

IN THE MATTER OF THE ARBITRATION BETWEEN

INTERNATIONAL FEDERATION OF)	
PROFESSIONAL & TECHNICAL)	
ENGINEERS, LOCAL 17, AFL-CIO)	ARBITRATOR'S OPINION
)	AND AWARD
UNION,)	
)	KATHRYN P. HOUBRE
and)	TERMINATION GRIEVANCE
)	
WASHINGTON STATE PATROL,)	
)	
EMPLOYER.)	
_____)	

BEFORE: JOSEPH W. DUFFY
ARBITRATOR
PO BOX 12217
SEATTLE, WA 98102-0217

REPRESENTING
THE UNION: NATALIE M. KAMINSKI
IFPTE LOCAL 17
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REPRESENTING
THE EMPLOYER: MORGAN DAMEROW
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HEARING HELD: NOVEMBER 9 & 10, 2010
SPOKANE, WA

OPINION

Introduction

International Federation of Professional and Technical Engineers, Local 17, AFL-CIO (“union”) serves as exclusive bargaining representative for a bargaining unit of employees who work for the Washington State Patrol (“employer”). The union and the employer (“parties”) submitted this dispute to arbitration under the terms of their July 1, 2007 through June 30, 2009 collective bargaining agreement (“Agreement”), excerpts from which they introduced into the record as an exhibit. (U1)

This dispute involves a grievance filed by the union on June 29, 2009 on behalf of Kathryn P. Houbre (“grievant”), a member of the bargaining unit. (U3)

The hearing took place at the offices of the Attorney General located at 1116 West Riverside Avenue, Spokane, WA.

At the hearing, the parties agreed that the grievance is properly before me for a final and binding decision on the merits. (TR6:3-7) The parties also agreed that I should retain jurisdiction to aid in the implementation of the remedy, should that be necessary. (TR6:16-20)

The hearing proceeded in an orderly manner. The advocates did an excellent job of presenting the respective cases. Both parties had a full opportunity to call witnesses, to introduce documents into the record and to make arguments. Witnesses were sworn under oath and subject to cross examination by the opposing party. A court reporter transcribed the hearing and made a copy of the transcript available to me and to the parties.

A total of eleven witnesses testified at the hearing, including the grievant. During the hearing, the parties submitted eighteen union exhibits (U1-U4, U4A-U4K, U5-U7) and eighteen employer exhibits (S1-S18) into the record. At the conclusion of the testimony, the parties agreed to submit post-hearing briefs by simultaneous mailing to me and to each other postmarked or submitted electronically by December 23, 2010. (TR228:11-14) I received the last brief from the parties on December 23, 2010 and closed the record.

Issue for Decision

At the hearing, the parties agreed on the following statement of the issue for decision: Did the employer have just cause to terminate the grievant’s employment? If not, what is the appropriate remedy? (TR6:8-15)

Background

The grievant, Kathryn P. Houbre, worked for the employer as a Communications Officer (“CO”) for twenty-four years and eleven months. From 1989 until her termination, the grievant worked in the Spokane Communications Center, and previously she worked in Vancouver and Bremerton, WA. (TR306) The employer maintains eight communications centers throughout the State.

The grievant worked as a CO1. The most recent Position Description for that job, a copy of which the grievant signed on January 9, 2008, summarizes the duties and responsibilities as follows:

“We, the Communications Division, focus on officer safety and public safety by answering 911 calls, initiating emergency response and using the most advanced technology available on a 24-hour basis every day.”

A CO1’s primary responsibility is to efficiently multi-task technologies answering emergency 911 and business phone calls, entering and updating calls for service and self-initiating activity into a Communications Activity Data (CAD) Computer system and transmitting and receiving radio communications from field personnel. These critical responsibilities are the lifeline for officers in the field and the first contact with the public who report emergency situations requiring police, fire or medical response. Officer and public lives are at risk without a competent staff to appropriately respond to their needs. (S14)

The events that resulted in an investigation of the grievant’s conduct and ultimately led to her employment termination took place on Saturday and Sunday August 16-17, 2008. Those events are discussed in more detail later in this Opinion.

The employer placed the grievant on administrative leave on March 30, 2009. (S6) Following completion of the investigation and a pre-disciplinary meeting (S7, S8), the employer gave the grievant notice of her employment termination by letter dated June 17, 2009 and signed by Deputy Chief Karnitz. The letter includes the following statement:

I am convinced by a clear preponderance of the evidence that you violated WSP regulations for Employee Conduct (A) Unacceptable Conduct, Employee Conduct (J) Neglect of Duty and Unsatisfactory Performance. These regulations were violated by you sending the trooper to the wrong location, not entering the error into the CAD log, not briefing dayshift that you had sent the trooper to the wrong location, not reporting the incident to your supervisor, not leaving a Repartee message and not entering the vehicles into the impound system. Unacceptable

Conduct was also violated by telling Snell it would “bite you (him) in the butt” and calling Larned a dumbass. (U2, S1)

The union filed a grievance dated June 29, 2009. The grievance document includes the following:

Ms. Houbre received official notice that she was being terminated from her permanent state position as a Communications Officer 1 with the Washington State patrol. The sanction is not supported by the facts at hand and violates the just cause standards because the termination is not reasonably related to the seriousness of the offense. (U3)

When the parties could not resolve the dispute in the grievance procedure, this arbitration followed.

Discussion

The Agreement provides in Section 27.1 as follows: “The Employer will not discipline any permanent employee without just cause.” (U1, p. 55) The parties did not define the term “just cause”, which is not uncommon in collective bargaining agreements. The terms just cause, justifiable cause and sufficient cause, as well as other similar terms, often are used interchangeably in the collective bargaining context. The terms have developed a specific meaning in labor arbitration based on numerous arbitration decisions issued over many years under many different collective bargaining agreements in a wide range of industries and employment settings.

In this case, the employer applied an analysis characterized as the Eleven Elements of Just Cause in making the termination decision. (U2) The “Eleven Elements” analysis is more thorough than the “Seven Tests” often referred to in labor/management relations. Labor arbitrators vary somewhat in the analysis they apply when reviewing a termination decision under a just cause standard. Generally, however, a common understanding has developed in labor arbitration that just cause requires: 1.) Notice to the grievant of the rules to be followed and the consequences of non-compliance; 2.) Proof that the grievant engaged in the alleged misconduct; 3.) Procedural regularity in the investigation of the misconduct, and; 4.) Reasonable and even-handed application of discipline, including progressive discipline when appropriate. (see Hill & Sinicropi, *Remedies in Arbitration*, 2nd Ed. (BNA Books; 1991) p.137-145) I have,

therefore, considered the facts of this case against the just cause standard as that term is commonly understood in the field of labor/management relations.

Burden of Proof

The principle is well established in labor arbitration that the employer has the burden of proof in a discharge case.

Application of the Just Cause Standard to the Grievant's Alleged Misconduct

1.) Notice to the grievant of the rules to be followed and the consequences of non-compliance.

The Communications Division *Communications Manual* states the following:

...Communications Officers must be willing to be team players, fostering good working relationships within the work group, with other members of the department, and with other agencies. (S11, p. 4)

The employer's Administrative Insight memo, dated March 26, 2009, discusses the rules that applied to the grievant's alleged misconduct. Nothing in the record indicates that the grievant was unfamiliar with those rules or did not understand that the rules applied to her. (S5, 7-10)

The grievant knew or should have known that her job required her: a.) to pass on necessary information to her co-workers on the next shift, particularly when she made a mistake that would cause confusion for co-workers and safety risks for an officer in the field if not fully communicated to them; b.) to back up and assist co-workers; c.) to complete her work before taking time out to read a book during work hours; d.) to follow the directives of the District Commander; e.) to treat co-workers with respect by refraining from describing them in derogatory terms, such as "dumb ass".

The grievant had previously been subject to progressive discipline and so she understood from that experience that future discipline could result in termination.

2.) Proof that the grievant engaged in the alleged misconduct.

a. The August 16, 2008 mistaken dispatch and related events

On August 15-16, 2008, the grievant worked the 8:00 p.m. to 6:00 a.m. graveyard shift at the Spokane Communications Center. CO1 Michael Snell worked as her co-worker on that shift. Mr. Snell transferred to Spokane in about December 2007 and he had been employed by the employer for a total of about one and one-half years at the time of these events. (TR135)

Early in the morning of Saturday, August 16, 2008, the grievant dispatched Trooper Troy Briggs to the scene of a semi-truck rollover accident. (S9) Trooper Briggs had just signed on for his shift that started at 5:00 a.m. The grievant radioed Trooper Briggs that the accident occurred at milepost 251 near Davenport, WA. Davenport is on Highway 2. (The grievant stated in her dispatch to Trooper Briggs: “[are you] available for a collision near Davenport?” and “one car, semi rollover, unknown injury, eastbound at milepost 251.” (S5, p. 115))¹

When the Trooper arrived at that location, he could not find an accident. When he contacted the grievant by radio, she advised him that she sent him to the wrong location and the accident scene was at milepost 251 on Interstate 90 rather than Highway 2.² (S5, p. 122-123) As a result, the Trooper had to drive over state routes from Davenport to Sprague, WA via State Routes 28 and 23 to the I-90 location. Trooper Briggs did not ordinarily work in the area around Davenport and so he was unfamiliar with the route to I-90. (see TR259:21-260:18) The Trooper described the SR 28 and 23 route as winding, two-lane rural roads. Sgt. Hays described State Route 28 as a good road, but State Route 23 as a road with sharper turns, farmland close to the roadway on both sides and many changes in elevation, which, among other factors, make it a more difficult road to drive. (TR29:18-TR30:17 and see TR40:6-TR43:15)

The mistaken dispatch caused a considerable delay of the Trooper’s arrival at the scene of the truck rollover. Sgt. Hays estimated that the trip to the accident scene, if the Trooper had used I-90, would have taken about thirty minutes. Trooper Briggs actually spent an hour and twenty minutes driving to the scene because of the mistaken dispatch, even though he had his emergency lights on and was driving at speeds intended to get him to the location expeditiously. (TR27-TR28 and see TR257:19-TR258:25) The delay added about fifty minutes³ to his travel time. Trooper Briggs took a ninety mile route to the scene rather than a thirty mile route. (S10)

The CAD log shows that Trooper Briggs received the dispatch at 4:56 a.m. on August 16, 2008 and he arrived at the scene of the accident on I-90 at 6:20 a.m., eighty-four minutes later. (S5, Attachment A) The grievant’s shift ended that day at 6:00 a.m. Therefore, when the

¹ During the investigation, the grievant offered the explanation that she made the mistake in the dispatch because she had something else going on with Highway 2 and she got confused. The record shows that nothing else on Highway 2 or in the Davenport area appears in the log for that shift. (S5, pp. 8, 113, 115, 311)

² At one point during the investigation, the grievant contended that she discovered her error and called the Trooper before he reached milepost 251 on Highway 2 to redirect him to I-90. That assertion did not turn out to be correct. (S5, p. 189)

³ The termination letter estimated the delay at approximately forty minutes. The delay was significant, whether it involved forty or fifty minutes. (S1, p. 2)

grievant went off duty, Trooper Briggs remained on the road, making his way over SR 28 and 23 to milepost 251 on I-90. The CAD log, however, contains no indication that Trooper Briggs had been dispatched to the wrong location or where he was at the time the grievant left work. Based on the fact that Trooper Briggs began the trip near his home in Spokane, the assumption that anyone would make who was looking for him between 6:00 a.m. when the grievant left work and 6:20 a.m. when Trooper Briggs arrived at the scene is that he was somewhere on I-90 between Spokane and the accident site. He was, however, somewhere else entirely because of the mistaken dispatch. If, for example, the Trooper had a one-car accident while traveling along SR23, his location would have been unknown to the Communications Center unless the Trooper had the ability to call for help.

CO Jeffrey Lopez came to work around 6:00 a.m. on August 16. Soon after he arrived, he received a call from the Lincoln County emergency services personnel at the accident scene. They were calling for the second time to find out when the Trooper would be arriving. Mr. Lopez initially responded that the Trooper was at the scene since Mr. Lopez could see from the CAD log that the dispatch occurred at 4:56 a.m. He knew from experience that the drive along I-90 to the scene should not have taken more than half an hour. Mr. Lopez testified that he didn't understand why the Trooper was not on the scene so he called him on the radio to ask where he was. Trooper Briggs advised Mr. Lopez that he was on SR 23. Mr. Lopez didn't understand why the Trooper would be on SR 23 so he called Trooper Briggs' cell phone. In that phone conversation, Mr. Lopez learned about the mistaken dispatch.

The record shows that the grievant did not leave a message for or attempt to contact her Supervisor about the mistaken dispatch and the fact that at 6:00 a.m., when the grievant left work, Trooper Briggs was not where anyone would expect him to be based on the CAD log. (TR315:15-17)

The record contains some conflicting testimony about whether the grievant had a duty to make a CAD log entry about the mistaken dispatch. The Manager of the Spokane Communications Center, Ms. Browell, testified that the grievant should have entered her mistake in the log, because otherwise the Trooper's location would be unknown. (TR59:4-TR66:2) During the investigation, when asked if she should have made such an entry, the grievant answered "...that's just not a notation I would have made." When asked why not, the grievant responded: "Why would I?" (S5, p. 129) The grievant testified that she did not enter the mistake

in the log because the Trooper said it wasn't a problem, because she has discretion whether to enter it or not and because no policy or procedure required her to make an entry. (TR310:13-22) By contrast, at another point during the investigation, the grievant stated, when describing the work she did associated with the Larned collision: "Everything I put in the log. I kept a very accurate log for her (the other operator), because she needed it." (S3, p. 2)

CO Moniz testified that she tries to document everything she does in the CAD log, but other COs may not enter as much detail into the log. (TR201:22-TR202:12) CO Lopez testified that entering a mistaken dispatch in the log would be a judgment call, but he would definitely let the incoming CO know what had happened, whether or not he entered the mistake in the log. He also testified that he would probably make some kind of notation about the mistake in the log. (TR216:10-TR217:3) CO Snell testified that he would make a log entry for a mistaken dispatch because: "If you make a mistake it needs to be annotated." (TR138:20-24) CO Bula testified that a mistake like the grievant made should probably be recorded in the CAD log. She testified that entering the mistake in the log would be a judgment call, but at the very least the CO should let their relief know by telling the relief: "I screwed up. I sent him to the wrong place. That's why his response time is delayed." (TR174:18-TR175:15)

Ms. Browell, testified that at shift change in the Spokane Communications Center the outgoing CO is expected to brief the relieving CO on the significant events that occurred during the shift. (TR66:3-TR69:6) The incoming CO is expected to arrive ten minutes early so that the briefing can occur. That ten minutes is paid time.⁴ (TR358:12-TR359:24; TR361:9-25) The grievant testified that the relieving CO often comes in only one or two minutes before the hour, which allows time only "for a real quick synopsis". (TR311:9-19) She also testified that so long as the relieving CO is in the Communications Center parking lot that the departing CO can leave. (TR345:2-6) Finally, she testified that there is no cross-over of CO shifts. (TR356:18-20) She also testified that no one relieved her on the morning of August 16. (TR310:25-TR311:2; TR345:2-3)

At around 6:00 a.m. on August 16, CO Amber Moniz reported to work. She relieved Mr. Snell and he gave her a briefing. In the course of that briefing, Mr. Snell asked the grievant: "If I

⁴ Deputy Chief Karnitz provided different testimony concerning the overlap of CO shifts and whether the COs received pay for coming in early. I find, however, that the immediate Supervisor, Ms. Browell, is more likely to know the details of how the day-to-day operation works in Spokane. Chief Karnitz, who has agency-wide responsibilities, would not necessarily be expected to know those details concerning one of eight communications centers. (TR285-TR286; TR360:3-24)

tell her [Ms. Moniz] what happened, will you kick me?” Mr. Snell testified that the grievant responded in words to the effect: “You can, but it may turn around to bite you.” (TR140:16-22) Mr. Snell testified that he interpreted the grievant’s comment as a threat. (TR140:23-TR141:4)

The grievant testified that she did not intend to threaten Mr. Snell, but she warned Mr. Snell against telling Ms. Moniz about the mistake because Ms. Moniz is a gossip. I question why informing Ms. Moniz of the grievant’s error would come back to bite Mr. Snell since he did not make the error and was only attempting to pass along necessary information. Clearly, the grievant made the “come back to bite you” comment to protect her own interests, not the interests of Mr. Snell.

Mr. Snell was a relatively new employee and the grievant had significant seniority. Although the grievant’s comment could possibly be interpreted to mean something else, Mr. Snell reasonably viewed the comment as a threat of future retaliation if he told Ms. Moniz about the grievant’s mistake. Consequently, CO Snell did not explain to Ms. Moniz about the mistaken dispatch, but he did try to indicate to her on the map where the Trooper was.

The grievant testified that because no one relieved her on August 16 at 6:00 a.m. that she did not give anyone a briefing. The grievant testified:

Q. So you didn’t even attempt to do a briefing then that morning? You got up and left?

A. It was time for me to go home, and Snell had done the briefing. (TR345:17-20) In the grievant’s mind, any briefing responsibility that morning fell to Mr. Snell when Ms. Moniz relieved him. The grievant testified:

I did not do the briefing, and I did not tell the supervisor because he was-- he wasn’t there. Plus, Amber is a gossip. (TR353:13-15)

Essentially, the grievant contended she had no obligation to pass on the information about the mistaken dispatch to anyone, since the Trooper was not upset about it, no policy or procedure required her to make a log entry, no one relieved her and the Supervisor had not yet arrived at work.

In summary, the evidence in the record establishes that on August 16, 2008 the grievant mistakenly dispatched Trooper Briggs to milepost 251 near Davenport rather than milepost 251 on I-90. As a result of that mistake, the Trooper’s arrival at the accident scene was delayed by about fifty minutes. The Trooper was still en route to the accident scene via SR23 at the time the

grievant left work. The grievant did not take any action to pass on the information about her mistake and the Trooper's location to the incoming CO shift or her Supervisor. (see S5, p. 132:13-25) In addition, the grievant actively discouraged CO Snell from passing on the information about the mistaken dispatch by making a comment to him that he reasonably interpreted to be a threat.

The evidence also shows in substantial detail the negative consequences that follow from a mistaken dispatch that is not reported within the Communications Center. (Karnitz testimony TR235-TR246)

The fact that the grievant made a mistake with the dispatch of Trooper Briggs is undisputed. More important than the mistake, however, is the fact that the grievant then tried to minimize and cover up her mistake. At the same time, she tried to shift the blame for not reporting the mistake to the dayshift to a co-worker, Mr. Snell, by contending that the briefing was his responsibility.

I find that the evidence establishes that on the morning of August 16 either the grievant attempted to cover up her error in making the mistaken dispatch or she carelessly failed to inform the oncoming shift of important information that she knew should have been passed on to the incoming COs. In either case, the grievant committed serious misconduct through her failure to communicate vital information to her day shift co-workers.

b. Alleged neglect of duties on August 17, 2008

On August 17, 2008 at about 12:15 a.m., a major incident occurred that involved significant injury to Trooper Larned. A motorist rear-ended the Trooper's patrol car while the Trooper was engaged in a traffic stop and arrest of an intoxicated driver that the Trooper had taken into custody. The incident required a felony investigation because the driver that rear-ended the Trooper also was allegedly intoxicated and the driver in custody in the rear seat of the patrol car sustained serious injuries.

The employer alleges that on August 17, as this incident with Trooper Larned unfolded, the grievant neglected her duties in at least three ways: 1.) Reading a book at her station while work, such as the impounding of vehicles, remained undone, and; 2.) Failing to assist the primary CO involved in the Larned incident, and; 3.) Failing to send a Repartee message as directed by Captain Otis. (S1, U2)

Reading personal reading material on duty in the Communications Center is prohibited by rule, but allowed in practice to some extent during slow times, particularly on graveyard shift. (S5, p. 9; U7) The record shows, however, that the employer considers reading while work remains to be done unacceptable. The grievant testified she did not recall whether or not she was reading during her shift following the Larned collision. (TR331:15-20) She testified, however, that if she had a book at her console it would be a novel. Three witnesses, however, testified that they observed the grievant reading while work remained to be completed, such as the impounding of the vehicles involved in the collision.

In addition, both Ms. Bula and Mr. Snell testified that the grievant could have done more to help Mr. Snell who was the primary on the Larned collision. (TR147:16-TR148:19; TR170:20-TR171:13)

Captain Otis testified that he gave the grievant specific instructions to send out a Repartee [voice mail] message to agency personnel with information on the Larned collision and Trooper Larned's condition. The Captain testified that he made the instructions explicit when he talked to the grievant because he knew that she had work performance problems. (TR109:10-TR112:4) Mr. Snell testified that he heard during his shift on August 17 that the Captain had directed the grievant to send out a Repartee message. (TR144:21-TR145:10) Testimony in the record shows that a directive from the District Commander would be considered by the CO staff to be something to act on as soon as possible, rather than a suggestion. Testimony in the record also shows that the grievant had difficulty understanding how to use the Repartee system. During the investigation the grievant said she did not know how to get into the Repartee system. (TR323:13-TR328:1; S5, p. 85:24-86:8; p. 149-154) The grievant contends that Captain Otis never told her to send the message on August 17.

Because of the conflict in the testimony, I have to determine which testimony to credit and which testimony cannot be believed. Arbitrators are not equipped with any special divining rod that enables them to know who is telling the truth and who is not when a conflict in testimony develops. One method for determining credibility is to look to other evidence in the record that either supports or undermines the testimony of the witnesses. I find that Mr. Snell's testimony that he was aware of the Captain's request that the grievant send a Repartee message substantiates the Captain's testimony. (S5, p. 234:22-236:29; TR144:21-TR145:10) After

considering the record and the entire testimony of the witnesses, I have resolved the credibility issue in the employer's favor.

The grievant contends that the Larned collision upset her so much she had difficulty concentrating and she spent the remainder of her shift crying at her console. (S5, p. 169:3-4) Others did not observe this visible emotional reaction by the grievant. In addition, the fact that witnesses observed the grievant reading a novel on two occasions after the collision conflicts significantly with the grievant's contention that she was emotionally distraught.

In summary, I find that the grievant neglected her duties on August 17 by not providing more assistance to the primary CO on the Larned collision, by not impounding the vehicles and by not sending out the Repartee message as directed.⁵

c. Alleged unacceptable conduct through remarks made about Trooper Larned

The record shows, and the grievant admits, that during the shift change from graveyard to day shift at 6:00 a.m. on Sunday, August 17, 2008, the grievant made certain comments about Trooper Larned. (S5, p. 164:22)

Ms. Moniz testified that when she reported to work at 6:00 a.m. on August 17, she learned for the first time that Trooper Larned had been seriously injured. She testified that the grievant, in the course of talking about the collision to Ms. Alderman, stated that Trooper Larned had become combative with aid personnel at the scene and the grievant said: "That's Al. He's a dumb ass." Ms. Moniz testified the grievant went on to say: "And he didn't call out his stop either, but that's just Al being a dumb ass."

Ms. Moniz testified that the grievant was not talking to her directly but was talking to Ms. Alderman near where Ms. Moniz was seated. Ms. Moniz described her reaction to the grievant's comments as follows:

...I just came to work and found out that one of our troopers had got hurt in a collision and was in the hospital, and we don't even know what his situation is, how badly he's hurt, if he'll be coming back to work. And she's standing there making derogatory comments about him, and it just really made me sick to my stomach. It really upset me. And I turned around and I told her that "You're being very rude, and it's disgusting, and you should shut up. You need to knock it off." (TR198:12-22)

⁵ The misconduct established here resembles misconduct for which the grievant received discipline in 2005, approximately three years before the present events occurred. (S13, p. 17)

Ms. Moniz testified she reported the grievant's comments to her Supervisor. In addition, the grievant filed a complaint with a Supervisor over Ms. Moniz's reaction and statements to the grievant. Ms. Moniz's Supervisor talked to her about the complaint but no disciplinary action followed. (TR198:23-TR199:20) In making the complaint against Ms. Moniz, the grievant did not mention what she had said, although the grievant does not deny that she made the "dumb ass" comments. (S5, p. 327)

The grievant contends she made the comments about Trooper Larned because she was upset about his injuries and she was blowing off steam or frustration. (S5, p. 164-168) Nevertheless, I agree with the employer's conclusion that the comments the grievant made were inappropriate for the workplace, were offensive to at least one co-worker and violated agency regulations.

3.) Procedural regularity in the investigation of the misconduct.

The employer initiated an investigation of the grievant's conduct on September 2, 2008. (OPS Case No. 08-1108, S2, S5) Most of the essential facts in this case are not in dispute. The main disputes center on the significance of the actions that occurred or did not occur. The investigation report shows that a thorough examination of the facts occurred. The report consists of 332 pages of material, including transcripts of all eleven witness interviews.

The only question raised about the investigation was why Trooper Briggs was not interviewed. The answer to that question is that Trooper Briggs sustained an injury and was not available at the time the investigation occurred. In my judgment, his testimony at the hearing only confirmed that a mistaken dispatch occurred on August 16 and that fact had already been admitted by the grievant. Whether or not Trooper Briggs was upset about the mistaken dispatch is irrelevant to the issues in this case.

Upon completion of the investigation, the employer, on March 30, 2009, provided the grievant and her Union Representative a copy of the complete case file of the investigation. (S7) The material provided included the proposed findings and the proposed recommendation for termination. On April 29, 2009, the employer held a pre-disciplinary meeting with the grievant and her Union Representative, during which the grievant had a full opportunity to provide additional information or to question information in the investigative file. (S3)

In my judgment, the record clearly shows that the employer conducted a thorough, fair and complete investigation.

4.) Reasonable and even-handed application of discipline, including progressive discipline when appropriate.

The majority of labor arbitrators subscribe to the view that discipline is meant to be corrective rather than punitive. Therefore, labor arbitrators typically expect employers to apply progressive discipline prior to terminating an employee's employment. The purpose of progressive discipline is to correct an employee's unacceptable behavior through the application of escalating levels of discipline. Those corrective actions range from oral counseling through written warnings, suspensions and ultimately termination if the behavior is not corrected. Through progressive discipline the employer clearly communicates the areas of inadequate or unacceptable performance and the employee has the opportunity to adjust future behavior to the employer's reasonable expectations.

Progressive discipline is a two-way street, however. The employee must also demonstrate a commitment to correcting behavior and responding to the reasonable expectations and directions of management.

A single instance of dispatching a Trooper to the wrong location would, in most cases, be unlikely to justify a CO's termination. Mistakes are made in any human enterprise. Here, however, the problem with the grievant's conduct on August 16, 2008 did not end with the dispatching mistake. She failed to communicate essential information to co-workers in the Communications Center, which had the effect of putting officer safety at risk, along with other potential consequences. In order to reduce the risks associated with her mistaken dispatch, the grievant had several means available to her to communicate the reason that the Trooper had not arrived at the scene of the rollover accident. Nevertheless, she did not report the error to a Supervisor. She did not make a log entry noting the mistake. She did not advise the CO who followed her on duty that the Trooper she dispatched earlier had not yet arrived at the location of the accident because of the fact that he was initially sent to the wrong location and that he was backtracking along SR 28 and 23 to get to the accident scene on I-90. Therefore, the misconduct on August 16 involved careless or intentional misconduct in addition to the mistaken dispatch.

On a similar basis as the mistaken dispatch, a single instance of not assisting the primary CO on a major incident or failing to send out a Repartee message might not support a termination. In the context of the grievant's record, however, these problems take on a different significance.

On August 17, the record shows that the grievant read a book at two different times during her shift while a much less experienced CO was left to handle the majority of the work associated with a major incident. The proven instances of the grievant's inattention to work on August 17 during an important event that included serious injury to a Trooper establishes that the grievant's personal priorities are inconsistent with her work responsibilities.

In addition, the events of August 16-17, 2008 were not isolated incidents. The grievant had been the subject of a significant number of other disciplinary actions. (S5, p. 279; S13)

In the termination letter, Deputy Chief Karnitz included the following:

Since 2003, you have maintained an uninterrupted egregious pattern of misconduct that progressive discipline has been unable to break. Nine times you have been sanctioned; you have been reprimanded four times and received five additional pay reductions. Your extensive disciplinary history, in conjunction with the current proven findings, show that you do not have the ability or desire to meet the standards required of you by the policies and procedures of the agency, which you have an obligation to follow. Termination is the appropriate discipline considering your record of poor performance and your refusal to accept full responsibility for your conduct. (S1, p. 4)

Although during her more than twenty-four years of employment, the grievant received positive recognition from time to time and a number of positive comments in her performance evaluations, the record in recent years has, on balance, not been a positive one. (U5)

Another factor in this case is the grievant's length of service. Although length of service is usually considered a mitigating factor in a discharge case, length of service does not guarantee continued employment.

In this case, the employer engaged in appropriate progressive discipline with the grievant and the grievant did not respond to that discipline. Therefore, the employer was left with no reasonable option other than termination when further misconduct took place.

Conclusion

Based on the entire record submitted by the parties, I find that the employer had just cause to terminate the grievant's employment. Therefore, no remedy is appropriate.

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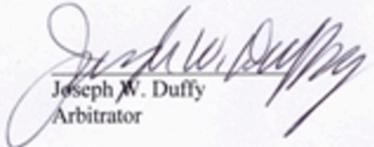
IN THE MATTER OF THE ARBITRATION BETWEEN

INTERNATIONAL FEDERATION OF)
PROFESSIONAL & TECHNICAL)
ENGINEERS, LOCAL 17, AFL-CIO)
UNION,)
and)
WASHINGTON STATE PATROL,)
EMPLOYER.)

ARBITRATOR'S
AWARD
KATHRYN P. HOUBRE
TERMINATION GRIEVANCE

For the reasons set forth in the Opinion that accompanies this Award, the grievance must be and it is denied.

Dated this 26th Day of January 2011



Joseph W. Duffy
Arbitrator