

IN RE ARBITRATION BETWEEN:

AFSCME Council 5,
and
State of Minnesota.

DECISION AND AWARD OF ARBITRATOR
NON-PRECEDENTIAL EXPEDITED ARBITRATION
Janine Betts grievant

APPEARANCES:

FOR THE STATE:

Joy Hargons, Labor Relations Representative Principal
Katherine Hanson, HR Consultant
Lyle Mueller, Financial Mgr. MPCA
Shelah Shilts, Office Supervisor

FOR THE UNION:

Christi Nelson, Field Representative
Janine Betts, grievant

PRELIMINARY STATEMENT

The hearing was held April 9, 2010 at the AFSCME office. The parties submitted stipulated facts that were reviewed along with the oral and documentary evidence presented. Briefs were waived.

ISSUES PRESENTED

The parties stipulated to the issue as follows: Did the Employer have just cause to issue a 1-day suspension to Janine Betts? If not what would the appropriate remedy be?

CONTRACTUAL JURISDICTION

The matter was held pursuant to the Expedited Procedure in the letter dated March 12, 2010. The parties stipulated there were no procedural issues and the matter was properly before the arbitrator.

STATE'S POSITION:

On April 6, 2009 the grievant accepted a collect phone call on her work phone and while on duty from her son from the Olmstead County Jail. Instead of telling the son to call her back on her personal cell phone the grievant took the call and spoke for approximately 10 minutes. When the Reliant Phone Company contacted the grievant for a billing address she gave them her work address.

The State contended that the grievant's actions obligated the State for the bill and that even though the bill was only \$2.09 it was a serious breach of policy and ethics for her to give the State's address for billing. Moreover, the grievant never spoke to her supervisor nor did she advise the State that she had accepted the call or that she had used the State's address.

Further, when the phone company sent the bill to the MPCA office in Rochester it did not contain the grievant's name and there was no way for the other personnel in the office to know that the grievant had accepted these charges. Accordingly, they sent the bill for payment to the St. Paul office where it was eventually paid even though it was not clear who had authorized the charges. In mid May 2009 an invoice for the collect call was received in the Rochester PCA office and the grievant took that bill and put it in her pocket. She then forgot about it and did not pay it. On June 10, 2009 the agency received an invoice dated 4-8-09 in the St. Paul office indicating that the bill would be sent to collections. The grievant paid the bill only after she knew she was being investigated.

The grievant has been warned repeatedly about excessive personal phone calls and that it has been the subject of complaints by her co-workers. See Letter of Expectations. The degree of discipline is thus reasonable and should be upheld.

UNION'S POSITION

The Union acknowledged that the grievant accepted the call but asserted that there is no parent on the face of the Earth who would not have accepted an emergency call from their child from a jail. It was unreasonable to expect her to have him call her back. Moreover, he may not have been able to call her back for at least two reasons: it was from a jail and a person who has been arrested only generally gets one phone call. Further, it may not be possible to accept a collect phone call on a cell phone. The grievant told her son not to call her on the work number again and he has not.

When contacted by the phone company the following day she told them to use her home address for billing. The phone company said they could only use the address where the call was made so she told them to send it to the PCA office and put her name on it. They failed to do that and sent the bill to the office without any identifying name. The grievant did not see a bill prior to May 26, 2009 and immediately acknowledged the bill was hers and took it with the intention of paying it promptly.

The Union contended that she paid the bill on June 18, 2009 and in fact paid the bill *before* she knew there was any sort of investigation pending. The investigation was done on June 22, 2009. The grievant never knew until the hearing that the State had paid the bill too, resulting in a double payment to the phone company. The Union contended that the State should be ashamed of itself for spending so much time on a \$2.09 bill; some 40 or more hours for the investigation and dozens more by senior staff members.

The Union finally contended that the grievant's phone use had to do with her calls out; not those coming in and that this was a simple case of miscommunication with no intention of defrauding the State or having it pay for a personal obligation.

DISCUSSION

The Union's contention that as a parent it was reasonable to accept the call has merit. Under these circumstances it would have been unreasonable for the State to expect her not to. Further, the letter of expectation did not cover this emergency situation. Moreover, the question of just cause rises or falls on *these* facts. The letter of expectations would at best be considered to determine the degree of discipline depending on whether the elements of just cause are present to sustain the charges here.

There was no evidence that the grievant intended to defraud the State or shirk her responsibility for these charges. She gave credible testimony that she told the phone company to use her home address but they refused. She gave credible testimony that she told them to put her name on the bill; the original of which was apparently received before May 26, 2009 and has not been located, but they failed to do that and billed the Rochester PCA office. This contention by the Union was neither refuted, nor was it surprising. Co-workers apparently already knew about the bill when it appeared on May 26, 2009 and one of them questioned why "we keep getting this bill" or words to that effect.

The grievant paid the bill on June 18, 2009 and this was before she was aware of the investigation. The record also reflects that she paid the bill within about 3 weeks of getting it, i.e. May 26th to June 18th and this was not unreasonable. There was no evidence of deception on this record.

The Union contended that the small size of the bill should also be taken into account. Size does not matter. If an employee attempts to obligate the State for a personal bill this would be a serious matter irrespective of the size of it. It is unfortunate that the bill was apparently paid twice but neither the grievant nor the State knew the other had paid it. Any "fraud" here is on the part of the phone company by accepting money twice for the same bill.

The grievant should however have notified her supervisor that she accepted the call. Her embarrassment was understandable but she would not have had to divulge the reason for the call nor any of its details. Based on this lack of communication, there was thus cause for some discipline.

There was not just cause for a *suspension* on this record. The Rules of the Expedited Procedure do not call for extensive analysis but suffice it to say that the State failed to support the degree of discipline for the one matter the grievant was shown to have done wrong (i.e. failure to notify her supervisor of the bill). It was clear that the basis for the discipline was grounded on the allegation that there was deception by the grievant and an intent to have the State pay for this instead of owning up to her obligation to do so. As noted, that latter allegation was not proven on this record. However, a formal written reprimand is warranted for the failure of communication here.

AWARD

The grievance is **SUSTAINED IN PART AND DENIED IN PART**. The discipline shall be reduced to a written reprimand that is to be placed in the grievant's employment record pursuant to the labor agreement. The grievant shall be made whole for lost wages and contractual benefits.

The parties' procedure calls for the "losing party" to be responsible for the arbitrator's bill. Here the discipline was split so the parties shall be equally responsible for the arbitrator's fee set forth in the billing served along with this Award herein.

Dated: April 19, 2010

Jeffrey W. Jacobs, arbitrator

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