IN THE MATTER OF ARBITRATION	)	
	)	
BETWEEN	)	**GRIEVANCE ID: Jody Hill**
	)	
SEIU DISTICT 1199	)	**Grievance No. Discharge**
	)	**Grievance #DRC 2020-03236-12**
AND	)	**BEFORE: ROBERT G. STEIN, NAA**
	)	**ARBITRATOR**
OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS, DIVISION OF PAROLE AND COMMUNITY SERVICES	)	

FOR THE UNION:

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INTRODUCTION

This matter came on for hearing before the arbitrator pursuant to the collective bargaining agreement ("Agreement" or "CBA") between The State of Ohio ("Employer") and The Service Employees International Union, District 1199 ("Union" or "SEIU"). That Agreement was effective from October 26, 2018, through April 30, 2021, and included the conduct which is the subject of this grievance. The department involved in this matter was the Department of Rehabilitation and Corrections ("ODRC"), the Division of Parole and Community Services ("DPCS," "Employer," "Department") Robert G. Stein was mutually selected by the parties to impartially arbitrate this matter, pursuant to Article 7 of the Agreement. A hearing on this matter was conducted on September 21, 2021, was held virtually. The parties mutually agreed to that hearing date and that virtual format, and they were each provided with a full opportunity to present both oral testimony and documentary evidence supporting their respective positions. The hearing, which was not recorded via a written transcript, was subsequently declared closed upon the parties' individual submissions of post-hearing briefs.

No issues of either procedural or jurisdictional arbitrability have been raised, and the parties have stipulated that the instant matter is properly before the arbitrator for a determination on the merits. The parties have also agreed to the submission of five (5) joint exhibits.

ISSUE

Was the Grievant terminated for just cause? If not, what shall the remedy be?

I. RELEVANT CONTRACT LANGUAGE

As set forth in the Grievance, the relevant contractual sections identified are:

6.01 Non-Discrimination

6.02 Agreement Rights

8.01 Standard

8.02 Progressive Discipline

8.03 Pre-Discipline

8.04 Investigations

BACKGROUND

The Grievant, in this matter is Jody Hill ("Hill" or "Grievant"), she was terminated from her position as a Parole officer with DPCS in the Cincinnati, Ohio Region on 8/27/2020. Hill's previous employment included service as a Probation Officer with Hamilton County, and for Summit Behavior Mental Health. On August 27, 2020, the Grievant, Hill, was removed from her position of parole officer (PO) with the Department of Rehabilitation and Correction, ("ODRC"), Division of Parole and Community Services ("DPCS" or "Employer"). According to the Employer, the Grievant was removed for violating the Standards of Employee Conduct (SOEC) Rules 7- Failure to follow post orders, administrative regulations, policies, or written or verbal directives and 36- Any act or failure to act that could harm or potentially harm the employee,

fellow employee(s), or a member of the public. The cited misconduct that led to violation of these rules was noted in the Employer's investigation as follows:

- The Grievant had numerous late field officer tool (FOT) notes, including late positive contact notes (PC), and staffing notes.
- The Grievant failed to address violation behavior of at least two offenders.
- The Grievant failed to make positive contacts with several offenders, including high and very high offenders.
- The Grievant failed to declare several offenders Whereabouts Unknown (WUVL) in a timely manner and/or declared them WUVL without first trying to make contact.
- The Grievant accepted an Interstate Compact case without meeting with the offender or visiting the offender's placement.
- The Grievant placed a hold order on a citizen not under the supervision of the APA.
- The Grievant failed to timely act upon an offender's holder resulting in the offender being released from jail without a mandatory violation hearing for weapons.

(Employer brief, p. 2)

Subsequently the Union filed a grievance on behalf of Hill, and it was processed pursuant to Article 7 of the CBA. The grievance remained unresolved, and it was submitted to final and binding arbitration.by the Union. The parties have stipulated that the matter is properly before the Arbitrator for a determination on the merits.

SUMMARY OF THE EMPLOYER POSITION

The Employer avers that it had just cause to terminate the employment of the Grievant for several offenses that dealt with judgment and performance. Moreover, she failed to take advantage of FMLA leave, and other employee services, such as EAP to assist her in managing her father's serious illness and other attending disruptions in her life. The Employer particularly points out that the nature of her performance failures was not only serious, but both resulted in harm to an innocent person, a failure to initiate and follow through with a parole violation and with required and important DPCS contact procedures involving offenders, which by their

absence and inordinate delay failed to provide required supervision of parolees and posing a potential threat to the public. DPCS rejects the Union's argument regarding disparate treatment of the Grievant, arguing that the Union failed to identify other employees who were similarly situated and were treated in a more favorable manner.

The Employer on pages 16 through 19 of its brief provides the following specific information, dates, and times to demonstrate that it had no choice other than to terminate the Grievant's employment:

B. ***MANAGEMENT'S ARGUMENT:***

There is no dispute that the Grievant failed to properly perform her job as a parole officer. The only dispute is what level of discipline the Grievant should receive. The Grievant admitted that she did make late entries. The Grievant admitted that she did not make her field contacts on high offenders. The Grievant admitted that she placed a hold order on a person not under APA supervision. The Grievant admitted that she failed to timely process violation behavior resulting in an offender avoiding a possible mandatory prison time.

Arbitrators uphold discharge when employees are chronically careless in performing their duties over a period regardless of the reasons. (Grievance Guide Eleventh Edition 2003, p. 194) In the instant case, the Grievant has shown a pattern of carelessness in performing her job duties over an extended period. Some of these incidents occurred before the issues that led to her termination; the two-day working suspension was not enough to correct the lack of thought applied to performing her job.

- *Offender Joshua Childres- (high supervision level) seen by Grievant on 01/24/2019; not seen again until 11/19/2019; required to have face-to-face contact, almost 10 months with no contact. She was required to have a face-to-face contact with him every month.*
- *Offender Daviau Carnes-(high supervision level)- seen by Grievant on 01/24/2019; not seen as of the date of Supervisor Tate's 11/22/2019 incident report; required to have face to face contact with him every month.*

- *Offender Miquel Fritz (very high supervision level)- seen by Grievant on 02/19/2019; not seen again until 09/23/2019, more than seven months later; required to have 3 face- to-face contacts with him every month. The Grievant also failed to sanction the offender for not living at his approved place of residence.*
- *Offender Larry Winslow- sex offender improperly classified at a high supervision level instead of very high; Grievant died not staff case with sex offender specialist as required.*
- *Offender Joshua Childres- Grievant declared offender WUVL without documentation of attempting locate offender prior to declaring him WUVL.*
- *Additionally Grievant had several late or missing FOT notes.*

The Grievant's caseload size for January 2019 through November 2019 (September missing) is reflected in Jt. Ex. 4 p. 9) The Grievant's average caseload size for the 10-month period (excluding September) was 108. The average number of very highs and highs for this same period was 34. This means that there were 34 high risk offenders the Grievant had to see monthly.

The Grievant's leave use was also verified during the investigation. (Jt. Ex. 4, pp. 9-10)

- *January 2019- 5 hours of vacation; 7.1 sick- total 12.1 hours of leave so about a day and the half plus two holidays.*
- *February 2019-10.2 hours of vacation, plus one holiday*
- *March 2019-28.5 hours of vacation but worked 2 hours of overtime so less than three and half days off in March.*
- *April 2019- 6.1 hours of sick.*
- *May 2019-6.2 hours of personal leave; 15.8 hours of comp time used but worked 1.6 hours of overtime so off a little over two and the half days, plus one holiday*
- *June 2019- 9.1 hours of vacation used but worked 1.5 hours of overtime so off a little less than a day.*
- *July 2019- 8 hours of vacation used, 8 hours of personal leave used but worked 1.5 hours of overtime so off a little less than two days, plus one holiday.*
- *August 2019- 33.5 hours of vacation and 8 hours of sick so off a little more than a week.*
- *September 2019- The Grievant's father passed away so the Grievant was off from 9/20/2019 through 10/15/2019, only working on 9/24/2019 from 12:30pm to 4:30pm.*
- *October 2019- 80 hours of vacation used; 8 hours of personal leave used but worked 1.2 hours of overtime so off almost 11 days.*
- *November 2019- 11.4 hours of vacation used; 8 hours of sick leave used so off less than two days, plus one holiday.*
- *December 2019- The Grievant was reassigned to transportation duties only pending caseload review.*

The relevance of the Grievant's leave usage is to show that she did not use much leave until September when her father passed away, so she was physically present to do her job. The Grievant chose to come to work in a position where the primary responsibility and actual basis for the position is to protect the public through appropriate supervision. She did not do that. The Grievant is saying that she came to work when she really wasn't functional so that she could save leave in case she needed it later. Perhaps coasting through a menial position with personal distractions and potentially disabling stress would be okay for a short period of time but not a position where mistakes and neglect could literally cost someone her life or a day of freedom, like Mr. Rhame Giles lost.

III. CONCLUSION:

The Grievant admitted to failing to perform her job duties. The Grievant has two prior active disciplines for performance-based incidents. While the Grievant offered sympathetic mitigation for her distractions, the Grievant had a responsibility to the Department and the public to perform her duties as a parole officer in such a way that people were not put at risk. The Grievant chose to report to work instead of taking advantage of the programs the State offers, such as disability and EAP. She chose not to use continuous FMLA leave; she chose to report to work and in doing so had a responsibility to do her job. The Grievant was removed from her job for just cause and the State respectfully request that the grievance be denied in its entirety.

SUMMARY OF THE UNION'S POSITION

The Union makes several arguments in this case and rather than attempting to summarize them and risk unfairly truncating or distorting their content, in this case the undersigned arbitrator, as was the approach taken in reiterating the Employer's case has chosen to simply restate what the Union has argued in its brief.

I. ARGUMENT

a. THE STATE DID NOT ACT WITH THE REQUISITE DUE PROCESS WHEN TERMINATING THE GRIEVANT, JODY HILL

The State violated traditional notions of due process by failing to question the Grievant and others within a reasonable period of time, disciplining the Grievant for matters previously known or which should have been known by APA but for its own negligence, failing to follow progressive discipline and provide sufficient notice that the violations of which she was accused could result in termination.

Due process requires employees to be disciplined within a reasonable period of time. This is to ensure an employee can adequately defend him or herself, an ability which may erode with the passage of time; to prevent an employer from holding disciplines over the head of the employee or stacking the incidents on top of one another at a later date to make the punishment more severe; and to provide a degree of predictability in employment. Further, when an employee is disciplined, it should be for all incidents known by the employer at the time of the discipline.

If a worker allegedly commits an act and is promptly interviewed, disciplined, and has use of the grievance process, the issue is fresh in the minds of all involved. The grievant and witnesses will undoubtedly have more reliable recollections and the importance of the situation will cement the facts and circumstances in memory. The conduct that led to Ms. Hill's termination spanned from November of 2018 to November of 2019. Some of that conduct was known or should have been known to the State at the time or shortly after it occurred.

Ms. Hill was not interviewed about her conduct until February 28, 2019- at least three (3) months since that last incident that allegedly occurred and fifteen (15) months after the first. The pre-disciplinary hearing on this matter did not occur until May 27 (another 3 months later). This was the Grievant's first opportunity to see all the evidence and respond to the allegations against her. It is unreasonable to hold this hearing for nearly half a year from the last incident (and a year and a half from the first) and expect Ms. Hill to have an accurate memory or response to the evidence presented, or the testimony of others. Further, as explained in more detail below, some of the alleged wrongdoing was known to the Employer months earlier and never dealt with.

Waiting until August to finally discipline Ms. Hill presented an unreasonable delay and undermined the ability of Ms. Hill and the Union to mount a defense. Addressing the State's allegation against her for the first time nearly a year and a half after the first incident would have been a hardship for anyone due to the memory of the Grievant and other potential witnesses, as well as the availability of evidence.

Further, Ms. Hill had a previous discipline for events that occurred as late as February 6, 2019. Joint Exhibit 5, p. 2. This was before the evaluation Ms. Hill received in March of 2019 with Mr. Tate. When an employer imposes discipline on an employee for a particular incident, all other events that could be a basis for discipline known or should have reasonably been known to employer and which occurred prior to that discipline should be merged. Any rational employee would reasonably assume that when an employer disciplines him or her, it includes all of the acts or omissions by the employee known to the employer at the time that it deems worthy of discipline. Ms. Hill's March 2019 evaluation was supposed to cover the periods of April 1, 2018, to March 31, 2019. At that point, Mr. Tate had identified several issues with Ms. Hill's performance.

Mr. Tate writes: "[a]t this time, PO Hill is not meeting expectations in the customer focus area…PO Hill being late with reports and falling behind on obtain the required contacts on the offenders in her caseload… it was also determined that PO Hill had not obtained and documented the required number of contacts required on a parole offender… PO Hill has recently lost focus on her duties and responsibilities and has found herself failing to remain in compliance with departmental policies and procedures… overall, PO Hill has not met expectations over this last rating period…" Union Exhibit B, pp. 2-5. Mr. Tate identified issues with offender contacts, reports, falling behind, losing focus, failure to comply with policy generally. These were known to Mr. Tate, and as such APA, when Ms. Hill was disciplined on June 20, 2019. Further, as Mr. Tate was obligated by policy (which will be discussed more below) to review the Grievant's FOT notes. Mr. Tate knew or should have known of the many of the deficiencies alleged by Investigator as the basis for Ms. Hill's discipline.[1] Thus any allegations dated prior to the June 20, 2019, the date the discipline should was issued, should not be considered.

The State also failed to provide proper notice that Ms. Hill's infraction could lead to discipline. Ms. Hill freely admitted that she was late with FOT notes and that some offender contacts were likely not reported. Joint Exhibit 4, p. 25. She told Investigator Dudas that she noted that the entries were late by

[1] See e.g., charges included late FOT notes from 11/21/2018 to 5/31/2019 for Offender Bryant p. 68-69; 4/11/2019 to 5/31/2019 Offender Lutz p. 77; Ms. Hill stated that she had already been corrected regarding Offender Adam Taylor, Id. p. 81; 12/20/2018 to 1/16/2019 for Offender Wells p. 83

indicating LATE ENTRY in the notes. Testimony showed that this was not something the system did on its own, but something Ms. Hill would include herself. Mr. Tate testified that he would have been able to look at Ms. Hill's entries, similar to the Note Sheets provides as Joint Exhibit 4, beginning on page 577. The LATE ENTRY notes are rather obvious. See Id., p 579, 581-583, and continuing. Mr. Tate, as Ms. Hill's immediate supervisor, had a responsible to review her to ensure she had notes for each offender. See Policy 100-APA-23(IV)(A)(4) states: "[t]he unit supervisor shall ensure all parole officers under his/her supervision who supervise offenders have a FOT and notes for each offender." Joint Exhibit 4, p.799.

If the State was supervising Ms. Hill in accordance with its own policy, it would have known of the late entries for at least some portion of the investigatory period (November 2018-November 2019) prior the incident reports filed in November 2019. But other than possibly the March 2019 evaluation by Mr. Tate, no one approached Ms. Hill regarding late FOT entries. According to the Investigation Summary, the Grievant had continuously reported late entries during this time. Ms. Hill synced this information from the FOT to the OSP where her supervisor (or anyone else in supervision at APA) could review it. As Ms. Hill continued to make these late entries and no one said a word, it is reasonable to assume that any policy related to the FOT was not enforced and it would be reasonable for the Grievant to assume that she could continue to engage in the same activity that she had without being counseled without consequence.

b. THE VERACITY OF THE STATE'S "PROOF" OF WRONGDOING IS IN QUESTION

Most of the State's evidence regarding Ms. Hill's wrongdoing is from the FOT system and the notes it syncs to OSP. The problem is that the system itself was so unreliable and riddled with problems the reliability of the evidence is in question. This was an issue often brought up by the Union to the State-members reported issues with the system losing entered information and failing to sync to the Offender Search Portal (OSP). This was also brought up during the disciplinary and grievance processes.

APA has approximately 500 bargaining unit positions for parole officers, yet hundreds of IT tickets were put in during the time period relevant to this inquiry related to the FOT system and its failures. From November 2018 until May of 2020, there are a multitude of reported issues regarding the FOT failure to sync, as well as contacts and information being lost when entered into the FOT.[2]

[2] When reviewing the IT information provided by the State set forth in Union Exhibit E, each incident has a number in the first column (which starts with INC), a brief description of the issue in the second column, and a date the matter was opened in the 9th column. The page numbers in the upper righthand corner are in reverse order based on date. The

In a spot review of twenty-five (25) pages of the report from page 99 to 124 (from March 2019 to May 2019), there were reports of issues regarding failure of the FOT to sync properly. See e.g., 3114969 (p.99), 3067666 (p.100), 3023635 (p.104), 2973849 (p.108), 2940292 (p.111), 2899227 (p.114), 2882534, 2870068 (p.116), 2862218 (p.117), 2782164 (p.124). Ms. Hill had previously reported syncing issues to IT, and a syncing issue presented itself during Investigator Dudas' investigation- as Hill's FOT tablet did not properly share the information entered on at least seven (7) offenders, whose records were subject to this investigation.

However, it appears even more common for information entered into the FOT to go missing entirely. See e.g. "offenders not on my FOT": 3081251 (99), 2972649 (108), 2911437 (112), 2824655 (120); "missing FOT notes previously entered": 3055101, 3045491, 3042239 (100), 2996497, 2993355, 2988977 (106), 29978101 (107), 2956805 (109), 2940739 (110), 2931861 (111), 2915070 (112), 2900154 (113), 2899826, 2899404, 2899227, 2893954 (114), 2884891 (115), 2867231 (116), 2840222, 2829271 (119), 2800509, 2790597, 2783556 (123). This spot check is very comparable to the report at large, nearly 150 pages. Please review Appendix 1 for a listing of report numbers related to failing to sync or missing information. Individuals often state that they have made reports regarding missing notes or offenders on multiple occasions.

It is clear that Ms. Hill violated policy by making late reports, she admits that her reports were late and entered LATE ENTRY next to them. She was cooperative during the investigation. See Joint Exhibit 3, p. 3. During that investigation, she also stated that she believed that she had made and entered more contacts with offenders than was recorded in the FOT/OSP. See e.g., Id. pp. 68, 82. According to the Investigator, she states that during her employment, she would update offender information on her tablet and occasionally find that it had not been recorded when coming back to a particular offender's record. It was not always obvious if information failed to upload unless she went back into a particular record and noticed the issue. Similar problems were repeatedly reported by APA staff to IT. See above.

Again, this problem was also evident during the investigation when Investigator Dudas found more information entered into the system that was not synced to OSP or otherwise saved. In fact, additional information was recovered regarding Offenders Bryant, Carnes, Childres, Fritz, Taylor, Warren, and Winslow. The information "recovered" was not from a finite time period as one might expect. Instead, the

earlier pages and closer in time with higher identification numbers, which is the way the information was provided. Appendix 1 is attached to this brief and includes numbers of reports that specifically state that the PO was having syncing issues or issues with lost information.

recovered documentation was found with entry dates beginning in April of 2019 and continuing through January of 2020. See generally, Id. pp. 67-86.

The Union, and frankly the State, has no way of knowing what did and did not actually show up doing the Investigator's review of the Hill's FOT notes. There could have been entries that did not show up in the FOT, entries that were in the FOT that did not sync to the OSP. The issues seemed so widespread as to be commonplace. Additionally, Ms. Hill's memory of events, like everyone's member, degraded over time and when she was finally interviewed on February 28, 2021, she was asked to recall events from 1.5 years to six (6) months prior. With such an unreliable system, which incidentally no longer used by APA, the veracity of the State's claims is ever more difficult to prove.

c. TERMINATION IS UNWARRANTED CONSIDERING THE SERIOUSNESS OF THE OFFENSES

The State also has the burden of showing that the seriousness of the offense justifies termination in this matter. When reviewing APA's actions in this matter, it quickly becomes apparent that APA did not treat some or all of Ms. Hill's alleged violations as serious conduct. If the Arbitrator is to believe that the violations here are worthy of termination, then the State must show that the violations were treated as such.

After Ms. Hill's evaluation, which included what Mr. Tate believed were deficiencies in Ms. Hill's work, a PIP was never implanted (though promised), there was no follow-up to determine if the Ms. Hill was still missing contacts and reports, and she was allowed to continue to work with the same number of offenders, including high and very high supervision offenders after these concerns were brought up. The APA basically washed its hands of any responsibility for the supervision of these offenders, even after it became apparent that Ms. Hill was having a difficult time meeting her responsibilities in an agency that was already short-staffed and overworked.

A similar reaction can be seen in the Cincinnati Office after the annual internal audit. There were problems identified with the number of offender contact generally, not with Ms. Hill specifically. This also wasn't treated as very serious in Cincinnati. Even though RA Williams stated that the spreadsheets (which appeared to be an accountability measure put in place by the Region) were to be implement in July of

2019, Cincinnati did not really start the program until a few months later. Even then, Mr. Tate did not seem to make any effort to collect the spreadsheets that were not turned in.

If the APA cannot be bothered to follow up on the conduct known to it at the time, it is difficult to believe the conducted that it allowed to continue was serious enough to justify termination.

d. TERMINATION IS NOT JUSTIFIED WHEN CONSIDERING THE MITIGATING CIRCUMSTANCES

"Just cause" also requires evaluating the penalty imposed, in this case termination, considering other mitigating factors. When deciding this matter, the State apparently took into consideration mitigating factors when terminating the Grievant. However, it only considered the death of Ms. Hill's parents (her mother in 2017 and her father in 2019), and that Ms. Hill was cooperative during the investigation as mitigation. See list of mitigating factors on Joint Exhibit 3, p. 3.

The State ignored a whole host of factors that must be reviewed when determining whether the Employer has satisfied its burden under the "just cause" standard. The death of the Grievant's parents, especially her father, and her cooperation during the investigation are undoubtedly mitigating factors that should be taken into account in determining whether termination is warranted in this case. Yet, the State has failed to consider: (1) the large caseload Ms. Hill (and other POs) were handling during this time- a caseload that is much larger than current or recommended ratios of parole officer to offender; (2) the State's failure to attempt to correct identified deficiencies, including failure to implement a PIP; (3) a general failure to supervise; and (4) the failure to transfer the Grievant's caseload per policy during her leave.

The shortage of parole officers was acknowledged in the Cincinnati Region. On August 12, 2018, the Cincinnati Region requested an extension of a variance for high and very high offenders to be monitored at a moderate level. At the time, the Cincinnati office was down four (4) parole officers. The extension was requested "to meet the operational, policy requirements and to allow for our new hires to receive necessary training." Joint Exhibit 4, p. 695. A request was again made in December of 2018 as the Cincinnati office was still "down" by four (4) POs- this time the variance related to moderate supervision offenders being supervised as the lower level. Id. p. 696. Between December and June, the Cincinnati office seems to have lost, or at least was in need of additional POs. The office was then down seven (7) parole officers when a request for an extension on the H/VH variance was made on June 4, 2019, when the Hamilton County Units supervising 680 H/VH offenders. Id. p. 689. In September 2019, RA Tyrone Williams

writes: "staff shortages have negatively impacted POs ability to meet operational benchmarks." He also stated that Hamilton County had 23 active parole officers to supervise 2237 offenders, including 718 H/VH levels of supervision. At that time, the unit was down four (4) parole officers. Id. p. 690. This shortage continued through at least January of 2020. Id. p. 692. During the time period in question, it is obvious that APA was overextended and did not have enough POs to adequately do all that was being asked of them.

The parole officer to offender ratio was much higher than APA's averages are currently, generally higher than 100 offenders to 1 parole officer at the time. Investigator Dudas found that Ms. Hill had 106 offenders in January 2019, 111 in February, 117 in March, 112 in April, 112 in June, 113 in July, 100 in August, 99 in October, and 94 in November. Joint Exhibit 4, p. 4, Union Exhibits I, J. It appears that the number of offenders for which Ms. Hill was responsible was higher than average at the Cincinnati Office. For example, in January of 2019, the regional average number of offenders in the Cincinnati Office was 86 offenders per officer to Ms. Hill's 106 offenders. Union Exhibit H, pp. 1-3. In July of 2019, the average was 93 offenders to Ms. Hill's 113. Union Exhibit I, pp. 1-3.[3]

On the day of arbitration, the APA Field Service page of ODRC stated that: "present caseloads are approximately 75 offenders per officer." Union Exhibit D. The average ratio in APA did begin to decrease in January of 2020 when there were 74 offenders per officer in January of 2020; 69 offenders per officer in July of 2020; and 61 offender average in January 2021. See Union Exhibits. J, K, L. After arbitration, the webpage set forth as Union Exhibit D was modified and now shows a ratio of 56 offenders per officer on average. See https://drc.ohio.gov/apa-field-services. This is still above the goal set forth by Governor DeWine in Budget Recommendations of a 50:1 ratio of offenders to parole officers. Union Exhibit C, p. D-351. All of these ratios are significantly less than the number of offenders Ms. Hill was tasked with supervising during the entire time period in question.

This was never considered by the State as a factor in terminating Ms. Hill. This is especially troubling as much of what happened was due to the action, or more accurately inaction of APA. But for APA's negligence and failure to properly supervise in this matter, Ms. Hill's performance deficiencies would not have led to such a serious outcome. The State failed in a number of ways.

The State failed to adequately supervise Ms. Hill by not reviewing her FOT notes and offender contacts. Mr. Tate admitted during the investigation that he is required to review parole officers' FOT

[3] The average was determined by adding up the number of total offenders in the Cincinnati Region and dividing that number by the number of parole officers.

notes. Joint Exhibit 4, p. 17. According to Investigator Dudas, Mr. Tate also stated that that there was not official policy on reviewing the notes of subordinate. However, Policy 100-APA-23(IV)(A)(4) states: "[t]he unit supervisor shall ensure all parole officers under his/her supervision who supervise offenders have a FOT and notes for each offender." Joint Exhibit 4, p.799. Mr. Tate was apparently unaware of this policy requirement and did not appear to follow the requirement, regardless. It is obvious from the testimony at arbitration that there was little, if any supervision over the FOT and notes of parole officers in the Cincinnati Region- even though parole officers' staff weekly with supervision and even though the synced FOT documentation is available to supervisors immediately to review. At least in the instances in which the FOT notes were actually saved and synced properly, which evidence shows was not guaranteed.

While being interviewed, RA Williams stated that he relies on his supervisor, including Mr. Tate, to address late FOT notes. Joint Exhibit 4, p. 12. Id. Yet, Mr. Tate stated that he had his own time constraints limited his ability to be able to look at the notes and comply with Policy 100-APA-23(IV)(A)(4), which he apparently knew nothing about.[4]

Mr. Tate stated during the investigation that Ms. Hill was the first PO that he had seen with so many late entries, yet it doesn't seem like he or anyone else was actually looking. Id. There is no evidence that anyone checked any of the Ms. Hill's documentation from March until November of 2020. Ms. Hill consistent typed LATE ENTRY next to the notes she had not timely entered into the system and those notes were obvious to anyone willing to look- they were obvious to the Investigator. See Id., p 579, 581-583, and continuing.

Ms. Hill admitted to being late with FOT. However, Mr. Tate was in violation of policy for not reviewing Ms. Hill's documentation, which he is required to do. Mr. Tate also told the Investigator that he thought he had talked to Ms. Hill about late entries once- though there was no documentation provided as to this alleged conversation. Mr. Tate said that the Grievant stated she was behind due to personal reasons, and he apparently never followed up. Id. at 18. Even under the time constraints Mr. Tate was under, it would seem especially important to review the documentation of a PO that he knew was struggling, which he failed to do. It should also be noted that Mr. Tate was never disciplined for lack of supervision over PO Hill even though the investigation clearly shows he was in violation of policy and failed to properly supervise her.

[4] To be fair to Mr. Tate, the ability to perform all functions of one's job at APA seemed to be difficult for everyone considering the offender ratios and the shortage of staff.

Beyond the Grievant's issues, there was a greater issue with the number of offender contacts the Cincinnati Region was making during this time. Testimony showed that an annual internal audit was conducted in early summer and an issue with offender contacts was discovered. RA Williams instituted spreadsheets so that parole officers could easily review the number of contacts that PO had which each assigned offender. Though Mr. Tate claimed this was merely and "employee goal," RA Williams opinion differed and stated that the spreadsheets should have started in July 2019 (after a 30-day grace period after the audit).

In contrast, Mr. Tate stated that they started in August or September and there was apparently some confusion regarding how they were to be handled. Id. at. 13. Apparently, the documentation included on the spreadsheets had not reliability been reviewed monthly before by supervision- a reoccurring problem. Testimony showed that supervisors would have been able to access such information in a less convenient format, but apparently were not doing so. Id., starting at p. 563. It was also noted in the investigation that Mr. Tate did not follow up in a timely manner with Ms. Hill regarding August and September spreadsheets. Id. at 37. These documents would have been due before the incidents in November ever occurred.

Again, Supervisor Tate identified multiple issues with Ms. Hill's performance during her March 2019 evaluation: "[a]t this time, PO Hill is not meeting expectations in the customer focus area…PO Hill being late with reports and falling behind on obtain the required contacts on the offenders in her caseload… it was also determined that PO Hill had not obtained and documented the required number of contacts required on a parole offender… PO Hill has recently lost focus on her duties and responsibilities and has found herself failing to remain in compliance with departmental policies and procedures… overall, PO Hill has not met expectations over this last rating period…" Union Exhibit B, pp. 2-5. Mr. Tate identified issues with offender contacts, reports, falling behind, losing focus, failure to comply with policy generally. RA Williams also saw the evaluation of Ms. Hill and commented on it. These lapses were apparently so serious at the time that Mr. Tate believed a PIP was necessary- a PIP which was allegedly created but is now missing, which seems to happen a lot at APA.

Ms. Hill testified that she never saw the PIP, and there is no evidence that she did. There is also zero follow up to see if she implemented any changes possibly recommended by the non-existent document. There is also no evidence that her cases were reviewed again until November 2019 after her father's death, showing a serious lack of concern over her performance and helping her improve.

RA Williams told the Investigator that if the PO was not meeting his or her contacts, the supervisor and PO are supposed to come up with an action plan. RA Williams stated that Mr. Tate failed to do his "due diligence" (Williams 24:50), Id. at 13. RA Williams stated in Ms. Hill's March evaluation: "[w]e is here to help you with any work-related issues. Our goal is to make sure you have what you need to [sic] your job and be successful in doing it. I believe we can come up with an action plan that will help improve your performance." Union Exhibit B. Instead, the APA let Ms. Hill fail by not following through with the PIP and providing no path for her to get better.

RA Williams acknowledges Mr. Tate's deficiencies in supervision. Investigator Dudas states in his report:

> *RA Williams stated that PSS Tate's approach is to "provide cover" for his officers by "keeping it in house" and not reporting things to him (Williams), so his staff does not get mad at him (Tate). He has told PSS Tate that he assumes all liability when he does this. He said by providing the officers cover he (Tate) is enabling them, and the issues don't get address [sic] they get worse RA Williams again said this has been PSS Tate's approach to dealing with poor performing staff. Id.*

Mr. Tate, himself, testified that he had only implemented one PIP prior to the plan that was supposed to go into place for Ms. Hill. He was unfamiliar with how long the PIP was supposed to last or the metrics by which to measure progress. Instead, the PIP was never implemented, metrics were never put into place, and there was no attempt to improve Ms. Hill's performance. There appeared to be no attempt to check up on her cases, her contacts, or reports. There was no evidence provided as to Ms. Hill's performance from that evaluation in March to November, when Mr. Tate was directed to write incident reports regarding the matters with Offenders Taylor and Giles that occurred after she returned from her leave.

If a PIP had properly been implemented and Ms. Hill had failed to meet the goals set forth in the plan, the State would undoubtedly use that as justification for her termination. However, the failure to set forth a plan to fix identified issues with Ms. Hill's work and failure to follow up to see if the issues are resolved was not even considered mitigating factors by the State. See Joint Exhibit 3, p. 3. In addition, RA Williams apparently knew of Mr. Tate's deficiencies as a supervisor and did nothing. And still has done nothing. Instead, the State took no responsibility it is failures.

The State, through Mr. Tate, also failed to provide adequate training to Ms. Hill. When asked at arbitration if he had told Ms. Hill that her previous supervisor had failed to train her properly, he admitted that he had. Mr. Tate also identified that problem during the time period of Ms. Hill's evaluation in March of 2019. There was little, if any, evidence of an attempt to retrain the Grievant or provide her specific training opportunities in the areas she was identified as lacking in some way.

Ms. Hill's father got worse very quickly in September. Ms. Hill took Friday, September 20 off work, and her father passed on Saturday the 21st. She was then off from September 20 to October 15- a period of about three and a half weeks. Joint Exhibit 4, pp. 436-438. Though some of her in-custody checks were done by other POs, her caseload was not transferred. 100-APA-23 (VI)(A)(4) states: [i]f a parole officer is off work for more than two (2) weeks, the unit supervisor shall transfer all cases to another parole officer. Joint Exhibit 4, p. 799. Mr. Tate testified that he asked RA Williams if he could transfer Ms. Hill's cases in accordance with policy, but he refused for whatever reason. According to the Summary, Ms. Hill had 99.

For all the foregoing reasons, the Union respectfully requests the Arbitrator to sustain the grievance, and to reduce or to eliminate the penalty imposed on the Grievant. In addition, District 1199 asks for a ruling making Ms. Hill whole, including backpay and benefits. Finally, the Union requests that the Arbitrator retains jurisdiction to ensure the proper calculation of any backpay award.

DISCUSSION

In the instant matter, the parties have collectively bargained for the inclusion of the "[just] cause" provision in both Article 5 entitled "Management Rights," and also Article 8 of the Agreement, entitled "Discipline." By utilizing those terms, the signatories have consequently also made an informed decision apportioning the burden of proof. *City of Saginaw and Police Officers Ass'n of Mich*., 00-1 Lab Arb. Awards (CCH) P 3443 (Dobry 2000). Even though the parties did not include a definition of the "just cause" standard in the language which they elected to include, commonly-accepted principles routinely used by arbitrators in disciplinary matters "are intended to ensure a higher level of fairness and due process for employees accused of wrongdoing. They are also intended to increase the

probability of workplace justice." *Paper, Allied Indus., Chem., and Energy Workers Int'l Union, AFL-CIO, Oren Parker Local 8-171, Vancouver, Wash. and Petra Pac, Inc.*, 05-1 Lab. Arb. Awards (CCH) P 3078 (Nelson 2004).

"Just cause" imposes on management the burden of establishing: (a) that the standard of conduct being imposed is reasonable and is a generally accepted employment standard which has been effectively communicated to the employee; and (b) that the evidence proves that the employee engaged in the misconduct which did occur in the instant matter. By utilizing those terms, the signatories have consequently also made an informed decision apportioning the burden of proof. *City of Saginaw and Police Officers Ass'n of Mich*., 00-1 Lab Arb. Awards (CCH) P 3443 (Dobry 2000). The proof must satisfy both the question of any actual wrongdoing charged against an employee and also the appropriateness of the punishment imposed. *Int'l Assoc. of Machinists and Aerospace Workers Union, Dist. 160 and Intalco Aluminum Corp*., 00-2 Lab. Arb. Awards (CCH) P 3608 (Nelson 2000).

> "Just cause" imposes on management the burden of establishing: (a) that the standard of conduct being imposed is reasonable and is a generally-accepted employment standard which has been properly communicated to the employee; (b) that the evidence proves that the employee engaged in the misconduct which did constitute a violation of that standard; and (c) that the discipline assessed is appropriate for the offense after considering any mitigating or extenuating circumstances.

Phillips Chem. Co. and Pace, Local No, 4-227, AFL-CIO, 00-2 Lab. Arb. Awards (CCH) P 3553 (Taylor 2000).

When a collective bargaining agreement reserves to management the right to discharge for "just cause," but does not define what does constitute "just cause," it is proper for an arbitrator to look at employer policies, rules, statutes, and regulations to determine whether or not a discharge was actually warranted. *E. Associated Coal Corp. and United Mine*

Workers of Am., Dist. 17, 139 Lab. Arb. Awards (CCH) P 10,604 (1998). The purpose of "just cause" is to protect employees from unexpected, unforeseen, or unwarranted disciplinary actions, while at the same time protecting management's rights to adopt and to enforce generally accepted employment standards. *Phillips Chem. Co. and Pace, Local No. 4-227, AFL-CIO,* 00-2 Lab. Arb. Awards (CCH) P 3553 (Taylor 2000). The Employer here has retained specific management rights in the Agreement, including the right to discipline employees, as long as its exercise of discretion in utilizing those specific rights is not unreasonable, arbitrary, capricious, or motivated by improper means. *Municipality of Anchorage (Alaska) and Int'l Ass'n of Fire Fighters, Local 1264,* 115 LA 190 (Landau 2001). One arbitrator defined "just cause" as "that cause which, given the totality of circumstances, enables an impartial observer to determine that the adverse action taken against an employee is, in all respects, a reasonable assertion of authority designed to meet legitimate management objectives." *Gallatin Homes*, 81 LA 919 (Cerone 1985).

"While it is not an arbitrator's intention to second-guess management's determination, he does have an obligation to make certain that a management action or determination is reasonably fair." *Ohio Univ. and Am. Fed'n of State, County, and Mun. Employees, Ohio Council 8, Local 1699*, 92 LA 1167 (1989). In the absence of contract language expressly prohibiting the exercise of such power, an arbitrator, by virtue of his authority and duty to fairly and finally resolve disputes, has the inherent power to determine the sufficiency of a case and the reasonableness of a disciplinary action or penalty imposed. *CLEO, Inc. (Memphis/Tenn.) and Paper, Allied-Indus., Chem., and Energy Workers Int'l Union, Local 5-1766*, 117 LA 1479 (Curry 2002).

Arbitrators do not lightly interfere with management's decisions in disciplinary and discharge matters, but that does not mean to suggest that they will sustain an action found to be unjust or unreasonable.

> The only circumstances under which a penalty imposed by management can be rightfully set aside by an arbitrator are those where discrimination, unfairness, or capricious conduct are proved—in other words, where there has been an abuse of discretion. The arbitrator should not substitute his judgment for that of management unless he finds that the penalty is excessive or unreasonable, or that management has abused its discretion.

Operating Eng'rs. Local Union No. 3 and Grace Pac. Corp., 01-2 Lab. Arb. Awards (CCH) P 3971 (Najita 2001).

The job of Parole officer is a difficult one largely performed in an environment where there are numerous requirements and obligations, but where the structure to successfully execute those requirements and obligations is largely self-generated within a set of guidelines and is highly dependent upon the self-discipline, flexibility, and organizational acumen of those individual officers who must perform this challenging set of tasks centered upon offenders transitioning from prison to civilian life. Offenders are challenging to supervise. The job requires a great deal of executive organizational skills involving a myriad of deadlines, legal requirements, careful adherence to regulations, and application of time management. It demands focus, exceptional attention to details, and the continued self-discipline of execution. And it is also a job that suffers from the ebb and flow of a changing workload placing even greater emphasis on a Parole officer's ability to deal with events and often the unpredictability of human behavior, staffing shortages, and added cases. On top of all of this is the inherent danger associated with the work.

The central questions to answer here to justify her termination is whether the Grievant failed in carrying out her duties. Assuming the evaluations of the prior three years (2015-15, 2016-17, and 2017-18 were accurate regarding the Grievant's performance (meets or exceeds demands) the following evaluation year (2018-19) in which she failed to meet expectations in several areas should have represented a serious, if not alarming "wake up call" for the Grievant and for the Department. Her formal evaluation and evidence gathered in the investigation revealed she had in essence either drastically lost focus, slowed down or in some cases stopped performing many of the fundamentals of the position of Parole officer, in particular making mandatory and important contacts with supervised offenders, but importantly in performing the requirements of the job. The Department also failed in this matter to follow through with what Supervisor Timothy Tate ("Tate") testified that when an employee receives a rating of "does not meet" or "needs improvement" in one area of an evaluation a Performance Improvement Plan ("PIP") is required. In Hill's March 2019 evaluation there were three (3) areas where she did not meet expectations. In the Grievant's evaluation Tate and RA Tyronne Williams stated the following.

"…PO Hill is responsible for the supervision of offenders on her caseload and is responsible for knowing and complying with all departmental policies and procedures…this rater believes PO Hill can improve in all areas that she is currently non-compliant in. As long as PO Hill keeps an open mind and is willing to work on improving her performance, this rater will assist her in any way possible."

"A performance plan will be created to assist PO Hill in utilizing better time management and improve in prioritizing responsibilities."

<u>Section 11 MANAGER RATER COMMENTS SECTION (Tate)</u>

"I am here to help and assist you if needed in improving the areas of non-compliance"

<u>Section 12 – MANAGER REVIEWER COMMENTS SECTION (Williams)</u>

"We are here to help you work with any work-related issues. Our goal is to make sure have what you need to be successful doing it. I believe we can come up with an action plan that will help improve your performance.

(Union Ex. B)

No evidence of a formal PIP was introduced into evidence; in fact, Tate in his testimony and during the investigation stated he could not access it. He further stated at that time he had only had to implement two PIPs, and this is one of them. He also stated on page 38 of the Investigation Summary Report Administrative Investigation, that a PIP generated by the March 2019 evaluation would have had to do *"…with issues with PO Hill completing reports by the end of the day after staffing, or by the next business day. Tate advised that PO Hill "drastically improved" in this area."* Yet, this statement appears to be in conflict with the findings of the Investigation conducted by Lindsay Duda ("Duda") which found that Hill's contacts continued to be delinquent by months following her March performance evaluation and to which she readily admitted and labeled as such.

Again, if the prior three (3) years of working as a Parole officer were an accurate reflection of the Grievant's performance as evaluated by the prior supervisor, John Cochran ("Cochran"), what happened in the following evaluative year was nothing short of substantial "job disengagement" either involuntary, voluntary, or some of both. While a formal PIP may have made improvements, they could only be made if Hill made the effort and was able to work in spite of the caregiving responsibilities she had regarding her father. The Union placed an emphasis on the Employer's failure to implement a PIP, but the record is not devoid of evidence and testimony of local supervision attempting to counsel and coach the Grievant following her March 2019 failed evaluation. The words of Tate, "*As long as PO Hill keeps an open mind and is*

willing to work on improving her performance, this rater will assist her in any way possible." This indeed is a curious statement that indicates some doubt in the Grievant's willingness to improve. Tate's remarks appeared to portend what happened in the ensuing months.

The saying that dates back to the 12th Century about leading a horse to water and not being able to make it drink seems applicable here and in light of Tate's words. Tate, being a new supervisor, may or may not have been proficient in motivating the Grievant, and possibly as a new supervisor he was acting too much like a "player's coach" providing cover for his staff so they would not get angry with him. (p. 18 RA Williams comments contained in the Investigation Summary Report Administrative Investigation). In spite of this, Tate appeared to provide honest testimony that he tried to counsel and coach the Grievant as early as January 2019, just a few months after he assumed his supervisory position. He testified that he continued these meetings with the Grievant to attempt to help her meet her reporting obligations. He also stated that he encouraged Hill to apply for an FMLA (as did RA Tyronne Williams), which she did do and it was approved, but served little purpose because she refused to take the leave (p. 6 of Investigation Summary Report Administrative Investigation,. Tate's testimony). There is no evidence of Hill taking advantage of what appeared to be an offer of managerial help or that she actively sought other Employer assistance such as the EAP. In fact, the record indicates she was at best ambivalent about seeking help from other sources. (p. 36-38, Investigation Summary Report Administrative Investigation)

What are the reasonable and realistic expectations for an employee who, according to the record, should know how to do the job and what is expected of her, but in essence disengages from satisfactory performance of it? The very purpose of the Organization and to the Grievant's

position as stated at the beginning of every one of her evaluations identified in the record is as follows: "Mission: To reduce recidivism among those we touch: To reduce crime in Ohio." Being late and in Hill's case extremely late on recording contacts may indeed be improved by learning techniques from those who manage and have considerable parole officer experience, even in the apparent chaotic workload conditions that ebbed and flowed in the Cincinnati office of the Employer. But what becomes inexplicable is simply not performing her job in light of the core mission of the job of Parole officer, particularly after she knows she is "on the bubble" having been evaluated in several areas as not meeting expectations. Hill's hearing testimony and her statements in the investigation process did little to explain her lack of focus and were vague in addressing her conduct. Joint Exhibit 4, pages 53 to 56 involve serious unsettling errors of judgment involving three (3) different offenders that not only reflected negatively upon the Grievant's competency, and the Employer's potential liability/reputation, but also could have had a negative impact on public safety. In a significant way they exemplify evidence of the Grievant's disengagement from her core duties and responsibilities of the position of Parole officer. While the application official PIP may have corrected some of the Grievant's ability to more timely do her offender contacts, misjudgment and irresponsible execution of duties are another matter, particularly when public safety is involved. In looking back at the active two (2) day suspension on the Grievant's record in 2019, which dealt with in large part the proper recording and storage of an offender's property, the instant offenses cited above demonstrate a continued pattern of failing to deal with the essential details of the position of parole officer.

Finally, it must be said that the Grievant may have been attempting to perform work that was beyond her personal skill set. Not everyone can perform their work well if put in a position

where organizational skills are not strong. For example, many people cannot multi-task, while others claim they are comfortable and even thrive on handling several duties at once. Ms. Hill throughout this matter did cooperate with the investigation in an honest manner and according to Tate she was always attempting to help others in the office, although at times it caused her to neglect her own deadlines and responsibilities. That's a matter of good intentions eclipsing judgment and it may be a matter of too many multi-varied demands or being in a position that does not suit one's work style and skill set. The three (3) significant incidents of failed execution of core responsibilities by the Grievant that occurred in late 2019 and which are cited above, are related to judgment and are central to a just cause finding here. And while Hill also had chronic problems associated with offender contacts and late reporting the inexplicable failure of the Employer to initiate a PIP in this matter is unjustifiable, particularly after an explicit commitment was made in writing to help the Grievant address problems with these caseload management issues. Such seemingly indifferent conduct undermines the Employer's ability to sustain discipline for these types of problems under a just cause standard. The Employer had just cause to discipline the Grievant, but due to the Employer's error in not implementing the PIP, the Grievant should be given an opportunity to resign in lieu of having a termination on her record. If she wants to continue in corrections, she may want to explore a case manager's position or a position of a similar nature where there is more structure, and which may be more compatible with her skill set. In fact, during the investigation, she raised this issue of possibly working in a prison as a classification specialist. (p. 37, Investigation Summary Report Administrative Investigation)

AWARD

Grievance denied. However, if the Grievant, through intervention of the Union submits a signed letter of resignation (back dated to the date of her termination) no later than 30 calendar days from the date of this Award, the Grievant's discharge shall be removed from her personnel file and replaced with said letter of resignation.

Respectfully submitted to the parties this _____ day of January 2022,

_____

Robert G. Stein, Arbitrator