

VOLUNTARY LABOR ARBITRATION

In the Matter of Arbitration

*
* Case No.: 23-17-
*920428-0873-02-11

Between:

THE STATE OF OHIO
Department of Mental Health
Toledo Mental Health Center

-AND-

OHIO HEALTH CARE EMPLOYEES UNION DISTRICT 1199
NATIONAL UNION OF HEALTH CARE EMPLOYEES, SEIU
AFL-CIO

IN RE: DISCHARGE GRIEVANCE OF: GAYLE STINSON, RN)

OPINION AND AWARD OF ARBITRATION

Dennis E. Minni, Esquire
Arbitrator
Suite 104
14761 Pearl Road
Strongsville, Ohio 44136
(216)238-0365

Date Of Hearing: November 5, 1992

Situs Of Hearing: Ohio Office of Collective Bargaining
Columbus, Ohio

Employer Representatives and Witnesses:

1. George R. Nash.....Advocate
2. Shelly Ward.....Labor Relations Sprcialist, OCB
3. Candice J. Young,.....Director of SOS, TMCH
4. Janet L. Beaverson,.....Psych/MR Nursing Supervisor, TMHC
5. Thomas W. Anderson,.....Associate Director, SOS
6. Arturo Quintero,.....Associate Director, TMHC

Union Representatives and Witnesses:

1. Lisa Hetrick,.....District 1199 Organizer
2. Gayle Stinson, RN.....Grievant
3. Donna Jordan,.....Therapeutic Program Worker
4. Yourline Johnson,.....Recreational Therapist
5. Barbara Carlton, RN.....Registered Nurse

ISSUE: (Per Stipulation) Is the termination of employment of Ms. Gayle Stinson, RN for just cause per Article 8? If not, what should the remedy be?

BACKGROUND INFORMATION

The parties, the Ohio Department of Mental Health's Toledo Mental Health Center (hereafter "TMHC", "Management" or "Employer") and the Ohio Health Care Employees Union, District 1199 (hereafter the "Union" or "1199") are signatories to a collective bargaining agreement (hereafter "cba" or the "contract") which was entered into the record as Joint Exhibit 1 (JX-1). Said contract imposes the following limitation on selected panel arbitrators in Article 7.07-E-1 which states:

"E. ARBITRATOR LIMITATIONS

1. Only disputes involving the interpretation, application or alleged violation of provisions of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of this Agreement."

This limitation is further refined by five duly stipulated points, signed by the advocates and presented at the hearing.

These stipulations are:

1. Ms. Stinson was classified as a Psychiatric/MR Nurse at the TMHC State Operated Services program at the time of this incident January 3, 1992;
2. Ms. Stinson began employment at TMHC August 17, 1987;
3. Ms. Stinson began services in SOS Program February 1991;
4. Both parties agree mutually per Article 7.08 and request that the Arbitrator issue a short decision within five (5) days of the close of the hearing; and
5. This case is properly before the Arbitrator.

The parties were advised of travel and hearing commitments in the week ahead by the Arbitrator and accepted an extension of the award date to November 16, 1992, postmarked.

The SOS program entails interaction with patient clients by clinical staff in the homes and other places in the community where the clients reside or frequent. RNs assist clients in matters of medication delivery, dosage and consumption. This is performed subject to a TMHC policy prohibiting the repackaging of dispensed medications (July 1991). The parties demonstrated a seven day medication container with removable vials for each day. These vials are compartmentalized to allow morning-night storage of

particular dosages. RNs observe and correct clients if necessary in the loading of pills into these vials as well as their actual consumption of same. Education about the various medicines administered to clients is also provided by the SOS RNs.

On January 3, 1992 the Grievant had been unable to find a particular client in the community in order to pass out his medications for the upcoming period. Upon return to the office her frustration with the inability to locate the client was apparent to her supervisor, Associate SOS Director Tom Anderson. He asked for then demanded that she give the medications to him because he was taking the patient on an outing during the ensuing weekend and would thus see him sooner than the Grievant.

She balked at doing this because of the policy prohibiting repackaging or dispensing to one not the patient; a policy she had been disciplined for breaching in the past. Weighing the policy prohibition against her supervisor's dictates she complied with the latter.

There is not much argument between the parties as to the facts that led to the instant Grievance. The case pivots upon judging the Grievant's decision to tender the medications to her administrative supervisor. Companion issues are the degree of authority Mr. Anderson exercised in so obtaining her compliance with his demands, her alleged predicament thereafter as to whether the shortcomings of the SOS program created a conflict of management or a situation of "overmanagement" and whether she was treated in a disparate fashion than her administrative supervisor.

The SOS program's mission is to positively respond to the needs of mentally ill patients who are being "mainstreamed" (my term, not meant to be derogatory to the program) into the community at large. There are two levels of supervision incorporated in the program. One is Administrative and the other is Clinical.

The parties entered a comprehensive list of Joint Exhibits covering their labor agreement ("cba"), the disciplinary record of nurse Stinson, grievance documentation, policies of the Center and some thirteen miscellaneous documents.

POSITION OF THE UNION

There was an inadequate amount of training and direction for the Grievant to successfully complete the assigned tasks in the SOS program. Frustration due to shortcomings in the incipient stage of the Program caused the Grievant to file grievances, write to the Governor's office and eventually seek union assistance for the many workplace problems.

The Grievant was within her rights to resist Mr. Anderson's

idea that he be given the patient's medications for distribution over the ensuing weekend. She yielded to supervisory pressure the upshot of which was impending serious discipline should she fail to comply. Meeting the needs of the served population was not guaranteed in an at-large context. The seriousness of missing a patient's medications is critical. Yet management expects that the RNs should soldier along undaunted and simply not follow the chain of command because Anderson was an administrative supervisor, not a clinical one. This dichotomy was first explained to the Union and the Grievant at the hearing.

This matter should not have advanced to disciplinary action which jumped the Grievant into the ambit of potential removal under the management's system. She wanted to transfer back to the Hospital, not be "demoted" per the settlement agreement. Her letter to the Governor ired certain officials and this discharge was fomented by that fact.

The Grievance has merit and should be granted, giving reinstatement and full back pay and benefits lost to the Grievant.

POSITION OF THE EMPLOYER

The Employer backs its decision to remove the Grievant on its progressive disciplinary system; the act of giving Mr. Anderson the medications violated a clear policy and put her into the "danger zone" (my terminology) based on her prior disciplinary record. Her evaluations and past difficulties at work all demonstrate that she was not an exemplary employee. Mr. Anderson, being on the administrative side, was not informed about the distribution policy and its prohibitions as the Grievant was. She well knew the severity of the decision she selected and her judgment caused a breach of a very serious nature. She could have called higher up officials for guidance; instead she acquiesced perhaps happily in order to escape the responsibility shouldered by Mr. Anderson.

The Center has met its standard of proof and its decision not to continue the Grievant's employment should be upheld.

DISCUSSION AND ANALYSIS

The burden of proof as to the validity of the discharge decision is clearly management's. As the proponent of discharge the Center must show by a clear and convincing degree of the evidence that the cba's promise of just cause for so doing was met.

Reviewing disciplinary actions compels the use of a three-fold test. The first or threshold part of this test is to determine if a disciplinable event took place. Next, it must be decided if the Grievant committed the act warranting discipline. Finally, if the

first two questions are affirmatively determined it remains to decide whether there are any mitigating or off-setting factors sufficient to modify or reverse management's action toward a grievant.

I conclude that this burden has not been met with regard to the requisite degree of proof. In denying management's removal of the Grievant I considered the threshold question as to whether a disciplinable event took place and conclude that such did not take place. That management failed to establish the substantive validity of its rationale that the Grievant was in a better position to know which rule to follow than Mr. Anderson is most apparent based on this record. Placed in a "damned if I do, damned if I don't" situation, the Grievant could have done little to avoid subsequent criticism. When that result is visited upon the employee as a serious transgression and the fact that she did comply with the supervisor's request is completely overlooked by management both as to evaluating Ms. Stinson's conduct and that of Mr. Anderson, I am not convinced that it was an event calling for disciplinary action. Employees locked in the onus of supervisory authority will invariably accede to the demand of the person as opposed to adherence to a policy. Employees must work with and for supervisory personnel on a daily basis; policies reside in books or manuals. Policies do not have memories or conduct performance reviews.

If the TMHC's rationale is that policy breach can never be countenanced they are doing a great disservice to all involved. Overall the facts make it inescapable that the SOS program, per se, was demonstrating a major deficiency. This should have been an opportunity for management to correct a problem without visiting blame on any employee. No one can gainsay the value of teaching or learning empirically how to put forth the best possible program or service. However, the Employer's argument fails to weigh that the program was in an incipient stage and that difficulties, when encountered, would need resolution. The testimony of clinical supervisor Candice Young was replete with reiterated policy criteria but gave no impression that a systemic problem really underscored this matter. This most important (to TMHC) action as applied to Mr. Anderson convinces me that he was afforded a different standard of review than the Grievant. Such a much more lenient approach was also owed to nurse Stinson. The shortcoming exhibited in this case belongs to the SOS program and is not attributable to any employee. The question of how to handle patients who are not found in the community for purposes of distributing their medications to them seems to me should be of paramount interest to the administrators rather than looking for scapegoats. There being no compelling proof of a delict, it is unnecessary to answer the two remaining parts of the test.

The Union shall prevail in this case but I note that the

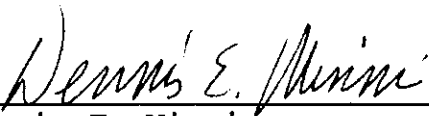
Grievant's previous disciplinary record is unaltered by this Award.

AWARD

Therefore, based upon the foregoing analysis and the record as a whole the Grievance is sustained. Grievant shall be reinstated with back pay less any interim earnings or unemployment benefits received. Her actual placement back in the workforce of TMHC shall depend on her contract rights as to bidding or agreeing to return to the hospital (or not). However, she shall be reinstated in a reasonably prompt manner. I shall retain jurisdiction for remedial purposes for sixty days from the date of this Award, if necessary.

Dated this 14th day of November, 1992 at Strongsville, Ohio.

Respectively submitted,



Dennis E. Minni
Panel Arbitrator