

IN THE MATTER OF ARBITRATION ) GRIEVANCE ARBITRATION  
 )  
 between )  
 ) Dawn Flores - Discharge  
 Ramsey County )  
 )  
 -and- ) BMS Case No. 10-PA-0025  
 )  
 )  
 AFSCME Council No. 5, )  
 Local 151 ) January 14, 2010  
 ))

**APPEARANCES**

**For Ramsey County**

- Dan DeHamer, Human Resources Supervisor
- Marcy Cordes, Labor Relations Manager
- Denise Templeton, Human Resources Generalist
- Leon Boeckermann, CHS Administrative Services Manager, Revenue Department
- Janelle White, Supervisor, Revenue Unit
- Sharon Bourne, Accounting Support Supervisor, Accounts Payable Within Accounting Unit
- Gale Burke, Accounting Unit Manager, Community Corrections Department
- Carol Fogerty, Training & Development Specialist, CHS
- Carolyn Reynolds-Smith, CHS Supervisor Guardianship/Adoption Family Support Section of Family & Children's Services Division
- Stacey Cotton, Social Worker III
- Don Jones, Director of Administrative Services

**For AFSCME Council No. 5, Local 151**

- Joyce Carlson, Business Representative
- Lorita Powell, Business Representative
- Terry Havican, Steward
- Judith Schultz, Former Steward
- Kathy Kane, Accounting
- Celeste (Last Name Omitted for Confidentiality Purpose), Foster Care Provider
- Dawn Flores, Grievant

## JURISDICTION OF ARBITRATOR

Article 15, Grievance Procedure, Section 15.4, Step 4, Arbitration, of the 2009-2011 Collective Bargaining Agreement (Joint Exhibit #1) between Ramsey County (hereinafter "Employer" or "County") and AFSCME Council No. 5, Local 151 (Community Human Services) (hereinafter "Union") provides for an appeal to arbitration of disputes that are properly processed through the grievance procedure.

The Arbitrator, Richard J. Miller, was selected by the Employer and the Union (hereinafter "Parties") from a panel submitted by the Bureau of Mediation Services. A hearing in the matter convened on November 20 and 23, 2009, in the County Government Center East, 160 East Kellogg Blvd., St. Paul, Minnesota. The hearing was tape recorded with the Arbitrator retaining the tapes for his records. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. The Parties elected to file post hearing briefs with an agreed-upon postmark date of December 21, 2009. The post hearing briefs were submitted in accordance with those timelines and received by the Arbitrator via e-mail on that date. The Arbitrator then exchanged the briefs to the respective representatives via e-mail on December 22, 2009, after which the record was considered closed.

The Parties agreed that the grievance is a decorous matter within the purview of the Arbitrator, and made no procedural or substantive arbitrability claims.

**ISSUES AS DETERMINED BY THE ARBITRATOR**

Did the Employer have just cause to discharge the Grievant?  
If not, what is the appropriate remedy?

**STATEMENT OF THE FACTS**

The Grievant, Dawn Flores, has been employed by the County since March 1989. She began her employment with the County as an Account Clerk. In 2001 the Grievant was transferred to the Revenue Unit. Her position was then reclassified as Program Specialist. The Grievant has held this position since that time and is now officially classified as Program Specialist in the Department of Community Human Services ("CHS"). As a Program Specialist, the Grievant performed several duties and responsibilities, including managing the payment system for fostercare children, which has many facets. The Grievant obtained the knowledge to manually change the computer system which generates payment to fostercare and respite providers.

While the process and procedures for paying fostercare invoices are quite complex, in a nutshell, the social worker (caseworker) provides the respite payment form to fostercare providers and that the providers fill out the form including

their name, vendor child's RID#, and names, days of respite, signs the form and submits the form to Account Clerk Jan Fladeboe.

As to the process and procedures for generating and paying fostercare providers, an invoice known as Placement Invoice Form ("PIF") is generated by Child Services Placement System ("CSPS"), mailed to the provider who signs, dates, and fills out number of days and returns the PIF to CHS for processing and payment.

There is a policy for no double payment of fostercare and respite care. There are few exceptions. In fact, when a double payment request is made it is "flagged" by the computer.

There have been situations when a fostercare provider wants a child to go to respite so that the provider can get a break from the child, but they also want to be paid the full monthly fostercare payment. In these incidences, the social worker or another authorized employee would fill out and sign a Special Requisition and have the supervisor sign off of it. The Special Requisition is a legitimate form to pay double for both the fostercare provider and respite provider.

The Grievant was a dedicated friend to Lily. Lily was the mother of four children (two boys and two girls). After four years of domestic abuse, Lily was murdered by her children's father, and eventually, the children came under CHS as clients,

since the father was incarcerated. Lily made a request to the Grievant to watch over her children if something should happen to her.

The four children were placed in foster care. The two girls were placed with their maternal aunt (Celeste) near Chicago and the two boys were placed with Barb, who lives just north of the Twin Cities. The children's assigned caseworker is Social Worker Stacey Cotton. There were times, however, that the Grievant honored her commitment to Lily by providing interim care arrangements at the Grievant's home.

In August of 2004, Lily's four children stayed in the Grievant's home. The County paid for two plane tickets for the girls to visit their brothers and attend a family funeral. When the children had stayed with the Grievant previously, this had been considered an informal arrangement and any compensation for care of the children had come from the foster parents.

Following this particular visit, the Grievant made changes to the CHS computer system that would authorize her to be paid by CHS for respite care while pay was being provided to the fostercare providers. In order to receive this pay, the Grievant had to prepare a Special Requisition. The Grievant prepared a Special Requisition for Celeste on September 2, 2004, noting: "Carolyn Reynolds agreed to pay the foster parent full pay even

though girls were in respite care on a week long visit with their brothers at a respite home." (Employer Exhibit #8A). The Grievant then prepared a Special Requisition for Barb on September 2, 2004, noting: "Carolyn Reynolds agreed to double pay the respite care and foster care because the social worker did not tell the foster care worker that she would not get paid for the boys' visit with their sister." (Employer Exhibit #8B). Carolyn Reynolds is a CHS Supervisor who was authorized to make these payments. Ms. Reynolds signed the Special Requisitions prepared by the Grievant on September 3, 2004. (Id.)

The Grievant then submitted two respite payment requests and was paid by the CHS's accounting unit. Making the changes needed to authorize payment was not part of the Grievant's normal job, but instead was usually the function of the social worker who managed the related case. The Grievant was able to make the changes because she had broad access to the computer system in her role as a Program Specialist for CHS. (Employer Exhibits #9, 10).

The Grievant received and cashed two checks for respite care payments, one dated August 24, 2004, in the amount of \$680 for the care of two boys and one girl, and the second dated September 3, 2004, in the amount of \$272 for the care of one girl. (Employer Exhibits #11). The Grievant deposited both checks in

her bank on the same day they were issued. (Employer Exhibit #12).

In July of 2007, CHS began looking into the events of 2004. An investigation was launched that lasted nearly a year and was re-started by a second team after a member of the first team withdrew. The investigation had been triggered when Supervisor Reynolds notified a manager that the Grievant may have received unauthorized respite payments in 2004.

The investigators who investigated the possible payments and issued the final report were Carol Fogarty, a trainer at CHS, and Gale Burke, a manager in the County's Corrections Department.

On July 7, 2008, the County notified the Grievant that she was being suspended with pay, effective July 8, 2008, "for a period not to exceed 45 days, to complete an investigation of potentially disciplinable behavior and to determine the appropriate course of action." (Employer Exhibit #7).

The investigators completed their final report on July 16, 2008. Their final report included the following assessments:

- Ms. Flores decided independently that the county should pay her for having four foster care children stay at her house.
- Ms. Flores used her knowledge of and access to County payment systems to create two checks payable to herself.
- Ms. Flores exceeded her authority when she made the changes needed to create the two checks.

- Ms. Flores' testimony was not credible due to internal inconsistencies and contradictions with the testimony of others in the case.
- The testimony of other witnesses, specifically Stacey Cotton and Carolyn Reynolds-Smith, was deemed credible as it was internally consistent and not contradicted by the testimony of others, including the foster parents.

(Employer Exhibit #13).

Upon receiving the final investigation report, and following a thorough review and internal consultation with County Human Resources and its attorney, the Employer decided to discharge the Grievant effective August 12, 2008. (Employer Exhibit #2). In addition to the concerns raised by the final investigation report, the Employer also considered the fact that the Grievant had received a lengthy suspension two years earlier for misrepresenting herself as a supervisor to two other counties doing reference checks on a former CHS employee. (Id.)

Prior to the Grievant's discharge, she asked for and was granted a Loudermill hearing to tell her side of the story after receiving a notice that the Employer intended to terminate her employment for cause. After considering what it heard at the Loudermill hearing, CHS discharged Ms. Flores on August 12, 2008.

On August 12, 2008, the Union, on behalf of the Grievant, filed a written grievance protesting the Grievant's discharge. (Joint Exhibit #2). The grievance was denied by the Employer.

The Union ultimately appealed the grievance to final and binding arbitration pursuant to the last step in the contractual grievance procedure.

#### UNION POSITION

The Union has shown that the Grievant's termination was without just cause and predicated on a falsehood by Ms. Reynolds in retaliation for the Grievant questioning Ms. Reynolds' poor decision to place the oldest girl in an unlicensable, unsafe home and in proximity of her former abuser.

The Union has shown that the Grievant's termination was without just cause and predicated on Ms. Reynolds' retaliation for the Grievant refusing to exclude herself from the lives of the oldest child and her three younger siblings.

The Union has shown that the Grievant's termination was without just cause and predicated on Ms. Reynolds in retaliation for raising the issue of Ms. Reynolds' poor placement decisions to Ms. Reynolds' peers and superiors in the County.

The Union has shown that the Grievant acted with the approval of Ms. Reynolds evidenced by Ms. Reynolds' signature to pay respite care to the Grievant and double payment of fostercare providers. The Union has also proved that the Special Requisition documents had all of the information related to the preparer, the respite payment, and the names of the children. The Union has

shown that the Special Requisitions were reviewed and approved for payment by a second supervisor level administrator who ordered the double payment. Ms. Reynolds' claims of denial, ignorance, and failure to recall are not credible.

Lastly, the Union has shown that Ms. Reynolds, to support her original lie that she did not approve the respite and fostercare double payment, escalated her retaliation by giving inflammatory and unsubstantiated testimony in her rebuttal that the Grievant purposefully facilitated sexual activity by a minor child with an unnamed male of unknown age. That last testimony by Ms. Reynolds shows the depth Ms. Reynolds will sink to destroy the Grievant. It irrevocably taints all of Ms. Reynolds' testimony.

Having proved that the Employer did not have just cause to terminate the Grievant, a 19 plus year County employee, from her position in the CHS Revenue Unit, the Union requests the following remedy:

1. Ms. Flores is returned to her position in Ramsey County;  
and
2. Ms. Flores is made whole to all contractual benefits she would have earned if she had not been wrongly terminated from employment, including but not limited to, vacation and sick leave accrual, seniority, salary step level;  
and
3. All references to the termination be removed from Ms. Flores' personnel and supervisory files; and

4. Payment for any health expenses she or her family incurred by Ms. Flores which would have been covered by her County health insurance. Ms. Flores will provide appropriate documentation; and
5. And in all ways made whole, and that the remedy be ordered immediately.

#### COUNTY POSITION

The Employer had just cause to discharge the Grievant from employment on August 12, 2008. The County performed a thorough investigation of the facts and the allegations made by those interviewed. The investigators were impartial and unbiased and not tied to the case in any manner. Their findings were based on the evidence available to them and were demanded by the nature and quantity of the evidence in this case. The evidence continues to support their findings.

The Grievant occupied a position that had great access to the CHS payment systems. She was an expert in the area and had much experience in the accounting field. She knew the rules and the procedures, and certainly understood the principles and tenets of the field, including that payment to oneself is always circumspect and that all authorizations must be observed when one receives a payment through a system on which one has clearance to make changes. The Grievant circumvented those safeguards when she made the changes needed to pay herself respite care payments in August 2004.

There is no physical evidence or electronic trail indicating that the payments were approved by a social worker or supervisor. The only signed documents in this case authorizing respite care payments are the request forms signed by the Grievant. The electronic trail authorizing payment leads only to the Grievant. She and she alone caused the payments to occur.

The Employer placed great trust in the Grievant when it gave her the clearances needed to perform her job as a Program Specialist. That trust was lost by the Grievant. Because the Grievant failed this trust, the Employer had no choice but to discharge her at that time.

For these reasons, the discharge should be upheld and the grievance be denied.

#### **ANALYSIS OF THE EVIDENCE**

Termination from employment is, to use a common expression, "capital punishment" for the Grievant, as it involves her livelihood, reputation, employee rights, and future job opportunities. Due to the ramifications of termination, the Parties have agreed in Section 15.9 of the Contract that there must be "just cause" to discharge an employee.

It is generally the function of an arbitrator in interpreting a contract provision which requires "just cause" as a condition precedent to discipline not only to determine whether

the involved employee is guilty of the wrongdoing as charged by the employer but also to safeguard the interests of the disciplined employee by making reasonably sure that the causes for discharge were just and equitable. The term "just cause" implies a standard of reasonableness under the unique circumstances of each case. Employees will not be disciplined by action which is deemed by an arbitrator to be arbitrary, capricious, discriminatory, unduly harsh, or disproportionate to the proven offense committed by them.

Specifically, the Grievant's Notice of Discharge dated August 12, 2008, indicates that the reasons given by the Employer for discharging the Grievant was her misuse of her position and that she falsified system records to pay herself "respite care" payments that were not owed to her. The Employer alleges that the Grievant's actions violated County Personnel Rule, Causes for Disciplinary Action (Discharge, Suspension Without Pay and Demotion), Section 24.2, Examples of Just Cause for Disciplinary Action. (Employer Exhibit #3). Section 24.2 contains examples that are declared to be "just cause" for disciplinary action, up to and including discharge. The Employer claims that the Grievant's conduct violated Examples (i) engaged in conduct unbecoming an officer or employee of the County; (j) violated any lawful and reasonable regulation, order, rule or directive made

or given by a supervisor; and (r) breached standards of conduct applicable to the employee's profession. (Id., p. 24c).

The County also alleges that the Grievant's conduct was in violation of the County Covenant of Ethical Responsibilities which state that all employees shall strive to:

Demonstrate honor, truthfulness, integrity, honesty, and propriety in all activities and relationships in order to inspire respect, trust, and confidence.

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Assume responsibility and accountability for our individual decisions, for the foreseeable consequences of actions and inactions.

(Employer Exhibit #4, p. 1).

The Grievant, on the other hand, alleges that she is not guilty of misusing or misdirecting County funds, and she did not commit a breach of trust as an employee in the County by receiving the respite payments.

The Arbitrator has spent numerous hours reviewing the lengthy testimony of the witnesses called during the two days of hearing. He also spent an enormous amount of time reviewing the numerous documents presented by the Parties that, for the most part, contained statements by the investigators of those individuals that they interviewed in this case. This entire review of the evidence was done to ascertain the credibility of the witnesses supporting the Grievant's discharge versus those

witnesses that support the Grievant's reinstatement to her former position.

The Arbitrator's overall impression from reviewing the evidence is that there were considerable inconsistencies in testimony, and contradictory and conflicting testimony between the witnesses and the documentation presented through these witnesses. In such situations, the Arbitrator was required to determine whether pertinent testimony and documentation, which appears to be inconsistent, conflicting, and contradictory, is made because of fallible memory or whether it is based on what appears to be a deliberate desire to evade and mislead the truth of the matter asserted.

It must be remembered that the events that resulted in the Grievant's discharge occurred during the summer of 2004. These events were first investigated by the County investigators in late 2007 and early January 2008, with the investigation being completed in July 2008. The arbitration hearing did not occur until approximately sixteen months later. Thus, we have over a five year period for witnesses to recall what occurred in 2004. Consequently, due to the element of elapsed time, it is reasonable that the myriad of inconsistent, conflicting, and contradictory evidence is attributable to the fallible memory of the witnesses.

The two day hearing was emotionally charged because of the accusations made by the key witnesses toward each other. The key witness for the Union is the Grievant and the key witness for the Employer is Ms. Reynolds. They have diametrically opposing testimony. This resulted in heated accusations between the Grievant and Ms. Reynolds over their work relationship as to the involvement and the care of the foster children by the Grievant.

Specifically, the Union alleges that the investigation of the payments and subsequent termination of the Grievant occurred in retaliation for the Grievant questioning Ms. Reynolds' poor decision to place the oldest child in an unlicensable, unsafe home and in proximity of her former abuser. The Union also claims that Ms. Reynolds retaliated against the Grievant because the Grievant refused to exclude herself from the lives of the children. Finally, the Union alleges that the investigation of the payments and subsequent termination of the Grievant was predicated on Ms. Reynolds in retaliation for raising the issue of Ms. Reynolds' poor placement decisions to Ms. Reynolds' peers and superiors in the County. The County, on the other hand, claims the investigation, which resulted in the Grievant being discharged, was not motivated by the "personal feud" between the Grievant and Ms. Reynolds. Instead, the County alleges that the Grievant was discharged for "just cause" for misusing her

position and falsifying system records to pay herself respite care payments not owed to her.

Whether the investigation was triggered by any of these Union's accusations is noteworthy but does not prove, standing alone or any combination, that the Grievant is innocent of any wrongdoing in this case. Whether the Grievant and Ms. Reynolds like or respect each other is secondary to the paramount issues at hand in this case.

There was potentially three issues before the Arbitrator. The first issue is whether Ms. Reynolds approved the respite and the related Special Requisitions for double payment of foster care payments on the respite days. If sustained, the second issue becomes whether the Grievant was entitled to the payments. Finally, if any wrongdoing by the Grievant is proved, what should be the appropriate remedy.

The pivotal issue in this case is whether Ms. Reynolds approved respite or the double payment. The evidence establishes that Ms. Reynolds in her role overseeing the case management of these children and supervisor of the children's social worker, Ms. Cotton, approved the respite verbally prior to the children coming to stay with the Grievant. The Grievant added the respite notes to the Special Requisitions (Employer Exhibits #8A, 8B) to pay fostercare provider Celeste and Barb, which were approved by

Ms. Reynolds by her signature on September 3, 2004. The Grievant added the respite notes and was paid respite by virtue of Ms. Reynolds' signature. Ms. Reynolds' signature authorized these payments to the Grievant. Ms. Reynolds' signature on the 2004 Special Requisitions constituted approval of respite or the double payment of fostercare.

There is corroborating evidence that in addition to Ms. Reynolds reviewing the Special Requisitions, they were also reviewed by a second supervisory level administrator, Sharon Bourne, Accounting Support Supervisor, Accounts Payable Within Accounting Unit. Ms. Bourne initially testified that the double payments were not allowed and she had never seen the Special Requisitions until her January 22, 2008 interview. However, there is the February 26, 2008 interview statement of Account Clerk Fladeboe which refutes the testimony of Ms. Bourne. Ms. Fladeboe stated in her interview that she brought the Special Requisitions to Ms. Bourne for her review and approval. Ms. Bourne saw the Special Requisitions, with the memo notes, the provider and children's name, with the Grievant as the preparer and Ms. Reynolds as the approver. Ms. Fladeboe recalled that Ms. Bourne reviewed the Special Requisitions, noted Ms. Reynolds signature, and confirming Ms. Reynolds had the authority to make the double payment, directed Ms. Fladeboe to pay the stated

amounts on the Special Requisitions. Ms. Fladeboe's interview states that she brought the Special Requisitions to Ms. Bourne for approval as they were not routine for Ms. Fladeboe.

(Employer Exhibit #13, first paragraph, page 10 of 11). The interviewers found Ms. Fladeboe to be credible. (Id., page 7 of 7).

The Grievant's claim that Ms. Reynolds approved the respite and the related Special Requisitions for double payment of fostercare payments on the respite days is further substantiated by the testimony of Union witness, Kathy Kane, Accounting. Ms. Kane testified that in August/September of 2004, she recalls the Grievant telling her that Ms. Reynolds had approved the respite and double payment at the time in 2004, after she overheard the Grievant talking to Ms. Reynolds. She also testified to seeing the Special Requisitions on the Grievant's desk in 2004.

Thus, there is overwhelming proof that Ms. Reynolds knew of the scope and contents of the Special Requisitions before she signed them, approving of respite and double fostercare payments.

Even assuming arguendo that Ms. Reynolds was unaware of the content of the Special Requisitions providing the payments, she still is held responsible. It is axiomatic in law that when one party meant what the contract clearly says and the other intended

something else, the former should be adopted. The parties are presumed to have understood the terms used, and there can be no relief to one because he/she failed to realize the full implication of the language used. Applying this principle to the instant matter, Ms. Reynolds is held responsible for signing and approving the payments. She should have realized the implications (payments) appearing on the Special Requisitions before approving of them by her signature.

It is undisputed that the Grievant did make the necessary changes in the computer system to allow the respite to be paid immediately upon return to work on August 23, 2004, after providing respite care for these children and prior to the fostercare payments being made on September 3, 2004. The Grievant did request that the PIF from fostercare providers (Celeste and Barb) for the month of August 2004 be intercepted and redirected to her for further processing. The Grievant did alter the PIF to a Special Requisition so that Celeste and Barb could be paid for the entire month of August 2004. The Grievant was paid by County CHS for respite care for those days she had the four children in August 2004.

While the August 2004 respite was paid 7-9 days (August 24, 2004) ahead of the fostercare provider payment (September 3, 2004), this practice was not unusual. The evidence establishes

that respite care is paid prior to fostercare payments to providers. The usual pay practice is that fostercare payments are always paid at the beginning of the month for the month prior after the submission of the PIF by the provider. The use of the Special Requisitions to pay the fostercare providers is required for the CSP Services payment process when a double payment of fostercare and respite days has been approved, as in this case. This was routine, if not frequent, and timing of the payments made to the Grievant in this case was not exceptional, unique, or unusual.

Having found by the evidence that Ms. Reynolds approved the respite and the related Special Requisitions for double payment of fostercare payments on the respite days, the second issue becomes whether the Grievant was entitled to the payments. In August 2004, the Grievant revealed to Social Worker Cotton that she intended (or had) paid herself respite care because she deserved it for watching all four children. In the past, the Grievant had been a "stickler" for no double payments. Normally, double payments are not made for fostercare providers, but rather the payments are reduced accordingly to the amount of time the children are actually being cared for by the providers. Thus, if children are absence from a fostercare provider, that provider is not paid, but the provider caring for the children is paid.

The record clearly shows that the Grievant could have survived reducing the pay of foster parent Celeste, as they were friends, and especially given the fact that the Grievant originally claimed only one of the two girls, which would have left Celeste with full foster payment for one girl and 22 of 30 days payment for the other after respite days were subtracted from her check. Celeste would likely contact the Grievant directly for the explanation of the reduction. The Grievant could find a way to resolve it with Celeste if an issue remained.

The same cannot be said about foster parent Barb. She was not a friend of the Grievant and that she clearly expected full pay. After Social Worker Cotton reminded the Grievant of this fact, the Grievant realized she had to take action to ensure that Barb was paid in full. The Grievant had just learned that others at CHS, including Ms. Cotton, did not agree with her that she "deserved" to be paid respite for the days in question, and her previous assumption that she could receive these payments were just wrong.

The Grievant's decision to seek payment opened the door for her to submit a second claim for the other girl and pay foster parent Celeste in full. The Grievant made the needed changes on September 2, 2004, changing the authorizations in the system for the oldest child so she could be paid respite, and creating the

Special Requisitions with the added notes that would satisfy the accounting staff so that she could receive the payments.

Arguably, the Grievant did not deserve the payments. In any event, Ms. Reynolds approved the payments. This leaves the appropriate remedy.

A factor traditionally considered by arbitrators when determining whether just cause exists is whether the penalty is reasonably related to the employee's record and the gravity of the alleged offense. Enterprise Wire Co., 46 LA 359 ; IBEW Local 97 v. Niagara Mohawk Power Corp., 143 F.3d 704, 710 (1998) (citing F. Elkouri & E.A. Elkouri, How Arbitration Works, 670-86 (4th ed. 1985)). "Some consideration generally is given to the past record of any disciplined or discharged employee. An offense may be mitigated by a good past record and it may be aggravated by a poor one. Indeed, the employee's past record often is a major factor in the determination of the proper penalty for the offense." Elkouri & Elkouri, How Arbitration Works, 983 (6th ed. 2003).

The Grievant has been a dedicated employee for the Employer for 19 plus years. Unfortunately, her work record has been tainted by a recent ten-day suspension without pay in 2006. On October 10, 2006, the Grievant received this suspension without pay for representing herself as a County supervisor to two

other counties performing a reference check on a former County employee. The Grievant also provided false and potentially misleading information regarding the reason this former employee was discharged from his employment with the County and also misrepresented the nature of this employee's work performance. (Employer Exhibit #5). The Grievant's actions were found to have violated Personnel Rule 24.2(i) and 24.2(r). In addition, her actions were in violation of the County Covenant of Ethical Responsibilities. These are the same violations that are contained in the Grievant's August 12, 2008 discharge letter. Unlike her discharge, the Grievant did not grieve her ten-day suspension without pay.

"Where an employee is guilty of wrongdoing, but management is also at fault to some respect in connection with the employee's conduct, the arbitrator may be persuaded to reduce or set aside the penalty assessed by management." Elkouri & Elkouri, How Arbitration Works, 1000-01 (6th ed. 2003). Here, even if the Grievant was not entitled to the payments, Ms. Reynolds approved of them. Thus, both the Grievant and the Employer are equally at fault in this case.

Clearly, the Grievant's actions cannot be condoned by the Arbitrator but, at the same time, the County's punishment of discharge is unwarranted. To discharge the Grievant in light of

the unique facts and circumstances surrounding this case would be excessive. It would represent an overkill on the part of the County. The appropriate remedy is reinstatement with no back pay.

**AWARD**

Based upon the foregoing and the entire record, the grievance is sustained in part. Within twenty (20) business days of the receipt of this Award the County shall reinstate the Grievant, Dawn Flores, to her former position without any back pay. The effective date of her termination to her date of reinstatement shall be construed as a disciplinary suspension without any back pay. All other remedies sought by the Union, on behalf of the Grievant, are hereby denied.

  
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Richard John Miller

Dated January 14, 2010, at Maple Grove, Minnesota.