

IN THE MATTER OF ARBITRATION

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WASHINGTON STATE
DEPARTMENT OF NATURAL
RESOURCES

-and-

WASHINGTON FEDERATION
OF STATE EMPLOYEES

OPINION AND AWARD
Philip Kienast, Arbitrator
August 3, 2010

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OFFICE OF THE ATTORNEY GENERAL
LABOR & PERSONNEL DIVISION

Re: Moller Discharge
(AAA 75-390-00351-09)

APPEARANCES

For the Union:

Gregory M. Rhodes, Attorney

For the Employer:

Kari Hanson, Assistant Attorney General

Reported by:

Linda M. Grotefendt, CCR

OPINION

This proceeding is in accordance with the parties' Agreement. A hearing in this matter was held on May 6 & 7, 2010 and the hearing closed upon receipt by the Arbitrator of post hearing briefs on July 6, 2010. The parties agreed that the issue before the Arbitrator was:

Did the Employer have just cause to discharge the grievant?

Background

The grievant was employed as the fleet service manager for the statewide operation of the Department of Natural Resources. He was terminated from employment for failure to properly manage the purchasing activities of the department.

The Union contends there is no evidence the grievant was willfully negligent. It argues that the grievant demonstrated his attention to contracting requirements when he initiated an agreement with Thurston County to buy a sufficient volume of oil products to get the State of Washington a lower rate for those purchases under a State mandatory contractor.

Moreover, the Union maintains the grievant did not have direct supervision of the purchasing agents that made any of the purchases in question. It argues that if Mr. Littlefield had given him a direct order to monitor all purchases to Industrial Specialties or Affordable Autoglass and irregularities had still occurred, then it would have a case that the grievant failed to properly perform his duties. It notes that in this case Mr. Littlefield did not issue such an order.

The Employer contends the grievant's job description clearly makes him responsible for the "day to day operation" of the fleet Management Section. It argues that after noting some purchasing anomalies, Mr. Littlefield hired Ken Wilson to investigate. His report noted several incidents that violated purchasing regulations for the State of Washington. The Employer contends the alleged violations of purchasing rules were proven and, therefore, it had just cause to terminate Mr. Moller.

Analysis and Conclusion

Two elements of just cause are missing in this case. First, the grievant was not the direct supervisor to the two purchasing agents involved in the “purchasing anomalies.” Second, the problems perceived by Mr. Littlefield were not brought to the attention of Mr. Moller so that he could take appropriate steps to correct the anomalies noted.

Moreover, Mr. Moller’s direct reports were located in districts around the State of Washington and, therefore, had only broad, not specific oversight of the Tumwater facility. His direct report in Tumwater never alerted him of any issues regarding purchases from the two suppliers in question. There is no evidence that any purchasing issues were brought to the attention of Mr. Moller other than oil purchases, which he successfully handled by partnering with Thurston County to enable the State to take advantage of a lower price for a given volume of oil purchases.

In the final analysis, the Employer has presented insufficient evidence to warrant any discipline against Mr. Moller, let alone discharge. The Arbitrator will issue an order that the grievant be reinstated and made whole.

AWARD

1. The grievant was not discharged for cause.
2. Mr. Moller shall be reinstated to his former position with full seniority no later than August 15, 2010.
3. The state shall make the grievant whole for lost wages and benefits up to the date of his reinstatement.
4. The Arbitrator will retain jurisdiction for the sole and exclusive purposes of resolving any disputes over the remedy ordered.

Philip Kienast 

Philip Kienast
August 3, 2010
Bothell, Washington