

IN THE MATTER OF ARBITRATION BETWEEN

AFSCME Council #5 [Teresa Gay]

And

**State of Minnesota, Department of Human
Services/Minnesota State Operated
Community Services (MSOCS)**

**Opinion and Award
BMS Case No. 10-PA0692**

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of AFSCME Council #5 [Teresa Gay]

Gladys McKenzie

Laurie Johnson

On behalf of State of Minnesota, Department of Human Services

TudyFowler

Rebecca Wodziak

JURISDICTION

In accordance with the agreement between Minnesota State Employees Union, AFSCME, Council #5, AFL-CIO and the State of Minnesota, July 1, 2007 through June 30, 2009; and under the jurisdiction of the State of Minnesota Bureau of Mediation Services, St. Paul, MN, the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on July 19, 2010. No post hearing briefs were filed by the parties. The decision was rendered by the arbitrator on August 30, 2010.

ISSUE AT IMPASSE

The Union and the State agree that the issue is:

Did the State of Minnesota have just cause to suspend Teresa Gay for 10 days? If not, what is the remedy?

APPLICABLE CONTRACTUAL PROVISION

Article 16- Discipline and Discharge

Section 1. Purpose

Disciplinary action may be imposed upon an employee only for just cause.

Section 3. Disciplinary Procedure

Disciplinary action or measures shall include only the following:

1. Oral reprimand;
2. Written reprimand;
3. Suspension;
4. Demotion;
5. And Discharge.

APPLICABLE POLICY PROVISION

General Harassment Policy

Prohibition of General Harassment and Compliant Procedures

Purpose: To establish a policy on prohibition of general harassment and to establish procedures for reporting and reviewing and/or investigating such complaints.

Authority: The Department of Employee Relations (DOER) Administrative Procedure 1.2 (harassment prohibited).

Policy: DHS shall provide an environment free of verbal, psychological, social or physical harassment. Employees who believe they have been harassed by other employees or agency customers or clients may file complaints (as described in this document) against those persons.

Definitions:

- **General harassment:** An egregious, repeated or persistent pattern of verbal, psychological, social or physical action, which results in intimidation, ridicule, entrapment, degradation, coercion or harm with the purpose or the effect of unreasonably and substantially interfering with and/or jeopardizing an individual's employment, or unreasonably creating

an intimidating, hostile or offensive work environment, providing the harassment is not based on any protected characteristics.

- **Protected characteristics:** Race, color, sex, disability, religion, creed, national origin, age, marital status, status with regard to public assistance, sexual orientation, political activity and membership or activity in a local human rights commission.
- **Employee:** As used in this document, the word employee includes DHS employees, interns, volunteers and independent contractors.

Policy violations:

1. The commissioner shall:
 - A. Implement the provisions of this policy.
 - B. Ensure that employees are fully aware of this policy.
2. Each employee shall:
 - A. Report allegations of harassment to his/her immediate supervisor, to the Office for Equal Opportunity Director, or to the Human Resources director by completing the Central Office Discrimination/Harassment Complaint Form (available in the Office of Equal Opportunity, the Human Resources Division or on the DHS Intranet site), or by submitting a written statement detailing the specific action involved, type of harassment (general or protected characteristic), persons responsible and requested remedy.
 - B. Do not intentionally use this complaint procedure for reasons of personal malice or abuse toward another employee.
3. Supervisors shall:
 - A. Review complaints with staff of the Office for Equal Opportunity to determine if the complaint alleges harassment based on the employee's protected group characteristics, or if there is some other indication that the issue might be related to the employee's protected group characteristics.
 - B. Investigate and resolve complaints of general harassment.
 - C. Coach and counsel employees or take disciplinary action, up to and including discharge, when warranted.
4. The Office for Equal Opportunity director or designee shall:
 - A. Review all complaints to determine whether the complaint is general harassment or based on protected characteristics.
 - B. Handle the complaint to its conclusion if the determination is made that the alleged harassment is related to protected characteristics.

(Refer to Procedure Manual #58.2 – Prohibition of Discrimination.)

- C. Refer the complaint to the Human Resources director if the determination is that the alleged harassment is not related to protected characteristics.

5. The Human Resources director or designee shall:

- A. Conduct an appropriate review of the complaint, refer the complaint to the employee's supervisor or, if the complaint is related to an action of the supervisor, to a higher level of supervision for review. The review shall begin within 15 working days from the date the complaint was received by the Human Resources director. The review may include any or all of the following:

- Interview the complainant.
- Interview other appropriate individuals.
- Gather relevant information.
- Write a summary.
- Discuss the situation with appropriate supervisory and managerial personnel.
- Provide a written statement to the complainant and/or to the person(s) charged with general harassment outlining the status of the review and whether action is to be taken.

- B. Ensure that appropriate levels of management implement any necessary actions. [Union exhibit #5].

FINDINGS OF FACT

1. By letter dated February 10, 2009, Ms. Teresa Gay, a five-year Human Services Technician with the Department of Human Services/MSOCS, was notified of a 10-day suspension. The letter in applicable part stated:

This letter is your notice that you are being issued a ten (10) day suspension effective **March 11, 2009 to March 24, 2009**. This action is being taken as a result of your violation of DHS General Harassment and Prohibition of Discrimination policies and specific responsibilities outlined in your position description.

Prior to this suspension being made final, you are entitled to request an opportunity to hear an explanation of the evidence against you, and to present your side of the story. This meeting is scheduled for February 13, 2009 at 10am, and will be held at MSOCS Vadnais Height Office, 3200 Labore Road Suite 104,

Vadnais Heights, MN 55110. You are entitled to union representation at this meeting, if you desire such representation, it is your responsibility to contact the union and arrange it. Please call Gina Viarello, Program manager, no later than 4 pm February 12, 2009 to confirm. Ms. Viarello can be reach [sic] at 651-278-8236.

On December 23, 2008, you met with Jamie Murphy, who was assigned to investigate this matter. You were informed of the nature of the investigation, provided a Tennessen Warning, and offered the opportunity for union representation, which you accepted. Paula Goetzke of American Federation of State, County, and Municipal Employees (AFSCME) provided this representation.

The investigation revealed in part by your admission that at least on one occasion you used the phrase "f***ing Ni*****" in the workplace.

You are reminded that you are expected to comply with all Department of Human Services and MSOCS policies and fulfill the responsibilities outlined in your position; failure to do so could result in termination of your employment. Please know this is your **last chance warning**.

It is imperative that you understand that your decision to use phrases and language such as this in the workplace is not acceptable and will not be tolerated; your actions create a hostile work environment. As a result of your behavior, this suspension and last chance warning is being imposed.

The State's Employee Assistance Program (EAP) is a confidential program available to help employees. An assessment and referral service is provided free of charge and all discussions are kept confidential. You are encouraged to contact them for guidance. They have offices statewide. EAP services can be accessed toll-free in greater Minnesota at 1-800-657-3719 and in the metro area at 651-259-3840. You can also obtain information at <http://www.mmb.state.mn.us/component/content/article/11>

If you wish to appeal this discharge, you may do so pursuant to the grievance procedure specified in your collective bargaining agreement.

Sincerely,

Sari Halabi

Community Residential Supervisor [State exhibit A]

2. The [Union and the State of Minnesota] have stipulated to the following:
 1. Ms. Teresa Gay was employed with the Minnesota Department of Human Services – Minnesota State Operated Community Services (MSOCS) program from January 26, 2004 to March 25, 2009
 2. MSOCS is a provider of residential (licensed foster care programs) and day training and habilitation (DT & H) services. In all, MSOCS operates 137 sites reaching to all Minnesota borders. MSOCS supports over 600 individuals in these programs and employs more than 1,300 employees.

3. The Ham Lake program is licensed as an Adult Foster Care program serving adult males with a diagnosis of moderate cognitive developmental disability and aggressive behaviors.
4. The three individuals supported in the Ham Lake program have the following characteristics:
 - CF – 5’7” Male approx 300 lbs; Caucasian. Age currently 28
Diagnoses – Moderate MR, Sexual Abuse of a child, Disruptive Behavior Disorder, Prader Willie and Morbid Obesity History of severe property aggression and aggression towards others.
 - JL – 6’0” Male approx 200 lbs; Caucasian. Age currently 28
Diagnosis – Moderate MR May aggress towards others but is very infrequent, more tantrum behavior
 - CB – 5’10” Male approx 240 lbs, Caucasian. Age currently 27
Diagnoses – Moderate, Attention Deficit Hyperactivity Disorder, Oppositional Differential Disorder Tantrum like behaviors
5. Ms. Gay’s position with MSOCS was as a Human Services Technician (HST).
6. Primary responsibilities of an HST include support of vulnerable individuals (minors or adults) in the following areas:
 - Activities of Daily Living (bathing, grooming, financial management, etc)
 - Household tasks (house cleaning, meal preparation, laundry, etc.)
 - Program/Care Plan implementation (following and implementing programs specifically designed to meet the individual needs of the persons under their care)
 - Communication, cooperation and networking with family members, county representatives and guardians.
 - Community Activities (religious activities, social events, etc)
 - Medication Administration
 - Health and safety
7. Prior to the February 10, 2009 10-day suspension, Ms Gay had received *no prior discipline*.
8. Ms. Gay’s 10-day suspension was issued on February 10, 2009 and served between March 11—March 24, 2009.
9. AFSCME filed a timely grievance on behalf of Ms. Gay saying the *incident did not happen as alleged and that she realized the comments were inappropriate*.
10. The grievance was filed timely and properly before the arbitrator.

11. Kitty Haley received no discipline as a result of this investigation
[Joint exhibit #2]

3. On December 29, 2008, Mr. Jamie Murphy, a Community Residential Supervisor with the Department of Human Services, filed his "Investigation Report" involving the incident. The Investigation report states in its entirety:

Investigation Report
Minnesota State Operated Community Services
Ham Lake

DATE SUBMITTED: December 29, 2008

SUBJECTS: Teri Gay, HST and Kathleen Halley, HST

ALLEGATION(S)

Hostile Work Environment

BACKGROUND

Sari Halabi, Community Residential Supervisor at Ham Lake, was notified that Teri Gay, HST had been making racist comments in the work place. In addition, Kathleen (Kitty) Haley, HST, had been accused of making sexist comments in the work place.

METHODOLOGY

The investigation was conducted by Mr. Jamie Murphy, Community Residential Supervisor. The following documents were reviewed:

- DHS General Harassment Policy
- Written statement from Teri Gay, dated 12/13/08
- Email from Kathleen Haley dated 12/17/08
- Ham Lake staff schedule 12/10/08 through 12/23/08

INTERVIEW SUMMARIES

Destin Anderson, HST Ham Lake

Mr. Anderson was interviewed in the staff office at the Ham Lake home on 12/22/08 at 10:45 am, by Jamie Murphy. Mr. Anderson signed the non-subject Tennessee warning. He signed the waiver of union representation. Mr. Anderson provided the following information:

- Mr. Anderson has worked for MSOCS for roughly 1 year and 3 months and at Ham Lake for 2 months.

- Mr. Anderson described the staff in the home as inconsistent, some have better communication styles. Some staff work very hard to make the clients' lives better, and others are "just here."
- Mr. Anderson stated that he has heard racist comments in the home. He stated that Teri Gay, HST was talking about people who live by individual #1's father. He stated that she used the "N word" (Nigger).
- Mr. Anderson stated that he has heard sexist comments in the home from other staff. He stated that Ms. Gay had said, "You need a click between your legs to get anywhere." He also identified Kathleen Haley, HST as making comments such as "Men are useless. Men are worthless." He stated that Ms. Haley and Ms. Gay go back and forth with each other making the comments.
- Mr. Anderson stated that he reported the comments to Joe Theroux, BA at Ham Lake, but did not let his supervisor know about the comments until there was one day that was especially bad for comments.
- Mr. Anderson is aware that there is a harassment policy in place.
- Mr. Anderson feels that the house is divided. He feels he is in a bad position because he is related to Joe Theroux. He feels that there are "a couple of bad seeds that are causing the problems."

Kathleen Haley, HST Ham Lake

Ms. Haley was interviewed in the staff office at the Ham Lake home on 12/22/08 at 12 pm by Jamie Murphy. Ms. Haley signed the subject Tennessen warning. She was represented by Paula Goetzke, AFSCME Local 390. Ms. Haley provided the following information:

- Ms. Haley has worked at MSOCS for 7 years. She has been with the Ham Lake home for 6 and a half years.
- Ms. Haley does not recall hearing any racist remarks being made at the home.
- Ms. Haley does not recall any sexist remarks being made, nor does she recall ever making sexist remarks in the home.
- Ms. Haley reported being confronted by the BA, Joe Theroux. He sent her several emails telling her that she was not cleaning good enough, and not buying the right groceries. Mr. Theroux told her that Sari Halabi threatened to kill him, he's taking sleeping pills, and cannot sleep. Mr. Theroux also told her that she was doing a better job, but there was room for improvement.
- Ms. Haley did report the issues in the home to her supervisor, Sari Halabi. She also spoke with the union asking what she should do.
- Ms. Haley has not witnessed her supervisor threatening anyone.
- Ms. Haley is aware of a policy on harassment.

- Ms. Haley feels that the issues with the BA have been going on for 5 months, and gotten progressively worse until Sari spoke with Joe.

Joe Theroux, BA Ham Lake

Mr. Theroux was interviewed in the staff office at the Ham Lake home on 12/22/08 at 1 pm by Jamie Murphy. Mr. Theroux signed the non-subject Tennessen warning. He was represented by Sheila Pokorny, MAPE business agent. Mr. Theroux provided the following information:

- Mr. Theroux has worked at MSOCS a little over three years.
- Mr. Theroux has worked at Ham Lake for 3 years in January. He is currently the lead staff/BA.
- Mr. Theroux has concerns with his co-workers, specifically rumor-milling, gossiping, not completing job duties, making racist comments.
- Mr. Theroux reported that Teri Gay, HST remarked, "I hate going to (Individual #1)'s dad's house because of those fucking niggers down there." The comment was made in front of Destin Anderson, HST. Ms. Gay also stated, "They say shit to us."
- Mr. Theroux has heard sexist comments in the home, such as "Another worthless male" and "Go lay down by your dish." When asked who made the comments, Mr. Theroux stated, "Kitty Haley."
- Mr. Theroux stated that he only sees Ms. Gay when she is taking Individual #1 out. He stated that he did not confront her on the racist comments when they were first made because he did not know what to say to her.
- Mr. Theroux discussed his concerns regarding Ms. Gay with his supervisor, Sari Halabi roughly a month ago. Mr. Halabi chuckled and said he would have to talk with her about it.
- Mr. Theroux stated he did not confront Ms. Haley because it's part of her nature, sarcastic all the time. It did not really bother him too much, as Ms. Haley is a rather negative person.
- Mr. Theroux has had other staff members come to him about concerns in the home. They have been yelling about Mr. Theroux when the clients are present. Mr. Theroux directed staff to not partake in it, especially around the clients. He did not recall if he had encouraged them to talk to their supervisor.
- Mr. Theroux stated that he has been threatened by his supervisor. Mr. Halabi wanted Mr. Theroux to make up a story about how they got a new bed for Individual #1. Mr. Theroux did not do the script that Mr. Halabi had requested. Mr. Theroux told Mr. Halabi not to ever do that to him again, and he thought Mr. Halabi was offended. Mr. Halabi said, "I could

kill you...you called me a liar.” Mr. Theroux did not take it as a threat at first, but has lost sleep over it since that interaction.

- Mr. Theroux stated that he does not directly supervise the other staff in the home.
- Mr. Theroux stated that he was aware of a policy on harassment.
- Mr. Theroux stated that Individual #1 reported to him that Ms. Gay said “Nigger” once.

Teri Gay, HST Anoka-Burns/Ham Lake

Ms. Gay was interviewed in the staff office at the Anoka-Burns home on 12/23/08 at 12 pm by Jamie Murphy. Ms. Gay signed the subject Tennessen warning. She was represented by Paula Goetzke, AFSCME Local 390. Ms. Gay provided the following information:

- Ms. Gay has worked for MSOCS for 5 years. She has worked with Individual #1 for almost 10 years, for his core team/parent visits.
- Ms. Gay described the Ham Lake environment as overall, good.
- Ms. Gay did not feel that all of the staff get along at Ham Lake. She has had staff tell her that Mr. Theroux has a power thing, nobody does anything right but him, and he’ll tell you so.
- Ms. Gay has taken Individual #1 to his father’s home in Columbia Heights several times. She stated that she has never made comments about his father’s home before.
- Ms. Gay stated that she enjoys taking Individual #1 on his visits and tries to make it a good time for him.
- Ms. Gay admitted that she has used the term “fucking nigger” on one occasion with one staff person (Ms. Haley). She states that she knows it was wrong and she should not have said it. Ms. Gay stated that there were not clients home at the time.
- Ms. Gay confronted Mr. Theroux on 12/11/08. He told her he was not happy with her using the term “Fucking Nigger” and that she is not the right kind of person to be working at the Ham Lake home. He also stated that he was going to do whatever he can to remove you from the Core Team. Ms. Gay told him that he is not her supervisor, and to discuss it with Sari Halabi.
- Ms. Gay let Mr. Halabi know that she was having problems with Mr. Theroux. Ms. Gay is aware of a policy on harassment.

ANALYSIS

- The DHS General Harassment Policy defines General Harassment as: as egregious, repeated or persistent pattern of verbal, psychological, social or physical action which results in intimidation, ridicule, entrapment, degradation, coercion or harm with the purpose or the effect of unreasonably and substantially interfering with and/or jeopardizing an individual's employment, or unreasonably creating an intimidating, hostile or offensive work environment, providing the harassment is not based on any protected characteristics.
- Ms. Gay's written statement matches her interview statements in regard to her confrontation with MR. Theroux.
- Ms. Haley's email matches her interview statement in regard to her confrontation with Mr. Theroux.
- Ham Lake staff schedule verifies that Mr. Theroux worked 7am-3pm, Ms. Haley worked 12pm-10pm, and Ms. Gay worked 2pm-8pm, on Thursday, December 11, 2008.

FINDINGS

- Ms. Gay admitted that she used racist remarks ("fucking niggers") among Ham Lake Staff.
- There was a confrontation between Ms. Gay and Mr. Theroux on 12/11/08.
- There was a confrontation between Ms. Haley and Mr. Theroux on 12/11/08.

CONCLUSIONS

NO Evaluation of whether MSOCS policies and procedures were followed

YES Evaluation of adequacy of policies and procedures

Policies are adequate

NO Evaluation of whether there is a need for additional staffing

Additional staff is not necessary at this time

NO Was there a need to take further action to protect the vulnerable adult?
Please describe:

Submitted by: Jamie Murphy
[Union exhibit #4]

Date: 12/29/08

4. Mr. Joseph Theroux, a five-year Human Services Technician employee, testified that when he was promoted he received resistance from Ms. Gay and another employee. He further

testified that approximately a year before he had heard Ms. Gay make "racist" statements, but did not bring this to anyone's attention because there were no other witnesses. He testified that in November 2008 he heard from another witness that Ms. Gay had made a racist comment.

Mr. Destin Anderson, a three-year Human Services Technician, testified that he heard Ms. Gay make a comment in the dining room of Ham Lake stating "I don't like going there [a certain resident's father's home] because of the nigger children." Mr. Anderson testified he was shocked, but didn't say anything. Mr. Anderson testified that Mr. Theroux said "Teri you can't talk like that." Mr. Anderson testified that Ms. Gay repeated it.

Ms. Teresa Gay testified that she loved her job and that she is quite good at it. Testimony at the hearing indicated that Ms. Gay has good rapport with a specific client she cared for. Ms. Gay testified that the dining room incident which Mr. Destin Anderson testified to "did not happen, it is not true." She testified she rarely worked with Mr. Anderson.

Ms. Gay testified that she did make a comment using the term "fucking niggers" on one occasion. That occasion was approximately one year before the complaint was made against her. She testified as she was driving to the home of her client's father, it was winter and a number of black children threw rock encased snowballs at her car. Ms. Gay's testimony was that she came to work early one day, shortly after the snowball throwing incident, and told Ms Kitty Healy, a fellow employee about the incident. Ms Gay testified she did, in fact, use the term "fucking nigger" as she described the incident to Ms. Healy. Ms Healy told the investigator months later that she did not recall Ms Gay making any racist comments. Ms Gay testified at the Arbitration hearing that she does not speak that way and that she is very sorry for using such language. Ms. Gay admitted to the investigator and at the Arbitration Hearing to using the language because she is "not a liar, was wrong and I admit to it." "But I don't talk like that and I understand that I am supposed to be a role model in my job." [Testimony of Ms. Gay at Arbitration Hearing].

5. The basic contention of the State of Minnesota Department of Human Services is that just cause does exist for a 10-day suspension of Ms. Gay for her admitted comment and for the comments she made later in the dining room of the residents to Mr. Theroux and Mr. Anderson. The State contends the investigation was fair. The investigator was not able to put specific dates and times on the allegations. The State contends that two witnesses, Destin Anderson and Joseph Theroux, heard her make a racist comment. The State contends that an employee of the

MSOCS cannot talk like this, especially in the home of a resident within possible earshot of a vulnerable resident. No evidence was offered to show that any resident heard her make such statements.

6. The Union contends there is not just cause to suspend Ms. Gay for 10 days. Ms. Gay is and has been a very good employee who has exceeded expectations. She liked the resident, he liked her. While the resident was aggressive, he was never aggressive towards Ms. Gay. Ms. Gay admits on one occasion that she used the term "fucking nigger" and that it was inappropriate. She denies that she ever made such comments in the dining room of the resident to Mr. Theroux and Mr. Anderson. The Union and Ms. Gay contend that the investigation was flawed by not laying out specific dates and times. The Union points out that not until the day of the Arbitration Hearing did Ms. Gay know the exact evidence against her. While Ms. Gay admits that making such a comment is inappropriate, both she and the Union contend that a 10-day suspension is excessive considering that she uttered the statement more than a year before any complaint was brought to a co-worker who cannot even remember the comment describing snowballs filled with rocks pelting her car. The Union asks that if there be any kind of discipline for the admitted racist statement a 10-day suspension is unjust; and that the discipline, if any, be lowered to coaching and counseling and that Ms. Gay be reimbursed for the 10-day suspension.

DECISION AND RATIONALE

The letter of suspension dated February 10, 2009 addresses Ms. Gay's use of the phrase "fucking nigger." "The investigation revealed in part your admission that at least on one occasion you used the phrase "f***ing Ni****" in the workplace." [See State exhibit A]. The concern of the state is the sensitivity of her job and the fact that it was made in the workplace where the resident lives. Ms. Gay admits that shortly after the snowball incident occurred she made a statement at the home of the resident to a co-worker about her car being hit with snowballs packed with rocks. She denies that anyone else heard this statement. Her co-worker, Ms. Haley, does not remember hearing this racist statement in the workplace. Ms. Gay denies ever making any racist statements in the dining room to Mr. Theroux and Mr. Anderson.

No dates were alleged by the state as to when the statements were made at the workplace. Neither Mr. Theroux nor Mr. Anderson was able to pinpoint precisely when such statements

were made. Neither filed a formal complaint at the time they heard the statements. Their testimony was elicited as a result of the investigation.

Ms. Gay admitted at the Arbitration Hearing to using the term "fucking nigger" to Ms. Haley shortly after the snowball throwing incident a year before the investigation. She denies she ever made statements to Mr. Theroux and Mr. Anderson in the dining room of the resident's home.

Neither Mr. Anderson nor Mr. Theroux made a complaint or wrote up an investigatory report on the day of or close to the day when the alleged the comments were made in the dining room.

On the other hand, by her own testimony, Ms Gay admits to making the inappropriate comment to Ms. Haley at the home of the residents shortly after the snowball incident. Ms. Gay testified that she made the comment more than a year before she received the 10-day suspension.

Further, she and the Union argue that a 10-day suspension is too severe taking account *that the comment was made to a fellow worker and, in fact, not within earshot of any residents.* Also, Ms Gay and the Union argue no evidence was adduced at the Arbitration Hearing that any resident heard the comment.

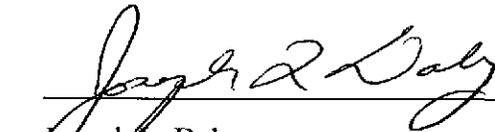
Taking Ms. Gay at her word it is held that a 10-day suspension is too severe for the admitted comment taking into account the circumstances and evidence adduced at the Arbitration Hearing. It is held that no evidence was shown at the Arbitration Hearing that any resident heard the comment. It is further held that the alleged comments in the dining room to Mr. Theroux and Mr. Anderson were not proven by a fair preponderance of the evidence, i.e. lack of date and time; no formal complaints made by Mr. Theroux and Mr. Anderson on the date she allegedly made the comments; the alleged comments are denied by Ms. Gay. It is held that the evidence of comments in the dining room to Mr. Theroux and Mr. Anderson is unsubstantiated and therefore is not taken into account for purposes of the remedy in this case.

On the other, Ms. Gay testified she understood the comment she admitted making at the home of the resident was inappropriate and that she was very sorry she said it. Her job is a sensitive job and such language is inappropriate for anyone, let alone someone in her position.

Based on the facts, the evidence and equity, the 10-day suspension is lowered to a five (5) day suspension without pay. It is ordered that Ms. Gay be reimbursed for five (5) days of lost pay.

August 30, 2010

Date



Joseph L. Daly
Arbitrator