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In the Matter of Arbitration

Between

District 1199, SEIU

and

The State of Ohio, Department of
Rehabilitation and Correction

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Case Number:

27-24-940811-0197-02-12

Before: Harry Graham

Appearances: For District 1199, SEIU:

David H. Bhaerman
Staff Representative
District 1199, SEIU
475 East Mound St.
Columbus, OH. 43215

For The State of Ohio:

Colleen Wise
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Introduction: Pursuant to the procedures of the parties three days of hearing were held in this matter before Harry Graham. In the course of those hearings the parties were provided complete opportunity to present testimony and evidence. Post hearing briefs were filed in this dispute. They were exchanged by the Arbitrator on July 10, 1995 and the record in this dispute was closed.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant removed for just cause? If not, what

shall the remedy be?

Background: There is little upon which the parties agree in this proceeding. The Grievant, Hollie Saunders, was initially employed as a Correctional Program Specialist, colloquially termed a case manager, at the Southeast Correctional Institution in July, 1990. Prior to her employment at that facility Ms. Saunders had several years of service in another State agency. On August 5, 1994 she was removed from her position with the Department of Rehabilitation and Correction. The removal was based on three alleged rule violations committed by the Grievant. These were: Rule 7, Insubordination, Disobedience of a direct order of a supervisor; Rule 46a, The exchange of personal letters, pictures, phone calls, or information with an inmate, furlougee, parolee or probationer without the express authorization of DR&C; and Rule 46e, Engaging in any other unauthorized personal or business relationships with inmates, ex-inmates, furlougee, parolees, probationers, or family or friends of same.

As a case manager Ms. Saunders was responsible for implementation of social and rehabilitative programs for inmates. She also developed treatment plans for specific inmates and conducted programs for groups of inmates. During her tenure at Southeast Correctional Institution Ms. Saunders came into contact with Inmate Douglas Robinson. In the summer

of 1992 Robinson was assigned to Ms. Saunders case load. At about the same time there was developed a program known as CARE to deal with concerns relating to cultural awareness of black inmates. Ms. Saunders was heavily involved with the program and Inmate Robinson came to be appointed secretary. As such, they came into frequent contact. When the program started Saunders and Robinson were in Unit 5. Subsequently, Robinson was transferred to Unit 3.

In spite of being transferred to a unit different from that of Ms. Saunders Inmate Robinson was seen from time to time in Saunders work area, she was seen in his dormitory and on occasion both were seen on the central street of the facility, "The Avenue."

In August, September and October, 1993 Ms. Saunders was directed by Gary Croft, her supervisor, to refrain from further contact with Robinson. On November 5, 1993 Robinson was placed in a high security area, H-1. (The hole). Saunders was due off work at 4:30 p.m. on that date. At about 4:50 p.m. she was seen in H-1 speaking with Robinson. She had not signed the log book indicating her arrival in the area as is the required procedure. The next day she was seen again at H-1 speaking with Robinson. She allegedly was in the area to place a telephone call for Robinson. This is contrary to accepted procedure as she was not his case manager.

Several days later a telephone call was received in

Saunders unit from a woman identifying herself as "Aunt Lilly." She was allegedly Robinson's aunt and the State interpreted the call as being instigated by Saunders.

In the winter of 1993-94 Ms. Saunders was off work on disability leave. During her absence a collect call was placed from Robinson's dorm to Saunders home. Upon Saunders return to work she and Robinson were observed entering Unit 5 together. Ms. Saunders visited Unit 3, Robinson's Unit, on April 9, 1994. She apparently spent a half hour alone with Robinson. On May 28, 1994 a "kite," an internal communication from an inmate to a staff member, was intercepted by Officer Barbara Buenaga. It professed great affection for a person regarded by the State to be Saunders. It also expressed jealousy over what the drafter regarded as contact between the addressee, Saunders in the State's view, and another man.

Robinson was subsequently transferred from Southeast Correctional to Allen Correctional Institution. A number of collect calls were made from that facility to Saunders residence. Investigation led the State to conclude that these events demonstrated unauthorized contact between Saunders and Robinson. She was discharged August 5, 1994. A grievance protesting that discharge was processed through the procedure of the parties without resolution. They agree it is properly before the Arbitrator for determination on its merits.

Position of the Employer: Investigation of telephone traffic

to Ms. Saunders residence indicated that Robinson called there on February 13, 1994. Initially the State believed her number was unlisted. It was found to be in the Lancaster directory under her Father's name. The State urges the conclusion that either Robinson was given the number, the name of Ms. Saunders father or her home address.

In the course of investigation Ms. Saunders claimed to be at a doctor's appointment at the time the phone call was received. She subsequently claimed to have been at a concert in Lancaster. Ms. Saunders initially claimed her parents received the phone call. She later asserted it was received by one of her brothers. In either event, she had a duty to report the phone call. She did not do so. Similarly, she did not state she was at a concert until the arbitration hearing.

Telephone records show calls from Allen Correctional to Ms. Saunders home. These were made while Robinson was housed there. Some of the calls lasted as long as eleven minutes. While the calls occurred after her removal from employment, the State claims they are relevant as they are an integral part of the investigation and lend support to the State's action in this case. Ms. Saunders should have reported the calls but did not do so. At the hearing the Grievant denied any knowledge of the phone calls from Allen Correctional Institution. This should be disbelieved according to the

State. Ms. Saunders' Mother testified she had accepted calls and told the caller to cease. She allegedly made a report to the Ohio Highway Patrol. No record exists of any report or investigation by the Patrol. Similarly, testimony was received that people other than Ms. Saunders mother accepted the phone calls. None testified at the hearing. No messages indicating a call were ever left for the Grievant. The State urges the testimony from the Grievant and her Mother on this issue be disbelieved.

The investigating officer, Tom Ratcliff, received from Officer Barbara Buenaga an unopened kite. Examination showed it to be of a romantic nature. Part of the material is dated 5/26. It refers to the author being able to see Ms. Saunders from his location in the Hole. Robinson was in the hole at the time.

Prior to these events, in the summer of 1992 Ms. Saunders had been directed not to have contact with Robinson. She had continued to do so and had received a written reprimand.

All persons in the chain of command in this situation are black. So too is the grievant. There can be no credible claim of race discrimination in this situation according to the State. Ms. Saunders filed complaints of race and sex discrimination during her tenure at the Institution. Investigation showed no basis for those complaints. Not until

after her discharge did the Grievant file a complaint with the EEOC and the Ohio Civil Rights Commission. The OCRC complaint is pending. The EEOC complaint was dismissed due to jurisdictional questions. Even if true, the complaints allege activity by persons not involved in these events except tangentially.

On November 5, 1993 Ms. Saunders allegedly received a call purportedly from an officer on duty at H-1, the hole. The officer wished that Gary Croft visit an inmate lodged there. Mr. Croft was not at the facility. In his stead, Ms. Saunders visited the hole. The inmate in question was Robinson, with whom Ms. Saunders visited. Subsequent investigation showed that no officer on duty at the time of the alleged phone call telephoned either Croft or Saunders. Similarly, Croft testified that neither he nor Saunders would properly have been visiting Robinson at H-1 as they were not responsible for him. Proper procedure would dictate determining the identity of an inmate before a visit. Saunders did not do this.

On November 6, 1993 Saunders again visited H-1. She told Officer Hughes she was authorized to assist Robinson make phone calls. She did so. No such authorization existed. Saunders did not sign the log book. In her testimony at the arbitration hearing Saunders claimed to have spoken with Officer VanGundy while in H-1. She asserted he actually

dialed the phone for Robinson. In fact, VanGundy was not at work on November 6, 1993. When confronted with this discrepancy she claimed to have made a slip of the tongue.

When "Aunt Lilly" called on November 8, 1993 she claimed to be returning a message from Saunders. Procedure does not call for family members to be contacted when an inmate is sent to the hole. Nor is it procedure for a case worker to have contact with the family of an inmate not assigned to them. Saunders testified that when the Unit Secretary passed the telephone call to her she referred it to Robinson's case manager. Yet, when Robinson wanted to contact his family she assisted him. She visited him in the hole. She was not his case manager.

On December 4, 1993 Officer Shawn Dorsey let Robinson into the dorm in which Ms. Saunders had her office. He testified he did so at Saunders request. This was not the first time he had seen the two together. Subsequently he was told by Gary Croft that Saunders and Robinson were not to be in each others' company.

There were other instances of unauthorized contact between the Grievant and Robinson as well. On December 18, 1993 according to Lieutenant William Smith, Robinson entered his office and said that Saunders had called for him. This was denied by Saunders but was confirmed by Smith. On April 4, 1994 Officer Stalter saw Saunders and Robinson enter his

unit together. He refused entry to Robinson. He also indicated that he had seen the two together frequently on The Avenue.

Ms. Saunders' response to the testimony against her was that she was being set-up, that witnesses lied or were part of a conspiracy. This is untrue according to the State. If those allegations are to have credibility it is necessary to believe that numerous people have engaged in a coordinated attempt to secure Ms. Saunders removal from State service. This is simply not the case. Ms. Saunders was directed to cease contact with Robinson. She did not do so. The Employer provided the Grievant and the Union complete opportunity throughout the investigatory process to present testimony and witnesses. None were provided. In this case there occurred more than chance or inadvertent encounters between the grievant and Robinson. There was a pattern of conduct to maximize their contact. This is reflective of an emotional relationship between them that is impermissible in a prison. In support of this proposition the State introduced three prior arbitration awards (including one by this arbitrator) upholding discharge of employees of the Department due to unauthorized contact between staff and inmates. It urges the same result in this case.

Position of the Union: The Union points out that prior to the events under review in this proceeding the Grievant had

served a total of seven years with the State. During that period she had received one written reprimand. She was a good employee.

One of the reasons proffered by the State to justify Ms. Saunders discharge was insubordination involving refusal to obey the direct order of a supervisor. The order in question was to cease further contact with an inmate on another unit (Robinson) without permission and prior approval. At the hearing Ms. Saunders unit manager, Gary Croft, acknowledged that he did not give her a direct order not to see Robinson. Nor did he apprise her of any consequences if she continued to see him. There is no written directive prohibiting her from seeing Robinson. At the time of her removal Ms. Saunders written reprimand was more than two years old. There is no element of progressive discipline in the action of the State in this situation.

Rule 46a dealing with exchange of personal correspondence between staff and inmates was allegedly violated by the Grievant. This is disputed by the Union. The material at issue used by the State to support its action was not signed. Nor was it addressed to Ms. Saunders. Officer Buenaga claims she was told they were from Robinson to Saunders. The person who told her so did not testify. The only name in the correspondence was "Juice." Ms. Saunders denied going by that name. No one was produced who indicated

that she answered to that name. The correspondence was not received by Saunders. Nor was any correspondence found in Robinson's possession from Saunders. A central element of the State's case is unproven in the Union's view.

At the arbitration hearing the State claimed Ms. Saunders telephone number is unlisted. This was proven to be erroneous. A collect call was made from Robinson's dorm to the Saunders residence on February 13, 1994. Ms. Saunders testified she did not receive the call and was unaware of it to the date of her predisciplinary conference. Further, when the call was made, Ms. Saunders was at a concert in Lancaster. This was testified to by her Mother and a family friend. The Union objects to consideration of evidence concerning the telephone call due to the provision of Section 7.06 of the Agreement. That Section calls for exchange of information in order to facilitate resolution of grievances. The material was not provided to the Union until the hearing. Citing the decision of Arbitrator Elliot Goldstein in District 1199 v. Department of Mental Health, the Union points out that due process is an integral part of just cause. That due process was not afforded the Grievant in this instance according to the Union.

The State utilized an alleged violation of Rule 46e to support its discharge in this situation. That Rule prohibits engaging in an unauthorized personal relationship with an

inmate. That did not occur in this situation in the Union's view. Ms. Saunders had incidental contact with Inmate Robinson. Robinson had been Secretary of the CARE program which Saunders administered. He had been in her unit and had been a clerk in the unit office. Robinson also was assigned clean-up duties on The Avenue. It would be difficult, if not impossible for Saunders to avoid seeing him there. An exchange of pleasantries should not be elevated to evidence of a romantic relationship when none existed.

When Ms. Saunders visited Robinson in the hole on November 5, 1993 it was due to the fact that Gary Croft was unavailable. She did not know the identity of the inmate she was to see when she went to H-1. When she assisted Robinson in placing a phone call the following day it was at the behest of Captain Hill. The call was authorized by Lieutenant Bradbury. She committed no offense in this situation.

When informed of the phone call from Aunt Lilly Saunders directed the caller to be routed to Unit 3 where Robinson was then housed. The Secretary of Unit 5, Ann Fritts, should have transferred the call to the appropriate unit without further direction. That she did not do so does not represent any dereliction of duty on behalf of Saunders.

When Robinson arrived at the area where Saunders worked on December 4, 1993 he was granted entry by the Correction Officer on duty. Saunders had nothing to do with Robinson's

entrance to the dorm.

When Robinson asked to see Saunders on December 18, 1993 Saunders refused to see him. She had returned a call to Robinson's dorm and indicated as much. The return of a telephone call cannot be used against the Grievant according to the Union.

Robinson was observed standing nearby Saunders on April 5, 1994. She did not know he was there. Robinson did not enter the dorm with Saunders. He was sent away by the Correction Officer on duty. Shortly afterwards, on April 9, 1994 Officer Bland sought out Ms. Saunders. She asked Saunders to wait for a moment in the day room while she attended to other tasks. Then, she locked the doors, confining Saunders. Upon her return approximately one-half hour later Bland indicated she did not have time to speak with Saunders. The area in question was that inhabited by Robinson. Saunders was responding to a request from Bland, not seeking out Robinson when she went to the dorm. This incident cannot be used against Saunders in the Union's opinion.

Saunders did have contact with Robinson from time to time during her service at the Institution. The events complained of by the State were incidental to her normal tasks. They were not a manifestation of any romantic involvement between them. There is no evidence of any action

by the Grievant to initiate an improper relationship between herself and Robinson. Nor is there any evidence of an effort by her to continue any sort of improper relationship. As that is the case, the Union urges the Grievant be restored to employment and made whole.

Discussion: That the State generated telephone records of a call to Ms. Saunders residence after her discharge does not violate any concept of due process. It is not to be expected that an investigation that results in discipline will be 100% complete as of the day discipline is administered.

Frequently additional facts or data come to light after discipline has been imposed that may serve to bolster the employer's case. This is different from the development of facts that may be used to provide new and different grounds for discharge or discipline after its initial imposition. In this situation discovery of phone calls from Allen Correctional Institution to Ms. Saunders residence occurred after her discharge. That does not make them invalid for evidentiary purposes. Those calls are an integral part of the case put forward by the State. They are related to its central charge, that the Grievant had an improper relationship with an inmate. As such, they do not infringe upon the concept of due process. Rather, they are an addition to the rationale proffered by the State to support its action in this situation.

A central contention of the State is that Ms. Saunders was insubordinate. She allegedly disobeyed orders to refrain from contact with Inmate Robinson. Those directives were supposedly given to her on August 26, September 22 and October 26, 1993 by Gary Croft. During the arbitration hearing Mr. Croft modified his initial testimony concerning his orders to Ms. Saunders. He admitted that he did not give her a direct order not to see Robinson. Nor did he indicate that discipline would be forthcoming if Saunders continued to see Robinson. The record does not show that the Grievant was given a direct, unambiguous order to refrain from all contact with Robinson. The most that may be concluded is that she was told not to have dealings with him. In the context of a prison, with its confined space, such an admonition is difficult to comply with consistently. The possibilities for chance encounters are many in the restricted area in which employees and inmates find themselves. The evidence presented by the State in this case does not demonstrate that Ms. Saunders deliberately went out of her way to rendezvous with Robinson.

When Ms. Saunders visited Robinson in the hole on November 5, 1993 it was not on her own initiative. A call was placed for Gary Croft. He was not at work that day. The caller asked the person who answered, Ms. Saunders, to come to the hole. Her arrival there was her first indication the

inmate who required attention was Robinson. It was happenstance that Robinson, who was no longer on her caseload, was involved. As a matter of fact, Saunders was successful in calming Robinson. That she failed to sign the sign-in and sign-out sheets at H-1 scarcely provides grounds for serious discipline. Unrefuted testimony was received that the Correction Officer on duty told her not to be concerned about the sign-in - sign-out procedure as her presence had been recorded in the log book.

The record establishes that telephone calls were on occasion made to Ms. Saunders residence by a person most likely to have been Robinson. What the record does not establish is that those calls were prompted by her or that she ever spoke with the Inmate. Even if she did, there is no evidence that both Saunders and Robinson were engaged in the sort of relationship at issue in the McClendon dispute. (Case No. 27-09(61792)091-01-03. In McClendon the evidence established beyond susceptibility of doubt that mutuality was involved. That is, both parties were attracted to one another and engaged in improper activity as a result. This situation does not present the same evidence of mutuality as McClendon. The record does not show that the Grievant reciprocated the feelings towards Robinson that he may have had for her.

The most significant evidence put forward by the State in support of its case are the letters allegedly written by

Robinson to Saunders while he was in the hole. (In Joint Exhibit 4). There are substantial problems in giving those documents the weight the State asserts they deserve in this proceeding. There is no signature but for reference to "Teddy Bear." The record does not reflect that Robinson was known by that nickname while at the Institution. The letters refer to a person termed "Juice." There is nothing on the record to indicate that Ms. Saunders has gone by that name. No testimony was received from any staff member at the Institution that she was called "Juice" by either staff or inmates. That name may have been a term of endearment between Robinson and Saunders but it was not shown to be the case by the State. More significantly, there is no indication that Ms. Saunders either solicited the material or responded to it. The letters from Teddy Bear to Juice (In Joint Ex. 4) were not received by Ms. Saunders. There is nothing on the record to indicate that Teddy Bear was able to get them to Juice or that he even attempted to do so. Assuming that Teddy Bear was Robinson and Juice was Saunders, the record does not show an exchange of amorous correspondence. No evidence is before the Arbitrator in this case to indicate the Grievant ever sent any letters to Robinson. The State asks the Arbitrator to credit the identities it attributes to Teddy Bear and Juice and to give great weight to the amorous writings in Joint Exhibit 4. Based upon the evidence that is

not possible.


The record made in McClendon showed beyond susceptibility of doubt that the employee and the prisoner were carrying on a romantic relationship. The evidence in that case was overwhelming. Both parties, male and female, were involved. The evidence in this situation does not approach that in McClendon. Rather, the evidence shows contact between Saunders and Robinson that was incidental to their proximity at the Institution. Unlike McClendon which showed a scheme to facilitate telephone contact between the persons involved, the evidence in this dispute does not demonstrate that Saunders conspired with Robinson to establish a telephone link between them. The asserted failure of Ms. Saunders family to tell her of the receipt of various phone calls is unusual. It is insufficient to prompt a conclusion that there existed a plan for telephone calls between them.

The evidence in this situation simply does not substantiate the conclusion sought by the State: that the Grievant engaged in an unauthorized, improper romantic relationship with an inmate. As that is the case, the action of the State cannot be upheld.

Award: The grievance is sustained. The Grievant is to be restored to employment to her duties at Southeastern Correctional Institution. She is to receive all pay and

benefits she would have received but for this incident. The Grievant is to promptly supply to the Employer such evidence of interim earnings including any payments made to her from Unemployment Compensation. Such earnings may be used by the Employer to offset its obligation to the Grievant.

Signed and dated this 27th day of July, 1995 at Solon, OH.



Harry Graham
Arbitrator