**OCB AWARD NUMBER: 2723**

SUBJECT: Arb Summary # 2723

TO: All Advocates

FROM: Thomas Dunn

OCB GRIEVANCE NUMBER: DMH-2022-04669-04

DEPARTMENT: Department of Mental Health and Addiction Services

UNION: Ohio Civil Service Employees Association (OCSEA)

ARBITRATOR: Meeta Bass

GRIEVANT NAME: Stephen Nelson

MANAGEMENT ADVOCATE: Laurie Spolarich

UNION ADVOCATE: Bruce Thompson

OCB REPRESENTATIVE: Thomas Dunn

ARBITRATION DATE: March 8, 2023

DECISION DATE: May 20, 2023

DECISION: SUSTAINED

CONTRACT SECTIONS: 24, 25

OCB/BNA RESEARCH CODES:

KEYWORD SEARCH TERMS: Discipline, Just Cause,

**HOLDING: Grievance Sustained**. The Employer did not have just cause to discharge the Grievant, and therefore it violated Article 24 of the parties' Collective Bargaining Agreement.

**Facts:** The Employer hired the Grievant on March 17, 2016. The Grievant worked as a Therapeutic Program Worker. On December 13, 2021, the Grievant went to Unit C-1 to ask his coworker/girlfriend for the passcode to her phone that he had in his possession. Another staff witnessed this. The coworker denied him the passcode and the Grievant left. Screenshots and video confirm Grievant and his girlfriend/ coworker interacted in the parking lot after their shift ended. Grievant got into coworker’s vehicle. The coworker leaves the driver side of the car and runs towards the building. Grievant gets out of the passenger side of the vehicle, back into his vehicle, and then drives off. Upon entering the building, the coworker informed Officer at the desk that the Grievant had pulled her hair and that she wanted to make a report. In summary, Coworker’s written statement stated, “Grievant was angry; he pinched my elbow; he got into my car where he pulled my hair and put his other hand to my throat; he said he would slit me like a gill if I reported him.” Police proceeded with domestic violence protocol. Coworker was escorted to her car and off the premises. Coworker went to the Police Department and filed a report. On the date of the pre-hearing conference for the grievant, Coworker emailed the union steward to explain what happened. The email explained it was PTSD from a past relationship and there was no threat or violence involved. The Employer disciplined the coworker for violating OhioMHAS Policy HR-22, Code of Conduct, and General Work Rule 3.3 Dishonesty. At the time of his removal, Grievant had a five-day working suspension on his record for violation of Rule 4:14: Actions that could potentially harm an employee, patient, or member of the general public.

**The Employer argued:** Employer contends that the Department trained the Grievant on HR22 Code of Conduct and General Work Rules and MHAS Workplace Violence Annual Training, as such, grievant knew of the policy and procedures of the Department. Employer also contends that the Department had just cause to terminate Grievant. Employer argues that the evidence established that Grievant’s actions meet the definition of a threat. Employer opines that the coworker’s original statement that Grievant grabbed her hair, shook it back and forth, threatened to kill her, and put his hand on her to prevent her from leaving the car is the most credible because her actions, statements to the officers, and video support the original statement. That statement is supported by the two officers who spoke to the coworker about her behavior and what she told them when she ran inside. The Employer also opines that the recantation at the request of the Grievant is not credible. Employer states that it has a zero tolerance for workplace violence.

**The Union argued:** Union contends that the Employer did not establish workplace violence. Union argues the evidence showed that the coworker recanted her statement, and the remaining circumstantial evidence does not support the charge of workplace violence. The Union points out that the coworker explained that she and the Grievant had a disagreement, and the disagreement triggered a memory of a traumatic experience that she suffered from her ex-husband. Union argues there was no eyewitness testimony or evidence that the Grievant committed any misconduct. Union concludes there was no just cause to discipline the Grievant.

**The Arbitrator found:** It is readily apparent that the Employer took its duty to maintain a safe workplace, free from violence, seriously and responded accordingly. The Employer charged Grievant with violating its workplace violence policy based on his coworker's original statements and from viewing the screenshots and camera video of her running toward the building seeking help and terminated the Grievant from his position. However, the evidence is inconclusive, with neither acceptance of the charge nor their rejection being more compelling. The coworker's original explanation of the events is as plausible as the coworker's supplemental explanation. Article 24 of the parties' collective bargaining agreement states that the Employer carries the burden of proof and, in this instance, has failed to meet the standard of clear and convincing evidence. When the scales are balanced, a grievance under this standard must be sustained.The Employer did not have just cause to discharge the Grievant, and therefore it violated Article 24 of the parties' Collective Bargaining Agreement. The grievance is **Sustained**.