

In the Matter of the Grievance Arbitration Between

Law Enforcement Labor Services, Inc.
Amanda Jensen, Grievant,

And

County of Mower, Employer

Before:

Harley M. Ogata

BMS Case No. 10-PA-0287

Date and Place of Hearing:

June 25, 2010
Mower County Government Center
Austin, Minnesota

Date Briefs submitted:

July 12, 2010

Advocates:

For the Union:

Isaac Kaufman
Law Enforcement Labor Services, Inc.
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For the Employer:

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Factual Background

This matter came before this arbitrator under the grievance procedure contained in the collective bargaining between the parties. The parties agreed that the matter was properly before the arbitrator.

The facts in this matter are largely not in dispute. The grievant was given a one-day suspension under these facts. The union grieved the suspension as being without just cause and seeks an alternative remedy.

Amanda Jensen (grievant) is a dispatcher for Mower County. At the time of the facts relevant to this matter, she had been employed for a little over one year.

Mower County dispatches for the county and for the city of Austin. On the night in question, August 27, 2009, the grievant was dispatching for the county. There was a trainee dispatching for the city of Austin. Also present in the room was a trainer who was patched in to the city dispatch channel (Brienna Leif) by a headset. Leif could hear the county radio channel out of the ear that was not covered by the headset. An Austin city police officer, April Kline, was also present in the room.

Jeff Karlen, an on-duty Mower county deputy, radioed the grievant that he was stopping a car. Karlen radioed the license plate number and told her “You don’t need to read it back just hold on to it for right now.” Karlen’s partner, Deputy Tom Mensink, radioed that he would be assisting Karlen.

Following standard procedure, the grievant ran a check on the license plate and discovered that the car was stolen. She then told Officer Kline and Leif of this fact. Both Kline and Leif were following the radio dispatch. Both Officer Kline and Leif told the grievant that she needed to inform the deputies that the car was stolen. The grievant replied that she believed Karlen probably already knew that or that she was pretty sure that he had run the plate himself, or something to that effect. In any event, the grievant did not immediately inform the Deputies that the car was stolen. Both Kline and Leif repeated to the grievant that she needed to inform the deputies of the fact that the car was stolen. Leif was the dispatch supervisor on duty that night.

The fact that the grievant was failing to give the information to the deputies concerned Officer Kline. After about a minute of Kline and Leif informing the grievant to give the info and the grievant’s continued failure to comply, Officer Kline left the room to provide more backup to the deputies at the scene.

About six minutes after first being asked to run the license plate, the grievant radioed the deputies to confirm their safety. The deputies made contact

back to inform the grievant that they were safe. The grievant still did not inform the deputies of the fact that the vehicle was stolen.

Deputy Karlen radioed the driver's license of the person in the stolen vehicle and asked to have it run. The grievant discovered that there was an outstanding felony burglary warrant for the arrest of the driver. At that time, a little over 7 minutes after first being provided with the license number by Deputy Karlen, the grievant informed the Deputy that the car was stolen and that there was an outstanding warrant for the driver's arrest.

Officer Kline was still upset enough about the grievant's failure to timely inform the deputies of the fact that the car was stolen that she told her supervisor about the events that had transpired in the dispatch room. Kline's supervisor was also present at the scene of the arrest, having responded in backup to the stop.

Discussion

As stated earlier, the facts of this matter are basically not in dispute. At issue is whether the grievant's failure to immediately inform the deputies that the vehicle being stopped was stolen provides just cause to issue a one-day suspension. For the reasons stated below, the arbitrator finds that there is just cause for the discipline.

The central argument posited by the union in this matter is that the grievant exercised reasonable judgment in not informing the deputies immediately of the fact that the vehicle was stolen, given the unusual instructions given her by Deputy Karlen to not read it back and hold on to it for right now. The arbitrator disagrees with this position.

First, it is undisputed that her immediate supervisor, Leif, informed the grievant more than once to inform the officer that the vehicle was stolen. It is also undisputed that Austin city police officer Kline told the grievant the same thing. The grievant's failure to follow through, despite the repeated attempts by Leif and Kline, is inexcusable. At the hearing, the grievant did not provide an adequate explanation for this repeated failure.

The grievant's position in this matter was that she was exercising reasonable judgment, based on the information that she was provided by Deputy Karlen. However, it is clear that the dispatcher's job is not to exercise judgment as to what information should be given to the deputies. Rather, the dispatcher should give the information to the deputies and let them exercise their judgment as to what to do with the information.

The training manual concerning traffic stops makes clear what the dispatcher's duties are in this regard. That document clearly states if a license check reveals that there is an outstanding warrant, the dispatcher must notify the

officer at the scene that there is a code green. Code green is veiled language indicating that there is a felony warrant and that the officers should proceed accordingly. There is no question that the grievant failed to follow this procedure in a timely manner here.

Both the employer's and the union's witnesses agreed that the stop would have been handled entirely differently had the deputies known that the vehicle was stolen. If the vehicle was stolen, the officers would have followed felony stop procedures. In that event, the deputies would have stayed by their squad car, ordered the suspect to throw the keys out the window, ordered her to step out of the car and place her hands on the roof and approached her with guns drawn. They would have taken these precautions under departmental policy regarding felony stop procedures designed to ensure the safety of the deputies. However, they could only proceed accordingly if they had the correct information. It is that information that the grievant failed to give to the deputies.

In this regard, the arbitrator finds the testimony of Deputies Karlen and Mensink that they were not in any danger as a result of the grievant's failure to timely inform them of the fact that the vehicle was stolen to be nonpersuasive. The Deputies and the grievant miss the point. The dispatcher's job is to give the deputies the information that the vehicle was stolen. She failed to perform this ministerial duty in a timely fashion. This failure, and this failure only, is the subject of this arbitration and the reason for the suspension.

The union also finds fault with the employer's investigation. It cites the fact that the deputies were never interviewed and that the grievant was only interviewed at the time she was being administered the discipline. The arbitrator agrees that it would have been fairer to hear the grievant's side of the story before making the decision to suspend. However, the grievant was given an opportunity to tell her version, but offered nothing that would mitigate the discipline. Under the circumstances, the arbitrator finds that any fault that can be found in the investigation did not result in any prejudice to the grievant.

Finally, the arbitrator finds that a one day suspension is not excessive under these facts. The union argues that the arbitrator should not consider the grievant's past verbal warning as prior discipline because verbal warnings are not listed as a form of discipline under the collective bargaining agreement. However, there is no question that some form of discipline is warranted under these facts. Therefore, if the arbitrator agrees with the union's argument, there would be no choice but to issue a suspension, which is the minimum discipline identified under the agreement. In any event, given the seriousness of the infraction, a one day suspension is the minimum this arbitrator would uphold under these facts, with or without the potential past "discipline."

The grievant's demeanor at the hearing also contributed to this decision upholding the discipline as well. It appeared to the arbitrator that the grievant neither understood nor acknowledged the legitimate concerns of the employer

regarding the facts of this case. In the mind of the arbitrator, there is little question that the grievant made a mistake in not giving the deputies the information regarding the fact that the vehicle was stolen immediately after she found it out. The grievant never appeared to acknowledge this at the hearing.

The grievant is a very new employee. Nonetheless, she appeared to believe that her position on this matter was more correct than her immediate supervisor that night (Leif), her supervisor's supervisor (Communications Supervisor Marlys Sorlie) and the Mower County Sheriff herself, Sheriff Terese Amazi. Given her relatively brief experience, this is troubling considering the seriousness of the infraction. A one day suspension is a serious form of discipline, and the arbitrator hopes the grievant understands why it was imposed and uses it to guide future conduct. Discipline should be imposed to correct future behavior but the grievant did not show an understanding that her behavior was incorrect and that she would do her best to conform her actions to departmental expectations in the future. Thus, the arbitrator found no mitigating circumstances that would warrant a reduction in the penalty.

Decision

For the foregoing reasons, the grievance is denied and the one day suspension given to the grievant is upheld.

Dated: August 5, 2010

A handwritten signature in black ink, appearing to read "H. Ogata", with a long horizontal stroke extending to the right.

Harley M. Ogata