In the Matter of the Arbitration Between

Sonia Morphew Pitt

And BMS CASE NO. 08VP0612

Minnesota Department of Transportation
State Of Minnesota

ARBITRATOR: Christine D. Ver Ploeg

DATE AND PLACE OF HEARING: April 9, 10, 11, 2008
State Department of Revenue
Saint Paul, Minnesota

CLOSE OF RECORD: April 29, 2008

DATE OF AWARD: May 15, 2008

ADVOCATES

For Ms. Pitt
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For the State
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ISSUE:

Did the Employer have just cause to discharge the employee? If not, what shall be the remedy?

BACKGROUND

On November 9, 2007, the State of Minnesota, Department of Transportation (hereinafter "Mn/DOT" or "Employer ") discharged Sonia Pitt from her position as the Department's Homeland Security and Emergency Management Director. Ms. Pitt now challenges that action.

The following evidence is not in dispute.

After 9/11, Minnesota state agencies began to develop emergency preparedness plans. As part of these efforts, in November of 2003, the Minnesota Department of Transportation hired Ms. Pitt to develop and organize a new work unit designated as Homeland Security and Emergency Management. In her capacity as Director, she was responsible for obtaining grants and developing Mn/DOT's emergency response planning, training, and exercises. Initially Ms. Pitt was the sole employee in that division. However, in the following four years her staff grew to five employees, and she obtained over $5.5 million annually in grants to support the program. Ms. Pitt's work performance evaluations throughout this entire time have been very good, and she never received any informal or formal disciplinary action.

Soon after hiring Ms. Pitt, the Employer reclassified her job as managerial within Mn/DOT's organizational structure. As an upper level manager with considerable discretion and responsibility, Ms. Pitt traveled frequently and was often out of the office for extended periods of time. Ms. Pitt has testified that despite this extensive travel she was able to complete her job responsibilities from any remote location through the use of e-mail and cellular telephones. Her work schedule was flexible, and she was also permitted to work from home on occasion.

In July of 2007, at least one member of Ms. Pitt's staff questioned whether Ms. Pitt's business travel and related expenses were, in fact, work-related.[1] These concerns made their way to the Employer's internal Audit Director, whose office audited Ms. Pitt's expenses and subsequently determined that a number of them did not comply with agency rules and policies.

Based on these troubling results, Mn/DOT's Office of Human Resources decided it would be appropriate to conduct a more comprehensive investigation of these issues. Because of Ms. Pitt's position as a high-level manager, Human Resources concluded that a professional investigator from outside of Mn/DOT's ranks should conduct the

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[1] Ms. Pitt submits that this employee was disgruntled because Ms. Pitt had begun a process of corrective action with respect to her. She also offered evidence that this same employee was overheard on the telephone speaking of the recent termination of one employee and her desire to terminate another employee: "It's time, we need to go after her now." Regardless of that employee's motivation and the genesis of the initial investigation, the issues now before this arbitrator are decided based upon the evidence presented at the hearing concerning the allegations set forth in the November 9, 2007, discharge letter.

employment investigation. In September of 2007, Ms. Pitt was placed on paid leave while the outside investigator reviewed the internal audit report, her personnel file, and other relevant documents. The investigator interviewed Ms. Pitt on several occasions and interviewed twelve other persons.[2]

Based upon the investigator's fact-finding report, the Employer concluded that Ms. Pitt had seriously violated Mn/DOT policies and procedures governing out-of-state business travel, expense reimbursement, appropriate use of state resources, and employee ethics. Thus the Employer discharged Ms. Pitt on November 9, 2007. The Employer's stated reasons for discharging Ms. Pitt's termination are as follows:

> (1) unauthorized travel and inappropriate compensation;
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> > (a) unauthorized alteration of travel documents for the July 31 through August 4, 2007 National Preparedness Leadership Institute Conference, by adding pre-trip and post-trip legs to Washington, D.C.;
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> > (b) unauthorized travel to Washington, D.C., from July 26 through July 30, 2007, and August 4 through August 11, 2007;
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> > (c) unauthorized expense reimbursements during personal travel on March 2, June 8, July 26 through July 30, and August 4 through August 11, 2007; and
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> > (d) unauthorized seat selection upgrades in violation of Mn/DOT's travel policy;
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> (2) misuse of state resources by making 2,400 minutes of personal calls on a State-issued cellular telephone, costing the State over $600.00; and
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> (3) violation of the Code of Ethics policy by being in an unauthorized travel status, thus having no work-related reasons to be in Washington, D.C., after August 3, 2007. Failing to comply with professional obligations by making a personal choice to be in Washington, D.C., from August 4 through 11, 2007, following the I-35W bridge collapse.

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[2] Those other persons included non-management Mn/DOT employees, witnesses who did not work for the State of Minnesota, and witnesses suggested by Ms. Pitt.

On November 27, 2007, Ms. Pitt appealed her discharge pursuant to the State's Managerial Plan, which is authorized by Minn. Stat. § 43A.18, subd. 3. She argues that her discharge has been without just cause, and seeks reinstatement to the same or comparable position with full back pay and benefits.

Prior to this hearing the parties raised several preliminary issues that this arbitrator heard and decided. On April 9, 2008, April 10, 2008, and April 11, 2008, the parties and this arbitrator met for the hearing concerning Ms. Pitt's appeal of her discharge, and on April 28, 2008, the parties submitted post-hearing briefs. The parties have stipulated that this matter is now properly before this arbitrator for resolution.

RELEVANT STATUTORY LANGUAGE

Minnesota Statute § 43A.33, Grievances, provides in relevant part as follows:

> …[N]o permanent employee in the classified service shall be reprimanded, discharged, suspended without pay, or demoted, except for just cause.
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> MS. 43A.33, Subd. 2, Just cause. Just cause includes, but is not limited to, consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided the policies and procedures are applied in a uniform, nondiscriminatory manner.

Minn. Stat. § 43A.38, the Code of Ethics for Employees in the Executive Branch, states:

> Subd. 4. Use of state property. (a) An employee shall not use or allow the use of state time, supplies, or state-owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

RELEVANT POLICIES

Minnesota's Managerial Plan (July 1, 2005 - June 30, 2007) provides in relevant part:

> Chapter 15 The Appointing Authority may authorize payment of travel and other expenses and reimbursement of special expenses for managers ... for the effective conduct of the State's business. Such authorization must be granted prior to incurring the actual expenses.

> For determining eligibility for certain employee expenses, an employee is in travel status when:
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> (5) The supervisor has determined that the employee will remain away from home overnight because of the requirements of the job, or
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> (6) The employee is on an authorized assignment more than thirty-five road miles from his/her temporary or permanent workstation.
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> Actual payment of toll charges and parking fees shall be reimbursed when the employee is in travel status.

Mn/DOT's Business Manual provides agency-specific policies and procedures relating to (1) state-paid business travel by Mn/DOT Employees, and (2) reimbursement of expenses incurred as part of such travel. Mn/DOT Business Manual (April 2005). Chapter 2 of the Manual, "Travel Policy," sets forth supervisors' responsibilities regarding business travel, providing in part as follows:

> Supervisors should evaluate all requests for travel to ensure that the alternatives to travel have been considered and that travel is the most efficient means of accomplishing the required task. The supervisor will authorize the mode of travel that is in the best interest of the department.
>
> Supervisors will make sure the employee is familiar with the procedures and guidelines necessary to complete the "Employee Expense Report" and the employee knows the reimbursement rates which apply to specific travel situations.
>
> **Employee Responsibility**
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> Employees who travel on state business at state expense are responsible for the accurate completion of all required forms. Employees are to claim only actual expenses and attach required receipts up to the amounts authorized by the Mn/DOT and by the employee's collective bargaining agreement or compensation plan. Employees should weigh all the travel costs (meals, lodging, transportation charges, and salary) in determining the most effective mode of travel to accomplish their work assignment.

Out of State Travel

Out of State Travel is defined as travel out of Minnesota to other states or to Canada. Advance approval is required for all out of state travel.

Mn/DOT's Policy Position Statement on the Appropriate Use of Electronic Communication and Technology, Revised February 14, 2007, states:

> Employee access to and use of electronic tools such as e-mail and the Internet is intended for business-related purposes. Limited and reasonable use of these tools for occasional employee personal purpose that does not result in any additional costs of loss of time or resources for their intended purpose is permitted. Reasonable use of state-owned cellular phones is limited to "essential personal use" as defined in the addendum to this policy specifically addressing Cellular Telephone Use.

The Cellular Telephone Use Addendum to Mn/DOT Policy Position Statement on the Appropriate Use of Electronic Communication and Technology states:

D. Use of State Cellular Telephone for Personal Calls – The use of state-owned cellular telephone equipment and service is intended for state business. Personal use of state-owned cellular phones is prohibited, except for essential personal calls.

E. Essential Personal Calls – Essential personal calls are defined as calls allowed in Minn. Stat. 43A.38, Subd. 4, paragraph b, which states: "An employee may use state time, property, or equipment to communicate electronically with other persons . . . provided this use, including the value of employee time spent, results in no incremental cost to the state or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impracticable.

F. Monthly Cellular Bill and Annual Service Reviews – Employees are responsible for keeping track of and identifying their personal calls. All personal use of a state cellular telephone, both essential and non-essential personal calls shall be identified by the employee and submitted as requested to his or her supervisor or other employee assigned to review and approve the monthly cellular telephone bill.

II. Reimbursement and Possible Disciplinary Action – Employees are expected to use State cellular telephones responsibly and in accordance with this policy and any applicable work rules... .

> Employees must reimburse the state within 30 days for the costs of any non-essential personal calls at the state's costs (i.e., the contracted per minute rate, any additional amounts for applicable toll or roaming charges, miscellaneous fees and taxes).

DISCUSSION AND DECISION

In this case the Employer has had the burden of proving just cause to discharge Ms. Pitt.[3] "Just cause includes, but is not limited to, consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided the policies and procedures are applied in a uniform, nondiscriminatory manner."[4]

The Employer does not claim that Ms. Pitt consistently failed to perform assigned duties, nor is it alleged that she engaged in substandard performance or insubordination. Rather, just cause in this case is premised upon allegations that Ms. Pitt engaged in serious violations of written policies and procedures.

The Employer has discharged Ms. Pitt for violating its policies and procedures governing (1) state-paid business travel and expense reimbursement, (2) appropriate use of state resources, and (3) professional conduct. The parties have presented extensive testimony, voluminous exhibits and detailed argument in support of their respective positions concerning these allegations. Each of these allegations is considered below.

I. Allegations

1. State-Paid Business Travel and Expense Reimbursement

A. Washington, D.C., segments added before and after attendance at Boston conference of July 31-August 4, 2007.

Background

It is undisputed that on February 20, 2008, Ms. Pitt obtained proper approval to attend a two part conference at Harvard on March 2-9 and July 31-August 3, 2007. It is also undisputed that before the second segment of this conference Ms. Pitt traveled to Washington, D.C., where she stayed between July 26 and July 30 and that after the conference she returned to Washington, D.C., where she stayed between August 4 and August 11. The Employer asserts that Ms. Pitt had no approval and no work-related reason to be in Washington, D.C., on those dates and that she improperly charged the State for expenses incurred during these unauthorized legs of travel.

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[3] Minn. Stat. § 43A.33, Subd. 1.

[4] Minn. Stat. § 43A.33, Subd. 2.

The discharge letter states in pertinent part:

> The investigatory findings show that you altered without authorization required travel documents related to your July 31-August 4 travel to the National Preparedness Leadership Institute (NPLI) in Boston, Massachusetts. Examples included, among other things, adding pre-trip and post-trip legs to Washington, D.C.
>
> The findings show that there was no work related reason for you to travel to Washington, D.C. from July 26-July 30, 2007 prior to traveling to the NPLI in Boston. You did not have this travel approved in advance. The findings also show that there was no work related reason for you to travel to Washington, D.C. after the final NPLI session on August 3, 2007. You did not have this travel approved in advance. As a result, you were not in authorized work travel status for the time frame August 4-August 11, 2007 after the NPLI concluded on August 3, 2007.

Ms. Pitt denies these allegations and asserts that she *was* properly approved for the Washington, D.C., legs of this trip, that she did spend her time there on work-related matters, and that her expense reimbursements were thus entirely proper.

Findings of Fact

Based upon the following evidence, I find that the State has met its burden of proof concerning this allegation. The evidence demonstrates the following:

In February of 2007, Ms. Pitt applied for and was accepted to participate in the National Preparedness Leadership Initiative (NPLI) at the Kennedy School of Government at Harvard University in Cambridge, Massachusetts. ("Boston conference"[5]) The NPLI program is a leadership-training program for senior government officials who are responsible for disaster preparedness, response, and recovery, and the program to which Ms. Pitt was accepted consisted of two sessions on the Harvard campus:

> March 4-9, 2007: A week-long residential session which included a combination of case studies, faculty presentations, and interactive exercises, and
> July 31-August 3, 2007: A two-and-a- half day concluding seminar, at which participants were to present group projects that they had worked on between the two sessions.

On February 20, 2007, Ms. Pitt followed department procedure and filled out a Mn/DOT Request and Authorization for Out of State Travel form, which she submitted

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[5] For ease of reference this will be referred to as the "Boston conference."

to her supervisor, Richard Arnebeck, for approval. Mr. Arnebeck has testified that, when he signed the form that day, it was totally typewritten and it did not contain any handwritten modifications. That original typewritten form provided the following information:

> **Date of Event:** "March 4-9, 2007"
> **Explanation of Benefits to Mn/DOT:** "Leadership program specifically for government representatives of homeland security and emergency management.... Requires two trips – March 2 - 9, 2007 and July 31-August 3, 2007."
> **Departure information:** "MSP [Minneapolis] to WA National [D.C.] – 3/2/2007"
> **Return information:** "WA National to MSP – 3/9/2007"
> .

The next day, February 21, 2007, consistent with Ms. Pitt's request, Mn/DOT's Office of Aeronautics booked her flights for the March NPLI session. Aeronautics did not book travel for the July/August NPLI session, and there is no evidence that Pitt ever contacted Aeronautics about coordinating her travel to and from this later session.

One month later (March 2007) Mr. Arnebeck left his position as Ms. Pitt's supervisor and was replaced by Steven Lund.

On April 28, 2007, Ms. Pitt made round-trip flight reservations for a personal trip to Washington, D.C., for the dates of Tuesday, May 8, 2007, to Sunday, May 13, 2007. The evidence demonstrates that at that time Ms. Pitt was engaged in a personal relationship with an employee at the Federal Highway Administration (FHWA).

As part of the July/August segment of the NPLI training, Ms. Pitt and two other attendees were to present a project to the entire class on August 1, 2007. On May 7, 2007, Ms. Pitt's three-person "cohort" exchanged e-mails to begin to plan and work on this project. There is evidence that at one time one member of the group, Mr. Hanretta, had planned to meet with Ms. Pitt in his Washington, D.C., office on May 10 for a working lunch and conference call with their third group member, Mr. Farnham. Mr. Hanretta has testified that he understood Ms. Pitt would be in Washington, D.C., at that time for other reasons and that it would be convenient for her to meet then. However, on May 7 Ms. Pitt cancelled that meeting due to a death in the family. There is no other evidence that the group ever planned to meet personally in Washington, D.C., before attending the second segment of the Boston conference.

Ms. Pitt testified that on May 7, 2007, she tried by phone to cancel and rebook her May 8-13 personal travel to and from Washington, D.C. However, the travel agent with whom she spoke told her that she would have to personally do so at the airport. Thus, on May 8, 2007, Ms. Pitt went to MSP and purchased a ticket for the following flights, which encompassed the Boston portion of the NPLI conference:

July 26, 2007 – MSP to Washington, D.C.
July 31, 2007 – Washington, D.C., to Boston
August 3, 2007 – Boston to Washington, D.C.
August 9, 2007 – Washington, D.C., to MSP.

The total cost of airfare for this July 26 to August 9, 2007, trip was $735.21. Pitt applied her personal credit of $139.30 from her canceled personal ticket to this amount and charged the $595.91 balance to her State of Minnesota credit card.

This was the first time flight arrangements were made for the July/August conference. Unlike her travel to and from the March portion of the program, Ms. Pitt never asked the Mn/DOT Aeronautics office to handle her travel for the July/August segment.

On July 23, 2007, Pitt's project partner, Kevin Hanretta, advised Ms. Pitt by e-mail that their group needed to e-mail their presentation to Harvard by July 25, 2007. That e-mail also says, "To confirm – did we agree to do a teleconference on Friday, July 27th at 10:30? That was in my notes but I didn't put it on the calendar." Ms. Pitt sent an e-mail the next day, July 24, 2007, and said: "Yes, we did set Friday, July 27th at 10:30 as our next *conference call* date/time. Does that still work for you two?" (Emphasis added). Hanretta replied: "Yes, Friday works for me..."

On July 25, 2007, Mr. Hanretta did e-mail the group's project to NPLI staff so that it could be included in the notebooks being prepared for the following week's conference.

Using the ticket she had booked on May 8, Ms. Pitt flew from Minneapolis to Washington, D.C., on July 26. On July 27 Ms. Pitt and her two group members did have the previously scheduled telephone conference call with each calling in from a separate location. At this time Ms. Pitt was in Washington, D.C., where she stayed until July 31, when she traveled to the Boston conference. It is unclear what she did while in Washington, D.C., during this time.

On Wednesday afternoon, August 1, 2007, Ms. Pitt and her two project partners presented their NPLI group project. The presentation lasted approximated 30 minutes. At 6:00 p.m. CST that same day the six-lane Interstate 35W bridge collapsed into the Mississippi River in Minneapolis, Minnesota, during rush-hour traffic. Ms. Pitt testified that she began working with Lisa Dressler on bridge collapse issues while still at Harvard. Ms. Dressler is Deputy Director of Emergency Preparedness for the City of Minneapolis, and she also happened to be attending the NLPI conference. Ms. Dressler returned to Minnesota before the conference concluded on August 4.

On August 4, after the NPLI program concluded, Ms. Pitt returned to Washington, D.C., where she stayed until August 11. Ms. Pitt has testified that, although she had originally planned to return to Washington, D.C., to work with cohort members to further refine their group project for possible publication, they were never able to meet because she was so busy working on bridge-collapse issues out of the Federal Highway Administration's ("FHWA") Washington, D.C., office. NPLI organizers have stated that

no follow-up work was expected of any conference participants.

When Ms. Pitt returned to Minneapolis on August 11,[6] she submitted her expenses from this entire trip, including the Boston conference and her pre- and post-conference stays in Washington, D.C. Ms. Pitt claimed meal expenses for each day of both her stays in Washington, D.C., and testified that she did not incur any hotel expenses at either time.

To be reimbursed for her travel expenses, Ms. Pitt had to submit a copy of her travel authorization form along with her expense report. The State submits that the travel authorization form she submitted was altered in that it added handwritten changes concerning the Washington, D.C., legs of the journey. Specifically, the form contains a handwritten notation, the first part of which says: "July 31-August 4, 2007." Everyone agrees that Ms. Pitt had Mr. Arnebeck's approval to add this notation and that it is proper. However, immediately following that approved statement Ms. Pitt has added, "plus group project work in DC." The State submits that no supervisor ever saw or approved any Washington, D.C., extension of the Boston conference and that she improperly altered this authorization after the fact to obtain reimbursement for these segments of the trip.

Thus, the essential question is as follows: ***Were the Washington, D.C. legs of Ms. Pitt's travel before and after the Boston conference authorized?***

Ms. Pitt argues that the February 20, 2007, "Mn/DOT Request and Authorization for Out of State Travel" form which she filled out and which her then supervisor (Mr. Arnebeck) approved, constituted approval not only for the two portions of the NPLI conference (March 4-9 and July 31-August 4) but also for the Washington, D.C., legs of the entire trip. In support of this position, Ms. Pitt offered the following evidence and argument:

First, Ms. Pitt has testified that, when Mr. Lund became her supervisor in March of 2007, she told him about the NPLI program, which had already been approved, and requested his permission to meet with her group members in Washington, D.C., before and after that program to work on their project. She asserts that Mr. Lund verbally approved her request and instructed her to add the now-challenged notation regarding the project on the original February 20 authorization.

Second, Ms. Pitt submits that further evidence of Mr. Lund's approval is found in the following facts, which she characterizes as undisputed: (1) she had legitimate reasons to be in Washington, D.C., before and after the Boston conference and could easily have completed an additional authorization form if it had been necessary, (2) an additional authorization was not necessary because the original February 20 form identified the Washington, D.C., legs and covered all relevant expenses, (3) on July 20 she reminded

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[6] When Ms. Pitt made these original flight arrangements on May 8, she was scheduled to return from Washington on August 9, 2007. However, she testified that this August 9 flight was cancelled at the last minute, Northwest Airlines then lost her reservation for August 10, so she had to return on August 11, 2007.

Mr. Lund of her upcoming travel, including the Washington, D.C., segments of the trip, (4) if Mr. Lund had not known and approved of her Washington, D.C., travel, why did he: (a) not order her home from Washington, D.C., (b) subsequently approve her claimed expenses, and (c) give her a positive evaluation on August 13, 2007?

I have considered the preceding evidence and arguments and find that they do not overcome the State's more persuasive evidence concerning the facts and argument surrounding the travel authorization question.

First, Mr. Arnebeck and Mr. Lund both unequivocally testified that Ms. Pitt never sought their authorization for the Washington, D.C. legs of this trip. From this the Employer infers that Ms. Pitt added the handwritten "plus group project work in DC" portion of the authorization after the fact, when she sought expense reimbursement and when she was questioned about her absence following the bridge's collapse.

Moreover, it is disingenuous to suggest that Mr. Lund should have gleaned this information by reviewing a February 20, 2007, authorization form that another supervisor signed prior to his arrival. True, had Mr. Lund exercised greater oversight of Ms. Pitt, he could have questioned her sooner than he did concerning her presence in Washington, D.C., as well as when he approved her expenses and gave her a favorable evaluation. He could also have directed her to come home from Washington, D.C.

However, it is important to put Mr. Lund's actions—for which the State has disciplined him—in context. Mr. Lund's failure to direct Ms. Pitt to return to Minnesota following the bridge collapse is unfortunate, but understandable. He had his hands full with his own job, and he trusted that Ms. Pitt was serving the Department. Mr. Lund knew that Ms. Pitt had developed her office from the ground up, that she was nationally viewed as a homeland security expert, and that as a manager she exercised tremendous discretion concerning her work hours, tasks, and work sites. Mr. Lund had every reason to believe that Ms. Pitt had previously been authorized to be in Washington, D.C., during the times in question and that she was performing her work admirably. He had no reason not to trust her.

Finally, Mr. Lund's lack of knowledge concerning Ms. Pitt's Washington, D.C., stays is reflected in his subsequent repeated questioning of her reasons for being there. Had he known of her reasons for being there, such questioning would not have been necessary.[7]

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[7] In response to Mr. Lund's questioning concerning her reasons for being in Washington, D.C., Ms. Pitt sent an email on August 23, 2007, which explained:

Following the class at Harvard, I was scheduled to be in Washington, DC working on a required class project. . . . I worked from the FHWA offices all day on Tuesday, August 7 and parts of other afternoons/evenings the first and mid-parts of that week. I was scheduled to return to Minnesota on Thursday, August 9 but due to cancelled flights did not make it home until Saturday, August 11th. I worked from the FHWA DC offices all day on Friday, August 10th. . .. My location at FHWA in D.C. was known back here in Mn/DOT. In fact, I had several conference calls from there, including one with Bob Winter and others, and several with others working on the response. If you have any

In short, Mr. Lund testified that he never knew that Ms. Pitt was going to Washington, D.C., or why she was there. That testimony was credible.

Based upon the preceding evidence, I conclude as a factual matter that no supervisor ever approved the Washington, D.C., legs of this trip.

With this finding, it is next necessary to evaluate whether Ms. Pitt nevertheless had a valid business reason to be in Washington, D.C., during the times in question. At the hearing, Pitt offered four primary reasons why it was appropriate for her to travel to Washington, D.C., following the bridge collapse. However, those arguments do not withstand scrutiny:

1. Group project

First, Ms. Pitt has pointed to the group project to explain her presence in Washington, D.C., before and after the Boston program. However, the group's e-mails clearly demonstrate that well before Ms. Pitt flew to Washington, D.C., before the Boston program, she knew no in-person group meeting was scheduled. Group members simply prepared their thirty-minute presentation via conference call. Moreover, group member Hanretta testified that the group never made plans to meet the week following the Boston conference. This is consistent with NPLI organizers' statements that no post-conference work product was expected and contradicts Ms. Pitt's representations during the investigation that the group did meet.

Furthermore, examination of the written materials the group did produce for their three-person, thirty-minute presentation reveals a modest work product. Although this arbitrator is admittedly not a homeland security expert, even to the untrained eye the written materials could not credibly have warranted the amount of time Ms. Pitt scheduled to devote to them in Washington, D.C. The scheduling of so much time in Washington, D.C., can only be explained by Ms. Pitt's personal interest in being there.

2. Ms. Pitt's professional responsibilities

Ms. Pitt testified that she did not need to return immediately to Minnesota following the bridge collapse because, as Mn/DOT's Homeland Security and Emergency Management ("HSEM") Director, her role was that of a "planner" and a liaison, not a "first responder"; Ms. Pitt explained that, in her role as a liaison, it did not matter whether she operated out of Washington or Minnesota; she could do her job from anywhere because of advanced communication technology.

Despite this argument Ms. Pitt's most recent Position Description, which she wrote

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questions about my involvement during that time, feel free to inquire. As a Homeland Security and Emergency Management professional, I was immersed in the response, as many others were. Technology is an amazing tool.

herself, demonstrates that she was expected to play a much more active role in emergencies that that of just planner and liaison. Frequent references to her role in the "execution," "implementation," and "delivery" of HSEM plans as well as communication with the "front line" show that Ms. Pitt was expected to play an active role in emergencies.

3. Using technology

Ms. Pitt testified that because of modern technology, *e.g.*, cell phones and e-mail, she could effectively do her job from almost anywhere. In fact, on August 23, 2007, after she returned to Minnesota, she sent an e-mail to her supervisor, Steven Lund, explaining her presence in Washington, D.C., and extolling the virtues of technology while she had been there: “As a Homeland Security and Emergency Management professional, I was immersed in the response, as many others were. Technology is an amazing tool.”

The State reasonably challenges Ms. Pitt's assertion that she could do her job just as well from Washington, D.C., as she could from Minnesota after the bridge collapsed. Just because Ms. Pitt was able to do portions of her job remotely does not mean that it made no difference where she was.

Mn/DOT's Business Manual instructs supervisors, prior to approving out-of-state travel, to "evaluate all requests for travel to ensure that the alternatives to travel have been considered and that *travel is the most efficient means of accomplishing the required task.* The supervisor will authorize *the mode of travel that is in the best interest of the department."* (Emphasis added).

The evidence demonstrates that Ms. Pitt's travel to Washington, D.C., after the bridge collapsed was not the most efficient means for her to do her job, nor was it in the best interests of her department. A planner and project consultant who previously worked in Mn/DOT's HSEM department under Ms. Pitt and who was at the Emergency Control Center after the bridge collapsed, testified:

> It became clear to me very early on that there was a gap [in communications] – that something was missing. The kinds of calls I was getting and questions people were asking me indicated a communication gap between the bridge site and the command center. I told (Ms. Pitt) that I felt that there was a gap in communications and she said, “Do what you need to do,” but I was not a supervisor and could not just “self deploy.”

Finally, the U.S. Department of Homeland Security's November 8, 2007 "After-Action Report," written following a review of Mn/DOT's response to the bridge collapse, confirms that witness’s testimony. It notes that there was some confusion regarding "on-site incident management" and recommended, among other things, that "[a]t a minimum, Mn/DOT's emergency management director or designee should be

on site or available for consultation when a District EOC is operational." That suggestion applied to Ms. Pitt in her position as Director of Mn/DOT's Homeland Security and Emergency Management.

4. Liaison role

Finally, Ms. Pitt submits that after the bridge collapsed it was actually better for her to be in Washington, D.C., than in Minnesota because she was in direct contact with critical government officials at the federal level. She has testified that by working out of the Federal Highway Administration (FHWA) offices in Washington she was able to maintain direct contact with federal government officials who were crucial to Minnesota's emergency-response efforts.

However, the evidence belies this claim. It is evident that the FHWA in Washington, D.C., provided an office to Ms. Pitt to accommodate the State of Minnesota, not because it or any other federal agency had any direct need of her services. Indeed, there was no apparent reason for Ms. Pitt to be there. Although Ms. Pitt explicitly claimed to have been in communication with the Administrator of the FHWA while in Washington, D.C., no one could confirm this. Finally, although Ms. Pitt claims that she was at the FHWA office at least a portion of every day beginning August 6, the evidence more strongly suggests that she was there only on August 7 and 8.[8]

Moreover, when questioned regarding the travel expenses associated with Ms. Pitt's additional days in Washington, D.C., in July and August, the FWA employee with whom she had a personal relationship responded that over 22 questions had "nothing to do with my professional duties." The Employer persuasively argues that, while this may be true, the FWA employee's unwillingness to clarify the record further supports the State's position that Ms. Pitt's unauthorized travel and expenses were for personal reasons.

Summary

The question has been whether supervisors authorized the Washington, D.C., segments of this trip. Ms. Pitt points to the handwritten addition to her February 20, 2007, authorization form as evidence that they were. That notation states, "plus group project work in DC." However, Ms. Pitt's argument is belied by the following: (1) both supervisors deny having seen or approved that notation, and (2) although the February 20, 2007, form authorized Ms. Pitt to attend both sessions of the NPLI program, it authorized only the expenses for the March session; another authorization form would have been necessary to authorize the expenses[9] for the second portion. No such second

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[8] The FHWA employee with whom Ms. Pitt had a personal relationship stated as part of this investigation that Ms. Pitt had been at the Agency on August 7 and 8. Other FHWA who were also interviewed at Ms. Pitt's behest stated they saw Ms. Pitt only infrequently.

[9] The expenses identified on the February 20, 2007, fall far short of including the expenses that could have been anticipated, and were incurred, for the second session of the NPLI conference.

authorization, which would have covered the Washington, D.C., extensions, was presented or approved. Moreover, even if supervisors had approved Washington, D.C. extensions to the July/August travel, they would have been misled in doing so as Ms. Pitt had no genuine business reasons to be there at that time.

In short, Ms. Pitt failed to justify her presence in Washington, D.C., following the bridge collapse. Her visits to Washington, D.C., before and after the Boston program were neither authorized nor necessary for the effective performance of the State's business. It was improper for her to claim reimbursement for expenses incurred during those times. Doing so constituted a serious violation of the Employer's written Managerial Plan and Mn/DOT travel policies.

B.March 2, 2007, Washington, D.C., expenses.

The November 9, 2007, discharge letter states the following:

> The findings show that you were not in authorized work travel status yet you requested and received reimbursement of work related expenses for personal legs of trips in excess of $850.00. Examples include . . . expense reimbursement for trips on March 2, 2007 in Washington, D.C…

The Employer submits that Ms. Pitt improperly claimed parking and meal expenses incurred while she was in Washington, D.C., for personal reasons, before she flew to Boston for the spring NPLI session held March 4-9, 2007. Ms. Pitt denies this allegation. The evidence shows the following:

As discussed in the previous section, in February of 2007, Ms. Pitt applied for and was accepted to participate in the NPLI "Boston program." Her Mn/DOT Request and Authorization for Out of State Travel form for the first segment of that program, which was approved, identifies the dates of the event as "March 4 [Sunday] -9 [Friday], 2007," and travel for the trip as March 2 [Friday] - 9 [Friday], 2007. However, rather than booking travel to and from Boston, that same form identifies "Departure information: MSP [Minneapolis] to WA National [D.C.] — 3/2/2007" and "Return information: WA National to MSP — 3/9/2007."

It is undisputed that the Washington, D.C., portion of this travel was for personal reasons and that Ms. Pitt's personal credit card was charged for that portion of the trip. However, the Employer submits that the parking and meal expenses[10] Ms. Pitt claimed for the two days she was in Washington, D.C., on personal business were not appropriate.

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[10] Parking expenses totaled $36.56 ($18.28/day x 2 days) and Ms. Pitt charged the state $23.00 for meals on Saturday, March 3, 2007,

Ms. Pitt testified that she submitted reimbursement claims for these expenses because she believed that she was in "authorized travel status" on March 2-3, 2007 since her travel authorization form included the following language under "Explain Benefits to Mn/DOT': "Requires two trips [:] March 2-9, 2007 and…." She also cites a "Saturday stay" provision in Mn/DOT's travel policy as justification for claiming these expenses.

Discussion

I have considered Ms. Pitt's evidence and argument, but find that it does not overcome the following: First, Ms. Pitt's reliance on the language of the form that she submitted is questionable because she was the very person who wrote that language. The fact that supervisors trusted that the cited dates were appropriate and signed this form is not exculpatory.

Moreover, Ms. Pitt's reliance on the "Saturday stay" provision in Mn/DOT's travel policy is misplaced. That policy states, "The cost of a flight can vary depending on the flexibility of the passenger. Tickets with a Saturday night stay and an advance purchase, generally 21 days, will have the lowest fares."[11] This provision does not apply to the Washington, D.C., portion of the trip because the evidence shows that, in this case, it would have been less expensive for Ms. Pitt to fly directly to Boston on March 4 (which was a Sunday) rather than to first fly to Washington, D.C., for the weekend.

Finally, the Mn/DOT travel policy quoted above requires an employee who is departing earlier or staying later to take advantage of lower airfare to note those factors on the form. When Ms. Pitt filled out the travel request form, she did not do this.

Thus, because Ms. Pitt's travel to Washington, D.C., prior to the March NPLI conference in Boston was for personal reasons and did not result in reduced airfare, pursuant to Mn/DOT's travel policy she was not entitled to reimbursement for those expenses. Moreover, those expenses were also not eligible for reimbursement under the Managerial Plan because, based upon Ms. Pitt's own admissions, they were not incurred "for the effective conduct of the State's business." The Employer has sustained its burden of proof on this allegation.

C. Claimed reimbursement for Las Vegas expenses, June 2007.

The discharge letter states in pertinent part as follows:

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[11] Mn/DOT's Business Manual is also relevant, "In completing an out of state travel authorization form . the form should detail any financial decisions, such as ... [whether the] employee will leave early or stay longer to take advantage of lower airfare. (Mn/DOT may pay additional expenses related to the reduced airfare providing the expense does not exceed the reduction in airfare)."

> The findings show that you were not in authorized work travel status yet you requested and received reimbursement of work related expenses for personal legs of trips in excess of $850.00. Examples include . . . expense reimbursement for trips on March 2, 2007 in Washington, D.C.; [and] June 8, 2007 in Las Vegas …

It is undisputed that on February 20, 2007, Ms. Pitt obtained proper approval to attend the Intelligent Transportation Conference (ITS) in Palm Springs, California, June 4-6, 2007. Her travel authorization form indicated she would depart Sunday, June 3, 2007, for Palm Springs and return Thursday, June 7. (In fact, she actually departed Saturday, June 2, presumably to take advantage of Saturday-stay airfare).

On April 23, 2007, before that conference, NPLI program administrators announced they had added an additional event for June 12-15, 2007, in Washington, D.C. This event was billed as a "refresher" meeting for past NPLI graduates and current participants. Formal sessions were not to start until Wednesday, June 13. June 12 was limited to registration and a reception.

On or about May 1, 2007, Ms. Pitt's then-new supervisor approved her travel authorization request form to attend the Washington, D.C., program, departing Minnesota on Monday, June 11. On that same form Ms. Pitt noted that she would be at the Palm Springs conference through June 7 and she wrote: "Flight may be from west coast as ITSA concludes at this time. May be more time and cost efficient to fly from coast to coast." The Division Director added his approval to the form on May 2.

With this amended itinerary, Ms. Pitt then contacted Mn/DOT Aeronautics and requested the following change to the travel plans that had already been booked. Specifically, Ms. Pitt wanted to schedule an interim visit to Las Vegas for personal reasons: to attend a court probate hearing on Friday, June 8. This addition was approved on the understanding that Ms. Pitt would pay the additional expenses of this trip.

Thus, Ms. Pitt flew to Palm Spring on June 2 to attend the June 4-6 conference in Palm Springs. On Thursday, June 7, she flew to Las Vegas where, because the probate hearing had been canceled, she has testified that she worked on State business on Friday, June 8. On Sunday, June 10, Ms. Pitt flew to Washington, D.C., to attend the Wednesday, June 13, - Friday, June15, conference (with registration and reception on June 12, which Ms. Pitt did not attend). Following the conference Ms. Pitt remained in Washington, D.C., until she returned to Minnesota on Wednesday, June 20th.

The Employer submits that Ms. Pitt improperly charged the following expenses with respect to the Las Vegas portion of this itinerary: $500 for additional airfare to Las Vegas, parking, lunch, dinner and baggage handling. With respect to Ms. Pitt's extension of her Washington, D.C., stay (Saturday, June 16 –Wednesday, June 20), the Employer submits she improperly sought reimbursement of $49 for a seat upgrade

from Las Vegas to Washington, D.C, and $31 each day for meals.

Ms. Pitt challenges these allegations. She testified that her supervisors were fully aware of, and approved, her side trip to Las Vegas, and subsequently approved these expenses as submitted. She also stated that she was totally surprised to learn that the State had never charged her personal card for the additional airfare to Las Vegas. Finally, Ms. Pitt justifies claiming the Las Vegas expenses on the grounds that after the probate court hearing was canceled, she devoted Friday, June 8, to writing a grant application (which she has testified resulted in a $235,000 award to the State).

Discussion

I am prepared to give Ms. Pitt the benefit of the doubt and accept that she intended to re-pay the Las Vegas portion of her airfare. I also accept her Las Vegas expenses as reimbursable, given supervisors' approval of her earlier representation, "Flight may be from west coast as ITSA concludes at this time. May be more time and cost efficient to fly from coast to coast." The Employer has not sustained its burden of proof concerning this allegation.

D. Flight upgrades

The November 6, 2007, discharge letter issued to Ms. Pitt alleges that she violated the Employer's Travel Policy in connection with $120.00 in charges relating to four separate aisle or exit row seating upgrades in the coach section of the aircraft. Mn/DOT's Business Manual states: "fares for state travel are not to exceed the cost of coach fare."

The Employer offered persuasive evidence that such upgrades are not reimbursable. However, Ms. Pitt also persuasively argued that the plain language of this policy does not prohibit Mn/DOT employees from obtaining aisle or exit row seats in the coach seating area of an aircraft during business travel. Moreover, there is no evidence that Ms. Pitt was ever advised that these additional expenses—which she testified were appropriate because of her height and her need to work on her laptop computer in-flight—were prohibited. In short, the evidence falls short of demonstrating that Ms. Pitt knowingly violated the Employer's Travel Policy in this respect.

2. Inappropriate Use of State Resources

Cell phone usage.

The November 9, 2007, discharge letter states as follows:

> The investigatory findings show that during February to June, 2007, you made a significant number of personal calls on your state cell phone and incurred additional plan charges in excess of $600 attributable to an overage in excess of 2,400 minutes.

> You did not reimburse Mn/DOT for these personal calls made with your state cell phone.

The evidence is undisputed that the Employer issued a cell phone to Ms. Pitt for business reasons. Ms. Pitt knew that State policies limit that cell phone use to business purposes except in emergencies, and she acknowledges occasionally using it for personal calls. Ms. Pitt never identified personal calls on her monthly cellular phone bills, nor did she ever reimburse the state for the cost of any non-essential personal calls.

Cell phone policy

Mn/DOT's policy on the "Appropriate Use of Electronic Communication and Technology (February 14, 2007)" states that "[r]easonable use of state-owned cellular phones is limited to 'essential personal use' as authorized in Minn. Stat. § 43A.38, Subd. 4(b). Essential personal calls are defined as calls allowed in Minn. Stat. § 43A.38, Subd. 4, which states that "[a]n employee may use state time, property, or equipment to communicate electronically with other persons . . . provided this use, including the value of time spent, results in no incremental cost to the state or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impracticable." Employees who make personal calls in excess of the authorized amounts are expected to reimburse the State for the costs of any non-essential personal calls. The prescribed consequence for non-essential use of the State cellular telephone is "revocation of the cellular telephone assignment and possible disciplinary action against the employee."

Employer's evidence and argument

Records reveal a total of 183 hours airtime used on Ms. Pitt's state-issued cell phone from February through June of 2007. Of those, 40 hours have been verified as work-related, and Ms. Pitt identified 31 hours of calls as personal. In addition, 94 additional hours were attributable to phone numbers that have now been identified as belonging to the FHWA employee with whom she was having a personal relationship at that time. Counting those 94 hours as personal, the Employer calculates that Ms. Pitt incurred additional charges of over $600 because of an excess of 2,400 minutes.

Ms. Pitt's evidence and argument

Ms. Pitt cites Department and state policy to argue that nothing prohibited her from making personal calls that resulted in small incremental costs, and she asserts that the actual incremental cost involved amounted to only $36.00. Ms. Pitt argues that the Employer's calculation of $600 is improper in that it ignores (1) the overwhelming evidence that Ms. Pitt had legitimate business reasons for calling the FHWA employee on

her state-issued cell phone,[12] and (2) the Managerial Plan that governs Ms. Pitt's employment also allows for "[a]ctual, personal telephone call charges" up to a maximum for each trip of $3.00 multiplied by the number of nights away from home.

Discussion and Decision

The evidence demonstrates that Ms. Pitt misused her state-issued phone. It is highly doubtful that all of her calls to the FHWA employee were work-related. Ms. Pitt's most recent Position Description indicates that only 10% of her total work time was to be allocated to representing Mn/DOT before federal agencies and other national organizations. Considering how Ms. Pitt herself calculated the demands of her job when she drafted this description, it is unreasonable to attribute such an inordinate percentage of her airtime to one particular person at one particular federal agency as all business-related.

Ms. Pitt misreads the Managerial Plan's provision that allows for "[a]ctual, personal telephone call charges" up to a maximum for each trip of $3.00 multiplied by the number of nights away from home. All other witnesses testified that it is well understood that this provision, negotiated prior to the adoption of cell phones, provides $3 per diem reimbursement for land line use directly charged to an employee when traveling out of state. Nevertheless, Ms. Pitt is technically correct in arguing that the policy does not expressly limit reimbursement in that manner.

Accepting that Ms. Pitt honestly misread the policy and should be credited $3 for every day she was out of state, and assuming that ½ of the 94 hours of Ms. Pitt's conversations with the FHWA employee were work-related, the fact remains that the direct cost to the State for Ms. Pitt's excess cell phone usage is more than a "small incremental cost." Ms. Pitt's cell phone use violated well-established state policy.

3. Unprofessional Conduct

The November 9, 2007, discharge letter alleges that Ms. Pitt "engaged in activities that violate Mn/DOT's Code of Ethics Policy" in that she engaged in or appeared to engage in "activities that cannot withstand public scrutiny without embarrassment to Mn/DOT; [do] not safeguard the public trust in the integrity of Mn/DOT; and undermine public trust in the Department." The discharge letter specifically referenced Ms. Pitt's presence in Washington, D.C., after August 3, 2007, following the collapse of the I-35W bridge as evidence of such conduct.

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[12] This evidence includes: The FHWA employee was one of Ms. Pitt's primary funding and emergency response coordination contacts and they also worked together on a number of training, funding and coordination projects. One witness, whose duties with the state of Wisconsin were similar in many respects to Ms. Pitt's duties and responsibilities, testified about the many business-related reasons he had to communicate with that FHWA employee. For these reasons Ms. Pitt has counted all of the calls to the FHWA employee as business related.

Ms. Pitt protests this allegation on the grounds that it completely fails to identify which provisions of the Code of Ethics Policy she supposedly violated.

Section 43A.38 of the Minnesota Statutes sets forth the Code of Ethics for employees in the Executive Branch. The Code of Ethics prohibits: (1) acceptance of gifts or favors in relation to official duties for personal gain; (2) use of confidential interest to further the employee's private interest; (3) use of state property for the employee's private interests; and (4) conflicts of interest. Mn/DOT also has a Position Statement and Guideline regarding the Code of Ethics that states:

> As public employees, all Mn/DOT personnel are held to a high standard of conduct and level of scrutiny. The public trust and confidence in Mn/DOT employees is critical to the success of the Department. Mn/DOT expects employees to adhere to the highest ethical values when conducting state business and to follow the Code of Ethics and related state statutes applying to executive branch employees. These statutes include but are not limited to: acceptance of gifts, favors, use of confidential information, use of state property, conflicts of interest, outside compensation, outside employment, economic interests and financial disclosure requirements, appearance/involvement before the department on someone else's behalf and personal use of state assets as set forth in Minnesota Statutes.

I agree that these provisions do not expressly apply to the conduct in question.

II. Does Ms. Pitt's conduct misconduct?

Contrary to Ms. Pitt's assertions, there can be no question that Ms. Pitt violated both the Managerial Plan and Mn/DOT travel policies with respect to the above-described travel by improperly claiming reimbursement for expenses incurred during these unauthorized travel segments. Ms. Pitt also violated both the Managerial Plan and Mn/DOT cell phone policies by her excessive use of her state-issued cell phone for personal reasons. In short, the totality of the evidence demonstrates a "serious violation of written policies and procedures…"[13] on Ms. Pitt's part.

III. Does the evidence of misconduct support the penalty of discharge?

Minn. Stat. § 43A.33, Subd. 3(c), states that disciplinary action should be mitigated if "extenuating circumstances" exist. The following evidence and arguments have been considered in determining whether the Employer had just cause to discharge Ms. Pitt as opposed to issuing some lesser form of discipline.

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[13] Minn. Stat. § 43A.33, Subd. 2.

A. Ms. Pitt's prior record.

It is undisputed that not only throughout Ms. Pitt's employment with Mn/DOT but also throughout the entire course of her employment with the State her work quality and productivity were well above normal. Ms. Pitt received numerous promotions and raises, and all of her supervisors consistently gave her positive performance evaluations. Prior to her termination on November 9, 2007, Ms. Pitt had never been issued any informal or formal discipline.

B. *Disparate treatment.*

In this case the Employer has had the burden of proving not only that Ms. Pitt engaged in a "serious violation of written policies and procedures" but also that those "policies and procedures are applied in a uniform, nondiscriminatory manner."[14] Ms. Pitt argues that the Employer has not applied its policies in such a manner. She submits that she is the only Department employee the Employer has audited, investigated, or disciplined regarding out-of-state travel, expense compensation, cell phone use or "unprofessional conduct unbecoming to the agency." As such, she argues that she has been subject to disparate treatment.

I have considered Ms. Pitt's evidence and arguments concerning this issue and find they are overcome by the following evidence.

First, the Employer has offered evidence that identifies previously discharged employees, the agencies where they worked, the date of discharge, the bargaining unit that represented the employee and the actual letters of discharge. The stated reasons in those cases are similar or analogous to those present in this case. They include misuse of state resources and equipment, falsification of timesheets, and falsification of expense reports and human resources documents on the state payroll system. Four of the discharges were from Mn/DOT. Arbitrators in the two most recent cases upheld discharges on these grounds even though the employees had no discipline in their files and had been employed by the State of Minnesota for 28 years and 16 years respectively. In addition, it is noteworthy that Ms. Pitt, unlike the other discharged employees, was a manager. Managers are afforded great trust and flexibility, and violation of that trust is a serious matter.

More specifically, Ms. Pitt has argued that the Employer's blatant unfairness is demonstrated by its acceptance of another Department employee's similar nonconformance with its travel policies. However, I have considered that evidence and find the two situations are easily distinguished. Although the cited employee did not have an individual travel authorization form, he traveled pursuant to a group authorization prepared and signed by the Commissioner. That employee's expense reports for the two days preceding the start of his authorized conference resulted from

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[14] Minn. Stat. § 43A.33, Subd. 2.

his attendance at meetings of a standing committee that routinely met at that time and of which he was a member. This employee's role and presence at the conference was well known, was clearly for work-related reasons, and his expenses were appropriate.

C. *Progressive discipline.*

Ms. Pitt argues that the Employer improperly failed to attempt to resolve these matters through informal means before terminating her employment. In support of this position, she cites the following directive: "Managers and employees *shall* attempt to resolve disputes through informal means *prior to* the initiation of disciplinary action."[15] In addition, she notes that the Managerial Plan requires that "[a]n Appointing Authority *shall* make reasonable effort to discuss with the manager any performance problem which may lead to disciplinary action and to assist the manager in eliminating problem areas *before* disciplinary action becomes necessary." (Emphasis added).

Despite these arguments, it is well established that an employer can bypass the steps of progressive discipline in cases of serious misconduct. Ms. Pitt's conduct was sufficiently serious to warrant doing so in this case. Her violation of the travel, expense, and cell phone policies cannot be construed as innocent misunderstandings or mild errors in judgment. Her actions were significant and on-going and resulted in substantial cost to the Employer.

IV. Summary

It is regrettable that the State has lost the services of an employee as hard-working, productive, and knowledgeable as Ms. Pitt. However, by her own actions Ms. Pitt has lost her Employer's confidence, and Mn/DOT has had just cause to terminate her employment.

Ms. Pitt was a high level manager with many years of State employment, and she knew and understood the Employer's policies. Indeed, she was responsible for ensuring her own staff's compliance with them. Unfortunately Ms. Pitt abused the latitude accorded to her in her capacity as a manager. Her actions cannot reasonably be attributed to confusion, carelessness, or any claim of ignorance or misunderstanding or acquiescence by her supervisors. There are no extenuating circumstances that would compel or justify mitigating the penalty of discharge.

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[15] Minn. Stat. § 43A.33, Subd. 1. (Emphasis added).

AWARD

The Employer has carried its burden of proving it had just cause to discharge Ms. Pitt on November 9, 2007.

May 15, 2008

Christine Ver Ploeg, Arbitrator