

Thomas J. Nowel  
Arbitrator and Mediator  
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO  
AGREEMENT OF THE PARTIES

In the Matter of a Controversy Between:	)	Grievance No.
	)	27-27-20110606-
Service Employees International Union,	)	0026-02-11
District 1199	)	
	)	ARBITRATION
and	)	OPINION AND
	)	AWARD
State of Ohio Department of Rehabilitation	)	
and Correction	)	DATE: APRIL 16,
	)	2012
Re: Patricia Callahan Termination	)	

APPEARANCES:

Tyrone J. Reynolds, Labor Relations Officer 2 for the State of Ohio Department of Rehabilitation and Correction; Emily Paine, Advocate for SEIU District 1199; and Victor Dandridge for the State of Ohio Office of Collective Bargaining.

## INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the State of Ohio and the Service Employees International Union, District 1199. The Union contends that the Employer violated the collective bargaining agreement when it terminated the employment of Patricia Callahan. The Employer argues that the termination of employment of the Grievant is for just cause.

The Union grieved the termination of Ms. Callahan on June 3, 2011, and the grievance was denied by the Employer. The Union then notified the Employer of its intent to appeal the termination to arbitration.

The Arbitrator was selected by the parties, pursuant to Article 7 of the collective bargaining agreement, to conduct a hearing and render a binding arbitration award. Hearing was held on March 13, 2012 at Trumbull Correctional Institution (TCI). At the hearing, the parties were afforded the opportunity for examination and cross examination of witnesses and for the introduction of exhibits. Witnesses were sworn by the Arbitrator. The parties stipulated that the matter was properly before the Arbitrator.

## ISSUE

The parties agreed that the issue before the Arbitrator is as follows. "Was the Grievant, Patricia Callahan, removed from her position of Psychology Assistant 2 for just cause? If not, what shall the remedy be?"

## WITNESSES

### TESTIFYING FOR THE EMPLOYER:

Sharon Chilson, Investigator

Dr. Paul Goodwin, Mental Health Administrator

Bennie Kelly, Warden

### TESTIFYING FOR THE UNION:

Patricia Callahan, Grievant

## RELEVANT PROVISIONS OF THE AGREEMENT

### Article 6, Non-Discrimination

#### 6.01 Non Discrimination

Neither the Employer nor the Union shall unlawfully discriminate against any employee of the bargaining units on the basis of race, sex, creed, color, religion, age, national origin, political affiliation, Union affiliation and activity, handicap or sexual orientation, or discriminate in the application or interpretation of the provisions of this Agreement, except those positions which are necessarily exempted by bona fide occupational qualifications due to the uniqueness of the job, and in compliance with the laws of the United States or the State of Ohio. In addition, the Employer shall comply with all the requirements of the Federal Americans with Disabilities Act and the regulations promulgated under that Act.

The Employer and Union hereby state a mutual commitment to equal employment opportunity, in regards to job opportunities within the Agencies covered by this Agreement.

### Article 8, Discipline

#### 8.01 Standard

Disciplinary action may be imposed upon an employee only for just cause.

#### 8.02 Progressive Discipline

The principles of progressive discipline shall be followed. These principles usually include:

- A. Verbal Reprimand
- B. Written Reprimand
- C. A fine in an amount not to exceed five (5) days pay
- D. Suspension
- E. Removal

The application of these steps is contingent upon the type and occurrence of various disciplinary offenses.

The employee's authorization shall not be required for the deduction of a disciplinary fine from the employee's paycheck.

If a bargaining unit employee receives discipline, which includes lost wages or fine, the Employer may offer the following forms of corrective action:

1. Actually having the employee serve the designated number of days suspended without pay; or receive only a working suspension, i.e., a suspension on paper without time off; or pay the designated fine or;

2. Having the employee deplete his/her accrued personal leave, vacation, or compensatory leave banks of hours, or a combination of any of these banks under such terms as may be mutually agreed to between the Employer, employee, and the Union.

The employee is not required to accept the Employer's option to issue a working suspension or leave depletion set forth in items 1 and 2 above.

## GRIEVANCE

Patricia Callahan filed a grievance on June 3, 2011 appealing the termination of her employment from the Department of Rehabilitation and Correction. The grievance states that the Employer violated the collective bargaining agreement, specifically Section 6.01, Non Discrimination; Section 8.01, Standard; and Section 8.02, Progressive Discipline. The grievance reads as follows:

*Removed from position without just cause. Excessive Discipline. To be re-instated into position as Psych Asst at TCI with back pay and benefits. To be made whole in every way.*

The grievance of the Union was denied by the Employer, and it was then appealed to arbitration.

## BACKGROUND

Patricia Callahan, the Grievant, had been employed as a Psychology Assistant 2 at the Trumbull Correctional Institution (TCI) since May 1, 1995. This represents sixteen years of service with the Employer. In addition, Ms. Callahan had been employed in the mental health field for twenty-six years with a number of organizations. As a member of the mental health

team at TCI, she performed mental health screenings and psychological interventions with inmates who required such services. The Grievant administered interviews with inmates in order to determine their psychological fitness. The Grievant was responsible for making segregation rounds and checking on the condition of inmates for all sixteen years of her employment with the prison.

The Grievant was responsible to monitor Inmate Fitzer who was in segregation. The Grievant met with Inmate Fitzer and learned that he was suffering from a high level of stress due to his mother's health conditions. His mother was suffering from cancer and dementia in a nursing home. Inmate Fitzer was not authorized to make contact with his mother due to being in segregation and was anxious to know of her condition.

The Grievant informed her supervisor, Dr. Ricciardi, that Inmate Fitzer was stressed regarding his mother and asked if she could make a call to the family for him. Dr. Ricciardi granted permission for such call (Un. Exb. 4). The Grievant then obtained two phone numbers of family members from Inmate Fitzer.

On March 8, 2011, the Grievant walked to the parking lot and retrieved her cell phone from her automobile. While in the parking lot, she placed a call to the phone number, which Inmate Fitzer had provided, at 10:27 am (Jt. Exb. 3, 77). Although a family member of Inmate Fitzer answered the telephone, the connection was not clear. After approximately three minutes, the Grievant ended the call and initiated a second call a few minutes later at 10:30 am. She conversed with the family member for less than two minutes, and the call ended (Jt. Exb. 3 – 77). The Grievant spoke with Inmate Fitzer's brother who had been released from the custody of the Ohio Department of Rehabilitation and Corrections within four months of the telephone calls.

On March 9, 2011, the Grievant was visiting with her mother on a Saturday. She was not scheduled to work on this day. The mother of the Grievant suffers from dementia, and this compelled her to make another call to Inmate Fitzer's brother from her cell phone to gain more information about the condition of his mother. This call took place at 2:19 pm and lasted approximately two and one half minutes (Jt. Exb. 3 – 77).

The Grievant did not document any of the calls to the brother or her conversations with the inmate regarding the calls in his mental health file.

Earlier in 2011, Management Investigator, Sharon Chilson, began to investigate the Grievant after receiving a confidential note from an inmate regarding inappropriate contact between Ms. Callahan and Inmate Fitzer (Jt. Exb. 3, 34-35). It was alleged that the Grievant was

involved with Fitzer romantically and was providing him with certain objects. Investigator Chilson monitored video of the Grievant and observed her conversations with Fitzer.

Chilson then subpoenaed the Grievant's cell phone records from Sprint and was able to determine that the Grievant had made three telephone calls to the inmate's brother from her personal cell phone (Jt. Exb. 3, 77). Inmate Fitzer's telephone book, which contained the phone numbers of his brother, had been removed from his cell. Following each call, the grievant was observed spending time with Inmate Fitzer.

On May 4, 2011, Investigator Chilson conducted an interview with the Grievant in the presence of her Union Steward. She stated to the Grievant that she was required to answer all questions truthfully, and she responded that she understood (Jt. Exb. 3, 16). On four occasions, Investigator Chilson asked if the Grievant made telephone calls to relatives of an inmate on her personal telephone. The Grievant denied having done so each time questioned.

Following the investigatory interview, Investigator Chilson recommended that the Grievant violated the Standards of Employee Conduct and that further action was necessary.

The Employer conducted a Pre-Disciplinary Conference on May 17, 2011, and the Grievant was represented by her Union Steward. The hearing officer recommended that discipline for just cause was warranted (Jt. Exb. 3, 3-5), and Warden Kelly removed the Grievant from her position on May 20, 2011 for violations of Rule 46A, Unauthorized Relationships and Rule 24, lying in an official investigation (Jt. Exb. 3, 1).

The Union appealed the removal through the Grievance Procedure and moved the grievance to arbitration when it was denied by the Employer.

#### POSITION OF THE EMPLOYER

The Employer argues that the termination of the Grievant is for just cause. Evidence and testimony offered at hearing clearly prove that the Grievant was guilty of an unauthorized relationship with Inmate Fitzer. Although the Grievant may have had permission to contact the inmate's family, it was expected that such telephone calls would be conducted utilizing the office phone at the facility. The Employer argues that the actions of the Grievant are violations of Rule 46A which prohibits exchange of personal information "with any individual currently under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, or friends or family of same, without express authorization of the Department" (Jt. Exb. 6, 22). Inmate Fitzer's brother had been

released from the custody of the Department of Rehabilitation and Correction only four months from the time that the Grievant contacted him on the telephone.

The Employer states further that the Grievant spent an inordinate amount of time with Inmate Fitzer. She placed no documentation in the mental health file of the inmate to justify the continual contact with him. This fact is an indicator that the contact was in violation of policy.

It is also clear that the Grievant knew the proper procedure for requesting the making of telephone calls in behalf of inmates. Testimony indicates that, prior to this incident, she used the proper protocol regularly during the course of her employment. To deviate from it now illustrates that the contact with Fitzer was improper and unauthorized. She testified that during her sixteen years of employment with the facility, she never used her personal telephone to make calls in behalf of an inmate. She clearly knew that to do so was a violation of policy.

In and of themselves, the three telephone calls to the inmate's brother are serious violations and warrant termination of employment. The Grievant then violated Rule 24 when she lied during the investigation. Rule 24 is very specific in that "lying in an official investigation or inquiry" is a violation for which removal is justified (Jt. Exb. 6, 17).

On May 4, 2011, an investigatory interview was conducted with the Grievant in the presence of the Union Delegate. She was asked on four separate occasions whether she made calls for an inmate utilizing her personal cell phone. She denied doing so each time this question was posed. Investigator Chilson testified that, in her experience, when an employee lies in an interview, it usually indicates that the interviewee is guilty and may be hiding something. The Employer states that the Grievant admitted to the dishonesty at a later time but blamed her actions on being "scared." This is an invalid excuse for an employee who possesses significant responsibility at TCI. The untruthful statements of the Grievant are an egregious violation of policy.

Warden Kelly concluded that removal was the appropriate level of discipline based on the seriousness of the policy violation regarding the telephone calls and lying during the investigative interview. He felt that she had violated the level of trust granted her based on her position and ability to move freely about the prison. She now posed a threat to the safety and security of the facility.

Finally, the disciplinary record of the Grievant includes two written reprimands and a two day fine (Jt. Exb. 5, 1). A number of these policy violations include improper involvement with inmates.

The Employer states the just cause existed for the termination of the Grievant's employment based on violations of Employee Conduct Rules 24 and 46A. The Employer asks that the grievance of Ms. Callahan be denied in its entirety.

#### POSITION OF THE UNION

The Union states that the termination of employment is not for just cause, and the Grievant should be reinstated and made whole. The Union argues that Investigator Chilson was unsure of certain dates and did not present important information at the pre-disciplinary hearing. She only produced certain tapes, complaint memos and other limited evidence. When asked if there was a tape of Inmate Peek's statement, she indicated that it was not available because he denied everything. Chilson told the Union that certain tapes were either recorded over or were erased. The Union argues that her investigation was not conducted appropriately, and it lacked essential elements. Further, she did not interview other employees who may have been able to provide important information regarding any alleged relationship between the Grievant and Inmate Fitzer. Ms. Chilson was also forced to submit the subpoena for the Grievant's telephone records twice due to procedural error. Much of the investigative process was defective, and the Arbitrator should take note.

The subpoena requested telephone records from October 1, 2010 to April 8, 2011. It is clear that the Employer went on a "fishing expedition" in an attempt to discredit the Grievant and then only found three questionable phone calls during this six month period. The Employer failed to run a check of her office phone.

When Ms. Chilson was asked if she interviewed Inmate Fitzer, she responded that she had not questioned him due to a confrontational relationship between the two of them. The Union states that the investigation was incomplete and poorly conducted.

Inmate Fitzer's cell had been "shaken down" but there were no photos or letters from the Grievant that could support the allegation of inappropriate relationship.

The Union states that monthly supervisions are required between a Psychology Assistant and supervisor. Union Exhibit 5 illustrates that Supervisor Ricciardi conducted only four supervisions over a two year period of time. The Grievant was not properly supervised at the time of the incident, and Dr. Goodwin, the Mental Health Administrator at TCI, did not know if Dr. Ricciardi signed off on the Grievant's mental health contacts. He stated that he was not Dr. Ricciardi's supervisor. The Grievant testified that supervision of her work was minimal.



The Union states, and evidence indicates, that the Grievant has a record of sixteen years of good to excellent performance. Evaluations confirm that her performance is in the acceptable range to “above indicators.” Her final evaluation, prior to her removal, was graded by the Deputy Warden with “above indicators.” The rater commented that the Grievant was “professional, responsible, takes on extra work and is a joy to work with.” He stated “thank you for your hard work.”

The Union argues that the Employer’s contention, that the Grievant maintained an inappropriate relationship with Inmate Fitzer, lacks merit. Fitzer was on her mental health caseload for only one year, and she was aware of the family history and the depression suffered by the inmate due to the medical condition of his mother. Dr. Ricciardi had given the Grievant permission to contact the inmate’s family. At a later time, the Grievant admitted to making the calls on her personal cell phone. The first call ended with a bad connection, and, therefore, a second call was made. Department policy does not specifically prohibit the use of personal cell phones for making calls of this nature.

When Ms. Chilson notified the Grievant that she was to be questioned, the Grievant did not know why she was being summoned. Neither did her Union Delegate, African Grant. The Grievant had only five minutes to confer with her Union representative prior to the interview. When Investigator Chilson questioned her about the phone calls, the Grievant was unable to think clearly. She panicked and felt anxiety and therefore was not forthcoming. The Union states that the Grievant has a history of honesty during interviews for previous incidents involving disciplinary action. This was an isolated occurrence and should be judged in that light.

The Union states that, in the sixteen years the Grievant has served the institution, she has been a “superior employee.” She has been employee of the month and has volunteered for numerous programs. Ms. Callahan has a history of being a truthful and honest employee and has no active pending discipline. The penalty of termination is too severe. The removal of the Grievant is not for just cause. The Union states that the Grievant should be reinstated and made whole.

## DISCUSSION

The Grievant is a sixteen year employee of the Department of Rehabilitation and Correction with no pending disciplinary action. Although the Employer cited previous disciplinary cases, for purposes of this matter and pursuant to Section 36.03 of the collective bargaining agreement, there is no standing discipline. Evidence also indicates that Ms. Callahan has been a productive employee with satisfactory evaluations and commendations.

The Employer argues that the Grievant had developed an inappropriate relationship with Inmate Fitzer. Evidence indicates that she spent significant time with him as compared to other inmates on her caseload. But evidence also indicates that she was very concerned regarding his anxiety over the health of his mother who was in a nursing home and suffering from dementia and cancer. Testimony and evidence in this case suggest the possibility of an inappropriate relationship, but there is little proof to this allegation outside the fact that the Grievant did not document much of her contact with him and was seen visiting with him on a number of occasions. The Investigator did not interview other employees. Nor did she interview Inmate Fitzer due to her claim that she had a bad relationship with him. Another investigator could have interviewed the inmate. Confidential notes from inmates, which accused the Grievant of a relationship with Fitzer, proved inconclusive, and the primary informant recanted his accusations when specifically questioned about the matter. Nevertheless, it is troubling that the Grievant did not document the three telephone calls, contacts and conversations with Inmate Fitzer. Dr. Goodwin, the TCI Mental Health Administrator, testified that the Grievant was required to document discussions with the inmate regarding his anxiety over his mother's severe health problems. And she clearly should have documented the telephone calls to the family member. The Grievant admits to failing to document properly. It is noted that this is a serious breach of practice.

The Union argues that the Grievant did not receive adequate and proper supervision as part of its defense. But it is clear from the record that she was fully aware of the rules and policies having received significant training. After sixteen years as a Psychology Assistant, the Grievant knew the rules and protocols. Therefore, when she made phone calls to Inmate Fitzer's brother, who himself was still under the supervision of the Department of Rehabilitation and Correction, from her personal cell phone and on her personal time, the Grievant knew that this was in violation of TCI protocol. The Union argues that the Employer failed to check the records of the Grievant's office telephone, but there is no evidence that she made any attempt to make the calls from inside the facility. And the fact that she denied making the calls on her personal cell phone indicates that she knew this activity was outside policy and protocol. Dr. Ricciardi indicates, in his affidavit, that he remembers giving permission to contact the inmate's family by way of telephone, but he does not authorize the making of the calls on the Grievant's personal cell phone outside the facility. Union Exhibit 4, Dr. Ricciardi's written statement, was written less than one and one-half month prior to hearing in this matter. Had he given permission to make the calls outside the facility on a personal cell phone, his affidavit would have reflected such. Dr. Goodwin, the Mental Health Administrator, testified that an employee must never make telephone calls to a family member of an inmate on a personal cell phone.

On May 4, 2011, Investigator Chilson asked the Grievant a series of questions during the investigative interview. She stated, "Okay, have you ever, uhm, placed calls for inmates, you know, on your personal phone? Any of your personal phones for inmates? The Grievant answered, "No." A few minutes later during the interview, Chilson asks again. "And you don't make calls for inmates outside of your office?" The Grievant responded, "No." The interviewer asks again a little later during the questioning, "And you have never contacted an inmate or their family members from your personal phone? The Grievant states, "No." Finally as the interview concludes, the Investigator asks again, "And again, emphatically, you've never made a call from any of your personal phones to an inmate's family or for an inmate?" The Grievant states, "No." Ms. Chilson concluded the interview by asking, "Do you want to ask me any questions about this subject, er, topic, er why we're asking you or that type thing?" The Grievant responds, "No. *I think you've made it clear why you're asking me.*" The Grievant was clearly aware of the incidents for which she was being questioned and yet chose to respond dishonestly.

The Grievant is clearly in violation of Rule 24 of the Performance Track and Disciplinary Grid. If she had obtained permission to make the calls on her personal phone outside the prison, and, if placing such telephone calls did not violate protocol, she clearly would not have been dishonest during the interview. The Employer argues that violation of Rule 24, in this instance, justifies the termination of the Grievant. Warden Kelly testified that he supported the termination of the Grievant because a dishonest employee becomes a threat to the safety of the facility. He testified that the dishonesty on the part of the Grievant served as a major factor in his determination that termination was the proper course of action. These arguments are found to be meritorious. The Union suggests that the Grievant was "scared" and only had five minutes to prepare for the investigatory interview. These arguments do not justify four blatant lies. The Grievant is a sixteen year employee who understands the sensitivity of her position. She has access to a secure prison facility and is free to enter segregation. The population with whom she works is volatile, and untruthful statements and allegations are often the rule of the day. The state depends upon the truthfulness of its prison staff, and especially its mental health professionals, to maintain order and safety for inmates and employees. Once honesty is violated, trust is completely lost. Like cases in law enforcement, dishonesty on the part of a mental health professional in a prison setting in certain circumstances is fatal. The Grievant lied four times.

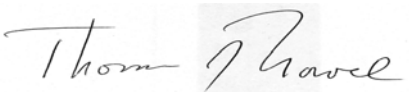
The Grievant violated Rule 46A when she made telephone calls to Inmate Fitzer's brother on her personal cell phone outside the facility and failed to document said conversations. In and of itself, this violation does not merit termination in light of the long tenure of the Grievant, and therefore, there would have been cause to reduce the discipline to

a fine or suspension. The Grievant violated Rule 24 when she was dishonest when questioned regarding the use of her personal cell phone. This violation is fatal, and the termination of employment of the Grievant is sustained. The Employer did not violate Sections 6.01, 8.01 and 8.02 of the collective bargaining agreement. The Employer had just cause to terminate the Grievant. The grievance of the Union is denied.

#### AWARD

The Grievant violated Rule 46A when she made telephone calls to Inmate Fitzer's brother on her personal cell phone outside the facility and failed to document said conversations. In and of itself, this violation does not merit termination in light of the long tenure of the Grievant, and therefore there would have been cause to reduce the discipline to a fine or suspension. The Grievant violated Rule 24 when she was dishonest when questioned regarding the use of her personal cell phone. This violation is fatal, and the termination of employment of the Grievant is sustained. The Employer did not violate Sections 6.01, 8.01 and 8.02 of the collective bargaining agreement. The Employer had just cause to terminate the Grievant. The grievance of the Union is denied.

Signed and dated this 16<sup>th</sup> Day of April, 2012 at Cleveland, Ohio.

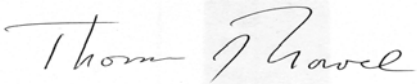
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Thomas J. Nowel  
Arbitrator

# CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> Day of April, 2012, a copy of the foregoing Award was served upon Tyrone J. Reynolds, representing the Ohio Department of Rehabilitation and Correction; Emily Paine, representing SEIU, District 1199; and Victor Dandridge, representing the State of Ohio Office of Collective Bargaining, by way of email.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

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Thomas J. Nowel  
Arbitrator

