#1978

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO
DEPARTMENT OF REHABILITATION AND CORRECTIONS

AND

SERVICE EMPLOYEES INTERNATIONAL UNION
SEIU LOCAL 1199

Before: Robert G. Stein

CASE# 28-03-071001-0187-02-12

Grievant: Michael Prendergast

Advocate for the EMPLOYER:

Ryan Sarni
Office of Collective Bargaining
100 E. Broad St., 18th floor
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Advocate for the UNION:

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INTRODUCTION

This matter came on for hearing before the arbitrator pursuant to the terms of a collective bargaining agreement between the State of Ohio, Department of Rehabilitation and Corrections ("DRC" or "Employer") and The Service Employees International Union, SEIU Local 1199 ("Union"). That Agreement is effective for calendar years 2006 through 2009 and includes the conduct which is the subject of this grievance, identified as number 28-03-071001-0187-02-12.

Robert G. Stein was mutually selected by the parties to arbitrate this matter, pursuant to Article 7, Section 7.07(A) of the Agreement, as a member of a recognized permanent panel of arbitrators. A hearing on this matter was conducted on February 20 and 26 at the Union's offices, located at 1395 Dublin Road, Columbus, Ohio. The parties mutually agreed to those hearing dates and location, and they were each provided with a full opportunity to present oral testimony, documentary evidence, and arguments supporting their respective positions. That hearing, which was recorded via a fully-written transcript, was subsequently closed upon the parties' individual submissions of post-hearing briefs.

No issues of either procedural or jurisdictional arbitrability have been raised, and the parties have stipulated that the matter is properly before

the arbitrator for a determination on the merits. The parties have also stipulated to the statement of the issue and to the submission of six (6) joint exhibits.

ISSUE

Did the DRC terminate the employment of Michael Prendergrast for just cause? If not, what shall the remedy be?

BACKGROUND

Dr. Michael Prendergast ("Prendergast" or "Grievant") was employed by the Adult Parole Authority for twenty-three (23) years to provide counseling and related services to individual parolees. Maria Hernandez ("Hernandez", "Maria") was one of such clients of Prendergrast, beginning in April, 2006 and intermittently through January 2007. (Employer's opening statement; Tr. pp. 8, 174)

In February 2007, Prendergast's friend, Mikalene Derrit ("Derrit") permitted Hernandez to accompany her on Derrit's daily visits to Prendergast's home in the Bay Village area, where Derrit typically cleaned the home, did personal laundry for herself and her children, cared for Prendergast's pet dog, and basically enjoyed the calm and private respite in Prendergast's home. Derrit, after driving him to his office in downtown Cleveland, would spend several hours at Prendergast's home before returning to drive him home from work. (Tr. pp. 209, 236, 240)

Prior to actually having Hernandez accompany Derrit to Prendergast's residence, Derrit asked Prendergast for his permission to take another person with her on her weekday visits to his home, indicating to Prendergast that the other intended visitor/guest was a friend of Derrit's from her job as a dancer at a local bar. (Tr. p. 229-230, 245) Derrit did not share with Prendergast that this proposed third-party guest was actually Hernandez, whom Derrit had gotten to know via some drug transactions in the specific neighborhood where both Derrit and Hernandez currently resided, and also at the bar where Derrit worked. (Tr. pp. 192, 213, 227, 228, 230) Derrit testified that she did not know either that Hernandez was a parolee or that she was a client of Prendergast's. In addition, Derrit indicated that Hernandez never told her that she knew Prendergast on a professional basis. (Tr. pp. 234, 241, 242)

In addition to having frequent access to the cell phone which Derrit had purchased with money provided by Prendergast, Hernandez used Prendergast's home phone to authorize approximately one hundred (100) collect calls, at a cost of $ 659 to the Grievant, from Hernandez' husband, Juan Rivera ("Rivera"), who was currently incarcerated at Belmont Correctional Institute in St. Clairsville while awaiting parole. (Tr. pp. 151, 177, 223) The recorded phone conversations indicate that Hernandez told Rivera that she was using the phone at the home of an elderly couple for whom she was hired to do cleaning. (Tr. p. 11)

On April 2, 2007, Parole Services Coordinator David Bogdas ("Bogdas") discovered as part of a placement investigation that Rivera had used the Grievant's Bay Village address as his intended parole address and Hernandez as his proposed sponsor. (Tr. pp. 8, 21, 67) Because Bogdas had received a phone call from Hernandez within half an hour after Bogdas had informed Prendergast that Rivera's placement request was being rejected, Bogdas believed that Prendergast had individually phoned Hernandez to share that information. Believing also that Prendergast had acted in violation of DRC conduct standards, Hernandez' parole officer, Janel Tilghman ("Tilghman"), got directly involved and visited Hernandez' approved parole residence. Latoya McCall (McCall), who was Hernandez' approved parole roommate, informed Tilghman that Maria had been "kicked out" of McCall's apartment and had been living with the Grievant for three (3) months. McCall also stated to Tilghman that Prendergast had been to McCall's apartment before to bring food and clothing to Maria and to get Maria's mail.

The Employer began an official investigation of the matter, which included a lengthy initial interview of Prendergast on May 18, 2007, as well as interviews and written statements given by Hernandez and other hearing witnesses. The Grievant had been placed on administrative leave on April 25, 2007, and a pre-disciplinary hearing was conducted on

August 21, 2007. Prendergast was removed from his position as an Adult Parole Authority psychologist on October 3, 2007, based on his claimed violation of the following two Standards of Employee Conduct:

> Rule 37: Actions that could compromise or impair the ability of an employee to effectively carry out his duties as a public employee. Violation of Rule 37 could result in either a written reprimand or a one-day fine, suspension, or working suspension or removal for the first offense, either a two-day fine suspension or working suspension or removal for the second offense, either a five-day fine, suspension or working suspension or removal for the third offense and removal for the fourth offense
>
> Rule 46: Unauthorized relationships
>
> B. Engaging in other unauthorized personal or business relationship(s) with any individual currently under the supervision of the department or friends or family of same. Violation of Rule 46B could result in a two-day fine, suspension or working suspension or removal for the first offense, a five-day fine, suspension or working suspension or removal for the second offense and removal for the first offense.

A grievance was filed on behalf of the Grievant on October 4, 2007, challenging his termination. Because the matter remained unresolved at Step 3 of the recognized grievance procedure, it has been submitted to the arbitrator for final and binding resolution.

SUMMARY OF THE EMPLOYER'S POSITION

The Employer's basic contention is that Prendergast's conduct in maintaining an unauthorized personal relationship with parolee Hernandez provided a "just cause" basis for his termination from

employment. The DRC claims that the Grievant's allegedly unacceptable conduct included the following:

- having Hernandez live with him in early 2007;
- Hernandez' use of the Grievant's home address for mail Hernandez sent between February 2007 and April 2007, including thirty-four (34) letters received by Rivera at Belmont Correctional Institute;
- use of the Grievant's address by Rivera as his requested parole placement address;
- McCall's statements to both Tilghman and investigator Charles Haggerty ("Haggerty") that Hernandez had resided at the Grievant's home after leaving McCall's apartment involuntarily and that the Grievant had been to McCall's apartment to visit Maria while she still lived at that address and had returned to get Hernandez' mail after she had moved from there; and
- providing a cell phone for parolee Hernandez and speaking with her repeatedly;

The DRC urges that Prendergast's actions violated his responsibility to interact professionally with his clients at all times and to maintain the security of all other DRC employees, such as Bogdas and Tilghman. Therefore, the Employer insists that the Grievant's termination was for "just cause" and requests that the Union's grievance be denied in its entirety.

SUMMARY OF THE UNION'S POSITION

The Union's basic contention is that the DRC has failed to meet its burden of proof in establishing that there was "just cause" to serve as a basis for Prendergast's termination of employment. The Union avers that

the matter "clearly is one of circumstantial evidence and an overzealous investigator [Haggerty] wanting to secure a discipline at any cost during his first investigatory assignment." (Union brief p. 1) The Union further insists that Prendergast gave honest and consistent answers during the lengthy five-hour initial investigatory interview with Haggerty, despite the fact that Prendergast was in a physically weakened condition with serious surgery pending within the next few days. (Union brief pp. 1, 2)

The Union also contends that Adult Parole Director Linda Janes' decision to authorize the Grievant's termination for a first disciplinary incident involving Prendergast was based on her erroneous belief that a full and proper investigation had been conducted. The Union further insists that Bogdas' hearing testimony clearly indicated that he had never seen Hernandez at the Grievant's residence and that the testimony of other witnesses indicated that Prendergast's disputed phone call with Hernandez, after the former's conversation with Bogdas about the unacceptable use of Prendergast's residence as a placement address by Rivera, resulted from the fact that Prendergast did, in fact, call Derrit, who immediately shared the information with Hernandez. The Union argues that Hernandez independently then called Bogdas within twenty (20) minutes without Prendergast's knowledge or encouragement. (Union brief p. 3)

The Union specifically argues that the pre-hearing statements made by Hernandez should be given no credence because "she believed that if she did not tell the State's story she would have her parole violated and not be able to see her husband." (Union brief p. 5) By contrast, the Union urges that Hernandez' actual hearing testimony did clearly establish that "Dr. Prendergast had absolutely no knowledge of her presence in his home, that he had never bought her anything . . . and that Dr. Prendergast never gave her permission to enter his home, use his phone, [or] allow her husband to list [the Grievant's] addresses as a placement upon his release . . . [Hernandez] also testified that Dr. Prendergast had never been to her residence when she lived with Ms. McCall or at any other residence of hers; that he had never bought her anything, never taken her to any restaurants, never given her any money, that she had never stayed overnight at Dr. Prendergast's residence, and never had a social relationship whatsoever with him." (Union brief pp. 4-5) The Union stresses that the Grievant's own testimony corroborates the same admissions and denials made at hearing by Hernandez and that the record demonstrates that Prendergast took immediate and decisive actions to avert any further problems by promptly terminating the cell phone service which he had been paying for Derrit's intended use and by no longer having Derrit provide him driving assistance to and from work or allowing her access to his home. (Union brief pp. 6, 7) The Union argues

that this "case was not one of a psychologist who tried to hide an illicit relationship, but of a man who was taken advantage of by someone he had entrusted." (Union brief p. 8)

The Union stresses that Prendergast was "a veteran employee with absolutely no prior disciplinary actions against him and a spotless work record." (Union brief p. 9) Because the DRC has purportedly failed to provide any credible evidence or testimony demonstrating that the Grievant was personally responsible for the alleged offenses or improprieties, the Union requests that the instant grievance be granted in its entirety, that Prendergast be returned to his position with the DRC, and that he be made whole for all losses sustained.

DISCUSSION

The identified issue for resolution in the instant matter is the validity of the Grievant's termination. One of the most firmly-established principles of labor relations is that management has the inherent right to direct its work force, normally through the use of a collective bargaining agreement, which specifies the parties' respective rights and responsibilities. In the exercise of those management rights, the Employer is governed by the rule of reasonableness, and the exercise of its management rights must be done 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 1, 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 clearly proved that an employee has committee an act or acts warranting discipline and that the penalty of discharge is appropriate under the circumstances. *Hy-Vee Food Stores, Inc. and Local 147, Int'l Bhd. of Teamsters, Warehousemen, and Helpers of Am.*, 102 LA 555 (Bergist 1994) In making such a determination, an arbitrator must consider, among other circumstances, the nature of the Grievant's offense(s) and the Grievant's previous work record. *Presource Dist. Serv., Inc. and Teamsters Local 184*, FMCS No. 95-01624 (1997)

> 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. 150 and Intalco Aluminum Corp., 00-1 Lab. Arb. Awards (CCH) P 3608 (Nelson 2000)

As recognized by the parties in formulating the issue to be resolved in this matter, the focus of the arbitrator's review here is the Employer's compliance with the tenets of the "just cause" standard. 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) Commonly-accepted "just cause" principles routinely used by arbitrators in disciplinary matters "are intended to ensure a higher level of fairness and due process for employees accused of wrongdoing. They are also intended to increase the probability of workplace justice." *Paper, Allied Indus., Chem., and Energy Workers Int'l Union, AFL-CIO, Oren Parker Local 8-171, Vancouver, Wash. and Petra Pac, Inc.*, 05-1 Lab. Arb. Awards (CCH) P 3078 (Nelson 2004)

> "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. (Emphasis added)

The Employer has retained the specific management rights included in the parties' collective bargaining agreement only so long as its exercise of its discretion in exercising those specific rights in not unreasonable, arbitrary, capricious, or motivated by improper means. *Municipality of Anchorage (Alaska) and Int'l Ass'n of Fire Fighters, Local 1264,* 115 LA 190 (Landau 2001)

> Arbitrary conduct is not rooted in reason or in judgment but is irrational under the circumstances. It is whimsical in character and not governed by an objective standard or rule. An action is described as arbitrary when it is without consideration and in disregard of facts and circumstances of a case and without a rational basis, justification, or excuse. The term "capricious" also defines a course of action that is whimsical, changeable, or inconstant.

City of Solon and Ohio Patrolman's Benevolent Ass'n, 114 LA 221 (Oberdank 2000)

While one of the most firmly-established principles in labor relations is that management has the recognized right to direct its work force, the Union and the Grievant have a reciprocal right or duty to challenge managerial action perceived by them to have

been ill-founded. *Minn. Mining and Mfg. Co. and Local 5-517, Oil, Chem. and Atomic*

Workers Int'l Union, Local 73, 117 LA 1055 (1999) When a grievance involves a challenge to a managerial decision, the standard of review is whether a challenged disciplinary action is arbitrary, capricious, or taken in bad faith. *Kankakee (Ill.) School Dist. No. 111 and Serv. Employees Int'l Union, Local 73,* 117 LA 1209 (2002)

The arbitrator must undertake a full and fair consideration of all of the evidence presented and determine the weight to which he honestly believes the individual evidence 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 resolving conflicts in testimony, an arbitrator normally utilizes the same factors that a judge or jury would employ in assessing witness credibility. Because not all of the conflicting testimony offered can be accurate, the arbitrator must carefully analyze all of the testimony given in order to resolve the recognized conflicts. In so doing, arbitrators and other finders of fact always keep in consideration the fact that a witness may be motivated to testify to serve some self-interest(s). It is common for factfinders to take into account the appearance, manner, and demeanor of each witness while testifying, his apparent frankness and intelligence, his capacity for consecutive narration of the facts and events, the probability of the story related by him, the advantages he appears to have had for gaining accurate information on the subject, the accuracy or retentiveness of his

memory, as well as the lapse of time affecting it, and even the intonation of his voice and his positiveness or uncertainty in testifying. *Racing Corp. of W.Va. d/b/a Tri-State Race and Gaming and United Steelworkers of Am., AFL-CIO, L OCAL 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 whether and 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 weapon 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 of frankness, 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 each of the parties which the 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 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 1092, 00-2 Lab. Arb. Awards (CCH) P 3490 (Richard 2000) Credibility determinations are often among the most difficult tests for any fact-finder to resolve. This is particularly true when, as here, there is only a small number of persons involved in the critical incidents surrounding a dispute. Obviously, in those

situations only those individuals directly involved will ever know for certain what was actually said or done.

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 of bias of a witness, the presence of 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) As recognized by a prior arbitrator's decision, in determining the credibility of witnesses, those factors deserving of consideration include each witnesses' character for honesty and veracity or their opposites, the existence of non-existence of a bias interest or other motive; and a statement previously made that is inconsistent with hearing testimony. *Minn. Teamsters Public and Law Enforcement Employees Union, Local No. 320 and City of Champlin, State of Minn.*, 00-2 Lab. Arb. Awards (CCH) P 3499 (Berquist 2000)

It is the arbitrator's job to make an objective determination based on all of the facts presented to him, and he must determine the outcome in favor of only one of the parties based on the arguments and evidence submitted. After a thorough review of all of the testimony given, evidence submitted, and arguments presented in the instant matter, the arbitrator here does find that the DRC did abuse its discretion in terminating the Grievant's employment based on the facts actually established. While acknowledging that Prendergast appears to have exercised less than optimal judgment in trusting and relying on Derrit's efforts during this period when his own health was jeopardized or in a weakened state, the unapproved conduct of others cannot be attributed to him. Clearly, the DRC has the right to demand that all of its employees comply with all relevant ethical and professional standards. However, no employee can be held accountable for the actions of others which were carried out without his authority, participation, or consent.

Unfortunately, most of the Employer's case was built on the oral and written pre-hearing statements of less-than-forthright witnesses, whose subsequent hearing testimony varied and was contradictory to that resulting from the prior pre-hearing inquiries. Notably, Hernandez's hearing testimony indicated that both her prior oral and written statements were falsified. (Tr. p. 104, 132) The actual hearing testimony also indicated that McCall's prior answers resulted in large measure from

personal animosity against Hernandez, reflected that Hernandez' prior answers during Haggerty's investigation were given to preclude the witness herself from being found in violation of her parole (Tr. p. 103), and demonstrated that Derrit's behavior that eventually implicated Prendergast resulted from her own need to "use" or "take advantage of" the Grievant. (Tr. pp. 214-215, 243)

Problematically, the DRC is basing its case primarily on the initial statements made by a parolee, a dancer at a strip club who admittedly engaged in drug deals at work, and a vengeful former roommate of parolee Hernandez who was angered by the latter's conduct and forced her to move to a new location. Obviously, this is not the first, nor the last, occurrence or investigation in which the DRC will be involved with interrogating witnesses with a criminal history or criminal involvement. The most significant precaution is that, when considered in the totality, the Employer is required to demonstrate with substantial evidence that Prendergast, or any of its employees, is personally responsible for the actual misconduct charged against him. The DRC has not met that burden in this case. Although the evidence does demonstrate that Hernandez did visit Prendergast's home, did accept the charges for one hundred (100) collect calls from Rivera using Prendergast's home phone, and did provide Rivera with Prendergast's address and phone number to use in pursuit of his parole placement application, the actual witness

testimony at hearing indicated that none of those actions was taken with the Grievant's knowledge or consent. The Grievant cannot be disciplined for actions taken by others which he did not personally authorize or approve.

> The "just cause" standard requires the Employer to conduct a fair, impartial, and thorough investigation before determining an employee's guilt and initiating disciplinary action. It requires the Employer to impartially examine all of the evidence, including the totality of circumstances surrounding the incident(s) in question, and possible mitigating factors that might reasonably explain the motive(s) for the employee's behavior(s). Further, this standard requires that the Employer's investigation produce substantive proof of the employee's guilt.

Gall and the Yolo County Correctional Officers Ass'n and Yolo County Sheriff-Coroner's Dept., Woodland, Cal., 04-1 Lab. Arb. Awards (CCH) P 3687 (Nelson 2003) "Ultimately, the 'just cause' standard requires that the employer's investigation produce substantive proof of the employee's failure or inability to comply with the employer's legitimate, identified expectations." *Yolo County Corr. Officers Ass'n and Yolo County Sheriff-Coroner's Dept., Woodland, Cal.*, 04-1 Lab. Arb. Awards (CCH) P 3697 (Nelson 2003)

In the often-cited Enterprise Wire Company decision, Arbitrator Carroll Daugherty identified seven (7) prerequisite tests for meeting the "just cause" standard in termination cases. In complying with those standards, employers are required to demonstrate that an affirmative

response may be given for assuring that the following steps or standards have been met:

. . .

(3) effort was made before discharge to determine whether employee was guilty as charged;

(4) investigation was conducted fairly and objectively;

(5) substantial evidence of the employee's guilt was obtained;

. . .

Enterprise Wire Co. and Enterprise Independent Union, 46 LA 359 (Daugherty 1966)

The testimony provided by the various witnesses at hearing in this matter, during both direct examination and cross-examination while under oath, is viewed by this arbitrator as being a full and final representation of their recollections and willingness to share all of the facts based upon their personal experiences and individual motives.

> In cases involving disciplinary actions, and especially when a discharge is at issue, it is not uncommon for a witness to give differing testimony about what happened before, during, and after the event(s) that resulted in disciplinary action. This case is no exception. When the testimony of witnesses significantly differs, an arbitrator has the responsibility to determine what testimony is credible and what is incredible . . . In some cases, social psychological pressures from a number of sources may cause witnesses to have lapses in memory, selective recall, and even recant earlier statements. In some cases, witnesses in their desire to help whomever they are testifying on behalf of will bend their testimony and fill in the gaps with testimony that supports their side's position. In some instances, witnesses, for any number of reasons, will give less than wholly truthful, or even totally unbelievable, testimony. In judging the testimony of those witnesses, arbitrators

> have to separate that which is believable from that which is unbelievable . . .

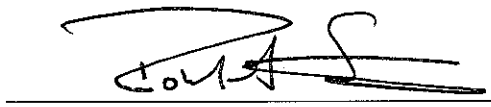
MKM Machine Too, Inc. and Int'l Ass'n of Machinists and Aerospace Workers, Dist. Lodge No. 27 and Kentucky Lodge 681, 96-2 Lab. Arb. Awards (CCH) P 6037 (Imundo 1995)

In view of the seriousness of the charges which have been leveled against the Grievant and the level of discipline imposed as a result, the Employer has failed to adduce a sufficient quantum of evidence to sustain either the charges levied against the Grievant or the employment discharge that resulted. Despite the requisite "clear and convincing evidence" standard normally recognized by this arbitrator in reviewing termination matters, the Employer here has failed to meet even the very minimal "preponderance of the evidence" standard and has failed to prove more than the Grievant's impaired judgment, naiveté□ and gullibility when dealing with selfish, ruthless, and manipulative associates.. There is an absence of evidence here that Prendergast engaged in an unauthorized and inappropriate relationship with his client Hernandez.

AWARD

The Union's grievance is sustained. The Grievant shall be reinstated to his former position with the DRC within one pay period after the date of this decision. His seniority shall be bridged and he will be made whole for all lost income and benefits.

Respectfully submitted to the parties this 8th day of May 2008,



Robert G. Stein, Arbitrator