

IN THE MATTER OF THE ARBITRATION BETWEEN

UNIVERSITY OF MINNESOTA MEDICAL CENTER, FAIRVIEW)	FMCS CASE NO. 05-0805
)	
“EMPLOYER”)	DECISION AND AWARD
)	
And)	RICHARD R. ANDERSON
)	ARBITRATOR
AFSCME COUNCIL 5 LOCAL 1164, a/w AFL-CIO)	
)	
“UNION”)	February 13, 2006
)	

APPEARANCES

For the Union:

Kurt Errickson, Staff Representative
Clarence Coker, Steward
Cheryl Ogbozo, Steward
Estelle Williams, Grievant
Don Williams, Custodian and Grievant’s husband
Ronald Johnson, non-employee brother of the Grievant
Harrison Perry, Custodian
Marilyn Daniels, Custodian
James Albinson, Mortician
Chris Simmons, Pastor Cornerstone Baptist Church—Dallas, Texas

For the Employer:

Jan D. Halverson, Attorney
Amanda C. Craig, Attorney
Pedro Ramos, Human Resource Representative
Melvin Thomas, Environmental Services Supervisor
Joyce Durham, Custodian
Peter Clayton, Environmental Services Manager

JURISDICTION

The hearing in the above matter was conducted before Arbitrator Richard R. Anderson on December 15, 2005 in St. Paul, Minnesota. Both parties were afforded a full and fair opportunity to present its case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced by both parties and received into the record. The hearing closed on December 15, 2005. Post-hearing briefs were mailed by the parties on January 20, 2006 and received by the undersigned on January 21, 2006.

This matter is submitted to the undersigned pursuant to the terms of the parties' collective bargaining agreement, hereinafter the Agreement, that is currently effective from August 1, 2003 through July 31, 2006.¹ The relevant language in Article 26 of the Agreement [Settlement of Disputes] provides for the filing, processing and arbitration of a grievance including the authority of the arbitrator. The parties stipulated that the grievance is properly before the undersigned for final and binding decision.

BACKGROUND

The Employer, a part of Fairview Health System operates an acute health care and teaching hospital in Minneapolis, Minnesota. The Union represents all non-professional employees at the Hospital including custodians. There are 900+ employees in the bargaining unit. The parties have a history of collective bargaining dating back to 1997.²

¹ Joint Exhibit No. 1

² Prior to the Employer's acquisition of the Hospital the University of Minnesota operated the Hospital.

The Grievant, Estelle Williams, was a Hospital employee for approximately fourteen years and worked as a custodian on the deep-cleaning crew until she was terminated on February 23, 2005.³ Her husband, Don Williams, was also employed at the Hospital as a custodian and still works there to date. The Grievant, who was subject to a Last Chance Agreement, was terminated for allegedly falsifying a leave request form and allegedly furnishing falsified and altered documents in order to receive an additional three days of paid bereavement leave.⁴ On February 28th, the Union filed a grievance alleging that the Employer did not have just cause to terminate the Grievant.⁵ The Employer and the Union held a grievance meeting on May 26th. Thereafter, on August 29th, the Employer affirmed the denial of the grievance in writing.⁶ The Union subsequently filed for arbitration⁷ and the undersigned was notified of my selection as the neutral Arbitrator by letter from the Union dated September 2.

THE ISSUE

The parties stipulated that the issue was, “Whether the Grievant was terminated for just cause, and if not, what is an appropriate remedy.”

RELEVANT CONTRACT PROVISIONS

ARTICLE 13- LEAVES OF ABSENCE

Section 1. Application for Leave. *All requests for a leave of absence shall be submitted in writing by the employee to the employee’s immediate supervisor. The request shall state the reason for and the anticipated duration of the leave of absence. Except in the case of an emergency, all requests for a leave of absence shall be submitted at least ten (10) calendar days in advance.*

³ Unless otherwise indicated, all dates herein are in 2005.

⁴ Employer Exhibit No. 13

⁵ Employer Exhibit no. 15

⁶ Employer Exhibit No. 16

⁷ The exact date unknown.

Section 2. Authorization for Leave. *Authorization for or denial of a leave of absence shall be furnished to the employee in writing by the immediate supervisor. The supervisor shall make reasonable efforts to respond to the request within three (3) working days of its submission.*

Section 3. Paid Leave of Absence. *Paid leaves of absence shall be granted to employees proportionate to their authorized hours.*

A. Bereavement Leave. *A leave of absence of three (3) days without loss of pay shall be granted to employees when a death occurs in the employee's immediate family, to make necessary funeral arrangements, and/or to attend funeral services. The leave will coincide with the day of the funeral unless different days are agreed upon between the employee and the department manager. The employee will receive bereavement leave based upon the number of hours he or she was scheduled during the bereavement leave. Employee's immediate family shall be defined as spouse or domestic partner, parents, parents-in-law, grandparents, grandchildren, children, brothers, sisters, or persons for whom the employee is the legal guardian. An employee will be allowed to attend the funeral of individuals not specified above with supervisory approval, and may be compensated for such leave through the use of their PTO. The use of PTO in such circumstances will not be recorded as UTO.*

ARTICLE 25- DISCIPLINE

Section 1. Purpose *Disciplinary action and discharge shall be taken only for just cause. Such action, except discharge, shall have as its purpose the correction or elimination of incorrect job related behavior by an employee.*

Section 2. Disciplinary Procedure. *The Employer shall have the right to discipline or discharge employees for just cause. Disciplinary action taken by the Employer shall be done in a manner that will not intentionally embarrass the employee before other employees or the public. Disciplinary action will be in the form of:*

- A.** *Oral warning given to employee specifying the nature of any incorrect job related behavior and pointing out that non-correction will result in further disciplinary action. Oral warnings shall be documented by use of a standard Employer form:*
- B.** *Written warning given to the employee specifying the nature of any incorrect job related behavior and pointing out that non-correction will result in further disciplinary action;*
- C.** *Suspension without pay given to the employee with a written explanation specifying the nature of any incorrect job related behavior and pointing out that non-correction will result in further disciplinary action; or*
- D.** *Discharge.*

The above list of types of disciplinary action, while subject to just cause principles, is not meant to imply a sequence of events.

Neither coaching nor counseling is part of the disciplinary procedure. When a supervisor intends to provide coaching or counseling to an employee, they will identify the discussion as coaching or counseling at the beginning of the meeting or at the time the supervisor determines the need for coaching or counseling during the course of the meeting.

Oral warnings, written warnings, notices of suspension, and notices of discharge shall become part of the employee's official personnel file. Notices of suspension and discharge shall be forwarded to the Union. Upon the request of the employee, copies of oral and written warnings shall be forwarded to the Union.

Any time an employee is being questioned as part of an investigation being conducted by the Employer, a Union steward may be present provided the employee requests a steward and a steward is available. In the event there is a steward availability issue due to staffing concerns, the Employer will make a reasonable effort to resolve the availability issue with the Union prior to the investigation.

Section 3. Discharge. *Should the Employer feel there is just cause for discharging an employee, the employee may be first suspended for a period of five (5) work days without pay during which the Union and the employee shall be notified immediately and furnished with reasons for discharge.*

Section 4 Appeal. *All disciplinary actions taken by the Employer may be processed through the procedure for settlement of disputes, except for an employee's failure to pass probation.*

ARTICLE 26- SETTLEMENT OF DISPUTES

Section 1. Grievance Definition. *A grievance for the purpose of this Article is defined as a dispute or disagreement regarding the application or interpretation of any of the terms or provisions of this Agreement.*

Section 2. Grievance Procedure. *All grievances shall be settled in accordance with the following procedure. However, upon mutual agreement of the parties, any step in the procedure may be waived.*

Step 1. *The employee will informally discuss the grievance with the employee's immediate supervisor in an attempt to resolve the matter. At the request of the employee, one (1) Union representative may participate in the discussion. This first step discussion shall occur no later than twenty-one (21) calendar days from the date the employee, through the use of reasonable diligence, had or should have had, knowledge of the event(s) giving rise to the grievance.*

If the grievance remains unsettled, it shall be reduced to writing and submitted to the Human Resources Department for processing to Step 2 within fourteen (14) calendar days after the supervisor orally responds to the grievance. In any event, to be timely, the written grievance must be submitted to the Employer within thirty-five (35) calendar days after the date of occurrence. The written grievance shall state specifically the provisions of the Agreement allegedly violated, facts upon which the

grievance is based, and the relief requested.

Step 2. *Step 2 meetings to discuss and attempt to resolve grievances shall be held on a regularly scheduled day, once per month. Participants may include the individual grievant, the Union Business Representative, the Local Union President, the Chief Steward, the appropriate Union Steward, Human Resources Representatives, and representatives of management. The Employer shall submit a written reply to the Union and the employee within twelve (12) calendar days following the Step 2 meeting.*

Step 3. *If the grievance is not resolved at step 2, either the Employer or the Union may refer the matter to arbitration. Any demand for arbitration shall be in writing and must be received by the other party within sixty (60) calendar days following receipt by the Union of the Employer's written reply to the grievance.*

The arbitration request shall be referred to a neutral arbitrator selected by parties. In the event that the Employer and the Union cannot agree upon a neutral arbitrator within five (5) days, the neutral arbitrator shall be selected from a list of seven (7) neutral arbitrators to be submitted by the Federal Mediation and Conciliation Service.

The decision of the neutral arbitrator shall be final and binding on the Union, Employer, and the employee. The decision shall be made within thirty (30) calendar days following the close of the hearing. The fees and expenses of the neutral arbitrator shall be divided equally between the Employer and the Union.

The time limitations set forth herein relating to the time for filing a grievance and a demand for arbitration shall be mandatory. Failure to follow such limitations shall result in the grievance being waived, and it shall not be submitted to arbitration. The time limitations provided herein may be extended by mutual agreement of the Employer and the Union.

Section 3. Arbitrator's Authority. *The arbitrator shall have no right to amend modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. He/she shall consider and decide only the specific issue or issues submitted to him/her in writing by the parties to this Agreement, and shall have no authority to make a decision on any other matter not so submitted to him/her, The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of the law. The decision shall be based solely upon the arbitrator's interpretation and application of the expressed terms of this Agreement and to the facts of the grievance presented. The arbitrator shall issue the award within thirty (30) days.*

FACTS

Article 13 Section 3A of the Agreement [Leaves of Absences] contains a paid bereavement (funeral) leave provision limited to an employee's "immediate family" that is defined as, "spouse or domestic partner, parents, parents-in-law,

grandparents, grandchildren, children, brothers, sisters, or persons for whom the employee is the legal guardian." This Section also allows an employee, *"to attend the funeral of individuals not specified above with supervisory approval, and may be compensated for such leave through the use of their PTO"*. Either way employees attending a funeral for "immediate family" or "non-immediate family" get paid, the later through a PTO account established pursuant to Article 12 [Paid Time Off (PTO)].

On December 31, 2004, the Grievant filed a standard Employer leave request for three days of funeral leave for January 5, 6, and 8 to attend the funeral of her sister, Crystal Graves, hereinafter the deceased, in Dallas, Texas.⁸ Environmental Services Manager Peter Clayton approved this request and directed the Grievant to present documentation of her attendance upon returning to work. The Grievant returned to work on January 11th and provided the Employer with a letter dated January 7th from Major Funeral Home in Dallas indicating she had attended a funeral for the deceased.⁹ The letter stated, "This letter is to verify that Estelle Williams was here attending the funeral services for Crystal Graves". The letter, however, did not state the Grievant's relationship to the deceased. When the Grievant's supervisor Melvin Thomas inquired, the Grievant responded that it was her sister. Thomas then made a notation "my sisiter (sic) Estelle" on the letter. Thereafter, the Employer approved the paid funeral leave.

⁸ An "X" was placed in the box with a typed standard heading of "paid time off (PTO)" followed by an additional handwritten word "Funeral". There were also additional handwritten words on the form—"sister passed away", "out state" and "Funeral Leave". Employer Exhibit No. 4

⁹ Employer Exhibit No. 5

On or about February 8th, fellow custodian Joyce Durham approached Clayton inquiring why she was not allowed paid funeral leave for attending a funeral for her uncle when the Grievant had been allowed get paid funeral leave for her cousin. Clayton told Durham that the Grievant received paid funeral leave because the individual that the Grievant had attended a funeral for was a sister, a covered individual under its funeral leave policy. Durham then informed Clayton that she knew the family and the Grievant was not a sister to the deceased, but rather a cousin. Based on this information, Clayton prepared a memorandum to the Grievant dated February 9th, which he handed to her on that date. The memorandum requested that the Grievant provide documentation within 48 hours that the deceased was in fact her sister.¹⁰ After the Grievant read the memorandum, Clayton testified that she said, "I don't have any. I guess I'm going to have to eat the hours", which Clayton then noted on the memorandum.¹¹

In a memorandum dated February 11th, Clayton directed that the Grievant together with a Union representative meet with Human Resource Representative Pedro Ramos to discuss the funeral leave issue.¹² During the course of the February 14th meeting attended by Ramos and Clayton for the Employer and the Grievant accompanied by a Union Steward, the Grievant furnished a copy of the memorial bulletin from the deceased's funeral that indicated the Grievant was the sister of the deceased.¹³ According to the Grievant, after Clayton demanded documentation that she was the deceased's sister, she contacted Ronda Shirley, a sister of the

¹⁰ Employer Exhibit No. 6

¹¹ The Grievant acknowledged stating, "I don't have nothing", but does not remember making the rest of the remark.

¹² Employer Exhibit No. 7

¹³ Employer Exhibit No. 8

deceased as well as her half-sister, and informed her of the need for this documentation. Shirley in turn had her niece and the deceased's daughter, LeDetrice Lewis, who was already going to be traveling from Dallas to the Twin Cities, give the funeral bulletin to the Grievant.

Ramos became suspicious about its authenticity when he examined the funeral bulletin. According to Ramos, he became suspicious because it contained several typographical errors and had a different font in the section listing the deceased's sisters. That same day Ramos located the e-mail address for Chris Simmons, the pastor who had conducted the funeral service for the deceased, and requested a list of the "ladies identified in the program as sisters of the deceased."¹⁴ On February 16th Pastor Simmons replied by e-mail and listed the names of five sisters contained in the funeral bulletin, none of whom were the Grievant.¹⁵ The e-mail listed the names of the deceased survivors, which were identical to the names contained in a funeral bulletin with the exception of a few misspelled names, which Durham later provided to the Employer on or about February 17th.¹⁶ Durham told Clayton when she gave him the funeral bulletin that she had received it from her brother Tyrone Durham who had attended the funeral of the deceased.¹⁷

The survivors listed on this funeral bulletin were:¹⁸

Crystal leaves to cherish her loving memories; Her daughter; LeDetrice Lewis; three sons; Demetrice (Tanay) Lewis, Charles Lewis and Andre Lewis all of Dallas, TX; 5 sisters; Jeniece Johnson of St. Louis, Mo., Rhonda

¹⁴ Employer Exhibit No. 9

¹⁵ Employer Exhibit No. 10

¹⁶ Employer Exhibit No.11

¹⁷ Tyrone Durham had been fired from his custodian position at the Hospital. His wife, Octavia Durham, was a sister of the deceased. Octavia Durham had preceded the deceased in death.

¹⁸ The punctuation is as it appeared on the funeral bulletin.

Shirley, Marla Johnson and Peggy Kent all of St. Paul, MN, Alice Bates of St. Louis, Mo. 2 brothers; Mikail Saalik and Ronald Gleghorn both of St. Paul, MN; one aunt; Ozzie Thomas of St. Paul, MN; grandmother; Julia Johnson of St. Louis, Mo; one uncle, 9 grandchildren and a host of nieces, nephews, cousins and friends.

Pastor Simmons in his February 16th e-mail also offered to fax a copy of the funeral bulletin, which Ramos subsequently requested by reply e-mail on February 16th.¹⁹ According to Ramos, he never received a copy of the funeral bulletin from Pastor Simmons, because "someone from the family" requested that the Pastor not furnish it. Pastor Simmons testified at the hearing that someone from the family contacted him and said furnishing information to the Employer was out of his responsibility, so he honored this request. The Pastor said this "someone" was the Grievant's husband Don Williams.²⁰ The Grievant, in rebuttal, testified that the Pastor was mistaken, that it was Shirley who contacted the Pastor.²¹ The Grievant's husband in his prior testimony also stated he did not contact Pastor Simmons. The Pastor also testified that he only found "one" funeral bulletin from the memorial service, the one that he used to furnish the names of the family of the deceased to Ramos by e-mail.

On February 18th the Grievant was issued a memorandum placing her on administrative leave and directing her to report to Ramos on February 23rd for a meeting.²² Attending this February 23rd meeting were Ramos and Clayton for the Employer, the Grievant and Union Steward Clarence Coker, and two of the deceased's sisters Rhonda Shirley and Peggy Kent. The sisters, who were only

¹⁹ Employer Exhibit No. 14

²⁰ At first the Pastor only identified the individual as a "male". Upon prompting from Employer's Counsel on whether the individual was from the "Twin Cities", the pastor responded "yes". Upon further prompting from Counsel as to whether the individual was Don Williams, the pastor initially responded, "it was" followed by a qualification, "I believe it was".

²¹ The Grievant testified while recalled after Pastor Simmons testified.

²² The certificate did not list a father. Employer Exhibit No. 12

present at the beginning of the meeting, informed Ramos and Clayton that it was a long held family secret that their father (Charlie Johnson) had also fathered the Grievant outside of marriage, and that the Grievant was both their sister and their cousin. Ramos testified that he asked the sisters who the individual was that had produced the funeral bulletin that the Grievant had supplied; and was told that the Grievant was not responsible, that "some niece in Texas sent it up". After the sisters left, Ramos testified that he showed the Grievant a copy of the funeral notice and shared with her the inconsistencies between her funeral bulletin and the one received from Durham along with the e-mails received from Pastor Simmons. Ramos further testified that when the inconsistencies were pointed out, the Grievant remarked that he (Ramos) should not have contacted the funeral director and he (Ramos) was guilty of inappropriate action by contacting the church. Ramos added that the meeting ended by the Grievant stating that the deceased was her half-sister and she did nothing wrong.

After the meeting, Ramos and Clayton caucused and decided that they would proceed with a discharge and the Grievant was issued a termination notice that same day, February 23rd.²³ Ramos testified that the reason termination was appropriate was that a review of her personnel file disclosed that she had a previous Decision Making Leave involving a two-day suspension, which resulted in a Last Chance Agreement. Further, that the Grievant falsified the funeral bulletin in order to receive three-days funeral pay. Finally, the Grievant waited until the last possible second to

²³ Employer Exhibit No. 13

"come clean" and acknowledge that there was some other kind of relationship with the deceased other than she initially claimed. In the termination notice the Employer stated, "We do not contest their (sisters) testimony this morning. However, there is no provision for granting paid funeral leaves for attending a funeral of a half-sister". Adding that, "We find your actions are in violation of our policy and the contract with regard to the provisions for obtaining paid Funeral Leave and further that the documentation you provided in support of this request, to have been falsified and altered to support your false claim for paid time off". Adding, "In consideration that you are on a last chance agree (sic) this latest occurrence leaves us with no alternative but to end your employment".

The evidence clearly established that the deceased's father also fathered the Grievant; however, he was not listed as the father on the Grievant's birth certificate.²⁴ Evidence also disclosed that the Grievant learned that the deceased's father was also her father when she was approximately twelve years old. When the Grievant was thirteen or fourteen years old, she and her mother moved in with the deceased's family.²⁵ According to the testimony of both the Grievant and Ron Johnson, who lived with both the deceased and the Grievant as children, there was no distinction between members of the two families. The Grievant was treated by all family members as a "sister" and never referred to as a "half-sister".²⁶

Evidence also disclosed that the Grievant filed a written request for funeral leave

²⁴ Union Exhibit No. 2

²⁵ The family of the deceased's mother Jean Johnson who was living in St. Louis, Missouri at the time.

²⁶ There were three adults, the Grievant's and the deceased's mothers and an uncle plus twelve children.

in August 2002 to attend the funeral of her nephew Michael Lewis. The Grievant's written documentation (letter from Majors Funeral Home) furnished to support paid funeral leave identifies the Grievant as the deceased's aunt.²⁷ The Grievant testified that her supervisor, Thomas, approved this written documentation and she then received paid funeral leave. Thomas testified that he did not remember the document; and if he had seen it, he would not have authorized paid funeral leave because an aunt is not a covered relative. The Grievant also testified that Thomas had previously told her that family was family, no matter if its cousin, uncle, aunt, niece and should get paid regardless.²⁸ Harrison Perry who is the brother to Thomas testified that he, Thomas and his sister, who also works at the Hospital, attended a funeral for their half sister, Charlotte White three or four years ago.²⁹ Thomas made all the arrangements for them to be gone; and he received paid funeral leave.³⁰ Thomas testified similarly, only that the funeral leave involved PTO, rather than paid funeral leave.

The Grievant testified that the funeral bulletin given to her by Shirley was the only funeral bulletin she had ever seen. She never received a funeral bulletin during the memorial service because she "arrived late" and they were "out of bulletins". The Grievant further testified that she did not alter the funeral bulletin she supplied to Clayton, nor does she know if anyone else did. The Grievant's husband testified that he did not alter this document either.

²⁷ Union Exhibit No. 3

²⁸ The exact date unknown.

²⁹ According to Perry all the children had the same mother, but different fathers.

³⁰ During cross-examination Perry was adamant that he received paid funeral leave not PTO.

The funeral bulletin(s) listed a company named D's Designs as the preparer. The Grievant testified that the deceased's daughter LeDetrice Lewis prepared the funeral bulletin used in the memorial service of the deceased. Further, that this was not a company; rather her niece does the work on a computer out of her home for friends in the Dallas area.

Funeral Director James Albinson, who is the president of Albin Chapel in the Twin Cities area and has years of preparing funerals for extended or blended families belonging to inner-city churches such as the one in the deceased's situation, testified that it is common for families to produce their own funeral bulletins. This is true especially where money is an issue. He has on many occasions, when asked, assisted the families in preparing the funeral bulletin; and it was not uncommon for more than one funeral bulletin to be prepared, especially when "someone" has been left out. Pastor Simmons also testified that he has officiated at funerals where more than one bulletin was used, especially where difficult relations existed, such as having children out of wedlock or when homosexuality issues are involved.

The evidence also disclosed that the Grievant had prior disciplinary actions while employed at the hospital. On May 5, 2004, the Grievant received a three-day suspension for inappropriate behavior involving yelling and using vulgar and threatening language directed at a security person near elevators in a patient care area. On July 30, 2004, the Grievant received a two-day suspension along with Durham's brother Tyrone Durham involving both of them using vulgar swearing language in a patient care area on July 21, 2004. The Grievant's disciplinary notice

contained a Last Chance Agreement.³¹ This agreement states, "Ms. Williams, you will be expected to abide by all the employers (sic) policies most especially the Violent, Harassing, Disruptive Behavior Policy. This is your second suspension for this violation, any further violations of policies and or any other work rule/policy of a like or other serious nature will result in termination". A grievance was not filed over any of the aforementioned disciplinary actions.

POSITION OF THE EMPLOYER

The Employer's position is that the grievance should be denied in its entirety. The Employer argues that it had just cause to terminate the Grievant. The Agreement provides employees with a specific number of PTO days. Article 13, Section 3A provides for three days of funeral leave. The Agreement makes it clear that members of an "immediate family", which is defined in this provision, receive three-days paid funeral leave while non-members can use accrued PTO to attend a funeral.³² It is clear that the Grievant requested "funeral leave" for the reason " her sister passed away", and requested paid funeral leave rather than PTO.³³ It is also clear that when Thomas asked the Grievant her relationship to the deceased, she informed him that it was her sister, which Thomas then recorded on the leave request. It is also clear that when Clayton requested documentation to prove that the Grievant was the deceased's sister, after receiving contrary information from Durham, the Grievant supplied an altered funeral bulletin. In both situations the Grievant had an opportunity to clarify her relationship to the deceased. The Grievant

³¹ Employer Exhibit No. 3

³² In both situations the funeral leave is paid; however, in PTO it is charged to the employee's leave account rather than directly coming from the Employer.

³³ Employer Exhibit No. 4

also had an opportunity to clarify her relationship in the February 14th meeting in Ramos' office.

Thus, the Grievant lied about her relationship with the deceased in order to get paid funeral leave. The Grievant also furnished an altered funeral bulletin in order to support a false claim of her relationship to the deceased in order to get paid funeral leave. The Union's assertion that the funeral bulletin that Durham submitted was not authentic or that there had been multiple "bulletins" at the funeral strains credibility. The fact remains that the Grievant submitted an altered document in an effort to obtain paid funeral leave. The fact that another person may have actually falsified the document does not relieve the Grievant of the responsibility for submitting it as justification for her requested paid time off. This "sad" effort on the part of the Grievant to get paid funeral leave is underscored by Pastor Simmons' testimony that it was the Grievant's husband that told him not to forward any additional information regarding the funeral bulletin to the Employer.

The Employer argues further that termination was justified since the Grievant's failure to correctly explain her relationship to the deceased and submission of an altered document occurred while the Grievant was under a Last Chance Agreement. The Last Chance Agreement specifically put the Grievant on notice that "any further violations of policies and or any other work rule/policy of a like or other serious nature will result in termination". Further, the Grievant was progressively disciplined through out the entire disciplinary process.

The Employer also argues that the Union's arguments are non-meritorious. The Union implies that the Employer applied a different standard to the funeral leave

request of the Grievant when it asked for documentation. The Employer states that it is its practice to ask for documentation when an employee requests paid funeral leave and not to ask if the funeral leave involves PTO. The Employer states that it initially accepted the letter from Major Funeral Home; but when it was brought to its attention that the Grievant was the cousin of the deceased, it requested additional documentation. The Employer states it has consistently followed the application of its Bereavement Policy. In light of the Grievant's other testimony, her assertion that she was paid funeral leave for attending her nephew's funeral is not credible.

The Employer further argues that the fact the Grievant and the deceased were raised as sisters does not change the fact that they were half-sisters and cousins. The Agreement language is very specific. Neither a half-sister nor a cousin is listed in the contract language as "immediate family".

POSITION OF THE UNION

The Union's position is that the Employer did not have just cause to terminate the Grievant. The Union argues that the Grievant did not submit a falsified leave request. The Union states that throughout this situation, the Grievant complied with the Employer's policies and requests to the best of her ability. She applied for funeral leave and submitted documentation that she had attended the funeral in accordance with the Employer's request. When asked to submit further documentation, she complied as best she could under the circumstances.

The Union argues that the Grievant should never have been disciplined for requesting funeral leave for the deceased. Although she was both a sister and a cousin, she chose out of love to list the deceased as her sister, because she was in

fact the deceased's sister. The Grievant and the deceased had the same father, grew up in the same household and belonged to an extended and blended family where there was no distinction between siblings. There was no impropriety in requesting funeral leave for her sister since "sister" is a covered category under the bereavement leave policy. Additionally, managers have previously allowed the Grievant paid funeral leave for a nephew, a category not listed as an "immediate family member" in the contract language.

The Union also argues that Employer made an impossible demand on the Grievant when it demanded on February 9th that the Grievant produce evidence of her sister relationship to the deceased within 48 hours. The Grievant knew she could not comply since there was no father listed on her birth certificate. She offered to "eat the hours" (take PTO for her leave). Thereafter, she tried to comply with the Employer's unreasonable request by asking her sister Shirley for assistance and was subsequently sent the funeral bulletin she ultimately gave the Employer.

The Union argues that the real issue here is the "falsification of a document". When the Employer realized in the February 23rd meeting that the deceased was indeed a sister to the Grievant, it concocted the "falsification of the funeral bulletin" as a reason for termination. The Union argues that the Grievant should not have been disciplined for submitting a false or altered document. There is no evidence that the funeral bulletin submitted by the Grievant was false or altered; and if it had been altered, there is no evidence that the Grievant was responsible. The Union states that testimony at the hearing demonstrated that it was not uncommon for more than one

bulletin to be prepared for a funeral. It is entirely possible that there could have been multiple bulletins at the deceased's funeral.

The Union also contends that because the Employer cannot show that the Grievant falsified any documents or deliberately falsified a funeral leave request, progressive discipline does not support a discharge. New discipline is not appropriate since there is no new violation of the Employer's policies or rules. Consequently, she is not in violation of the Last Chance Agreement.

Finally, the Union argues that the appropriate issue here should have been, "are half siblings covered under the bereavement leave policy". If the Employer had initially accepted the Grievant's offer to substitute PTO for paid funeral leave and this request been subsequently denied, she could have filed a grievance. Therefore, rather than discharge, the stakes would have been three days paid funeral leave.

OPINION

The issue herein presents a well-settled two-step analysis: first, whether the Grievant engaged in activity which gave the Employer just and proper cause to discipline her; and second, whether the discipline imposed was appropriate under all the relevant circumstances. It is the Employer's burden to show that the Grievant engaged in conduct warranting discipline and that the appropriate discipline was termination.

The evidence presented failed to establish that the Employer had just and proper cause to discharge the Grievant. The Grievant was terminated for three reasons. First, for falsifying a leave request form in order to get Employer paid funeral leave; rather than using PTO, paid leave that comes from an employee's personal paid time

off account. Second, the Grievant furnished false and altered documentation in order to support the false claim for paid funeral leave. Third, the Grievant was under a Last Chance Agreement, wherein the penalty for any violation of the Employer's policies/rules is termination.

The evidence is clear that the Grievant filed a written leave request form seeking paid funeral leave to attend the out state funeral of a sister. The evidence also clearly established that the Grievant was both a sister and a cousin to the deceased. The Employer argues that because the Grievant was a "half-sister" and not a "sister", she falsified her leave request in order to get paid funeral leave. The Employer is arguing that the paid funeral (bereavement) leave provision in the Agreement only applies to a "full-sister". It is not my role as the Arbitrator to decide whether the term "sister" in Article 13 Section 3A excludes a half-sister. That issue is not before me; rather, it is an issue for future litigation, if warranted. The only sister issue before me is whether the Grievant falsely claimed she was a sister to the deceased when she filled out the leave request form in order to get paid funeral leave, rather than using her PTO.

I find she did not. The evidence clearly disclosed that the Grievant and the deceased had the same father, that they lived together for a number of years in the same household, and that she was treated and referred to as a sister by all members of her blended family. There is no evidence presented to show that the Grievant ever referred to the deceased as a half-sister. There was also no evidence presented that the deceased or any family member ever referred to the Grievant as a half-sister. This protocol is not unusual. It would be highly unlikely for either a genetic or an adopted sibling to be referred to as a half-sister by any member of an immediate family, or for

that matter, by anyone else in the community who personally knows them. One sibling calling the other a half-sister or half-brother would be strange and have to involve an unusual relationship or circumstances. Thus, it would only be natural for the Grievant to use the term sister rather than half-sister.

Further, there is no evidence that Grievant engaged in any devious or a deceptive action or otherwise had an ulterior motive in listing the deceased as her sister on the leave request form. There was no reason for the Grievant to make a distinction between the deceased being her sister or half-sister when she filled out the leave request form. There is no evidence, nor did the Employer present any evidence, that a distinction was necessary. There is no formal policy or Agreement language that makes a distinction between full-sisters and half-sisters. While the Employer contends it has an unwritten policy that makes this distinction, there is no evidence that this unwritten policy was communicated to any employee, much less the Grievant. Moreover, if there was such a policy, it was not enforced. If it had been enforced the Employer would have inquired into the actual sister relationship when the Grievant requested paid funeral leave for the deceased before granting paid funeral leave. The Employer would also have inquired into Thomas' and his half-brother Perry's leave when the deceased was their half-sister. At least Perry and perhaps Thomas may have been paid funeral leave, rather than using PTO.³⁴ The unrefuted evidence also disclosed that the Grievant also had previously received paid funeral leave for other

³⁴ The Employer through Supervisor Thomas tried to rebut the testimony of Perry; but failed to submit any payroll records to support its' position that Perry received PTO.

than a covered category.³⁵ While this fact is not dispositive it does mitigate against the Employer's strict enforcement of its bereavement leave policy.

Further Employer actions also mitigate against imposing discipline for allegedly filing out a falsified leave request form. The Employer argues that the Grievant had numerous opportunities to "come clean" and disclose that the deceased was her half-sister rather than a sister. The same could be said about the Employer. When the issue that the Grievant was not a sister to the deceased first arose, Clayton failed to inquire into the Grievant's relationship with the deceased. The Grievant's half-sister relationship to the deceased would more than likely have surfaced then.³⁶ The Employer could then have denied paid funeral leave based on the Grievant being a half-sister and require the Grievant to take PTO. If the Grievant or the Union disagreed with the Employer's interpretation of Article 13 Section 3A, they could have challenged it through the grievance procedure.

The Employer also asserts that the Grievant submitted a falsified and/or altered funeral bulletin in order to further her falsified sister relationship with the deceased. There is a possibility that there could have been two bulletins prepared for the memorial service. The one that Durham furnished and Pastor Simmons was in possession of, and the one the Grievant furnished. Both Pastor Simmons and Funeral Director Albinson testified that it was not uncommon for multiple bulletins to be produced with one of the reasons being a close relative was left out of the

³⁵ The Employer also failed to submit any payroll records to support its position that the Grievant did not receive paid funeral leave for her nephew

³⁶ The initial issue, a cousin vs. sister relationship, was raised by Durham on or about February 8th. It did not become a half-sister vs. full-sister issue until the February 23rd meeting when the Grievant's sisters disclosed this fact. The Grievant's first knowledge that this was an issue would have been when she received her Notice of Discharge that same day.

predecessor bulletin. No evidence was proffered to rebut the multiple bulletin scenario.³⁷ Even assuming arguendo that there was only one bulletin and Durham furnished it, there is no evidence that the Grievant was aware there was another bulletin besides the one she furnished. Unrefuted testimony of the Grievant disclosed that she arrived late for the service and "they" had run out of bulletins; and that the only bulletin she was aware of was the one given to her by her niece. Thus, any typographical error or difference in fonts would have no meaning to her and could have been a result of a late correction to an error omitting her as a sister. Even assuming the one and only bulletin had been altered there is no evidence that the Grievant made the alteration, or for that matter her husband or any other family member. Moreover, the alleged alteration is in fact a truthful alteration. The Grievant was indeed a "sister" to the deceased.

Finally, since the Grievant did not engage in any conduct justifying discipline, the Last Chance Agreement is unenforceable. Inasmuch as I have concluded that there was not just and proper cause to discipline the Grievant, there is no need to discuss the appropriateness of the discipline.

CONCLUSION

In view of the foregoing, I conclude that the Employer failed to establish its burden of proof that it had just and proper cause to terminate the Grievant; therefore, the grievance is sustained. I will, therefore, revoke the Employer's February 23, 2005 Notice of Discharge and the Employer will expunge any reference contained in the

³⁷ The Grievant's and deceased's niece LeDetrice Lewis was the preparer listed on both bulletins and was in a position to resolve this issue. She was not called as a witness.

Grievant's personnel file involving her termination. Further, the Employer will reinstate the Grievant to her former position with all benefits, seniority and any other rights or privileges she may have enjoyed as of the date of her termination. Further, the Grievant will be made whole for any loss of wages, benefits, seniority or any other rights and privileges suffered from the date of discharge to the date of reinstatement, less any interim earnings.³⁸ Finally, since I am directing a return to the status quo that existed on February 23rd, the Last Chance Agreement will continue in effect.

AWARD

IT IS HEREBY ORDERED that Estelle Williams be unconditionally reinstated to her former position.

IT IS FURTHER ORDERED that the Estelle Williams be made whole for any loss of wages, economic benefits, seniority; or any other benefits or rights or privileges suffered as a result of the Employer's action, less any interim earnings.

IT IS FURTHER ORDERED that the Employer expunge the Notice of Discharge and any reference to Estelle Williams' termination contained in her personnel file, consistent with my Decision herein.

. The undersigned Arbitrator will retain jurisdiction in this matter for a period of forty-five (45) days from the receipt of this Award to resolve any matters relative to implementation.

**Dated: February 13, 2006
In Eagan, Minnesota**

**Richard R. Anderson
Arbitrator**

³⁸The beginning date will be her termination date unless she was suspended with out pay on February 18th. The cut-off date for receiving monetary amounts will be the date of the Grievant's reinstatement unless an unreasonable delay in reinstating the Grievant is directly attributable to the Employer. In the event the Grievant declines reinstatement, the cut-off date for monetary amounts will be the date of the Employer's offer of reinstatement.