



## BACKGROUND

The State of Washington Employment Security Department hereinafter referred to as the Employer, handles Unemployment Compensation and Workforce Development for the State. The Washington Federation of State Employees, hereinafter referred to as the Union, represents the Statutorily exempt employees of the Department. The current Collective Bargaining Agreement between the Parties commenced on July 1, 2005.

The employees of the Department rely heavily on computer information. It employs Information Technicians who are in charge of the computers used by the Department's employees. The number of Techs over the years has decreased due to budgetary constraints. Similarly, the hardware and software for the most part has not been updated. Resource 2 is the name of the computer system. It uses Windows XP, which was first developed in the mid 1990's. Resource 2 uses a technology known as RAID-5. That system uses 7 disc drives. The system is designed so that it will continue to function should one of the drives fail. No data is lost and the system simply stores the information that was on the failed disc until the disc is repaired. It then rebuilds the array itself. If two discs fail, Resource 2 is not able to perform that function and the data is most likely lost.<sup>1</sup>

Due to the age of the system, Resource 2 frequently encounters problems. One problem is known as "blue screen." The screen goes blank except for a blue screen. Other problems have also been encountered. The IT Division had

---

<sup>1</sup> A data recovery center may be able to retrieve some or all of the data, but that is not certain.

hoped to update the computer system by the year 2000, but budgetary problems prevented it from doing so.

The Employer utilizes a backup system to store data in case of a problem with Resource 2. The backup system is called Veritas. The information on the computer is saved on tapes. There are different types of backup. A full backup is performed each weekend. It is set up automatically so that when a storage tape is full, the information goes to the next tape until all data has been saved. This is done on weekends because considerable bandwidth is required. If done during regular business hours there could be disruption to the system users. These users do not work over the weekend. In addition to the full backup, each night an incremental backup is performed. This saves any new information that has been put in the system that day. Tapes are then saved for five weeks. After that, the tapes are reused and new data is recorded over the original data.

Grievant was employed as an ITS4. He has been employed for approximately 19 years. His job responsibility was to monitor Resource 2 and to backup the data from Resource 2 on Veritas.<sup>2</sup> Resource 2 produces a log indicating how it was operating. If a disc failed, that would be seen on the log although the system might automatically repair itself and no action need be taken. One of Grievant's duties was to monitor the log to make sure the system was functioning properly.

As noted, Grievant was also responsible for setting up the backup so that the full backup and incremental backups occurred on time. In 2005, the Employer did upgrade its backup system. It went from Version 9 to Version 10.

---

<sup>2</sup> Jt. Exhibit 2 references documents signed by Grievant where he acknowledged these were his duties. Others in the Division were crosstrained so that they would know this system, but primarily it was Grievant who had these responsibilities regarding Resource 2 and Veritas.

Version 10 had features not present on Version 9, such as the ability to monitor the status of the backup from a remote site. This meant Grievant could have an e-mail sent by the backup system to inform him of failure of the backup. Grievant was sent to a class in 2005 to familiarize himself with the new features on Veritas 10. When he returned from the training, he showed his then Supervisor, Brian Kerr, the new features of this version of Veritas.

Grievant was working on October 5, 2006. On that day, it was discovered that a disc drive had failed. Dean Gruginski was then his Supervisor. He had only been in that position for ten days at the time. He was informed in the morning by Grievant that a disc had failed. It was later learned from the event log that this disc had actually failed several months earlier and was never restored. In the afternoon, Mr. Gruginski observed Grievant getting a second drive for a Raid 5. There are several Raid 5's used by the Employer so Mr. Gruginski asked Grievant if that was a drive from the same Raid 5 as the one he previously noted. He was told the drives had come from "two separate Raid's." In actuality, the drive failures were both from the same Raid 5. That meant that the information from the Raid 5 was lost. The Employer tried to recover the information, but discovered that Grievant had recreated "the array by manually using the array manager software." When that is done, there is no way to recover the data. The discs are simply blank. It is like putting a new blank disc with nothing stored on it into a computer.

The Employer when it realized it could not retrieve the information looked to the backup tapes to obtain the information. Mr. Gruginski went to the backup logs and from those logs saw that no full backup had been completed for at

least the last five weeks. There were some incremental backup, but the full backups had failed for many weeks. Through the data on the incremental backup tapes some of the lost data was retrieved, but overall 80 gigabytes of information was lost.

The Employer determined that Grievant had failed to perform his job functions properly by failing to monitor Resource 2 and by failing to monitor the Veritas Backup system.

Article 27.2 provides:

Discipline includes oral and written reprimands, reductions in pay, suspensions, demotions and discharge. Oral reprimands will be identified as such.

It determined that demotions was the appropriate penalty and demoted him from an ITS4 to an ITS3. The Union grieved that discipline.

#### POSITION OF THE EMPLOYER

Grievant was trained sufficiently so that he could handle the duties assigned to him. He knew his responsibilities and failed to perform them. He had multiple performance deficiencies. He failed to monitor Resource 2 and failed to manage the backup system. Resource 2 was critical to the Employer so that the Department could do what it was tasked to do. Grievant failed to check the log and see that a drive failed. He should have checked those logs daily. If he had done so, the system could have been repaired before the second drive failed. Grievant then recreated the system after the failure. This erased any data from the discs that might have been recovered had he not done that.

Grievant was given additional training on the newer version of Veritas. He showed his Supervisor that he knew the new system. The logs were greatly improved on Veritas 10. The logs should have alerted Grievant to the failure to complete the backup. He did not see the problem and was thereby deficient in the performance of his duties.

The investigation performed by the Employer was fair. Grievant was given an opportunity to explain his actions. After completion of the investigation, it was determined that Grievant's actions were neglectful and not willful so it decided that demotion rather than discharge was the appropriate remedy. It did not leave him in his position because it no longer trusted his ability to do the job properly. Grievant's Supervisor also faced repercussions as a result of this incident. His evaluation noted his failure to properly supervise staff based on this incident. His annual raise was lower because of that notation.

#### POSITION OF THE UNION

The computer equipment of the Employer was old. It had consistent problems. Everyone was aware of that. Even though the system could be monitored, there was no way anyone could prevent two drives from failing on this old system. The fact that two did fail was not the responsibility of Grievant. If a drive fails, a light indicates that it did. This light is on the server, not where Grievant was located. If a drive failed, one of the Network Service employees would have or should have noticed that. It is more likely that the drive failed and then fixed itself.

The backup failure was also not the responsibility of Grievant. He scheduled the backup. That it failed was not the fault of Grievant. He did not deserve to be disciplined for that. The backup procedure used by the Employer was not the best practices method recommended for backup systems. A backup copy should have been made quarterly and stored off-site. This was not done and if it was this could have helped prevent this loss of information from occurring. Furthermore, the whole system was faulty. A communication problem between computer and backup system slowed the process and delayed the backup. This was also not the fault of Grievant.

Grievant was the only employee disciplined, yet what transpired was not his fault alone. Everyone was cross-trained to do all tasks. It was not just Grievant who did not see the log and find the problems, but he was the only one found responsible. Mr. Mortensen as the Supervisor was responsible for making sure the servers were working properly. He failed to do that and he failed to have the proper monitoring systems in place to catch the problems. Given these facts, it was unfair to single out Grievant for discipline.

Grievant worked for the Employer since 1998. Demoting him was an improper form of discipline given his work history. He had never been disciplined previously and had good performance evaluations. He is a dedicated worker and demoting him was an unfair form of discipline. The Employer's decision to demote Grievant was made based on emotion by individuals who were upset with how the customers or users reacted to the problem. That is not a fair basis for discipline.

## DISCUSSION

There is no dispute that Resource 2 was an old system with considerable problems. Budgetary constraints limited the Agency's ability to modernize its equipment. Not only was the equipment old, but those budgetary problems were also causing it to lose personnel. Resource 2 was a product of the 1990's. In the world of computer technology, that is eons. These were all problems for which Grievant obviously had no responsibility.

These circumstances led to the failure of a driver in a RAID 5 array. That failure also cannot be attributed to Grievant. It was simply a by-product of the system's age. Grievant, however, was responsible for monitoring the system. He had logs. Grievant signed an Employee Development and Performance Plan in 2004. In the Plan, Grievant acknowledged that he was expected to "monitor daily all servers and devices." He signed a similar plan in 2005. Thus, Grievant knew his responsibilities. The event log showed that a drive failed. Again, the failure is not his fault. That he did not discover the failure until October 5 is. There is no indication that at any time before that date Grievant knew there was a problem with one of the discs in the array. As the person responsible for monitoring the system, he should have.

The Union has argued that it is possible that the logs did not show that a disc failed or that it might have failed and repaired itself and that would not show on the log. The problems with that argument are twofold. First, there is no evidence that Grievant looked at the log to see if everything was running properly. Grievant at his interview during the investigation was asked how often he checked the logs. He stated: "we do it about once a week and check



the status of the drive and event log.”<sup>3</sup> His job was to monitor it daily. Furthermore, if the drive failed much earlier, even a weekly review would have shown the drive failure. The second problem with this argument is that even though there was some testimony that it was remotely possible for the drive failure not to be listed on the log, Grievant’s Supervisor later reviewed the log and he stated it did show the failure.

The Arbitrator finds based on all the evidence that Grievant was deficient in the performance of his duties by failing to properly monitor Resource 2. The Arbitrator also finds that failure alone would not justify the level of discipline issued, but that is not all there is. There was also an alleged deficiency in the other aspect of his duties regarding the backing up of data in Veritas. That alleged deficiency also must be considered.

Mark Childs testified on behalf of Grievant regarding Veritas. Mr. Childs was an ITS4 in the same group as Grievant from 1998-2005. He left that assignment in 2005. He noted that Veritas like Resource 2 was an antiquated system and that there were far better systems in existence. He pointed to some of the deficiencies in Veritas such as the lack of notification by the system if the backup was not successful. The problem is his testimony all related to Veritas 9. After Mr. Childs left, Grievant was sent to training on Veritas 10. This version of Veritas corrected some of the system weaknesses referenced by Mr. Childs. The curriculum for the course was placed into evidence. One of the new features of this system was the ability to monitor the status of the backup remotely. An e-mail can be sent to an individual notifying that individual about

---

<sup>3</sup> This was in response to Question 15 in Employer Exhibit 6. The “we” is referring to the entire IT Group. As noted, monitoring was primarily his responsibility, not the groups.

the backup and its success or lack of success. One of the topics covered by the course was entitled "Monitoring and Troubleshooting Backup Jobs." Included under that topic was "viewing alerts" and "Confirming Backup Exec Default Options." The new version of Veritas unlike the old one informed the user as to whether the backup was successful.

Grievant's job was to do a full backup weekly. Grievant set the process up correctly and the backup started as scheduled. The tapes used for backup had been reused on numerous occasions. In addition, there were some communication problems between Resource 2 and the server doing the backup. That slowed the speed of the transfer. As was true with the breakdown of the Raid 5, the failure of the backup system was not Grievant's fault. He started the process correctly. As was also true regarding the Raid 5 breakdown, Grievant's failure to look at the log and discover the problem was his fault and was a deficiency in his performance. Grievant acknowledged during his interview that part of his job was to "verify that backup jobs have run successfully." The fact that the five most recent weeks when a full backup was done had not been completed and that Grievant did not seem to know that demonstrates to this Arbitrator that Grievant did not do the job he was supposed to do. Despite his training, he failed to monitor the backup and that failure caused the Employer and its users to lose valuable data. It is this failure that the Arbitrator finds most egregious. If he had seen that the backup did not succeed, he could have rerun or if that did not work, tell his Supervisor who then could have also helped address the problem. The failure to recognize the problem prevented Grievant or his superiors from trying to fix it. It is unknown

whether those attempts might have been successful, but it is only unknown because Grievant missed the problem altogether.

The Union argues that the Employer failed in several respects to do what it should have done regarding a backup procedure and that this also led to the lost information. Specifically, it argues that a best practice would have been to save information off-site quarterly. This was not done. It also argues that if the Employer had implemented a Disaster Recovery Plan and the tests that are part of that plan this situation might never have occurred.<sup>4</sup> The Employer in response noted that some of the suggestions made by the Union in this regard require funding that it did not have. The Arbitrator finds that regardless of whether these plans should have or could have been put in place, that does not excuse Grievant's deficiencies. He still failed to do what he should have. Furthermore, saving information on a quarterly basis does not protect information gained after that quarter. Some or all of the information lost might still have been lost even if this suggestion were implemented if it was entered after the quarter ended. The Arbitrator, therefore, rejects this argument.

The last question to then be answered is whether the deficiencies noted justify the level of discipline imposed. The Union argues that it was unfair to single out Grievant, because others in the Department also bore some responsibility for recognizing the problems. It notes that the cross training of employees put everyone in a situation where the overall operation was their responsibility. Gary Mortenson, the Manager of Network Services, was not disciplined, but the October 5 incident and his failure to discover the problems

---

<sup>4</sup> The Disaster Plan was meant to cover situations such as natural disasters rather than system failure.

in advance of that day was included in his evaluation. As a result, his pay raise was lower than his peers. As for the others in the Department, while they were trained in Grievant's duties, those duties were not their area of responsibility. It was Grievant who was responsible for Resource 2 and for backup. Disparate treatment can be shown when individuals with equal culpability have been disciplined unequally. That is not the case here. Everyone else had their own jobs to perform and there is no evidence that any of them were deficient in their performance of those duties. Unlike his co-workers, Grievant did not do what he was tasked to do and he alone bears responsibility for that.

Michael McVicker was the Assistant Commissioner for the Department. He made the decision to demote Grievant. He testified that he debated between discharge and demotion and chose the latter for several reasons. He felt that Grievant's actions were negligent and not willful and Grievant had an otherwise good work record with good evaluations. He also noted that these deficiencies caused him to question whether he could trust Grievant to handle the duties he had been handling given the importance of the storage of the information in his area of assignment. On that basis, he decided to move Grievant to Field Services where the duties were not as critical. The Arbitrator when weighing those arguments against Grievant's good record agrees that this was a viable form of discipline. Demotion is specifically included under Article 27 as a form of discipline that can be imposed. Under the facts of this case, that decision was justified. The Employer argues that it has lost trust in Grievant. That concern is not unreasonable given what transpired and the effect on the Department that Grievant's errors had.

The Arbitrator finds the Employer had just cause to discipline Grievant. It also had a sufficient basis upon which to demote him.

AWARD

The Grievance is denied

Dated: August 25, 2008

\_\_\_\_\_  
Fredric R. Dichter,  
Arbitrator