IN THE MATTER OF ARBITRATION)

BETWEEN)

OHIO DEPARTMENT OF DEVELOPMENTAL DISABILITIES/NODC)

AND)

OCSEA AFSCME LOCAL 11, AFL-CIO)

GRIEVANCE ID: Carrie Coffee

Grievance No. Discharge/Removal

Grievance #DODD-2024-03314-04

BEFORE: ROBERT G. STEIN, NAA

ARBITRATOR

FOR THE UNION: Jeff Freeman, Staff Representative
OCSEA AFSCME LOCAL 11
jfreeman@ocsea.org

FOR THE EMPLOYER: James P. Hogon, Labor Relations Officer 3
Department of Developmental Disabilities
James.Hogon@dodd.ohio.gov

INTRODUCTION

This matter was brought before the arbitrator for a hearing under the collective bargaining agreement ("Agreement" or "CBA") between the State of Ohio, Ohio Department of Developmental Disabilities ("Employer," "DODD," "DODD" or "Department"), and the Ohio Civil Service Employees Association, AFSCME Local 11 ("Union" or "OCSEA"). This Agreement, effective in 2024, covers the conduct at issue in this grievance. The Ohio Department of Developmental Disabilities acts as the Employer, specifically its Northwest Developmental Center ("NODC"). The parties mutually selected Robert G. Stein to serve as an impartial arbitrator in accordance with the terms of the Agreement. A hearing was held virtually on July 17, 2025, and August 6, 2025. The parties agreed to these dates and the virtual format, and each had full opportunity to present oral testimony and documentary evidence supporting their positions. The hearing was recorded in transcript form and concluded after the parties submitted post-hearing briefs.

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: Did the Employer have just cause when they removed the Grievant, Carrie Coffee, for violating the Employer's Standards of Conduct, Rule B1-Verbal Abuse? If not, what shall the remedy be?

Classification: Therapeutic Program Worker (TPW)

Length of service: 14 years (DODD=11/09/2009)

Termination Date: 10/24/2024

Discipline: One day working suspension at the time of removal. L 9, L13 (1/20/2022

Grievance filed: 10/29/2024.

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 B1-Verbal Abuse of a Client.-the use of words, gestures, or other communicative means to purposely threaten, coerce, intimidate, harass, or humiliate an individual.

  (Jx. 3, Notice of Removal, p.4-5)

I. RELEVANT CONTRACT LANGUAGE

Articles 24. 24.01, 02, 03

(Jx. 1 Arbitration Binder)

BACKGROUND

The individual filing the grievance is Carrie Coffee, also referred to as "Coffee", "TPW Coffee," or "Grievant." She was previously employed as a Therapeutic Program Worker (TPW), having started her employment on November 9, 2009, and she was terminated on October 24, 2024. At the time of her termination, Coffee had completed over 14 years of service with DODD. According to the Employer's statement, the Grievant was dismissed for violating Rule B1, Verbal Abuse of a Client as previously stated above.

The alleged violation occurred at the DODD Northwest Ohio Developmental Center ("NODC"), specifically in the foyer of Home 608/A-side on July 25, 2024, in the late afternoon. The individual involved in this case, who is the alleged subject of abuse by the Grievant, will be referred to as "SL." SL is a long-time resident of various institutional settings, and her current

residence is NODC. She has developmental disabilities and has been institutionalized most of her life due to trauma received as a child and an adult, as well as suffering from psychiatric distress related to bipolar disorder and borderline personality disorder. (Employer brief, p. 3).

It should be emphasized early on that the parties have regarded the issue of abuse as critically important for decades. As a native of Ohio and a long-time participant in the labor-management community, both as an advocate and a neutral, the arbitrator is well aware that debates over abuse in state-run institutions in Ohio and across the nation have a long history. These discussions typically follow a pattern of public scandals, calls for reform, and efforts toward deinstitutionalization. Over the years, the scope of concern has expanded to include facilities for individuals with intellectual and developmental disabilities (IDD), mental health institutions, and juvenile detention centers. The central concerns for conditions of housing and treatment of individuals who are cared for, proper staffing levels, a focus on caregivers' conduct, proper training, workload levels, and scope of responsibilities are a regular concern of management and labor alike. It is not hyperbole to say that this mission and work is subject to extra scrutiny by the magnified focus of public advocacy groups and those who have the responsibility to conduct this challenging work. The contractual article at the center of this dispute is Section 24.01 of the Agreement. It was most recently negotiated and amended in the latest round of negotiations leading to the current Agreement. It states as follows:

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. Abuse cases which 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. ***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. For abuse cases, employees of the Department of Developmental Disabilities (DODD) shall be governed by the Ohio Administrative Code (OAC) 5123-17-02.*** *Employees of the Lottery Commission shall be governed by ORC Section 3770.021.* [Emphasis added] (JX. 1 pg. 91)

On October 29, 2024, the Union filed a grievance on behalf of Coffee, claiming that the Employer lacked cause to remove her from her position and that it did not prove abuse had

occurred. 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.

BACKGROUND/INCIDENT

For the record, the following incident is recorded on video, but without sound. At dinner on July 25, 2024, around 4:35 pm, SL was eating her dinner and asked TPW Kristen Holmes, a colleague of the Grievant, whether she was on a diet. After checking the diet book, TPW Holmes said that, according to it, SL was not on any diet restrictions. However, SL had been told earlier by the Grievant that she was not supposed to have seconds. At that time, chili was being served for dinner, and SL wanted a second helping. Later, SL was given a second serving of chili by another TPW, Michael Tompson. Showing frustration, SL ate her second helping and dropped her dishes into the sink with what appeared to be intentionality. She then quickly left the kitchen.

The Grievant immediately noticed SL's display of what appeared to be agitated behavior and attempted to ask her what was wrong as she quickly exited. The Grievant claimed that SL told her, "Fuck you bitch, I 'm going to talk to Brandon." (Union Opening Statement, p. 1) That statement by SL was not corroborated, since there were no witnesses who claimed to have heard it. SL went into the foyer of Home 608 and sat in front of Supervisor Brandon Tooson, "Tooson," the supervisor of the building. The Grievant, who pursued SL down the hallway to the foyer of Home 608, caught up with her as she sat in front of Tooson's office. They exchanged words and threats. Both individuals were shouting at one another, and SL then stood up, opposing the standing Grievant face-to-face, touching each other in a "Mano on Mano" confrontation stance (Mano is a gender-neutral term), and SL threatened "to beat the Grievant's ass" only to have the Grievant return the same threat back at SL. Additionally, the Grievant stated she knew SL had been known to escape the building in the past. She stated that her motive for following SL, who exited the kitchen in an aggravated state, was to ensure he would not attempt to leave the building. After exchanging threats as previously described, SL and Coffee stood face to face with one another and made physical body-to-body contact. Coffee then responded to SL, saying that if you touch me, "I'll have to put you down." No injuries were sustained in this confrontation.

(Video and Binder, Jx. 4, p. 5-18) Following its investigation, the Employer determined that the Grievant had verbally abused resident SL and subsequently terminated her employment. The Grievant, engaging the Union's assistance, filed a grievance claiming the Employer had insufficient evidence that Coffee abused SL, and that the penalty of discharge was not reasonable. The Union also argued that insufficient consideration was given to other factors, such as the circumstances, the Grievant's seniority, and the parties' commitment to progressive discipline.

After progressing through the steps of the grievance procedure, the dispute remained unresolved leading to the instant arbitration.

SUMMARY OF THE EMPLOYER'S POSITION

The Employer asserts that it presents clear and convincing evidence showing that the Grievant, despite her tenure with DODD, committed a serious violation of victim abuse, warranting her removal from DODD. Instead of summarizing the arguments and possibly distorting or truncating their meaning and intent, the arbitrator has provided an accurate verbatim account of the Employer's key arguments as presented in its brief.

ARGUMENT

I. The Grievant was properly removed for violation of Rules B1 – Verbal Abuse, when she threatened and used intimidating body language and tone during an argument with a developmentally disabled individual who resides at the Northwest Ohio Developmental Disability Center.

II. The Employer had Just Cause to discipline the Grievant (7 tests)

A. (1) The Grievant had foreknowledge of the employer's Rules in the Standards of Conduct and the possible disciplinary consequences for violating those rules. The **Grievant received annual training** on the Employer's Standards of Conduct for **fourteen (14) consecutive years,** with the most recent being on February 21, 2024. (JX. 4, p. 170.)

B. (2) The Employer has a reasonable expectation that employees will not abuse those in the care of the State of Ohio Department of Developmental Disabilities.

C. (3) The Employer conducted an administrative investigation to discover if the Grievant did violate the Employer's rule. (JX. 4.)

D. (4) The Employer's investigation was conducted fairly and objectively. The Grievant was interviewed and given an opportunity to exercise all rights with respect to proper notification, union representation, and discovery. (*See id.*)

E. (5) The Hearing Officer determined that substantial proof had been obtained from the evidence gathered during the investigation.

F. (6) Discipline has been administered in a consistent manner for employees who are found to have abused an individual under the supervision or care of the Department or State.

G. (7) The discipline administered by the Employer in this case is reasonably related to the seriousness of the actions of the Grievant and is commensurate with the offense.
    a. 3rd offense Rule B 1
(JX. 4, p. 081.)

WITNESSES

Brandon Tooson

Supervisor Tooson was a new supervisor at NODC and as a new supervisor was trying to build relationships and trust with his employees. Supervisor Tooson completed his incident report/statement of the incident but did not list what was said during the incident. When Investigative Agent Bacon reviewed the video and saw that Supervisor Tooson was directly in between the Grievant and the Victim, she then asked Supervisor Tooson to complete a supplemental report to elaborate on what he heard being said by both parties.

Supervisor Tooson was asked during his interview to describe the Grievant's behavior and his reply was that the Grievant's tone of voice was very aggressive, confrontational, unprofessional, and not what the expectation of a TPW would be in regard to communicating with to a client. (See JX. 4, pg. 58.)

Speaker 1

Can you describe TPW Carrie Coffee 's body language and her tone of voice, the cuss words she used during her interaction with S

Speaker 2

The tone of voice that she was using it was very it was very aggressive I say that much. She was very confrontational in regard to the situation between her and the client. And it wasn't professional at the end of the day, it wasn't what the expectation of a TPW would be in regard to communicating to a client without supervision support. It wasn't like I said wasn't professional at all. Words she was using were cuss words of bitch in that term. This is if I'm not mistaken. It was something to the extent of causing physical harm or whooping her ass and those words were also changed back from S and to Carrie, so they're both using verbal altercations during the time the communication.

Supervisor Tooson, during direct examination, did clarify that the second report he submitted was written either the same day or day after the event. He also explained that he was not told what to write, he was only told to elaborate on what he heard the Grievant and Victim say to each other. Supervisor Tooson also testified that both reports were true and accurate.

Supervisor Tooson, during direct examination, acknowledged he called Jeanette Brooks and discussed the Grievant. During the discussion he mentioned to her that he had written a supplemental report.

Under cross-examination, the Union attempted to paint a picture that simply because Supervisor Tooson admitted to discussing that he had written a supplemental report, during his phone conversation with Jeanette Brooks a month later, that meant he had written the supplemental report at the time of the call. That speculation is ludicrous and there was absolutely no evidence presented in support of that speculation. Under re-direct, Supervisor Tooson clarified that the phone conversation with Jeanette Brooks took place over a month after he had submitted the supplemental report.

Supervisor Tooson was the only witness who was in the area when the Grievant threated the Victim. He was standing right between them. Supervisor Tooson did not have any reason to lie about what he heard. The Union did not present any evidence that Supervisor Tooson had any ill will toward the Grievant nor was there any evidence presented that he was mistaken in what he heard.

> *Special considerations are involved in weighting testimony in discharge and discipline cases. One umpire, for example, recognized that an accused employee has an incentive for denying a charge, in that the employee stands immediately to gain or lose in the case, and that normally there is no reason to suppose that a security guard, for example, would unjustifiably pick one employee out of hundred and accuse that employee of an offense, although in particular cases the security guard may be mistaken or in some cases even malicious. This umpire declared that* ***"if there is no evidence of ill will toward the accused on the part of the accuser and if there are no circumstances upon which to base a conclusion that the accuser is mistaken, the conclusion that the charge is true can hardly be deemed improper.***

(*See* Elkori and Elkori, Ruben, sixth edition, page 417.)

Dr. Braunstein

Dr. Braunstein testified that he has worked with Shalanda prior to this event and that usually Shalanda is all over the place when she communicates. But on this day, when Shalanda was telling him that the Grievant was getting ready to fight her and she didn't feel safe going back to her home in 608 while the Grievant was still there, Shalanda was very adamant and focused. So much so that Dr. Braunstein knew this was serious and was something that had to be immediately reported.

Charles Lutchey, LPN

Charles Lutchey was asked during his interview, "Please describe TPW Carrie Coffee's body language, tone of voice, and words used during her interaction with SL in the A-side foyer? Please answer in detail." He replied that he did not witness much of the Grievant's body language and the interaction was muffled. (*See* JX. 4, pg. 42-45.)

Charles Lutchey was also asked if he observed the Grievant pointing her finger in the face of the victim. He replied he did not. (*See id*.)

During cross-examination, Mr. Lutchey was asked if his written report and his interview answers were correct, and he stated. "Yes." Mr. Lutchey then acknowledged that he is significantly taller than the Grievant.

The video was played and stopped when Mr. Lutchey could be seen breaking the plane of the doorway into the foyer where the altercation was taking place. When Charles Lutchey entered the foyer area, he was less than 14 feet from the altercation. Mr. Lutchey testified that his view was unobstructed when he was in the doorway. At the time Mr. Lutchey entered the foyer, the Grievant was pointing her finger in the face of the Victim.

Lutchey breaks plane of doorway – 14 ft. (bottom)

Mr. Lutchey stated in his investigation he did not see this. Mr. Lutchey then approached the Grievant and was within ten (10) feet of the Grievant. Mr. Lutchey still claimed he did not see the Grievant again point her finger in the face of the Victim and could not hear what the Grievant was saying because it was muffled.

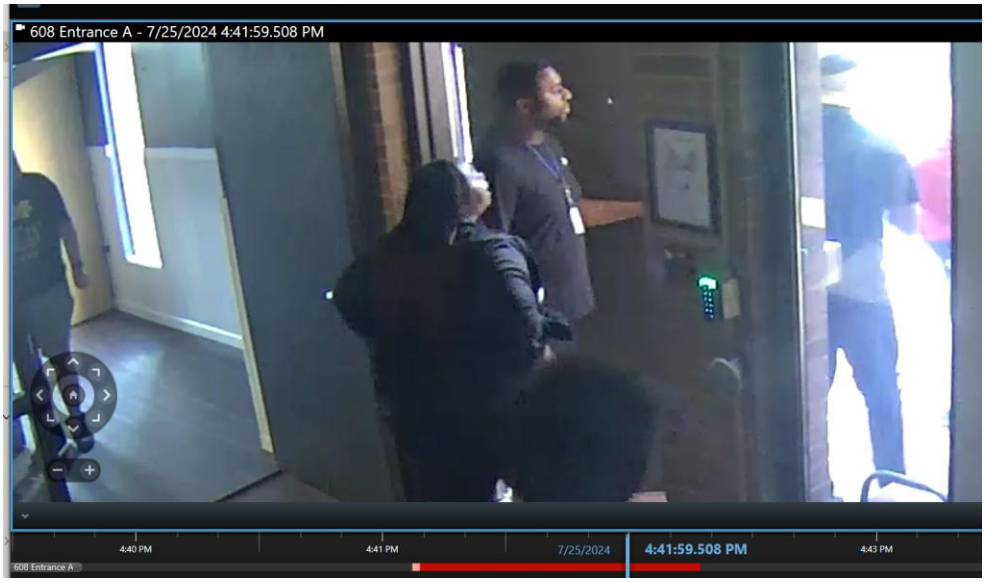
Lutchey 10 ft.

W

Mr. Lutchey is simply not credible. As any reasonable or prudent person can see, Mr. Lutchey had a clear unobstructed view and was well within hearing distance. There is no way that the reason he did not hear what the

Grievant said to the Victim was because "the interaction was muffled." Especially when the video clearly shows at one point, the Grievant standing right beside Mr. Lutchey when she was yelling at the Victim.

Lutchey propping door open.



Superintendent Johnson

Management witness Superintendent Johnson testified that she was hired by the DODD as the Superintendent of Northwest Ohio Developmental Center on September 3, 2024, which was after the incident on July 25, 2024, and less than 60 days prior to the removal of the Grievant. Superintendent Johnson testified that she issued the Removal to the Grievant based on the evidence that was collected during the investigation, just cause being found by the Hearing Officer at the Pre-Disciplinary meeting, and because it was the Grievant's third offense in the Performance track of the Standards of Conduct for Rule B1 – Verbal Abuse.

When the Arbitrator asked her if she took into account the past alleged good deeds of the Grievant, Superintendent Johnson replied, "No." The reason Superintendent Johnson replied "no" to this question was because this alleged mitigation was presented prior to the issuance of discipline. The first time this mitigation was presented was at the Step 2 Grievance meeting. (*See* JX. 2.)

Kristen Holmes

Union witness Kristen Holmes testified that her written report was true and correct as written. Ms. Holmes stated that she did look in the mealtime book and did not see any restrictions for the Victim. She also confirmed her statement that when the Grievant asked the Victim why she threw the bowl the Victim responded, "She didn't throw the bowl." (JX. 4, pg. 48.) Ms. Holmes also stated in her interview that the Grievant was yelling at the Victim (See. JX. 4, pg. 51.52), and that the Grievant was arguing with the Victim, but that she did not remember what was said.

5. When SL left the kitchen and went to the A-side foyer and TPW Carrie Coffee followed behind her what did you witness standing in the service hallway? Please answer in detail.

Response: I witnessed the Q, C.C. and S.L. by front door. S.L. was yelling she wasn't scared of C.C. All three of them went outside. I went back to kitchen. KH

D There was more yelling between the both, but I didn't hear exactly what was said.

(JX. 4, pg. 51.)

Employee's name:
Kristin Holmes

6. Please describe TPW Carrie Coffee's body language, tone of voice, and words used during her interaction with SL in the A-side foyer?" Please answer in detail.

Response: C.C. was arguing with S.L. for a little bit. Brandon was inbetween the two. KH
I don't remember what exactly was said.

(JX. 4, pg. 52.)

Ms. Holmes was the first witness on the scene and observed the incident the longest. It is hard to believe that the only thing she allegedly remembers is something that the Victim said to the Grievant, and nothing that the Grievant said to the Victim.

The reason that this is hard to believe is that she was fourteen (14) feet away with an unobstructed view of the incident – well within hearing distance, and Ms. Holmes states they were YELLING. When someone is yelling it would be easier for someone to hear what they are saying.

Trianna Beauregard

Union witness Trianna Beauregard was not called to testify. This was most likely due to the Video evidence proving that she was not truthful during her interview. Ms. Beauregard stated she saw that when Supervisor Tooson came out of his office the Victim "got loud and started screaming, I ain't scared, you bitch, I hit you and all that. Carrie was like you know you hit me and then we gonna have to take you down. And that's all. That's all that was going back and forth for about." (*See* JX. 4, pg. 68.) Video evidence proves these statements are not true: First, the video clearly shows that Ms. Beauregard was still in the kitchen when Supervisor Tooson came out of his office. Second, during the recorded investigation, the Grievant was asked to explain what was happening on the video as it played. When the audio and video were synchronized and played together, the time the Grievant stated she said, "gonna have to put you down," was during the time she made physical contact with the Victim by Supervisor Tooson's door. At that time Ms. Beauregard was still in the kitchen. The only reasonable explanation as to how Ms. Beauregard found out about these alleged facts is if the Grievant had told her.

Speaker 1 (Investigative Agent Bacon)

So when you walked into the A side foyer when the incident with S and Carrie, what did you see so far as any type of interaction, any type of words that were used?

Speaker 2 (Trianna Beauregard)

I just see Brandon (Supervisor Tooson) out of the Q office as soon as he walked out of the office, S'

got loud and start screaming. I ain't scared you bitch I hit you and all that Carrie was like you know you hit me and then we gonna have to take you down. And that's all. That's all that was going back and forth for about.

(JX. 4, pg. 68.)

Jeanette Brooks

Union Witness Jeanette Brooks **was not present during the Verbal Abuse of the Victim**. Ms. Brooks testified that Supervisor Tooson called her and during the conversation he mentioned that he had written a supplemental report.

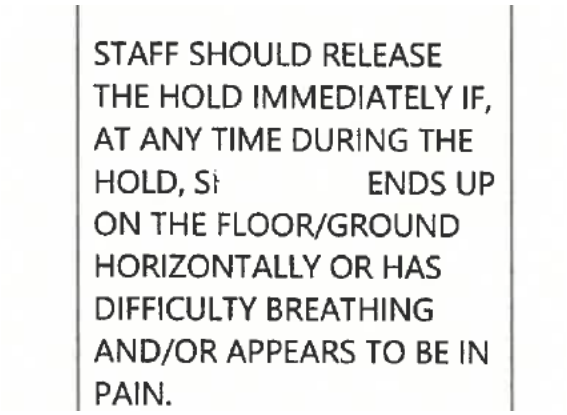
Supervisor Tooson, during re-direct, clarified that his conversation with Ms. Brooks was approximately over one month after he submitted his supplemental report.

Felicia Townsend

Union witness Felica Townsend **was not present during the Verbal Abuse of the Victim**. Ms. Townsend testified that she recalled years ago that they would use the phrase, "put them down," in reference to placing an individual in a hold (an approved behavioral support).

Under cross-examination Ms. Townsend was asked how the saying, "gonna have to put you down" relates to the approved behavioral support of a "two-armed escort." Ms. Townsend stated, "because it could end up on the ground." Her statement confirms management's position that the phrase, "gonna have to put you down," means threatening to take someone to the ground and not placing someone in an approved behavioral support as the Grievant claimed.

TPWs are not trained to take a developmentally disabled person to the ground. In fact, it is not allowed. As you can see, the Victim's support plan explicitly excludes the Victim from being taken to the ground.


STAFF SHOULD RELEASE THE HOLD IMMEDIATELY IF, AT ANY TIME DURING THE HOLD, SI ENDS UP ON THE FLOOR/GROUND HORIZONTALLY OR HAS DIFFICULTY BREATHING AND/OR APPEARS TO BE IN PAIN.

(JX. 4, pg. 85.)

The Grievant

The Grievant's credibility is severely unreliable. The Grievant has given false information in her written statement, in her in-person interview and at this arbitration hearing.

The false information the Grievant gave to the Victim was the catalyst that began the series of events that transpired on July 25, 2025. It all began when the Grievant told the Victim that she was not supposed to have seconds at mealtime. (*See* JX. 4, pg. 33.)

The Grievant's statement conflicts with TPW Holmes' written statement and in-person interview. TPW Holmes stateed she looked in the diet book and did not see any restrictions (JX. 4, pg. 48) and stated that she didn't remember receiving any training that the Victim was not allowed to have seconds. (*See* JX. 4, pg. 54.)

In her written report, the Grievant stated the reason she followed the Victim to Supervisor Tooson's office was because, "She [the Victim] was agitated and to make sure she didn't leave the building." (JX. 4, pg. 33.)

Mr. Arbitrator, the video clearly shows the Victim calmly walking out of the kitchen all the way to the supervisor's office.

The Grievant also claimed in her written statement that when she asked the Victim why she threw her bowl, the Victim responded, "Fuck you, bitch. I'm going to talk to Brandon." **This statement directly conflicts with the three (3) witnesses who were present.**

- TPW Holmes stated in her report that the Grievant asked Shalanda what was wrong, because she threw her bowl. Shalanda said nothing was wrong and walked out of the kitchen. (JX. 4, pg. 48.)
- TPW Beauregard stated in her report that the Grievant asked SL why did she throw the bowl? SL then stated she didn't throw the bowl and exited the kitchen. (JX. 4, pg. 64.)
- TPW Lutchey stated in his report that he and the Grievant asked Shalanda what was wrong since she had been able to get more food. SL walked past me and Carrie [the Grievant] continued behind her asking her what was wrong. (JX. 4, pg. 41.)

During the Grievant's in-person interview, she stated that the Victim was sitting in the chair and the Grievant was standing by the door, when the Victim said, "What you looking at, bitch," and the Grievant claimed she replied, "What you looking at?" Then the Grievant claimed that the Victim began banging on supervisor Tooson's door.

This conflicts with the video evidence. The video clearly shows the Victim calmly walking to the supervisor's door, knocking on the door then sitting down before the Grievant even got to the door.

Speaker 2

Her saying she was sitting she sat on the chair. I stood by the front door. She said what you looking at, bitch? And I said, what you looking at and then she started banging on his door Brandon came out. When Brandon came out, she jumped up in my face like what you going to do now? And she was like Brandon, you better get her and then he was trying to calm her down, and I told her if you put your hands on me because she pulled her hand up, I said I'm have to put you down. She continued to yell some things or whatever, whatever. And then Brandon walked her outside. I kind of stood to make sure he wasn't going to need no

(JX. 4, pg. 35.)

Also, during her in-person interview, the Grievant stated that she did not use profanity during the altercation with the Victim. (JX. 4, pg. 36.) That statement conflicts with both Supervisor Tooson's statements (JX. 4, pgs. 56, 58) and the Grievant's co-worker, TPW Beauregard's statements (JX. 4, pg.64).

The Grievant was also asked if she thought the situation could have been handled any better and the Grievant replied, "On my behalf, no." (JX. 4, pg. 37.)

The Grievant was also asked if she believed her actions were safe and supportive to the Victim and the Grievant replied, "Ya." (JX. 4b – Audio – C. Coffee interview SL 608 August 6, 2024. Begins at 4 minutes 31 seconds.)

The Grievant's claim that the situation could not have been handled better and that her actions were safe and supportive to the Victim is simply outrageous. The video evidence proves this to be untrue.

During the arbitration the Grievant's lies began as soon as her direct examination began. She could not even be honest about her length of service. She testified that she has over 16 years of service for DODD, which is a false statement. The Stipulated Facts show that the Grievant had 14 years and 11 months of service when she was terminated.

- The Grievance is properly before the Arbitrator and there is no procedural objections.
- The Grievant was hired by the Employer on **November 9, 2009**, as a Therapeutic Program Worker (TPW)
- The Grievant was removed from her position as a TPW on **October 24, 2024.**

(Stipulated Issue and Facts)

During the arbitration the Grievant denied that she yells and cusses during arguments and also denied she has a history of yelling and cussing during arguments.

This conflicts with the Grievant's active discipline, which includes a Written Reprimand for "Failure of Good Behavior/Discourteous treatment of an employee or the public, includes but is not limited to, being disrespectful and/or using disrespectful language to coworkers, management or the public. Engaging in arguments with co-workers, management or the public." (Man EX 1- Written Reprimand).

The true character of Grievant can be determined by the Employee investigation report on her actions that led to the Written Reprimand she received.

EMPLOYEE INVESTIGATION REPORT

(Should a Suspension, Reduction, or Removal be recommended, an Administrative Conference will be held.) (Commendations will be filed.)

SECTION I

Employee's Name: Carrie Coffee_____ Department: **DODD**_____

Location and Date of Incident: Cottage 608 12/8/2020_____

Describe Incident Fully:
On 12/8/2020, approximately 2:01pm I asked 608's 2nd shift staff to come out the office to take over their supervision groups for their shift. Carrie Coffee was using inappropriate language, and very loud tone of voice in front of her peers and the presence of a supervisor, I walked towards the staff office because I heard Carrie yelling and cursing, I heard Mother F**** several times. I then walked in the office and said what's the problem. Carrie the said "yall can take the floor if we not on the floor" I said you need to get on the floor at 2pm, she said "it's only 2:01p, we don't have to be on the floor, 1st shift is still here" I looked at my phone it was then 2:03pm. I then repeated you need to get on the work floor. While in the office, she said "These managers always on that Bull S***, always riding us, now yall Mother F*** on the Bull S**** too, and I don't care you can write me up". I said I got you, and Carrie walked out the office._____

_____

_____

Les Leonard_____ 12-8-2020_____
Person Reporting Incident Date

(Man EX 1 – EIR)

As you can see, the Grievant does have a history of yelling, cussing and being disrespectful. Mr. Arbitrator, this is how she acted towards her supervisor; her true character is captured here. Please do not be fooled by the attempts to make the Grievant appear to be a saint just because she let the Victim come to her wedding over 3 years ago. This report depicts how she truly behaves. During cross-examination the Grievant again revealed her argumentative behavior and had to be told by the Arbitrator on three (3) occasions to answer the questions.

Arbitrator Stein, this is not the case of the positive things the Grievant may have done several years ago. This case is specifically about the **Grievant's intentional deliberate actions** on July 25, 2024.

> *Yet, there is an important distinction between unintended action and deliberate action, which was the case in the instant matter. Individuals served by DODD are susceptible to harm to themselves and from others and rules to protect them that are reasonable, clearly communicated, regularly reinforced, and applied fairly are essential to provide necessary protection to the most vulnerable of those among us.*

(OCB Award #2681 – Stein.)

The Grievant did not accidentally lie to the Victim telling her she was not supposed to have extras. The Grievant did not accidentally pursue the Victim through the home. The Grievant did not accidentally talk over the Victim when she was attempting to speak to the supervisor, escalating the situation. The Grievant did not accidentally use intimidating body language and tone when she aggressively entered the Victim's personal space so much so that she made physical contact. The Grievant did not accidently threaten the Victim saying she would "beat her ass." The Grievant did not accidentally continue to yell and argue with the Victim even after the supervisor intervened. The

Grievant did not accidentally point her finger in the Victim's face while yelling at her. The Grievant did not accidentally continue to yell at the Victim even though the Victim had left the building.

The Employer attempted to correct the Grievant's behavior with the issuance of the Written Reprimand for violating the Employer's work rule in Performance Track. (Man X 1 Written Reprimand.)

The Employer again attempted to correct the behavior of the Grievant when they had to issue subsequent discipline of a 2-day working suspension for again violating the Employer's work rule in the Performance Track. (Man Ex 2) (Note: The 2-day was reduced to a 1-day at NTA – Man Ex 2 – NTA decision.)

This is the Grievant's third offense of the Employer's Standards of Conduct Performance Track. A Removal is in accordance with progressive discipline for Rule B1. Please note that the disciplinary grid calls for Removal on a second offense violation of this rule.

CONCLUSION

As you can see, the Employer's continued attempts of trying to correct the Grievant's behavior has been unsuccessful. The Grievant's behavior has now escalated to Verbally Abusing developmentally disabled persons.

There is no place for this type of behavior towards the individuals who reside with the State of Ohio, Department of Developmental Disabilities. The Taxpayers of this great State expect State Employees, who are in direct care positions, to be kind, empathetic and professional.

There was just cause for the Employer to terminate the Grievant for her intentional acts toward the Victim. The Employer's decision was based on the substantial proof that was gathered during the investigation, progressive discipline and was not arbitrary or capricious.

Removal is the appropriate penalty for a third offense of the Employer's Standards of Conduct Rule B1, when employees verbally abuse individuals who are in the care of the State of Ohio, Department of Developmental Disabilities.

Throughout the entire grievance and Arbitration process the Union has failed to present any evidence that the intentional acts of the Grievant did not meet the definition of verbal abuse as defined in Ohio Administrative Code 5123-17-02, and the Employer's Standards of Conduct.

Mr. Arbitrator, Shalanda deserves better; the Taxpayers of this great State deserve better. Please help us protect those individuals whom we serve and deny this Grievance in its entirety.

SUMMARY OF THE UNION'S POSITION

The Union presented several arguments in its strong defense of the Grievant, asserting that the Employer lacked just cause to remove the Grievant from her position with DRC. The Union emphasized that instead of summarizing the arguments and potentially distorting or truncating their meaning and intent, the arbitrator provided an exact account of the Union's salient arguments as presented in its brief.

Arbitrator Stein, the Union has demonstrated and proven through witness testimony and exhibits that TPW Carrie Coffee, a nearly 15-year employee, was terminated October 24, 2024, from her employment at Northwest Development Center without Just Cause.

TPW Carrie Coffee was removed from her position at the Northwest Development Center without just cause; The record demonstrates this. What the Employer has offered is not a reliable set of facts but instead a case stitched together with hearsay, contradictions, and after the fact alterations. The OCSEA contract and the law require more. In abuse cases, Arbitrator Anna DuVal Smith and many others have recognized that management must prove its case by clear and convincing evidence, showing not just that misconduct occurred but that the employee acted recklessly, knowingly, or with indifference, consistent with Ohio Revised Code Section 2903.33(B)(2). But here, the State cannot even meet the lower standard of preponderance of the evidence. The factual foundation is absent. Without credible facts and quantum of evidence, the OAC does not even come into play. The Employer cannot invoke the Administrative Code when its proof rests on shifting testimony and unreliable statements.

The contractual framework reinforces this conclusion. Dr. Buffy Andrews of OCSEA testified that the OAC language in the CBA was simply carried forward and was never intended to limit the Union's rights. Dr. Andrews confirmed that the State has historically cited OAC provisions in abuse cases, and the Union has retained the right to cite arbitration history and statutes. Nothing in the agreement strips the Union of these rights. More importantly, the Employer cannot use the OAC as a shortcut around its evidentiary burden. As Arbitrator David Pincus has stated in some of his past decisions that "*the mere citation of a code provision cannot substitute for actual proof of misconduct*." That is exactly what the flaw is here. The OAC is not even implicated because the Employer never proved the underlying facts to which it could attach.

The investigation itself destroys any appearance of fairness. A just cause standard requires a fair and impartial investigation. That did not happen in this case. The investigator Keish Bacon did not neutrally gather facts. Instead, she directed a key witness Brandon Tooson to add to his statement after his initial statement (which would have been his best recollection) until it fit the narrative the state wanted. This fact is undisputed as Brandon Tooson on cross examination testified that Keisha told him he had to add to his statement several days after the incident and again after his initial report which again would be his best recollection. Memory gets worse as the days pass not better. The investigators conduct tainted the entire investigation by directing the witness to add to and embellish their statement until it aligned with her own expectations. The investigator substituted coercion for truth-seeking. This manipulation created evidence that reflects the investigator's bias rather than the witnesses' actual account of what happened. Her conduct is a violation of the standards of fairness and the due process standard that an employee is entitled to. Because the removal was based on evidence that was altered and unreliable, the outcome cannot be trusted, and the entire investigation is compromised.

The testimony of Supervisor Brandon Tooson illustrates this problem in stark detail. His first written account, made days after the incident, contained no allegation that Ms. Coffee threatened to "kick the ass" of the client. It was only later, after being prompted by Investigator Keisha Bacon, that he produced a second statement with new allegations. On the stand, he admitted he was told that his statement had to "match the video," and that he even called (Union Exhibit# 1) union steward Jeanette Brooks to say he was told to add to his statement that it needed to match the video. Arbitrators consistently view such evolving testimony with suspicion. Historically, Arbitrators held that where a witness's recollections "shifted and grew overtime, particularly after meetings with management," the testimony was "unreliable and insufficient to sustain the burden of proof." The same is true here. Once Supervisor Brandon Tooson admitted to being coached to rewrite his statement, his credibility collapses, and the Employer's case collapses with it. At that point, what remains is not fact, but hearsay dressed up as evidence.

Dr. Abraham Braunstein testified that he was aware of the history of "S" that she can escalate rapidly and has been known to act out at staff and residents.

Human Resources Director Trina Kincaid had no definitive explanation other than to deflect blame onto a subordinate in HR as to the reason the Pre-Discipline conference packet (Union Exhibit #2} titled C. Coffee Conference Packet with attachment being listed as "Coffee, Carrie performance 5-day". The OCSEA CBA Article 24.05 – Pre-Discipline states "Prior to the meeting, the employee and his/her representative shall be informed in writing of the reasons for the contemplated discipline and the possible form of discipline." The Union brought this contractual violation to the State at the step 2 grievance meeting, which was the first opportunity for the Union to bring the contractual violation to the employer in this removal grievance. The state ignored the contractual violation. The State once again in this case is asking this Arbitrator to ignore their flawed disregard for due process and the contract. Trina Kincaid testified that under (Joint Exhibit #5) Medicaid rules, "Appropriate corrective action is defined as that action which is reasonably likely to prevent neglect, mistreatment, or injury from recurring. This regulation does not require staff termination as the only corrective action". The Union has demonstrated that this regulation clearly gives the employer other corrective options they should have chosen. The employer, however, chose to issue TPW Carrie Coffee, Career ending Capital Punishment even when their own pre-disciplinary notice to the employee and the union stated the potential level of discipline was a 5-day suspension. The union does not agree with the 5-day suspension either but that was the language in the pre-disciplinary hearing packet.

Trina Kincaid testified that the active one-day suspension that was thirty-two months earlier was not related to client abuse or mistreatment. Trina Kincaid also testified that Ms. Coffee was relied upon as the "go-to" staff for Client "S", and that she went above and beyond in her care for this client doing her hair for a prom, allowing Client S to attend her wedding, and providing consistent support as the go to person for Client S. This testimony is crucial because it shows that Ms. Coffee was trusted and valued, not reckless or abusive.

The parties agreed while Trina Kincaid was on the stand that Carrie Coffee's performance evaluations (Union Exhibit #3) were to be submitted into the record for the years 2021-2024. Excerpts from Carrie Coffee's performance appraisals include Meets Expectations in every year submitted:

- Carrie communicates well with managers and peers in her 2024 evaluation
- Carrie has years of experience and is looked to for leadership in her home, her knowledge and time is helpful on a daily basis for the success of the home 2024 evaluation
- Carrie Coffee shows general wellbeing care for those who live in 608 2024 evaluation
- Carrie remains a team leader in the building and helps with newer staff 2023 evaluation
- Carrie knows the individuals well and interacts with them appropriately 2022 evaluation
- Carrie does focus on the individual needs of the residents 2021 evaluation

Arbitrators have long recognized that evidence of an employee's good character and history of service must be weighed against allegations of misconduct. In *State of Ohio, Dept. of Rehabilitation and Correction v. OCSEA, Local 11* (Arb. Murphy, 2015), the arbitrator emphasized that the grievant' s long and positive service record weighed against termination where the alleged misconduct was not convincingly proven. Carrie Coffee deserves the same weight here.

Arbitrators have consistently overturned discipline where the investigation was biased or predetermined. *Arbitrators have historically held that an investigation infected by managerial interference with witness statements is neither fair nor impartial and cannot support just cause. T*he same principle applies here. The State's investigation was compromised at its core, and its conclusions cannot stand. Even if one were to consider only the lower standard

of preponderance, the Employer still fails to prove their case due to the interference by the investigator herself. Where there are multiple conflicting accounts and testimony tainted by coaching, the moving party has not tipped the scales not even enough to meet a preponderance of evidence in this case. In *Ohio Dept. of Mental Health v. OCSEA, Local 11* (Arb. Williams, 2009), the arbitrator held that "*where the testimony of management witnesses is inconsistent and not corroborated, the burden of proof has not been met*." That holding squarely fits this case.

The Union's evidence, by contrast, has been consistent: Ms. Coffee acted responsibly in following a client known for elopement and aggression; she backed away as the client threatened her, and she relied on approved interventions. Nothing in that conduct rises to recklessness or abuse.

TPW Kristin Holmes testified that she was about 8-10 feet from the foyer where "S", TPW Carrie Coffee and Supervisor Brandon Tooson were engaged in the alleged incident. TPW Kristin Holmes testified that she did not hear TPW Carrie Coffee threaten to kick "S's" ass.

TPW and Union Steward Jeanette Brooks testified that she was aware that TPW Carrie Coffee had been placed on administrative leave during the investigation of the incident. Jeanette Brooks testified that she received a phone call on September 13th (Union Exhibit #1) from Supervisor Brandon Tooson. TPW Jeanette Brooks testified that Brandon said he was calling her to tell her that he was told by investigator Keisha Bacon that he had to add to his statement and that it needed to match the video. This testimony is undisputed, as Management witness Brandon Tooson confirmed on cross examination that he in fact did call Jeanette to tell her he had to add to his statement at the direction of the investigator. TPW Jeanette Brooks testified that she knew the relationship between "S" and TPW Carrie Coffee and that Carrie was the go-to person when the center needed help with "S".

Thirty-year LPN Felesha Towbridge testified to the historical nature of "S" and her history of going from zero to off the charts as it pertains to her history of rapidly escalating when she doesn't get her way or gets upset for no reason. LPN Felesha Towbridge testified that "S" had years of trauma in her formative years. LPN Felesha Towbridge testified that when dealing and communicating with "S" you have to be "Matter of Fact with "S" in what will happen if she continues to escalate and begins to act out." LPN Felesha Towbridge testified that "S" has had an extensive history of getting violent with both staff and residents. LPN Felisha Towbridge stated that "S" will get upset and act out one day and the next day she is acting like nothing happened. LPN Felesha Towbridge testified that it is widely known at NODC that "S" will make unfounded allegations against staff when ever she gets upset. LPN Felesha Towbridge testified that "S" is very intelligent and is a great advocate for herself and her rights. LPN Felisha Towbridge stated that whenever "S" would get upset she would call all levels of Managers in DODD, from the Superintendent to the Deputy Director of the entire Agency demanding that staff be fired or removed from her care. "S" knew what TPW Carrie Coffee said and meant when she stated, "put you down." "Felesha Towbridge testified that "S" knew that "put you down" meant that if you continue to escalate and hit someone you will be placed in the approved restrictive seated /standing stabilization.

Management upon hearing the testimony of thirty-year LPN Felisha Towbridge inaccurately claimed that her testimony was that she testified that "put you down / take you down" was an approved name of a restrictive approved redirection measure. Management asked to recall HR Director Trina Kincaid to testify that there is no name of "put you down/ take you down" The Union then recalled LPN Felisha Towbridge to once again state that her testimony was that "S" knew what that meant; not that it was the name of an approved restrictive approved redirection measure. This misrepresentation and attempted Character Assassination of a thirty-year LPN is just another example of management disregarding and ignoring the facts surrounding this difficult issue.

LPN Charles Lutchey testified that "S" got upset about wanting a second helping of chili. LPN Charles Lutchey said that he heard TPW Carrie Coffee recommend a healthier choice for seconds, but that "S" received her requested second bowl of chili. LPN Charles said that "S" tossed her bowl into the sink and that he and TPW Carrie Coffee and other staff followed her down the hallway. He stated that he was putting the med cart away and didn't see any of the interaction in the foyer but was about 12-14 feet down the hall and could her "S" yelling at TPW Carrie Coffee. LPN Charles Lutchey's statement of the event was deemed credible from the investigation. LPN Charles Lutchey was asked if a medical assessment from the nursing department was done on "S" the day of the incident as is the protocol. LPN Charles Lutchey testified that there was no medical assessment done that day by the LPN's on duty. LPN Charles Lutchey's testimony further underscores that the interaction that day between "S" and TPW Carrie Coffee was not the ordeal that the state claims otherwise medical protocol would have been followed, and "S" would have been evaluated. The lack of evaluation underscores our point that this was not even a significant event that warranted medical attention.

TPW Carrie Coffee testified that "S" has a history of acting out at NODC staff and residents. TPW Carrie Coffee testified that she was not being mean, rude or trying to withhold food from "S" when TPW Carrie Coffee suggested to "S" that she not have a second helping of chili, as management claims. TPW Carrie Coffee was simply following "S's" (PCP Person Centered Plan Jan. 21,2024-Jan. 20, 2025, Union Exhibit #4) page 61 Healthy Living Nutrition: "S is on a calorie and carbohydrate conscious diet, she should be encouraged to have low caffeine and having fruits and vegetables as extras should she want additional food." Page 62 Healthy Living Wellness: " S would like to lose weight. She believes eating smaller portions and being active will assist her with having a healthy lifestyle. "S" has expressed an interest in having weight loss surgery." when TPW Coffee reminded her of her plan of wanting to lose weight and live a healthier lifestyle. TPW Coffee testified she was very familiar with "S" as it pertains to her desire to have weight loss surgery and in fact had taken "S" to medical appointments for bariatric weight loss consultations and the two of them often worked out on campus by exercising and walking to help her attain the desired medical procedure.

TPW Carrie Coffee testified that she was aware of the (PCP Person Centered Plan Restrictive Measures page # 33 Union Exhibit #4) approved redirection intervention of "A seated or standing stabilization may be utilized when "S" is being aggressive to others or trying to hurt herself." TPW Carrie Coffee's testimony of when dealing with "S" you have to be "A matter of fact" in telling "S" what the outcome may potentially be if she continues to escalate. TPW Carrie Coffee testified that she herself has been on the receiving end of an attack from "S". This testimony was not disputed by management and in fact it was jointly stipulated by the parties that "S" has a history of violent behavior toward both staff and residents. TPW Carrie Coffee testified that when she told "S" if you hit me, I will have to put you down was an attempt by TPW Carrie Coffee's to be Matter of Fact with "S" and that "S" knew that meant she may end up in the approved restrictive redirection seated / standing hold.

TPW Coffee testified that "S" continues to this day to call her (Union Exhibit #5 call log screen shots from "S" calling TPW Carrie Coffee) telling her how much she misses her and wants her back with her in 608.

Finally, proportionality cannot be ignored. Article 24 of the CBA requires progressive and corrective discipline. The Department's own Standards of Conduct reinforce this requirement. Yet here, the Employer chose termination, disregarding Ms. Coffee's long and positive work record. Arbitrators have consistently emphasized that termination is a penalty of last resort, reserved for clear and egregious misconduct but not this department; this is a constant practice; fire the employee based off of false claims, fabricate statements, and have witnesses tailor their statements to match what investigators want by shifting their statements as many times as needed and then make the employee fight to get their job back. This is not ok. Arbitrators have ruled in the past that termination must be

proportional and corrective, not punitive, and cannot be imposed where mitigating factors outweigh unproven allegations. That reasoning applies here. Termination, in this context, is punitive, excessive, and unjust.

The collective bargaining agreement through Article 24.02, Progressive Discipline clearly states the parties' purpose as it relates to discipline, "*The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense."*

Further under Article 24.06, the employer agreed that *"disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment*."

For all these reasons, the Union respectfully requests that the grievance be sustained. The Employer has not proven misconduct by clear and convincing evidence, nor by a preponderance of evidence. Its case rests on hearsay, contradictions, and an investigation marred by bias. Because it failed to prove the underlying facts, the OAC is irrelevant to this case. Without fact, the law does not apply. Without law or facts, there can be no just cause.

Ms. Coffee should therefore be reinstated with full restoration of wages, benefits, seniority, and entitlements, and her record cleared of this unjust termination.

The Union respectfully request that you sustain the grievance and order the following:

- TPW Carrie Coffee reinstated at NODC.
- The termination is stricken from her record including any employee electronic record.
- All lost wages including step increases and longevity, less any interim earnings and appropriate deductions including union dues.
- PERS contributions both employer and employee share.
- Any holiday pay or premium pay that the grievant would have been entitled to.
- All leave balances that would have accrued from the date of removal.
- No loss in seniority.
- The bid, shift and good days that TPW Coffee held when she was removed.
- Payment for any medical, dental or vision expense that would have been covered under her insurance less appropriate deductible and co-payments.
- All missed overtime opportunities.

The Union respectfully requests that the Arbitrator retain jurisdiction for sixty (60) days.

DISCUSSION

The term "just cause" imposes a responsibility on management to prove that (a) the standard of conduct enforced is reasonable and consistent with generally accepted employment standards communicated to the employee, and (b) the evidence demonstrates that the employee committed the misconduct in question. The evidence must address whether the employee committed actual wrongdoing and whether the punishment was appropriate. *(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 purpose to second-guess management's decisions, he must ensure that a management action or decision 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 explicitly prohibits such power, an arbitrator, through his authority and duty to settle disputes, has the inherent power to evaluate the strength 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 review employer policies, rules, statutes, and regulations to determine if a termination was justified. The "just cause" principle protects employees from unfair disciplinary actions while recognizing the employer's right to maintain standard employment practices. The Employer retains specific rights under the Agreement (Joint Ex. 1), including the right to discipline employees, provided 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 criteria of "just cause" rather than the higher, beyond a reasonable doubt standard used in criminal cases. However, it remains a strict standard that must meet certain conditions, including providing proper notice, establishing findings of fact, and making a determination of liability for rule violations. This requires a solid basis of practical probabilities that allow for reasonable inferences and conclusions to determine the truth of the matter. (Frontier Airlines 82, LA 1283, 1288 (Watkin, 1984); Westinghouse Elec. Co., 48 LA 211, 213 (Williams, 1967)

This case involves a single charge of verbal abuse of an individual SL by the Grievant. The rule is the Employer's Standards of Conduct, Rule B1- Verbal abuse. It is specifically addressed in Article 24.01 of the Agreement as stated below.

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. Abuse cases which 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. 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. For abuse cases, employees of the Department of Developmental Disabilities (DODD) shall be governed by the Ohio Administrative Code (OAC) 5123-17-02. Employees of the Lottery Commission shall be governed by ORC Section 3770.021. (JX. 1 pg. 91)

As the unequivocal language found in Article 24.01 of the Agreement states, the parties agree that for DODD it is governed by OAC 5123-17-02. According to the OAC definition "Verbal Abuse": are words, gestures, or other communicative means to purposely threaten, coerce, intimidate, harass, or humiliate an individual (Jx. 6, p. 3) It is important to note that the charge of abuse made against an employee represents an allegation of one of the brightest of "bright line rules", addressing the serious matter of an abuse of an individual in the care and custody of the State of Ohio. This is a distinct rule, over which the parties have negotiated for several years, and for which a just cause finding of abuse triggers a contractual-mandated action, leaving the arbitrator with no discretion regarding the penalty.

The Union contends that Abuse is a serious charge that carries with it considerable weight. The well-respected Arbitrator, the late Anna Duval Smith ("Smith"), in 2007 correctly stated that "Management has a heavy burden in abuse cases." Eighteen years later, that is certainly still the case. (*OCSEA Arbitration Decision No. 1918)* In her 2007 opinion, Smith also noted that a finding of abuse requires intent or at least indifference. In contrast, the DODD asserts the combination of video evidence, along with the first-hand account from Supervisor Tooson, is decisive proof of abuse.

After thoroughly reviewing the hearing testimony and other evidence submitted, as well as the parties' individual arguments in their post-hearing briefs, this arbitrator finds that the Employer met its evidentiary burden. The video evidence, combined with direct witness testimony, shows that the Employer conducted a thorough investigation and gathered sufficient evidence to support its interpretation of the Grievant's conduct on July 25, 2024. Coffee has a long history with DODD, and according to the record, Coffee has previously shown significant kindness and support toward SL, making this situation particularly unfortunate. However, although these facts are commendable, they do not exempt DODD from its obligation to expect its employees to act in accordance with its mission and the Agreement consistently, especially in the case of a potential MUI.

The Grievant and the Union contend that Supervisor Brandon Tooson's account of the confrontation between the Grievant and SL on July 25, 2024, which was provided in three different versions, was falsified under managerial pressure and inconsistent with what actually happened. (*See Step 2 of Binder)* However, when reviewing Tooson's initial statement made on 7/25/24, written in his own words, he states, "During the verbal altercation between SL and CC, there were many curse words used by both parties. I can only remember sayings such as 'Bitch I'll beat your ass, SL and CC,' "Get the fuck up out of my face (SL),' 'You aren't going to do Shit' (CC)," and "Leave me the hell alone (SL)" (Jx. 4, P. 56). In the transcript of the verbal interview with Tooson, taken a little over one month after the incident on 8/27/24, he states that Coffee told SL, "I will beat your ass." Tooson also stated that Coffee's actions were not appropriate or safe (Jx. 4 p. 58-59). Management has the right and obligation to seek the truth in every matter

involving potential rule violations. Under a just cause standard, it must conduct a thorough and objective investigation, which is critically important to all parties involved in allegations of abuse.

If an employer finds that the video, which is generally considered neutral evidence, does not match witness statements or that in this case witness Tooson did not provide enough detail to align with what is objectively recorded, it has the right to ask witnesses for more information — not for forced or fabricated details, but for an honest account of what occurred and what was recorded. While I understand the potential for witnesses to give testimony or accounts supporting a biased position, the video and the totality of corroborating evidence, when viewed together, create greater certainty regarding the employer's findings, not less.

In Jx. 4, Tootson states in pertinent part, "During the altercation, you were heard yelling and making inappropriate, threatening, or intimidating statements. Video evidence captured you displaying intimidating body language, including approaching the individual SL aggressively and chest bumping her." The Grievant followed SL down the hall, confronted her as she sat in front of Tootson's office, and engaged in conduct that can only reasonably be considered confrontational. While SL also engaged in derogatory and threatening rhetoric, such behavior, according to the record, is indeed a manifestation of her maladies, which the Grievant was presumably familiar with, given their considerable dealings. Yet, on this day, the Grievant, who may initially have had SL's health in mind when she attempted to deny her seconds at dinner, was mistaken—there were no dietary restrictions. Instead of admitting her mistake and possibly lessening the tension, Coffee doubled down on her confrontation with SL, triggering a reaction that, according to SL's profile, was not unexpected. Coffee, who knew how to handle SL behaviorally, on this day, "poked the bear." Evidence shows that SL is difficult, depressed, suicidal, self-harming, threatening, physically aggressive, and makes allegations against staff. This behavior is part of her usual pattern, and the Grievant was aware of it and presumably knew SL's "triggers." Unfortunately, on July 25, 2024, the Grievant's actions, instead of defusing the situation, escalated it. The evidence indicates she should have anticipated this reaction and, by confronting her with aggressive language, worsened a situation that originated from a simple denial of a second helping of food based on a false premise. According to evidence, the Grievant's conduct was provocative, not therapeutic. It crossed the line from being controlling—where the

need to control seemed apparent—into threatening and abusive behavior. The question is: why? Why was this entire episode necessary, and why was there no attempt to defuse the situation rather than ignite further threatening behavior? SL has severe behavioral issues, which is why she is in the care of NODC.

In Tab 4 of the binder, there are several strategies the Grievant was aware of for managing SL. Under the heading "Need to Know to Support SL" and a review of SL's Ohio Individual Service Plan (OISP), are the following:

-Be honest

-Be patient and do not give up on her

-Attempt to redirect quickly with positive interactions

-Allow her time to feel comfortable and build rapport and a relationship

-Be empathic

-Forgive and forget when incidents occur

-Don't judge her

-Set parameters or boundaries such as setting up a date and time for phone calls and stick with whatever you put in place.

On July 25, 2024, the evidence demonstrates that most of these strategies were not employed. Instead, the Grievant was assertive, not patient, or positive; her demeanor was derogatory, confrontational, and incendiary. The Grievant crossed the line from therapeutic intervention to confrontation, acting from a position of power and intimidation. Her behavior failed to demonstrate efforts to manage SL's abnormal behavior, promote stability, clarify miscommunication (which the Grievant contributed to), or de-escalate and redirect the incident. Instead, her actions intensified the situation for reasons that remain unclear.

Additionally, the Grievant's account of the incident lacks credibility. Everyone has bad days when they say things or do things they wish they could undo. However, what those behaviors are and whether an employee accounts for them are both important. The Grievant pursued SL after she deliberately dumped her empty dishes into the sink. On her way out of the kitchen, SL said she was going to talk to Supervisor Brandon Tooson. The Grievant followed her closely, claiming she wanted to ensure SL did not leave the building and possibly harm herself.

While record evidence shows this has happened in the past, Coffee noted she saw SL sitting outside Brandon's office, not appearing to be going anywhere or trying to leave the building, which undermines the Grievant's motive for the ongoing and heightened confrontation. Furthermore, the Grievant stated she did not say "I'll beat your ass," contrary to Tooson's and SL's testimony. Coffee stated she did not use profanity. (Jx. 4, p36) All of this conflicts with Tooson's account of what he directly heard and the chest bumping that was initiated—according to the video and Tooson, during their confrontation outside Tooson's office. At one point, the Grievant stepped toward SL and initiated physical contact in a "mano a mano" manner (Jx. 4, p. 59). The follow-up verbal interview with Tooson provided significant details supporting the Employer's position. The interview revealed that Coffee's tone was "very aggressive" and "very confrontational" (Jx. 4, p. 58). It was unprofessional and "not what the expectation of a TPW would be in regard to communicating with a client without supervision support." (Jx. 4, p. 58) Her words implied physical harm or a desire to fight, and SL also exchanged hostile words with her. Both were engaged in verbal altercations during the interaction… TPW Coffee threatened to fight SL, saying, "I will beat your ass."(Jx. 4, p. 58) It appears that other underlying issues may have been present but were not disclosed in this case. In summary, it was inappropriate for Coffee to speak to SL the way she did, and the situation could have been resolved differently without verbal belittling or aggressive communication. (Jx. 4, p. 60) There is no doubt that SL was agitated, belligerent, and made threats toward Coffee. However, Coffee, by virtue of her position, has professional boundaries to maintain and was trained and experienced to handle such behavior. Unfortunately, on July 25, 2024, the Grievant crossed those boundaries and interacted with SL in a manner that made her feel unsafe. (Jx. 4 p. 8-9)

The State met its burden under Article 24.01 by providing sufficient proof that Coffee engaged in verbal abuse.

AWARD

Grievance denied.

Respectfully submitted to the parties this 15th day of October 2025.

Robert G. Stein

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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 October 15, 2025

Robert G. Stein

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Robert G. Stein