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\*E-MAIL TRANSMITTAL\*

TO: Kate Nicholson

DATE: 04/13/2021

PAGES: 23  
(Including cover)

E-Mail kate.nicholson@das.ohio.gov

\*\*\*\*\*

RE: March 3, 2021 Arbitration

MESSAGE:

Dear Kate:

Please find attached the Arbitration Opinion in the Shenna Gwynn Grievance.

I am sending a copy of the billing that was sent to Ohio Shared Services for your records.

Very truly yours  
Craig A. Allen

HARD COPY:  WILL FOLLOW OR  WILL NOT FOLLOW  
BY:  MAIL  OVERNIGHT  OTHER

\* IF YOU HAVE ANY PROBLEMS WITH THE RECEPTION OF THE FOLLOWING PAGES. PLEASE CALL THE ABOVE NUMBER.

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**IN THE MATTER OF ARBITRATION**

**BETWEEN**

**STATE OF OHIO  
DEPARTMENT OF TAXATION**

**AND**

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION  
LOCAL 11  
AFSCME. AFL-CIO**

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Arbitration Dates: March 3, 2021

Grievant Sheena Gwynn: TAX-2019-03599-09

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Teri P. Fowler  
Ohio Department of Taxation  
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Advocate for the Union:

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## **I. HEARING**

The hearing was held via Zoom. The hearing commenced at 9:12 A.M. The joint issue before the Arbitrator is: "Was the Grievant, Sheena Gwynn, removed for Just Cause? If Not, what shall the remedy be?"

Testifying for the Employer were Donna Young and Jennifer Woodman

Testifying for the Ohio Civil Service Employees Association, Local 11, AFSCME (the "Union") were Elois M. Craig, Tamara Banks, and the Grievant, Sheena Gwynn.

## **II. STATEMENT OF THE CASE**

The Grievant was a Data Entry Operator 2. The Grievant was removed from employment September 30, 2019 for violation of Departmental Work Rule #5 - Inappropriate delay in carrying out a management directive or work assignment. A grievance was filed requesting reinstatement, a clean disciplinary record, full back pay, union dues, unpaid medical bills, and retirement contributions.

The Grievant's prior discipline consists of : February 17, 2016, Written Reprimand - Violation of Departmental Work Rule #9, Failure of Good Behavior, Discourteous or Rude Treatment of Another Person. January 17, 2017, Five (5) Day Suspension - Violation of Departmental Work Rule #4 - Insubordination.

The grievance was timely filed and the matter is before the Arbitrator.

## **III. THE EMPLOYER'S CASE**

The Employer's witness was Donna Young. Ms. Young is the Data Capture Supervisor.

She has held this position for six (6) years. Ms. Young says the Unit scans tax returns. Ms. Young testified the Grievant had reported to her for the last nine (9) months.

Ms. Young testified that she had held a muster meeting with employees and had advised the employees to scan the tub prior to the count. She said she saw a tub with the bar code sitting on a table. Ms. Young testified the Grievant got loud and talked over her.

Ms. Young said the Grievant told her she would not come to the office without witnesses. She advised the Grievant to come to the Office Door. The Grievant took the tub to another Supervisor to scan the bar code. Ms. Young testified that all other employees had her scan bar code.

On Cross-Examination Ms. Young testified she has been with the Department twenty (20) years. At first she was a Data Entry Operator 2. She had worked with the Grievant. Ms. Young became a Supervisor in 2015 and in 2019 she got Lisa Moore's employees.

Ms. Young testified that on the morning of September 14, 2019 she held a muster meeting. Ms. Young read Exhibit Union 1, which is a sketch of the work area. The meeting was held between the 3<sup>rd</sup> row of cubicles. Ms. Young said she advised the employees to bring the tubs to her to scan the bar code prior to working on the tub.

Ms. Young read Exhibit Union 4 and said it was her statement. Ms. Young testified that Grievant got her tub at 7:30 and began to work on it without a scan. She said she saw the tub on a table without a bar scan.

Ms. Young was asked: "Why did it take an hour and ten minutes to correct the Grievant?" She replied: "I was busy with other employees". Ms. Young testified that the encounter at 8:40

took place at Grievant's desk and others were present. Ms. Young said she did not tell Grievant to go to Mark Hay.

Ms. Young then read the statement of Jane Edse, JE 5 Page 5. She also looked at Exhibit Union 4 and said Ms. Edse had a back office. She said Ms. Edse could have heard the argument.

Ms. Young testified she has worked with Jane Edse for a long time. She then testified that Ms. Edse's statement does not say she told the Grievant to take the tub to Mark Hay.

Ms. Young then read JE 4 Page 18 and testified that the tub goes to Supervision to scan the Barcode. She said the Grievant won't do Barcode without a witness.

Ms. Young then read the statement of Elois Craig, JE 5 Page 3. The statement says Ms. Young slammed the tub down before Grievant. It says Ms. Young talked over Grievant and told Grievant to go see Mark. Ms. Young testified she did not tell Grievant that. Ms. Young did say she had met with Grievant with a witness present.

Ms. Young then read Exhibit Union 4. She said Elizabeth Kooi works in the Department. The Grievant first tells HR of issues with Ms. Young. Ms. Young testified that all management take courses in communication.

Ms. Young read JE 5 Page 9 which is an E-Mail from the Union President. She said this E-Mail was about the time she became a Supervisor. She said the E-Mail tells Grievant to have a witness.

Ms. Young testified the Exhibit also shows Grievant's E-Mail to the Union that she fears Ms. Young. The Grievant doesn't want to sit next to Ms. Young. Ms. Young testified she doesn't remember the Grievant sitting in.

Ms. Young reads JE 5 E-Mail which says the Grievant is in fear of her. Ms. Young said she is aware of the Workplace Violence Policy. She read the policy which covers harassment and intimidation. Ms. Young testified the documents showed that Grievant was afraid of her.

On Re-Direct Examination Ms. Young testified she was never investigated for Workplace Violence.

The Employer's next witness was Jennifer Woodman. Ms. Woodman is in Revenue Processing. She receives correspondence, taxes and tax returns and payments.

Ms. Woodman testified that Data Processing is critical, the information is important. Ms. Woodman has been an Administrative Officer 3 since 2016. Her job duties are to oversee the day to day operation, the employees work flow etc. She said the Grievant is in her reporting chain since 2017.

Ms. Woodman testified that in 2016 the Grievant was reprimanded for discourteous E-Mails to a supervisor. Ms. Woodman testified that Grievant refused to complete duties and was suspended. She said the Grievant had issues with three (3) members of management. The Grievant had counseling and training.

The Union says the Grievant was to go to another supervisor. Ms. Woodman testified that if this was so why was the Barcode not scanned. Ms. Woodman testified the tub was not taken to Mark Hay.

On Cross-Examination Ms. Woodman testified that on September 4, 2019 she was not present for the 7 A.M. muster meeting. Ms. Woodman has no knowledge of Donna telling the Grievant to go to Mark.

Ms. Woodman was asked: "The Grievant is charged with delay. How?" Ms. Woodman testified that the inventory would be inaccurate. The Grievant gets a tub of mail and a bar code. The Grievant did her work without the bar code being scanned. Ms. Woodman testified that tubs were worked with no scan. The delay was the system did not have the information. Ms. Woodman read JE 4 Page 14, Donna Young's statement to HR about tubs and bar code. The Grievant got the tub at 7:30. At 8:40 Donna Young sees the tub with bar code. Ms. Woodman was asked why Donna Young wasn't there. Ms. Woodman says supervision can come back later to address problems.

Ms. Woodman was asked: "How can you charge employee with delay when it takes 1 ½ hours to discuss it?" Ms. Woodman testified that failure to scan the bar code is a big deal. The inventory is off and there had to be a manual correction. She said she cannot say there was no financial harm to the Agency. Ms. Woodman read Exhibit JE 4 Page 51 and said it is her reprimand of the Grievant. The E-Mail was sent to Grievant's supervisor, Lisa Moore. The Grievant was leaving early. Donna Young told Lisa Moore the E-Mails were disruptive in tone.

Ms. Woodman testified the Grievant was given a five (5) day suspension for disobeying a direct order. Ms. Woodman had given the order. Ms. Woodman said the Grievant was accommodated by letting her have a witness.

There was no Re-Direct Examination.

#### IV. UNION'S CASE

The Union's first witness was Elois Craig. Ms. Craig is a Data Entry Operator. She has been a Data Entry Operator for nineteen (19) years. On September 4, 2019 she was at her desk. She has provided a written statement.

Ms. Craig testified that the Grievant had done work. The Grievant looked in Donna's office and Donna was out. The Grievant set the tub on a table.

Ms. Craig testified Donna goes back, takes the tub to Grievant's desk and slams it down. The Grievant tells Donna you weren't there and I can't go in your office without a witness. Donna tells the Grievant to go to Mark Hay.

On Cross-Examination Ms. Craig testified she was at the muster meeting and took a tub of mail to Donna.

On Re-Direct Examination she said sometimes you have to wait to get bar codes.

The Union's next witness was Tamara Banks. Ms. Banks has been a Data Operator 2 for thirteen (13) years. Ms. Banks testified that Donna Young is her Supervisor and Lisa Moore was before. On September 4, 2019 she gave Labor Relations a statement.

Ms. Banks testified she got an E-Mail about her duties. She said they are allowed to listen to music and she had her ear phones on. She testified she saw Donna agitated. Donna slammed the tub on Grievant's desk and said: "Give your work to Mark Hay. Now her work is already scanned before she gets it.

On Cross-Examination Ms. Banks said she can't remember a muster meeting on September 4, 2019. She said she can't remember her job that day. Ms. Banks said she does not



remember taking mail to Donna.

Ms. Banks testified she had her earphones on and did not hear anything. She did hear the tub slammed down. It is usual to have a different job than others.

Re-Direct Examination:

Ms. Banks testified that she did Data And Tax Forms. She also helped with the Mail. Ms. Banks read JE 4 Page 32 which shows she worked on tax returns and then read JE 4 Page 31 which is her E-Mail about employee duties.

Ms. Banks said after lunch she worked on 1040s and return mail.

Ms. Banks testified there were different trays and she could have done tubs of mail on September 4. She also said if bar code not scanned first you can still do tubs.

The Union's last witness was the Grievant, Sheena Gwynn. Ms. Gwynn is a Data Entry Operator 2. She has been on the Unit for fourteen (14) years. Ms. Gwynn works on tax documents and in other areas when work is slow.

Ms. Gwynn read JE 4 Page 25 and testified that on September 4, 2019 she started at 7:00 A.M. This Exhibit is her work schedule. Ms. Gwynn testified that there was a Muster meeting and Donna explained the mail tubs. She said at 7 A.M. she had computer trouble.

Ms. Gwynn testified that from 7:30 to 10:00 A.M. she processed the Mail tub. Donna was not in the area. Ms. Gwynn testified she doesn't recall Donna saying she had to scan the bar code. She said she put a tub on a table and did not have the bar code scanned.

Ms. Gwynn then testified that Donna came back at 8:40 A.M. and slammed the tub on her desk.

Ms. Gwynn said she took her earphones off and said Donna said: "You were supposed to have it scanned. Come to the office". Ms. Gwynn said: "I need to wait on a witness". Ms. Gwynn testified Donna said: "Give it to Mark". There were other Operators there.

Ms. Gwynn read JE 5 Page 6, which are witness statements given to HR. Cynthia Williams statement says she did not see or hear anything. She said Sheena is quiet and works hard. Shirlee Bridges statement says: "On September 4, 2019 between the hours of 7:00 A.M. and 3:30 P.M. I am unaware of any outburst or disturbance in my area".

Ms. Gwynn testified that she was working on the second tub when she was told to go to Mark. She did all her work for the day.

Ms. Gwynn read Exhibit Union - 4 which is an E-Mail from her to Elizabeth Kooi concerning an EEO Complaint. She said she met with Ms. Kooi and told her she was in fear of Donna and that it was a hostile work environment.

Ms. Gwynn read Exhibit Union 3 which is the Workplace Violence Policy. Paragraph 5 says to report to HR and Ms. Gwynn said her meeting with Ms. Kooi was per policy.

Ms. Gwynn then read JE 5 which is her E-Mail to Lisa Moore Ms. Gwynn wants a designated area to get batch numbers. Lisa Moore said she will go with Ms. Gwynn to Donna's office. Ms. Gwynn told Ms. Moore she was afraid of Donna. Ms. Gwynn testified this was the second time she told Management she was afraid of Donna. No action was taken except she could have a witness to go to Donna's office. There is nothing in writing.

Ms. Gwynn testified that in January 2019 Donna became her supervisor and she expressed her concerns to the Union.

Ms. Gwynn read JE 5 Page 9 which are E-Mails with Fred Anthony, the Union Chapter President. The E-Mail concerned Ms. Gwynn's concern about a meeting. Donna wanted Ms. Gwynn to sit next to her but she did not want to do it. In her E-Mail to the Union Chapter President Ms. Gwynn said there were seats not by Donna or Jennifer Woodman. She had to sit at the table. Ms. Gwynn testified there was usually open seating. Ms. Gwynn said there was negative energy from Donna and Jennifer Woodman and that she was afraid of them.

Ms. Gwynn then testified Fred Anthony said for her to have a witness. Mr. Anthony wanted to give Ms. Kooi a week to do something but she never heard from HR or Labor Relations.

On Cross-Examination Ms. Gwynn testified she doesn't recall Donna telling her to give Donna the bar code to scan. She said she tried to find Donna but she is not allowed to leave the area.

Ms. Gwynn testified she did not know Donna needed the bar code. She said the Union told her there was an agreement with HR about a witness and also an E-Mail from Lisa Moore. There was no agreement in writing about a witness from HR.

On RE-Direct Examination Ms. Gwynn testified that she told HR of her concerns in 2016. She said she told Lisa Moore in 2017. The Union E-Mail was in 2019. Ms. Gwynn felt she should have a witness and Lisa Moore said she would go with her.

Ms. Gwynn said she had few interactions with Donna when Lisa Moore was her supervisor. She first knew of scan requirement when the tub was slammed on her desk.

There was no rebuttal.

The hearing adjourned at 2 P.M.

The parties agreed to submit Closing Arguments by close of business April 2, 2021.

#### **V. OPINION AND AWARD**

The Employer says: The Grievant was removed from her position on September 30, 2019, for violation of the Department's Work Rule #5 – Inappropriate delay in carrying out a Management Directive or Assignment, as set forth in its Standards of Conduct Policy (ODT.002). She was charged with this violation after not carrying out the directions as given to her by her manager. The Employer argues that Article 5 of the OCSEA/AFSCME contract, the Employer has the exclusive right to direct its workforce.

The Employer argues that through investigation, fact-finding and witness testimony the Employer determined that the employee's removal was justified. The Employer contends that the nature of this charge, in combination with the Grievant's history of unacceptable behavior and insubordination, led to this removal. The Grievant was fully aware that her actions could have consequences which could result in her removal.

The Grievant had a history of similar conduct that does not in any way comport with the reasonable expectation for employees.

The Employer points out that at the time of her removal, the Grievant had an active written reprimand for violating Departmental Work Rule #5, failure of good behavior, discourteous or rude treatment of another person. The Grievant sent rude and unprofessional e-mails to her then manager. The Grievant had a five (5) day suspension for violation of

Departmental Work Rule #4 – Insubordination.

The Employer argues the Grievant refused to follow a direct order when assigned to assist in a keying test. Jennifer Woodman had been the Administrative Officer for Revenue Processing since 2014 and the Grievant had been under her reporting umbrella for a number of those years.

Ms. Woodman testified that the conduct resulting in the Grievant's removal was not new. Over the years, she had been coached, counseled, and even placed on an improvement plan, giving her the opportunity to learn how to develop productive relationships with management.

The Employer says, on the morning of September 4, 2019 the Grievant's manager, Donna Young, Data Entry Supervisor held what was known a "muster meeting" for all the direct reports. The meeting was held before the day's work began and was intended to inform the employees of the day's assignments and alert them to any changes there may be to those assignments. On this occasion, the employees were told to work tubs of paper mail which included Ohio tax returns and other related documents. The Grievant's manager provided clear and simple instructions -- have the inventory Barcode slip associated with each tub scanned before beginning to work the mail in that tub. The Employer argues the Employees were directed to bring each inventory slip to her, the only manager having the scanning device.

The Employer argues the Grievant did not do this. The Grievant did not do this. She worked the mail first, placing the completed tub of mail on a table with the inventory slip tucked inside. When her manager discovered the tub of worked mail, she approached the Grievant to

reiterate the earlier instructions. The Grievant was argumentative, speaking over her manager and interrupting her. After once again, communicating the proper steps to the Grievant, Ms. Young returned to her office.

The Employer contends that subsequently the Grievant worked a second tub of mail and took the inventory Barcode to another manager for scanning, again after the work was already completed. The Employer argues the Grievant refused to follow instruction, timely or otherwise.

In the past, when completing this specific workstream, the employees worked in a common room and scanned the inventory Barcodes, then brought the tub of mail to each of the employers.

The Employer says that in order to improve operational efficiencies, they now worked in their own cubicles and are individually responsible for getting the Barcode scanned. Ms. Jennifer Woodman, Administrative Officer 3, provided testimony explaining the scanning process. Ms. Woodman stated that the timing of when the inventory Barcode is scanned is operationally important to the Department. The inventory Barcode slip is generated when the tray of mail is received from the U.S. Post Office. It includes such data as the date the mail was received, which Post Office it came from, and the piece count. The Barcode is to be scanned prior to starting the work as that starts the system clock for calculating time to complete the assigned work, piece count and updates the inventory and location information. If the barcode is not scanned in the order directed, it can result in inconsistencies which leads to inaccurate date. Ms. Woodman further stated inaccurate data can affect operational decision-making such as importing staffing needs, budgetary projections, and processing decisions.

It can also create additional work for others when that data must be cleaned up or corrected. And, very importantly, it can negatively impact taxpayers downstream in the tax return filing process..

The Employer says an administrative investigation was conducted. Human Resources interviewed the Grievant's manager, Donna Young, the Division Administrator, Bradley Marshall, the manager the Grievant asked to scan her second barcode , Mark Hay, a co-worker, Jane Edse, who witnessed the interaction between the Grievant and her manager.

Co-workers, Elois Craig, Tamara Banks, Jane Edse, Shirlee Bridges, and Cynthia Williams provided statements to the Grievant. The Employer argues these statements represented an interaction between the Grievant and manager but did not refute the violation of the work rule.

The Employer argues that the work rule violation in this case is that Grievant inappropriately delayed carrying out a management directive or assignment. The issue was not whether there was a loud interaction or the absence of a witness.

The Employer argues it has proven that the Grievant did inappropriately delay following direction and carrying out the assignment. This resulted in a delay to an important part of the work task.

During the investigation the Grievant stated her manager gave her separate instructions after giving the other employees their instructions. The separate instructions allegedly given to the Grievant were to take the barcode to another manager.

The Employer argues when questioned by the Employer on March 3, 2021 the Grievant

testified that she worked her tub of mail without getting the barcode scanned and placed it on a table, waiting for her manager to return and she could receive further instruction. The Employer argues that these responses and testimony contradict one another.

Donna Young testified to finding the tub of mail that was worked by the Grievant and left on a table. She testified to approaching the Grievant to reiterate proper instructions and the Grievant became argumentative and wouldn't come to get the barcode scanned without a witness. Ms. Young told her she could bring the inventory slip to the door for scanning rather than into her office. The Employer argues she could not even follow this instruction. She then worked another tub of mail and took the barcode slip to another manager for scanning.

The Employer argues that the eyewitness testimony from Union witness, Elois Craig, confirms that the Grievant did the work first and then placed the work and the inventory barcode on a table. An Employer witness Jane Edse, a co-worker of the Grievant, confirmed that their manager did instruct them to have the barcode scanned first. Ms. Edse also confirmed in her interview with the Employer that Grievant's manager approached the Grievant because she had failed to have the inventory barcode scanned beforehand.

The Employer argues the work rule at issue is inappropriate delay in carrying out a management directive or assignment.

The Employer argues that the Union's allegations of a strained relationship between the Grievant and Ms. Young are merely distractions.

The Employer contends the Union's witness testimony and evidence submitted in no way refutes the core issue. In fact, the testimony and statements offered by the Grievant actually



support the Employer's position that she violated the work rule.

The Employer says the discipline imposed was progressive and not a surprise. The contract between the State of Ohio and OCSEA gives management the right to direct its' workforce. Employees are not given the right to direct managers or do as they wish.

The Employer argues that it has proven its case. The Grievant has a history of being disobedient and not following instructions with more than one manager, as evidenced in prior disciplinary actions.

The Union argues that the Employer had no just cause to remove the Grievant. At the time of her removal the Grievant had a Written Reprimand and a 5-day Suspension.

The Union makes the following assertions.

Sheena Gwynn was a 13-year employee with excellent performance evaluations.

The Employer provided no eyewitnesses to the interaction between Sheena Gwynn and Donna Young on September 4, 2019.

The Union provided five signed statements from eyewitnesses which contradict Donna Young's version of events.

The Grievant was aware any additional work rule violations would cause her to lose her career.

The Grievant was four months away from a clear discipline record.

Prior to Donna Young being promoted the Grievant had never received any discipline.

When Donna Young was promoted to Data Entry Supervisor she had no direct reports. She worked side by side with Lisa Moore, Sheena Gwynn's supervisor until 2019.

The removal is not just because it hinges on the word of one supervisor.

The Union says the Employer provided two witnesses, Jennifer Woodman (Administrative Officer 3) and Donna Young (Data Entry Supervisor). Ms. Woodman testified the Grievant continuously exceeds daily work expectations. She also testified the Grievant is often requested by other departments to assist with work and special projects. Ms. Woodman also testified she was not an eyewitness to the events which took place on September 4, 2019.

The Union says Donna Young testified Grievant yelled at her in the work area September 4, 2019 and the Union argues the Employer failed to provide any eyewitness testimony to corroborate this. On the stand, Supervisor Young read written statements from other staff members who did not witness any disruptive behavior from the Grievant. When asked if she had a reason to believe the authors of the written statements would lie, Supervisor Young replied no.

In Supervisor Young's initial statement to HR she stated she witnessed Grievant grab a tub of mail at 7:30 A.M. and began working it without first having her barcode scanned. During Cross-Examination, when asked why she didn't correct the Grievant at that point Supervisor Young replied she had other work to do . In fact Supervisor Young did not approach Grievant until 8:40 A.M. regarding the completed tub of mail. Grievant was removed for violating work rule #5 - Failure of Good Behavior - Inappropriate Delay. The Union argues that by Supervisor Young's own admission, she waited one hour and ten minutes to address the situation with Grievant. The Union argues Supervisor Young testified Grievant completed the tub of mail in question and was unaware of any harm to Ohio Taxpayers. Employer testimony indicated

someone had to log into the system to enter the barcodes for the two tubs of mail Grievant started before going to Mark Hay. The Union argues the delay was caused directly by Supervisor Young's inaction at 7:30 A.M.

The Union says it provided direct testimony from two eyewitnesses who were present in the mail work area on the morning of September 4, 2019. The Union argues both witnesses testified that Supervisor Young was the aggressor in the interaction with Grievant. They also testified that not scanning the barcode before beginning the mail did not prevent them from doing the work. The barcode scan at the beginning and end of batch was for timing and tracking purposes. Both witnesses testified they were aware that Grievant was afforded a witness whenever she met with Supervisor Young. Both witnessed Grievant ask Supervisor Young to provide a witness for the conversation and Supervisor Young declined, instead coming onto the floor.

The Union argues that on a number of occasions Grievant made management aware of her fear of Supervisor Young. The Union contends the evidence is that May 14, 2016 there was an e-mail to Elizabeth Kooi, HR Administrator, and documented her concerns to her supervisor, Lisa Moore. The Union argues that not only did the Employer ignore Grievant's concerns, they made her directly report to Supervisor Young on January 2019. At that point Grievant reached out to her local Union President begging for assistance. The Grievant was advised to have a witness anytime she met with Supervisor Young. The Union argues the Employer denies this was an official order, even though she was accommodated with a witness from January 2019 until the morning of September 4, 2019

The Employer asserted the Grievant has always had an attitude, was difficult to work with, but was very good at her job. The Union recognizes the Grievant had two active disciplines at the time of her removal but was four (4) months shy of a clean discipline record on September 4, 2019.

The Union argues that it has proven the Grievant had no disciplinary issues until Donna Young was promoted to Supervisor in 2015.

The Union argues the Employer did not have Just Cause to remove the Grievant. The Union contends that the Grievant had a 13 year career with the department that ended because of the word of one supervisor.

The Employer failed to interview the other employees who were present during the September 4, 2019 interaction. The Union provided five written statements which directly contradict Supervisor Young's version of events. The Union also submitted evidence of the layout of the work area.

The Union argues that the Grievant's removal was punitive. The Grievant's active discipline was to expire in 2020 and this is a clear indication the Grievant was mindful of every interaction she had at work.

The Union says the Grievant was well aware that if any additional allegations were leveled against her she would be terminated. She has been cautious at work since January 2017 when her 5-day suspension was issued. Supervisor Young was fully aware as well that Grievant was very close to removal.

The Union contends the entire situation could have been avoided had the agency paid

attention to Grievant's fears of Supervisor Young which are documented back to 2016, if Supervisor Young provided a witness on September 4, 2019 as Grievant asked, or if Supervisor Young didn't try to correct Grievant on the work floor in front of the entire unit. The Union argues the Ohio Department of Taxation failed to manage on several occasions as it relates to Grievant and Supervisor Young.

The Union asks that the grievance be granted and the Grievant made whole.

The Arbitrator has reviewed the Exhibits, testimony and the Closing Arguments of the parties.

The Employer is correct that the evidence is the Grievant disobeyed a simple, direct order: "Have the barcode scanned prior to doing any work on the tub". Ms. Goodman testified that the Grievant had been coached, counseled, even placed upon an improvement plan.

The evidence is that Grievant worked several tubs without having the barcode scanned in advance. The evidence is clear that the Grievant and Supervisor Young have a difficult relationship. The job still has to be done.

The Arbitrator is not persuaded that Supervisor Young's delay in correcting Grievant makes the delay Supervisor Young's fault.

The dispute in the evidence concerning the verbal altercation and slamming the tub on the table does not alter the fact that the Grievant disobeyed a clear direct order.

The Union says the Grievant had been provided a witness before but not this time. The Union argues that a witness was not provided but Supervisor Young went out on the floor. The Employer says Ms. Young offered to meet Grievant at the door of her office.

Based upon the drawing of the work place, in either case, there were witnesses.

The Arbitrator does not agree with the Union that the removal was punitive. The Grievant had prior discipline, and the Grievant had been counseled and coached.

The Union has proven that the Grievant was afraid of Ms. Young. The Grievant attempted to use the Workplace Violence Policy, but to no avail. She then turned to the Union. The Union established a past practice of witnesses even though there was no formal agreement with HR. It looks to the Arbitrator, as stated above on September 4, 2019 the witness issue was resolved.

This brings us to the basic rule "Work now Grieve later".

The grievance is denied.

Entered at Ironton, Ohio this 12<sup>th</sup> day of April, 2021



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Craig A. Allen  
Arbitrator

# INVOICE

**NAME:** Craig A. Allen  
**ADDRESS:** 311 S. 3<sup>rd</sup> St., POB 1, Ironton, OH 45638  
**Fed. ID No.**

Submitted to:

OCSEA

Attn: Jessica Chester  
390 Worthington Rd. #A  
Westerville, OH 43082-8331

Office of Collective Bargaining

Attn: Kate Nicholson  
Department of Administrative Services  
100 E. Broad St., 14<sup>th</sup> FL  
Columbus, OH 43215-3607

Invoice No. 030321 -1  
Date of Invoice: 04-13-21  
Date of Service: 03-03-21

Supplier # 0000047063  
Purchase Order: 0000030180

Date briefs due 04-02-21

Date briefs received 04-02-21

Description of Service: NTA/MED/Exp. ARBITRATION

Location: Zoom Arbitration

Date: 03-03-21

Grievant Name: **Sheena Gwynn**

PROFESSIONAL SERVICE:

<u>1</u> day (s) of hearings	@ \$1,000.00 per day	\$1,000.00
<u>   </u> day(s) of travel	@ \$1,000.00 per day	\$
<u>2</u> day(s) of study & writing	@ \$1,000.00 per day	\$2,000.00

Total Professional Services \$3,000.00

AFSCME/OCSEA \$1,500.00

**OFFICE OF COLLECTIVE BARGAINING \$1,500.00**