

**Labor Relations Connection
Voluntary Labor Tribunal
Case No. 24-0416, LRC196-20**

IN THE MATTER OF ARBITRATION BETWEEN

CITY OF BOSTON

Center for Youth and Families

&

SALARIED EMPLOYEES OF NORTH AMERICA LOCAL 9158

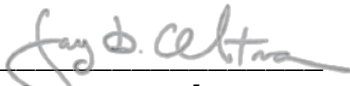
(Grievant - [REDACTED])

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 Employer did not have just cause to suspend the grievant, [REDACTED], for three days. The suspension shall be reduced to a written warning to be placed in [REDACTED]. [REDACTED]' personnel file, and he shall be made whole for three days of lost pay.

February 3, 2021
Brookline, Massachusetts



Gary D. Altman

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(Grievant - [REDACTED])

ARBITRATION DECISION AND AWARD

Introduction

SENA Local 9158 ("Union") and City of Boston Center for Youth and Families ("Employer" or "City") are parties to a Collective Bargaining Agreement ("Agreement"). Under the Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration. The parties presented their case in a virtual arbitration hearing before Gary D. Altman, Esq., on September 30, 2020. The Union was represented by G. Alexander Robertson Esq., and the Employer was represented by Ellen McClintock, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted written briefs after the close of the testimony.

Issue

At the outset of the hearing, the parties agreed that the issue to be decided is as follows:

Was there just cause to issue a three day suspension of the grievant, [REDACTED] If not, what shall be the remedy?

Facts

The Boston Center for Youth and Families ("BCYF") operates thirty-six community centers throughout the City. The Centers provide activities and recreational facilities for children and families that live in the City of Boston. The Center employs staff who work at the Center's headquarters, including Regional Operations Managers, who, in turn, oversee a number of Community Centers in designated regions of the City. Working at the Centers are Program Supervisors and Administrative Coordinators, who oversee the activities and supervise the staff who work at the Centers.

The [REDACTED] Center is located in [REDACTED], and has a pool, gym, and community rooms, and offers youth activities. [REDACTED] is a Regional Operations Manager, and the [REDACTED] Center is one of the Centers in the region that he oversees. [REDACTED] does not actually work at the Center, but goes to the Center on an as-needed basis. There is no Administrative Coordinator assigned at [REDACTED] and [REDACTED] the Program Manager, is the on-site supervisor and oversees activities and a staff of six employees, including administrative, athletic and aquatic staff. Mr. [REDACTED] has worked for BCYF for just short of thirty years, and has worked as a Program Manager for the past fifteen years.

In July of 2019, [REDACTED] an Athletic Assistant, and [REDACTED] the Athletic Director at the [REDACTED] Center, were outside of the Center when a man, who was walking a dog, approached them. The man was upset that

employees were parking their cars on an outdoor basketball court at the Center, and told Mr. [REDACTED] and Mr. [REDACTED] that workers should not be parking their cars on the court. Apparently, staff members parked their cars on the courts since the courts were in disrepair and not being used. Mr. [REDACTED] told the man that the children could play basketball indoors. Mr. [REDACTED] thought that the man was joking, but he became angry and said words to the effect "you think this is a joke you guys are here cleaning your cars instead of being in the gym working." The man then began to swear and said words to the effect "I am going to get some kids to fuck up your cars good, and shoot bricks at your cars."

Mr. [REDACTED] testified that on the same day as this incident Mr. [REDACTED] and Mr. [REDACTED] were back in the building and walked by Mr. [REDACTED]. Mr. [REDACTED] stated that Mr. [REDACTED] and Mr. [REDACTED] were laughing and he asked them what they were laughing about, and they told him about the interaction with the man outside. Mr. [REDACTED] asked Mr. [REDACTED] and Mr. [REDACTED] if they felt threatened in any way by the encounter and they told him that they were not, that the "guy was crazy and was swearing all the time". Mr. [REDACTED] stated that he told Mr. [REDACTED] and Mr. [REDACTED] not to park their cars on the basketball courts, and not engage with this man anymore. Mr. [REDACTED] stated that since the two staff did not think they were threatened by the man or in any way concerned about the matter, he did not believe that this was an issue that had to be followed up with an Incident Report or to contact Mr. [REDACTED]. There is no dispute that Mr. [REDACTED] did not mention this incident to any of the other staff of the Center, did not report this to Mr. [REDACTED], the Regional Operations Manager, or make a police report.

On August 7, 2019 [REDACTED] the Administrative Assistant at the Center, was escorting someone out of the Center, and she noticed that her car was vandalized; it had been spray painted with black paint. Mr. [REDACTED] testified that Ms. [REDACTED] called him that evening, told him what had happened, and she was very upset. Ms. [REDACTED] also wanted to know if the Center would pay for her car to be repaired. Mr. [REDACTED] stated that Ms. [REDACTED] told him that she believed that a female summer employee, who she had argued with and told to leave the Center, was the one that had vandalized her car. Mr. [REDACTED] stated that Ms. [REDACTED] did not park on the basketball court where Mr. [REDACTED] and Mr. [REDACTED] had parked, but was in a completely different area. Mr. [REDACTED] stated that no other cars had been vandalized that day. Mr. [REDACTED] stated that he told Ms. [REDACTED] that he would contact [REDACTED] Facilities Manager, about filing a report.

Ms. [REDACTED] went to the police station to file a police report. Ms. [REDACTED] also completed an Accident/Incident Report dated August 7, 2019 that she gave to [REDACTED] her Union representative. Ms. [REDACTED], in this report, wrote, "I walked outside and my car was vandalized I did not see who did the damage. However, I think it's a resident that complained about how we park and threatened my coworkers." Ms. [REDACTED] further wrote, "This should not have happened. I do not feel safe, there is no security cameras or security". Mr. [REDACTED] stated that he never received Ms. [REDACTED] incident report.

On the afternoon of August 8, 2019 Mr. [REDACTED] sent an email to Mr. [REDACTED] describing what had occurred to Ms. [REDACTED] car, and asked whether they had cameras and could obtain video of the location on the night in question, and

also inquired whether City insurance would reimburse Ms. [REDACTED] for the damage. Mr. [REDACTED] responded that Ms. [REDACTED] would have to file a claim through the School Department. Mr. [REDACTED] testified that he believed that by following up with Mr. [REDACTED] that was all that needed to be done on the matter.

Mr. [REDACTED], the Regional Operations Manager, testified that he first learned of the interaction between the man and the staff about staff parking on the basketball courts, and the man's threatening comments and the later vandalism to Ms. [REDACTED] car, when Ms. [REDACTED] sent him an email on August 14, asking him to talk about the incident and staff safety at the [REDACTED] Center. Mr. [REDACTED] stated that informed Ms. [REDACTED] that he knew nothing of the events, and Ms. [REDACTED] then emailed him Ms. [REDACTED] incident report to him.¹ Mr. [REDACTED] testified that Ms. [REDACTED] was upset that nothing had been done after the confrontation with the man, and that Ms. [REDACTED] did not feel safe when she was working evenings at the Community Center. There was also a follow-up meeting with Ms. [REDACTED] about ensuring Ms. [REDACTED] and staff safety.

Mr. [REDACTED] testified that he was upset that Mr. [REDACTED] made no effort to notify him when the incidents first took place. Mr. [REDACTED] stated that it is the Program Supervisor's responsibility to notify the Regional Operations of issues that arise at the Centers; the incidents with the man who threatened the two employees, and also when Ms. [REDACTED] had her car vandalized, were serious matters that involved staff safety. Mr. [REDACTED] explained that the City promulgated The Zero Tolerance for

¹ Ms. [REDACTED] apparently did not submit a copy of her report to Mr. [REDACTED].

Violence Policy, which was provided to all City employees including Mr. [REDACTED]. Mr. [REDACTED] stated that the Policy reads in part:

Management personnel including cabinet chiefs, department heads, managers and supervisors are responsible for assessing situations, making judgements on the appropriate response, and then responding to reports of, or knowledge of violence, or of employees who are the victims of violence, and for initiating the investigation process... Any report of workplace violence brought to the manager or supervisor's attention must be investigated immediately and discreetly, and appropriate action taken, where possible, in order to protect the employee(s) from further violence. Managers and supervisors who have reason to believe that an employee is or has been the victim of violence, shall attempt to intervene to provide assistance through referral to the Employee Assistance Program.

Any incident involving violent behavior as defined in the Policy and Program is considered a serious matter that will not be tolerated, and as such, must be investigated. All incidents involving emergency and/or criminal activity will be referred to the Police Department for investigation...

Mr. [REDACTED] also explained that BCYF also has procedures that must be followed for emergencies and accidents that occur at the Centers. Specifically, Mr. [REDACTED] stated that staff are to complete Incident/Accident Reports for injuries that occur at the Center, and staff are also expected to complete incident reports for instances in which staff need to call police, 911 calls, or calls for medical assistance. Staff filling out these reports are to describe the incident, what occurred and the nature of the injury or emergency. The form reads in part:

The report must be sent to the Facilities Manager AND the appropriate Regional Operations Manager (ROM) at Boston Centers for Youth & Families' Central Office via fax or email **no later than 48 hours** after the occurrence...

Important: If the Accident/Incident is of a serious nature, such as the need to call 911 or medical or police assistance, the appropriate ROM should be called immediately following the event."

Each Center also has an Operations Manual which contains the various policies and procedures that apply to all the BCYF Centers. The Operations Manual also emphasizes the need to report to supervisors and states:

The following types of incidents must be immediately reported to a supervisor: ... [d]amage to City of Boston property or an employee's personal property while on City of Boston premises involving actual or suspected mischief, vandalism, or criminal negligence..."

Mr. [REDACTED] stated that in April of the same year Mr. [REDACTED] sent him an email about a medical emergency that occurred at the Center involving a youngster who became short of breath and an ambulance had to be called. Mr. [REDACTED] stated that he sent Mr. [REDACTED] an email with an attached Incident Accident Form, and directed Mr. [REDACTED] to complete the form and send it directly to him. Mr. [REDACTED] testified that Mr. [REDACTED] failed to follow the BCYF procedures for reporting the incident that occurred at the Center, and that he certainly should have known that the policies and procedures called for him to have completed reports and submit them at the time the incidents occurred.

Mr. [REDACTED] testified that he met with Mr. [REDACTED] to ask him why he had not submitted Incident Reports after the

man's threats to the two workers, and after Ms. [REDACTED] car had been vandalized. Mr. [REDACTED] stated that Mr. [REDACTED] claimed that he did not believe that he had to submit reports to the Program Supervisor after these matters, and believed that submitting the report to the Facilities Manager was sufficient.² Mr. [REDACTED] stated that these were not insignificant matters, and that Mr. [REDACTED] should have known that he had the responsibility to ensure that the reports were completed and provided to him. Mr. [REDACTED] testified that after his investigation the Department imposed a three day suspension as a result of Mr. [REDACTED] "failing to report an incident to his supervisor".³

Relevant Provisions of the Agreement

ARTICLE 9 - DISCIPLINE AND DISCHARGE

Section 1. No employee who has completed their probationary period as defined in Section 2 below shall be issued a warning, suspended without pay, demoted or discharged without just cause. The City agrees to apply the concept of progressive discipline in all but the most serious cases.

Positions of the Parties

Summary of the City's Arguments

The City argues that the three-day suspension of the grievant, [REDACTED] was appropriate and for just cause, and that the grievance must be dismissed. The City states that it has promulgated a number of policies and procedures to be followed by supervisors at Community

² Introduced into evidence was a May 15, 2012 counselling for Mr. [REDACTED] for failing to complete an incident report for a fight that occurred outside the Center.

³ Also introduced into evidence was a one-day suspension issued to Mr. [REDACTED] on August 1, 2019. This suspension was for insubordination for not getting supervisory approval prior to purchasing something for the Center. This suspension was also grieved, and submitted to arbitration before another arbitrator. The suspension was overturned by the Arbitrator, and the discipline was to be removed from Mr. [REDACTED]' personnel records.

Centers when dangerous or violent incidents occur at one of the Centers. The City contends that the policies and procedures are clear and there can be no doubt as to a Community Centers supervisor's responsibility to notify a Regional Operations Manager when there is violence or threats of violence, damage or vandalism to an employee's property. Moreover, the City states that just a couple of months prior to the incidents in the present case, Mr.

██████ sent an email to Mr. ██████ informing him of the need to complete an Incident/Accident report when a youngster at one of the Center's had a medical emergency and an ambulance had to be called. The City also points to a 2012 counselling given to Mr. ██████ for failing to report a fight that occurred at his Center. The City argues that the evidence demonstrates that Mr. ██████ knew or certainly should have known of his responsibility to report to his Regional Manager the threats and acts of violence that occurred in the present case.

The City argues that there is no dispute as to the incidents that occurred in the present case. There was the incident in July, when two staff members told Mr. ██████ that a man walking by the Center was angry that staff were parking on the outside basketball court, and threatened to "fuck up" their cars, and "shoot bricks" through their car windows. The City states that in view of the City's zero policy on violence this was the type of matter that Mr. ██████ should have reported to Mr. ██████. Mr. ██████, the City states, asked the two employees a number of times whether they felt safe, and even directed the two employees not to park their cars on the outside basketball court; this was certainly not a typical interaction with member of the public. The City states that what occurred was serious;

it involved threats of vandalism, and it was the type of incident for which Mr. [REDACTED], the Program Supervisor, should have completed an Incident Accident Report and sent to Mr. [REDACTED].

The City argues that the incident regarding Ms. [REDACTED] was even more serious as it involved a real act of vandalism to an employee's car that was parked at the Center. The City argues that there is no legitimate reason for Mr. [REDACTED] not to have completed an incident report and immediately submitted it to Mr. [REDACTED]. The matter was serious enough that Ms. [REDACTED], on her own initiative, completed and submitted a police report, and was so concerned about her safety that she contacted her Union representative. Moreover, Mr. [REDACTED], told Mr. [REDACTED] that Ms. [REDACTED] believed another employee had caused the vandalism to her car. The City states that if this was the case, it is inexcusable that an act of vandalism, allegedly involving another employee, was a matter that Mr. [REDACTED] did not see fit to report to Mr. [REDACTED]. The City maintains that Mr. [REDACTED] should have learned about this matter from Mr. Hughes and not from Ms. [REDACTED] Union Representative, who called Mr. [REDACTED] to set up a meeting about the events and staff safety.

The City also argues that Mr. [REDACTED] explanation that he sent an email to Mr. [REDACTED] about the vandalism did not excuse Mr. [REDACTED] from submitting an Incident Report to Mr. [REDACTED]. Specifically, the City states that Mr. [REDACTED] is not Mr. [REDACTED]' supervisor, and works in the Facilities Department, responsible for building maintenance; even then, Mr. [REDACTED] told Mr. [REDACTED] that there was no immediacy to the matter and could wait until after he returned from his vacation. The

City maintains that the grievant's failure to properly report an incident amounted to poor work performance, was a clear violation of BCYF policy and safety rules, and demonstrates extremely poor judgement.

The City argues that the three-day suspension was appropriate and in line with the seriousness of Mr. [REDACTED]' dereliction of duty. The City states that on two separate occasions Mr. [REDACTED] disregarded the safety policies of the Center by failing to notify his supervisor of two serious incidents that occurred at the [REDACTED] Community Center for which he was the supervisor. These incidents, the City argues, involved threats of violence and an actual act of vandalism on an employee's car. The City argues that it was possible that if Mr. [REDACTED] had notified Mr. [REDACTED] after the first incident, that it would have put employees on notice of where to park their cars. The City argues that this was not the first time Mr. [REDACTED] failed to inform his supervisors of events at the Center, and previously received counselling for his failure to do so in the past. The City contends that Mr. [REDACTED] dereliction of duty was serious and a three-day suspension was reasonable and appropriate.

The City further argues that the fact that another arbitrator recently overturned a one-day suspension of Mr. [REDACTED] should have no impact on the penalty in the present case. Specifically, the City contends that Mr. [REDACTED] conduct was sufficiently egregious that a three day suspension was warranted regardless of the fact that Mr. [REDACTED] one-day suspension for insubordination was overturned. The City concludes that the Arbitrator should not substitute his judgement for Management, that the

grievance should be denied, and the three-day suspension should be upheld.

Summary of the Union's Arguments

The Union maintains that there was not just cause to discipline the grievant, [REDACTED]. The Union states that Mr. [REDACTED] was disciplined by the City for failing to report two incidents that occurred at the [REDACTED] Center for which he was the Program Manager. The Union states that the first incident in which the City faults the grievant, occurred in July of 2019 when Mr. [REDACTED] approached two employees who were joking about an incident that occurred outside the Center that day. The Union states that the two employees told Mr. [REDACTED] about an encounter with a man walking his dog who made comments about parking their cars on the basketball court. The two employees told Mr. [REDACTED] that the man was upset and made comments about vandalizing their cars. The two employees knew the man as he often walked his dog in the area, did not think that the man was serious, and told Mr. [REDACTED] that they were not concerned for their safety nor did they believe that the man posed any risk to them, and were laughing about the matter.

The Union states that based on the beliefs of the two employees, who had the actual interaction with the man, that this was not a real or serious concern, it was reasonable and appropriate for Mr. [REDACTED] to not report this matter up the chain of command. The Union contends that not every insignificant event that occurs at the Centers must be reported to the Central Office. The Union claims that this was the type of event that Mr. [REDACTED] decided could be handled at the local level, and he did so by telling employees not to park their cars on the outside basketball courts. The Union states that Mr. [REDACTED]

response to this matter was reasonable and appropriate and not deserving of any discipline.

The Union argues that the second incident that was cited in Mr. [REDACTED]' suspension letter was the fact that he did not report vandalism to a staff member's car. The Union contends that although Mr. [REDACTED] did not complete an incident report or notify Mr. [REDACTED], he did not ignore the incident. Specifically, the Union states that Mr. [REDACTED] reported the matter to the Mr. [REDACTED] the Agencies Facilities Manager seeking to address the vandalism to the employee's vehicle. The Union asserts that Mr. [REDACTED] believed that this was the appropriate method by which to report the matter, and he had not received any prior training that required that this matter had be completed on a specific BCYF form.

The Union further argues that even if it is found that Mr. [REDACTED] should have done more to report the matters to Mr. [REDACTED], a three day suspension is excessive. Specifically, the Union states that Mr. [REDACTED] had never before been disciplined for failing to submit incident reports, and this is the type of behavior that could be addressed by non-disciplinary counselling as opposed to removal of the grievant from work for a period of unpaid suspension. Moreover, the Union states that during this time period Mr. [REDACTED] was also issued a one day suspension for alleged insubordinate behavior. The Union states that this discipline was overturned in arbitration, and thus cannot serve as progressive discipline to warrant a three day suspension. The Union maintains that under the principles of just cause and progressive discipline, the grievance should be sustained, the grievant made whole and the suspension removed from Mr. [REDACTED] personnel records.

Discussion

It is well-established arbitral precedent that the employer has the burden to prove that an employee's discipline is for just cause. This includes proof that the employee is guilty of the alleged wrong doing, and that the penalty imposed by the employer is in keeping with the severity of the offense. An employee's past work record is an important factor to be considered when determining whether the punishment is appropriate and fair.

On December 2, 2019 the City suspended Mr. [REDACTED] for failing to report two incidents that occurred at the [REDACTED] Center for which he was the Program Coordinator, the supervisor at the Center. The first incident relates to comments made by a man to two employees about employees of the Center parking cars on the outside basketball courts, which occurred in July 2019. The second relates to an act of vandalism that occurred to an employee's car on August 7, 2019. There is no dispute that Mr. [REDACTED] did not complete an Incident Report or ever report these two incidents to his supervisor, [REDACTED]

The evidence demonstrates that there are policies and procedures that require supervisors of the Community Centers to notify the Program Manager of incidents that occur at the Centers. There is the City's Zero Tolerance for Violence policy, which provides for supervisor to be informed of potential acts of violence. In addition, there is the Operations Manual for the Centers that provides:

The following types of incidents must be immediately reported to a supervisor: ... [d]amage to City of Boston property or an employee's personal property while on City of Boston premises involving actual or suspected mischief, vandalism, or criminal negligence..."

Moreover, there is also the actual Incident/Accident Report form that specifies that for injuries or emergencies:

[A] report must be sent to the Facilities Manager AND the appropriate Regional Operations Manager (ROM) at Boston Centers for Youth & Families' Central Office via fax or email **no later than 48 hours** after the occurrence...

Important: If the Accident/Incident is of a serious nature, such as the need to call 911 or medical or police assistance, the appropriate ROM should be called immediately following the event."

Mr. [REDACTED] in April of the same year, was directed by Mr. [REDACTED] to complete an Incident/Accident Report when a child needed medical attention. Although the incidents at issue were not medical emergencies, the form covers all incidents, not just medical emergencies. Mr. [REDACTED] should have known of the requirement to report serious incidents, especially when they involve the safety and acts of vandalism of employees of the Center.

One could certainly debate whether the first incident involving the interaction of the staff with the man about parking on the basketball court was serious enough for Mr. [REDACTED] to have completed an Incident Report. The two staff members apparently knew the man, had seen him before outside the Center, knew that he often swore, and did not think his statements were a credible threat. They were both laughing about the interaction, and did not think it was a big deal, and only told Mr. [REDACTED] about it when he noticed that they were laughing about the interaction. Under the totality of circumstances, it cannot be concluded that Mr. [REDACTED] was negligent or was derelict in his duties by failing to report this matter to Mr. [REDACTED].

A different conclusion must be found with respect to the vandalism to the employee's car. This did not involve future possibilities or whether comments could be perceived as a potential threat. What occurred was an actual act of vandalism; there was nothing imagined or something that may occur in the future. While it is true that Mr. [REDACTED] informed Mr. [REDACTED] of the Facilities Department about the event, this was done to find out about insurance coverage. Mr. [REDACTED] testified that Ms. [REDACTED] was very upset about the encounter, and told him that it was possibly done by a former disgruntled employee.⁴ Mr. [REDACTED] as the Regional Operations Manager, should have been told immediately of this event; this was an incident that was done to an employee of the Center, and it impacted the safety and security of employees working at the Center. Mr. [REDACTED] should not have had to find out from the employee's Union Representative that the employee was concerned about her safety working at the Center. Mr. [REDACTED] conduct in failing to report the vandalism to Ms. [REDACTED] car violated Department policies and was deserving of some level of discipline.

Just cause has long been held to embrace not only a finding of whether the alleged misconduct has occurred but also whether the discipline imposed by the employer was appropriate for the offense. In disciplinary cases arbitrators exercise the right to change or modify a penalty if it is found to be improper or too severe under

⁴ Ms. [REDACTED] report made no mention of a former employee, but mentioned the threat made by the man to the two staff members. Whether she told Mr. [REDACTED] that it was the former employee, is no significance, as Mr. [REDACTED] still had the obligation to notify Mr. [REDACTED]

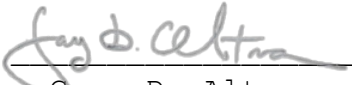
all the circumstances of the situation. Elkouri and Elkouri, How Arbitration Works, Vol 4. p. 668.

The parties' Agreement states that "the City agrees to apply the concept of progressive discipline in all but the most serious cases." As stated above, Mr. [REDACTED]' failure to notify Mr. [REDACTED] about the vandalism to Ms. [REDACTED] car was wrong, but it was not an intentional act of misconduct. It cannot be stated that it met the standard of "all but the most serious cases". Mr. [REDACTED] had no prior discipline in his many years of service. While he did receive a counselling about a similar matter seven years ago, he did not receive a written warning for that matter, nor are there any written warnings in Mr. [REDACTED]' his record. Mr. [REDACTED] failure to notify Mr. [REDACTED] was not deserving of his being removed from the work force for even one day, and it does not warrant abandoning the principles of progressive discipline that is part of the parties' Agreement. Accordingly, the three-day suspension shall hereby be reduced to a written warning to be placed in Mr. [REDACTED] personnel file, and he shall be made whole for three days of lost pay.

Conclusion

For the reasons set forth above, the Department did not have just cause to suspend the grievant, [REDACTED], for three days. The suspension shall be reduced to a written warning to be placed in Mr. [REDACTED] personnel file, and he shall be made whole for three days of lost pay.

February 3, 2021
Brookline, Massachusetts


Gary D. Altman