

IN THE MATTER OF ARBITRATION BETWEEN

Ohio Department of Developmental Disabilities
Warrensville Developmental Center
Employer

Grievance No:DMR-2022-04898-04

And

Ohio Civil Service Employees Association
/AFSCME Local 11
Union

Leyland Walker,
Grievant

Arbitrator: Arbitrator Meeta Bass

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PROCEDURAL HISTORY

Ohio Department of Developmental Disabilities is hereinafter referred to as DODD, and Warrensville Developmental Center is hereinafter referred to as "WDC" or "Employer." WDC is one of eight residential care facilities that the DODD operates. WDC is an integrated care facility for individuals with developmental disabilities under the Medicaid program. It provides homes for approximately 100 individuals with complex care needs requiring intensive behavioral or medical services. Ohio Civil Service Employees Association is hereinafter referred to as "Union." Leyland Walker is hereinafter referred to as the "Grievant."

DODD and Union are parties to a collective bargaining agreement. The Union submitted Grievance Number DMR-2022-04898-04 to the Employer on May 11, 2022, pursuant to Article 25 of the parties' Collective Bargaining Agreement, effective April 21, 2021 - February 28, 2024. The grievance alleged the Grievant was removed from service on May 3, 2022, violating Article 24. The Statement of Grievance reads,

The Grievant was investigated in January 2022 and put on administrative leave for about 1-week. He was returned back to work allegation unfounded after speaking with staff on the house that day. 2-3 weeks later a letter was received, and on February 4, 2022 a staff gave a statement, and the Grievant was again placed on administrative leave, and then termination was issued on May 3, 2022. Three staff along with the Grievant stated that he never made threats of violence to harm or fighting or striking. He was investigated twice for the same thing and management has failed to prove this.

Pursuant to the CBA between the Employer and the Union, the parties have designated this Arbitrator to hear and decide certain disputes arising between them. The parties presented and argued their positions via a virtual forum on May 11, 2023.

The parties stipulated the issue as follows:

Was the Grievant, Leyland Walker, removed for just cause? If not, what shall the remedy be?

The parties stipulated the following facts:

- 1) The Grievance is properly before the Arbitrator.
- 2) The Grievant was hired by the Employer on December 12, 2016, as a Therapeutic Program Worker (TPW).
- 3) The Grievant was removed from his position as a TPW on May 3, 2022.
- 4) The Grievant was removed for a violation of the Ohio Departmental of Developmental Disabilities Standards of Conduct Policy, Specifically rules: Failure of Good behavior(k2) - Threatening, fighting, intimidating, striking another, or any other act or threat that in violation of the violence prevention in the workplace policy.

During the hearing, both parties were afforded a full opportunity to present evidence, examine, cross-examine witnesses, and make oral arguments.

WITNESSES were sequestered. The following individuals testified:

EMPLOYER WITNESSES

Donte McCalla, Therapeutic Worker
Ayana Thompson, Therapeutic Worker
Nicole Baxter, Investigative Service Manager
Patricia Nixon, Superintendent of WDC

UNION WITNESS

Leyland Walker, Grievant and Therapeutic Worker
Michael White, Maintenance Repair Worker

JOINT EXHIBITS

- 1) Collective Bargaining Agreement Between the State of Ohio and Ohio Civil Service Employees Association, 2021-2024
- 2) Grievance Trail
- 3) Discipline Trail & Video
- 4) DODD Standards of Conduct, Rule Violations, and Penalties

MANAGEMENT EXHIBITS

None

UNION EXHIBITS

1. Seven Tests of Just Cause

The parties agreed to post-hearing submissions on June 9, 2023 at which time the record was closed.

APPLICABLE PERTINENT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT AND POLICY RULES.

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 the authority to modify the termination of an employee committing such abuse. Abuse cases that 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.

24.06 Imposition of Discipline

The Agency Head or designated Deputy Director or equivalent shall make a final decision on the recommended disciplinary action as soon as reasonably possible after the conclusion of the pre-discipline meeting. The decision on the recommended disciplinary action shall be delivered to the employee, if available, and the Union in writing within sixty (60) days of the date of the pre-discipline meeting, which date shall be mandatory. It is the intent to deliver the decision to both the employee and the Union within the sixty (60) day timeframe; however, the showing of delivery to either the employee or the Union shall satisfy the Employer's procedural obligation. At the discretion of the Employer, the sixty (60) day requirement will not apply in cases where a criminal investigation may occur and the Employer decides not to make a decision on the discipline until after the disposition of the criminal charges. The employee and/or Union representative may submit a written presentation to the Agency Head or Acting Agency Head.

If a final decision is made to impose any discipline, including oral and written reprimands, the employee, if available, and Union shall be notified in writing. The OCSEA Chapter President shall notify the 95 Agency Head in writing of the name and address of the Union representative to receive such notice. Once the employee has received written notification of the final decision to impose discipline, the disciplinary action shall not be increased. Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

Department of Developmental Disabilities Division of Human Resources
Subject: **Standards of Conduct, Rule Violations, and Penalties for Classified Employees** (Department Wide-) (HR-013)
Effective Date: March 18, 2019

Purpose

To ensure that employees of the Ohio Department of Developmental Disabilities (DODD) are aware of the expectations of the Department and the consequences of inappropriate behavior, that discipline is imposed in a fair and consistent manner, and when appropriate, that employees are afforded the opportunity to correct inappropriate behavior or performance.

Scope

This procedure applies to all classified employees. A classified employee is subject to examination and has employment protection under the terms of the Ohio Civil Service Laws.

Procedure

This procedural prescribes guidelines to be used when a classified employee is suspected of misconduct that may result in some form of discipline. Discipline will be imposed for just cause without regard to race, color, religion, sex, national origin, disability, age, or veteran status.

Supervisors are responsible for implementing this procedure. This procedure supersedes all previous procedures and memorandums on the subject.

Employees are responsible for their awareness of and compliance with this procedure.

Investigation

In the event of a suspected breach of policy or procedure., it is the responsibility of the Appointing Authority to ensure that a fair and consistent investigation is conducted and that all employees are afforded due process prior to the recommendation or imposition of discipline. Bargaining unit employees under investigation are entitled to union representation, if requested, during the investigation phases of the disciplinary process.

During an investigation, employees may be placed on administrative leave or reassigned to less sensitive duties at the discretion of the Appointing Authority. Administrative leave or change of duties will not be unreasonable and do not constitute discipline.

Applicable References:

OCSEA/AFSCME Article 24

FAILURE OF GOOD BEHAVIOR

K-2 Threatening, fighting, intimidating, striking another, or any other act or threat that is in violation of the Violence Prevention in the Workplace Policy.

1st Offense - Removal

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 are necessary to understand the Arbitrator's decision.

The Employer hired the Grievant on December 12, 2016, as a Therapeutic Program Worker (TPW). As a TPW, Grievant advocated for the individual for whom he was assigned and provided hands-on care to individuals with developmental disabilities who reside at WDC.

On January 17, 2022, the Grievant worked his regular TPW shift. Grievant's Mother, who is also employed as a TPW with WDC, worked the same shift. Upon their arrival, Grievant and his Mother found individuals were left unattended, the laundry was not put away, breakfast was unavailable, and no hygiene was completed. There were staffing issues due to a blizzard.

Due to the weather storm, TPW McCalla was mandated. TPW McCalla and Grievant's Mother exchanged words regarding tasks not being completed on the prior shift. TPW McCalla stated they discussed the laundry. TPW McCalla called the RCS (the supervisor or manager) and reported there would be trouble if he, McCalla, remained on the unit. The RCS instructed Grievant to go over to the 7-200 side, which he did. The RCS then instructed TPW Harris to cover TPW McCalla's group in 7-100.

Grievant's Mother then went over to the 7-200 side. She said something to TPW McCalla by the service entrance door, then returned to the 7-100 side and conversed with the Grievant. Grievant then went to the 7-200 side through the service entrance and confronted TPW McCalla, who was on the phone with the RCS. As Grievant approached TPW McCalla, TPW Harris intervened. TPW Harris, who is prominent in stature, placed his hands on the Grievant's chest, turned him, and escorted the Grievant to the 7-100

side. A few minutes later, the Grievant returned to the area through the kitchen area and again confronted TPW McCalla. Another coworker attempted redirecting him from the unit, but Grievant spun away. The coworker gets in front of him and gets him to leave the unit.

TPW McCalla states the Grievant said, "Bitch, I'm gonna beat yo ass. Don't say anything to my momma, Bitch; I gonna wait by the time clock, beat your ass." TPW Thompson testified to a similar statement, "Don't you ever disrespect my momma; I will whip your ass. I'll be at the time clock." TPW McCalla and TPW Thompson testified that Grievant repeated these statements when he returned the second time.

On the first occasion, Grievant admitted using profanity and said, "TPW McCalla if you speak to my mother again, that will be a problem." Grievant said he would report TPW McCalla for lack of supervision of his one-on-one. According to Grievant, TPW McCalla was cussing back at him. Grievant denied making any threats to TPW McCalla. Grievant stated he voluntarily walked back to 7-100 with TPW Harris. Grievant explained that when he returned the second time, he called TPW McCalla a "lazy ass" and needed to return to 7-100 and finish his work. He admitted his other coworker tried to block him, but he walked around her and stated he was cool. Grievant further explained that he wanted to explain certain things to TPW McCalla, but he was not listening.

According to TPW McCalla, Grievant's Mother returned to the area and asked him not to file an incident report, but he filed his incident report. On January 19, 2022, the Grievant was placed on administrative leave while an investigation was being conducted after the completion of the investigation. The incident is captured on camera, but there is no audio. The investigator confirmed profanity of Grievant and his remarks about disrespecting his Mother but did not confirm the threat of a physical altercation.

Grievant returned to work on January 27, 2022. On February 4, 2022, an anonymous letter was sent to HR Human Resources addressed to the Superintendent and Director. The typewritten letter stated:

"Several weeks ago, Leland Walker did threaten to Fight a coworker D. McCala on house 7-100 his words were I will fuck you about my Mother I'll be your punk ass meet at the time clock you lazy mother fucker it was really bad I don't think anyone should be subject to this at work and it be alright that is why I have decided to let you know what happen because it really bothered me and I would want someone to tell the truth if it was me and I thought the camera would show how he tried to attack his coworker and his Mother was alright with his action. His Mother was also very nasty to this coworker. This has happened to many other staff working on the house."

The Employer did not determine the author of the anonymous letter. The investigation was reopened. TPW Thompson, who was on vacation during the investigation, provided a witness statement confirming that Grievant made statements to TPW McCalla not to disrespect his mom, he would whip his "ass" and meet at the time clock." On February 11, 2020, Grievant was placed on administrative leave for a second time.

On April 25, 2022, the Superintendent and Director signed the removal letter removing Grievant from his position as TPW effective May 3, 2022, for violation of DOD standard of conduct, specifically, rule K-2 threatening, fighting, intimidating, striking another or any other act or threat that violates the violence prevention in the workplace policy. The Grievant signed the removal letter on May 3, 2022. At the time of his removal at no active discipline. The Union filed the grievance on May 11, 2022. The parties were unable to resolve the grievance and advanced the same to arbitration.

POSITION STATEMENTS

POSITION OF EMPLOYER

The Employer maintains it had just cause to terminate the Grievant for violation of the DODD Standards of Conduct, Rule K-2 (Failure of Good Behavior) Threatening, fighting, intimidating, striking another, or any other act or threat that is in violation of the Violence Prevention in the Workplace Policy. Its main arguments in support of that position are summarized as follows:

Employer contends the evidence established the Grievant failed to adhere to the Standards of Conduct and verbally threatened physical harm upon a coworker. Employer asserts the incident was reported and supported by video evidence. Employer argues the Grievant's aggressive behavior prompted other coworkers to intervene on two separate occasions, resulting in the Grievant being escorted away from the premises and back to their assigned area to avoid any physical altercation between Grievant and his coworker. Employer maintains it has satisfied the burden of proof.

Employer contends the primary goal of DODD is to ensure the health, safety, and happiness of the individuals it serves, which requires a dedicated and cooperative staff that communicates respectfully and provides a safe work environment free from threats, intimidation, or bullying. (DODD) has established policies and procedures, such as the DODD Standards of Conduct, to ensure the safety of clients and staff. As related to staff, Employer argues the collective bargaining agreement between the Employer and Ohio Civil Service Employees Association (OCSEA) contract recognizes the significance of violence against employees. Employer asserts the evidence established the Grievant had received prior training and was aware of these standards. The Employer maintains the decision of the Superintendent to remove the Grievant aligns with the contract language and the DODD Standards of Conduct.

Employer contends the evidence established the Grievant threatened a coworker with physical violence in the presence of their peers. Employer asserts the Grievant's behavior is a serious violation of the DODD Standards

of Conduct and goes against the goal of ensuring a safe and respectful work environment. The Employer states it cannot risk the health and safety of its employees. Employer requests this Arbitrator to deny the grievance.

POSITION OF UNION

The Union asserts the Employer did not have just cause to terminate the Grievant when it failed to conduct a fair investigation to establish misconduct and take corrective rather than punitive action. Its principal arguments in support of that position may be summarized as follows:

The Union argues that Warrensville Developmental Center did not conduct a fair and objective investigation and claims that testimonies from all employees involved were not taken into account. Grievant denied making a threat. The Union highlights the statements of investigation witnesses to demonstrate insufficient evidence to establish a violation of K2. Union asserts that two witnesses allegedly heard a threat, two witnesses were not present, one witness did not hear anything, one witness did not hear due to headphones, one witness could not recall exactly what was said, and the other witness could not make out exactly what he said. Union asserts the Employer failed to consider exculpatory evidence provided by key eyewitnesses to the incident. In the opinion of the Union, this failure to consider such evidence falls short of the standard of clear and convincing evidence required in reaching a fair judgment and the Employer did not prove the misconduct.

The Union contends the Employer did not have just cause to discipline Grievant. The Union argues the investigation conducted by the Employer was not fair and objective. The Union believes the testimonies from all employees involved were not taken into account to support a finding of misconduct and argues the statements were inconclusive to make a finding that Grievant violated the policy. The Union argues the investigator only weighed the testimony of four witnesses to make her findings and did not interview TPW Thompson. Union maintains substantial proof did not exist to establish a violation. The Union contends that when Mr. Walker returned to work after being placed on administrative leave, the investigation had already been completed, suggesting that management used the process as a means to

punish him. According to the Union, DODD policy also states that disciplinary measures imposed should be corrective. It is the position of the Union there was no just cause to discipline.

The Union requests the Arbitrator to sustain the grievance and grant the Grievant the requested remedy. This includes reinstating the Grievant as a Therapeutic Program Worker (TPW) to his previous shift, assignment, and days off before his removal. The Union also seeks back pay for the period between the removal and resolution dates, with deductions for union dues and retirement contributions. Additionally, they request payment for all medical, dental, and vision expenses incurred during the removal period until the Grievant is re-enrolled. The Union further asks for the Grievant to be restored to all benefits and to have any entries related to the removal erased from the Employee History Report (EHOC). Finally, the Union asks that the Arbitrator retain jurisdiction for sixty (60) days.

Discussion

The parties pose these questions to be answered by this Arbitrator: Was the Grievant, Leyland Walker, removed for just cause? If not, what shall the remedy be?

Article 24.01 of the parties' Agreement states a disciplinary action shall not be imposed upon an employee except for just cause. In labor law, "just cause" is a standard used to determine whether an employer's disciplinary action, such as termination, was reasonable and fair based on established criteria. This Arbitrator notes this standard is often used in collective bargaining agreements and labor contracts to protect employees from arbitrary or unjust dismissals. The Union asserts the answer to whether the Grievant was removed for just cause can only be found through consideration of the Seven Steps. The seven steps of just cause are a set of principles that are commonly used to assess whether a disciplinary action, in this case, the removal of the Grievant, meets the standard of just cause. These seven steps are as follows:

- Notice: Did the employee receive adequate notice of the alleged misconduct or performance issues?
- Investigation: Was there a fair and thorough investigation of the incident?
- Proof: Is there sufficient evidence to support the Employer's decision to take disciplinary action?
- Rule or Standard: Was the Employer's rule or performance standard reasonably related to the efficient and safe operation of the workplace?
- Equal Treatment: Were all employees in similar situations treated the same way?
- Progressive Discipline: Was progressive discipline used, where appropriate, to correct the employee's behavior or performance before resorting to termination?
- Mitigating Circumstances: Were any mitigating circumstances considered before deciding on the disciplinary action?

Arbitrators typically analyze the facts and evidence presented by both parties in light of these principles to determine if the termination was justified.

In this scenario, the Employer alleges the Grievant violated its workplace violence standard, which carries a penalty of removal on a first offense. The removal order states:

On or about January 17, 2022, you were engaged in a verbal altercation with a coworker in which you displayed aggressive and hostile behavior. Specifically, you approached your coworker aggressively and made threats of violence to harm him. Your actions are in violation of DODD Standards of Conduct Policy.

The burden of proof required for such a claim is "clear and convincing evidence." This standard is higher than the typical "preponderance of the evidence" standard used for minor infractions of work rules. "Clear and convincing evidence" means that the Employer must present evidence that is highly and substantially more likely to be true than not. The evidence must be compelling, credible, and convincing to establish the Grievant indeed violated the workplace violence standard.

The evidence established that the Grievant participated in the Annual Core Training, and the discussion of the material presented included HR-013 Standards of Employee Conduct. The training verification indicates his signature.

The Union does not object to the Employer's decision to place the Grievant on administrative leave during the initial investigation; the Employer's actions appear reasonable and appropriate. In these circumstances, this measure would be consistent with the negotiated Article 11.04 which reads:

11.04 - Workplace Violence The Employer and the Union recognize that violence against employees is serious and requires violence prevention programs. Agencies will develop practices and procedures aimed at reducing

risk of job-related violence. Agency plans shall consider Occupational Safety and Health Administration (OSHA) guidelines for preventing workplace violence to guide development of each Agency plan. Agency plans shall be reviewed with the Agency Health and Safety Committee which shall be provided an opportunity for input.

Administrative leave is a common practice when investigating alleged violation of work rules. It allows the Employer to conduct a thorough and unbiased investigation while ensuring the workplace remains free from potential disruptions or influences. Moreover, administrative leave is not discipline.

However, the Union takes exception to initiating the second administrative leave. The Union argues that when Grievant was permitted to return to work, the final decision was not to discipline him, and the second investigation was simply punitive. The evidence established when Grievant was allowed to return to work after the initial investigation because the Employer could not conclusively establish a work rule violation. The investigator explained the employees interviewed during the initial investigation did not corroborate all of the alleged remarks by the Grievant, specifically, the active threat of violence. TPW Harris did not hear the comments because he was wearing headphones. Notwithstanding, TPW Harris felt it necessary to escort Grievant to the other side. TPW Harris had no objection to retrieving TPW McCalla's coat from the other unit to keep the peace. Another coworker stated the threat was conditional, i.e., if you disrespect my mother again. It is incumbent on the Employer must demonstrate the misconduct, the threat, occurred, and the threat would be considered a threat by a reasonable coworker.

More importantly, employees are entitled to due process. If the evidence available at the time did not firmly support the alleged violation, it is appropriate to reinstate the employee until further evidence is obtained

within a reasonable time. This ensures that employees are not unjustly penalized based on preliminary findings. Further, there was no evidence that a final determination was made prior to Grievant's return to work. The Employer's actions in placing the Grievant on a second administrative leave after new evidence supporting the alleged violation surfaced appear to be a responsible course of action due to the nature of the offense. The Employer timely conducted a follow-up investigation to ensure all available information was considered before making any final decisions. The Employer gave the Grievant a fair opportunity to respond to the new evidence and present his side of the story in accordance with the provisions of the CBA. This Arbitrator finds no material prejudice in continuing the investigation and placing the Grievant on leave for the second time.

The video of the encounter between McCalla and the Grievant has no audio component. Still, despite the initial intervention of his coworker to escort him from the work location on 7-200, the Grievant returned to confront TPW McCalla a second time. Coworkers who allegedly stated they could not hear the Grievant's statements found it necessary to step in front of the Grievant on two separate occasions. The video shows Grievant was physically escorted away from TPW McCalla. At times, pictures speak more clearly than words. The camera footage corroborates the account of TPW McCalla. Based, in part, upon the video evidence, this Arbitrator credits the testimony of TPW McCalla and TPW Thompson.

TPW McCalla stated the Grievant said, "Bitch, I'm gonna beat yo ass. Don't say anything to my momma, Bitch, I gonna wait by the time clock, beat your ass," and he felt threatened. TPW McCalla contacting managers requesting to be moved and asking another coworker to retrieve his belonging to avoid confrontation supports his perception of trouble brewing at the workplace.

The other coworker recalled variations thereof, "No one disrespects my mom," "I'll meet you at the time clock," or "Whip your ass." These remarks appear to be a response to his coworker who may have spoken disrespectfully or rudely to his mother. "Don't say anything to my momma," this part of the statement indicates the Grievant is objecting to the way his coworker spoke to his mother. The use of "you" suggests the Grievant is directly addressing his coworker. The phrase "whip your ass" is a colloquial expression and can be interpreted as a threat of physical violence. The statement suggests the Grievant is willing to take aggressive action against his coworker. The second phrase "meet you at the time clock" suggests a meeting point or a physical location where the confrontation may take place. The phrase "I'll meet you at the time clock" also implies a confrontational intention suggesting the speaker is willing to confront the person who spoke disrespectfully to their mother physically. All of which further corroborates the aggression and behaviors the video shows.

Based on the careful consideration of the witness testimonies, incident documentation, camera footage, and other relevant evidence presented at the arbitration, as well as the findings regarding the investigation process and the opportunity given to the Grievant to respond to the accusation, this Arbitrator finds the Employer has met the high burden of proof required (clear and convincing evidence) to establish the Grievant violated the workplace violence standard.

The Employer issued the termination in accordance with the work rule - K2 of HR-013 Standards of Employee Conduct, which indicates violation thereof results in immediate discharge for a first offense. The Employer asserts the policy provision is consistent and reflects the concerns of the Employer and Union to provide a safe workplace environment as stated in the parties' CBA. It is common for collective bargaining agreements to address workplace safety, including policies related to violence prevention

and appropriate disciplinary measures. Such provisions are vital for fostering a safe and respectful work environment and are often mutually beneficial to both the Employer and the employees represented by the Union. Notwithstanding, where the Agency's policy is unilateral, and the parties' agreement contains the just cause standard, an Arbitrator must consider the reasonableness of the penalty to determine if the penalty is unreasonable, arbitrary, capricious, or an abuse of discretion.

This Arbitrator recognizes the principles of arbitral modification of penalties under the Just Cause Standard. However, there is no basis to warrant such modification in this particular case. Grievant worked for the Employer for approximately 5 1/2 years before his termination with no active discipline. The record is devoid of any performance evaluations. The evidence did not substantiate any claims of disparate treatment. The evidence supports the Employer's decision, and no material procedural or substantive errors were found to justify altering the disciplinary outcome.

The Union implies the alleged verbal lashing of Grievant's mother by TWP McCalla is a mitigating circumstance. This Arbitrator points out that Grievant's mother could have pursued her own grievance under the CBA if, indeed, there was verbal abuse and disrespect. The parties' CBA and Employer's policies address employee-employee relations.

The Employer's decision to terminate the Grievant, though stringent, is found to be within its managerial discretion. The parties' CBA states that the disciplinary action must be commensurate with the offense. The Employer's action is a reasonable measure to uphold a safe work environment and deter future incidents. While it is acknowledged that the termination decision may seem harsh, especially for a first offense, the Employer's response must be evaluated in light of the severity and potential consequences of workplace violence. Even if not carried out, threats can escalate conflicts and create a toxic work environment. This can negatively impact employee morale and

overall productivity. Such incidents can jeopardize the safety and well-being of the entire workforce and lead to an atmosphere of fear and insecurity among employees.

However, it is essential to remember that the perception of a statement as a threat can vary depending on the cultural background, tone of voice, and context. Intentions and emotions behind the words are also essential to consider. The Grievant's remarks convey a strong sense of protectiveness and defense of his mother, but Grievant's aggressive tone and the intention to harm or cause physical conflict constitute a threat. TPW Thompson also shared a past unreported incident where Grievant contacted her regarding comments made to his mother regarding workplace issues with her daughter. TPW Thompson stated the Grievant asked her if she wanted to fight, and she responded she did not fight men, but she had a son and brothers if he wanted to take that route. TPW Thompson further explained that she did not file an incident report because the matter was resolved between the workers involved.

Given the potential consequences of workplace violence incidents and their detrimental impact on the entire workforce, Employers have a legitimate interest in maintaining a violence-free environment. As such, Arbitrators have increasingly supported the termination of employees who pose a threat of harm to others. Such threats, taken at face value, undeniably provide a proper reason for discharge. The testimony of Employee White echoes this sentiment of severe consequences for violating these rules.

In light of these findings, there is no basis for an arbitral modification of the penalty. This Arbitrator finds the Employer did not violate Article 24 of the collective bargaining agreement.

AWARD

After careful consideration of this record, this Arbitrator finds the Employer did have just cause to discharge the Grievant, and therefore it did not violate Article 24 of the parties' Collective Bargaining Agreement. Accordingly, the grievance is denied.

Dated: July 24, 2023

Meeta A. Bass

Arbitrator Meeta A. Bass

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Award was served on the following individuals this 25th day of July 2023:

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Meeta A. Bass

Arbitrator Meeta A. Bass