

#1943

IN THE MATTER OF ARBITRATION
BETWEEN
THE STATE OF OHIO
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION
AND

SERVICE EMPLOYEES INTERNATIONAL UNION
DISTRICT 1199, AFL-CIO

Before: Robert G. Stein
CASE #27-17-20060526-1518-02-11

Grievant:
Judith Lalli, Termination

Advocate for the EMPLOYER:

Richard B. Shutek, Labor Relations Officer 2
Lorain Correctional Institute
Ohio Department of Rehabilitation and Correction
Office of Collective Bargaining
100 E. Broad St., 18th floor
Columbus OH 43215

Advocate for the UNION:

Jim Tudas, SEIU 1199, Advocate
SEIU AFL-CIO
1395 Dublin Road
Columbus OH 43215

INTRODUCTION

This matter came on for hearing before the arbitrator pursuant to the collective bargaining agreement (herein "Agreement") between the State of Ohio (herein "Employer"), as it applies to employees of the Ohio Department of Rehabilitation and Correction (herein "ODRC"), and the Service Employees International Union, District 1199, AFL-CIO (herein "Union"). That Agreement was effective during calendar years 2003 through 2006 and included the conduct which is the subject of this grievance.

Robert G. Stein was selected by the parties to arbitrate this matter as a member of a permanent panel of arbitrators. A hearing was held on May 24, 2007 at the Northeast Pre-Release Center, located at 2675 East 30th Street, Cleveland, OH 44115. The parties mutually agreed to that hearing date and location, and they were each provided with a full opportunity to present both oral testimony and documentary evidence supporting their respective positions. The hearing, which was not recorded via a fully-written transcript, was subsequently closed upon the parties' submissions of post-hearing briefs.

No issues of either procedural or jurisdictional arbitrability have been raised. The parties have stipulated that the matter is properly before the arbitrator for review, have stipulated to the issue to be resolved, and have also agreed to the submission of five (5) joint exhibits.

ISSUE

As stipulated by the parties, the identified issue is:

Did the ODRC have just cause to remove Judith Lalli? If not, what shall the remedy be?

BACKGROUND

Dr. Judith Lalli (herein "Lalli" or "Grievant") was employed by the ODRC beginning on February 3, 1997. She served as a licensed psychologist and provided professional counseling services to various inmates who were under the direct supervision of the ODRC.

Lalli was terminated by the Employer, effective May 26, 2006, based on her purported violations of the following sections of the ODRC Standards of Employee Conduct (Joint Exh. 4) under the "Performance Track" section:

Rule 7 - Failure to follow post orders, administrative regulations, policies or directives; and

Rule 24 - Interfering with, failing to cooperate in, or lying in an official investigation or inquiry

The first Rule 7 violations allegedly occurred when Lalli made personal contact with two individual inmates, who had previously been identified in a Return-to-Work Directive (Joint Exh. 2, pp. 14-17) on September 26, 2005 as individuals with whom Lalli was directed to have no future contact. The first violation leading to the challenged termination purportedly occurred when Lalli counseled inmate Searcy in her office just nine (9) days after Lalli had received that written directive to have no contact with Searcy. (Employer brief p. 1) That same "no contact" directive was deemed by the Employer to have been violated a second time when Lalli had a conversation with inmate Alfano in her office on October 19, 2005. An additional Rule 7 violation was based on the Grievant's failure to complete three (3) treatment plans prior to a Treatment Team meeting on October 24, 2005, as directed on page 2 of the Return-to-Work Expectations. (Joint Exh. 2)

The Rule 24 violation was based on Lalli's purported interference with an official investigation of her own conduct or performance "when she discussed her administrative investigation with Alfano by luring this inmate into her office on October 19, 2005." (Employer brief p. 2) One day prior to that conversation, Lalli had signed an Acknowledgement and Waiver of Right to Representation form (Joint Exh. 2, p. 40), in which she represented: "I further understand that I am not to discuss this

investigation with anyone except an authorized representative until there has been a final disposition of the investigation."

At the time of the Grievant's termination, her active disciplinary record consisted of a prior written reprimand and a two-day fine. (Joint Exh. 5) The removal order being challenged in the instant matter is her recognized third discipline pursuant to the Performance Track of the Standards of Employee Conduct.

In response to the Grievant's discharge, a grievance (Joint Exh. 3) was filed by the Union on her behalf on May 25, 2006 pursuant to Article 7 of the Agreement. Because the matter remained unresolved after passing through the preliminary stages of the grievance procedure, it has been advanced to the arbitration level for binding resolution.

SUMMARY OF THE UNION'S POSITION

The Union's basic contention is that the ODRC's termination of Lalli was not based on "just cause." The Union contends that the ODRC has failed to provide sufficient evidence, including credible witness testimony, that the claimed violations actually did occur as alleged and that the ODRC has failed to properly follow the progressive disciplinary steps, as identified for the relevant violations in the Disciplinary Grid. (Joint Exh. 4)

In response to the claim that the Grievant violated Rule 7 by meeting with inmate Searcy for an office visit on October 5, 2005, the

Union admits that "[t]he Grievant acknowledged in her testimony that she violated the no contact provision of her Return to Work Expectations Agreement of 9-26-05, but stated that her motivation was not to intentionally violate the no contact rule but only to comply with her moral and ethical obligations as a licensed psychologist to respond to a client in crisis." (Union brief p. 1) In doing so, the Union argues that Lalli acted in a manner consistent with the Rules of Professional Conduct included in Ohio Admin. Code Chapter 4732-17 and the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct 2002. (Union Exhs. 1, 2) The Union insists that Lalli made the proper decision in providing services to Searcy in a situation deemed by the Grievant to have been an "emergency/crisis situation" and that Lalli acted in the best interests of the client in crisis because making a referral to another professional counselor in a crisis situation "would constitute an act of client neglect." (Union brief p. 2) Based on these claims, the Union insists that the Employer has failed to establish the occurrence of a Rule 7 violation regarding this incident.

In response to the second alleged Rule 7 violation, based on the Grievant's failure to have completed three (3) treatment plans by October 24, 2005, the Union insists that "[i]t is fair to assume that the Grievant would have been prepared with the treatment plans if she had been at work" but "[s]he was on disability leave from October 24, 2005

through April 19, 2006" and was, therefore, not available on the designated date. (Union brief p. 3) The Union also points out that that hearing testimony from both the Grievant and her Mental Health Department supervisor, Dr. Lisa Drogosz (herein "Drogosz"), indicated that treatment plans are generally completed at the actual treatment team meetings with the individual clients present and that "[i]t is fair to assume that the Grievant would have been prepared with the treatment plans if she had been at work." (Union brief pp. 2-3)

The Union also challenges the Rule 24 violation charged against the Grievant, which was identified in the Notice of Disciplinary Action (Joint Exh. 2) as follows: "On or about 10-19-05, you spoke with inmate Alfano #52948, without authorization, about her involvement in your investigation." Lalli had been made aware of an administrative investigation being undertaken by ODRC personnel regarding her alleged breach of confidentiality of inmate information. In response to the violation charged against the Grievant, the Union asserts that "[m]anagement did not present any evidence relating to an investigation with inmate Alfano's involvement, did not identify the subject of the alleged investigation, did not present an investigative report, and did not present any evidence of Dr. Lalli interfering with an investigation." (Union brief p. 3) "The Union contends that the Grievant did not interfere with

any investigation" and that the ODRC has failed to produce sufficient credible evidence to prove Lalli's interference. (Union brief p. 4)

Based on these arguments, the Union requests that the grievance be sustained, that Lalli be reinstated with her seniority restored in full, and that she be given full back pay and benefits from the date of her removal.

SUMMARY OF THE EMPLOYER'S POSITION

The Employer basically refutes all of the Union's claims and contends that the Grievant's termination was, in fact, based on "just cause." The Employer denies any assertions by the Union that the Grievant was subjected to any allegedly harassing conduct by Drogosz or any other ODRC administrators, who purportedly acted reasonably to protect or preserve the integrity of the ODRC's therapeutic efforts, and notes that the Grievant's prior discipline had resulted from "performance violations involving poor judgment in carrying out work assignments, violations of policies and directives, and falsifying or altering documentation." (Employer brief p. 5)

The Employer refutes the Union's contention that Lalli "was obligated to give psychological services to the inmate in distress [Searcy] despite the 'no contact' directive" and insists that an ethically "reasonable alternative . . . would have been to refer Inmate Searcy to

her assigned Psychologist," an identified "reasonable and available option" which Lalli was alleged to have "blatantly disregarded."

The Employer stresses that Lalli has failed to justify or excuse her failure to complete the three treatment plans prior to the Treatment Team meeting scheduled for October 24, 2005, despite the fact that she had received a clear directive to complete those forms approximately one month earlier on September 26, 2005. Especially in view of Lalli's hearing testimony that she "would regularly complete Treatment Plans in advance to assure that they were done," the Employer stresses that her awareness that her disability leave was scheduled to begin on October 24 established an ethical and professional responsibility for her to complete the individual Treatment Plans in advance of that date. (Employer brief pp. 7-8)

In regard to the alleged Rule 24 violation, which implicated Lalli for interfering with an official investigation or inquiry through her October 19, 2005 conversation with Alfano, the Employer notes that Lalli admitted speaking with Alfano on that date, just one day after she had signed the statement indicating that she was "not to discuss this investigation with anyone except an authorized representative" and that the conflicting testimony offered at the arbitration hearing by Lalli and Alfano suggests that only the latter was actually a credible witness. The Employer contends that, despite Lalli's testimony "under oath that she had no

reason to believe that Inmate Alfano had any connection with her investigation," Lalli's Incident Report Supplement dated August 4, 2005 (Employer Exh. 1) indicated her awareness of an on-going investigation of her prior performance conduct and the related involvement of Alfano. (Employer brief p. 9) The Employer insists that Alfano had been made aware of the on-going investigation regarding Lalli's purported breach of client confidentiality by Lalli herself and that Alfano's self-initiated conduct in contacting Drogosz and in authoring the Inmate Voluntary Statement (Joint Exh. 2, pp. 18-19) on October 20, 2005 was congruent with her hearing testimony, which was purportedly more credible than that of the Grievant.

Based on these arguments, the Union requests that the instant grievance be denied in its entirety and that the Grievant's removal be upheld.

DISCUSSION

The precise issue for resolution here is whether the Employer has established that the Grievant's employment was terminated for "just cause." One of the most firmly-established principles in labor relations is that management has the right to direct its workforce, normally through the use of a collective bargaining agreement, which details the parties' respective rights and duties. Both the Agreement and also the Ohio

Collective Bargaining Law, Ohio Rev. Code Ann. § 4117.08, retain the Employer's right to discipline or discharge for "just cause" any ODRC workers, who are employees of a state agency or department. In the exercise of that management right, the Employer is governed by the rule of reasonableness, and it must act in the absence of arbitrary, capricious, or unreasonable conduct. *Cal. Edison and Int'l Bhd. of Elec. Workers, Local 47*, 84 LA 1066 (2002). "While it is not an arbitrator's intention to second-guess management's determination, he does have an obligation to make certain that a management action or determination is reasonably fair." *Ohio Univ. and Am. Fed'n of State, County, and Mun. Employees, Ohio Council 8, Local 1699*, 92 LA 1167 (1989). In the absence of contract language expressly prohibiting the exercise of such power, an arbitrator, by virtue of his authority and duty to fairly and finally resolve disputes, has the inherent power to determine the sufficiency of a case and the reasonableness of a disciplinary action or penalty imposed. *CLEO, Inc. (Memphis, Tenn.) and Paper, Allied-Indus., Chem., and Energy Workers Int'l Union, Local 5-1766*, 117 LA 1479 (Curry 2002).

Generally, in an employee termination matter, an arbitrator must determine whether an employer has sufficiently proved that a discharged employee has committed one or more acts warranting discipline and that the penalty of discharge is appropriate under the specific circumstances.

Hy-Vee Food Stores, Inc. and Local 747, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am., 102 LA 555 (Bergist 1994).

Discharge from one's employment is management's most extreme penalty against an employee. Given its seriousness and finality, the burden of proof generally is held to be on the employer to prove guilt of a wrongdoing in a disciplinary discharge or to justify or show "good cause" for terminating an employee . . .

Int'l Assoc. of Machinists and Aerospace Workers Union, Dist. 160 and Intalco Aluminum Corp., 00-1 Lab. Arb. Awards (CCH) P 3608 (Nelson 2000).

When a collective bargaining agreement in effect between the parties to facilitate their reciprocally cooperative relationship reserves to the Employer the right to discipline for "just cause," but fails to define what actually does constitute "just cause," it is proper for an arbitrator to look at the Employer's policies and rules and also the conduct in dispute to determine whether or not the challenged discipline was actually warranted and justified. *E. Assoc. Coal Corp. and United Mine Workers of Am., Dist. 17*, 139 Lab. Arb. Awards (CCH) P 10,604 (1988). "'Just cause' is not a legal concept, but it embodies the principles of industrial justice. The purpose of 'just cause' is to protect employees from unexpected, unforeseen, or unwarranted disciplinary actions, while at the same time protecting management's rights to adopt and to enforce generally-accepted employment standards." *Phillips Chem. Co. and Pace, Local No. 4-227, AFL-CIO*, 00-2 Lab. Arb. Awards (CCH) P 3553 (Taylor 2000).

"Just cause" imposes on management the burden of establishing: (a) that the standard of conduct being imposed is reasonable and is a generally-accepted employment standard which has been properly communicated to the employee; (b) that the evidence proves that the employee engaged in the misconduct which did constitute a violation of that standard; and (c) that the discipline assessed is appropriate for the offense after considering any mitigating or extenuating circumstances.

Phillips Chem. Co.

The duty of an arbitrator is simply to determine the truth regarding the material matters of a controversy, as he believes it to be, based upon a full and fair consideration of all of the evidence and the weight to which he honestly believes it is entitled. It is the role of an arbitrator to observe the witnesses and to determine who among them is telling the truth. *Givaudin Corp.*, 80 LA 835, 839 (Deckerman 1983). In addition to determining the credibility of witnesses, the arbitrator must also determine the weight to be afforded to their testimony, as well as all of the other evidence submitted by the parties. *Minn. Teamsters Pub. and Law Enforcement Employees Union, Local No. 320 and City of Champlin, State of Minn.*, 00-2 Lab. Arb. Awards (CCH) P 3499 (Berquist 1999). To do so, an arbitrator must consider whether conflicting statements do ring true, weigh each witness's demeanor while he testifies, and use certain guidelines to determine credibility—the self-interest or bias of a witness, the presence or absence of corroboration, and the inherent probability of the specific testimony offered. *CLEO, Inc. (Memphis, Tenn.) and Paper, Allied-Indus., Chem. and Energy Workers Int'l Union, Local 5-1766*, 177 LA

1479 (Curry 2002). Because not all of the conflicting testimony given in this matter can be accurate, the arbitrator must carefully analyze all of the statements given at hearing in an attempt to resolve the recognized conflicts. In so doing, arbitrators and other triers of fact always attempt to keep in consideration the fact that a witness may be motivated to testify falsely due to some self-interest. Certainly, a witness who has been discharged by an employer may have such an interest, but other witnesses may also be biased. In addition to considering questions of self-interest and motivation, it is also of value to consider whether the individuals involved acted in a way that a reasonably prudent person would have under the same circumstances and as events unfolded, thus by their actions confirming what they alleged to have taken place. *Racing Corp. of W.Va. d/b/a Tri-State Race and Gaming and United Steelworkers of Am., AFL-CIO, Local 14614*, 00-2 Lab. Arb. Awards (CCH) P 3625 (Frockt 2000).

In resolving the issues presented in any case, an arbitrator must determine the weight, relevancy, and authenticity of the evidence. He must weigh and consider the exhibits received into evidence, any stipulations of the parties, and the testimony—both on direct and cross-examination—presented during the hearing. With regard to the testimony presented, an arbitrator must determine to what extent the testimony of each witness is to be believed, as well as the significance of the facts educed . . . To assist in making the necessary credibility determinations, although the best measure is probably common sense, arbitrators utilize various guidelines. They consider, *inter alia*, the conduct, appearance, and demeanor of each witness who appears and gives testimony, weighing, of course, his or her frankness or lack thereof, any inconsistencies between his testimony and any

previous statements he may have made, any inconsistencies between his testimony and that of other witnesses, his character as indicated by his past history and conduct, any relationship with or feeling for or against the grievant or either of the parties that each witness may have, the factual probability or improbability of the testimony offered, the witness's opportunity for observation or acquisition of information with respect to the matters about which he testified, and any possible motive or lack of motive he may have had for testifying the way he did or any interest or lack of interest he may have in the outcome of the dispute.

Startran, Inc. and Amalgamated Transit Union, Local 1091, 00-2 Lab. Arb. Awards (CCH) P 3490 (Richard 2000).

The truth, particularly the whole truth regarding an incident, is a lofty ideal not always conclusively attainable, especially when witnesses are personally and emotionally involved. Sometimes even impartial witnesses, who sincerely believe that their account of an incident is entirely correct, are limited by "selective" memory, which falls within the same category as bias and personal opinions. Each witness's statement must be critically examined to detect any inaccuracies, either intentional or unintentional. "Given the unreliability of memories, even the most knowledgeable and well-meaning witness can easily be mistaken on dates, times, and what was said or was not said at a particular time." *Advance Nursing Ctr. and Serv. Employees Int'l Union, AFL-CIO, Local 79, 04-1 Lab. Arb. Awards (CCH) P 3697 (Allen 2003).*

[I]n this kind of situation, no witness may be consciously lying. When two or more people are involved in a highly emotional situation, their recollection of the facts is far from reliable. Each tends to not recall whatever wrong he's done. Each quickly recasts the event in a light most favorable to himself. As time passes, the

distorted view of the event slowly hardens. By the time the arbitration hearing is held, each witness is absolutely certain that his account of what happened is true. Perhaps no one is then telling a deliberate untruth. Often, their own self-interest or self-image operates to affect their capacity for perceiving or telling the truth.

Covington Furniture Mfg. Corp., 75 LA 455, 459 (Holly 1980).

The full story of what actually transpired during the October 19, 2005 conversation between Lalli and Alfano will likely never be known to anyone except those two individuals. What is known, however, is that the Employer's decision to discipline the Grievant for her conduct in that incident was sufficiently substantiated by the hearing testimony and documentary evidence submitted for the arbitrator's review. Alfano's own independently-authored statement and hearing testimony both clearly identified the pending investigation against the Grievant as being the main focus of that conversation, which was initiated by the Grievant with full knowledge that she was to have "no contact" whatsoever with Alfano and also with full awareness that she was to discuss the pending investigation with no one other than an authorized labor-related representative. The weight of the evidence supports the Employer's position regarding a violation of both Rule 7 and Rule 24. However, the degree to which Rule 24 was violated cannot be determined from the record.

Although it was not made clear what the purported "crisis situation" was that was deemed by the Grievant to ethically and professionally

require the immediate counseling of Searcy, the Grievant failed to adhere to the existing "no contact" order, rather than considering conferring with Drogosz or another ODRC supervisor or administrator to determine if there was an alternative means of providing timely and appropriate counseling for that client. Lalli's decision to choose to ignore the existing order specifically precluding her contact with Searcy was a clear violation of that administrative directive and was not excused by her personal determination that the circumstances excused her violation of Rule 7.

All of the circumstances surrounding the Grievant's failure to have prepared and presented the three (3) identified treatment plans for the October 24 Treatment Plan meeting were not clearly defined by the evidence presented to the arbitrator. While it is clear that the Grievant's failure to have met that preparation deadline after having been instructed generally to timely complete all such documents on September 26, 2006 was neither ethically nor professionally appropriate, it is also clear that the Grievant's actual last work reporting day before she began her six-month disability leave was the preceding Friday, October 21. Based on that factor, it is more difficult to identify the Grievant's conduct as intentional neglect or defiance of an administrative directive, rather than a potential oversight.

Based on a review of all of the evidence submitted into the record here and the parties' arguments based thereon, the arbitrator finds that

the Company did have "just cause" to discipline the Grievant for her established misconduct. Initially, the burden of proof in a disciplinary matter such as this lies with the Employer to demonstrate through a preponderance of the evidence that there was ample justification for its decision to discipline the aggrieved employee. When the entire record in this matter is carefully considered, the arbitrator finds that the preponderant evidence supports the Employer's decision to discipline the Grievant.

The "just cause" principle also applies to the level of discipline imposed, as well as to the reason for the challenged discipline. That means that there must be some proportionality between the offense and the punishment imposed, that the Employer must use progressive discipline, except in extreme cases, and that the Employer must weigh all mitigating factors, such as the employee's seniority, the magnitude of the offense(s), and the employee's work record. *Lorillard Tobacco Co., Greensboro, N.C. and Bakery, Confectionary and Tobacco Workers Int'l Union, Local 317T*, 00-1 Lab. Arb. Awards (CCH) P 3433 (Nolan 2000). It is the Employer's burden in a discipline or discharge matter to prove both guilt of wrongdoing and to also show "good cause" for the discipline which was actually imposed. *San Diego Transit Corp. and Int'l Bhd. of Elec. Workers, Local 465*, 03-2 Lab. Arb. Awards (CCH) P 3542 (Prayzich 2003). "Disciplinary actions must reflect the circumstances of each

incident and the employment record of the individual employee." *Paper, Allied-Indus., Chem., and Energy Workers Int'l Union, AFL-CIO, Local 8-0784 and Chinet Co.*, 01-1 Lab. Arb. Awards (CCH) P 3819 (Nelson 2000).

Circumstances that must be taken into account when determining the appropriate discipline to be imposed include the nature of the offense, the degree of fault or culpability, and the mitigating and aggravating factors.

S.B. Thomas, 92 LA 1055, 1058 (Chandler 1989).

Arbitrators generally agree that, once proof of an offense has been established, the determination as to the appropriate penalty generally lies within the discretion of management. *Greene County Dept. of Human Res. and Teamsters Local 957*, FMCS Case No. 97/08895 (Sergent 1997). As noted above, the Agreement reserves to the Employer the right to make disciplinary decisions. Once those decisions are made, arbitrators do not lightly interfere in discipline and discharge matters, but that does not mean to suggest that they will sustain an action found to be unjust or unreasonable under the circumstances. Arbitrators have consistently noted that mitigating factors, such as the Grievant's ten (10) years of service with the ODRC, are recognized as potentially meriting the consideration of alternative levels or choices of discipline.

In a "just cause" environment, an employee should be given an opportunity to correct or remediate his misbehavior or improper conduct before being summarily discharged, except for the most heinous of offenses. Mitigating circumstances (e.g., length of employment, seriousness of offenses, and number of offenses) must be adequately considered, weighed, and applied before a

disciplinary decision is made and implemented. Alternative disciplinary actions must be considered.

Paper, Allied-Indus., Chem., and Energy Workers Int'l Union, AFL-CIO, CLC, Oren Parker Local 8-171, Vancouver, Wash. and Tetra Pak, Inc., 05-1 Lab. Arb. Awards (CCH) P 3078 (Nelson 2005).

"Many contracts give the arbitrator express authority to modify the penalties found to be improper or too severe. When the Agreement fails to address the issue, the right of an arbitrator to change or modify penalties found to be improper or too severe is inherent in the arbitrator's power to determine 'just cause.' This right is also inherent in the arbitrator's authority to finally resolve disputes." *Paper, Allied-Indus., Chem., and Energy Workers Int'l Union, AFL-CIO, CLC, Oren Parker Local 8-171, Vancouver, Wash. and Tetra Pak, Inc., 05-1 Lab. Arb. Awards (CCH) P 3078 (Nelson 2005).*

The arbitrator here finds that the Grievant's nearly 10-year tenure with the ODRC serves as a mitigating factor, meriting the use of additional progressive disciplinary measures. The Grievant's disciplinary record indicates the prior imposition of a written reprimand on June 2, 2005 and a two-day fine on September 26, 2005 "for not keeping her charts current concerning counseling sessions" with a specific inmate. (Union brief p. 6; Joint Exh. 4 p. 7) The documents included in Union Exhibit 3 indicate that the Grievant had twice been part of employee groups which had received recognition as ODRC "Correctional Employees of the Month" at

the Northeast Pre-Release Center. Copies of prior evaluations completed regarding the Grievant's performance during 2005 and before include comments recognizing Lalli as a "valuable employee," as one who "continues to work very diligently in the mental health department," who was "a much-appreciated staff member," who "always cooperates with other staff," and whose "work is done in a timely manner." It is very noteworthy that in the performance evaluation ratings for quality, quantity/timeliness, teamwork, communication, problem solving/decision making, and customer service, the Grievant very consistently was given "above average" rankings on the evaluations completed through December, 2005.

There is no evidence in the record to demonstrate that the Grievant is incapable of further remediation or unwilling to accept further good-faith efforts from the Employer to correct her misconduct. Indeed, employees do and will make mistakes. Progressive discipline and "just cause" recognize this given in the world of work and permit and encourage employees to learn from their mistakes and make positive adjustments. The Grievant is responsible for her own conduct and performance and must be able to demonstrate that she can perform in compliance with all ODRC rules and policies, as well as all ethical requirements, and she should be offered one last opportunity to prove that she is sincerely committed to performing her job in an acceptable


and professional manner. The arbitrator notes that the applicable ODRC disciplinary grid provides for a five-day suspension as an intermediate disciplinary step prior to removal, a step or level of discipline which was not utilized by the Employer in this case in lieu of effecting the Grievant's immediate removal.

In accordance with the foregoing opinion and for the reasons set forth herein, the ODRC is directed to reinstate the Grievant to her former position with full seniority, but without any back pay or benefits. The decision to reinstate the Grievant without back pay or benefits is based upon the fact that in a correctional environment discipline and order have a high priority. While it is recognized that the Grievant is a highly trained professional, she must take stock of the fact she is employed in a decidedly structured environment that requires full compliance with supervisory directives.

AWARD

The grievance is granted in part and denied in part. The Grievant's termination shall be converted to a time served suspension without back pay or benefits. She shall be reinstated to her former position without loss of seniority within two pay periods.

Respectfully submitted to the parties this 24th day of August, 2007.



Robert G. Stein, Arbitrator