**STATE OF OHIO, DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**

 **BRIEF**

 **IN THE MATTER OF ARBITRATION**

**DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES:**

 **HEARTLAND BEHAVIORAL HEALTHCARE**

 **AND**

 **THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION**

 **(OCSEA)**

 **AFSCME LOCAL 11 AFL-CIO**

**DMH-2020-02161-07: SHERRIA NEEL-BLACK**

Arbitrator: Sarah Cole

 Date of Hearing: August 26, 2021

 Location of Hearing: Via Zoom

 Submitted by:

 Todd M. Viars

 Labor Relations Officer

 Office of Human Resources

 30 East Broad Street, 11th Floor

 Columbus, Ohio 43215

**Joint Stipulations**

1. This grievance is properly before the Arbitrator.
2. The Grievant was hired by Heartland Behavioral Healthcare on October 22, 1990.
3. At the time of her removal, the Grievant was employed as a Laboratory Technician 2.
4. June 5, 2020, the Grievant was removed from her position violations of HR22. Code of Conduct and General Rules:
* Rule 4.1 Failure to follow policies and procedures Specifically: MHAS policy LEG-01 Workplace Violence Prevention Policy and Procedures.
* Rule 3.3 Dishonesty: Being dishonest while on duty or engaged in state business, including but not limited to, deliberately withholding information, giving false or inaccurate information verbally or in writing, to a supervisor or appropriate authority, i.e., administrative investigation, State Highway Patrol, State Auditor, etc.
1. At the time of the termination, the grievant had an active Written Reprimand effective pay period ending March 24, 2020, for violation of HR22. Code of Conduct and General Rules:
* Rule 4.3 Inappropriate communication/correspondence with a member of the public or staff. Use of obscene, abusive, or insulting language or gestures towards a member of the public or staff.
1. At the time of the termination, the grievant had an active Written Reprimand effective pay period ending July 23, 2018 for violation of HR22. Code of Conduct and General Rules:
* Rule 4.3 Inappropriate communication/correspondence with a member of the public or staff. Use of obscene, abusive, or insulting language or gestures towards a member of the public or staff.

**Joint Exhibits**

1. State of Ohio and OCSEA Local 11 Labor Agreement:
May 12, 2018, – February 28, 2021
2. Grievance Trail: DMH-2020-02161-07
3. Termination letter, effective date June 5, 2020
4. Due Process Trail
	* + - 1. Pre-Disciplinary Hearing notice
				2. Acknowledgement of Pre-Disciplinary Hearing notice
				3. Pre-Disciplinary Hearing Officer’s Report
5. Administrative Investigation Packet
	* + - 1. Cover letter
				2. Director’s letter
				3. Disciplinary Record
				4. Just Cause
				5. Pre-Disciplinary Meeting Hearing Officers Findings
				6. Pre-Disciplinary Meeting Notice
				7. Summary of Investigation
				8. Administrative Investigation May 1, 2020- Lt. Michael Horvath
				9. Statements- Therapeutic Program Worker Olivia Sampsel
				10. Statements- Therapeutic Program Worker Ester Townsend
				11. Statements- Psychiatric/DD Nurse Coordinator Amy Boyd
				12. Statements- Sherria Neel -Black
				13. Email from Nurse Executive Michael Dewitt
				14. Email from Psychiatric/DD Nurse Supervisor Dawn Walton
				15. Email from Psychiatric/DD Nurse Becky Harmon
				16. Email from Lt. Michael Horvath
				17. Sherria Neel-Black Training Records
				18. HR-22 Code of Conduct and General Work Rules
				19. Workplace Violence Prevention Policy and Procedure

**WITNESSES FOR MANAGEMENT**

1) Joseph Dina, Labor Relations Officer

2) Olivia Sampsel, TPW

3) Ester Townsend, Retired TPW

4) Amy Boyd, RN/Nurse Educator

5) Becky Harmon, RN

6) Bob Hobart, IT Supervisor

**ISSUES IN DISPUTE**

Was the Grievant Sherria Neel-Black, removed for just cause and if not, what shall be the remedy?

**SUMMARY OF FACTS**

 The Grievant was hired at Heartland Behavioral Healthcare on October 22, 1990 as a Laboratory Technician 2. She held that position at the time of her termination. The Grievant was terminated on June 5, 2020 after violating HR-22 “Code of Conduct and General Work Rules”:

Work Rule 4.1 Failure to follow policies and procedure (JE0075) Specifically: MHAS policy LEG-01 Workplace Violence Prevention Policy and Procedures (JE0079).

Work Rule 3.3 Dishonesty: Being dishonest while on duty or engaged in state business, including but not limited to, deliberately withholding information, giving false or inaccurate information verbally or in writing, to a supervisor or appropriate authority, i.e., administrative investigation, State Highway Patrol, State Auditor, etc. (JE0073).

 The Grievant had a pre-disciplinary meeting on May 15, 2020 (JE0017) and it was determined by the Hearing Officer that there was just cause to issue discipline. At the time of her removal the Grievant had an active Written Reprimand dated July 23, 2018 for violation of HR-22. Code of Conduct and General Works, Rule 4.3 Inappropriate communication/ correspondence with a member of the public or staff. Use of obscene, abusive, or insulting language or gestures towards a member of the public or staff. (JE0013). The Grievant also had an active Written Reprimand dated March 24, 2020, for violation of Rule 4.3 Inappropriate communication/ correspondence with a member of the public or staff. Use of obscene, abusive, or insulting language or gestures towards a member of the public or staff. (JE0014).

**DISCUSSION**

 On April 16, 2020 Olivia Sampsel, Therapeutic Program Worker (TPW) and Ester Townsend, now retired TPW, were having a discussion on whether a doctor’s laboratory coat is considered Personal Protective Equipment (PPE). The Grievant, overhearing their conversation, came around the corner and stated, “a lab coat certainly is PPE”. Ms. Sampsel stated that it was not and left the area to go take temperatures and scan an employee into the building. Ms. Sampsel also called Amy Boyd, RN/Nurse Educator on the VOCERA to confirm if a doctor’s lab coat was considered PPE. Ms. Boyd told her it was not.

Once back in the office Ms. Sampsel told both the Grievant and Ms. Townsend that a doctor’s lab coat was not PPE and asked Ms. Boyd, who was still on the VOCERA, to confirm this, which she did. Immediately the Grievant became very upset. Her face became red, and she stated she was talking about her lab coat being PPE. Ms. Sampsel told the Grievant she was tired of her always switching her stories, tired of the way the grievant talks to people, and proceeded to walk to her desk and do her work.

 Upon hearing this the Grievant became irate and told Ms. Sampsel “I am going to fuck you up” and proceeded to approach Ms. Sampsel. The Grievant double tapped Ms. Sampsel on the cheek with her hand. Ms. Sampsel took her left hand and swung it in front of her face to remove the Grievant’s hand and told her to never touch her again.

The Grievant continued to physically attack by double tapping Ms. Sampsel’s face again. Ms. Sampsel once again took her left hand a swung it across her face to remove the Grievant’s hand. Ms. Sampsel could hear the reaction from her co-worker Ms. Townsend who said, “oh shit”. Then the Grievant, perhaps realizing what she had just done said, “I was just joking. Where did all this madness come from?” Ms. Sampsel packed up her belonging and left the office to work in the screening area for the remainder of the day.

During her testimony, Ms. Sampsel stated that she was shocked that the Grievant had laid hands on her and at first did not know what to do. According to her statement (JE0029-0030) when asked by the investigator why she waited until the next day to fill out an incident report she stated:

Cause I am very scared of Sherri and how she will react or how she might do in revenge. I went home and all I could do is see picture of her face and how fast she got out of control. No employee should ever get that mad or treat other coworkers like that.

The following day April 17, 2020, Ms. Sampsel decided that she needed to report the incident to her Supervisor Dawn Walton (JE0039). Ms. Walton in turn notified Nursing Director Mick Dewitt as to what had taken place. After learning of incident, Director Dewitt notified then acting Human Resource Director Bernadette Mosley, who initiated an investigation into the matter.

After reporting the incident to her supervisor, Ms. Sampsel reached out to Registered Nurse and SEIU/1199 Union delegate, Becky Harmon about concerns she had with the Grievant being the Local Chapter President and not receiving any representation from her union, OCSEA (JE0041).

During her testimony, Ms. Harmon stated that Ms. Sampsel was never approached by her local Union, OCSEA, and needed guidance on what would take place after writing the incident report. Ms. Harmon stated Ms. Sampsel told her what had taken place the day before and wanted to know if she had done the right thing by reporting the incident. Ms. Harmon explained to her that no one should be verbally or physically threaten or assaulted at their place of work especially by a coworker. It should be noted that during Ms. Sampsel and Ms. Harmon’s cross examination, the Union never refuted the fact that they had never reached out to Ms. Sampsel. In fact, the only thing they seemed focused on was that Ms. Sampsel had held a Union position for a short period of time.

During the testimony of the only eyewitness, Ms. Townsend, who was in the same office at the time of the incident. Stated the Grievant, had in fact told Ms. Sampsel, that “I am going to fuck you up” and proceeded to double tap her on the side of the face. The Grievant did this not once, but twice, after being told by Ms. Sampsel not to ever touch her again. Ms. Townsend said she was shocked by what had taken place that day. Ms. Townsend is a credible witness; she has no motivation to be anything but truthful and forthright. She has been retired for months. In fact, the Union never challenged her testimony. The she testified to exactly what she saw take place in the office that day; the Grievant threatening Ms. Sampsel and then assaulted her.

 Labor Relations Officer (LRO) for HBH, Joseph Dina testified MHAS employees are held to the rules and standards outlined in HR-22: Code of Conduct and General Work Rules (JE0065). The policy is reviewed by every employee on an annual basis. Mr. Dina testified that the Grievant completed her annual training for HR-22, as well as Workplace Violence Prevention Policy and Procedures LOG-1 (JE0079). He further testified that being the LRO for HBH he is involved in most employee disciplines. He reviews all investigations, compiles the Pre-Disciplinary packets and notices to include drafting the charges. Mr. Dina drafted the Pre-Disciplinary Notice for Ms. Black’s Pre-Disciplinary Conference which was held on May 13, 2020 (JE0007). Mr. Dina attended the Pre-Disciplinary Conferences as the management representative. The hearing officer determined there was just cause for disciplinary action (JE0011).

 Mr. Dina testified the Grievant had two active disciplines: A written reprimand, dated July 23, 2018 (JE0013), and a written reprimand, dated March 24, 2020 (JE0014).

 Mr. Dina also testified that upon receiving the hearing officer report that found there was just cause, he drafted the termination letter and supporting documentation, sent it to Laurie Spolarich, the Labor Relations Administrator at Central Office for review. After her review, Ms. Spolarich sent it to MHAS Director, Lori Criss for a final review. After agreeing the discipline was appropriate, the Director signed the removal letter on June 5, 2020.

 The Union argued that the Grievant never swore at Ms. Sampsel and only touched her on the shoulder to defuse the situation. During her testimony the Grievant claimed that she started to leave the office when heard Ms. Sampsel and Ms. Townsend talking. the Grievant claims that Ms. Sampsel said to her “that what you told me about doctor’s PPE was wrong”. The Grievant stated Ms. Sampsel was agitated. The Grievant claimed that Ms. Sampsel told her, “You’re just pissed because you’re wrong”. The Grievant then testified she told Ms. Sampsel, “whatever drama is starting here I don’t want any part of this”. She then walked over to Ms. Sampsel and tapped her on the shoulder and said, “Honey that’s not what I said” and left the area.

 Management would like to point out that the Grievant openly admits to touching Ms. Sampsel during their exchange. During the testimony of both Ms. Sampsel and Ms. Townsend were consistent in the fact that the Grievant had stated that “I am going to fuck you up” and that she double tapped Ms. Sampsel on the face two times. In the Grievants written statement (JE0035) she was asked who witnessed the incident. The grievant answered that Ester Townsend was in the room and Amy Boyd was on the VOCERA for maybe a minute. (See Amy Boyd statement JE0033) In Ms. Boyd’s statement she stated that she clearly heard Ms. Sampsel tell the Grievant to “Get your hands off me”.

 Ms. Black testified that she held the office of Local Chapter President off and on for 12 years and was also a long-time employee of the State. With her acknowledgement of this she can not deny the fact that she has been trained on both HR-22 Code of Conduct (JE0065) and MHAS Policy LOG-1 Workplace Violence Prevention Policy and Procedures (JE0079) multiple times throughout the years. The Grievant knows that MHAS has adopted a zero-tolerance policy for workplace violence. LOG-1 states under POLICY section C 1) Threats or acts of violence against persons and/or property will not be tolerated by MHAS. Threats of violence or workplace violence by employees will lead to disciplinary action up to, including, termination and the involvement of the law enforcement authorities as needed (JE0080).

 To further aggravate the circumstances of the incident, the Grievant was dishonest in all her accounts of the interaction between herself and her co-worker. She has adamantly refused to take any responsibility for her behavior or actions on that day. This choice of hers resulted in the second rule violation listed on her termination letter, Rule 3.3 Dishonesty (JE0073).

 The facts of the case are clear. The Grievant hearing a conversation injected herself into it then became enraged and threaten Ms. Sampsel by stating that “I am going to fuck you up” and proceeded to assault her. Once she realized that she had crossed the line she tried to play it off as a joke. The testimony from Ms. Sampsel, and Ms. Townsend has never wavered on the actions the Grievant choose to take that day. Clearly threatening to physically harm a fellow coworker and then laying hands on her face is no joking matter.

**CONCLUSION**

Management has clearly met the burden of proof and has shown through testimony and evidence that the Grievant was removed for Just Cause. The Grievant threatened Ms. Sampsel and physically tapped her on the side of the face over nothing more then a Doctor’s lab coat being PPE. The Grievant was not honest in her statement during the investigation, in her pre-disciplinary conference or in her testimony at this hearing. The testimony of Management’s witnesses paints a clear picture of what happened in the office that day.

Based on the testimony and the evidence presented, Management respectfully requests that the grievance be denied.

Sincerely,

Todd M Viars

Labor Relations Officer 3

Central Office