

BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO
DEPARTMENT OF MENTAL HEALTH
(Rollman Psychiatric Institute)
and

Grievance of Alicia Blythe
(Discharge)

OHIO HEALTH CARE EMPLOYEES
UNION 1199

OPINION AND AWARD

This arbitration arises as a result of the discharge of the grievant, Alicia Blythe, as a employee of the Department of Mental Health.

FACTS

The grievant was employed as a registered nurse at the Rollman Psychiatric Institute in Cincinnati, Ohio on June 1, 1987. Rollman is a psychiatric facility of the Department of Mental Health and primarily admits as patients short term, acute care adults between the age of 18 and approximately 65. The average stay at Rollman is 60 to 90 days. Its basic function is to evaluate and diagnose patients' mental conditions. Approximately 25% to 30% of the patient population at Rollman have substance abuse problems.

At Rollman, patients generally have freedom to move about, they have daily activities, group field trips and may go out on passes. Although the hospital attempts to keep track of

patients' money by requiring it to be placed in a patient account, there are many instances when patients are given money by visitors or have money on return from passes concerning which the Institution has no knowledge.

At the time of grievant's termination, she was classified as a Psychiatric Nurse 2 and was working on the second shift. As such, she was responsible for carrying out therapeutic treatment, directing and supervising the work of hospital aides and LPN's. She was also responsible for receiving and carrying out medication orders, which responsibility included access to narcotics which were kept under double lock.

On the late evening of August 12, 1988 grievant had completed her shift and was riding home as a passenger in the car of her boyfriend, who was also employed at Rollman as a second shift safety officer. The car was stopped by the Cincinnati Police at approximately 11:30 p.m. on that evening, probably because grievant's boyfriend was a suspected narcotics dealer. When the police searched the car they found in grievant's purse, which had been placed between the front seats, 6.4 grams of marijuana. The grievant testified that her purse was between the two front seats, that her boyfriend must have put the marijuana in her purse when the car was stopped, that there was no marijuana in her purse when she

left work, that she does not know how the marijuana got in her purse, and that she does not use drugs.²

As a result of the foregoing, the grievant was charged with drug trafficking. At her trial she related the above facts to the court. Her boyfriend, however, took the Fifth Amendment and the grievant was found guilty on May 5, 1989 of drug trafficking, a fourth degree felony under O.R.C. 2925.03(a)(2). She was given a suspended sentence, placed on three years probation, fined \$2,000, which was waived, and required to do community service. Grievant was terminated from Rollman as a result of said conviction on May 25, 1989. This arbitration results.

A further result of grievant's conviction was that she was required to appear before the State Board of Nursing to determine if her license should be revoked. The State Board hearing was September 1, 1989 and thereafter the Board revoked grievant's license, stayed the revocation contingent on the Board receiving satisfactory results of grievant's compliance with her probation. Therefore, grievant still retains her nursing license.

² At the same time the grievant gave the police officers permission to search her house. In that search they found a scale belonging to Rollman. Because of that fact, she was originally discharged by Rollman on September 19, 1988 for unauthorized possession of State property. She filed a grievance regarding this discharge and she was subsequently reinstated by a decision of Arbitrator Joyce Goldstein.

POSITION OF THE PARTIES

Position of Department of Mental Health

Grievant, as a registered nurse, served as a role model for patients and is an essential part of the mission of Rollman. Her conviction directly impacts on the mission of the hospital and there is sufficient relationship between the conviction and her work assignment that her discharge was essential.

Position of the Union

Grievant was caught up in circumstances not of her making and that her conviction was caused by her boyfriend's failure to testify. Grievant does not use drugs and as such is no threat to patients and coworkers in regard to selling drugs. The Union also contends that in effect the discharge for drug trafficking is "double jeopardy" in that this matter should have been part of her original discharge for improper possession of State property.

DISCUSSION

There is no issue in this case of whether or not the grievant was aware of Department policy and the disciplinary code. Even, however, if it were otherwise, it would be obvious to anyone in grievant's position that a conviction for drug trafficking would subject an employee to discharge. Therefore, no advance notice of such a rule is necessary.

The Union has argued that the drug trafficking incident should have been a part of the grievant's original discharge for possession of State property and that by discharging her for the trafficking offense after being reinstated by arbitration on the possession charge amounts to double jeopardy. The Arbitrator disagrees. The evidence is clear that the Department did not originally discharge grievant for drug trafficking because at the time of her original discharge she had not been convicted of the trafficking charge and the Department was properly required at that time to assume her innocence until proven guilty. It was only after she was proven guilty that the Department initiated her removal. It is, therefore, the Arbitrator's opinion that the Department's action was a logical and reasonable way to proceed and that the grievant has not been adversely jeopardized.

In respect to the merits in the instant case, the grievant, a registered nurse, works with substance abuse patients, has been convicted of drug trafficking. The Union makes a compelling argument that the circumstances of the conviction were not of grievant's making but that of another, the Arbitrator, however, is faced with the fact that although the same argument was made in grievant's criminal trial, she stands convicted of that crime. Such being the case, the

Arbitrator cannot go behind the conviction, and grievant, for the purposes of this arbitration, must be considered a convicted drug trafficker.

This Arbitrator is not the first to be confronted with facts similar to the instant case occurring under the collective bargaining agreement between the parties to this arbitration. In the Matter of the Department of Mental Health, Warrensville Development Center (discharge of Fontelle Burley), and Department of Health, Portsmouth Receiving Hospital (discharge of Steven Jones), Arbitrator David N. Pincus, in lengthy, well-reasoned opinions, set forth the criteria applicable to discharge for drug trafficking in the context of an employee of the Department of Mental Health. This Arbitrator concurs in Arbitrator Pincus' opinion and reasoning. In the Warrensville Center case, the arbitrator reinstated the grievant, notwithstanding the conviction for drug trafficking, because she had received disparate treatment. In the Portsmouth case, as here, there was no contention of disparate treatment and the discharge was sustained. In the Portsmouth case, Arbitrator Pincus observed:

"The product of every mental health facility is the service rendered by the staff to the patients, which impacts the mission of the facility. The duties and responsibilities of a Hospital Aide are pivotal to the mission of the facility; these activities cannot be adequately conducted by a convicted drug trafficker. Hospital Aides'

responsibilities in the role modeling area are an integral component of their job description. ... Patients housed in this facility are high functioning and impressionable; a high percentage of patients are plagued with secondary substance abuse disorders. One could logically expect that the habilitation of these patients could be thwarted or misdirected if a convicted drug felon served as their role model.

...
The availability of unaccounted for cash; the liberal visitation privileges; the use of unprescribed drugs by patients, and warnings provided by law enforcement agencies concerning suspected drug trafficking at the facility. The Employer has an inherent responsibility to prevent drug abuse amongst its patients and staff members."

The arbitrator concluded:

"This condition, therefore, warrants a finding that the Employer has the right to protect its mission, and the interests of its patients and employees from the possibility that an individual charged with drug trafficking will engage in such activity on the facility's property."

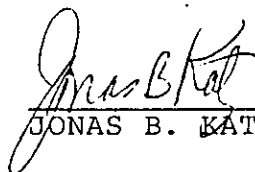
The above facts and observations, with the possible exception of warning about drug use at the facility, are all present in the instant case. For that reason I find that the mission of Rollman could be thwarted by the present reinstatement of the grievant and that the interests of Rollman patients require that a convicted drug trafficker not be reinstated.

There is in this case one fact not present in the previously referred to cases. In this case, the State Board of Nursing did not, in fact, revoke grievant's nursing license, but made its revocation or non-revocation dependent on

grievant's conduct. The decision was undoubtedly influenced by letters of recommendation from the Health Commissioner of the City of Cincinnati and others. While I do not believe this fact can change my decision, particularly because of the nature of the patient population at Rollman, I can only suggest to the Department of Mental Health that it may wish to re-examine grievant's qualifications for rehiring after the completion of her probation. Of course, the question of rehiring will be within the discretion of the Department.

AWARD

The grievance is denied.



JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Hamilton County,
Ohio, this 15th day of December, 1989.