

ARBITRATION DECISION

December 31, 1996

In the Matter of :

State of Ohio, Department of Public Safety,)	
Bureau of Motor Vehicles)	
) Case No. 15-02-(951107)-0075-01-09
and)	Patricia D. Jones, Grievant
)
Ohio Civil Service Employees Association,)	
AFSCME Local 11)	

APPEARANCES

For the State:

Richard Corbin, Advocate
 John A. McNally, Office of Collective Bargaining, Second Chair
 Carol Mason-Scott, ODPS, Human Resources Specialist
 Debbie Bell, Witness
 Sancta Ryce, Witness
 Tom Tefft, Witness

For the Union:

William A. Anthony, Advocate
 Robert W. Steele Sr., Staff Representative
 Patricia D. Jones, Grievant
 Rachelle Butcher, Witness
 Henry Young, Witness
 Rosemary Jamison, Witness
 David Gilkerson, Highway Patrol, Witness
 Richard Jones, Witness
 John Kougendakis, Supervisor

Arbitrator:

Nels E. Nelson

BACKGROUND

The instant grievance involves the discharge of Patty Jones. She was hired by the Department of Public Safety, Bureau of Motor Vehicles, in 1983. At the time of her discharge the grievant worked in the Bureau of Motor Vehicle's Columbus licensing agency processing vehicle and drivers license applications in the same fashion as deputy registrars in offices around the State of Ohio. Her title was public information assistant 1.

The events leading to the grievant's discharge began on August 23, 1995. At that time Rachelle Butcher, an acquaintance of the grievant, had her father register her 1985 Ford Escort. Since her birthday was within 45 days, he was allowed to purchase a 1996 registration sticker but he was also required to purchase a 1995 registration for the seven days up to her birthday on August 30, 1995. The deputy registrar at the Grove City office gave her father a 1996 registration sticker but did not give him a 1995 sticker because the 1996 sticker was valid thirty days before its August 30, 1995 beginning date. Although Butcher was in the process of selling the car, she put the 1996 sticker on the car because she had been warned by the police that she could not leave an unregistered vehicle on the street.

On August 28, 1995 the grievant and her ex-husband looked at Butcher's car. The grievant's ex-husband agreed to purchase the car for \$350. Since Butcher did not have the title for the car and did not wish to be paid at that time, they arranged to meet on September 1, 1995. Butcher then allowed the grievant's ex-husband to use her license plates to drive the car to his home.

The grievant and her ex-husband met with Butcher as planned. He paid her the agreed-upon amount. Butcher completed the assignment of title on back of the title and the grievant, a notary public, notarized Butcher's signature.

On September 5, 1995 the grievant's ex-husband requested the grievant to get temporary license plates for the car. She completed an application for temporary plates.

The grievant signed her ex-husband's name attesting that the form was completed accurately and that he had insurance or other proof of financial responsibility.

The next day Sancta Ryce, the grievant's supervisor, reviewed the prior day's application forms. She recognized the grievant's ex-husband's name and noted that his signature was done in the grievant's distinctive handwriting. Ryce discovered that the application did not include a power of attorney form which is required whenever one person signs another person's name on an application.

On September 8, 1995 the grievant took Butcher's license plates to work. She completed an application for a "D reversal" which is used to get a refund for an unused sticker or for a sticker which is surrendered prior to the effective date of the sticker. The grievant signed Butcher's name on the application and took \$40 from the cash register.

The next morning Ryce reviewed the applications. She noticed that the grievant had signed Butcher's signature on the application and that no power of attorney was on file. Ryce also noted that the grievant had not brought the application to her for her approval as is the custom for D reversals.

Later that day Ryce told Duwayne Hobson, the chief of the administrative services division, about both applications. A few days later Hobson and Dave Lieurance, the assistant to the chief of field services, interviewed Butcher and obtained a statement from her. It states:

I write this statement of my own free will. On the date of Aug. 23, 1995 tags were bought for my car (1985 Escort). On the date of Sept. 1, 1995 the car was sold to Richard Jones, using my tags for that day only! I was told by [the grievant and her ex-husband] there would be no refund for the tags. I did not give [the grievant or her ex-husband] Power of Attorney.

Thomas L. Tefft, a supervisor in the audit and support section, was assigned to conduct an administrative investigation. He interviewed the grievant; reviewed the statements of Hobson, Lieurance, and Butcher; and examined the applications signed by the grievant. On October 17, 1995 Tefft sent a memorandum to Ann Van Scoy, a labor

relations representative, indicating that the grievant had probably violated a number of work rules.

A pre-disciplinary hearing was conducted on November 3, 1995. A few days later the hearing officer, Robert J. Posey, found that there was just cause for further action. On November 7, 1995 the grievant was terminated by Charles D. Shipley, the director of the Department of Public Safety, for falsifying, altering, or removing official documents in violation of rule #21 and failure of good behavior in violation of rule #33.

A grievance was filed on the same day. It charged that the grievant was terminated without just cause. The grievance asked that the grievant be reinstated with back pay and benefits. When the grievance was not resolved, it was appealed to arbitration. The hearing was held on December 11, 1996. It concluded with closing statements by both sides.

ISSUE

The issue as agreed to by the parties is as follows:

Was the grievant's removal for just cause? If not, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

Article 24 - Discipline

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.

24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.

Disciplinary action shall include:

- A. One or more oral reprimand(s) (with appropriate notation in employee's file);
- B. one or more written reprimand(s);
- C. a fine in an amount not to exceed two (2) days pay for discipline related to attendance only; to be implemented only after approval from OCB;

- D. one or more day(s) suspension(s);
- E. termination.

* * *

24.05 - Imposition of Discipline

* * *

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

STATE POSITION

The state argues that there is just cause to discharge the grievant. It points out that she signed her ex-husband's name on an application for a temporary registration without a power of attorney form. The state claims that this violates its procedures and constitutes forgery.

The state charges that the grievant also signed Butcher's name on an application for a refund of a registration fee. It points out that no power of attorney form was completed. The state emphasizes that Butcher's statement indicates that the grievant told her that she was not entitled to a refund and that she did not give her permission to sign her name.

The state rejects the union's contention that Butcher was intimidated in making her statement or that the statement was dictated to her. It notes that the statement was written by Butcher in her own home with her father sitting only a few feet away. The state indicates that Butcher changed her story only after she received the refund for her registration and learned that the grievant was the subject of a criminal investigation.

The state contends that Butcher was not entitled to a refund because she did not sell her car until after August 30, 1995. It points out that the assignment on the back of the title was not completed until September 1, 1995 so that the car still belonged to her on August 30, 1995. The state stresses that the fact that the grievant put September 1, 1995 on her ex-husband's application for a temporary registration as the date of purchase

reveals that the grievant recognized that the sale did not take place until September 1, 1995 when the assignment was completed and notarized.

The state rejects the union's claim that other employees sign the names of friends and family members on applications. It observes that Debbie Bell, a supervisor, testified that employees are expected to "go by the book" and that Ryce stated that the rules are taken seriously. The state emphasizes that the union did not show that any manager or supervisor had knowledge of an employee signing another person's name on an application when no power of attorney form was on file.

The state acknowledges that the prosecutor had determined that there was not enough evidence to try the grievant for theft in office. It stresses, however, that the issue is the grievant's violation of its rules of conduct. The state maintains that the grievant signed her ex-husband's name and Butcher's name on applications without having a power attorney form. It stresses that the grievant also gave a refund of a registration fee when none was due.

The state disputes the union's claim that Hobson violated application procedures but received no discipline. It points out that Hobson did not sign anyone else's name and that no refund of money was involved. The state maintains that his alleged conduct did not come close to the grievant's conduct.

The state concludes that the discipline that it imposed is appropriate. It states that employees cannot be led to believe that it is okay to steal once. The state asks the Arbitrator to deny the grievance.

UNION POSITION

The union argues that there was not just cause to discharge the grievant. It claims that the discipline was punitive rather than corrective and that progressive discipline was not used. The union asserts that the state's action was arbitrary, capricious, discriminatory, and unreasonable.

The union contends that the grievant did not intend to forge any signatures. It asserts that she had the verbal approval of her ex-husband and Butcher to sign their names on applications in order to expedite the process. The union stresses that if the grievant had intended to forge their signatures, she would not have used her unique handwriting style in signing their names.

The union contends that employees routinely process applications for friends and family members and sign their names on applications. It states that this is the case even where they do not have power of attorney or a signature on file. The union indicates that employees sometimes complete power of attorney forms for friends and family members who are not present.

The union charges that Hobson committed an offense similar to that of the grievant but received no discipline. It observes that Hobson signed an application as the owner of a vehicle while he was only the lessee and that he did not have power of attorney. The union acknowledges that Hobson did not sign the lessor's name but emphasizes that he still misrepresented the truth by signing his name as the owner of the vehicle.

The union contends that there was no attempt by the grievant to defraud the state. It claims that the grievant told Butcher that she might be entitled to a refund and that Butcher gave her carte blanche to do whatever she needed to do to "get the job done" including signing her name. The union admits that it took the grievant a couple of days to get Butcher's refund to her but blames it on their conflicting schedules.

The union charges that the statement by Butcher shows that the state was engaged in a "witch hunt." It claims that Butcher was intimidated into writing the statement which she later recanted. The union maintains that Hobson and Lieurance dictated the statement to her in an attempt to make it appear that the grievant intended to defraud her and the state of \$40.

The union argues that discharge is too severe a penalty for a misjudgment. It points out that the grievant has 12 years of service, no prior discipline related to the

instant charge, and cooperated with the state in the investigation. The union indicates that she is the type of employee who would benefit from corrective discipline and rehabilitation.

The union asks the Arbitrator to reinstate the grievant with full back pay and benefits. It further requests him to retain jurisdiction until the back pay and benefits are calculated.

ANALYSIS

The grievant was discharged for falsifying, altering, or removing official documents in violation of rule #21 and failure of good behavior in violation of rule #33. These charges are based on two incidents.

The first incident occurred on September 5, 1995. At that time the grievant completed an application for a temporary registration for the car her ex-husband had purchased from Butcher. The grievant signed her ex-husband's name on the application affirming that he had insurance or other proof of financial responsibility and that the information provided on the application was true. The grievant did not have power of attorney to sign his name and did not indicate on the application that she was signing for him as is required by the procedures set forth in the deputy registrars manual.

The Arbitrator, however, believes that this violation of the rules cannot serve as the basis for the discipline imposed on the grievant. Jamison and the grievant testified that everyone knows that employees from time to time sign their spouses' names on applications for registrations and that no discipline is imposed. This appeared to be confirmed by an October 5, 1995 memorandum from Bell to Hobson which acknowledges that there may have been occasions when employees were allowed to purchase a sticker without a power of attorney form but as of the date of the memorandum employees would be required to present the same documentation as the general public. Given the apparent lack of enforcement of the rules prior to October 5, 1995, the grievant's discharge for signing her ex-husband's name would be inappropriate.

The second incident occurred on September 8, 1995. The state alleges that on that date the grievant was involved in three instances of misconduct. It complains that she improperly signed Butcher's name on an application for the refund of a registration fee; granted a refund of a fee when none was due; and intended to keep the \$40 refund for herself.

The Arbitrator finds that the grievant did improperly sign Butcher's name on an application for a refund. The procedures contained in the deputy registrars manual require a power of attorney form to be attached to an application that is signed by another person and direct the person signing the form to indicate that he or she is signing for someone else. While it may be that employees have signed applications for renewals of registrations for spouses without a power of attorney form and without indicating that they were signing for a spouse, signing Butcher's name on an application for a refund is another matter. More importantly, it appears that the grievant did not have Butcher's verbal permission to sign her name. The statement which Butcher provided on September 14, 1995 states that she "did not give [the grievant's ex-husband] or [the grievant] power of attorney."

The union's claim that Butcher was coerced into making the statement must be rejected. The statement was taken in her father's home with her father sitting only twelve feet away. It was given to Hobson and Lieurance who were dressed in normal business attire rather than any type of uniform. Butcher wrote the statement herself and indicated that it was provided of her own free will. Most significantly, when Butcher testified at the arbitration hearing, she did not appear to be an individual who could be coerced into writing a false statement against a friend. She resisted attempts by the state's advocate to get her to answer certain questions by responding that she did not recall.

The state also accused the grievant of making a refund of a registration fee when none was due. The deputy registrars manual indicates that a refund is due in two cases. First, it states that employees are "authorized to issue refunds ... on renewal registrations

provided the registration period has not begun." Since the application for the refund was made on September 8, 1995 and the registration period began on August 30, 1995, no refund was due on the first grounds.

Second, the manual provides that "a 'D' reversal is used to refund a registration for an unused sticker." It would appear that no refund was due on this basis. Butcher's father placed the 1996 sticker on Butcher's car on August 23, 1995 because she had been warned by the police about leaving an unregistered vehicle on the street. Furthermore, when Butcher agreed on August 28, 1995 to sell her car to the grievant's ex-husband, she allowed him to use her license plates to drive the car to his home.

The grievant argued, however, that a refund was due because Butcher's sticker **should** have been unused. She maintains that when Butcher's father registered her car on August 23, 1995, he should have been issued a 1995 sticker along with the 1996 sticker so he could have put the 1995 sticker on his daughter's car. The grievant further claims that since Butcher sold her car on August 28, 1995, the 1996 sticker would never have been used which would have made her eligible for a refund.

The Arbitrator agrees with the grievant that the deputy registrar at Grove City should have given Butcher's father a 1995 sticker. On August 23, 1995 he was allowed to purchase his daughter's 1996 sticker which had an effective date of August 30, 1995. Butcher's father was also required to pay for the seven days from August 23, 1995 to August 30, 1995 remaining in the 1995 registration year. Since he was required to pay for part of 1995, he should have been issued a 1995 sticker even though the 1996 sticker would have been recognized thirty days before its effective date.

The Arbitrator also believes that the grievant's claim that Butcher sold her car on August 28, 1995 has merit. On that date Butcher agreed to sell her car to the grievant's ex-husband for \$350 and requested that he pay her on September 1, 1995. She then "delivered" the car to him and allowed him to use her plates to drive the car home. The

fact that the assignment of the title and the payment did not take place until September 1, 1995 would not appear to change the date of the sale.

Despite agreeing with the grievant on these two points, the Arbitrator still must conclude that she was guilty of serious misconduct when she refunded money for Butcher's 1996 registration. The deputy registrars manual is clear. A refund is due for an unused sticker only when the sticker still has the peel-off backing in place or, if the sticker is attached to the plate, when the plate shows no signs of use. The grievant does not dispute that the sticker was attached to the plate while the car was parked on the street and while the car was driven to her ex-husband's home.

While the Arbitrator can understand the argument that the 1996 sticker should have been unused making Butcher eligible for a refund, the grievant knew that the sticker had been used. She ignored the rules in the deputy registrars manual and issued a refund. If she felt that a refund was due despite the provisions in the manual, she was obligated to get the approval of a supervisor before making a refund. In fact, it was the testimony of Ryce and John Kougendakis, the grievant's former supervisor, that no refund can be made without checking with a supervisor.

The Arbitrator, however, believes that the pivotal factor is the state's charge that the grievant intended to keep the \$40 refund. Butcher's statement of September 14, 1995 indicates that she "was told by [the grievant's ex-husband] and [the grievant] there would be no refund for the tags." Despite this the grievant went ahead and sought a refund. This certainly creates the appearance that the grievant planned to keep the refund for herself.

The union offered three responses. First, as indicated above, it claimed that Butcher's September 14, 1995 statement was coerced. The Arbitrator has already rejected this contention. It seems much more likely that Butcher changed her position when she learned that her friend was under criminal investigation.

Second, the union pointed out that the grievant did give Butcher the \$40. The record, however, indicates that Butcher did not get the refund until September 21, 1995.

This was one week after Butcher called the grievant to tell her about the statement that she gave to Hobson and Lieurance.

Third, the union claimed that the criminal charges against the grievant for theft in office had been dropped. It provided a copy of a journal entry from the Criminal Division of the Court of Common Pleas of Franklin County indicating that nolle prosequi was entered in the grievant's indictment because of "witness unavailability and unwillingness to cooperate." However, when the union asked Sergeant David Gilkerson of the Ohio State Highway Patrol to produce documents that it had subpoenaed, he refused to do so because of an on-going criminal investigation.

The Arbitrator must conclude that the grievant was guilty of serious misconduct on September 8, 1995. She signed Butcher's name on a application for a refund of a registration fee without having power of attorney or even verbal permission to sign her name. The grievant then refunded \$40 for the 1996 registration even though no refund was due under the rules in the deputy registrars manual. Finally, the statement written by Butcher on September 14, 1995 suggests that the grievant intended to keep the money for herself.

The union charged that the grievant was subject to disparate treatment because Hobson committed similar offenses but received no discipline. While it can be argued that Hobson did not follow all of the procedures in the deputy registrars manual relating to the registration of a leased vehicle, the instant case involves very different circumstances. In no instance did Hobson sign someone else's name. More importantly, there was no suggestion that he ever sought a refund which he was not entitled to receive.

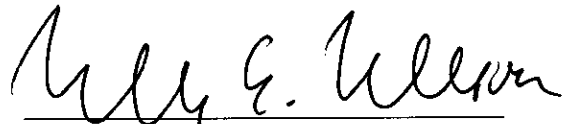
The Arbitrator must also reject the union's claim that the grievant's discharge was punitive in violation of Section 24.04 or contrary to the requirement for progressive discipline contained in Section 24.02. While most discipline has a punitive aspect, an employer has a legitimate concern in preventing the recurrence of a rule violation by a grievant and in discouraging other employees from engaging in similar conduct.

Furthermore, the grievant's termination is consistent with the universally recognized principle that progressive discipline does not have to be used where a serious offense is committed provided the penalty is commensurate with the offense.

The Arbitrator concludes that the state has shown that the grievant was guilty of very serious misconduct that constitutes just cause for termination. He also finds that the union failed to show that the state violated any of the contractual requirements regarding the imposition of discipline.

AWARD

The grievance is denied.



Nels E. Nelson
Arbitrator

December 31, 1996
Russell Township
Geauga County, Ohio