

IN THE MATTER OF ARBITRATION

BETWEEN

OHIO DEPARTMENT OF
REHABILITATION AND
CORRECTIONS

AND

OCSEA AFSCME LOCAL 11, AFL-CIO

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GRIEVANCE ID: Heath Causey

Grievance No. Discharge/Removal

Grievance #DRC-2021-02787-03

BEFORE: ROBERT G. STEIN, NAA

ARBITRATOR

FOR THE UNION:

Adam Ruth, Staff Representative
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FOR THE EMPLOYER:

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INTRODUCTION

This matter came before the arbitrator for a hearing pursuant to the collective bargaining agreement ("Agreement" or "CBA") between the State of Ohio, Ohio Department of Rehabilitation and Correction ("Employer" "DRC" "Department"), and the Ohio Civil Service Employees Association, AFSCME Local 11 ("Union" or "OCSEA"). This Agreement became effective in 2018 and covers the conduct that is the subject of this grievance. The Ohio Department of Rehabilitation and Corrections serves as the Employer in this matter, specifically its Corrections Reception Center ("CRC"). The parties mutually selected Robert G. Stein to arbitrate this matter impartially under the Agreement. A hearing was conducted on January 22, 2025, and March 5, 2025, held virtually. The parties mutually agreed to these hearing dates and the virtual format, and each was given a full opportunity to present both oral testimony and documentary evidence in support of their respective positions. The hearing was recorded via a written transcript and was closed upon the parties' submission of post-hearing briefs. The title of Correction Officer as used herein is "Officer."

No procedural or jurisdictional arbitrability issues have been raised, and the parties have agreed that this matter is properly before the arbitrator to determine the merits.

Joint Stipulations

Issue: Was the Grievant, Heath Causey, removed with Just Cause? If not, what shall the remedy be?

Classification: Corrections Officer

Length of service: 15+years (DOH=10/03/2005)

Termination Date: 08/27/2021

Discipline: Written Reprimand, at the time of removal, Rule 7 (July 15, 2020)

Grievance filed: 09/29/2023.

VIOLATIONS OF RULES/STANDARDS OF EMPLOYEE CONDUCT FOUND BY THE EMPLOYER

(NUMBERED BY ARBITRATOR FOR PURPOSES OF ORGANIZATION ONLY)

The Grievant was removed on August 27, 2021, based upon the Employer's finding that he had violated several Standards of Employee Conduct (SOEC) rules. The Grievant was found to have:

- Rule 8: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment.
- Rule 24: Interfering with, or failing to cooperate in, or lying in an official investigation or inquiry.
- Rule 40: Use of excessive force toward any individual under the supervision of the Department or a member of the general public.
- Rule 42 Current: Abuse, including physical, mental, or otherwise of any individual under the supervision of the Department.
- Rule 43 Current: Using force on any individual under the supervision of the Department when force was not authorized to be used.

(Joint Exhibits, Notice of Removal, p.4-5)

I. RELEVANT CONTRACT LANGUAGE

Articles 24. 24.02, 24.05, 24.06

(p. 1 in the Arbitration Binder)

BACKGROUND

This case came to arbitration approximately three years after the incident. The individual filing the grievance is Heath Causey, also referred to as "Causey" or "Grievant." He was previously employed as a Corrections Officer with DRC, having started his employment on October 3, 2005, and he was terminated on August 27, 2021. At the time of his termination, Causey had completed over 15 years of service with DRC. According to the Employer's statement, the Grievant was

dismissed for violating five Employee Conduct (SOEC) rules, specifically Rules 8, 24, 40, 42 (current), and 43, all of which are detailed above.

The alleged violations occurred on February 6, 2021, while Causey was working at CRC and escorting an inmate ("Inmate McDaniel" or "McDaniel") from the R2 unit to Medical (a.k.a. "med bay") (p. 19 Binder), following a violent confrontation with an inmate involving several Officers in housing unit R2. They were Officers Sarah Cline ("Cline"), Kristy Judd ("Judd"), Jamie Barlett ("Barlett"), and Jason Roberts ("Roberts"). Cline and Judd both suffered physical injuries from punches and kicks from McDaniel; it is unclear to what extent Barlett was injured. Eventually, the officers gained control of McDaniel, a large individual (6'5", 270 pounds), by using force through the deployment of mace, ultimately handcuffing him from behind. This takedown (referred to as Incident #1 in the Use of Force Investigative Report) was ruled to be "justified and not excessive."

The central focus of this case is what occurred after the inmate was under control in R2 and during his escort to the med bay by the Grievant, Officer Roberts, along with several other officers following behind. It also examines whether the Grievant violated Rules 8, 24, 40, 42, and 43 during the approximate 8-minute escort to the med bay. This escort took place in 28-degree winter weather, and inmate McDaniel was not wearing shoes, a coat, or any protective clothing. Inmate McDaniel, age 55, refused medical treatment and died shortly after arriving at the med bay, just as he was being transported to the Transitional Program Unit, suffering a cardiac arrest just outside the doors of the med bay (p. 19-20 Binder). The Coroner determined the immediate cause of death to be "stress-induced sudden cardiac arrest" (p. 325 Binder). The Employer's investigation found that inmate McDaniel ended up on the ground at least a dozen times during this escort, most of which were attributed to his actions. However, starting with the escort of McDaniel just inside R2 and outside of the R2 unit, three (3) other takedowns were determined in the investigation to constitute excessive use of force (p. 22-33 Binder). Consequently, the Employer concluded that the Grievant, who physically escorted inmate McDaniel to the med bay, had violated several DRC Rules and terminated his employment on August 27, 2021.

On November 2, 2021, the Union filed a grievance on behalf of Causey, claiming that the Employer lacked cause to remove him from his position. However, the matter remained

unresolved throughout the grievance procedure. The Union subsequently submitted the issue to final and binding arbitration. The parties have agreed that the issue is properly before the arbitrator for a determination on the merits.

SUMMARY OF THE EMPLOYER'S POSITION

The Employer asserts that it presents clear and convincing evidence showing that the Grievant, despite his tenure with the Department, committed serious violations of essential departmental rules that warrant his removal from DRC. Instead of summarizing the arguments and possibly distorting or truncating their content, the arbitrator has offered an accurate account of the Union's key arguments as presented in its brief.

ARGUMENT

I. Removal of the Grievant was necessary based on his violations of the Standards of Employee Conduct and the facts of this case.

A. The Grievant exercised poor judgment during his escort of Michael McDaniel from R Unit to Medical Services on February 6, 2021.

Rule 8 – Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment.

The Grievant was hired by the Ohio Department of Rehabilitation and Correction on October 3, 2005, as a correction officer. (Stipulation #2.) The Grievant claimed that he “did a really good job at this job, [. . .] had exceptional reviews on every evaluation,” and that he had “been promoted several times because of it.” (Tr., p. 216.) However, on February 6, 2021, the Grievant was a correction officer. (See JX 2, p. 1) At the time of his removal, the Grievant had an active written reprimand on his record for violation of Rule 7 – Failure to follow post orders, administrative regulations, policies, or written or verbal directives. (Stipulation #3.)

The Grievant was a very well-trained DRC employee at the time of the February 6, 2021, incident. (See Tr., pp. 176-177.) The Grievant explained that he taught Cell Extractions, Immobilizing Restraints, and Unarmed Self-Defense. (Tr., p. 176.) He also stated that he taught Use of Force training for fourteen (14) years of his DRC career, up until the last year he worked at CRC. (Tr., p. 177, emphasis added.)

In his Use of Force Report, the Grievant acknowledged that he “took over control of the inmate.” (JX 4, p. 54.) By being the person who took control of Mr. McDaniel, the Grievant made himself responsible for Mr. McDaniel's well-being. While the Grievant had control of and responsibility for Mr. McDaniel – who had just been sprayed with mace (also called “OC”) – the Grievant took Mr. McDaniel out of the building into the freezing cold outdoor temperature, with no shoes, no coat, and wearing only a badly torn t-shirt. (JX 4, pp. 24, 31; Tr., p. 71; Video – 2/6/21 McDaniel Escort (OSHP), Camera CRC-Bldg 5 Yard 4, 3:10:36 PM.)

The Grievant acknowledged that Mr. McDaniel was likely feeling the after-effects of the OC spray. (Tr., p. 187.) He noted that “a lot of OC” had been used in R Unit and that Mr. McDaniel “had OC on him.” (Tr., p. 203.) The Grievant described what it is like to be sprayed with mace:

I don’t know if you’ve ever been sprayed with Fox OC spray, but Fox is 5.3 million Scoville Heat Units. It’s about the hottest stuff that you can imagine. One of the effects of Fox getting on you anywhere, especially your face area, is you immediately go to the ground when it engages. So you might get sprayed with it and it might take a second or three seconds or five seconds or even a minute, but we didn’t gauge his – it causes like an involuntary closure of the eyes. It gets in your pores, and like the – it will – it will put you on the ground.

(Tr., pp. 203-204.)

The Grievant claimed, “He [Mr. McDaniel] felt resistant right around the time that we were going through the doors. I don’t know why. It might have been because he was off balance. It might have been the OC spray. It – it might have been going outside, the OC spray kicking in just because of the temperature change [. . .].” (Tr., pp. 186-187.) The Grievant also acknowledged,

I’ve been sprayed with it [OC], and it’s put me on the ground several times just because it takes your breath. It puts your body into like a panic mode. [. . .] I think more than likely happened is that happened to him when he went outside because of the temperature change, the Fox probably engaged because his pores closed from being from 70 degrees to probably 10 to 20 degrees, and it probably closed his pores up and it probably caused the Fox to enact [. . .].

(Tr., p. 204.)

Despite knowing Mr. McDaniel had been sprayed with OC, and knowing from his own experience the debilitating effects OC spray can have on a body, the Grievant failed to provide suitable outerwear or shoes to Mr. McDaniel, and failed to utilize any available options to transport Mr. McDaniel to Medical. (See Tr., pp. 201, 203-204.) Investigator Nate Harris explained, “The staff had a number of different things they could have done. They could have called for a golf cart that was on grounds, multiple were on grounds, to come pick up McDaniel for the escort. They could have got a wheelchair and placed him in a wheelchair to escort him.” (Tr., p. 71.)

When asked why he did not put shoes or a coat on Mr. McDaniel, the Grievant testified,

Sir, at the time that’s not something that happened at CRC. I guess it could have happened at other institutions [. . .] in a situation such as that, sir, even if we were supposed to, letting the inmate that just assaulted two women stay in the unit and have the unit in an uproar and waiting for him to put shoes on him, or to put shoes on him or to put a coat on him, I mean, at – at that time if he’s already assaulted two officers – I mean, I’ve been kicked in the face by an inmate before. I mean, he’s already showed that a minute or two before that he just almost murdered two women. I mean, why – why would I want to risk my safety and the safety of other people by randomly putting shoes on him when that’s something that we’ve never really done before at the institution. [. . .] I don’t even think it’s reasonable to expect that I should have went in his cell, grabbed his coat and his shoes and put them on him before he left the unit.

(Tr., p. 197.)

When asked about the golf cart option, the Grievant stated, "That really is not something that happened either at the time. I was told that happened at other institutions, but CRC has never taken inmates on the golf carts unless it was a medical situation where the inmate had medical problems, like if they broke their ankle or if they had, you know, chest pains or something to the fact that walking would be bad." (Tr., p. 201.)

The Grievant's responses to these questions show his true character. The Grievant admitted, "[E]ven if we were supposed to" get a coat and shoes for Mr. McDaniel, he wouldn't have done it because waiting for him to put on shoes and a coat would not have been "reasonable." (Tr., p. 197.) His comments also show that his attitude and actions toward Mr. McDaniel were retaliatory. The sarcasm in the following statements literally drips with the Grievant's contempt: "why would I want to risk my safety and the safety of other people by randomly putting shoes on him when that's something that we've never really done before at the institution. [. . .] I don't even think it's reasonable to expect that I should have went in his cell, grabbed his coat and his shoes and put them on him before he left the unit." (See Tr., p. 197, emphasis added.)

The man had his hands cuffed behind his back. (See JX 4, p. 25.) Not counting the two (2) correction officers who were involved in the initial altercation with Mr. McDaniel, there were no fewer than six (6) DRC correction officers and two (2) Ohio National Guardsmen present in the unit before Mr. McDaniel, handcuffed with his hands behind his back, was escorted out of the unit. (Video – 2/6/21 McDaniel (OSHP), Camera CRC-R2-1, 3:09:23 PM.) At this point in time, the Grievant's safety was not at risk. At this point in time, no other employee's safety was at risk. At this point in time, it was eminently reasonable that the person who took control of the escort would ask another employee to go, or go himself, into Mr. McDaniel's cell to grab his coat and shoes so Mr. McDaniel could have some protection from the elements before he left the unit.

In regard to using the golf cart to transport Mr. McDaniel to Medical, this WAS a situation "where the inmate had a medical problem [. . .] or something to the fact that walking would be bad." (See Tr., p. 201.) The Grievant acknowledged as much when he testified about the effects of Fox OC spray. (See Tr., pp. 203-204.) After the Grievant's takedown of Mr. McDaniel into the snowbank, during "the continuation of that walk to the Medical Department, Mr. McDaniel collapse[d] and [fell] to the ground about another ten (10) times. We determined these were not uses of force – he wasn't forced to the ground. He collapsed." (UX 1, 22:15 – 22:28.) How many times does a man have to collapse, "placing [his] bare skin on cold pavement, head first into the pavement," before we provide a safe means for him to be transported to Medical? (See Tr., p. 71.)

The Grievant claimed that using a golf cart to transport an incarcerated person to Medical was "not something that happened" at CRC. (Tr., p. 201.) The Union produced no evidence to support this claim, other than the Grievant's testimony. The Union's witness, Richard Daily, former chapter president at CRC, could have corroborated the Grievant's testimony on this point, but did not. (See Tr., pp. 154-174.) Nate Harris, the CRC Investigator, both in the Use of Force Investigation Report and during his hearing testimony, stated that staff could have called for a golf cart or used a wheelchair to transport Mr. McDaniel to Medical. (JX 4, p. 31; Tr., p. 71.) The Director, during her press conference, noted that golf carts were available to use to transport Mr. McDaniel. (UX 1, 30:20.) The Grievant's claim that this *just wasn't done* at CRC is unsupported, disingenuous, and patently false. (See Tr., p. 201.)

The Union will likely claim that it was the supervisor's responsibility to get a coat and shoes, and to request a cart or wheelchair for Mr. McDaniel. (See Tr., p. 218.) However, the Grievant testified that he "did not see any supervisor" while he was escorting Mr. McDaniel out of the unit. (Tr., pp. 190-191.) The Grievant "took over control" of the escort. (JX 4, p. 54.) As with all correctional professionals, the Grievant had the responsibility to protect the incarcerated person who was under his control. Even if a supervisor had made the decision not to provide a coat and shoes for Mr. McDaniel, or a ride on a golf cart, the Grievant had a duty to protect him.

As Fyodor Dostoyevsky said, "The degree of civilization in a society can be judged by entering its prisons." On February 6, 2021, at the Correctional Reception Center, the degree of civilization disintegrated into a herd mentality, led by the Grievant's failure to provide basic care to protect another human being over whom he had custody and control.

First they came for the Socialists, and I did not speak out—because I was not a Socialist. Then they came for the trade unionists, and I did not speak out—because I was not a trade unionist. Then they came for the Jews, and I did not speak out—because I was not a Jew. Then they came for me—and there was no one left to speak for me.

--Martin Niemöller.

SOMEONE must stand up and speak out in these situations. Failing to do so, especially when the employee is the one who “took over control,” constitutes extreme poor judgment. (See JX 4, p. 54.) Mr. McDaniel – a bad actor in this situation, to be sure – had no one speak out for him on February 6, 2021. As a result, he paid for his bad actions with his life.

B. he Grievant’s take-down of Michael McDaniel, that caused McDaniel to veer off the walking path and land face-down in a snowbank, was an unauthorized and excessive use of force.

The Rules of the Ohio Administrative Code provide guidelines regarding the amount of force DRC staff members may use. (Rule 5120-9-01(C), OAC.) The Rule states,

Guidelines regarding the use of force. Force shall be used in accordance with the following guidelines.

(1) Amount of force. Staff members considering the use of force shall evaluate the need to use force based on the circumstances as known and perceived at the time it is considered.

(a) Staff may use force only to the extent deemed necessary to control the situation; staff shall increase or decrease the level of force as resistance increases or decreases.

(b) Staff should attempt to use only the amount of force reasonably necessary under the circumstances to control the situation and shall attempt to minimize physical injury.

(c) Force or physical harm to persons shall not be used as punishment.

(*Id.*)

The Grievant claimed in his Use of Force Report that Mr. McDaniel “**had** to be taken to the ground.” (JX 4, p. 54, emphasis added.) Taking Mr. McDaniel to the ground was a use of force, and an analysis of whether that force was authorized and/or excessive must be made.

Rule 43 – Using force on any individual under the supervision of the Department when force was not authorized to be used.

The Grievant participated in Use of Force training on October 9, 2019. (Jx 4, pp. 63, 65-67.) On his Use of Force test, the Grievant correctly stated that the four elements that must be present to justify the use of force against an incarcerated person include Preclusion, Jeopardy, Ability, and Opportunity. (JX 4, p. 66.) As described in the investigation report, the element of “Preclusion” is present when “reasonable alternatives have been considered and/or exhausted prior to using force.” (JX 4, p. 27.) An Officer may consider that “Jeopardy” is present when “looking at the individual’s intent [to cause harm] and the employee’s reasonable perception of that intent.” (JX 4, p. 27.) The incarcerated person’s “Ability” is “determined by looking at the individual’s power and capability to cause harm.” (*Id.*) An incarcerated person’s “Opportunity” to cause harm is “determined by looking at the individual’s physical distance from the employee.” (*Id.*)

When evaluating the use of force that occurred when the Grievant “**had** to [take Mr. McDaniel] to the ground,” the investigators found that none of the four (4) elements were met. (JX 4, pp. 27-28; 54, emphasis added.) The investigators noted that the element of Preclusion was not met because the Grievant did not use an available

lesser alternative to the aggressive takedown into the snowbank, such as stopping the escort to de-escalate the situation. (JX 4, p. 27.) The Grievant said Mr. McDaniel went “dead weight.” (JX 4, pp. 26-27.) The Grievant had the alternative to simply allow Mr. McDaniel to drop “dead weight” onto his knees and then onto his chest, as he did during the other times Mr. McDaniel went to the ground between R Unit and Medical. (Video – 2/6/21 McDaniel Escort (OSHP), various camera views and times.) An aggressive, forced takedown was not necessary. (See JX 4, pp. 27-28.)

Similarly, the elements of Ability and Opportunity were not met. (See JX 4, pp. 26-28.) Prior to the takedown, Mr. McDaniel’s hands were handcuffed behind his back. (Video – 2/6/21 McDaniel (OSHP), Camera CRC-R2-1, 3:09 PM.) No less than six (6) staff members were in the area. (Video – 2/6/21 McDaniel Escort (OSHP), Camera CRC-Bldg 5 Yard 2, 3:10:12 PM.) He was wearing a ripped t-shirt and no shoes. (Video – 2/6/21 McDaniel Escort (OSHP), Camera CRC-Bldg 5 Yard 2, 3:10:36 PM.) Mr. McDaniel’s ability to cause harm to anyone was greatly reduced to the point of being virtually non-existent. (See JX 4, p. 28.) Although officers were close to Mr. McDaniel, the fact that he was handcuffed behind his back with multiple officers present greatly diminished his opportunity to cause harm. (See JX 4, p. 28.)

Finally, neither was the element of Jeopardy present. (See JX 4, p. 27.) At the time of the takedown, Mr. McDaniel’s intent could not have been to cause harm to anyone. (See *id.*) The Grievant claimed on his Use of Force Report that an “immediate threat” was present that required him to use force. (JX 4, p. 54.) The Grievant indicated that this “immediate threat” was that the “Inmate assaulted staff and was physically resistant during the entire escort to CRC medical.” (*Id.*) Mr. McDaniel’s assault on staff occurred prior to the escort and takedown. There was no threat of further assault once the escort began. Mr. McDaniel, suffering the effects of OC spray in freezing cold temperatures, was not likely concerned with causing further harm to DRC employees. In fact, Mr. McDaniel did not assault, nor did he *attempt* to assault, any staff member after leaving R Unit. (See Video – 2/6/21 McDaniel Escort (OSHP), various camera views, various times.) He was well and thoroughly subdued.

Rule 40 – Use of excessive force toward any individual under the supervision of the Department or a member of the general public.

“Excessive force” is defined in the DRC Use of Force policy as “An application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which reasonably appears to be necessary under all the circumstances surrounding the incident.” (JX 4, p. 191.) The policy further provides, “force, up to and including deadly force, may be used to respond to resistance, protect persons, to halt or prevent escapes, to apprehend an escapee, or protect its institutions and enforce its rules. *Force shall never be used as punishment. Only the amount of force reasonably necessary to control the situation shall be used.*” (JX 4, p. 193, emphasis added.)

The Grievant did not articulate a concern that he or any other employees would be subject to immediate harm if he did not take Mr. McDaniel to the ground and into the snowbank. (See JX 4, p. 27.) He did not identify any other person he was trying to keep safe by taking Mr. McDaniel to the ground and into the snowbank. (See JX 4, p. 54.) He only pointed to the harm that had already been visited on his co-workers. (See *id.*) In his Use of Force report, the Grievant mentioned no less than four (4) times that Mr. McDaniel had “just assaulted staff.” (*Id.*) The inmate’s assault on other staff members, although it was a heinous and vicious act, had no bearing on whether the Grievant was justified in using aggressive force when he took Mr. McDaniel down to the ground into the snowbank, or whether that force was excessive. Excessive force is never justified. Forcing Mr. McDaniel down, face-first into a snowbank, was not necessary to control the situation; it was clearly excessive.

C. During the investigation of the events of February 6, 2021, the Grievant was not truthful.

Rule 24 – Interfering with, failing to cooperate in, or lying in an official investigation or inquiry.

During his investigatory interview, the Grievant was not truthful when questioned about his knowledge of what occurred between Mr. McDaniel and the two (2) female correction officers he assaulted. (See JX 4, p. 57.)

When asked, "When you responded, did you know what had occurred between McDaniel and the staff," the Grievant responded, "No." (*Id.*) The Grievant continued this lie at the hearing. (*See Tr.*, p. 199.) When asked by the Arbitrator, "How did you know he – he had almost killed two women? I thought you didn't really know what was going on when you arrived," the Grievant claimed, "That's just after-the fact knowledge, sir." (*See Tr.*, p. 199.)

The Grievant just can't keep his story straight. In his Use of Force Report, the Grievant described the "immediate threat" that justified his use of force as, "Inmate assaulted staff." (JX 4, p. 54.) The Grievant mentioned the inmate had assaulted staff four (4) times in his Use of Force Report. (*Id.*) He claimed that his knowledge of Mr. McDaniel's assault on his co-workers was a condition precedent to him using force, and that this assault justified his use of force on Mr. McDaniel. (*See id.*)

Even at the hearing, the Grievant couldn't keep his lies in order. He testified,

Control center then relayed it to the radio system, and they told us that there was a man down alarm going off in R Unit. And from that, I began responding from the captain's office area down to R Unit.

And during this time, the captain, which was Captain Miller at the time, she was giving updates over the radio of what was going on. She was saying that **there was officers down. There's two females. She said the females were unresponsive**, and she kept giving updates over the radio in the time from the captain's office to R2.

(*Tr.*, pp. 183-184, emphasis added.) At the time the Grievant walked into R Unit, he had been informed by Capt. Miller that two (2) female correction officers were down, and that they were unresponsive. (*See id.*) His statement to investigators that he did not know what occurred between Mr. McDaniel and the staff was a lie. (*See JX 4*, p. 57.)

The Grievant's untruths on this point, both during the investigation and at the hearing, only make sense if one understands that he is trying to avoid responsibility for engaging in retaliatory, punishing behavior toward Mr. McDaniel. If he didn't know what happened between Mr. McDaniel and the staff, he would have no reason to retaliate against or punish Mr. McDaniel. But he DID KNOW what happened before he got there. He did have cause, in his mind, to take Mr. McDaniel outside after he had been sprayed with 5.3 million Scoville Heat Units, into freezing weather, without a coat and without shoes. (*See Tr.*, p. 203.) He did have cause, in his mind, to forcibly take Mr. McDaniel down into a face-plant into a snowbank. (*See JX 4*, p. 54.) The Grievant's actions were retaliatory and intended to punish Mr. McDaniel for assaulting two female correction officers. (*See JX 4*, p. 54; *see Tr.*, p. 198.) Claiming that he did not know what happened in R Unit before he arrived was a lie designed to cover up his retaliatory actions toward Mr. McDaniel.

The Grievant was also not truthful about the reason for his takedown of Mr. McDaniel into the snowbank outside of R Unit. As noted in the investigation report, "Officer Causey stated that McDaniel was being combative, refusing to walk, and acting as if he was 'dead weight'." (JX 4, pp. 26-27.) The Grievant repeated this explanation at the hearing. (*Tr.*, p. 189.) He stated, "The inmate lowered his body weight completely, like went dead weight to like a fall." (*Id.*)

The video footage of the takedown does not corroborate the Grievant's explanation. (*See id.*, *cf.* Video – 2/6/21 McDaniel Escort (OSHP), CRC-Bldg 5 Yard 2, 3:09:45 PM.) The Grievant's claims that Mr. McDaniel's "momentum" carried him into the snowbank, after Mr. McDaniel "went dead weight," are contradictory. (*See id.*) A person who goes "dead weight" has no "momentum" that would carry them forward into a face-first fall. A person who goes "dead weight" drops straight down to the ground. When Mr. McDaniel "went dead weight" an additional ten (10) times after the takedown into the snowbank, his "momentum" never carried him off the walking path. (Video – 2/6/21 McDaniel Escort (OSHP), various camera views, various times.) He never ended up in the snow. (*Id.*) Rather, when he "went dead weight," Mr. McDaniel dropped to his knees and then fell forward on his face and/or chest. (*See e.g.*, Video – 2/6/21 McDaniel Escort (OSHP), CRC-FS reception Outside, 3:11:55 PM.) He did not land face- or chest-first into the snow. (*Id.*)

The investigators explained in the Use of Force Investigation Report:

Based on the experience of these investigators, when a man of McDaniel's stature (6'5", 273 pounds) becomes "dead weight," he would typically fall where he stood. Instead, in this instance, the video shows that, as he fell, McDaniel's body swung off the walk path to an area that appears to be grass covered in snow. His body appeared to go down at an angle that would be consistent with being forcefully taken down and not consistent with a "dead weight" fall. It is also notable that he appeared to be walking on his own accord just before the take down and resumed walking on his own accord following the take down. Additionally, Lt. B. Brown described this incident as a take down [...] and said it was perhaps the hardest take down of the escort [...].

(JX 4, p. 27.)

The Grievant's claims that Mr. McDaniel's "momentum" carried him into the snowbank only makes sense if one understands that he is trying to avoid responsibility for the unauthorized and excessive force he used on Mr. McDaniel. The Grievant needed a reason to justify his use of force, so he claimed Mr. McDaniel was resisting orders of staff once outside of the unit. (JX 4, p. 54.) As noted in the investigation report, "[t]he video footage shows McDaniel was walking on his own accord and not being combative as they exited the unit. There is no indication on video that he was being non-compliant." (See JX 4, p. 27. Video – 2/6/21 McDaniel (OSHP), CRC-R2-1, 3:09:23 PM) Even the other correction officer who was assisting with the escort indicated, "McDaniel was not being combative, *he just stopped walking and acted if he was dead weight.*" (JX 4, p. 27, emphasis added.) Mr. McDaniel's forward movement would have no "momentum" when he "just stopped walking." (See *id.*) The Grievant's claim that Mr. McDaniel resisted the escort and that his momentum took him into the snowbank were lies designed to cover up his unauthorized, excessive, and retaliatory use of force.

II. The Employer has met the standard of "Just Cause" for removal of the Grievant based on his actions on February 6, 2021.

A. The Employer submitted substantial credible evidence that the Grievant committed the violations as alleged.

The Employer has proven each and every charge levied against the Grievant for the behavior he exhibited on February 6, 2021. The Union presented little challenge to the evidence submitted by the Employer at the hearing and instead argued that the pre-disciplinary meeting notice (JX 4, pp. 15-17) and the Notice of Removal (JX 3, pp. 4-5) were defective. The Union's argument is one of due process – that the Grievant did not have notice that his failure to obtain a coat and shoes for Mr. McDaniel, or to put him on a cart or wheelchair, were facts that supported the charges.

The Grievant did have notice of the charges brought against him – the rules for which he was removed from employment, and the evidence that would be used to support these charges. (See JX 4, pp. 4-5, 15-17.) The Pre-Disciplinary Meeting Notice lists the same five (5) rules that were listed on the Notice of Removal. (JX 4, pp. 15-17.) The Pre-Disciplinary Meeting Notice and the Notice of Removal include a narrative that describes the Grievant's escort of Mr. McDaniel from R Unit, as well as the Grievant's take-down of Mr. McDaniel into the snow. (*Id.*) The complete investigation of this incident was attached to the Pre-Disciplinary Meeting Notice. (JX 4.) In short, the Grievant had all the information he needed in order to respond to the five (5) rules he was charged with violating. The Employer hid nothing from the Grievant.

Even if the Arbitrator finds that the narrative in the Pre-Disciplinary Meeting Notice and the Notice of Removal are defective, the Employer asserts that it has still proven each and every charge levied against the Grievant, based on the stated narrative. (See JX 3, p. 5; see JX 4, p. 16.) The Grievant's decision to escort Mr. McDaniel in the

manner he did was excessive poor judgment (Rule 8). The Grievant lied during the investigatory interview about Mr. McDaniel's behavior during the escort (Rule 24). The Grievant was not authorized to use force when he performed a takedown maneuver on Mr. McDaniel outside of R Unit (Rule 43). The force the Grievant employed on Mr. McDaniel during the takedown outside of R Unit, described as the "hardest take-down of the entire escort," was excessive (Rule 40; see JX 4, p. 27). And, finally, as discussed below, the factors that led to the Grievant's charge of abuse to include but not limited to the Grievant's take-down maneuver which resulted in Mr. McDaniel landing unprotected, face-first in a snowbank, was abusive and retaliatory (Rule 42).

B. The Grievant's actions toward Michael McDaniel on February 6, 2021, were retaliatory, inhumane and abusive.

Rule 42 – Abuse, including physical, mental, or otherwise of any individual under the supervision of the Department.

The force employed to put Mr. McDaniel on the ground and into the snowbank was not required. As noted above, the force used against Mr. McDaniel was unauthorized and excessive. But the Grievant went further. The Grievant utterly failed to attempt to minimize physical injury to Mr. McDaniel and instead took action designed to *cause* physical injury to Mr. McDaniel. (See Rule 5120-9-01(C)(1)(b), OAC.) The Grievant failed to provide the basic human necessities of a coat and shoes to Mr. McDaniel in the freezing winter temperature on February 6, 2021. (See Tr., pp. 29, 193; see JX 4, p. 31.) He failed to request or use an available cart or wheelchair when it became patently obvious that Mr. McDaniel was in medical distress, which ultimately resulted in Mr. McDaniel's death. (See Video – 2/6/21 McDaniel Escort (OSHP), various cameras, various times. See also Tr., pp. 144-145.) Instead, the Grievant allowed Mr. McDaniel to continually go to the cold pavement, after Mr. McDaniel had been exposed to 5.3 million Scoville Heat Units – "the hottest stuff you can imagine." (See Video – 2/6/21 McDaniel Escort (OSHP), various cameras, various times; Tr., p. 203.)

Instead of taking seriously his duty and responsibility to provide a safe escort to the incarcerated person over whom he had taken control, the Grievant used his position to punish Mr. McDaniel. (See JX 4, p. 54.) The statements made in his Use of Force Report and at the hearing support the determination that he engaged in abusive, punishing behavior toward Mr. McDaniel. (See JX 4, p. 54.)

As previously noted, the Grievant mentioned in his Use of Force Report, no less than four (4) times that Mr. McDaniel had assaulted staff. (*Id.*) At the hearing, the Grievant explained his justification for not putting shoes or a coat on Mr. McDaniel. (Tr., pp. 197-198.) The Grievant said it was unreasonable to expect him to put shoes and a coat on an inmate who had "just almost murdered two women." (Tr., p. 197.) He continued, "It – it wasn't my decision for him to act that way [. . .]. It seems honestly unreasonable [. . .]. It didn't really seem like a logical thing to do at the time." (Tr., p. 198.)

Given Mr. McDaniel's own depraved actions, portraying him as a "victim" is repulsive; but that is what he was – a victim. It may not have been the Grievant's "decision for [McDaniel] to act that way." (*Id.*) However, it certainly was not Michael McDaniel's decision to be escorted out of R Unit without the basic human necessities of shoes or a coat on a very cold winter day after he had been exposed to OC spray – that was the Grievant's decision. (See Tr., pp. 197-198.) It was also the Grievant's decision to fail to obtain a cart or wheelchair for Mr. McDaniel after he collapsed to the ground more than ten (10) times. (See Tr., p. 201.) The Grievant was the leader who led the pack of CRC employees who ultimately engaged in the behavior that led to Mr. McDaniel's death. (See JX 6, pp. 325-326.)

As you have previously noted, "The Grievant's abuse of his position in the manner described, while serving in his professional capacity, violated the public trust. Grievant owed the inmate and the general public a duty to act in a professional manner and to not take advantage of his position for personal satisfaction." (ODRC and SEIU/District 1199, Carnes, OCB #2510, (Stein) p. 27, citing *Cantrell v. Ohio State Bd. of Emergency Med. Servs.*, 2007-

Ohio-149 (Fourth Dist. 2007).) The Grievant acknowledged that he knew two (2) female correction officers had just been assaulted by Mr. McDaniel. (Tr., p. 183.) And the Grievant admitted that he took control of the escort. (JX 4, p. 54.)

The Grievant had a duty to act in a professional manner and to not take the following retaliatory, punishing actions against Mr. McDaniel:

- The Grievant required Mr. McDaniel to walk outside without shoes or a coat, and in a shirt that provided not even minimal coverage of his body in 28-degree weather. (Video – 2/6/21 McDaniel Escort (OSHP), various cameras, various times; JX 4, p. 31.)
- The Grievant forcibly took down Mr. McDaniel face-first into a snowbank. (Video – 2/6/21 McDaniel Escort (OSHP), CRC-Bldg 5 Yard 2, 3:09:45 PM.)
- The Grievant allowed Mr. McDaniel to fall more than ten (10) times to the freezing cold pavement before arriving at Medical and, thereafter, dying at the end of his forced march. (Video – 2/6/21 McDaniel Escort (OSHP), various cameras, various times. See JX 6.)

The Grievant's actions clearly constitute the abuse of an individual under the supervision of the Department.

Arbitrators have found correction officers have engaged in abuse for much less egregious actions than are present in the case before you. (See *e.g.*, ODRC and OCSEA, Geiger, OCB #2091 (Pincus).). In one case, a correction officer escorted an incarcerated person who was handcuffed from behind. (See *id.*) The incarcerated person was verbally disrespectful and spit on the correction officer. (See *id.*) The Arbitrator found the correction officer committed abuse when he "pushed [the incarcerated person] toward [the Captain's] desk and the inmate, while still cuffed from behind, fell back onto the desk. The Grievant stated he would beat the inmate's ass as he held the inmate down on the desk." (Geiger, *supra*, at 3.) Arbitrator Pincus noted that the incarcerated person was injured as a consequence of the Grievant's misconduct. (*Id.* at 10.)

Arbitrator Pincus wrote,

The type of proven misconduct discussed in this Opinion and Award cannot be tolerated by the parties. When bargaining unit members engage in acts similar to those engaged in by the incarcerated population order has to be restored. The fury and intolerance exhibited by the Grievant indicate he can no longer be trusted to engage in correction activities. To allow his return to work would jeopardize the mission of the Department of Rehabilitation and Correction, and the safety and health of fellow bargaining unit members and inmates.

(*Id.*)

In the case presently before you, the Grievant did much, much more. The Grievant took Mr. McDaniel outside with no shoes or coat, and only a torn t-shirt in 28-degree weather. (Video – 2/6/21 McDaniel Escort (OSHP), various cameras, various times; JX 4, p. 31.) The Grievant performed an unauthorized and excessive takedown on Mr. McDaniel, causing him to land face-first in a snowbank. (Video – 2/6/21 McDaniel Escort (OSHP), CRC-Bldg 5 Yard 2, 3:09:45 PM.) The Grievant led a mob squad when he should have utilized transportation with a golf cart or a wheelchair. (See Tr., p. 71.) The Grievant's actions were abusive and retaliatory.

As this Arbitrator is fully aware, the parties' contract does not permit modification of a penalty when an employee is terminated after he commits abuse. "In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse." (Section 24.01, OCSEA contract.) Michael McDaniel, a person incarcerated at the Correctional Reception Center, Department of Rehabilitation and Correction, was in the custody of the State of Ohio. The Grievant's actions toward Mr. McDaniel meet the very

definition of the word “abuse.” One can hardly think of a set of facts that more readily call to mind the reason DRC has a rule prohibiting “abuse . . . of any individual under the supervision of the Department.”

The Grievant’s employment with DRC was terminated because he committed abuse of Mr. McDaniel. The Grievant’s termination may not be modified. (See Section 24.01, OCSEA contract.) Returning this Grievant to work in the field of Corrections would jeopardize the mission of the DRC, and the safety and health of fellow bargaining unit members and incarcerated people. (See Geiger, *supra*.)

In the sister grievance to the one presently before you, Arbitrator Robert Brookins noted,

The level of trust increases proportionately with the level of an employee’s power, position, and duties in the workplace. As a Correctional Officer, the Grievant literally held the very lives and well-being of inmates in her hands. Trust and sound judgment are indispensable for correctional officers. The Grievant’s conduct, in the instant case, constitutes a deafening warning for any reasonable employer. Retention of the Grievant, in the shadow of this dispute is, therefore, [. . .] contraindicated.

(Cline, *supra*. at 33.) With the egregious actions that the Grievant committed against Mr. McDaniel, the same argument must be applied to the Grievant’s case.

III. The Employer’s decision-making process in this case was fair and unbiased.

On May 25, 2020, George Floyd was murdered by white police officers in Minneapolis, Minnesota. On December 4, 2020, Casey Goodson, Jr. was shot and killed by a white police officer in Columbus, Ohio. On February 6, 2021, Michael McDaniel died after being involved in an altercation with correction officers at the Corrections Reception Center in Orient, Ohio.

Faced with this backdrop of events, and after the investigation into the circumstances surrounding the death of Mr. McDaniel was completed, Director Annette Chambers-Smith held a press conference to answer to the public about what happened at CRC on February 6, 2021. (See UX 1.)

Knowing that fair and unbiased decisions would need to be made about any disciplinary actions that might be imposed on the employees involved in this case, Assistant Director Stuart Hudson recused himself from any discussion, participation and/or involvement in the press conference. (See Tr., p., 134.) Mr. Hudson noted that Director Chambers-Smith had no discussions with him about this case. (Tr., p. 135.)

Assistant Director Hudson reviewed the investigation materials and independently determined, without any input from Director Chamber-Smith, that removal of the Grievant was warranted. (Tr., p. 202.) He stated that the part of the incident that “sticks with him” over time is:

The number of times that an individual in our – in our care and custody, I guess, allegedly fell down on the way over to the – to medical. Not being able to notify or notice the signs of distress, that – that’s probably what – the ability of staff in general just to take – take – noticed the issues that’s going on and take control of the situation and make sure that that individual was escorted to medical and checked and properly cared for after he committed that assault on a staff member. That’s what we train folks to do. But to watch him fall down so many times on the way over to medical was – was just egregious.

(Tr., pp. 144-145.)

Likewise, former Warden Brian Cook testified that he had no discussion about this case with Director Chambers-Smith. (Tr., p. 119.) Warden Cook stated that he based his decision to remove the Grievant “on the evidence that was presented to me through the investigation.” (Tr., p. 120.) He also noted, “The biggest thing that stands out in this case was what happened to the individual [McDaniel] from the time he left that housing unit – or living area all the way up through to the time he was taken to medical and then right after. You know, how many times he was placed on the ground and all that. It was – it was excessive.” (Tr., p. 128.)

Director Chambers-Smith’s opinion about this case had no bearing on the eventual discipline imposed. Neither Warden Brian Cook nor Assistant Director Stuart Hudson – the two (2) individuals who determined that the Grievant should be removed from employment at DRC, were influenced by the comments made by the Director during the press conference. (Tr., pp. 135, 202.) In fact, neither of them spoke to the Director about this case prior to making their decisions. (*Id.*) The decision to terminate the Grievant’s employment was based solely on the decision-makers’ review of the facts of the case. (*Id.*)

In the Cline decision, Arbitrator Brookins, when presented with the exact same argument from the Union, did not find that the Director’s press conference had any impact on the decision to remove the Grievant. (*See Cline, supra.*)

CONCLUSION

I think you are all probably feeling what I felt when I watched that [video]. I was appalled. That’s not what we train people to do. That’s not what our policy says, but it is what happened. [. . .] There’s just nothing about this that is OK. It does not comport with what our Department is about.

There are literally hundreds of correctional professionals that work there [at CRC] and do their best every day to help people mend lives.

[Do you accept responsibility for the death of Inmate McDaniel cDaniel?]

We’re responsible for what happened in that video.

There’s no question about it.

(UX 1 – Director Annette Chambers-Smith press conference, emphasis added.)

For all of the above reasons, I respectfully request that you deny this grievance in its entirety.

REMEDY ISSUES:

Without negating any part of the argument that the grievance should be denied in its entirety, the Employer raises the following issues that may impact the remedy requested by the Union.

Should the Arbitrator decide that the grievance should be granted, the Employer respectfully requests that the Arbitrator find that any back-pay awarded be reduced by the Grievant’s interim earnings. The Arbitrator should order the Union and Grievant to turn over the best evidence of the Grievant’s earnings, which should include his tax returns and pay stubs for the time period in question.

The Employer respectfully requests that no award of “lost overtime” be granted. (*See JX 2, p. 2.*) The Union presented no evidence about actual overtime hours worked by the Grievant. Former chapter president Richard Daily claimed that overtime was “rampant” during the time period of the February 6, 2021 incident. (Tr., p. 156.) However, DRC has not been working under the conditions created by the COVID pandemic for several years. Any overtime hours worked by the Grievant during February 2021, would not be comparable to overtime hours available

to correction officers since then. An award for “lost overtime” would be purely speculative and is not supported by the record.

Should the Arbitrator decide that the grievance should be granted, the Employer respectfully requests that the Arbitrator not grant the portion of the Resolution Requested that would allow the Grievant to “retain extra curricular DRC/ Institution groups/ activities.” (See JX 2, p. 2.) Given his misconduct in this case, the Grievant should not be permitted to return to any special teams activities. Selection of members for special teams is a management right and is not a contractual issue.

SUMMARY OF THE UNION’S POSITION

The Union presented several arguments in its strong defense of the Grievant, asserting that the Employer did not have just cause to remove the Grievant from his position with DRC. The Union emphasized that instead of summarizing the arguments and potentially distorting or truncating their content, the arbitrator provided an exact account of the Union’s salient arguments as presented in its brief.

The Management issued the Notice of Disciplinary Action (NODA)¹ on August 27, 2021, finding that Mr. Causey violated the rules listed due to the statement provided on the NODA Summary:

“On February 6, 2021, while using a forced-escort technique to escort Inmate McDaniel ichael McDaniel from the R2 unit, with McDaniel handcuffed from behind and walking on his own, you and another officer performed a take-down of McDaniel causing his body to veer off the walking path and land face-down in a snow-covered area. During this investigation, you stated that Mr. McDaniel was combative, refused to walk, lowered his body weight and went to the ground.”

While The Management’s defends that the NODA declares the cause of Mr. Causey’s termination, you heard in the testimony from the Warden, Brian Cook that the summary had no mention of excessive force, abuse, poor judgement, or lying. And further, the facts that establish the excessive force, the poor judgment, and lying are not mentioned in that summary. Specifically, he states, “No, Jimmy, They’re not. No, it’s not in the summary.”²

This very lack of notice goes to show, The Management failed to meet “just cause”. According to Elkouri & Elkouri, “Specifically, noted that the notice, whether oral or written, must sufficiently explain the charges against the employee. A vague, boilerplate, generic accusation will not suffice”³. This then directly impacts the Unions ability to represent the member during the discipline proceedings. The failure of The Management to correlate acts or omissions with rule violations impedes the Union’s right to refute and rebut charges.

A major objection⁴, made by the Union, was brought to the attention of the Arbitrator during the first day of Arbitration concerning documents/audio interviews utilized in The Managements Use of Force Investigation⁵ that was not included in the original Pre-disciplinary Meeting Notice to the Grievant or the Union. This attachment was

¹ Notice of Removal pgs. 4-5

² Transcript Arbitration Vol. 1 pg.124, 7-19

³ Elkouri & Elkouri, How Arbitration Works, Chapter 19: 3. A. ii. Oral or Written Notice

⁴ Transcript Arbitration Vol. 1 pg. 40, line 1 – pg. 44 through line 14.

⁵ Use of Force Investigation Report Pgs. 19 - 34

also not listed on the Pre-disciplinary Meeting Notice Attachment List⁶ nor was it listed in the attachments in the Use of Force Investigation Report Attachments.⁷ The Union shared during the objection that it is The Managements duty to provide all documents, audio recordings, video's etc. with the Member and the Union in the Pre-disciplinary Meeting Notice and/or Meeting and they did not do so, as directed in the Loudermill Rule from Elkouri & Elkouri⁸. Through the arbitrator's facilitation, the parties determined that the audio interviews shall not be used to include any of the information, findings from or conclusions based on the audio in this instant case. The Management argument that the President was aware of the audio recordings, but this does not negate the ruling from the Cleveland Board of Education vs. Loudermill.⁹

From the testimony of Mr. Causey, he became involved only after the second incident had occurred. His response was due to a man down alarm and a call for officers needing assistance in R2. Officer Causey arrived in the R2 Unit and quickly began assisting in escorting the inmate along with other officers out of the unit as seen in the video footage.¹⁰ Following along with the testimony and video footage, Officer Causey then escorted the inmate along with another officer out of the unit through the sallyport and into the yard area¹¹. Testimony from Officer Causey¹² and Investigator Nate Harris confirmed¹³ that the incident in question happened in the snow, off the walkway, approximately 30 feet from the front of the R2 Unit and that there was in fact no camera footage until Officer Causey, Officer Roberts and Inmate McDaniel cDaniel come into frame on the Building 5 Yard 2 Camera, steps from when they entered the snow. Officer Causey reported that the inmate lowered his body weight and due to the momentum, they went to the ground in the snow. He testified he did in fact attempt to break the fall into the snow with his right arm. Officer Causey then assisted Inmate McDaniel cDaniel to his feet in attempt to continue the escort. After the fall into the snow, this concludes the only incident that The Management took forth to discipline Mr. Causey for.¹⁴

The Management in direct testimony with Investigator Nate Harris chose to show further video of the remaining incidents that the Grievant, Mr. Causey, was not disciplined for. Although Officer Causey did accompany the remaining escorts, he did give first responder care for an unconscious Inmate McDaniel cDaniel. Mr. Causey determined that Inmate McDaniel cDaniel was in need of CPR, immediately began chest compressions. The Management's own Hearing Officer wrote that *"...This investigation only deals with one take down..."*¹⁵. This was a further reason for the objections of relevance during the Nate Harris Direct testimony¹⁶, when The Management played video and continued to ask questions about the remaining occurrences with Mr. McDaniel. Sadly, Inmate McDaniel cDaniel died well after the third incident with the grievant on February 6, 2021. Inmate McDaniel cDaniel was taken by squad to the nearest hospital, Mt. Carmel West, and was then declared deceased.

DRC Attempted to stitch together a narrative to have you believe that Mr. Causey's actions were a part in Inmate McDaniel cDaniel's subsequent death. Rather, the Union has shown where Officer Causey only moved Inmate McDaniel cDaniel off the asphalt path and into the snow after the inmate dropped his weight and refused to walk attempting to soften the fall. Ultimately the inmate's downward momentum left Officer Causey and Roberts off balance and no choice but to take McDaniel into the snow. The Management argued that Officer Causey and another Officer chose to take Inmate McDaniel cDaniel to the ground when he was walking on his own outside of the unit. What The Management was not able to show or provide testimony to, was the approximate 30 feet from

⁶ Pre-disciplinary Meeting Notice Pgs. 16 -17, Document(s): copy attached

⁷ Use of Force Investigation Report Pg. 34

⁸ Elkouri & Elkouri, How Arbitration Works, Chapter 19: 3. A. i. The Loudermill Rule

⁹ 470 U.S. 530, 1 IER Cases 424 (1985)

¹⁰ R2 Video, R2-1 3:09:21

¹¹ R2 Video, R2-Sallyport 3:09:33; Transcript, Arbitration Vol. 2, pg. 185

¹² Transcript, Arbitration, Vol. 2 pg.187

¹³ Transcript, Arbitration, Vol. 1 pg. 89.

¹⁴ Notice of Disciplinary Action (Removal) pgs. 4-5

¹⁵ Hearing Officer Report, pg.8, Employer response #5

¹⁶ Transcript, Vol. 1 pg. 27, line 23 – pg. 32 line 6.

the exit of the unit to the location where the two Officer's and Inmate McDaniel cDaniel ended up in the snow due to lack of video footage. The Union asks you to find that both explanations can be true at the same time. Mr. Causey testifies that he looked to the snow as the best place to land; while The Management conclusion is that Mr. Causey's purposefully took Inmate McDaniel cDaniel into a snowbank.

The Management's, "desperate times called for desperate measures", when somehow they came to the harsh and absurd conclusion that Officer Causey should have been terminated for abuse of an inmate, the use of excessive force, Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment, unauthorized use of force and Interfering with, failing to cooperate in, or lying in an official investigation or inquiry, in 11 seconds of video footage¹⁷ and one investigatory interview¹⁸.

Desperate they were, The Director called for a press conference and provided extensive press packets to get ahead of the story that was soon to come about from CRC as testified to by the Union President Mr. Daily¹⁹. The Press Conference²⁰ that was held prior to the Pre-Disciplinary Meeting for Mr. Causey. The press conference was an attempt to shield Governor DeWine, the Director and DRC. The Statements given during the Press Conference by Director; Annette Chambers-Smith spoke directly to predetermined discipline. From this point, the Union asserts that Mr. Causey had no chance to be heard without prejudice, as the Director had already spoke on his fate. This is significant because the Director made it clear to the press that everyone, the officers, the Lt. and the LPN would be fired. The Union has shown the video of the press conference, and you have heard the Director speak to that sentiment more than once. You have also heard the Director state that she has asked the county prosecutor to take up criminal charges against those staff.

The public was hearing national news about law enforcement, jails and prisons blatant disregard for civil rights and preferential treatment for those that carried out the injustices. At the time DRC had numerous cases of officers injuring inmates, causing inmates to injure one another, bullying inmates, and racist behavior of staff. DRC had lawsuits by the inmate family members and the inmates. There was the inmate fight club in which the officers made the inmates fight and took bets. There was the inmate that was severely beaten to the point of being a quadriplegic. Those officers bragged by text about hurting the inmate. The suicide attempts and successes that occurred because officers and staff did not follow policies. The drugs entering the institutions causing inmates to overdose. Inmate gang activity on the inside and outside of the prison due to contraband entering (cellphones and drugs). The cries of prison rape throughout DRC. The reports of inmates not getting COVID PPE and not being treated for COVID.

The Union has shown through testimony of both Mr. Daily and Officer Causey that the institution was operating under CIM at that time and had been for months prior to and afterwards. As both Mr. Daily and Mr. Causey testified to, CIM is Critical Incident Management. CIM is used to operate the institution where some or all normal operations or normal daily schedules run a risk to the institution. In this case, COVID was killing DRC staff and inmates. There were ambulances arriving all day and night to transport inmates to The Ohio State University Medical Center. The staffing levels at CRC required many National Guard to supplement the CO ranks, also the institution COs went from 8-hour shifts to 12-hour shifts for the safety and security of the inmates and staff. COVID made it impossible to have mass movement and impossible to have congregating inmates. This affected healthcare, mental healthcare, meals, recreation, religious services, court ordered programming, law library, library, education, visiting, et al.

DRC asserted that Officer Causey lied or interfered in an official investigation, however with only an Investigatory Interview and the Use of Force Report, testimony has shown that there is no way to support this

¹⁷ Video thumb drive – Escort File – Camera Bldg. 5 Yard 2

¹⁸ Investigatory Interview Q & A Document (Union) pgs. 56-59

¹⁹ Transcript, Vol. 2, pgs. 159-168

²⁰ https://www.youtube.com/live/1oTSKUH_oHM?si=2OBTCKH5m-f03jKB

statement in the use of force investigation.²¹ DRC also asserted that two officers (Causey and Roberts) were seen on camera using a "forced escort technique" on video footage. As testified to by Investigator, Nate Harris, there is no such named technique taught in ODRC Use of Force Training²², this phrase, was created by the Assistant Chief Inspector, Antonio Lee during this investigation. Furthermore, the Assistant Chief Inspector stated in his findings that video footage shows McDaniel walking on his own accord and not being combative as the two officers and McDaniel left the unit, but the video does not show this. The Union has shown where the video clearly shows Officer Roberts is pushed against the door frame, with his right hand near McDaniel's left hand, Officer Causey's left arm over Inmate McDaniel cDaniel's right arm at the doorway of the unit and leaving the unit in the camera footage²³. The next view of the footage you will see is approximately 26-30 steps away, outside the door, two steps before Officer Roberts and Officer Causey are shown falling with Inmate McDaniel cDaniel into the snow²⁴.

The Union asserts where The Management accused Officer Causey of Abuse, a charge with only removal, solely for the purposes of being punitive and not corrective. The Management did not lay an evidentiary foundation for the charge of abuse in their findings. The Management claims abuse but has not supported where force charges and abuse charges are delineated. The Management conclusory finding for abuse is a mere inference in the instant case. Officer Causey testified that he authored his Use of Force report²⁵ on the day of the incident, stating the inmate was resistant and had to be taken to the ground for safety purposes. Officer Roberts' Use of Force Report²⁶ supports Officer Causey's report, stating the inmate was going dead weight and that the inmate's forward momentum took them to the ground in the snow. The Union's cross examination of Investigator, Nate Harris²⁷ highlights that they failed to identify any violations that rose to the level of abuse. We also heard cross examination from Investigator, Nate Harris, Warden, Brian Cook and Assistant Director, Stuart Hudson about the Discipline Notice not containing "significant explanation of the charges against the employee"²⁸.

Arbitrator Stein, after the testimony presented to you and the lack of just cause, The Union asks that you sustain the grievance, reinstate Heath Causey to his position of Corrections Officer without loss of State or Institutional seniority. Require the ODRC to provide all back pay, step increases, longevity, all pay for overtime opportunities, return all leave balances and accruals, any benefits to include any out of pocket medical costs, all OPERS contributions and no loss of time, all Union dues, reinstate all Pick-A-Post shift, good days, post and eligibility for FMLA/Disability.

DISCUSSION

The term "just cause" places a responsibility on management to demonstrate (a) that the imposed standard of conduct is reasonable and aligns with generally accepted employment standards that have been communicated to the employee, and (b) that the evidence shows the employee engaged in the misconduct that occurred. The evidence must address the question of any actual wrongdoing attributed to the employee and the appropriateness of the imposed

²¹ UOF Investigation incident #3 pg. 26-27

²² Transcript Vol. 1 Pg. 88 ln. 10-24

²³ Video thumb drive –Unit File – Camera R2 Sallyport

²⁴ Video thumb drive – Escort File – Camera Bldg. 5 Yard 2

²⁵ Causey Use of Force Report pgs. 54-55

²⁶ Roberts Use of Force Report pgs. 153-154

²⁷ Transcript Vol. 1 Pgs. 73-98

²⁸ Elkouri & Elkouri How Arbitration Works, Chapter 19: 3. A. ii. Oral or Written Notice

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

"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 that expressly prohibits the exercise of such power, an arbitrator, by his authority and duty to resolve disputes, holds the inherent power to assess the sufficiency of a case and the fairness of any 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).

An arbitrator must assess employer policies, rules, statutes, and regulations to determine if a termination was justified. The "just cause" principle protects employees from unfair disciplinary actions while acknowledging the employer's right to uphold standard employment practices. In this case, the Grievant was accused of violating Rules 8, 24, 40, 42, and 43. The Employer retains specific rights under the Agreement (Joint Ex. 1), including the right to discipline employees, as long as these rights are not exercised unreasonably, arbitrarily, or improperly. (Municipality of Anchorage, Alaska, and International Association of Fire Fighters, Local 1264, 115 LA 190, Landau, 2001).

In labor relations, the standard for finding an employer guilty requires meeting the standard of "just cause" rather than the stricter, beyond a reasonable doubt standard found in criminal cases. However, it remains a rigorous standard that must satisfy certain conditions, including proper notice, findings of fact, and a determination of liability regarding rule violations. This necessitates a solid basis of practical probabilities that allow reasonable inferences to be drawn and conclusions to be reached to ascertain the truth of the matter. (Frontier Airlines 82, LA 1283, 1288 (Watkin, 1984); Westinghouse Elec. Co., 48 LA 211, 213 (Williams, 1967))

The events on February 6, 2021, took place within the context of the COVID-19 pandemic, arguably creating a heightened atmosphere of stress and health awareness for everyone, including employees and inmates. Several employees were involved in the incidents of February 6, 2021, and the death of Inmate McDaniel. This case focuses on the Grievant and whether his

actions or inactions, evaluated in light of what transpired, support the charges brought by the Department. On February 6, 2021, Inmate McDaniel failed to follow instructions from Officers Cline and Judd, becoming extremely agitated, verbally threatening, and physically violent. McDaniel, 56, was a large man, standing 6 feet 5 inches tall and weighing around 270 pounds. Cline and Judd, both female Officers, faced an intense physical assault from McDaniel, who punched and kicked them. Eventually, Officers Barlett and Roberts became the third and fourth Officers to assist Cline and Judd. (Tab 4, p. 75, 76, 115, 116, P. 44) Officer Roberts ultimately handcuffed McDaniel from behind. Cline and Judd sustained significant injuries during their confrontation with McDaniel. This encounter was challenging; however, the investigation into this initial confrontation with McDaniel was ultimately reviewed by DRC to assess whether the involved officers adhered to proper procedures and policy and exercised sound judgment. The use of force against McDaniel was deemed justified under DRC policy. (Tab 4, p. 25)

After being handcuffed, McDaniel was escorted out of the R2 unit by Officer Roberts, who was soon joined by Officer Jerry Perkins (“Perkins”). According to Roberts, McDaniel stopped struggling or being combative, but during the escort, he ceased walking. In contrast, Perkins disagreed, claiming that McDaniel continued to be combative while being escorted out of R2. McDaniel was then subjected to a second use-of-force takedown at Perkins’ insistence. DRC determined, according to policy, that this takedown was not justified and was excessive. (Tab 4, p. 26)

Officer Causey arrived at the R2 unit as McDaniel, still handcuffed, was assisted to his feet following this second takedown. He then took over responsibility for the escort and relieved Officer Skinner. According to Causey, it was DRC policy (Tr. 184). Causey then assumed control of escorting Inmate McDaniel, assisted by Officer Roberts. Causey and Roberts employed a use-of-force escort technique to escort McDaniel to the infirmary or med bay. It was at the beginning of this escort, approximately 30 to 40 yards outside of R2 (Building 5, Yard 2, Tab 4, p. 26, p. 54, Tr. 187), that Inmate McDaniel again went to the ground, this time falling somewhat forward and sideways, off the clear pavement and into the snow along with Causey and Roberts. Causey testified that this was not a takedown, but rather a result of losing balance and being pulled down due to McDaniel dropping his body weight. (Tr. 189) That explanation is contrary to other

evidence. What the Grievant is stating is that he and Roberts did not act intentionally, and both lost their balance as McDaniel deliberately used his dead weight to fall headfirst into the snow-covered ground. Even if McDaniel were suffering from the lingering effects of pepper spray, it appears unlikely he would intentionally careen headfirst in the snow without the ability to break his own fall. I concur with the Employer's argument that going to dead weight as an act of resistance results in collapsing in place rather than careening to the side. Before this third take down, the video shows McDaniel walking normally. The credibility of the Grievant's account of the fall #3 incident, its trajectory, and his explanation for why it occurred is questionable. The video of the incident does not support it. This third fall to the ground shows McDaniel, the Grievant, and Roberts first careening to the side and then to the ground. In light of what is viewed on the video, the chances of both Officers simultaneously losing balance while both were exercising firm control of McDaniel are more improbable than probable. The numerous subsequent collapses by McDaniel, again using his dead weight in a resistive manner as claimed by the Grievant, consistently depict McDaniel collapsing in place, which is expected if one stops moving and falls due to their sheer body weight. To argue, as the Grievant has, that McDaniel purposely went headfirst into the ground makes little sense. The Grievant and Roberts also disagreed on whether McDaniel was combative and struggling at the time, necessitating an aggressive takedown. The video also does not show McDaniels being combative or actively resistant. Additionally, neither Roberts nor the Grievant indicated that McDaniel posed a threat to anyone, and his ability to cause harm in the circumstances was significantly reduced, given that he was handcuffed and accompanied by several officers. (Video, Tab 4, p. 28) At the hearing, while under direct examination, the Grievant stated he did not know that McDaniel was the inmate involved in the violent incident with Cline and Judd. (Tr. 191) Yet, he initially conducted this escort of McDaniel along with Roberts, who was directly involved with the first taking down of McDaniel and handcuffed him.(Tab 4, p. 153, 156) It is not credible that Causey did not know what McDaniel had done and that Roberts, during the escort, did not tell Causey what happened to Cline and Judd. Causey at the hearing stated he did not know what had happened and learned what happened by being provided "after the fact knowledge." (Tr. 199)

During the investigation, Lt. Brown described this incident as the hardest take-down of the escort. (Tab 4, p. 27) However, Lt. Brown did not provide testimony at the hearing which was not subject to the rigors of cross-examination. After reviewing the video of the incident multiple times, the arbitrator finds that the weight of the evidence supports the reasonable conclusion that this was a purposeful takedown of McDaniel by the Grievant and Roberts at 3:09:45 p.m. on February 6, 2021, and is sufficient, under the criteria used by DRC to judge justifiable takedowns, to support a Rule 43 violation. It is noted that, according to Investigator Harris (under cross-examination), "...we could never specifically state which use of force incident caused what injury [to Inmate McDaniel] (Tr. 111). While this conclusion represents an honest conclusion, the 3rd take-down of McDaniel was found to be unnecessary under the Use of Force Policy.

The significant and unexplained lack of concern by the Grievant (along with the Officer who replaced Roberts as the escort proceeded) is apparent from the evidence and the investigative findings. Here is a person who had just been taken down inside of R2 and, a few minutes later, fell headfirst into the snow-covered ground from an upright position. During the forced escort of McDaniel to the med bay, these two Officers had extraordinarily close contact with McDaniel. It's reasonable to assume that the harsh winter conditions that McDaniel was exposed to with little protective cover, coupled with his numerous collapses, were signs of his rapidly deteriorating health and not active resistance, which was indicated on the video. In what typically takes about an eight-minute walk from the R2 unit to the med bay, McDaniel collapsed to the ground multiple times, only to be repeatedly forced to his feet, appearing to grow weaker and weaker. On Tab 4, p. 31 of the Use of Force report, it states:

"Lt. Brown was the first supervisor on the scene...It was his responsibility to ensure the safety and well-being of everyone involved...The high temperature for the day was 28 degrees. McDaniel was escorted across the yard without any shoes or coat, and in a ripped t-shirt...at no point did Lt. Brown take steps to shield McDaniel from the elements.

There was also a failure to recognize that the method by which McDaniel was being escorted was in effective and inappropriate. It took approximately 8 minutes for the escort to leave R2 and reach med bay. During the 8 minutes, McDaniel was face and/or chest down on the frigid pavement a total of twelve times. There times during the escort, particularly at the end of the escort, that McDaniel appeared to be barely walking.

Prior to Incident #4 McDaniel appeared to be walking on his own accord. After Incident #4 McDaniel has more difficulty moving and appears very fatigued. In a period of six minutes McDaniel went to the ground ten additional times in a relatively short distance just prior to entering med bay. McDaniel may have been struggling to walk or may have become fatigued because he went to the ground ten times within six minutes. Nevertheless, Lt. Brown failed to

recognize that something appeared wrong with McDaniel and that force was being used inappropriately by his staff.

Lt. Brown failed to take control of the situation and ensure the safety and wellbeing of McDaniel and the staff involved in his escort. Lt. Brown should have stopped the walking escorting of McDaniel by his staff and called for assistance of medical staff to safely transport McDaniel to med bay, to include the use of a medical cart, security cart, or a wheelchair. When questioned about changing the method by which McDaniel was being escorted after witnessing him go down multiple times, Lt. Brown stated he did not think about it at the time (Recording Lt. Brown 10-30) and that was definitely on me (Lt. Brown_) as the scene supervisor.” (Recording Lt. Brown 11:05).

Despite the investigative report on the February 6, 2021, incident noting criticism regarding the initial engagement with Inmate McDaniel, the actions taken by Officers Judd and Cline, along with others, to subdue Inmate McDaniel, who was extremely violent and out of control, were deemed both necessary and effective. McDaniel brought this upon himself, leading to the first and only necessary use of force in R2. However, after McDaniel was subdued and handcuffed, the weight of the evidence supports the Employer’s assertion that he stopped struggling and his resistance was no longer combative. (Tab 4)

While supervisors (as admitted by Lt. Brown in the instant matter) should be liable for their actions or for failing to prevent harm, individual Officers remain responsible for their direct conduct and should not evade accountability by claiming their supervisor was aware of the situation. Is it appropriate to hold individual officers answerable for abuse, even if their supervisor was aware of it? (Tab 4, p. 31) This is a situational question, but in this case, considering the Grievant's proximity to McDaniel, the answer is yes. It's about accountability; when Officers are not held accountable, it can create a culture of impunity where abuse or failure to respond to an inmate’s safety or health becomes normalized and tolerated.

Under the conditions present and the rapid decline in McDaniel’s physical health, this specific escort procedure became abusive. No one had a closer or more intimate familiarity with McDaniel’s rapidly deteriorating physical condition during his entire escort than Causey and, initially, Roberts, and then his replacement. This condition worsened as McDaniel repeatedly collapsed on the pavement, continuously exposed to frigid winter conditions without shoes or adequate coverings, such as a blanket or coat. Abuse that went unrecognized and, from the evidence, was met with indifference. The Grievant equates McDaniel’s limited mobility and physical condition as being purposely resistant and uncooperative, which appears to be a

misrepresentation of what is demonstrated by the video. What is clear is that the Grievant, who took control of the transport, showed a lack of concern for Inmate McDaniel's rapidly deteriorating physical condition, which, according to the video, progressively worsened after each of his numerous collapses onto the pavement. An inmate clearly in such a condition and unable to be escorted a few feet without repeatedly collapsing is in distress. This was either a result of purposeful disregard for McDaniel's condition or gross neglect. Either way, it was punishing and abusive. Why the Grievant could not have initially stopped for a few minutes to obtain some protective clothing or at least a blanket to place on McDaniel in 28-degree winter weather was insufficiently answered at the hearing by the Grievant. When asked, he stated, "It's not something we did at the time" (Tr. 197, 198). And, when asked during the hearing why McDaniel was not transported using a medical cart or one of the several golf carts in the immediate area, he stated, "...CRC has never taken inmates on the golf carts unless it was a medical situation..." (201, 202). Repeatedly collapsing or falling to the ground several times during a short escort is a sign of a medical condition that deserves attention.

"There was a failure to recognize that the method by which McDaniel was being escorted was ineffective and inappropriate. It took approximately 8 minutes for the escort to leave R2 and reach med bay. During the 8 minutes, McDaniel was face and/or chest down on the frigid pavement a total of twelve times. There were times during the escort, particularly at the end of the escort, that McDaniel appeared to be barely walking."

From p. 31 of the Use of Force investigation (Case #04-21-01)-McDaniel #799-807)

The Grievant is asking the arbitrator to believe that McDaniel purposely collapsed to the pavement multiple times in harsh weather while not wearing shoes or any protective clothing. Understandably, there is an instinctive desire to engage in retribution and to respond to inmates who harm fellow employees. However, that is precisely why there are policies regarding retribution. The Department's use of force policy is essential for protecting law enforcement personnel while they perform their duties, which involves the necessary use of force. It emphasizes accountability and serves as both a guide and a shield for Officers who must use force to ensure compliance with reasonable directives that are within the scope of their duties.

The Employer's findings in this matter meet a just cause standard. I understand the Union's concern that this tragic incident created a compelling urgency of "we will get to the

bottom of this” by DRC, and the Union’s argument that allegations not thoroughly investigated or fueled by public pressure can lead to improper findings of fault; they certainly can. However, the voluminous record created by Inspector Harris, supported by the video evidence, contradicts this. Inspector Harris performed his duties based on the facts, and the considerable detail of his report supports his findings. It established sufficient evidence to meet the just cause standard from which reasonable inferences and conclusions were drawn. The Union also argued about the severity of DRC’s decision to terminate the Grievant and the improper notice of charges. However, the evidence shows that under Joint Exhibits, Tab 3, the Grievant and the Union received adequate notice of the charges against him. The facts and video independently support this case, regardless of whether DRC leadership may have demonstrably articulated any initial biases.

The Union also argued that progressive discipline should be considered under Article 24.05 of the Agreement. In this case, along with the proper prohibitive applicability of Article 24.01 of the Agreement, a crucial factor in implementing progressive discipline instead of harsher measures, such as discharge, must include a genuine acknowledgment of wrongdoing and a sincere willingness to correct one’s mistakes. Those conditions were was absent in this case.

AWARD

Grievance denied.

Respectfully submitted to the parties this ____ day of June 2025.

Robert G. Stein, Arbitrator

AFFIRMATION

I, Robert G. Stein, affirm that I am the individual described in and who executed the foregoing instrument, which is my Opinion and Award.

Dated June 3, 2025

Robert G. Stein