

1832

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO – DEPARTMENT OF JOB AND FAMILY SERVICES

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME LOCAL 11, AFL-CIO

Grievant: Randy Littlejohn

Case No. 16-11-20041118-0095-01-09

Date of Hearing: June 16, 2005

Place of Hearing: Chillicothe, Ohio

APPEARANCES:

For the Union:

Advocate: Sharon Van Meter Ralph
2nd Chair: Timothy L. Rippeth

Witnesses:

Randy Littlejohn, Grievant

For the Employer:

Advocate: Richard G. Corbin
2nd Chair: Ray Mussio

Witnesses:

Mark Mowery
Rodney Pennington
Dave L. Williams
Mollie de Rojas

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: July 21, 2005

INTRODUCTION

The matter before the Arbitrator is a grievance pursuant to the Collective Bargaining Agreement (“CBA”), in effect March 1, 2003 through February 28, 2006, between the Ohio Department of Job and Family Services (“ODJFS”) and the Ohio Civil Service Employees Association Local 11 AFSCME, AFL-CIO (“Union”).

The issue before the Arbitrator is whether just cause existed to support the removal of Grievant, Randy Littlejohn (“Littlejohn”), for violations of the ODJFS Standards of Employee Conduct. The removal resulted when Littlejohn allegedly filed a false expense report with regard to his work activities on January 28, 2004, and provided false and misleading information in the administrative investigation that followed.

The removal of Littlejohn occurred on November 12, 2004, and was appealed in accordance with Article 24 of the CBA. This matter was heard on June 16, 2005, and both parties had the opportunity to present evidence through witnesses and exhibits. Post-hearing written closing briefs were presented by both parties, with the record being closed as of June 27, 2005. This matter is properly before the Arbitrator for resolution.

BACKGROUND

Littlejohn was employed as a Customer Service Disabled Veterans Outreach Specialist for the Ohio Department of Job and Family Services (“ODJFS”). Prior to employment with ODJFS, Littlejohn retired from the military after a distinguished career of twenty (20) years. Littlejohn’s duties with ODJFS included providing employment and training services to military veterans in the southeastern geographical region of the state. Littlejohn was required to work with organizations and community leaders to aid

veterans who sought assistance and/or support. Littlejohn had been employed by ODJFS for approximately five (5) years at the time of his removal on November 12, 2004.

At the time of his removal, Littlejohn was “headquartered” out of the ODJFS Ironton Processing Center, but physically worked out of the Portsmouth One-Stop office. Littlejohn lived in Kitts Hill, Ohio, approximately forty (40) miles from the Portsmouth One-Stop office. The Ironton Office Manager, Mark Mowery (“Mowery”), was Littlejohn’s supervisor at all times pertinent herein. Mowery indicated that Littlejohn’s job required him to travel on a daily basis. Littlejohn was required to submit expense reports for reimbursement associated with his travel expenses. The travels were primarily by car to various locations, such as Portsmouth, Ashland, Athens, etc. Mowery would typically meet with Littlejohn and the other Outreach Specialist every other week, but would receive itineraries from them indicating key activities and planned travel arrangements for that week.

Giving rise to Littlejohn’s removal were events that occurred on January 28, 2004. On January 28, 2004, Littlejohn and a co-worker, Rodney Pennington (“Pennington”) were scheduled to attend a meeting for the quarterly Southeast Ohio Coalition for the Homeless in Athens, Ohio. The coordinator for the meeting was Steve Wasserman (“Wasserman”). The meeting was to occur from 11:30 a.m. to about 1:30 p.m. at the “Timothy House,” a homeless shelter in a residential neighborhood in Athens, Ohio. This meeting was on Littlejohn’s itinerary that was emailed to Mowery for the week of January 26, 2004. (Management Exhibit (“MX.” 3). According to Littlejohn, he did not attend the meeting on January 28, 2004, primarily due to the weather. However, Littlejohn contends that he drove to Athens and submitted for reimbursement, travel

expenses on his State of Ohio Travel Expense Report, of which he received compensation. (MX. 2).

ODJFS was unaware that Littlejohn had not attended the meeting at the Timothy House until a few weeks later, when Pennington mentioned that fact to a supervisor. Upon notification that Littlejohn had not attended the meeting, Mowery initiated an administrative investigation into the matter. The ODJFS investigation included the following: Littlejohn's itinerary; Pennington's itinerary; sign-in/sign-out sheets from the Portsmouth One-Stop; Littlejohn's official expense report; two (2) investigatory interviews with Littlejohn; Littlejohn's cell phone records; a statement from Pennington; a statement from Wasserman; and other records to ascertain Littlejohn's whereabouts on January 28, 2004.

On October 1, 2004, a pre-disciplinary conference was convened to inform Littlejohn of the charges against him and to ascertain what disciplinary action should be taken, if any. The Pre-Disciplinary Hearing Officer determined that Littlejohn had violated ODJFS Standards of Employee Conduct D1: "Falsifying or fraudulently altering any official or public document," and F21: "Refusal to fully cooperate, interfering with and/or providing incomplete, or misleading information in an investigation or inquiry." Effective November 12, 2004, Littlejohn was removed from his position by Thomas J. Haynes ("Haynes"), Director, ODJFS.

The Employer believes that just cause existed to impose the discipline of removal. On the other hand, the Union believes that Littlejohn did not warrant removal.

ISSUE

Was the Grievant, Randy Littlejohn, removed for just cause? If not, what shall the remedy be?

RELEVANT PROVISION OF THE CBA ODJFS WORK RULES 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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have the authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(i).

ODJFS STANDARDS OF EMPLOYEE CONDUCT POLICY

D 1: Falsifying or fraudulently altering any official or public document (e.g., work documents, travel report, attendance records, employment application, physician's verification, etc.)

<u>OFFENSE</u>			
1 st	2 nd	3 rd	4 th
Suspension or Removal	Removal		

F 21: Refusal to fully cooperate, interfering with and/or providing false, incomplete, or misleading information in an investigatory or inquiry

<u>OFFENSE</u>			
1 st	2 nd	3 rd	4 th
Determination based on the severity of the incident			

POSITION OF THE PARTIES

POSITION OF THE EMPLOYER

The Employer contends that it had just cause terminate Littlejohn's employment. Specifically, Littlejohn violated ODJFS Standards of Employee Conduct D1: "Falsifying

or fraudulently altering any official or public document,” and F21: “Refusal to fully cooperate, interfering with and/or providing false, incomplete, or misleading information in an investigatory or inquiry,” with regards to the events on January, 28, 2004, and the investigation that followed.

On January 28, 2004, Littlejohn was scheduled to attend a Southeast Homeless Veterans meeting at the Timothy House with Pennington. This meeting was on Littlejohn’s itinerary and subsequently was also documented on his travel expense report. (Joint Exhibit (“JX.” 6). The Employer was not aware that Littlejohn failed to attend the Timothy House meeting until a few weeks later, when Pennington mentioned to a supervisor that Littlejohn had not attended the meeting. Upon notification that Littlejohn had not attended the meeting, the Employer initiated an administrative investigation. Mowery contacted Pennington to find out what he knew about the meeting and whether or not Littlejohn attended. Pennington told Mowery that Littlejohn had not attended the meeting, but Littlejohn had made two (2) phone calls to him on January 28, 2004. In the first telephone call around 9:14 a.m., Littlejohn told Pennington that his car skidded into a ditch near his home in Kitts Hill, and that he would be delayed. In the second call around 10:09 a.m., Littlejohn sought directions to the Timothy House, as he was no longer in the ditch and was now on his way to Athens.

It is undisputed that Littlejohn did not attend the meeting, nor did he notify his supervisor or manager that he did not attend the meeting. In addition, Littlejohn did not inform his supervisor that he had any car trouble that prevented him from attending the meeting. However, Littlejohn submitted a detailed expense report claiming mileage and time traveled to Athens, Ohio for the meeting. Littlejohn also claims that he reported to

the Portsmouth One-Stop on two (2) occasions that day, which is also contained on his expense report. (MX. 2). As a result, Littlejohn was paid expenses for the trip to Athens and paid for the hours worked as well.

During the investigation, the Employer obtained Littlejohn's cell phone records to verify if Pennington's recollection was accurate. The Employer points out that Littlejohn's AT&T cell phone usage report provides further evidence that Littlejohn was not where he alleged on his expense report. The detailed listing of calls on his cell phone usage report confirmed that Littlejohn made two (2) calls to Pennington on the morning of January 28, 2004. However, both calls went through an Ashland, Kentucky cell tower instead of the tower closer to Athens, Ohio. The Employer provided evidence that it was unlikely that calls placed from the Athens area would be routed through the Ashland/Huntington towers. Therefore, the cell phone usage report further discredits Littlejohn's position that he was in or near Athens, Ohio at times he alleged on his expense report.

According to Littlejohn's expense report, from 8:30 a.m. to 10:30 a.m. he was in route from Portsmouth to Athens. (MX. 2). However, during the investigatory interviews Littlejohn indicated that he did not arrive in Athens until 11:30 a.m. At that time, Littlejohn's car went into a ditch. Simply, which ditch version is believable?

The Employer refutes Littlejohn's claim that he drove to Athens but was unable to locate the Timothy House. The Employer points out that the Timothy House has an address; and that the street, city name, and a contact number for information are listed on the Timothy House's website. Also, Littlejohn had to ask Pennington the mileage from Portsmouth to Athens for his expense report, despite allegedly taking the trip himself. In

addition, Littlejohn had been to the Timothy House once before. Further, Littlejohn made no attempt to call Pennington, who was at the Timothy House, a third time for help with directions to the meeting site. Also, why did Littlejohn not call Pennington when he allegedly went into the ditch in Athens?

The Employer contends that it had just cause to terminate Littlejohn's employment because Littlejohn provided a false expense report in violation of ODJFS rule D1. In the expense report he submitted, Littlejohn outlined two extended stops at the Portsmouth One-Stop on January 28, 2004. No evidence supports the finding that the roads were hazardous from recent snow storms. Littlejohn alleged he drove thirty-seven (37) miles out of his way to report to the Portsmouth One-Stop before driving to Athens. However, no evidence exists to find that Littlejohn was at the Portsmouth One-Stop on January 28, 2004, at any time. Specifically, Littlejohn departed the Portsmouth One-Stop without having turned on his computer, without performing any work-related duties, without interacting with or being seen by any other employee. Further, the Employer points out that Littlejohn failed to utilize the route slips at any time on January 28, 2004, despite the fact that he routinely complied with the sign out policy on other days the week of January 26, 2004. (MX. 6, 8, 9).

The Employer also contends that Littlejohn violated ODJFS rule F21: "Refusal to fully cooperate, interfering with and/or providing false, incomplete, or misleading information in an investigation or inquiry." Specifically, Littlejohn has provided conflicting information at both investigatory interviews and has continued to modify times associated with his expenses and interaction with Pennington. The Employer initially points out that the times submitted on Littlejohn's expense report do not match

any of his varied explanations for his whereabouts on January 28, 2004. In addition, the two investigatory statements of April 21, 2004 and August 12, 2004 that Littlejohn authored are in direct conflict. (JX. 5 (a)). For example, Littlejohn claimed to have arrived back at the Portsmouth One-Stop around 3:00 p.m. on January 28, 2004. He allegedly stayed at the Portsmouth One-Stop until 5:00 p.m. However, during the two investigatory meetings of April 21, 2004 and August 12, 2004, and at the pre-disciplinary meeting, Littlejohn changed his story regarding the location of the accident; conversations with Pennington; and the amount of time he spent at the Portsmouth One-Stop. (MX. 2). In addition, Littlejohn contradicted himself at the Arbitration hearing by stating that he left the office at 3:30 p.m.

The Employer urges it applied the correct disciplinary penalty when it recommended Littlejohn's removal as a Customer Service Disabled Veteran Outreach Specialist. The Employer asserts that fudging travel reports and providing false and misleading information were in direct conflict with the nature of Littlejohn's employment. The Employer maintains that any other disciplinary penalty besides removal would be an affront to the public who must believe public employees are held accountable for the performance of their duties and the honest and accurate reporting of their expenses.

The Employer submits that the credibility of Littlejohn is at odds with Pennington's written statement (JX. 5); Littlejohn's own expense report (JX. 6); Littlejohn's own cell phone records (JX. 3); Littlejohn's testimony at the Arbitration hearing contradicts with prior times provided by Littlejohn regarding what time he arrived and departed the Portsmouth office (Employer's Post Hearing Brief, p. 1); and

Littlejohn's expense reports are in opposition to each subsequent version of "that day" provided by Littlejohn.

The Employer requests that the grievance be denied in its entirety.

POSITION OF THE UNION

Grievant, a decorated twenty (20) year veteran of the U.S. Air Force ("USAF") and a valued employee of ODJFS was removed without just cause. Littlejohn had received good performance evaluations in the past, warranting at least mitigation by the Employer. (Union Exhibit ("Un. Ex." 2).

On January 28, 2004, a snowy and cold day in Southern Ohio, Littlejohn was scheduled to travel to Athens to attend a meeting at the Timothy House. The meeting was scheduled to begin at 11:30 a.m. at a homeless shelter that is non-descript in appearance, displays no signage, and generally cannot be distinguished from family residences in the area. On that day, Littlejohn, as opposed to departing from his house to Athens, first reported to the Portsmouth One-Stop and worked for about thirty (30) to sixty (60) minutes, and then departed for Athens, Ohio. Upon arriving in the Athens area, Littlejohn's car slid into a ditch. At approximately 12:30 p.m., after spending between thirty (30) and forty-five (45) minutes in a ditch, a Good Samaritan helped Littlejohn extricate his vehicle from the ditch. Littlejohn attempted to locate the meeting, eventually finding himself at a residence that appeared to be the Timothy House. Littlejohn quickly became convinced that he was at the wrong location or very late because he did not see Pennington's red truck parked in the vicinity. After traveling approximately thirty-four (34) miles from his home in Kitts Hill to the Portsmouth One-Stop; another eighty-six (86) miles to Athens; sliding into a ditch, and apparently missing

the meeting; Littlejohn had enough. He got into his vehicle and returned to the Portsmouth One-Stop, arriving in the late afternoon. According to Littlejohn's testimony, he arrived back at the Portsmouth One-Stop around 3:15 p.m. and only stayed for about fifteen (15) minutes before he departed to go home.

In addition, the Employer improperly relied on the Portsmouth One-Stop "route" slips¹ as the evidence that Littlejohn did not report to work at the Portsmouth office on January 28, 2004. While the route slips were customarily used by the One-Stop Operator to determine who was in or out of the office, the route slips were not required by the Employer to be completed each time an employee entered or exited the building. Also, Littlejohn and Pennington both testified that there were many occasions when they failed to complete the log. Further, it was a practice of many Portsmouth staff to enter the building from the side door, particularly when there was inclement weather; thereby bypassing the sign in procedure and minimizing contact with workers. Littlejohn believes he used the side entrance on January 28, 2004, thereby explaining the absence of his name on the log and no contact with co-workers. The Union contends that it is possible that Littlejohn worked on January 28, 2004, and co-workers failed to recall seeing him that day. Littlejohn claims that workers were interviewed over four (4) months after the date in question as a plausible explanation.

The Union contends that the Employer lacked just cause to remove Littlejohn because Littlejohn did not violate ODJFS rule D1: "Falsifying or fraudulently altering any official or public documents." In several emails sent from Mowery, Littlejohn and Pennington were given great latitude in terms of setting and modifying daily schedules and itineraries at their discretion. Therefore, the Employer's conclusion that Littlejohn

¹ Route slips, otherwise commonly referred to as the sign-in/sign-out log.

committed an ODJFS rule D1 violation by falsifying his expense report and/or failing to notify his supervisor of his itinerary change is flawed because Littlejohn was not required to notify Mowery of itinerary changes that routinely occurred. Namely, the alleged time inconsistencies on his expense reports are not material, because Littlejohn drove to Athens and actually worked at the Portsmouth One-Stop, validating the claimed two hundred and sixty-four dollars (\$264) reimbursement he received. (MX. 2).

The Union points out that it is possible Littlejohn did not log onto his computer that day because he was only there for a relatively short time in the morning and the afternoon of his trip to Athens, Ohio. The Employer's reliance upon Pennington's version as to the cell phone call(s) made by Littlejohn, and Pennington's recollection is tainted due to animosity which existed between the two. Pennington and Littlejohn worked in a very small office together and on at least one occasion they exchanged harsh words to each other. Simply, the Employer was flawed in relying on a written statement from the disgruntled, "vindictive" Pennington as the key evidence that Littlejohn did not work on January 28, 2004.

The Union further contends that the Employer's reliance on Littlejohn's cell phone records to determine that his location on January 28, 2004 was in the Kitts Hill, Ohio area is flawed because the Employer failed to provide any corroborating documentation from AT&T to support that theory. In contrast, Littlejohn provided testimony regarding his conversations with AT&T, in that the cell phone tower nearest the caller is not the tower that always receives or transmits that signal. For example, Littlejohn's cell phone records from February 11, 2004 indicate that calls made from Portsmouth showed the "calls from" the Chillicothe and the Charlestown, West Virginia

towers. Therefore, the cell phone records are inconclusive to support the Employer's claim that it is unlikely Littlejohn left the area near his home on January 28, 2004.

The location of the Timothy House was problematic as well, according to the Union. The Union provided photographic and website evidence that describes the Timothy House as non-descript in appearance, and without signage that might otherwise distinguish it from other family residences in the neighborhood. Further, Littlejohn had only visited the Timothy House once before, almost a year ago. Therefore, for Littlejohn to have forgotten the exact location of the Timothy House under the dire straits that occurred on the morning of January 28, 2004, was plausible.

The Union also contends that the Employer lacked just cause to remove Littlejohn because ODJFS rule F21: "Refusal to fully cooperate, interfering with and/or providing false, incomplete, or misleading information in an investigation or inquiry" was not violated. ODJFS rule F21 was not violated because there is no evidence that Littlejohn intentionally, or unintentionally, provided false or misleading information throughout the course of the investigation. Prior to the first investigatory interview conducted in April 2004, Littlejohn requested additional time to gather information and to refresh his recollection of the events that occurred on January 28, 2004. This request was denied. Consequently, Littlejohn had some difficulty reconstructing the sequence of events of that day, conversations with co-workers, and approximate times that events occurred. Moreover, the fact that time has dulled some of Littlejohn's recollection of the events of January 28, 2004 does not automatically imply that he falsified records in violation of ODJFS Standard of Employee Conduct F21. Regarding credibility, Pennington's version

of the events is based upon a vendetta against Littlejohn. ODJFS inappropriately relied upon Pennington's recollection of events.

Lastly, the Union contends that the Employer acted in an egregious fashion when it deliberately chose to pursue disciplinary action against Littlejohn despite the presence of mitigating information. The Union maintains that the disciplinary action taken was not commensurate with the alleged offense. Thus, the disciplinary actions taken were punitive, rather than corrective in nature. Simply put, Littlejohn was a good employee of ODJFS with one minor exception. Therefore, the Union contends that none of the series of events that befell Littlejohn on January 28, 2004, alone or combined, were serious enough to justify termination Littlejohn's employment.

The Union seeks that Littlejohn be made whole with no loss of pay or benefits and that records related to the termination be expunged from his file.

BURDEN OF PROOF

It is well accepted in discharge and discipline related grievances, the employer bears the evidentiary burden of proof. See, Elkouri & Elkouri – How Arbitration Works (6th Ed., 2003). The Arbitrator's task is to weigh the evidence and not be restricted by evidentiary labels (i.e. beyond reasonable doubt, preponderance of evidence, clear and convincing, etc.) commonly used in non-arbitable proceedings. See, *Elwell- Parker Electric Co.*, 82 LA 331, 332 (Dworkin, 1984).

The evidence in this matter will be weighed and analyzed in light of the Employer's burden to prove that the Littlejohn was guilty of wrongdoing. Due to the seriousness of the matter and the Article 24 requirement of "just cause," the evidence

must be sufficient to convince this Arbitrator of (the Grievant's) guilt. See, *J.R. Simple Co. and Teamsters, Local 670*, 130 LA 865 (Tilbury, 1984).

DISCUSSION AND CONCLUSION

After a review of the testimony, exhibits, and post hearing arguments of both parties, the grievance is denied. My reasons are as follows:

When widely different versions of the facts are presented, it is the Arbitrator's duty to evaluate the testimony and reach the best logical conclusion. See, *Texas Electric Steel Casting Co.*, 28 LA 757 (Abernathy, 1957). Based upon all of the testimony, the resolution of the credibility conflict in this arbitration proceeding was not particularly difficult. Littlejohn's credibility is pivotal, in that Littlejohn's self-interest is at issue and he could be motivated to be evasive. To assist this Arbitrator to reach the most plausible conclusion on credibility, I relied upon my interpretation of the evidence, my observations of the demeanor of each witness, and my review of each of the exhibits introduced by the parties. For the reasons contained herein, Littlejohn's sworn testimony was not credible in light of the record, superior credible testimony, and exhibits offered by the Employer.

After considering the entire evidence, affording each witness and documentary evidence the proper weight, this Arbitrator finds that the Employer had just cause to remove Littlejohn because he violated ODJFS Standards of Employee Conduct D1 and F21.

The evidence offered is overwhelming that Littlejohn submitted a false expense report for January 28, 2004. In the travel expense report Littlejohn submitted, he claimed to have traveled to Athens and made two trips to the Portsmouth One-Stop on January 28,

2004. It is illogical that Littlejohn would have driven from his home in Kitts Hill to the Portsmouth office before departing for Athens, Ohio. Coupled with the allegation that it was a “snowy and cold day in southern Ohio” and Littlejohn had no meetings or documents to pick up, he could have driven directly to Athens; thus, saving him and the taxpayers the cost of the extra miles driven. The direct route to and from Athens would have resulted in a savings of seventy-five (75) miles and approximately ninety (90) minutes of time on the alleged potentially hazardous roads. Littlejohn, as part of the rationale to take the longer route, testified that to take the direct route would have required him to drive through Wayne National Forest where the roads are generally more hazardous. Unfortunately, no evidence was offered in the record to support that the roads on January 28, 2004 through Wayne National Forest were any more dangerous than any other road. Therefore, what was the business justification for Littlejohn to go to the Portsmouth One-Stop on the morning of January 28, 2004?

The evidence further supports the Employer’s contention that Littlejohn did not come to the Portsmouth One-Stop office on the morning of January 28, 2004. Specifically, Littlejohn did not interact with or be seen by any other employees on the day in question, he did not place any calls on the State phone system, and did not turn on his computer. Further, Littlejohn did not sign in/out of the Portsmouth One-Stop after his morning visit to the Portsmouth One-Stop on January 28, 2004. Assuming arguendo, that the sign-in/sign-out log is not instructive as to his presence at the office, the other unaddressed factors do not support Littlejohn’s claim that he was physically present at any time at the Portsmouth One-Stop the morning of January 28, 2004. Therefore, while Littlejohn claims to have made two trips to the Portsmouth One-Stop on January 28,

2004, he is unable to produce a shred of evidence that supports his position. With respect to the allegations that Littlejohn reported to the Portsmouth One-Stop in the afternoon around 3:15 p.m., I find the same analysis applicable, as well as the same conclusion. In other words, there is no inference that allows a finding that Littlejohn was at the Portsmouth One-Stop in the afternoon of January 28, 2004. Consequently, this Arbitrator finds that Littlejohn did not, in fact, make the two trips to the Portsmouth One-Stop as claimed on his expense report.

Littlejohn admits that he did not attend the meeting at the Timothy House, as indicated on his expense report. However, Littlejohn believed that he was entitled for the pay for hours worked and the travel expenses he incurred to Athens. Littlejohn testified that he slid into a ditch in Athens around 11:30 a.m. and was aided by a Good Samaritan who helped him out of the ditch approximately forty-five (45) minutes later. Upon getting free from the Athens ditch, Littlejohn went to a house that was not the Timothy House. At that point, Littlejohn got back into his car and returned to the Portsmouth One-Stop, stopping along the way to have lunch.

This Arbitrator finds that Littlejohn's account of the alleged trip to Athens contains theories not supported by any evidence. While the Timothy House may be without any signage that makes it distinguishable from other family residences in the neighborhood, the address and contact information for the Timothy House are easily ascertainable.² In addition, Littlejohn testified that he had been to the Timothy House once before. It is undisputed that Littlejohn's cell phone was operable between 11:30 a.m. and 1:30 p.m. on January 28, 2004. Why did he not call Pennington or Mowery

² The website as correctly pointed out by the Employer revealed the Timothy House was located at 91 Central Avenue Athens, Ohio, and contained a phone number.

when he went into the Athens' ditch? He placed a call to his wife's office at 11:59 a.m. (JX. 3). It is simply not believable that after all the time and trouble Littlejohn encountered getting to Athens, he would simply turn around and drive back to Portsmouth without calling Pennington or Mowery to update them on the Athens ditch incident or to ascertain the correct directions for the meeting. It seems clear to this Arbitrator that if Littlejohn had called Pennington about the Athens ditch incident, Pennington would have been put on "red alert" about the veracity of the Kitts Hill ditch incident that occurred earlier that day.

The Employer also points out that Littlejohn's AT&T cell phone usage report indicates that the two calls to Pennington on January 28, 2004 were "calls from" the Ashland, Kentucky cell tower instead of one closer to his alleged location in Athens, Ohio. Due to my earlier conclusions, I will not opine as to the weight or relevance of the cell phone records, based on the technological inconclusiveness that calls from one area can be routed through towers that are located further away from the caller than the nearest tower.

Other factors that aided my decision were that Littlejohn had to ask Pennington for the mileage total for the trip to Athens, and Littlejohn's claim that he stopped somewhere for lunch but had no idea the name and location of the restaurant, support the conclusion that Littlejohn did not make the trip to Athens, or selective recall is fatal in this matter. Simply, not a shred of corroborating evidence was offered to establish Littlejohn's presence in Athens.

Littlejohn correctly points out that Mowery allowed great latitude in terms of setting and modifying daily schedules and itineraries. However, the freedom to modify

one's itinerary at will does not grant one the right to claim expenses on work that never occurred. Thus, with the authority to change itineraries and keep track of time worked, the employee undertakes that he/she will honestly and accurately account for their time. However, when an employee falsifies time records it is considered an act of theft, subject to the appropriate discipline. *Alofs Mfg. Co.*, 89 LA 5 (Daniel, 1987). Therefore, after carefully weighing all the evidence, this Arbitrator finds that Littlejohn submitted a false travel report in regards to his reported expenses on January 28, 2004, in violation of ODJFS Standard of Employee Conduct D1.

The next determination, does credible evidence support the Employer's contention that Littlejohn violated ODJFS Standard of Employee Conduct F21: "Refusal to fully cooperate, interfering with and/or providing false, incomplete, or misleading information in an investigatory or inquiry?" While time may have dulled Littlejohn's recollection, the stark inconsistencies in Littlejohn's statements pertaining to the events of January 28, 2004 indicates that Littlejohn continued to change and modify his story as more evidence became available. Littlejohn's statements of April 21, 2004 and August 12, 2004 are nonsensical and in direct conflict with each other. For example, Littlejohn initially told Mowery that he had attended the Southeast Homeless Veteran's Meeting, but, changed his statement when he found out that Pennington verified that he had not, in fact, attended the meeting.

In addition, Littlejohn's statements about how long he was at the Portsmouth One-Stop in the afternoon following the alleged trip to Athens on January 28, 2004, and Littlejohn's statements pertaining to the content of his phone calls with Pennington are examples of Littlejohn's statements that have changed during the course of the

investigation. Another glaring example of the inconsistencies with Littlejohn's account of January 28, 2004 is contained in his State of Ohio Travel Expense Report. (JX. 2). In the Travel Expense Report, Littlejohn submitted that he arrived in Athens at 10:30 a.m. and departed there at 1 p.m. (JX. 2). However, Littlejohn later testified that he got out of the ditch at approximately 12:30 p.m., after spending between thirty (30) and forty-five (45) minutes in the ditch. Therefore, while the times on the Travel Expense Report may have been "approximate," Littlejohn cannot account for hours worth of events that day. Littlejohn's written statements about the events of January 28, 2004, serve as a feeble attempt to justify conduct that is unexplainable. No credible evidence was offered to refute or explain the plethora of inconsistencies provided by Littlejohn regarding the events of January 28, 2004.

Further, this Arbitrator finds that the Union's claim that the disciplinary penalty was not commensurate to the offense and punitive in nature is without merit. Where the grievant has been completely forthright about his/her conduct and has cooperated with the investigation, arbitrators have found this a mitigating factor. See, e.g., *Ameripol-Synpol Co.*, 100 LA 896 (Nicholas, 1993). As discussed *supra*, this Arbitrator finds that Littlejohn has been less than forthright during all facets of the investigation in an attempt to fit his story to the facts as they become available. Consequently, Littlejohn's discipline is not worthy of mitigation.

Moreover, pursuant to the ODJFS Standards of Employee Conduct, the disciplinary penalty for a first offense D1 violation is suspension or removal. In a case with similar facts, the court, in *Herbert*, ruled that an employer had "just cause," in accordance with company policies and the O.R.C., to terminate an employee who had

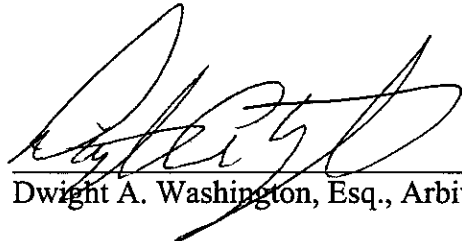
falsified reports about work that never happened. *Herbert v. Administrator, OBES*, 1984 LEXIS 12259 * 2 (Ohio App. 9th 1984). Therefore, similar to *Herbert*, the Employer was within its rights to remove Littlejohn. A review of the record convinces this Arbitrator that the Employer did not act arbitrary or unreasonable, or that the penalty is excessive.

Finally, while it is uncontested Littlejohn was a decorated veteran of the USAF and a good employee of ODJFS, he unfortunately, made a series of mistakes which justified his removal.

AWARD

The grievance is denied.

Submitted this 21st day of July 2005.



Dwight A. Washington, Esq., Arbitrator