IN RE ARBITRATION BETWEEN:

TEAMSTERS LOCAL 320

and

DAKOTA COUNTY

DECISION AND AWARD OF ARBITRATOR

JEFFREY W. JACOBS

ARBITRATOR

October 27, 2013

IN RE ARBITRATION BETWEEN:

Teamsters Local 320

and

Dakota County

DECISION AND AWARD OF ARBITRATOR
Desiree Chartrand grievance

APPEARANCES:

FOR THE UNION:

Kevin Beck, Attorney for the Union
Desiree Chartrand, Grievant

FOR THE COUNTY:

Pam Galanter, Attorney for the County
Nancy Hohbach, Deputy Employee Relations Director
Lt. Jodi Rolloff, Administrative Lt. Jail Division
Timothy Leslie, Chief Deputy Sheriff

PRELIMINARY STATEMENT

The hearing in the matter was held on September 18, 2013 at the Dakota County Administration Offices in Hastings, Minnesota. The parties submitted briefs that were received by the arbitrator on October 18, 2013 at which point the record was closed.

CONTRACTUAL JURISDICTION

The parties are signatories to a collective bargaining agreement covering the period from January 1, 2011 through December 31, 2012. Article X provides for submission of disputes to binding arbitration. The arbitrator was selected from a permanent panel maintained by the parties. The parties stipulated that there were no procedural arbitrability issues and that the matter was properly before the arbitrator.

ISSUES PRESENTED

The parties stipulated to the issues as follows: Did the County have just cause to suspend the grievant for one (1) day? If not what shall the remedy be?

COUNTY'S POSITION:

The County's position was that there was just cause to suspend the grievant for one day for her error on April 26, 2012 in failing to notify jail staff regarding a transport of inmates to the St. Cloud Correctional Facility. In support of this position the County made the following contentions:

1. The County asserted that the grievant has had a somewhat checkered history and has been disciplined for various violations of policy and other sorts of errors on 7 occasions in the past. These have included several warnings and suspensions; one of which was for 3 days and another for 5 days that all these must be taken into account in this matter. Some of these were not grieved and must be taken as part of her official record.

2. The grievant was given an oral reprimand for violating office policies and for her unsafe use of office equipment, a written reprimand for unsatisfactory performance during which she was warned to be careful and make sure that she followed all require work duties or face future discipline, a second written reprimand for failure to lock down her computer, a three day suspension for disrespectful comments about her supervisor, a 5 day suspension that was reduced as part of a settlement between the county and the union but still resulted in a 3 day suspension for making false statements about a supervisor and accusing him of having an inappropriate personal relationship with another staff member. The County asserted that the grievant, despite some good evaluations, does not have a clean work record by any means.

3. The County further asserted that the grievant has been trained on her position as a Program Service Assistant (PSA) requiring her to prepare all appropriate documentation for transporting inmates that have been committed to various Minnesota correctional facilities. There is a step-by-step process for doing this and the grievant was trained on this system. Moreover, the county noted that the grievant has successfully performed this task and knows how to do it. The issue is whether she is careful enough in making sure that all of the steps are done correctly and in a timely fashion. Further, that whenever she needs assistance in figuring out computer systems or other issues that help has been made available to her. The county's witnesses testified that they have helped the grievant on multiple occasions and that she understands her job. The County further asserted that her duties do not exceed those expected of anyone in her position and that in fact the person who held her job before the grievant was assigned to it was able to do it without error for years.

4. This case revolves around the failure to perform all of the necessary steps on April 27, 2012 to get inmates ready for transport to the St. Cloud Correctional facility. She admittedly missed the crucial step of telling the Dakota County jail staff which inmates had to be ready by 4:30 a.m. the next day. The county noted that the inmates have to be awakened, fed, dressed and cleaned, the room needs to be inspected and they then must be driven to Hennepin County in Minneapolis for transfer to a bus to take them to St. Cloud.

5. The county asserted that the grievant acknowledge that she did not perform this step and as a result the inmates were not ready in time and even though a deputy drove them to Minneapolis, they missed the bus to St. Cloud. This in turn caused extra expenses for the county both in time and mileage as well as a short staffing situation in the jail in Dakota County.

6. The county further asserted that the grievant acknowledged this and even sent an apology e-mail admitting her mistake to various county staff. She further acknowledged that there was no excuse for her error and apologized for the extra work and confusion she caused both to staff and to the inmates. She simply was not paying attention and missed a critical step in the process by which these inmates were to be transported.

7. The county further acknowledged that there was no need for a more extensive investigation of this due to the grievant's clear admission of guilt and based on the training and counseling she had already received on how to do this job. The county noted grievant acknowledged the error in her e-mail on April 30, 2012. Moreover, the grievant and several of her supervisors were at a training session when the error came to light on April 26th and they did discuss it with the grievant.

8. The county asserted that Chief Deputy Leslie reviewed the facts of the case and determined based on all the evidence he had that the grievant had indeed made this mistake, that it had caused the missed bus and caused the additional costs and scheduling difficulties noted above. Based on this he determined that a one day suspension given the nature of the error and the grievant's past history was appropriate.

9. The county countered the claim by the union that the grievant has not made any errors like this since the suspension was meted out and effectively asserted that the suspension was thus effective at getting the grievant to understand the error and to be more careful in the future. If discipline is intended to be corrective, then this suspension was thus effective. The County argued that the mere fact that the discipline worked does not erase the original violation nor does it provide grounds to simply overturn it – indeed that would have the opposite effect and send the wrong message to the grievant.

10. The County also noted that the grievant's performance was once at a good level but that since 2009 it has deteriorated until it was at a "needs correction" level. Eventually, due to the disciplinary actions taken the grievant has as of her latest evaluation achieved a "contributor" status, which is effectively a "meets expectations" level. Thus the disciplinary action as a whole is again doing what it is intended to do and provide the grievant with the correction she needs to conform her actions and to be more careful in her work and make sure these types of errors do not occur. The union also argued for a reduction in the level of penalty due to the grievant's long service to the county and her otherwise excellent evaluations.

11. The essence of the county's case is that the grievant admitted her error, the error was serious and caused cost and disruption to operations and that the one day suspension was both reasonable given her history and the seriousness of this error.

The County seeks an award of the arbitrator denying the grievance in its entirety.

UNION'S POSITION

The union's position was that there was no cause for the termination here. In support of this position the union made the following contentions:

1. The union acknowledged that the grievant made the error as alleged and that she simply failed to notify jail staff of the transport of the three inmates on April 27, 2012. This was not intentional and was simply a human error. Moreover, the grievant's past performance has been quite high and that she was once regarded as a "contributor," one of the highest marks one can achieve. She received high praise on many of her past performance evaluations and that changed only when Captain Jeska took over as her supervisor. At that point things changed dramatically and she was subject to "microscopic scrutiny" the moment Captain Jeska became her supervisor,

2. The grievant asserted though that she immediately took ownership of this, acknowledged the mistake and apologized to the people whose schedules were affected by this. She further asserted that nothing like this had ever happened before and has not since, thus there is no need to impose discipline in this instance.

3. The union also asserted that the grievant has completed 189 such transport notifications between February 2012, when she was first assigned to this position, and November 2012, when she was evaluated. The union further noted that her evaluations, while showing some deficiencies for several years, are now at an acceptable level.

4. The union also noted that the grievant sustained a very serious work related injury to her knee which disabled her from her regular duties. As a result she was reassigned to other duties for which she had little or no training and was expected to perform as though she had done this job for a lengthy period of time. Indeed, she indicated on February 28, 2012 that she did not have computer skills and that this was not her strength. She never got the training she truly needed and has been told to stop asking questions regarding her job except to her direct supervisor, Lt. Rolloff.

5. The union also asserted that the County never even talked to the grievant before imposing discipline and was guilty of a deficient investigation. They should have at least gotten her side of this story and if they had they would have discovered that the grievant was responsible for more duties than the prior person who had held this job.

6. Further, that the disciplines in the past were in many cases duplicative. One set of 3 warnings was in fact for the same incident and as such should really be counted as one such violation. One other one was given to the grievant for literally falling off a chair. She was warned to "use the chair properly." The union asserted that discipline for this bordered on the ridiculous.

7. The union also asserted that the prior warnings and suspensions were entirely unrelated to the error the grievant made in this instance and should not be considered. The union asserted that this is something entirely new and thus the level of discipline must be at least reduced to reflect that clear fact. She has never been specifically warned or disciplined for failure to follow the steps necessary to prepare the paperwork for inmate transport.

8. The grievant also asserted that other more serious violations have been ignored by the County or that the County has not issued any discipline. One incident involved an inmate who was detained for 4 days in the jail, when that person should have been released far earlier. No one was disciplined as a result of that and the union and grievant asserted that this was far more serious and could have involved liability for the County in detaining that person well beyond State law guidelines. She asserted that she is being held to a different and more stringent standard than other similarly situated employees. The union asserted that the penalty here is far too severe for the proven offense and that her "precipitous" decline in performance is due to her new supervisor rather than her own performance.

9. Further, the union took issue with the county's claim that it was somehow harmed by these errors. The county would certainly have had to pay the deputy anyway so there was no "extra" personnel cost due to the deputy having to drive to St. Cloud that day. There were no additional staffers called in for this and no harm shown due to a "lack" of adequate staff in the jail due to this extra time spent driving to and from St. Cloud. At best there was additional mileage, which the union characterized as minimal.

10. The essence of the union's case is that the grievant acknowledged her error on April 26, 2012 and has not repeated it. Further that whenever she has been disciplined in the past the actions complained of have not recurred. Finally that the suspension is excessive given her long history with the County and the fact that she has now conformed her behavior to the County's expectations.

Accordingly, the Union seeks an award sustaining the grievance, reinstating the grievant to her former position and to make the grievant whole for all lost time and accrued contractual benefits.

DISCUSSION

The essential facts of this matter are not in dispute. The grievant is a PSA and has worked for the County since 1996. She sustained a work related injury to her knee and was unable to return to her regular duties. She was assigned to a PSA position in February 2012. The union at first asserted that the grievant advised the county that she was unfamiliar with the computer system and would essentially need help with that. However, the evaluation in which the grievant complained about not knowing how to do the job and her lack of familiarity with the computer system appeared to have been made very shorty after taking the job – as short as a day or two. The record revealed that after that she got the assistance she said she needed and was able to do the task of preparing the documents necessary for inmate transfer successfully before this incident. This entails a multi-step process one of which is to notify the Dakota County jail staff which inmates are to be made ready for transport.

Dakota County jail personnel must get the inmate up at 4:30 a.m., get them ready, check the cell, get them fed and ready for transport. The transport officer then takes them to Hennepin County where they meet a bus to take them to whichever facility they are assigned to.

On April 26, 2012 the grievant was assigned to arrange for transportation for three inmates in the Dakota County jail facility. She appropriately contacted Hennepin County and the transport officer but neglected to contact jail personnel through the pass along system. This was clearly a mistake on her part.

As a result, when the transport officer appeared early in the morning of April 27, 2012, the inmates were not ready and had to be rushed out of bed, cleaned and fed. Despite these efforts the Dakota County transport officer missed the bus at Hennepin County and had to drive the inmates to St. Cloud Minnesota to the State Correctional facility there.

This in turn caused not only additional expense in terms of mileage and time for the deputy but also disrupted the schedule for the day. Other personnel had to fill in for the deputy who did the transport to St. Cloud. There was also some indication that other agencies may have been disrupted, albeit slightly, since the bus operator had been told that there were inmates coming from Dakota and likely also waited for them to show up.

The county claimed that this was a straightforward case and that all of the essential elements of just cause were met. There was a clear rule and clear expectations of performance. That was shown to be the case here. The grievant had been trained and knew what the requirements of the job were.

Further there was adequate evidence to show that the grievant had been properly trained in how to perform this task and indeed had done it correctly before. There was also sufficient evidence to show that the process is straightforward and that any difficulties the grievant might have had with the computer system did not impact this incident. Moreover, the union did not claim that there was a computer glitch or other technical reason for this – the grievant simply forgot to do it.

There was an adequate investigation. The union asserted that no one talked to the grievant to get her side of the story but there was evidence that the grievant was at a meeting with several supervisory personnel immediately after this incident occurred and discussed the error and the incident with them. While this was not a formal Loudermill hearing, it did fulfill the essential requirement in any just cause analysis that the employer take appropriate steps to determine the facts of the case and provide adequate proof that the grievant was at fault for the claimed rule violation or the event leading to discipline.

Also, the grievant sent an e-mail on Monday April 30, 2012 effectively admitting her error, taking full responsibility for it and apologizing to the affected staff for the miscue the Friday before. On this record there was thus adequate proof that the grievant clearly missed this step in the process and that the employer did an adequate investigation. On this unique record, further discussion with the grievant would have been unnecessary, even though talking to an employee before taking disciplinary action is almost always a good idea and something that will rarely "get the employer's case in trouble."

There was clear evidence, and in fact no dispute, that the grievant made this error. The union's main arguments were that the grievant has a long record and that the level of discipline was too severe.

As discussed below, these arguments were unpersuasive on this record. Initially, the union's argument that she took ownership for this error and that this acceptance of responsibility should result in the discipline being overturned was unpersuasive. An apology for a violation does not necessarily equal erasure of the violation.

The county showed that some additional cost and inconvenience resulted from the grievant's mistake. There was some additional mileage due to the drive from Hastings to St. Cloud and there was a disruption in the jail that day. More to the point, the question of how much this cost the county is not the essential issue. The question was whether the grievant failed to follow the proper procedure and was there some showing of a negative impact – clearly both were shown here. Thus the union's "no harm-no foul argument" did not carry the day.

The union raised another claim that the grievant's performance has been good until Captain Jeska arrived and placed her under increased scrutiny. There was no evidence of discrimination against her by her supervisors however and no showing that Captain Jeska in particular was discriminating against her in any way. There was also an inadequate showing that the county placed the grievant under any different or increased sort of scrutiny that was different from the requirements of any other county employee.

To be sure, some of the past disciplines appeared to be curious at best. As an example, the grievant was disciplined for falling off a chair and warned to "use the equipment more safely." That incident was not however under examination and is part of her record as a discipline. There were also several other, more serious, actions that resulted in multi-day suspensions on her record. Again these do not need to be decided here but exist to justify the level of discipline once there has been a showing of a rule violation.

On this record the one-day suspension was appropriate given her record. Further, the mere fact that she had not been disciplined for this exact violation in the past is of little consequence. Past discipline even for unrelated rule violations or transgressions can be taken into account in any arbitral determination of the appropriate level of discipline.

The union further made the claim that the prior reprimands and suspensions do not reference the reports at issue in this matter, did not relate to this part of her job performance and therefore should not be considered in the progressive disciplinary steps. The question of prior record is relevant to degree of discipline, not guilt of current allegation; here the failure to properly complete the paperwork for the transport.

Further, prior discipline can be considered for a given violation and whether the penalty is appropriate; it does not have to relate directly to the offense under current consideration. In other words, prior discipline for one type of offense can be considered in determining whether to impose a more severe penalty for another type of violation or offense without that prior discipline.[1]

In addition, the union claimed that her performance was once quite good – and it apparently was – but fell off due to the increased scrutiny she was subjected to but has now improved. The union argued that there is thus no need for discipline given this showing of performance improvement.

This argument misses the point. Even though the grievant's performance has improved as shown by her recent evaluations, that fact actually undercut the union's claim that the grievant was somehow subject to disparate treatment or that her supervisors are "out to get her" by placing her in an untenable position and subjecting her to increased scrutiny. Further, it is apparent that the discipline meted out in this instance accomplished exactly what it was intended to do – correct performance issues by impressing upon the grievant the need to be more attentive to these details and make sure that all appropriate steps are performed for her duties. To that extent the discipline was appropriate and successful – that is after all what discipline of this nature is intended to do.

Finally, there was inadequate evidence of disparate treatment. The union raised an oblique reference to an inmate who was left in the jail for an extended period of time inappropriately and the person or persons responsible for this were not disciplined. There as simply insufficient proof of this and an inadequate amount of evidence as the facts and circumstances of that incident to provide a basis for a disparate treatment claim.

On this record, given the clear evidence of the error that was committed and based on the totality of the circumstances the grievance must be denied.

[1] Further, if the union's argument were extended to its logical extreme, a person could commit literally dozens of rule violations, being careful to violate a different one each time and never be subjected to more than an oral warning for it. This is hardly consistent with the concept of progressive discipline, with each step getting a bit more severe to more deeply impress upon the employee the need to follow whatever rules or performance expectations are in place.

AWARD

The grievance is DENIED.

Dated: October 27, 2013

Jeffrey W. Jacobs, arbitrator

IBT 130 and Dakota County Chartrand award