

**IN THE MATTER OF THE ARBITRATION BETWEEN**

OCSEA/AFSCME  
Local 11, AFL-CIO

Grievance No: DMR-2020-01380-04

Jacob Kirgis, Grievant

and

STATE OF OHIO  
Ohio Department of Developmental  
Disabilities - Cambridge Developmental  
Center

Employer

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ARBITRATOR: MEETA A. BASS

OPINION AND AWARD

AUGUST 26, 2021

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**APPEARANCES FOR THE PARTIES**

**Employer Advocate:**

Jill Harlan  
Labor Relations Officer III  
Ohio Department of Developmental Disabilities  
30 East Broad Street, 18th Floor  
Columbus, Ohio 43215

**Union Advocate:**

Tim Watson  
Staff Representative  
Ohio Civil Services Association  
390 Worthington Road, Suite A  
Westerville, Ohio 43082

## **PROCEDURAL HISTORY**

This arbitration proceeding arises under the Collective Bargaining Agreement effective May 12, 2018, through February 28, 2021, between the Ohio Departmental of Developmental Disabilities, Cambridge Developmental Center is hereinafter referred to as "Employer" or " Agency" or "Management" and the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO is hereinafter referred to as "Union". It grieves the termination of Jacob Kirgis, hereinafter referred to as "Grievant," for "Failure of Good Behavior" in violation of rules K-2 and K-11. The Union submitted this grievance to the Employer in writing pursuant to Article 25 of the parties' Agreement. Following unsuccessful attempts at resolving the grievance, the Union requested to advance the grievance to arbitration. The parties have designated this Arbitrator to hear and decide this discipline action. The parties presented and argued their positions on June 9, 2021, at the virtual hearing hosted by the Union.

The parties stipulated to the following issues for resolution by the Arbitrator:

Was the Grievant, Jacob Kirgis removed for just cause? If not, what shall the remedy be?

Both parties were afforded a full opportunity to present evidence, exam and cross-exam the witnesses, and oral argument during the hearing. Witnesses other than the representatives were sequestered in the waiting room and/or contacted when needed.

The following individuals testified at the hearing:

1. Samantha Ward, Therapeutic Program Worker
2. Karla Abrams, Therapeutic Program Worker
3. Jennifer Hayward, Supervisor
4. Tonya Mangerie, former Superintendent
5. Jacob Kirgis, Grievant

## **Stipulations of Facts and Exhibits**

The Parties stipulated to the following facts:

1. The Grievance is properly before the Arbitrator.
2. The Grievant was hired by the Employer as an Intermittent Therapeutic Program Worker (TPW) on November 27, 2017, became a Permanent Part-Time TPW on February 18, 2018, and became a Permanent Full-Time TPW on September 2, 2018.
3. The Grievant was removed from his position as a TPW on March 31, 2020.
4. The Grievant was removed for a violation of the Ohio Department of Departmental Disabilities Standards of Conduct Policy:
  - Rule K-2 (Failure of Good Behavior) - Threatening, fighting, intimidating, striking, or any other act or threat that is a violation of the Violent Prevention in the Workplace Policy.
  - Rule K-11 (Failure of Good Behavior)-Discourteous treatment of an employee or the public, includes but is not limited to, being disrespectful and/or using disrespectful language to co-workers, management or public. Engaging in arguments with co-workers, management, or the public.
5. At the time of his removal, the Grievant had an active performance track discipline on his record consisting of:
  - January 6, 2019 - Written Reprimand for L-9 (Disregard of Duty)
  - April 24, 2019 - 2 Day Working Suspension for K-6 (Failure of Good Behavior)

## **Joint Exhibits**

1. 2018-2021 OCSEA Contract
2. Grievance Trail and Video Zip Drive
3. Discipline Trail/Investigation
4. DODD Standards of Conducts, Rule Violations and Penalties
5. Policy HR 34-Violence Prevention in the Workplace
6. Grievant's Co-Workers Statements

The parties submitted their written closing statements on July 9, 2021, when the record was closed.

## **Relevant Provisions of the Collective Bargaining Agreement and Policy Provisions**

### **Article 24 - Discipline:**

#### **24.01 - Standard**

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.05. Employees of the Lottery Commission shall be governed by ORC Section 3770.021.

#### **24.02 - Progressive Discipline**

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.

Disciplinary action shall include:

- a. One (1) or more written reprimand(s);
- b. One (1) or more working suspension(s). A minor working suspension is a one (1) day suspension, a medium working suspension is a two (2) to four (4) day suspension, and a major working suspension is a five (5) day suspension. No working suspension greater than five (5) days shall be issued by the Employer. If a working suspension is grieved, and the grievance is denied or partially granted and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine. The employee may choose a reduction in leave balances in lieu of a fine levied against him/her.
- c. One (1) or more day(s) suspension(s). A minor suspension is a one (1) day suspension, a medium suspension is a two (2) to four (4) day suspension, and a major suspension is a five (5) day suspension. No suspension greater than five (5) days shall be issued by the Employer;
- d. Termination.

Disciplinary action shall be initiated as soon as reasonably possible, recognizing that time is of the essence, consistent with the requirements of

the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process...

**Standards of Conduct, Rule Violations, and Penalties for Classified Employees (Department-wide) (HR-013) incorporated herein as if fully rewritten.**

Guidelines for the Progression of discipline are outlined in the attached Standard Guidelines for Progressive Discipline Grid. Progressive discipline is intended to impose discipline at a level that is commensurate with the offense and progresses through the grid when further violations are committed. Any discipline imposed, up to removal, is intended to be corrective rather than punitive...

**Standard Guidelines For Progressive Discipline: Performance Track:**

**Failure of Good Behavior**

K-2 Threatening, fighting, intimidating, striking, or any other act or threat that is a violation of the Violation Prevention in the Workplace Policy, K-11 (Failure of Good Behavior) 1st Offense Removal

K-11 Discourteous treatment of an employee or the public includes but is not limited to being disrespectful and/or using language to co-workers, management, or the public. Engaging in arguments with co-workers, management, or the public. 1st Offense Written Reprimand to Removal, 2nd Offense, 2-Day Time/Working Suspension/Fine/Removal, 3rd Offense, Time/Working Suspension/Fine/Removal, and 4th Offense, Removal.

**Violence Prevention In The Workplace, Policy Number HR-34 incorporated herein as if fully rewritten.**

**Procedure:**

This procedure establishes a standard process for the application of the zero tolerance of violence policy (DIR-99-003), Violence Prevention in the Workplace.

**1. Definition of Workplace Violence**

Any act of violence or the threat of any act including conduct against persons or property that is sufficiently severe, offensive or intimidating to alter the conditions of State employment or to create a hostile, abusive, or intimidating work environment for one or more employees of the Department of Developmental Disabilities (DODD). Prohibited workplace violence includes, but is not limited to the following:

- All threats or acts of violence occurring on State property, regardless of the relationship between the State and the individual involved in the incident.
- All threats or acts of violence not occurring on State property, but involving someone who is acting in the capacity of a representative of DODD.
- All threats or acts of violence not occurring on State property, but involving an employee of DODD if the threats or acts of violence affect the legitimate interests of the State.
- Any threat or acts of violence resulting in the conviction of an employee or agent of DODD or of an individual performing services on the Department's behalf on a contract or temporary basis, under any criminal code provision relating to threats or acts of violence that adversely affect the legitimate interest of the State.

## **STATEMENT OF FACTS**

Set forth in this Background is a summary of undisputed facts and evidence regarding disputed facts sufficient to understand the parties' positions. Other facts and evidence may be noted in the Discussion below to the extent knowledge of either is necessary to understand the Arbitrator's decision.

Employer hired the Grievant as an Intermittent TPW on November 27, 2017. The Grievant became a Permanent Part-time TPW on February 18, 2018, and became a Permanent Full-time TPW on September 2, 2018. On January 23, 2020, the Grievant was working the 3rd shift.

The Grievant observed a client coming from the kitchen with a pie and sitting down to eat it. The Grievant started asking who was working in this area and learned that the responsible individual was TPW Ward. The Grievant located TPW Ward and told her to check with staff before allowing clients to obtain items from the pantry. The Grievant returned to his area and continued with his job duties. TPW Ward completed her duties and then contacted the Supervisor to request relocation to a different area. TPW Ward expressed that she did not want to work with the Grievant because he was in a bad mood and wanted to avoid any other encounters with the Grievant. TPW Ward testified that the Grievant is generally talkative and telling jokes. TPW Ward stated that he did not curse but was rude and belittling; his

comments made her feel inadequate at her job. The Supervisor arranged for TPW Abrams to trade assignments with TPW Ward since TPW Wards seemed upset during the telephone call.

Supervisor contacted TPW Abrams. While TPW Abrams agreed to trade assignments, TPW Ward explained that if there were any issues, the Supervisor would have to deal with it. When TPW Ward arrived at the Cottage, TPW Abrams testified that she observed that TPW Ward was physically upset and crying. Notably, TPW Ward does not recall crying.

The Supervisor went down to the Cottage to take statements and determine what happened. The Supervisor obtained statements of staff who were working with the Grievant. These individuals were not aware of any incident between the Grievant and TPW Ward. When the Supervisor approached the Grievant, she explained the circumstances regarding her request for a written statement, and told the Grievant that he should not be abrasive when communicating with others. The Grievant completed his written statement, and wrote, "I guess I'm abrasive. LOL. What a Joke!!".

TPW Abrams contacted the Supervisor concerning breaks; the Grievant wanted to cover a break for TPW Gearhart, and TPW Abrams was the float. The Supervisor instructed TPW Abrams to cover the break because that was her assignment and the Grievant was to stay with his group. However, the Supervisor did not advise the Grievant of her decision. Approximately two hours later, the Grievant called Supervisor Hayward. As soon as she answered the phone, the Grievant said, "This is Jacob. What the fuck?" He was angry and complaining that TPW Abrams was relieving for breaks. When the Supervisor attempted to explain her reasoning, the Grievant hung up on her.

After covering the lunch break, TPW Abrams was walking through the common area, the Grievant began yelling at her. TPW Abrams, who cannot hear in one ear, explained that she turned around to focus on what was

being said; she reads lips. TPW Abrams testified that the Grievant repeatedly called her a "coward." TPW Abrams also stated that the Grievant said if she thought she had a problem with him before, he was going to "fix" her. TPW testified that she refused to engage with the Grievant, raised her hand toward him, and walked away. TPW Abrams then reported the incident to her Supervisor, TPW Abrams stated that the Grievant called her a "coward". The incident was captured on video.

The Supervisor then called the Grievant and told the Grievant that she was sending relief for him and to come to her office. The Grievant raised his voice and refused to come. The Supervisor explained that she was the administrator on duty, that she needed to ensure everyone's safety and well-being, and then repeated her request. The Grievant then told her "I'm not coming down. You better call someone." The Supervisor then contacted the Superintendent, who spoke to the Grievant.

The Superintendent testified that the Grievant was "worked up," and recognized that the Grievant was frustrated regarding the incidents, and needed to vent his frustrations. The Grievant was loud and using profanity. The Superintendent asked that the Grievant remove himself from the area. While she allowed him to vent and encouraged breathing techniques to calm his emotions, the Superintendent reminded the Grievant of his communication to others and their perceptions. Following their conversation, the Grievant returned to his duties.

The Employer conducted a Pre-Disciplinary Meeting on March 5, 2020. On March 31, 2020, the Grievant received the Order of Removal from his position effective March 31, 2020, for Failure of Good Behavior violations of the Department of Developmental Disabilities (DODD) Standards of Conduct K-2 and K1 with a stated reason that the Grievant had been guilty of Failure of Good Behavior in his use of profanity and intimidating behavior with his coworkers and supervisors on several occasions. The Union submitted this



grievance on October 28, 2020, alleging a violation of Article 24 of the parties' Agreement. The Union requested that the Grievant be reinstated to his position with full back pay, seniority, healthcare, leave balances, union dues paid, and otherwise made whole. The Step 2 grievance response denied the grievance, and found just cause for the imposition of discipline. The parties were unable to resolve this matter and advanced the grievance to arbitration.

## **POSITION OF THE PARTIES:**

### **Position of the Employer**

The Employer contends the evidence established that the Grievant engaged in acts of intimidation, threats, and disrespectful behavior directed at co-workers and management in violation of the Standards of Conduct and Violence in the Workplace. The Employer also asserts that it maintains a zero-tolerance policy toward workplace violence. The Employer asserts that the removal is commensurate with the offense. The Employer maintains that there was just cause to discipline the Grievant.

The Employer also contends that the Grievant intimidated and threatened TPW Abrams. The Employer argues that TPW Abrams perceived the Grievant's comments as a threat of violence. Employer points to the Grievant's demeanor depicted in the video to corroborate the Grievant's agitated state. The Employer asserts that the recipient's reactions to the statements and actions determine whether they are threatening in nature. If not a direct threat, being told by an angry and upset Grievant that he would "fix her" is a veiled threat. As such, it is prohibited by the Violence in the Workplace policy and the Standards of Conduct. The Employer concludes that the Grievant violated Rules 2 and 11.

In addition, Employer contends that the Grievant intimidated TPW Ward in his efforts to manage her work assignment. The Employer argues that the Grievant intimidated TPW Ward when he rudely instructed her to check with him before giving a resident food from the pantry, causing her to request relocation to a different area. The Employer asserts that the evidence established that TPW Ward felt belittled and was treated like she did not know how to perform her job. The Employer opines that the recipient's reaction to the conversation determines whether it was intimidating. The Employer suggests that when viewed through the lens of TPW Ward's reaction to the Grievant, the evidence establishes that she was intimidated. The Employer concludes that the Grievant violated the Violence in the Workplace policy and the Standards of Conduct.

Further, the Employer contends that the Grievant violated the Standards of Conduct Rule K-11 in his interactions with the Supervisor. Employer argues that the Grievant failed to complete the written statement in a meaningful way but instead completed a document that referred to the process as a joke. The Employer argues that the Grievant cursed at supervisor over the phone saying, "What the fuck," and later intentionally hangs up on her while she was talking to him. Employer also argues that the Grievant challenged his supervisor's authority when he refused with a raised tone of voice to come to her office, and challenged her authority when he

told her that she "better call someone." The Employer acknowledged that any of his other actions were discourteous or disrespectful. The Employer also argues that the Grievant attempted to justify his actions by denigrating the Supervisor's ability to make the correct decisions and her knowledge of client supervision. The Employer maintains that these actions meet the definition of discourteous and disrespectful.

Moreover, the Employer contends that the removal is the appropriate level of discipline. The Employer explains that the Grievant is short term employee with 28 months of service. The Employer also explains that the Grievant had two (2) prior performance-related disciplinary actions on his record; this offense constitutes a third offense. The Standard of Conduct grid carries the penalty of removal for first offense violation of Rule K-2.44 The penalty for a third offense violation of Rule K-11 ranges from a 5-day suspension to removal. Given the testimony and evidence presented at the hearing in this matter, her decision complies with the just cause standard required by the collective bargaining agreement.

Lastly, Employer contends that the grievance should be denied in its entirety.

### **Position of the Union**

Union contends that Employer has failed to meet its burden of proof to establish that the Grievant is guilty of the misconduct. The Union argues that there was no threat of violence. The Union asserts that the Grievant's remarks that he was going to fix the situation with Management only relates to the break with the resident, "D.S.", who had certain TPW's assigned to her. The Union argues that Grievant had no intent to disrespect any of the coworkers that night. The Grievant was unaware of any incident until his Supervisor approached him. The Union explains that the Grievant is "matter-of-fact", and "forthright" in delivery of his opinions which may have been perceived differently than his intentions. The Union maintains there was no violation of the cited rule and policy.

The Union also contends that the Employer did not complete a fair and objective investigation. The Union argues that the TPWs there are several supervisors mentioned within the statements that they spoke to several supervisors regarding the alleged conduct of the Grievant; there are no reports from these supervisors. The Union argues that the investigating officer was bias because her reports makes references to TPW Abrams as a strong woman, her child with a disability, problems at home and her self

esteem but fails to investigate the facts and circumstances of this grievance. The Union argues that the investigative officer failed to preserve video evidence that would have captured the interaction of TPW Ward and the Grievant as well as the Grievant talking with the Superintendent on the phone. The Union maintains there was no fair investigation.

Further, the Union contends that the Employer did not provide fair enforcement of the rules. The Union argues that the TPWs involved made complaints to other supervisors and those supervisors failed to report or investigate those complaints. The Union maintains that these supervisors should have been disciplined for failing to follow policy or failing at their supervisory duties by not documenting any alleged incidents, and they were not. Therefore, the Union concludes that Employer had lax enforcement of the rules.

Moreover, the Union contends that even though the Employer followed the progressive discipline under the policy, the discipline imposed is punitive when management imposed the maximum penalty for the offense given the facts and circumstances of this case. The Union asserts that Article 22 of the parties' Agreement mandates that all probationary employees be given an annual performance evaluation. Union argues that the evidence established that Employer did not complete an evaluation of the Grievant, which would have given him notice of behaviors. Union claims that the Grievant had no intent to disrespect his coworkers. The Union argues that there is no policy for speaking one's mind. The Grievant was frustrated, and his Supervisor appropriately allowed him to vent his frustration to de-escalate the situation.

The Union points out that the Grievant was not removed from the workplace but returned to his duties because no threat existed. The Union concludes that the Grievant's behavior could have been corrected through lesser means.

Lastly, the Union contends that the grievance should be sustained in its entirety. The Union requests that the Grievant be reinstated as a TPW, the removal be removed from his record, full back pay and entitlements, shift, assignment, and days-off be restored, reimbursement unpaid union dues, and otherwise made whole.

## **DISCUSSION**

The Employer correctly opines that management has the sole right to suspend, discharge, and discipline bargaining unit members, and its right to discipline is limited by the terms in the parties' Agreement. Article 24 states that disciplinary action shall not be imposed upon an employee except for just cause. Here, the Employer seeks to remove the Grievant because of his interactions with his two coworkers and his supervisor for his actions on the third shift on January 22-23, 2020. Employer has charged the Grievant with violations of K-2 and K-11. Just cause generally requires persuasive proof that an employee violated the rules or policies, and the discipline was proportionate to the offense. That is, the discipline imposed was reasonable under the totality of the circumstances.

This Arbitrator does not find that the interactions of the Grievant with TPW Ward constitute a violation of Standards of Conduct K-2. The violence prevention policy defines workplace violence as "any act of violence or threat of any such act..." No evidence of record that establishes that the Grievant committed an act of violence or threat of violence against TPW Ward. The Grievant's remark to TPW Ward that the resident was not allowed in the pantry without permission from the Grievant or other staff, whether perceived as rude or not in its delivery, is not an act of violence or threat of violence as contemplated by the policy and K-2.

TPW Ward explained that she believed the Grievant was in a bad mood because generally, he was very talkative at work and told jokes. TPW Ward made a conscious decision to request a transfer to another assignment to avoid any further interaction with Grievant. However, the Grievant's request to not allow residents to obtain items from the pantry without talking to other staff or him first is not discourteous in violation of K-11.

Likewise, this Arbitrator is not persuaded that the interactions of the Grievant and TPW Abrams constitute a violation of Rule K-2. The record establishes no violent act occurred between them during this incident. The issue is whether the remark to “fix” her was a threat of violence within the context of the rule. TPW Abrams testified that she believed that the Grievant was going to do her bodily harm. In the past, TPW Abrams explained that the Grievant had been verbally abusive toward her and used his body to tower over her to intimidate her<sup>1</sup>; the Grievant believed that the next step was physical contact. This perceived threat of violence stated at the hearing is undermined by her written statement of January 23, 2020, where she wrote, “He said I had thought I had a problem with him before He was going to fix me he was going to make sure I couldn’t be “D.S.” staff.” This version in her written statement corroborates the testimony of the Grievant, who stated that he was going to talk to management in the morning about client “D.S.” staff coverage.

The video confirms the encounter between TPW Abrams and the Grievant. Unfortunately, it does not have audio. The video depicts TPW Abrams walking across the room, and the Grievant was behind her. TPW Abrams turns around and approaches the Grievant to hear what is being said, and then turns back around and walks away. It shows the Grievant jumping down from the desk/cabinet and waving his arm as he was still talking to TPW Abrams as she walked away. With her back turned and walking away, TPW Abrams cannot read lips.

TPW Abrams stated that the Grievant called her a “coward”. The Grievant wanted to confront TPW Abrams about the rumors in the workplace, and she did not want to participate. I will credit the testimony of

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<sup>1</sup> There are no management actions of record to confirm these allegations of misconduct.

TPW Abrams. To call someone a coward is argumentative, and could incite further discord. K-11 prohibits arguments with coworkers.

Thus, the Arbitrator finds insufficient evidence to establish the threat of violence as contemplated in Rule K-2; there was no act of violence. However, the Arbitrator finds that the incident involving TPW Abrams does represent a violation of K-11, Failure of Good Behavior.

Of more significance is the Grievant's interaction with his Supervisor. The evidence establishes the following misconduct by the Grievant:

1. The Grievant contacts the Supervisor regarding the breaks. His introduction, "This is Jacob. What the fuck?" There is sufficient evidence of record to persuade this Arbitrator that he had a raised tone in his voice.

2. During the conversation, the Grievant intentionally hangs the phone up.

3. Supervisor contacts the Grievant to inform him that she is sending a person to relieve him, and he should come to her office to discuss the matter. The Grievant said, no he was not coming.

4. The Supervisor reinforces her role as the person in charge, and he needs to come to her office. The Grievant told her no and also told her to call someone else. The Supervisor then calls the Superintendent during the 5:00 am hour regarding the Grievant's conduct.

The Grievant's blatant refusal to comply with a lawful directive, in conjunction with the disrespectful tone and nature of the Grievant's speech, undermined the Supervisor's ability to effectively supervise this unit. The Union attempts to explain his actions as his frustrations from the events of his shift, and being wrongly accused of misconduct. However, employees simply cannot go around and do as they please, disregarding supervisory and managerial directions. His actions were a clear disruption to the workplace. His actions were disrespectful, discourteous, and otherwise a

failure of good behavior. The Arbitrator finds that Employer has met its burden to establish a violation of K-11, Failure of Good Behavior.

Having found that the Grievant violated K-11, Failure of Good Behavior, the question becomes what is the appropriate remedy. Employers have the initial discretion to impose discipline for proven misconduct. Generally, Arbitrators will not second guess management so long as the penalty imposed is reasonable under the facts and circumstances. The parties' Agreement provides for progressive discipline, which gives employees the chance to correct negative behaviors. An employer generally must first attempt to correct misconduct before turning to suspension.

The Grievant is a short-term employee. At the time of the discipline, the Grievant had two active disciplines, a Written Reprimand for L-9 (Disregard of Duty) and a 2-Day Working Suspension for K-6 (Failure of Good Behavior). This proven misconduct is a third offense, and the Employer's grid has a penalty range between time, working suspension, fine, and removal. Management chose removal for this third offense violation. The Superintendent testified that in making this determination, she considered the disciplinary grid, the seriousness of the offenses, the threatening and intimidating nature of the conduct, the impact on the affected staff and operations, the Grievant's non-compliance with the supervisor's directions, as well as the prior conversations she had with the Grievant about controlling his emotions. The Arbitrator finds that the Employer has progressed the discipline according to the provisions of its policy.

This Arbitrator is mindful that parties did not negotiate the Standards of Conduct Discipline Grid. The Employer unilaterally implemented the grid to guide managers in the imposition of discipline. As such, the Arbitrator is not bound by the grid and must look instead to the just cause standard within Article 24 of the parties' Agreement. Under the just cause analysis, the question is whether the penalty is commensurate with the offense.



The Union argues that Management could have provided a lesser penalty within the grid to correct his behavior. The Union explains that the Grievant did not intend to be disrespectful to his supervisor but was frustrated by the allegations of his coworkers and the decisions that the Supervisor made regarding breaks. The Union points to the statements of other coworkers who have worked closely with the Grievant to demonstrate that although the Grievant does speak his mind, the Grievant is also kind, pleasant, compassionate, and works well with the residents. The Union also complains that there has been a failure to manage the Grievant. The evidence established that management has never provided an evaluation to the Grievant to notice him of any work-related performance issues. Further, TPW Abrams complaints about him have never been addressed and/or documented by Management.

Failure to manage maybe a mitigation factor in certain circumstances. In this instance, this factor did not contribute to the more serious behavior of the Grievant, the insubordinate behavior to his Supervisor. The Arbitrator finds that the Grievant was previously disciplined for Failure of Good Behavior, and the Superintendent counseled him on his interactions with others.

In weighing the seriousness of the misconduct, this Arbitrator finds that the removal is commensurate with the offense. The Grievant's interaction with TPW Ward is not at issue. The Grievant's interaction with TPW Abrams would have resulted in a lesser penalty. However, it is Grievant's interaction with his Supervisor that is problematic. Disrespectful, belligerent behavior that tends, or is intended, to undermine the authority of a supervisor is a dischargeable offense. His Supervisor wanted to discuss the situation with him. The Grievant tells her, "No, I am not coming, and to call someone else." The Grievant directly challenged her authority.

It is not the place of an Arbitrator to substitute her judgment when management's judgment is within the standard of reasonableness. Thus, the Arbitrator finds that the Employer has not met its burden of proof as to a Rule K-2 violation. The Arbitrator also finds that the Employer has met its burden of proof as to a Rule K-11 violation. The Arbitrator further finds that the penalty is commensurate with the offense. As a result, there is just cause to discipline the Grievant.

## **AWARD**

After the review and study of the testimonies of the witnesses, exhibits presented, submissions, and arguments of the Advocates, and in light of the above Discussion, the Grievance is denied.

Dated: August 26, 2021

/s/ Meeta A. Bass, Arbitrator  
Reynoldsburg, Ohio

## **CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing Opinion and Award was served upon the following individuals via electronic service to this 26th day of August 2021:

Jill Harlan  
Labor Relations Officer III  
Ohio Department of Developmental Disabilities  
30 East Broad Street, 18th Floor  
Columbus, Ohio 43215

Tim Watson  
Staff Representative  
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390 Worthington Road, Suite A  
Westerville, Ohio 43082

/s/ Meeta A. Bass, Arbitrator  
Reynoldsburg, Ohio

