented into evidence an email from Mr. Navaja in 2002 that said that they had found a box with the Grievant's name on it which "contains miscellaneous papers and supplies" and "her personal hand truck" was sitting on top of the box. Mr. Watson testified that this box contained supplies belonging to the State and was ultimately brought to him. He testified that OIC routinely bought hand trucks for employees to use.

The Grievant filed suit against the Employer in Pierce County Superior Court, alleging discrimination. The issues involved in that suit included allegations that the Employer improperly denied the Grievant a promotion to Examiner 3 and had confiscated her personal belongings. While that suit was pending, the Grievant's attorney sent to the Employer a lengthy list of the personal items that the Grievant claimed were confiscated from the Safeco worksite. The list contained items such as a briefcase, a blazer, a sweater, shoes, a Palm Pilot, and a calculator. A hand truck was not among the items listed.

The Grievant testified that upon her return to work, she was told by Ms. Mark, Mr. Odiorne, and by Rebecca Kelly, who was then the OIC human resources manager, that she was back because of a technicality. On her first day back, Ms. Kelly attempted to return to the Grievant the box of her personal belongings which the Employer still was holding. The Grievant refused to accept the box, explaining that it had to do with her ongoing court suit.

During 2005, a number of events occurred which culminated in the Grievant being assigned to her home in late October, and subsequently terminated.

January 2005

In January 2005, the Employer's accounting section raised a concern about the Grievant's claimed travel expenses for the months of November and December. At that time, the Grievant was conducting an audit of Molina Healthcare located in Bothell, Washington. The Grievant was entitled to receive travel expenses from her home in Fife, Washington to the audit location in Bothell. The Grievant claimed point to point mileage reimbursement for a trip of 49 miles each way. This mileage reimbursement was not disputed by the Employer. However, the accounting section did question the per diem reimbursement paid to the Grievant. Such reimbursement is provided when employees work a designated number of hours beyond their scheduled work shift. The Grievant's scheduled work shift was from 8:00 a.m. to 4:30 p.m. On her travel voucher reports for every workday in November and December, the Grievant reported that she had left her home to travel to work at 7:00 a.m. and did not return home until 7:15 p.m. Inasmuch as the Grievant claimed on her travel voucher that she had worked over 12 hours, she was paid a per diem of \$38 per day, for a total per diem of \$570 in November and \$583 in December. Michael Jordan is the assistant chief examiner. Mr. Jordan testified that he lives in Edgewater, a community which is adjacent to Fife, and that when he travels from his home, he would enter the highway at Fife. According to Mr. Jordan, on January 12, 2005, he commuted from his home through Fife to Molina and it took one hour and ten minutes. Mr. Jordan testified that on January 13, 2005, he left his home at 7:10 a.m. and arrived at Molina at 8:30 a.m. Mr. Jordan testified that the Grievant arrived at work at 10:20 a.m. that day. Shortly after her arrival, Mr. Jordan, accompanied by the Grievant's supervisor, John Gaynard, met with the Grievant to discuss her travel voucher report. According to Mr. Jordan, he asked the Grievant what time she had left for work that morning, and the Grievant responded that she left at 7:00 a.m. Mr. Jordan told her that

it was unreasonable that her commute would take so much longer than his. He advised the Grievant that her per diem would be denied. The Grievant responded that the commute did take her 3 hours every morning and 2 3/4 hours in the afternoon and that she would appeal the decision. The Grievant testified that Mr. Jordan said to her during this meeting, that he had driven by her home to see where she lived and that he specifically stated to her, "I am stalking you." Mr. Jordan denies that he did anything that could be perceived to be "stalking." Mr. Jordan further denies that he even knows where the Grievant lives, other than it is somewhere in Fife. He testified that he never told the Grievant that he had driven by her house.

On January 20, 2005, Mr. Jordan received an email from Molina's chief financial officer, Dale Ahlskog, complaining about the Grievant's behavior. Ms. Ahlskog attached a memo which the Grievant had prepared and asked Molina's accounting Manager to sign. The memo purported to be from the accounting manager and was directed to "Whom It May Concern." The memo stated that the Grievant had examined Molina since November 1, 2004, and that she "reported to work at about 9:00 AM." Ms. Ahlskog reported to Mr. Jordan by email that she viewed the memo as inappropriate and she had directed the accounting manager not to sign it. Ms. Ahlskog further advised Mr. Jordan that the memo was "not accurate" regarding when the Grievant reported to work at Molina.

Also on January 20, 2005, the Grievant sent an email to Mr. McNaughton notifying him that she would not be able to go to her next assignment in Spokane because for health reasons she could not leave town. Ms. Kelly testified that the Grievant asked for a reasonable accommodation because she had a strained lower back. Ms. Kelly testified that the Grievant's medical restrictions included no traveling for more than an hour. Ms. Kelly testified that the Grievant wanted to telecommute from home, but this request was denied.

On January 25, 2005, Mr. Gaynard directed the Grievant to provide assistance in the preparatory work for the North Coast Life examination. On the same day the Grievant responded to Mr. Gaynard by email, indicating that she would not perform certain work.

. . . I will not help . . . with the planning or anything related to the planning of North Coast Life . . . If I do any planning work, I would be expected to be compensated for it. Just so you know this is a major part of my lawsuit. . . . I will not be working for OIC for free. I have learned that the best thing to do is sue them when they don't comply with the law or when they violate my rights. It's a given. . . .

The Grievant viewed planning work as Examiner 3 work. The Employer took the position that it was an integral part of Examiner 2 work which the Grievant was required to perform.

February 2005

The Grievant's lawsuit against the Employer culminated in a jury trial in Pierce County Superior Court which commenced on January 30, 2005 and concluded on about February 7, 2005. That trial involved the Grievant's allegations that she was unlawfully denied a promotion to Examiner 3 and back pay for performing Examiner 3 work. The trial also involved the Grievant's claim for damages for the loss of her personal belongings when she was sent home from Safeco. The jury reached a verdict denying all of the Grievant's claims.

On February 25, 2005, Mr. Jordan and Mr. Gaynard met with the Grievant to discuss her continuing refusal to perform certain assigned work which she considered to be Examiner 3 work and which the Employer considered to be Examiner 2 work. The Grievant was advised that she must perform all functions assigned by her supervisor and she was asked to sign a statement to this effect. The Grievant refused. The Grievant was advised that she was receiving an informal corrective action counseling. Also on February 25, the Grievant filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC), alleging that by assigning her Examiner 3

duties, the Employer engaged in unlawful discrimination based on race, sex, and national origin, and unlawful retaliation for filing a previous EEOC charge.

March 2005

Mr. Jordan testified that following the corrective counseling of February 25, the Grievant continued to refuse certain work assignments. On March 1, 2005, Mr. Jordan sent the Grievant a memo advising her that her continued refusal to perform her assignments would be considered insubordination, and formal corrective action would be taken. Also on March 1, 2005, Mr. Jordan and Mr. Gaynard met with the Grievant to discuss the complaint received from Molina Healthcare. The Grievant admitted that she had given the memo to the Molina accounting manager and asked him to sign it. Mr. Jordan advised the Grievant that her action was improper and would result in discipline. Later that day, the Grievant sent an email to Mr. Jordan, with copies to various supervisors and managers, saying that she was “hereby officially notifying ‘him that he was’ to cease and desist from [his] harassment.”

Also on March 1, 2005, Ms. Mark sent an email to the Grievant asking her to pick up the box of her personal belongings.

On March 2, 2005, Mr. Gaynard met with the Grievant and attempted to give her a letter of reprimand for her inappropriate request made to the Molina Healthcare manager. The Grievant refused to accept the letter of reprimand. Later that day, the Grievant sent a letter to Mr. Jordan, with copies to various managers, in which she accused him of “harassment,” of stalking her, of admitting that he had driven by her home, of forcing her to do the work of an Insurance Examiner 3, and of harassing her about a request she had made to the Molina Healthcare accounting manager. The Grievant further wrote in that letter that during the meeting on February 25, Mr. Jordan “stated ‘Kendy, you filed a lawsuit and you lost, so you will have to

continue doing 'planning' which is the work of a 3. We are asking you to do it and without pay.'”

Mr. Jordan was asked by Ms. Kelly to respond to the Grievant's allegations. In his written response which he provided to Ms. Kelly, Mr. Jordan denied that he had made the statements attributed to him by the Grievant. He testified that these allegations were not true and he was concerned that the Grievant was trying to destroy his career.

Ms. Mark gave the box of the Grievant's personal belongings to Ms. Kelly. On March 4, 2005, the Grievant was called into Ms. Kelly's office and at that time opened the box and took some things from it. On March 7, the Grievant sent an email to Ms. Kelly listing 18 “missing items,” valued at almost \$2000 and asking that she be paid for them. On March 8, Ms. Mark responded by email to the Grievant that the box contained all personal items that had been retrieved from her work station at Safeco.

On March 14, 2005, Mr. Jordan and Mr. Gaynard met with the Grievant and her Union representative about the Grievant's continued refusal to do certain work. At the meeting, the Union representative advised the Grievant to perform the work and to request a desk audit to determine the proper level of pay. The Grievant agreed that she wanted a desk audit. The Grievant submitted a formal request for a desk audit on March 22.

On March 31, 2005, Ms. Kelly wrote to the Grievant that she had investigated her allegations of harassment by Mr. Jordan and had “not found any substantiation.” Also on March 31, Ms. Kelly sent an email to the Grievant advising her that her health condition would be accommodated by not sending her to the planned Spokane assignment, but that telecommuting was not an option. The Grievant responded by email that Ms. Kelly had ignored the Grievant's warnings, and that she would file additional charges against the agency for violation of the ADA.

April 2005

On April 1, 2005, the Grievant filed a charge of discrimination with the Washington State Human Rights Commission, alleging that she had been denied a reasonable accommodation for her disability by the Employer, and was placed in a hostile work environment because of her disability, including failing to pay her “mileage they owed for work-related travel,” and “unfairly call[ing her] in for corrective action.”

On April 4, Ms. Kelly sent an email to the Grievant advising her that as a reasonable accommodation, she was temporarily assigned to work at the Tumwater headquarters in an Insurance Examiner 2 position.

On April 7, Ms. Kelly denied the Grievant’s request for reallocation because she had not been an examiner in charge.

On April 15, the Grievant sent an email to Ms. Mark stating that if a check was not received from her for her missing personal belongings, she would file a legal action against her.

April 15 was the last day of Ms. Kelly’s employment. Ms. Kelly was replaced as OIC human resource manager by Patty McGuire.

On April 26, the Grievant was handed a letter from Mr. Odiorne advising her that during the period of her temporary accommodation, which would last until May 13 when her condition would be reassessed, she would be supervised by Dennis Julnes. Mr. Julnes is the manager of the financial analysis section. Mr. Odiorne’s letter also advised the Grievant of her work hours and the amount of travel time from her home that she would be allowed.

On April 27, the Grievant sent an email to Mr. Odiorne advising him that she had received his letter. Her email concluded:

Today your harassment and discrimination continued and in fact in writing. As for the May 13, 2005 that you have indicated, I will wait to hear from you as to what accommodation this office is providing me as a field examiner because I am not an analyst.

Jim, I am hereby putting you on notice. Any attempt to thwart this L & I investigation and your discriminatory actions directly or indirectly will result in a Washington State Bar complaint against you, this is just so you know.

On April 28, the Grievant submitted her travel voucher report for the period from January 26 through March 10. For January 26, the Grievant requested mileage reimbursement for a trip to Tumwater. On her travel voucher report, the Grievant recorded that the purpose of the trip was: "Meeting with Rebecca Kelly to report Mike Jordan re: Stalking." Ms. Mark testified that travel voucher reports are entered into a computer and any employee can look at any other employee's travel voucher.

May 2005

On May 4, the Grievant appealed the denial of her reallocation request to the Director of the Department of Personnel.

On May 9, Mr. Gaynard, by email, advised the Grievant that she would need to resubmit her travel voucher report without the reference to "stalking" by Mr. Jordan. He explained that it is inappropriate to include such "sensitive" details on a travel voucher report which could be viewed by anyone, once approved. The Grievant responded by email that she would not make the requested change, since the travel voucher report was accurate as submitted. On May 11, Mr. Gaynard responded in writing to the Grievant that he viewed her "behavior as insubordination, which may result in disciplinary action." He again asked the Grievant to revise her travel voucher report. On May 27, the Grievant sent an email to Mr. Gaynard, which was copied to Mr. Odiorne, Ms. Mark, Mr. McNaughton, and Mr. Jordan. In that email, she again stated that she would not change her travel voucher report. She stated that Mr. Jordan admitted to stalking her

and that was a “felony.” She questioned why she was being discriminated against and warned them to stop their “illegal employment practices,” as “none of you can get away with any of this because it will be a long legal battle.”

On May 31, and June 14, the Employer submitted lengthy responses to the Equal Employment Opportunity Commission regarding the Grievant’s charges.

June and July were relatively uneventful months in the difficult relationship between the Grievant and the Employer. A review hearing was conducted on July 21 by a Department of Personnel Hearing Officer regarding the Grievant’s reallocation appeal.

August 2005

On August 3, the Department of Personnel Hearing Officer denied the Grievant’s reallocation appeal, finding that the Grievant’s position was properly allocated to the class of Insurance Examiner 2. In his decision, the Hearing Officer wrote that “Mr. Shea correctly denied [the Grievant’s] request.” Ms. Kelly, after reading the decision, noticed that the Hearing Officer mistakenly referred to Mr. Shea, rather than her, as initially denying the Grievant’s request. She pointed this out in an email to the Hearing Officer. On August 4, the Hearing Officer issued a corrected decision which merely changed the words “Mr. Shea,” to read “Ms. Kelly.”

On August 10, the Grievant sent a “Request For Public Disclosure” by email to Ms. McGuire. It requested numerous documents which could relate to a discrimination lawsuit against the Employer. Ms. McGuire testified that she viewed this request as an inappropriate use of the Employer’s computer and the Grievant’s work time, since the request was not a part of her work duties. Ms. McGuire testified that she spoke to Mr. Julnes about this, and then Mr. Julnes spoke to the Grievant about the matter. Ms. McGuire testified that the Grievant came to her office and questioned whether she had authority to prevent the Grievant from using the

Employer's email to submit a public disclosure request. Ms. McGuire testified that she then directed the Grievant to not use agency resources for such purposes, but rather she needed to use the regular mail.

On August 24, the Grievant appealed the denial of her reallocation request to the State Personnel Appeals Board.

September 2005

On September 7, the Grievant sent an email to Ms. McGuire stating that she had been told by Mr. Julnes that Ms. McGuire said that she was not to send public disclosure requests during work hours. In that email, the Grievant wrote:

* * *

I can only categorize your action as intolerable harassment and discrimination at the highest level and will not be tolerated. . . .
On a different note, you have also been caught instructing the Department of Personnel ("DOP") on how to write and correct the reallocation letter that was sent to me. I know this because DOP gave me a copy of your email instructing then to do so. What you have done is unethical and your letter will be used as evidence in all charges against OIC.

The Grievant handed a copy of this email to Ms. McGuire's assistant and asked that it be placed in Ms. McGuire's personnel file. The Grievant testified that the only correction made to the original Department of Personnel decision that she is aware of was the name change from Mr. Shea to Ms. Kelly. The Grievant testified that when she found out that Ms. McGuire had communicated with the Hearing Officer she felt that she "could not trust her anymore" and that Ms. McGuire had "crushed the process."

On September 30, the Grievant used her OIC computer to send a clarification of her public disclosure request.

October 2005

On October 3, Mr. Julnes met with the Grievant and gave her an oral reprimand for continuing to use her OIC computer for personal matters. According to Mr. Julnes, the Grievant expressed disagreement, called him a “lackey for management,” and said that she was going to include him in a suit against the agency. He recalled further that the Grievant said to him that the meeting was over, did not take place, and she was not there. Mr. Julnes reported the meeting to Ms. McGuire. Later that day, Mr. Julnes sent the Grievant an email referring her to the Employer ethics policy related to their earlier discussion. The Grievant responded by email: “What discussion are you taking about? I never had any discussion with you today.”

On October 6, the Grievant again used her OIC computer to communicate with Ms. McGuire about her public disclosure request.

On October 10, Ms. McGuire wrote to the Grievant that she was directed not to attempt to Place documents in any other employee’s personnel file. Ms. McGuire, in that letter, encouraged the Grievant to contact the Employee Assistance Program if she was experiencing any personal problems. On October 11, the Grievant responded with a letter, at the end of which was an indication that a copy had been sent for inclusion in Ms. McGuire’s personnel file. The Grievant’s letter included the following:

* * *

On August 4, 2005, . . .you managed to corrupt the hearing process at the Department of Personnel and you in fact instructed them on what to do after you all failed at your conspiracy to do injustice. . . .What you have done is not only fraudulent, it will not be tolerated. . . .
First, you are being put you [sic] on notice. You are not to obstruct any and all pending investigations and/or proceedings against OIC. Any correspondence that I receive from any OIC employee, management and in particular personnel office will be responded to accordingly and placed in the respective files of those involved.

* * *

. . . You are not to selectively decide what goes into anybody's file. . . .

Ms. McGuire retained the letter that was sent to her, but returned to the Grievant the copy that was addressed to Ms. McGuire's personnel file, with the notation that it was not deliverable as addressed.

On October 19, the Grievant sent another letter, with a copy to be inserted in Ms. McGuire's personnel file. In that letter, the Grievant stated that she had received back the letter from Ms. McGuire, and that she would use it as "evidence of [her] continuing endeavor to corrupt pending investigations."

Also on October 19, the Grievant sent an email to Mr. Julnes, telling him to submit her September travel voucher or else he would be personally responsible for all interest. Mr. Julnes responded by email that the Grievant had been informed when she was given the reasonable accommodation appointment that she would be allowed 45 minutes of travel time from her home. He stated that he could not approve her September travel voucher because she claimed more than 45 minutes for her commute. The Grievant responded by email that he had "trouble interpreting the rules" and he would be held personally responsible. Later on October 20, the Grievant and her shop steward met with Mr. Odiorne to discuss her travel voucher. At that meeting, Mr. Odiorne stated that he agreed with Mr. Julnes that the Grievant's reported travel times were unreasonable. On October 21, the Grievant sent Mr. Odiorne an email which contained the following:

* * *

Previous court subpoenaed papers show that you did in fact instruct others to stalk me and monitor my movement and that instruction continued to be carried out by your subordinates daily.

The purpose of the meeting was to discuss my travel voucher and to stop you and your group from your continuing harassment and your discriminatory practices and also to remind you that Dennis Julnes whom you have now designated to harass me and help carry out your unethical and discriminatory behavior needs to stop.

* * *

All you need to do is give me my money because what you are doing is unethical and illegal and you have no basis for your actions.

In that same e-mail I also stated that your direct or indirect involvement in discrimination here will result in a Bar complaint against you. Yesterday, I gave you documents which clearly show your continuing retaliation for the previously filed Bar complaint against you. In my humble opinion, a clear violation of Rule 12.11 which warrants a complaint.

If I do not hear from you by Tuesday, I will exercise all my rights as this discrimination and harassment by you will need to stop.

On October 25, Mr. Odiorne responded to the Grievant by memorandum. In that memorandum, Mr. Odiorne listed the documents that the Grievant provided to him during their meeting on October 20. Those documents were travel vouchers, travel regulations, and an email concerning those travel vouchers. Mr. Odiorne denied that there had been any stalking or conspiracy. Mr. Odiorne warned the Grievant that she must stop threatening and harassing the staff.

Also on October 25, Ms. Mark sent a memorandum to the Grievant, which was a response to the Grievant's October 19 letter to Ms. McGuire. Ms. Mark wrote that she viewed that letter as a "malicious and false personal attack...on her simply because you do not like the answer she gave you." Ms. Mark warned the Grievant to stop harassing Ms McGuire. The Grievant responded to Ms. Mark in writing the same day, accusing Ms. Mark of encouraging the continuing discrimination and harassment against her.

Also on October 25, Mr. Julnes advised the Grievant, in writing, that he would not approve her September travel voucher unless it was resubmitted to claim 45 minutes of travel

time from her house. The Grievant responded by email, asking why Mr. Julnes was asking her “to commit a crime by lying on [her] travel voucher.” The Grievant did amend her travel voucher and it was approved the following day.

On October 26, Mr. Julnes handed the Grievant a letter of reprimand for continuing to use her OIC computer to communicate regarding her public disclosure request after he had counseled her and given her an oral warning for the same offense. In that document, Mr. Julnes suggested that the Grievant contact the employee assistance program if she was experiencing personal problems. According to Mr. Julnes, the Grievant later appeared angry and upset when she came to his office and said, “You will get a reply.”

Also on October 26, Mr. Julnes sent a memorandum to Mr. Odiorne asking for a meeting to discuss the Grievant’s “unusual behaviors.” In that memorandum, Mr. Julnes expressed his concern that the Grievant’s “reactions to directions and comments seem too extreme,” and that he was concerned about staff safety because he was “not sure what she will do next.” Mr. Odiorne met with Mr. Julnes the same day to discuss these concerns.

October 27, 2005

The Grievant prepared a response to the letter of reprimand which she had received from Mr. Julnes. During the morning of October 27, she brought a draft of her response to Shellie Savage, who is the supervisor of hotline staff and also serves as chief shop steward. Ms. Savage testified that the Grievant came to her desk at about 9:00 a.m. with a draft of her response, and she reviewed it and recommended some changes. Ms. Savage testified that they discussed that the Grievant would return and show her the changes she made before she gave the response to Mr. Julnes. The Grievant did not return to discuss any changes with Ms. Savage. Ms. Savage

testified that the response letter that the Grievant later submitted to Mr. Julnes was not the version she had reviewed.

Ms. Savage testified that between 10:15 a.m. and 10:45 a.m., she filled in answering the phone for hotline employees who were on break. Ms. Savage was not working in the area where Mr. Julnes and Mr. Odiorne had their offices and the Grievant had her cubicle, but rather worked in another area of the building. Ms. Savage testified that at about 10:30 a.m., about in the middle of the time that she was filling in on the hotline, the Grievant came to her, shaking, frightened, and tearful, and said that Mr. Julnes threatened her by saying she was “dead meat.” Ms. Savage testified that she could not get off the hotline, so she told the Grievant that she would see her as soon as someone came back from break.

The Grievant had been scheduled to meet at 11:00 a.m. with Mr. Julnes and her lead, Ron Pastuch, to discuss the Grievant’s evaluation. Mr. Pastuch’s cubicle was located very close to the Grievant’s. When asked to describe her relationship with Mr. Pastuch, the Grievant testified that “[h]e was one of the best people in the office.” Mr. Julnes testified that the Grievant came to his office a few minutes before 11:00 a.m. and dropped a packet of documents and started to walk away. Mr. Julnes testified that when he asked “What about the meeting?” the Grievant pointed at the packet, and said, “You need to read it,” and left. When asked on cross examination whether it was correct that she gave the documents to Mr. Julnes just before 11:00 a.m., the Grievant responded, “Sometime before 11:00 am., yes.” The letter which the Grievant delivered to Mr. Julnes reads:

Continuing Racial Discrimination; Harassment; Unequal Pay, Sexual Harassment, and Hostile Work Environment by. Dennis Julnes and Jim Odiorne.

For starters, the letter you delivered to me as you came out of Jim Odiorne's office on October 26, 2005, (see attachment 1); does not deserve a response from me. Please follow proper Union procedure.

Below is a light reading for you.

At this point I will advise you to consult your personal attorney as this is something that I am not willing to ignore.

If you think you can continue to have taxpayers defend lawsuits against the Agency as a result of your illegal acts. You must think again. Not this time.

I should instruct a little.

1. I have the right to use state resources for a few minutes per day as long as it is De-Minimus.
2. I noticed that you failed to include the so-called "Public Disclosure Request" (PDR) E-mail in your letter to me so that any reasonable person can conclude as to how many minutes I spent sending the e-mail.
3. See WAC 292-130-090 (attachment 2). It is hereby attached for your education.
4. It was an official and an OIC Personnel request.
5. You, Dennis Julnes have always and continue to use and abuse State Resources for your own personal gain and to run your personal businesses — including your skiing instructor business. The websites you visited alone were well over five thousand (5,000) visits — (see just a few attached to this letter). I have similar information on Jim Odiorne, which I have not included in this response.

Should you wish to carry out your threats you should think hard.

It appears that when you are not surfing the Internet, you and your co-conspirators do find time to conspire against me. You will all fail again.

It makes me wonder when you have the time to do your OIC assigned work that you are being paid to do. You have failed to do your assigned job, I will like to remind that it is your duty to sign off on my travel voucher which you have yet to do.

Here are a few from your state-assigned computer of your web surfing for your quick review.

* * *

[Listing of 12 attachments which appear to be excerpts from web sites]

Dennis Julnes, be prepared to explain which ones of these Exhibits 1-12 are OIC work related,

Sincerely,

Kehinde Ovbiebo
Insurance Examiner

Attachments

CC: Office of Insurance Commissioner – Personnel Office
Kehinde Ovbiebo, Personnel File
Enclosures: Copy of Letter from Dennis with attachment.
Exhibits 1-12 – Dennis’ illegal computer usage.

Mr. Julnes testified that the Internet documents which the Grievant attached had been utilized by the Employer some time prior to this incident with the Grievant, for discipline meted out to him for misuse of his OIC computer.

Mr. Julnes read through the Grievant’s letter. Mr. Pastuch arrived for the meeting a few minutes after 11:00 a.m. He found Mr. Julnes sitting at his desk. Mr. Pastuch asked where the Grievant was. Mr. Pastuch described Mr. Julnes’ demeanor as “kind of flabbergasted” in that he “shrugged his shoulders” when asked whether there would be a meeting. During the later investigation of the incident, Mr. Julnes told the investigator that he told Mr. Pastuch that the Grievant had dropped off a packet and left the office. During his testimony, Mr. Julnes did not mention that he made this statement to Mr. Pastuch. Mr. Pastuch testified that Mr. Julnes did not mention that the Grievant had dropped off a packet of documents. Mr. Pastuch testified that as he was standing at the doorway to Mr. Julnes’ office, he observed the Grievant walking from her cubicle to the building exit while talking on her cell phone. Mr. Pastuch testified that he told Mr.

Julnes that it looked like the Grievant was leaving. Mr. Pastuch testified that he asked, “What’s going on?” and Mr. Julnes responded, “I don’t know.”

Mr. Julnes testified that after Mr. Pastuch left his office, he carefully reviewed the packet of documents that the Grievant had left with him. Mr. Julnes testified that he determined that he needed to meet with Mr. Odiorne to discuss what had transpired with the Grievant. At 11:21 a.m., Mr. Julnes sent an email to Mr. Odiorne requesting a meeting “very soon.” According to Mr. Julnes, he did not see the Grievant again after she dropped off the packet of documents.

The Grievant testified that after she dropped off those documents with Mr. Julnes, she gave a copy to Ms. Savage. She testified that Ms. Savage was on the phone, so she left it on her desk. She testified that she then went upstairs and left a copy on Ms. McGuire’s desk, and left another copy for the Grievant’s personnel file. She testified that it was then her intent to go to the meeting with Mr. Julnes. She testified that she came down the steps and entered into a corridor where she encountered Mr. Julnes. That particular corridor is adjacent to the restrooms for the floor where the Grievant and Mr. Julnes had their offices. The Grievant testified that Mr. Julnes was “walking really fast,” and “came after [her] with force.” She testified that she saw that his face was “red” and “sweating,” and he looked very angry. The Grievant testified that Mr. Julnes then said to her “You are dead meat.” The Grievant testified that she was afraid for her life. The Grievant testified that she ran to Mr. Odiorne’s office, which is just down the hall, but he was not there. She testified that she then went to her desk, which is located in the row of cubicles between Mr. Odiorne’s office and Mr. Julnes’ office, and dialed 9-1-1.

Police records indicate that the Grievant’s 9-1-1 call was made at 11:03 a.m., and she reported that her supervisor threatened her by saying that she was “dead meat.” At 11:05 a.m., the Grievant was still on the phone with the 9-1-1 operator, and she said that she was going

outside to wait for the police officer. According to those records, a police officer arrived at the scene at 11:13 a.m. and spoke with the Grievant outside the building. According to those records, the officer entered the building at 11:21 a.m. in order to contact Mr. Julnes. The officer's notes indicate that Mr. Julnes told him that the Grievant did not show up at a planned meeting, and he had not spoken to her. The officer recorded that "Mr. Julnes was very alarmed at the allegation." The officer left the scene at 11:43 a.m.

The Grievant testified that about five minutes after calling 9-1-1, Ms. Savage came to see her and she told Ms. Savage what happened. The Grievant testified that Ms. Savage sent for another shop steward, Gayle Nixon, to stand by her. The Grievant testified that she then went outside to meet the officer.

Mr. Pastuch testified that about 15 minutes after seeing the Grievant leave the building, he observed the Grievant back in her cubicle, looking at her computer screen. Mr. Pastuch, in his testimony, did not say that he observed anyone with the Grievant at this time. Mr. Pastuch testified that he then told the Grievant that they were scheduled to have a performance evaluation meeting. He testified that the Grievant responded that she would not be going to a meeting, but did not explain why. Mr. Pastuch testified that he told the Grievant that she needed to inform Mr. Julnes of this, and that the Grievant agreed that she would. At 11:40 a.m., the Grievant sent Mr. Pastuch an email saying that she could not attend a meeting with Mr. Julnes, and that she and Mr. Julnes had been involved in "an incident."

Mr. Julnes testified that at 11:25 a.m., the receptionist called his office and said that a police officer was there to see him. They met at the reception desk and then went outside the building to talk. Mr. Julnes testified that after he explained what happened, the police officer told him that there was no crime and that he was not in trouble.

The Grievant testified that after speaking with the police officer, she returned to her cubicle, where Ms. Nixon was waiting for her. The Grievant testified that she had no conversation with Mr. Pastuch after she spoke with the officer, but rather she sent him an email saying that because of an incident there would be no meeting.

At 11:31 a.m., the Grievant sent the following email to Ms McGuire:

This morning I reported Dennis Julnes to the authority based on the threat he made to me after I delivered a response to his letter from yesterday. I need to be safe here at work. Thanks, Kendy.

The Grievant testified that she sent an email to Mr. Pastuch saying that she needed to take the rest of the day off. She then went home. Mr. Pastuch testified that at about 12:07 p.m., the Grievant told him that she was leaving. Mr. Pastuch reported this to Mr. Julnes by email at 12:16 p.m.

After speaking with the police officer, Mr. Julnes walked upstairs to report the matter to Ms. McGuire. After hearing Mr. Julnes' version of the events, Ms. McGuire reported the matter to Ms. Mark. The three of them then went to speak with Mr. Watson and Mr. Odiorne. Mr. Watson directed that the Grievant be reassigned to her home until the matter could be investigated and he told Mr. Julnes to leave the building and take a long lunch break. Ms. Mark testified that she drafted for Mr. Watson's signature a letter reassigning the Grievant to her home. When she went downstairs to give the letter to the Grievant, she learned that the Grievant had already left for the day.

October 28-31, 2005

When the Grievant reported to work on October 28, she was given a letter from Mr. Watson notifying her that she was "being reassigned with pay to [her] home." She was then escorted out of the building.

On October 31, the Personnel Appeals Board dismissed the Grievant's reallocation appeal.

November 2005

On November 7, the Grievant filed a worker's compensation claim with the State of Washington, Department of Labor and Industries for a stress related injury. On the claim form, the Grievant described her injury as occurring on October 27, 2005 when "[m]y supervisor at work threatened to kill me." The Grievant testified that after the incident, she had seen her doctor because she was having nightmares and could barely sleep.

On November 14, the Grievant filed a tort claim with the State of Washington, Office of Financial Management, alleging that the Office of Insurance Commissioner owed her \$1,828.15 for the personal belongings she had at Safeco in July 2002 when she had been terminated, which were missing and had not been returned to her.

On November 18, the Department of Labor and Industries denied the Grievant's worker's compensation claim on the basis that mental conditions caused by stress are excluded from coverage by law.

Also on November 18, the Grievant filed a grievance alleging harassment and discrimination by Mr. Julnes. In that grievance, the Grievant wrote: "Dennis Julnes threatened to kill me on the job. . . . I repeatedly requested meetings with management regarding Dennis Julnes' threats, however, management failed to acknowledge my requests."

On November 21, the Grievant's tort claim was denied.

On November 22, G/T Investigations began an investigation of the Grievant's allegation against Mr. Julnes. G/T Investigations is an investigative company based in Spokane, Washington which is owned and operated by Joe Griffin. Mr. Griffin testified that he had

previously retired after 25 years as a detective with the State Patrol. Mr. Watson testified that he had asked the State of Washington to contract with an outside investigator to investigate the October 27 incident, and that the State followed a procurement process which led to the contract with G/T Investigations. Mr. Griffin later expanded the scope of his investigation to include the Grievant's allegations that she was subjected to harassment and discrimination.

December 2005

On December 2, the U.S. Equal Employment Opportunity Commission notified the Grievant that it was terminating its processing of her charge.

On December 21, Mr. Griffin completed his investigation. Mr. Griffin interviewed 13 employees, including the Grievant, Mr. Julnes, and a number of employees who worked near them. In his lengthy investigation report, Mr. Griffin concluded: "The weight of evidence to prove the accusation does not meet reasonable or probable cause to find that the threat could have occurred." He also concluded that the Grievant's allegations of harassment and discrimination were unsubstantiated.

On December 27, the Grievant filed another appeal of the denial of her reallocation request.

On December 30, the Grievant personally sued Ms. Mark and Mr. Odiorne in King County District Court for \$2,093.91, for "personal belonging taken by [them]." This related to the personal belongings which the Grievant claimed were not returned to her in 2002.

January 2006

On January 13, a Personnel Hearing Officer denied the Grievant's new appeal of the denial of her reallocation request. The Hearing Officer explained that the matter had already been heard and decided.

On January 17, Mr. Watson advised the Grievant in writing that the Employer was considering taking disciplinary action against her, “up to and including dismissal.” The reasons given were “false accusations against OIC managers and staff; threats against your supervisors; insubordination, and unprofessional conduct.” The Grievant was further advised that a pre-disciplinary meeting was scheduled in Mr. Watson’s office on January 30. On January 23, Mr. Watson advised the Grievant an additional charge of misconduct was added to those contained in his letter of January 17, and would also be considered during the scheduled pre-disciplinary meeting. The additional charge against her was “filing a fraudulent Industrial Insurance claim.”

On January 24, a trial was held in King County District Court in Kent, Washington regarding the Grievant’s personal suit against Ms. Mark and Mr. Odiorne. The judge entered a defense verdict on the basis that the District Court does not have jurisdiction, the suit was brought after the statute of limitation had passed, and the matter had already been heard in Superior Court.

On January 30, a pre-disciplinary meeting was held, attended by Mr. Watson, Ms. McGuire, the Grievant, and her Union representative. At that meeting, the Grievant had the opportunity to reply to the charges against her.

The Termination

By letter dated February 3, 2005, Mr. Watson notified the Grievant that she was terminated. The reasons given were filing a false police report and a fraudulent industrial insurance claim, and filing false claims for personal belongings which continued with her tort claim and her personal suits against OIC employees. An additional reason given for the termination was “false accusations against OIC staff,” including Mr. Jordan and Mr. Gaynard. The termination letter gave as another reason, the Grievant’s threatening correspondence to Ms.

McGuire, Mr. Odiorne, and Mr. Julnes. Finally, Mr. Watson stated in the termination letter that the Grievant engaged in “unprofessional conduct” by calling the police to the worksite on a false charge, and had engaged in insubordination when she refused to follow Ms. McGuire’s directive not to submit a travel voucher which contained false accusations about Mr. Jordan stalking her. Mr. Watson testified that he chose termination as a penalty because in view of her escalating misconduct and her refusal to take any responsibility for her behavior, he did not believe that any lesser discipline would have any effect.

Mr. Julnes’ Credibility

Lana Monfort testified that she found Mr. Julnes to be “very hostile” when she worked under his supervision between 2000 and 2004. She explained that Mr. Julnes encouraged her to take the CPA exam so that she could be promoted, and as a result she obtained her CPA certification. She testified that when she then asked Mr. Julnes about being promoted, he said he could not justify it because she would have to lead someone to be promoted to an Examiner 3 position. She testified that she viewed Mr. Julnes as hostile, because when she asked him what she needed to do to obtain a promotion, Mr. Julnes would say he didn’t know or would just stall her. Ms. Monfort testified that Mr. Julnes never threatened her. She further testified that while she was working under Mr. Julnes, there was never an opening for an Examiner 3 that she could move into.

Mr. Jordan testified that he has worked with Mr. Julnes for 18 years, and found him easy to work with and not threatening in nature. Mr. Odiorne testified that he had worked with Mr. Julnes for 17 or 18 years and it was inconceivable to him that Mr. Julnes would have made a threatening statement to the Grievant. Mr. Pastuch testified that he had worked with Mr. Julnes

since 1997 and had never known him to be a threatening character. Mr. Pastuch paid to have a polygraph examination and he provided the results of that examination to Mr. Griffin.

POSITION OF THE EMPLOYER

The Employer contends that it had just cause to discharge the Grievant because of her repeated and escalating behavior in making false and defamatory claims against co-workers and threatening them with legal actions and Bar complaints. The Employer argues that these threats were made to intimidate any time the Grievant was counseled, corrected, or denied something she felt was her right. The Employer asserts that the Grievant's false police report was the most serious misconduct and was the final straw. The Employer denies that Mr. Julnes ever threatened the Grievant by saying she was "dead meat." The Employer maintains that it was not reasonable to believe Mr. Julnes would say this when he had raised a concern with management just the day before that he was concerned about the safety of the staff given the Grievant's extreme behavior. The Employer also argues that the timing of when events occurred does not support the Grievant's version. In this regard, the Employer points out that the Grievant does not dispute that she dropped off her packet of documents just before 11:00 a.m. and then delivered copies to several others in different parts of the building, and then, after the alleged threat, went to Mr. Odiorne's office before returning to her cubicle and calling 9-1-1 at 11:03 a.m. The Employer claims that this is a lot of activity to engage in over a five minute period. The Employer questions why the Grievant would, as she testified, seek assistance from Mr. Odiorne, her alleged harasser, rather than others she trusted, such as Mr. Pastuch or Ms. Savage. The Employer points out that Mr. Pastuch's testimony regarding his conversation with the Grievant after the alleged threat varies greatly from the Grievant's, and the alleged witness who could have supported the

Grievant's version, her shop steward, Ms. Nixon, did not testify. The Employer also points out that the one witness the Union presented to support the Grievant's version of the event, Ms. Savage, said that the Grievant told her at 10:30 a.m. that she was threatened by Mr. Julnes, which was considerably before the Grievant made the 9-1-1 call. The Employer asserts that the Grievant is not a credible witness because she has a history of filing false claims against people, including the Bar complaint against Mr. Odiorne and the stalking complaint against Mr. Jordan. The Employer maintains that the Grievant also tried to get someone to lie about when she arrived at work at Molina Healthcare and she persistently tried to get money for items that were never proven to be in the possession of OIC. The Employer argues that the other acts of misconduct addressed in the disciplinary letter are all supported by documents created by the Grievant. These include her worker's compensation claim that her supervisor threatened to kill her, the stalking allegation against Mr. Jordon, her threat to file a Bar complaint against Mr. Odiorne after he gave her a letter informing her of her temporary reasonable accommodation, her threats against Mr. Julnes and Ms. McGuire, and her claim for belongings that were returned by OIC. The Employer argues that these documents reflect the Grievant's intent to intimidate people and threaten their livelihood. The Employer maintains that such inappropriate behavior cannot be tolerated in a work place where integrity and trustworthiness are a necessary component of the work these regulators must engage in. The Employer claims that the Grievant's inability to accept direction and take responsibility for her own failures made changing her impossible and supports the decision to terminate her.

POSITION OF THE UNION

The Union contends that the evidence does not support the action against the Grievant taken by the Employer. The Union maintains that the significant issue in this case is essentially whether the Grievant was in fact threatened by Mr. Julnes on October 27, 2005. The Union concedes that if no threat was made, the termination would be appropriate. The Union urges that if the Arbitrator determines that either a threat was made, or the evidence is insufficient to determine this, then termination would not be warranted. The Union asserts that the burden is on the Employer to prove its case by clear and convincing evidence. The Union maintains that the Grievant's version of the events is credible, inasmuch as she has consistently stated that Mr. Julnes said she was "dead meat," and the reactions and demeanor of the Grievant following the threat, described by Ms. Savage, was consistent with a threat of this type. The Union questions why no one from management interviewed the Grievant following the incident during the hour she remained on the scene following this incident. The Union argues that if a threat occurred, the Grievant cannot be disciplined for filing a fraudulent industrial insurance claim. Regarding the allegation of fraudulent claims for personal belongings, the Union claims that no court or adjudicating body ever deemed her claims to be false, fraudulent or event without merit. The Union further asserts that contrary to Ms. Mark's testimony that she boxed all of the Grievant's personal belongings in 2002, another box was located by Mr. Navaja which contained her personal items, including a personal travel hand truck. Regarding the Grievant's correspondence which was alleged to be false or threatening, the Union questions why she was not disciplined following the first correspondence on March 2, 2005. The Union argues that the Employer failed to make the Grievant aware of these multiple allegations within a reasonable time, and it should not be permitted to pile them up and use them in a shotgun approach. The Union maintains that

the Grievant's letters were not hostile or threatening, but were protective and preemptive. The Union claims that the Grievant was subjected to disturbing workplace behavior, where everything she did was questioned and fellow employees rummaged through her garbage. The Union claims that Ms. Mark ignored a claim of discrimination brought by the Grievant against Ms. McGuire. In this regard, the Union observes that Ms. McGuire returned as undeliverable a complaint letter from the Grievant and Ms. McGuire had an ex-parte contact with the Hearing Officer who decided the Grievant's reallocation request. The Union argues that it is not appropriate to punish the Grievant for an environment created by those around her and because the Grievant refused to allow herself to be targeted, harassed, and treated differently by management personnel who ignored her claims of discrimination.

DISCUSSION

Article 27.1 of the Agreement states that "The Employer will not discipline any permanent employee without just cause." The just cause standard is essentially one of fairness and reasonableness. It is recognized that management has a reserved right to effectively manage the enterprise. If its reserved right to discharge for just cause is exercised fairly and reasonably, such decisions by management should not be disturbed by an arbitrator. However, such decisions may be overturned, and just cause may be found to be lacking, where a decision to discharge is unfair or outside a reasonable range of responses that management should be entitled to make under the circumstances. An often quoted explanation of the just cause standard reads:

...whether a reasonable man taking into account of all relevant circumstances would find sufficient justification in the conduct of the employee to warrant discharge.

RCA Communications, Inc., 29 LA 567, 571 (Harris, 1957).

For the reason explained below, I find that there is clear and convincing evidence which supports the Employer's decision to discharge the Grievant.

The Grievant blames her predicament on a management conspiracy to harass her based on her race, national origin, and sex. I find no basis in the record to support such claims. Indeed, such claims have already been rejected by federal and state agencies, and by a jury. Rather, I find that from January 2005 until her termination, the Grievant engaged in escalating insubordinate and unprofessional behavior which could not be corrected through counseling and discipline. In fact, counseling and discipline resulted in reactive insubordinate and unprofessional behavior by the Grievant. This behavior was not confined to the Grievant's relationship with one particular supervisor or manager, but rather involved many. The Grievant was insubordinate or unprofessional in her dealings with Mr. Jordan, Ms. Kelly, Mr. Gaynard, Ms. McGuire, Ms. Mark, Mr. Odiorne, and Mr. Julnes.

Insubordination has been defined as "a willful and deliberate defiance of managerial or supervisory authority." Goldsmith and Sherman, "Common Causes of Discipline," in Bornstein, Gosline, and Greenbaum, eds., Labor and Employment Arbitration, 2nd ed. (1999), § 16.04[1]. This includes arguing with supervisors and failing to comply promptly with directives. *Id.*, § 16.04[6]. Arbitrators generally follow the principle that abusive and threatening acts by employees directed at supervisors or management warrant discipline, including discharge in appropriate circumstances. Brand, ed., Discipline and Discharge in Arbitration (1998), p. 275.

In February 2005, the Grievant received an informal corrective action counseling from Mr. Jordan for refusing to perform assigned work. In March 2005, when she continued to refuse to perform assigned work, Mr. Jordan warned her that she faced formal corrective action. Also in March, the Grievant received a letter of reprimand from Mr. Jordan for unprofessional

behavior with the manager of a company she was auditing. The Grievant reacted by accusing Mr. Jordan of harassment, and specifically accused him of saying to her both, "I am stalking you" and "you will have to continue doing 'planning' which is the work of a 3 . . . without pay." I credit Mr. Jordan's denial that he made such unusual statements. In April 2005, the Grievant threatened to personally sue Ms. Mark over her alleged missing personal belongings, and eventually carried out that threat, even though the matter had previously been tried and decided against the Grievant in a jury trial. Also in April 2005, the Grievant threatened Mr. Odiorne with a Bar complaint, apparently because she did not agree with the reasonable accommodation he offered her as a result of an injury she suffered. In May, the Grievant was counseled about her insubordinate refusal to remove a reference to Mr. Jordan stalking her which she placed in her submitted travel voucher.

The Grievant's insubordinate behavior escalated in October 2005. It is her conduct that month, in the context of her prior counselings and warnings, that established just cause for termination. On October 3, Mr. Julnes gave her an oral reprimand for insubordinate behavior when she continued to use her OIC computer in furtherance of her public disclosure request after being directed not to do so. The Grievant's reaction to this discipline was insubordinate. In an email to Mr. Julnes following the discipline, the Grievant denied they had any discussion that day, and thereafter the Grievant continued to use her OIC computer for her public disclosure request. The following week, when Ms. McGuire directed the Grievant not to attempt to place documents in other employees' personnel files. The Grievant responded in an insubordinate manner by accusing her, in writing, of corruption, fraud, and conspiracy, and then ignored her directive. The next week, when Mr. Julnes disagreed with the Grievant's travel voucher report and would not approve it, the Grievant threatened to hold him personally responsible. When Mr.

Odiorne agreed with Mr. Julnes' action, the Grievant accused Mr. Odiorne, in writing, of instructing others to stalk and monitor her, and of "unethical and discriminatory behavior" in designating Mr. Julnes to harass her. The Grievant again threatened Mr. Odiorne with another Bar complaint. Mr. Odiorne reasonably responded by warning the Grievant that she must stop threatening and harassing the staff. That same week Ms. Mark warned the Grievant that she must stop her harassment and "malicious and false personal attack" directed at Ms. McGuire. On October 26, the Grievant alarmed Mr. Julnes when she angrily warned him that he would get a reply to the written reprimand she received for her continued insubordination in using her OIC computer for her public disclosure request. That day, Mr. Julnes sent an email to Mr. Odiorne asking to meet with him because the Grievant's "unusual behaviors" made him concerned about "what she will do next" and staff safety.

Mr. Julnes' concern after hearing the Grievant angrily warn him to expect her response turned out to be well founded. The next day, October 27, 2005, the Grievant responded to the letter of reprimand from Mr. Julnes with a response letter that was insubordinate and threatening. She headed that response with an accusation that both Mr. Julnes and Mr. Odiorne were engaging in racial discrimination and sexual harassment. She accused Mr. Julnes of engaging in "illegal acts." Her advice to Mr. Julnes in that letter to consult his personal attorney must be viewed as a threat by the Grievant to precipitate some sort of legal action against him in retaliation for the letter of reprimand he had given her. In the same letter, the Grievant admonishes Mr. Julnes to be prepared to explain his own use of his OIC computer. This appears to be a threat that if he does not back off, she would see to it that he was in trouble. This insulting and threatening response by the Grievant to her supervisor's discipline of her is gross insubordination and a clear disregard of the very recent warnings she received separately from Mr. Odiorne and Ms. Mark to

stop harassing and threatening staff. It in itself justified her termination. The Grievant's behavior with supervisors and management was inappropriate, disrespectful, and not correctible. Despite counselings and warnings, her inappropriate and unprofessional behavior was escalating.

The Union concedes that if the Grievant made a false accusation to the police about Mr. Julnes, then termination was justified. I am convinced that the Grievant's report to the police that Mr. Julnes threatened her life was false. I credit Mr. Julnes' denial that he ever said to the Grievant that she was "dead meat." Under the circumstances, it seems unlikely that he would have made such a statement. First, the Grievant testified that this statement was made in the hallway and Mr. Julnes was red faced, sweating, and very angry. Yet, just minutes after the time the Grievant said this occurred, Mr. Pastuch found Mr. Julnes sitting at his desk, and not exhibiting unusual behavior. Mr. Julnes was a long-term employee, and witnesses testified that he was not known to be a threatening type. Moreover his email to Mr. Odiorne just the previous afternoon that he was concerned about the Grievant's extreme behavior and staff safety indicates a mindset by Mr. Julnes of fear and concern, which would seemingly be inconsistent with his confronting her with a death threat the next morning. The Union correctly points out that Mr. Julnes and Mr. Pastuch had differing recollections of what was said between them when Mr. Pastuch arrived for the scheduled 11:00 a.m. meeting with the Grievant. Mr. Julnes has said that he told Mr. Pastuch that the Grievant had dropped off a packet and left the office. Mr. Pastuch denies hearing this. I attribute this difference, most likely, to a faulty recollection of banter which would not have seemed particularly significant at the time.

On the other hand, there are convincing reasons to doubt the Grievant's credibility in her accusation against Mr. Julnes. First, the alleged incident came right after she warned him in writing to expect trouble from her and that he would need to consult with his personal attorney.

Calling the police and reporting a death threat made by Mr. Julnes would reasonably follow from this warning. More significantly, in the past, when the Grievant had problems with a supervisor and manager, she has made exaggerated or seemingly false accusations in response. This occurred when she reported to the Bar Association that Mr. Odiorne stole \$400 from her, when actually he had approved a leave without pay form. It occurred when Mr. Jordan questioned the Grievant's travel voucher request, and the Grievant responded by reporting to management that Mr. Jordan had admitted he was "stalking" her. It occurred when Ms. McGuire directed the Grievant not to attempt to place documents in other employees' personnel files, and the Grievant responded by accusing her, in writing, of fraud and corruption. It occurred when Mr. Odiorne disapproved the Grievant's travel voucher report, and the Grievant responded by accusing him of instructing others to stalk her and designating Mr. Julnes to harass her, and then threatening to report these unfounded allegations to the Bar Association.

The Grievant's actions after the alleged death threat are not logical for someone who fears for her life. There were people in the building who she trusted and could have protected her. Why did she not escape, either upstairs where she could have reported the matter to management or else run outside? If she fled in the opposite direction from Mr. Julnes' office, she could have sought refuge with her shop steward, Ms. Savage, where the Grievant claims she had just dropped off a copy of her response. Instead, the Grievant, incredibly, claims she ran into the corridor where Mr. Julnes' office was located, to Mr. Odiorne's office, the very person she condemned in the response letter she submitted that morning, as her harasser along with Mr. Julnes. Why did she not seek help from Mr. Pastuch, whom she liked and trusted, and who was in the vicinity? Then she phoned 9-1-1 on her cell phone while still standing alone in the corridor only steps away from Mr. Julnes' office. It appears that the Grievant was more intent on

reporting Mr. Julnes to the police, than seeking immediate protection for herself. It also appears that the Grievant's action in this regard was a continuation of her practice of seeking to strike back at those who she perceived as trying to harm her. The Grievant's behavior following her report of the alleged threat to the police also raises a question. Mr. Pastuch testified that he spoke to the Grievant about 15 minutes after the alleged incident and the Grievant never mentioned that she had been threatened by Mr. Julnes, but rather she agreed at that time to notify Mr. Julnes that she would not be at their meeting. Considering the Grievant's admittedly good relationship with Mr. Pastuch, it is likely that the Grievant would have acted differently if there actually had been a death threat. Why did she not say something to Mr. Pastuch about what she claims had occurred? The Grievant's explanation is that this contact with Mr. Pastuch never happened. I credit Mr. Pastuch that it did.

I have considered Ms. Savage's testimony that the Grievant appeared upset and tearful when she reported to her that Mr. Julnes had threatened her. Ms. Savage testified that this occurred at about 10:30 a.m. when she was filling in answering the phone during the morning break period. Since the alleged threat, if made, must have occurred within a few minutes of 11:03 a.m. when the Grievant phoned 9-1-1, it is difficult to see how the Grievant could have spoken to Ms. Savage about a threat at 10:30 a.m. Assuming Ms. Savage is mistaken about the time, it appears that she did not take the reported threat seriously enough to leave the phone and comfort the Grievant. In any event, despite the Grievant's appearance to Ms. Savage, I am persuaded, for the reasons previously stated, that there had been no threat by Mr. Julnes.

The Grievant's repeated insubordinate and threatening behavior directed toward supervisors and managers during October 2005 and her false reports to the police and others that Mr. Julnes threatened to kill her were serious acts of misconduct which provided just cause for

her termination. It is also significant that the Grievant's inappropriate conduct continued after she was sent home and while the matter was being investigated.¹ During this period, she reported to the Department of Labor and Industries that her supervisor threatened to kill her and she sued Ms. Mark and Mr. Odiorne in small claims court for her alleged missing belongings from 2002, even though a superior court jury had already decided the matter against her.

For the foregoing reasons, I conclude that there was just cause, in accordance with Article 27.1 of the Collective Bargaining Agreement, to discharge the Grievant.

AWARD OF THE ARBITRATOR

It is the Award of your Arbitrator, for the reasons set forth in the attached Opinion, that the grievance is denied.

Sammamish, Washington
Dated: September 26, 2007



Alan R. Krebs, Arbitrator

¹ In its brief, the Union questions why the Grievant was not questioned by management before she left the building on the day of the incident. In fact, Ms. Mark came to the Grievant's cubicle soon after learning of the Grievant's accusation against Mr. Julnes and discovered that she had already gone home. The Grievant was later interviewed at length by an outside investigator retained by the Employer to investigate the incident.