

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration *
Between *
OHIO CIVIL SERVICE *
EMPLOYEES ASSOCIATION *
LOCAL 11, AFSCME, AFL/CIO *

OPINION AND AWARD

Anna DuVal Smith, Arbitrator

Case No. 27-04-040311-1075-01-05

and *

OHIO DEPARTMENT OF *
REHABILITATION AND *
CORRECTION *

Loretta Bettah, Grievant
Removal

APPEARANCES

For the Ohio Department of Rehabilitation and Correction:

David Burrus, Labor Relations Officer
Ohio Department of Rehabilitation and Correction

Laurie Worcester, Labor Relations Specialist
Ohio Office of Collective Bargaining

For the Ohio Civil Service Employees Association, Local 11 AFSCME, AFL-CIO:

Robert W. Steele, Staff Representative
Ohio Civil Service Employees Association, Local 11 AFSCME, AFL-CIO

I. HEARING

A hearing on this matter was held at 9:15 a.m. on September 22, 2004, at the offices of Ohio Civil Service Employees Association in Westerville, Ohio, before Anna DuVal Smith, Arbitrator, who was mutually selected by the parties pursuant to the procedures of their collective bargaining agreement. The parties stipulated the matter is properly before the Arbitrator and presented one issue on the merits, which is set forth below. They were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn or affirmed and excluded, and to argue their respective positions. Testifying for the Ohio Department of Rehabilitation and Correction (the "State") were Investigator Paul Arledge, Investigator Cary Sayers, Food Service Manager Clarence McClain and Food Service Manager Yomi Adjobi. Testifying for the Ohio Civil Service Employees Association, Local 11 AFSCME, AFL-CIO (the "Union") were Cathy Bettah, Paul Wallang, and the Grievant, Loretta Bettah. A number of documents were entered into evidence: Joint Exhibits 1-4, State Exhibits 1-3 and Union Exhibits 1-6. The oral hearing was concluded at 12:55 p.m. on September 22. Written closing statements were timely filed and exchanged by the Arbitrator on October 27, 2004, whereupon the record was closed. This Opinion and Award is based solely on the record as described herein.

II. FACTUAL BACKGROUND

The Grievant was a Food Service Coordinator at Corrections Medical Center, which provides comprehensive health services to adult felony offenders in Ohio. Her state employment began on December 1, 1997. She had received her employer's Standards of Employee Conduct and had no active discipline on her record. On March 11, 2004, the Grievant was removed from state employment for violation of Rule 46a-Unauthorized Relationships A) The exchange of personal letters, pictures, phone calls, or information with any individual under the supervision of the Department or friends of family of same, without express authorization of the Department. This action was timely grieved that same day and fully processed to arbitration as aforesaid

where it presently resides, free of procedural defect on the issue of: *Was the Grievant's removal for just cause? If not, what shall the remedy be?*

The case came to the attention of the State when a private party (G. Jones) claiming to be the girlfriend of a parolee formerly incarcerated at the Corrections Medical Facility ("CMC") contacted the institution to say that the parolee (K. Jones) was living with a staff member of the institution. Upon investigation, much of what Ms. Jones had to say was found to be untrue. However, the parolee claimed in his interview that his real girlfriend was the Grievant, whom he had met while incarcerated at CMC where he worked under the Grievant's supervision in food service. According to Investigator Paul Arledge, the former inmate also said that he and the Grievant had arranged for him to be paroled to G. Jones' residence and that they had communicated by telephone calls from the institution to G. Jones' residence while he was still incarcerated. He also provided other information that lent credibility to these claims. One of these was that the Grievant had filed a nexus report to cover up their relationship. Another was that he knew her address, telephone and cellphone numbers. Institutional Investigator Cary Sayers recovered 64 telephone calls from CMC's system placed under the parolee's PIN to G. Jones' telephone number during the period July 18 through August 3, 2003, the day before he was paroled. He also found that the Grievant had filed an incident report on April 13, 2003, stating that she had learned that her friend, G. Jones, was friends with the inmate. A second report was filed on July 30, 2003, the same date she wrote a nexus report, stating that she had learned the inmate was to be living with her best friend, G. Jones, upon his release on August 4. He further found that the Grievant's time records correlated with dates and times of the telephone calls, and that she had called off sick the day the inmate had been released and the day following. Further, the inmate had been working in the kitchen on the swing shift while the Grievant was on first shift. Sayers interviewed the Grievant, who admitted she had been at G. Jones' residence when the parolee was there, but said she had taken August 4 off long before the inmate was released in order to attend her country's reunion in Cincinnati and that the voice on the telephone

recordings was not hers. It bears noting that the Grievant's native country is Cameroon and she speaks English with a distinctive accent. In Sayers' opinion, though speaking very low for most of the time on the telephone calls, it is the Grievant's voice. He also concluded that her quiet voice and the admonishments from the inmate whenever she spoke up indicates they knew they were being recorded, so used the quiet voice to avoid detection of the woman's true identity. Two food service managers, Clarence McClain and Yomi Adejobi, who claim to have called the Grievant at home several times and so know her phone voice, also listened to one of the recorded phone calls in which the woman's voice can be clearly heard (#64). They wrote statements and testified in arbitration expressing their opinion that the voice was that of the Grievant.

In arbitration the Grievant testified G. Jones is a very close friend whom she has known for ten or twelve years. She denied she had a personal relationship with K. Jones but believes G. Jones did. G. Jones is not from Africa, but she does have other African friends. In support of this testimony, the Union offered two letters purportedly from K. Jones addressed to G. Jones and G. Jones's affidavit supplementing an affidavit offered at the Grievant's pre-discipline meeting. The Grievant further testified as to her whereabouts on the dates of a number of the phone calls relied on by the State. She said she was at work on July 20 (8 calls between 1:52 p.m. and 6:21 p.m., Joint Ex. 3, p. 12) and July 22 (no calls), and offers a statement from her secondary employer which says she was on duty "after 1:00 p.m. on July 20 and 22." (Union Ex. 5) She also testified that on July 20 her family had a cookout for her sister's birthday which she attended. In support she offers Pescaline Bettah's affidavit which states that the party began at 5 p.m., ended at 11:30 p.m., and took place at the Grievant's house. For August 2 (1 call at 12:15 a.m., 3 between 7:26 p.m. and 8:30 p.m., Joint Ex. 3, p. 11), she testified she was at the Cameroon reunion in Cincinnati and offers the affidavit of a member of the TRISCA organization to that effect. She testified she had put in for the entire weekend and following week off, but her supervisor had no coverage for her. She said she told this to Investigator Sayers at her investigatory interview, but before he turned the tape on. She denied she met the

parolee on August 4 and 5 when she called off sick and that the voice is not hers on the phone recordings. She further stated that neither of the supervisors who testified against her ever called her at home for overtime. Yomi Adjobi is the one who calls occasionally, but not for overtime. Both the Grievant's husband and her younger sister testified that they had listened to one or more of the recorded conversations and were of the opinion that the female's voice as not the Grievant's.

III. DISCUSSION

The former inmate with whom the Grievant is said to have had an unauthorized personal relationship was not, at the time of the hearing, under the control of the State and apparently could not be found. At any rate, he did not testify. Therefore, the State's case must stand on the telephonic evidence. The Arbitrator has listened to every minute of the six selected calls, some more than once,¹ the recording of the Grievant's investigatory interview and the Arbitrator's recording of the Grievant's testimony. She has compared the female voices during clear portions of the calls (e.g. the beginning of #51, #59 at 12:56, and several stretches on the #62 and #64) with the interview and testimony recordings. In the Arbitrator's opinion, it is the same woman. She does not know what portions of the recording the Grievant's family members listened to, but the woman's voice is very quiet for most of the recordings. In some places one cannot even tell what she is saying. Some of the calls have other female voices mixed in. In any event, what the Arbitrator heard is enough to establish that the Grievant had a personal relationship with an inmate at CMC at the time of the calls.

The Arbitrator has also examined the Grievant's other defenses. Even if she were to give weight to the affidavits (which she does not because of the State's inopportunity to cross-examine), they do not place the Grievant somewhere else at the time of the calls. ABA Health Services has her on duty after 1 p.m. on July 20, but does not say when, exactly, after 1 p.m.. Her younger sister states that the family cookout was at the Grievant's house on July 20, but does

¹She has also listened to selected portions of the 64-call disk.

not say when the Grievant was there. The TRISCA member's affidavit similarly lacks specificity about when the Grievant was in Cincinnati on August 2. The Arbitrator is thus left with only the Grievant's denials and the testimony of her family members. In the face of what the Arbitrator, herself heard, this is not enough to overturn the removal.

IV. AWARD

The Grievant's removal was for just cause. The grievance is denied in its entirety.



Anna DuVal Smith, Ph.D.
Arbitrator

Cuyahoga County, Ohio
January 20, 2005

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