

VOLUNTARY ARBITRATION PROCEEDINGS  
GRIEVANCE NO. 25-17-20081231-0049-05-02  
GRIEVANT: SHERRIE HUSTEAD

OFFICE OF COLLECTIVE  
BARGAINING, THE STATE OF OHIO  
OHIO DEPARTMENT OF NATURAL  
RESOURCES, DIVISION OF  
WATERCRAFT

The Employer

and

THE FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.

The Union

OPINION AND AWARD

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LICENSED TO PRACTICE LAW IN THE STATE OF OHIO AND COMMONWEALTH OF KENTUCKY

### APPEARANCES

#### For the Employer:

Bret Benack, Labor Relations Administrator  
Ryan Sarni, Office of Collective Bargaining  
Bill McGarity, Deputy Chief of the Division of Watercraft/HR  
Carrie Spradlin, Labor Relations Officer  
Michael Quinn, Witness  
Tony DeLong, Witness

#### For the Union:

Paul Cox, Chief Counsel  
Joel Barden, Staff Representative  
Renee Engelbach, Paralegal  
Sherrie Hustead, Grievant  
Carl Vance, Witness

I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted on May 27, 2009, at the conference facility of the employer in Columbus, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would be filed. It was upon the evidence and argument that this matter was heard and submitted and that this Opinion and Award was thereafter rendered.

II. STATEMENT OF FACTS

The grievant in this particular matter, at the time of the instant incident, had a classification of Watercraft Investigator. She had been on the job for approximately twenty years and during that period of time had garnered several disciplines. Her disciplines may be set out as follows:

- “
- **January 8, 2007** - Oral Reprimand - failure to meet the minimum swim standards.
  - **March 22, 2007** - Written Reprimand - using obscene, abusing or insulting language toward an employee or general public and officer's code of conduct.
  - **September 5, 2007** - One day working suspension for insubordination.
  - **February 4, 2008** - Three day working suspension for insubordination, dishonesty, neglect of duty and the officer's code of conduct.

- **May 8, 2008** - Five day suspension - multiple violations committed between December 9, 2007 and February 29, 2008.”

Thereafter, by way of sign-off date of May 8, 2008, the grievant, with the consent of her union, entered into an agreement that revealed that she was now in a Last Chance category. The language of that category, as it appears on the signed-off document, revealed the following:

- “
- If WI Hustead commits a violation of the ODNR Disciplinary Policy during a period of two (2) years commencing with the date of the signatures on this Agreement and just cause is present, the ODNR may terminate the employment of WI Hustead and neither the FOP nor WI Hustead shall grieve the level of discipline under Section 19.05 of the Collective Bargaining Agreement. Thus, the only issue appropriate for grievance arbitration or other litigation is whether just cause exists for any discipline that is issued in the aforementioned time period. The active period of this Agreement shall be extended by a period equal to any leaves of absence taken by the employee of seven (7) days or longer.”

Her last performance review was generally satisfactory, although, in categories known as quality, teamwork/cooperation, communications and adhering to procedures, all revealed that the grievant does not meet standards as provided by the agency, at least those were the answers to questions with the review date or deadline of March 10, 2008.

By hand delivery on December 23, 2008, the grievant received, as a result of a pre-disciplinary conference, the following notification of removal:

“Hand Delivery

December 23, 2008

Sherrie Hustead  
1998 Blacklick Eastern Road  
Millersport, OH 43046-9710

Dear Ms. Hustead:

As a result of pre-disciplinary conference held on December 18, 2008, just cause for discipline was found for your violation of the **Insubordination: (A) (2) - Willful Disobedience of a direct order by a superior; Dishonesty: (B) (1) - Dishonesty & (B) (2) - Willful falsifying any official document; Neglect of Duty: (C) (1) Neglect of Duty - Minor & (C) (4) - Exercising Poor Judgment and for a violation of the Uniformed Officer's Code of Conduct** provisions of the ODNR Disciplinary Policy.

Therefore, you are being **Removed** from your Watercraft Investigator position with the ODNR-Division of Watercraft. Your removal is effective on December 29, 2008.

Sincerely,

/s/

\_\_\_\_\_  
Sean D. Logan  
Director, ODNR

cc: Bill McGarity, Deputy Chief - Division of Watercraft  
Joel Barden, FOP Staff Representative”

To that, a timely grievance report form was filed by the union and the reason for the

termination grievance revealed the following:

“STATEMENT OF GRIEVANCE (GIVE TIMES, DATES, WHO, WHAT, WHEN, WHERE, WHY, HOW) BE SPECIFIC.

On December 29, 2008 I was terminated from my position without just cause.”

Thus, from that it is noted that the contestation reason was lack of just cause. The remedy requested revealed the following:

“REMEDY REQUESTED

To be returned to my position and made whole for all time, benefits, seniority, overtime benefits and wages lost. As well as any other items not specified.”

The summary of the complete investigation revolving around the termination of seniority of the grievant was revealed as follows:

**“Summary of complete investigation:** In Event #1 Investigator Hustead did not conduct a thorough, factual investigation. Because of her lack of effort she produced a report that was not factual and in several areas contained false information. When confronted with this and given an opportunity to re-investigate the accident and submit a quality investigation she chose to continue with false statements and did not, as instructed, conduct a thorough re-investigation. In fact she made no additional contacts with the boaters involved.

In Events #2 and 3 Investigator Hustead initiated both incidents by making

false claims against two Watercraft Supervisors. In both incidents she alleged inappropriate actions or statements were made against her. An investigation into her claims proved she originally provided false information to give the appearance both supervisors were treating her disparagingly.

I interviewed Investigator Hustead Wednesday November 5, 2008 at 12 noon, in my office. Present during this interview were Investigator Hustead, FOP representative Carl Vance and Deputy Chief Quinn. Investigator Hustead was given a copy of the Internal Investigation Warning, which she and Officer Vance both read and signed (see attachment). A brief discussion was conducted to brief Mr. Vance of the events leading up to this interview. An interview of 10 total questions was conducted. An original copy of this interview (questions & answers) as well as a transcript copy is attached to this report. Investigator Hustead's answers were vague and false, when compared to the facts of this investigation.

Investigator Hustead has a history of discipline for acts of in-subordination, dishonesty and poor judgment. The three (3) incidents described in this report document continuing examples of this history. Her actions in these events constitute violations of: The Code of Conduct for Watercraft Officers specifically Page 2 Conduct on Duty, paragraph 1, **"The conduct and attitude of a watercraft officer while on duty shall be mature, self-controlled, moral and in keeping with the highest standards for professional behavior."**

She also violated several sections of the Disciplinary Policy-Procedure of the Ohio Department of Natural Resources, specifically:

- (A)(2) Insubordination - Willful disobedience of a direct order by a superior
- (B)(1) Dishonesty
- (B)(2) Willfully falsifying any official document
- (C)(1) Neglect of Duty - Minor
- (C)(4) Exercising poor judgment.

I recommend appropriate discipline."

It appears that the grievant was assigned an investigation concerning two boats in her

jurisdiction. As a result of that investigation, it was noted by her supervisor that the investigation was seriously lacking. The supervisor made the following notations concerning his activity concerning the report of the grievant. That supervisor stated the following:

“Administrative Investigation  
Watercraft Investigator Sherrie Hustead  
Watercraft Accident CAACO-08-147

Action Taken:

08/08/08 - Investigator Hustead provided me with her completed investigation of Watercraft Accident CAACO-08-147 for my review. On this date I was able to review her report. After my review I provided her with a two (2) page note containing thirteen (13) specific areas needing correction as well as my concerns about the quality of this investigation.

08/11/08 - Investigator Hustead came to my office to discuss this investigation and my notes of direction and corrections needed. We discussed the lack of actual investigation and effort on her part. We also discussed the lack of information included and I recommended when she has an accident she might consider including a narrative of her action taken in the future. We discussed all items listed under “Comments” on the 2<sup>nd</sup> page of the note I provided her.

I provided oral direction, in addition to the written direction; this accident was lacking in quality and information and was to be re-investigated.

08/15/08 - I received Investigator Hustead’s corrected copy of this accident, a copy of my notes for corrections (including comments from Ms. Hustead) and a narrative of her actions. After reviewing the report and additional information it did not contain much new information and did not appear to have been a re-investigation.

08/18/08 - I met with Area Supervisor Tony DeLong and voiced my concerns about the quality of the accident investigation provided by Investigator Hustead. I asked if he had ever conducted quality control checks and if he would be comfortable doing so with the two boaters involved in this accident. He said he would.



08/22/08 - Mr. DeLong called and informed me he had received verbal statements from both boaters that were in conflict with the report provided by Investigator Hustead. One of the boaters stated he thought the State of Ohio had "blown him off" in this investigation and he was not happy with the service he received. After hearing this statement and considering the conflicting information Mr. DeLong told me he felt it was important to do a complete re-investigation of this accident. I approved his request.

09/25/08 - Area Supervisor DeLong completed his re-investigation and submitted his report to me within the next few days. My review took several days but after I completed reviewing the facts it was obvious Investigator Hustead had provided false information on the original report and had failed to follow my directive to re-investigate this incident."

The subsequent investigator was able to obtain reports from the two boaters involved. Both of the boaters stated that the grievant had not accomplished the investigation by taking statements from them. The subsequent investigator (DeLong) completed the report and, as a result of the lack of re-investigation by the grievant and as a result of the completed report by DeLong, the discipline followed. Based upon the inactivity of the grievant as the employer viewed it and based upon the subsequent investigation by DeLong and based upon the lackadaisical response of the grievant, as well as false statements, it was noted that the grievant should be terminated from her seniority by way of a violation of the Last Chance Agreement.

The grievant testified. She testified that all of the information obtained in the original report, as well as subsequently, was a total of the investigation she conducted. She further stated that her activity was subject to protocol and that she attempted to obtain information which she could not because the parties involved in the accident were not cooperative. The grievant merely denied all

of the inactivity suggested by the employer and it was based upon her denial that this matter rose to arbitration because the grievant's offered information differed dramatically from the employer's.

It was upon all of these facts that this matter rose to arbitration for Opinion and Award.

### III. OPINION AND DISCUSSION

There is no doubt that the grievant, at the time of the instant incident, had been the subject of several disciplines, each of which is noted by the employer in this matter and restated hereinabove. As a result of all of these disciplines, the grievant was given the opportunity of a Last Chance Agreement and that Last Chance language is also indicated hereinabove. The employer now finds that the grievant was derelict in her duty, falsified documents and told untruths concerning her investigation as well as exhibiting a lack of serious effort.

It appears that the employer, by and through the grievant's supervisor, directed the grievant to re-investigate the accident because the original investigation, according to the employer, was wanting and many facts were not revealed. The employer found that the re-investigation by the grievant was also seriously lacking in many areas. The employer and the grievant's immediate supervisor were still not satisfied with the results of the investigation and directed another by the name of DeLong to accomplish that re-investigation.

DeLong was able to accomplish the re-investigation and obtained statements that the grievant

had stated could not be obtained from the participants in the watercraft accident in the grievant's jurisdiction. As a result of the lack of thoroughness on the part of the grievant and as a result of the lack of honesty as the employer believed of the grievant, the employer terminated the seniority of the grievant.

The employer's activity in this particular matter was founded upon the Last Chance Agreement and upon the grievant's inactivity and dishonesty as the employer viewed it. The grievant denied any untruthfulness that the employer alleged. The grievant stated she accomplished the reports as best she could and that the activity now obtained by DeLong was denied to the grievant when the grievant requested the information of the same witnesses to the accident. Based upon this difference of view and based upon the testimony as placed into the record, a few findings have to be made in order to reach a decision in this matter.

The evidence in this matter is not at odds. The documents speak for themselves. The grievant's investigative report was sparse when reviewed with DeLong's report. It is apparent that the grievant's behavior in this particular matter was that of a lackadaisical worker who sought to create an easy investigation. The fact is the employer was correct in their analysis in this matter of behavior problems on the part of the grievant in not wanting to complete this investigation although she had been given an original opportunity and a second opportunity by her immediate supervisor, neither of which she took advantage of. The lack of quality of work in the accident investigation provided by the grievant was clearly shown in her writings (or lack) in this particular matter. This

is especially evident when the grievant's writings are compared to the writings of the second investigator (DeLong). The analysis made by the grievant's supervisor was direct and on point. To quote the writer of the investigation again, it seems that the grievant did not conduct a "thorough, factual investigation and showed a lack of effort" and by virtue of comparing it with subsequent investigative material, found that her investigation was false in many regards.

Reading and rereading the union material admissions with regard to this case causes certain findings of facts to be made. The case involves a twenty-year employee who was working under a Last Chance Agreement signed off by her and her union. The grievant was an accident investigator, having risen to that classification by her years in service and experience. She was assigned an accident case for investigation. Her report, as I read it, lacked depth, completions and truthfulness. Her supervisor met with her and ordered a re-investigation, assigning thirteen questions in writing to be answered by her in that re-investigation. The grievant, according to the supervisor, found her answers and re-investigation to be untrue in part, a fabrication in part, and totally incomplete.

The matter was assigned to another who did complete the investigation and it is from that investigation by another, as well as the work products of the grievant, that the grievant was found to have violated the Last Chance Agreement, the language of that Agreement having been stated hereinabove.

From a review of the material submitted by the grievant in the investigation of this matter,


it is revealed from her findings that her reports were incomplete, untrue and, apparently, a partial fabrication. From all of this, the termination of seniority must stand, the conduct of the grievant being contrary to the language of the Last Chance Agreement.

Arbitrators are not prone to modify the final disposition of an employer and arbitrarily create their own industrial justice. There must be good reason to modify or change the findings and award of management. The record of this case shows no reason to modify or change. For all of these reasons, the action of termination of seniority of the grievant must stand.

It is my finding that the grievant, as exhibited by her conduct, was terminated for just cause. It is unfortunate that an employee of some twenty years of experience has such inactivity in her record, but the facts of the case are clear and, upon review, it is determined that the employer was proper and correct in terminating the seniority of the grievant. Simply put, there is good and sufficient evidence in the record to reveal that the grievant's effort was substantially less than professional in both her investigation and re-investigation and cannot continue her employment at this facility.

IV. AWARD

Grievance denied.

  
Marvin J. Feldman, Arbitrator

Made and entered  
this 15th day  
of July 2009.