

**American Arbitration Association
Voluntary Labor Tribunal
Case No. 01-16-0005-5309**

IN THE MATTER OF ARBITRATION BETWEEN

Seekonk Fire Fighters IAFF Local 1931

&

Town of Seekonk

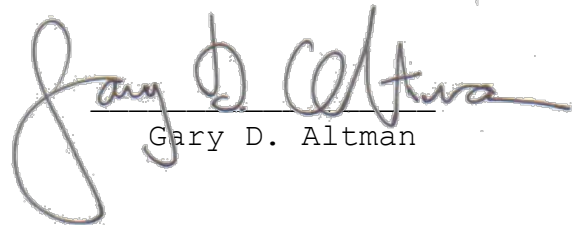
(Grievance: [REDACTED] and [REDACTED] - Suspensions)

AWARD OF THE ARBITRATOR

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties AWARDS as follows:

For the reasons set forth in the attached Decision, the grievance, the eight-tour suspension of Firefighters [REDACTED] and Firefighter [REDACTED] was not for just cause. The discipline for Firefighter [REDACTED] should be reduced to a four-tour suspension, and the discipline for Firefighter [REDACTED] should be reduced to a written warning.

February 26, 2018
Brookline, Massachusetts


Gary D. Altman

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Voluntary Labor Tribunal
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Town of Seekonk

(Grievance: [REDACTED] and [REDACTED] - Suspensions)

ARBITRATION DECISION AND AWARD

Introduction

The Town of Seekonk ("Town" or "Employer") and Seekonk Fire Fighters IAFF Local 1931 ("Union") are parties to a Collective Bargaining Agreement ("Agreement"). Under the Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration under the rules of the American Arbitration Association. The parties presented their case in Arbitration before Gary D. Altman, Esq., on November 17, 2017. The Union was represented by Patrick Bryant, Esq., and the Town by Joseph Fair, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted post-hearing briefs.

Issue

The parties agreed that the issue should read as follows:

Did the Town have just cause to suspend the Firefighters [REDACTED] and [REDACTED] for eight shifts? If not, what shall be the remedy?

Facts

I. Background

The Town of Seekonk Fire Department is comprised of twenty-eight (28) firefighters, four (4) lieutenants, two (2) captains, and one (1) Chief. Except for the Chief, all positions are included within the bargaining unit. The Department operates two stations, Headquarters and the Pine Street Station. When a call comes for service, generally the response will be dispatched to the station that is closest in proximity to the call. At Headquarters there is a Rescue (ambulance), an Engine Truck, and a Ladder Truck. The Pine Street Station has a Rescue and an Engine. Two firefighters are assigned to the Pine Street Station, which means that if it is a rescue call, generally a medical call or motor vehicle accident, the two firefighters will respond in the rescue truck, but if it is a fire call, the two firefighters will then respond with the engine. In the event that both stations are responding to a call, and the Department is unable to dispatch its own equipment, the Department will call upon mutual aid in which a Department from a neighboring community will cover for Seekonk, and Seekonk will in turn cover for a mutual aid community if that community needs assistance at another time.

When there is a fire call, the Seekonk Communication Center will general dispatch all firefighters on duty to respond, which means that the Department will send an engine and the ladder truck to the scene. Upon arriving at the scene the responding firefighters will check in and communicate with the superior officer at the scene, who is in charge of directing the response to the incident. The superior officer at the scene also has the authority to assess the situation, and decide upon the necessary level

of service, and, for example, can determine that the initial dispatch of two engines is not necessary and to then direct that a responding engine return to its station. The emergency is then handled by the first engine company that arrived at the scene. The superior officer using the Department's radio transmission would communicate a "Code Yellow" or a "return to service" to a responding apparatus, and the firefighters receiving the call would cease their response, turn off the sirens and lights, and return to their station to be able to respond to the next call for service. While the firefighters are returning to their station, they are in service, and can be called to respond to another incident. It is permissible for firefighters, while returning to their station, and in service, to stop and get food or a beverage before they return to the station.

For medical calls for which the rescue responds, firefighters wear the uniform they normally wear at the station (Class B uniform). For fire calls firefighters wear their turnout gear, which includes pants with attached boots, a helmet, coat and gloves. The gear is heavy, approximately 25 pounds, and is only worn when firefighters are in the apparatus responding to a call and at the scene of a fire.

II. Incident on September 9, 2016

On September 9, 2016, at approximately 3:53 pm, the Seekonk Fire Department received a 911 call that a shed had exploded at Wayside Motors, which is located at 1651 Fall River Avenue in Seekonk. Fall River Avenue is also Route 6, and is a four-lane roadway that has considerable traffic, and many businesses. At the time of the call Engine 3 and Car 3, which are stationed at Headquarters, were on another

call. Dispatched to the scene at Wayside Motors were Rescue 4, from Headquarters and Engine 2, which is housed at the Pine Street Station. Assigned to the Pine Street Station and responding to the call on Engine 2 that afternoon were Firefighters [REDACTED] and [REDACTED].

Firefighter [REDACTED] was driving Engine 2 and Firefighter [REDACTED], the more senior firefighter, was in the passenger seat and was the one to receive and respond to any calls as they were responding to the scene. Engine 2 was travelling to the scene with its siren and lights on, and Firefighter [REDACTED] estimated that they were responding at approximately 55 miles per hour. They both were wearing their turnout gear, and Firefighters [REDACTED] and [REDACTED] both explained that Engine 2 had no air conditioning, that the temperature outside was in the nineties, and it was very hot inside the cab of the engine.

Captain [REDACTED] testified that she was assigned Car 3 on September 29, and that she and Engine 3, had previously been dispatched to a call and that they had completed the call, returned to service, and proceeded to the scene at Wayside Motors, and they actually arrived at Wayside Motors before Engine 2. Captain [REDACTED] explained that when she arrived at Wayside Motors both Engine 3 and the Rescue from Headquarters were on the scene, and she determined that no further response was necessary. Specifically, Captain [REDACTED] testified that Engine 3 had pulled a hose from the truck, and the rescue was attending to a person who had been injured, and there was no fire at the scene. Captain [REDACTED] stated that she then dispatched over the radio to Engine 2, "Car 3 to Engine 2 you can go back in service." Engine 2 acknowledged receipt of Captain [REDACTED] call.

Firefighter [REDACTED] testified that once they received the call they turned off the emergency lights and sirens on Engine 2, and moved from the left lane into the right lane on Route 6. Firefighter [REDACTED] explained that once the call came in from Captain [REDACTED], Engine 2 was now in service and able to respond to any call that they would have received. Firefighter [REDACTED] stated that at the time they got the call they were on Route 6, close to Wayside Motors, where there are a lot of small businesses on the same of side of Route 6 as Wayside Motors, that did not have parking lots that were large enough to pull the engine into and turn around, and he knew that the parking lot at Wayside Motors was large enough that they could pull Engine 2 into the lot, and turn the Engine around. Firefighter [REDACTED] explained that he would have to get out of the truck and assist Firefighter [REDACTED] to turn the truck around. Firefighter [REDACTED] stated that it was his decision to turn Engine 2 around at Wayside Motors. Firefighter [REDACTED] testified that he agreed with Firefighter [REDACTED] decision to turn around at Wayside Motors and further stated that they were maybe a half a mile, thirty seconds, from Wayside Motors.

Firefighter [REDACTED] testified that Firefighter [REDACTED] parked Engine 2 behind Engine 3 in the parking lot at Wayside Motors, and they both got out of the truck to take off their turnout gear. Firefighter [REDACTED] stated that he asked Firefighter [REDACTED] to check with the others to see if they needed any assistance. Firefighter [REDACTED] stated that he went over and spoke with Firefighter [REDACTED] who was about 50 feet away, and asked him if anything had changed and whether they needed their assistance, and [REDACTED] stated that no additional help was necessary.

Firefighter [REDACTED] stated that he was assigned to Engine 3 and was dispatched to Wayside Motors. Firefighter [REDACTED] stated that he saw Firefighters [REDACTED] and [REDACTED] at the scene and saw them take off their turnout gear at the scene. Firefighter [REDACTED] stated that Firefighter [REDACTED] asked him if they could help, and he responded that they were all set. Firefighter [REDACTED] stated that he noticed Firefighter [REDACTED] speak to one of the Firefighters assigned to the rescue truck. Firefighter [REDACTED] testified that Captain [REDACTED] then came over to Firefighter [REDACTED] and told him that he was to report back in service, and that initially Firefighter [REDACTED] did not respond, and Captain [REDACTED] said to Firefighter [REDACTED] "to go", and that Engine 2 then left the scene.

Captain [REDACTED] testified that she noticed Firefighters [REDACTED] and [REDACTED] at the scene, and she was surprised to see them there, since she had directed that they go back in service. Captain [REDACTED] stated that she then told Firefighter [REDACTED] that they were supposed to go back into service, which meant that they were to go back to Pine Street Station. Captain [REDACTED] testified that Firefighter [REDACTED] initially did not do or say anything, and after she told him to leave, he then told her that they were leaving. Captain [REDACTED] explained that Rescue 4 would be transporting the injured person to the hospital, and the Rescue at the Pine Street Station, was then the only operational ambulance in the Town.

Firefighter [REDACTED] testified that Captain [REDACTED] saw him at the scene and came over and asked why Engine 3 was there and that she told them they were supposed to be back in service, and to leave. Firefighter [REDACTED] stated that both he and Firefighter [REDACTED] then took off their turnout

gear, and got back in the Engine and drove back to Pine Street Station, which was about a thirty minute drive at the time during the day. Captain [REDACTED] stated that she spoke to the Chief and later emailed him about what had transpired and wrote:

Their departure appeared to be with no urgency and/or concern for getting apparatus back in service. E2 departed from the Wayside parking lot, not the Tai-Pan parking. FF [REDACTED] directly disobeyed an order (actually two times) and I found him to be insubordinate at this incident.

[REDACTED] has been with the Department since 1987, and has served as Chief for the past three years. Chief [REDACTED] testified that he was not working the day of the incident at Wayside Motors, but that Captain [REDACTED], who was at the scene, had called him to tell him of the events. Chief [REDACTED] stated that during one of the calls she told him that Engine 2 had arrived at the scene after she had previously told Engine 2 to go back in service. Chief [REDACTED] stated that he met with Captain [REDACTED] reviewed Captain [REDACTED] email, and then met with Firefighters [REDACTED] and [REDACTED]

Chief [REDACTED] stated that there was no dispute that Engine 2 had received and heard Captain [REDACTED] call to return to service. Chief [REDACTED] stated that it was important that Engine 2 return to Pine Street Station, to be able to respond to any rescue calls since Rescue 4 would be transporting the injured individual to the hospital, and the rescue at Pine Street was the only other rescue available in the Town. If the rescue at Pine Street was not staffed, then the Department would have to utilize mutual aide to respond to a rescue call. Chief [REDACTED] stated that

he asked Firefighter [REDACTED] why Engine 2 went to the scene at Wayside Motors instead of immediately returning to Pine Street Station, and that Firefighter [REDACTED] responded that he was "curious", as to what was happening at the scene. Firefighter [REDACTED] also acknowledged that he did not check in with Captain [REDACTED] when he arrived at Wayside Auto. Firefighter [REDACTED] also told him that he took off his turnout gear before getting back in the Engine. Chief [REDACTED] stated that it was unusual for firefighters to stop and take off their turnout gear before returning to the station, but acknowledged that there was no policy on whether firefighters could take off their gear before returning to the station.

Chief [REDACTED] stated that Firefighter [REDACTED] explained that after Engine 2 received the call he was looking for a place to turn the Engine around, and that when they arrived at the scene he did get out of the truck to ask one of the firefighters on the scene if they needed assistance.

Chief [REDACTED] testified that he concluded that Firefighters [REDACTED] and [REDACTED] did not follow Captain [REDACTED] directive to return to service, and that they should have immediately returned to Pine Street Station. Chief [REDACTED] explained that from when they received the call to return to service there were a number of locations where they could have turned the engine around and did not have to drive to Wayside Motors. Chief [REDACTED] also stated that Firefighters [REDACTED] and [REDACTED] when they arrived at the scene did not simply turn the Engine around, but got out of the truck to see if they could offer assistance, and never checked in with Captain [REDACTED]. Instead, she had to come over and direct them to go back to the Station. Chief [REDACTED] explained that under the Town's Personnel Rules, he has the

authority to issue up to a five-day or four-tour suspension, and he believed that a four-tour suspension was appropriate. On September 26, Chief ██████ issued his four-tour suspension for Firefighters ██████ and ██████. Chief ██████ testified that he did speak with the Town Administrator before issuing the discipline but did not discuss the discipline with the Board of Selectmen.

On October 3, 2016, the Union filed a grievance over the Chief's four-tour suspension of Firefighters ██████ and ██████. The first step of the grievance procedure called for the grievance to be filed with the Chief, who on October 11, 2016, denied the grievance. On October 12, 2016 the Union pursued the grievance to the Town Administrator, ██████. On October 19, ██████ denied the grievance and upheld the Chief's decision to suspend the two firefighters for four tours.

On November 2, the Union pursued the grievance to Step 3 before the Board of Selectmen. On November 3, at the Board of Selectmen's meeting, the Board of Selectmen voted "to uphold the grievance ... and reinstate Firefighters ██████ and ██████ pay for the four shift suspension." The Board of Selectmen also decided to issue notice for Firefighters ██████ and ██████ to appear before the Board of Selectmen "for a disciplinary hearing, which could result in disciplinary action up to and including termination."¹ The Board of Selectmen at their November 16, 2016 meeting decided to then issue an eight-tour suspension. The Union then pursued the matter to Arbitration.

¹ Neither the Union nor the grievants appeared at the November 3, 2016 Selectmen's meeting.

Chief [REDACTED] testified that as far as he could remember, nobody had been disciplined up to eight tours. Chief [REDACTED] stated that there was another firefighter who had been insubordinate and he issued a four-tour suspension. Chief [REDACTED] stated that this firefighter had prior discipline, including a previous suspension.

Relevant Provisions of the Agreement

Article 13, Section 2:

It is agreed that the Chief of the Fire Department or the Board of Selectmen has the right to discipline or discharge employees for just cause.

Positions of the Parties

Summary of the Town's Arguments

The Town argues that there was just cause to suspend Firefighters [REDACTED] and [REDACTED] for insubordination. The Town states that there is no dispute that Captain [REDACTED] gave a clear directive to Firefighters [REDACTED] and [REDACTED], while they were responding to Wayside Motors, to "return to service." The Town further maintains that there is no dispute that Firefighter [REDACTED] received the directive. The Town contends that the directive to "return to service" was understood by all Seekonk Firefighters, that they were no longer needed at the scene to which they were dispatched, and that the apparatus they were in was to turn around, and return to their station. The Town states that instead of turning Engine 2 around, they continued to Wayside Motors, in clear defiance of Captain [REDACTED] directive.

The Town further asserts that Chief [REDACTED] testified that there were a number of locations where Engine 2 could have turned around prior to the parking lot at Wayside Motors. Moreover, the Town states that Firefighters [REDACTED]

and [REDACTED] should have known that Wayside Motors was not an appropriate place to turn around as there were already a number of emergency vehicles present at the scene, and the location had a number of other cars parked there since it was a car dealership. The Town contends that the real reason that Firefighters [REDACTED] and [REDACTED] proceeded to Wayside Motors was to check out the scene, and such action was in direct conflict with Captain [REDACTED] directive to return to service.

The Town states that Firefighters [REDACTED] and [REDACTED] knew that they were directed to return to service, yet, when they arrived at Wayside Motors, they got out of the truck, went over and asked other firefighters at the scene if they could be of assistance. The Town states that not only did Firefighters [REDACTED] and [REDACTED] fail to check in with Captain [REDACTED] the commanding officer at the scene, but also their request to offer assistance at the scene was in defiance of Captain [REDACTED] directive to return to service. Specifically, the Town contends that Firefighters [REDACTED] and [REDACTED] had been directed to return to service and report back to Pine Street Station, not to offer any assistance at the scene at Wayside Motors. The Town further states that Chief [REDACTED] credibly testified that Firefighter [REDACTED] told him that the reason Engine 2 continued to the scene was because he was curious as to what was going on at the scene. The Town maintains that the evidence clearly demonstrates that Firefighters [REDACTED] and [REDACTED] intentionally disobeyed the directive from Captain [REDACTED] to return to service and return to the Pine Street Station.

The Town argues that failure to follow a directive of a supervisor amounts to insubordination, which is a very serious charge, especially in the fire fighting service,

where the command structure is crucial to the safety of personnel and the public. The Town states that the longer it took for Engine 2 to return to the Pine Street Station, the longer the Town did not have a second ambulance to respond to an accident. The Town maintains that the eight-day suspension imposed by the Selectmen was appropriate and warranted by the intentional misconduct of Firefighters [REDACTED] and [REDACTED]. The Town contends that the Selectmen were initially unaware of the four-tour suspension imposed on the firefighters, and as a result, wanted to hear from Firefighters [REDACTED] and [REDACTED] before imposing discipline. The Town further states that it was, therefore, appropriate for the Selectmen, as the appointing authority, to rescind the Chief's four-day suspension, and, after holding their own hearing, to replace the initial four-tour suspension with the eight-tour suspensions of the two firefighters.

The Town maintains that the evidence demonstrates that Firefighters [REDACTED] and [REDACTED] were guilty of insubordination, and that there just cause to impose an eight-tour suspension. The Town concludes that the grievance should be dismissed.

Summary of the Union's Arguments

The Union contends that there was not just cause to impose any discipline on Firefighters [REDACTED] and [REDACTED]. The Union states that the grievants did not violate any rule or order that would warrant a conclusion that they were insubordinate. The Union first asserts that Captain [REDACTED] dispatch to Engine 2 was not a direct order. Specifically, the Union states that Captain [REDACTED], in her radio communication, stated that Engine 2 "can go back in service". The Union argues that this was not a definite order; nor did Captain [REDACTED] state that Engine 2 had to

immediately turn around and proceed back to the Pine Street Station, the moment they received Captain [REDACTED] call.

The Union also maintains that going back in service means that the firefighters must be available to answer any calls, and Firefighters [REDACTED] and [REDACTED] did, in fact, go back in service, as they turned off the emergency lights and siren, and were then ready and able to respond to any calls. Moreover, the Union states that there is no specific policy that defines "being in service", and the testimony reveals that even while "being in service", firefighters can stop and buy food or drinks or to pick up supplies. The Union thus states that since Engine 2, after receiving Captain [REDACTED] call, did go back in service and was ready and able to respond to any call, it cannot be concluded that Firefighters [REDACTED] and [REDACTED] were in any way insubordinate by continuing to Wayside Motors to turn the Engine around.

The Union states that the facts show that Engine 2 was less than a half mile, or 40 seconds, from Wayside Motors, and that Firefighter [REDACTED] knew there was ample space at the site to turn the engine around, as opposed to crossing the highway, or stopping at another location. Moreover, the Union states that it was over ninety degrees and since it would take twenty to twenty five minutes to return to Pine Street Station, it was appropriate for Firefighters [REDACTED] and [REDACTED], when they stopped to turn the Engine around, to take off their turnout gear before returning to Pine Street Station. Again, the Union states that no Department rule prohibits firefighters from taking off their protective gear before returning to the station.

The Union contends that insubordination has been defined as a willful and intentional disregard of a

supervisor's instruction, or the defiance of a supervisor's authority. The Union argues that Firefighters [REDACTED] and [REDACTED] conduct cannot be considered as willful or intentional disregard of a supervisor's directive or defiance of supervisory authority. The Union states that the two firefighters immediately went back into service after receiving Captain [REDACTED] call, and were ready and able to respond to any and all calls for service that may have come into the Department. Moreover, the Union states that Firefighters [REDACTED] and [REDACTED] did nothing wrong when they arrived at the scene of Wayside Motors, to turn the engine around and take off their protective gear. In particular, the Union states that Firefighters [REDACTED] and [REDACTED] did not initially see Captain [REDACTED], they did not provide any services at the scene, but simply asked if the situation was under control, before they got back in the engine to return to Pine Street Station.

The Union states that even assuming that the firefighters did something wrong by going to Wayside Motors before they turned around, the discipline imposed by the Town was unjustified. The Union first contends that Firefighter [REDACTED] had the responsibility to follow the directive of the senior firefighter assigned to Engine 2 that afternoon, and it was Firefighter [REDACTED] decision to go to Wayside Motors to turn the engine around. Moreover, the Union states that it was Firefighter [REDACTED] who instructed Firefighter [REDACTED] to get out of Engine 2 and ask other firefighters at the scene whether they needed assistance. Finally, the Union states that it was Firefighter [REDACTED] that Captain [REDACTED] interacted with at the scene, and he was the one who Captain [REDACTED] complained was disrespectful. The Union thus maintains that there is

not just cause to issue any discipline to Firefighter
██████████

The Union further contends that an eight-tour suspension was too severe, and totally disproportionate to the conduct of Firefighters ██████████ and ██████████. First, the Union states that both Firefighters ██████████ and ██████████ had received no prior discipline during their employment. The Union states that the only other firefighter who was disciplined for insubordination received a four-tour suspension, and he had a record of prior discipline. Moreover, the Union states that it must be remembered that, at worst, the decision to stop at Wayside Motors delayed Firefighters ██████████ and ██████████ by two minutes from returning to Pine Street Station, and was a well-meaning effort to see if further assistance was necessary at the scene. Further, the Union states that neither the Chief nor the Town Administrator believed that the discipline warranted an eight-tour suspension, but only a four-tour suspension.

The Union maintains that the Selectmen's decision to double the suspension occurred after the Union filed a grievance and failed to appear at the Step 3 grievance hearing. The Union argues that the Selectmen offered no explanation for doubling the discipline in the present case, and it can only be concluded that the Selectmen's action was intended to restrain employees rights to engage in protected concerted activity. Moreover, the Union states that the Selectmen's action amounted to double jeopardy, as the Selectmen first granted the Union's grievance to vacate the four-tour suspension. The Union argues that the Selectmen were then estopped from again disciplining the grievants for the same conduct.

The Union concludes that the grievance should be sustained and that Firefighters ██████ and ██████ have their suspensions rescinded and be made whole.

Discussion

As a general matter, in disciplinary matters the Employer has the burden to prove that the employees' discipline is for just cause. This includes proof that the employees are guilty of the alleged wrong doing, and that the penalty imposed by the Employer is in keeping with the severity of the offense. After the Chief imposed a four-tour suspension for Firefighters ██████ and ██████, the Selectmen rescinded the discipline, and in a letter dated November 23, 2016, imposed an eight-tour suspension for insubordination.

I. Incident of September 9, 2016

Insubordination is a refusal to obey an order issued by a supervisor. Arbitrators have long held that management has the responsibility to direct the workforce and that an employee must obey the instruction and challenge the order through the established grievance procedure.² There are certain key ingredients that must be present before an employee can be disciplined for failure to obey a direction of the supervisor: 1) there must be an order by a person with the proper authority; 2) the order must have been clearly communicated to the employee; 3) the employee must have understood the order; 4) the employee refused to comply with the order. The Employer maintains that Firefighters ██████ and ██████ were insubordinate when,

² An important exception to the "work now grieve later" rule is when the work involves an unusual health hazard. The facts in the case do not demonstrate the existence of an unusual health or safety hazard.

after they were directed to return to service, they instead proceeded to the scene at Wayside Motors.

The Union first maintains that Captain [REDACTED] radio communication to Engine 2 and received by Firefighter [REDACTED] was not an order to immediately return to service but rather an indirect instruction that it would be permissible for Engine 2 to return to service. A review of the dispatch indicates that Captain [REDACTED] radioed to Engine 2, "you can go back in service". Both Firefighters [REDACTED] and [REDACTED] unquestionably knew that this was a directive that they were not needed at the scene, and that they were to return to service; to return to Pine Street Station and be ready and able to respond to any calls that may be received by the Department. Moreover, there is no evidence that Firefighters [REDACTED] and [REDACTED] had any doubt or uncertainty about Captain [REDACTED] directive. They never called to seek clarification of the communication. Engine 2 turned off its siren and emergency lights, and both Firefighters [REDACTED] and [REDACTED] testified that they knew they were no longer needed at the scene.

There was much testimony, some conflicting, about what is commonly understood by a directive to return to service; that is, that firefighters do not have to proceed directly back to their station, that they can stop and get supplies and food, that they can take off their turnout gear before returning to their station. It is not necessary to wade through the conflicting testimony as to whether it was reasonable and appropriate for Engine 2 to have turned around before they arrived at Wayside Motors. Specifically, the actions of Firefighters [REDACTED] and [REDACTED] at the scene of Wayside Motors show that their conduct was insubordinate, and deserving of some level of discipline.

Firefighter ██████ testified that when Engine 2 arrived at the scene he directed Firefighter ██████ to check with firefighters at the scene to see if they needed assistance, and he, too, left the cab of Engine 2 to check the scene to see whether further assistance was necessary. The Union asserts that it was logical and an appropriate response for the two firefighters to get out of the Engine and to check with their colleagues as to what was occurring at the scene, that they did so with the best of intentions. Such conduct, however, directly contradicts the directive of Captain ██████. Specifically, Engine 2 had already been given the directive by Captain ██████ to return to service. In other words, a superior officer had already determined that Engine 2 was not necessary to provide any assistance at the scene of Wayside Motors.

For the Firefighters at Engine 2 to proceed to the scene and ask other firefighters as to whether they needed assistance, was conduct that called into question the directive of a supervisory official that their assistance was not necessary. Moreover, it is conduct that conflicts with the order they were given to return to service, and be able to respond to other calls, and not proceed to Wayside Motors to offer assistance. Accordingly, it must be concluded that the Chief correctly determined that discipline of the two firefighters was appropriate.

II. Disciplinary Penalty

It is true, as the Town asserts, that insubordination is a very serious offense: it undermines a supervisor's authority to direct the work force, and may be grounds for serious discipline. An arbitrator should not "second guess" the penalty imposed by the employer. This does not mean, however, that the arbitrator's sole purpose is only to

determine whether the employees have engaged in wrongful acts. The principles of just cause require a review of the penalty imposed by the employer. "In many disciplinary cases, the reasonableness of the penalty imposed on an employee rather than the existence of proper cause for disciplining him is the question an arbitrator must decide." How Arbitration Works, Elkouri and Elkouri, p. 668 (4th Ed. 1985).

Initially, the Chief determined that both Firefighters [REDACTED] and [REDACTED] deserved the same level of discipline, a four-tour suspension, which was later increased by the Board of Selectmen to an eight-tour suspension. There can be no dispute that the Board of Selectmen is the appointing authority for Seekonk Firefighters, and has the authority to discipline Town employees. There was, however, no justification as to why the Selectmen decided to double the suspension already levied by the Fire Chief. No Selectmen testified at the hearing as to why the suspension was increased. The Selectmen's November 23, 2016 letter provides no explanation as to why the suspension was doubled. Moreover, this was not a situation in which the Chief made a recommendation to the Selectmen as to what he thought should be the appropriate level of discipline. Rather, he had already decided upon a four-tour suspension, which was then confirmed by the Town Manager. Under the circumstances, it must be concluded that the Selectmen's decision to double the suspension to eight-tours was arbitrary and not for just cause.

The Chief imposed a four-tour suspension on both Firefighters [REDACTED] and Firefighter [REDACTED]. Of course, both were assigned to Engine 2 and both responded together to the scene at Wayside Motors. It cannot be concluded,

however, that both shared the same degree of culpability. Specifically, the record shows that Firefighter [REDACTED] was the Senior Firefighter and that Firefighter [REDACTED] was required to follow the directives of the Senior Firefighter. It was Firefighter [REDACTED] decision to continue to Wayside Motors, and it was he who then instructed Firefighter [REDACTED] to speak to a firefighter at the scene to ask if assistance was necessary. Firefighter [REDACTED] also left Engine 2 to speak to someone at the scene to see if further assistance was necessary. Moreover, in reviewing Captain [REDACTED] email to Chief [REDACTED] she specifically cited Firefighter [REDACTED] for his disobedience and insubordination at the scene, and not Firefighter [REDACTED] conduct. Therefore, Firefighter [REDACTED] should shoulder more of the responsibility for the misconduct that occurred on September 9, 2016.

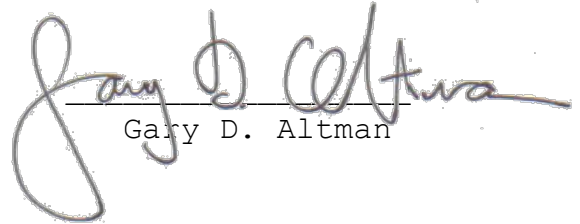
In addition, an employee's past work record is an important factor to be considered when determining whether the punishment is appropriate and fair. Specifically, arbitrators often consider an employee's work record to ascertain whether there exist other incidents that demonstrate that the employee is unable to conform to rules and regulations of the Employer, other instances of poor performance, or whether the instant incident is the last straw in a continuing pattern of inappropriate behavior. The record demonstrates that neither Firefighters [REDACTED] nor [REDACTED] had ever been disciplined for insubordination or any other acts that would show a pattern of having difficulties with supervisory authority.³

³ Captain [REDACTED] mentioned past interactions with Firefighter [REDACTED] but Chief [REDACTED] stated that no discipline had been imposed for past conduct.

Conclusion and Award

Accordingly, under the totality of all the circumstances, and for the reasons set forth more fully above, the eight tour suspension of Firefighter [REDACTED] and Firefighter [REDACTED] was not for just cause. The discipline for Firefighter [REDACTED] should be reduced to a four-tour suspension, and the discipline for Firefighter [REDACTED] should be reduced to a written warning.

February 26, 2018
Brookline, Massachusetts



Gary D. Altman