

**STATE OF OHIO
LABOR ARBITRATION TRIBUNAL**

IN THE MATTER OF THE ARBITRATION BETWEEN:

State of Ohio, Office of Collective
Bargaining and the Department of
Mental Health,

Employer,

-and-

**OPINION
AND
AWARD**

District 1199, The Health Care and
Social Service Union, SEIU, AFL-CIO,

Union.

Case No. 23-08-920910-0851-02-11

Appearances: For the Employer -- Shelly Ward
For the Union -- Charles Lester

SIX-DAY SUSPENSION OF JOYCE BARNETTE

ISSUE

The parties stipulated to the issue at the hearing. It is as follows:

Was the Grievant's six-day suspension for just cause?

If not, what shall the remedy be?

The issue arose out of a grievance filed by Ms. Joyce Barnette on September 4, 1992. (Joint Exhibit No. 3f) It appears to read as follows:

"Statement of Grievance. Unjust discipline by management.

Contract article(s) and Section(s). Including, but not limited to Article 8.

Resolution Requested. To be made whole in every way, including, but not limited to removal of all record of discipline and reimbursement for all income withheld due to work denied."

The grievance clearly involves ARTICLE 8 - DISCIPLINE, 8.01 Standard of the collective bargaining agreement. (Joint Exhibit

No. 1) That contractual provision reads as follows:

Disciplinary action may be imposed upon an employee only for just cause.

Also, the parties stipulated that the grievance is properly before the arbitrator.

STATEMENT OF THE CASE

The determination of the issue involves, inter alia, a recognition of certain facts as they existed in 1992. The pertinent facts appear to be as follows:

1. The Dayton Mental Health Center (hereinafter sometimes referred to as "DMHC") is an institution within the Ohio Department of Mental Health (hereinafter sometimes referred to as "ODMH" or the "Department"). It is located in Dayton, Ohio. This institution has two units, i.e., the forensic unit and the civil unit. The patients, who require the most restrictive confinement, are assigned to the forensic unit. The patients, who need less restriction, are assigned to the civil unit.

2. Mr. Robert "Bob" Buckles was arrested and charged with robbery in 1989. He has a mental problem. He entered a plea of not guilty by reason of insanity. He was committed to DMHC.

3. Mr. Buckles was initially assigned to the forensic unit. However, as his condition improved, he was assigned to the civil unit. He was in the civil unit in the spring of 1992. He was in Ward 56. This unit contains some patients who are about to be released from DMHC.

4. Ms. Joyce Barnette is employed at DMHC as a Psych/MR Nurse Coordinator. She is a registered nurse. Her duties, inter alia, included responsibilities for Ward 56. The effective date of her employment is September 14, 1987.

5. Initially, there was a friendly relationship between this nurse and this patient. They were able to converse easily with each other. Frequently, they played cards. It was an acceptable nurse - patient relationship. Also, there was a good relationship between this nurse and Ms. Betty Hessler, the patient's mother. She came to DMHC to visit her son about one time a month.

6. There was a serious situation in April of 1992. Mr. Buckles was on an AWL (i.e., away with leave). He was supposed to be with his mother and under her supervision. If he did not return to DMHC at the appropriate time, his status would be AWOL (i.e., away without leave).

7. Ms. Hessler called the Grievant on April 6, 1992. The

telephone conversation lasted somewhere between 90 and 120 minutes. She was concerned about her son. He had called her from a motel. He had a gun and was going to kill a certain lawyer. He has also made murder threats against his sister and her husband. Bob was drinking and he had a couple of females with him and they were "partying". (Union Exhibit No.9) Also, at one point in this long telephone conversation, Ms. Hessler stated that her son had engaged in an affair with Ms. Johanna Beck, a DMHC police officer. When the Grievant attempted to clarify this statement, the mother retreated from it. So, this matter was forgotten - - for the time being. Bob walked through the door a few minutes later. He was no longer AWOL.

8. Mr. N.C. Patalinghug, M.D. (sometimes herein referred to as "Dr. Pat") is a psychiatrist and is directly involved with Ward 56. He issued an order on March 27, 1992. It clearly stated that Mr. Buckles was to go on AWL only if he was picked up by his mother and not his sister. (Union Exhibit No 7) There was an instance when Ms. Hessler was ill. So, she sent a daughter to pick up this patient. Ms. Barnette refused. Later, the mother arrived and the leave was effectuated.

9. There is a Ward 56 rule that precludes patients from keeping food items in their rooms. This rule has not been uniformly enforced. It was amended, and some exceptions were allowed, on July 9, 1992. (Joint Exhibit No. 2d) There were at least three instances (May 24, June 3 and July 3, 1992) when Mr. Buckles had large amounts of food in his room. These groceries were either brought to him by a family member or he obtained them while on leave. When the Grievant attempted to enforce some portion of the rule, she was not supported by the police. (Union Exhibits Nos. 1,2&3)

10. On or about May 29, 1992, Ms. Barnette saw Bob standing very close to Ms. Johanna Beck, a DMHC police officer. The Grievant counseled him. She also told him of the story of his having an "affair" with this police officer. She did not tell him the source of this information.

11. The Department concluded that this nurse engaged in some acts of incompetence. Therefore, she was suspended for six work days (i.e., September 8,9,10 11,14&15). (Joint Exhibit No. 21)

12. Ms. Barnette has a right to file a grievance. She did so. Also, she copied some records in preparing for the presentation of her position during the grievance procedure.

EMPLOYER POSITION

The Employer believes that Ms. Barnette engaged in acts of incompetency. She acted in an unprofessional manner. This caused an upsetting situation in Ward 56.

Furthermore, the ODMH believes that a six-day suspension was consistent with its progressive discipline policy. It was for just cause. It did not violate the collective bargaining agreement.

UNION POSITION

The Union believes that all of the allegations against Ms. Barnette are without foundation. The accusations constitute a collection of hearsay. She did not commit the alleged acts. She is innocent of all charges.

Furthermore, the ODMH did not follow the prescribed steps in the progressive discipline policy. The case against the Grievant is also flawed for this reason.

In short, the just cause standard has not been met. The suspension should be overruled in its entirety.

DISCUSSION

The Department has the burden of proving that Ms. Barnette engaged in acts of incompetency. If it meets this burden of proof, then it has established just cause for the imposition of appropriate disciplinary action. If it does not do so, it has not met the just cause standard.

The most damaging charge against the Grievant involves the allegation that she told disinterested people that Mr. Buckles was sexually involved with Ms. Beck. She denies this allegation.

Ms. Barnette testified that this item was told to her by Ms. Hessler in a long telephone conversation in April of 1992. When questioned, the mother recanted. The matter was temporarily forgotten. Then, when the Grievant saw Bob standing very close to this police officer a few weeks later, she privately told him of the statement (but not the source). She counseled the patient about his behavior. She did not tell anyone else about the alleged affair. Sometime later, when the rumors were flying and an investigation was imminent, she told Ms. Beck.

This Arbitrator believes that the testimony of Ms. Barnette is credible. She appears to be truthful in her rendition of the facts. There isn't any inconsistency in her testimony.

The testimony of Mr. Buckles is suspicious. He believes that the Grievant is infatuated with him and that this infatuation motivated her to tell lies about him. He admits that his memory is not good. In fact, at the time of the hearing, he had been released from DMHC for about one week. He couldn't remember the day of his release. He admits that he has a mental problem. He also admitted that he manipulated the system when he entered a plea

of not guilty by reason of insanity. He stated that he deserved to go to prison. He also appears to have an alcohol problem. He attends meetings of Alcoholic Anonymous between 5 and 7 times per week.

Mr. Charles Baker, R.N., at Dayton Mental Health Center, is a supervisor. He testified that Mr. Buckles is a manipulator. He manipulates people and the system. He will engage in this conduct to meet his needs. Dr. Pat indicates similar characteristics. He notes that this patient will place blame on others just to put others in jeopardy for his own benefit. This patient tells lies about the staff. (Union Exhibit No. 13)

In short, Ms. Barnette is not responsible for the untrue statements that were made concerning alleged sexual involvement between Mr. Buckles and Ms. Beck. The cursory investigation of this allegation was inadequate. The hearsay was never traced or identified. The Employer did not meet its burden of proof.

The charge of harassment is similarly without foundation. The rule concerning food in the room was clear. But, it was not enforced. The practice varied from the policy. It appears that everyone had their own standard on the amount of leeway that should be allowed in the enforcement of this rule. When the Grievant thought that the rule was being abused, she sought help from the police. They refused to support her. This situation is not her fault. Then, sometime later, the rule was amended and modified. (Union Exhibit No. 2d) There isn't any credible evidence of harassment in this case. Again, the Employer did not meet its burden of proof.

There is a similar unsubstantiated charge concerning AWL. Dr. Pat left clear orders that Mr. Buckles was to be released to his mother and not to his sister. (Union Exhibit No. 7) It is unfortunate that Ms. Hessler was ill. But, that circumstance did not alter the doctor's order. This situation did not constitute harassment. The Grievant followed the doctor's order. Again, the Employer did not meet its burden of proof.

There is a vague allegation of rudeness. There isn't any proof. The Department did not present any solid evidence of loud voice, obscene remarks or any other similar conduct that might be characterized as rude. There are conclusory allegations. There isn't any hard evidence. The burden of proof standard was not met by the Employer.

There is a serious charge that Ms. Barnette related personal information to patients. This charge was never established by any convincing evidence. Mr. Buckles made these allegations. She denies them. There isn't any evidence that anyone ever overheard these conversations. There isn't any evidence that she ever related personal information to any other patient. In short, this

allegation again falls into the category of unsubstantiated hearsay. There wasn't any credible evidence. The Employer did not meet its burden of proof.

There is also a collection of charges and innuendoes that were not proved by any credible evidence. They were reiterated by hearsay. The key witnesses were not present. There was a charge that the Grievant falsified records. There was not a scintilla of proof offered of a single falsification. There was a charge that an ex-patient was in the ward with a gun. There wasn't any proof. There was a charge that an ex-patient watches the Grievant undress through a window. There wasn't any proof. There was an allegation that the Grievant was trying to get medication through an ex-patient. There wasn't any proof. The Employer did not meet its burden of proof on any of these charges.

The Department has not proved by a preponderance of the evidence that Ms. Barnette engaged in any acts of incompetency. It has not met the just cause standard set out in the collective bargaining agreement. It has relied on hearsay and uncorroborated statements by people whose testimony lacks credibility. The Employer simply did not meet its burden of proof. It did not prove that Ms. Barnette is incompetent.

AWARD

The grievance is sustained. The Employer violated ARTICLE 8 of the collective bargaining agreement when it suspended Ms. Joyce Barnette for six days in September of 1992. This disciplinary suspension shall be expunged from her record. She should be made whole in every way including all lost monies for those six days plus any seniority or benefits that she may have lost as a result of this suspension.

The Arbitrator will maintain continuing jurisdiction. If the parties are unable to agree on the back pay calculations or any other item in this award, either party may ask the Arbitrator to hear and decide the dispute so that this award may be appropriately implemented.

Signed, dated and mailed this 6th day of August, 1993.


Richard E. Gombert, Arbitrator