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**IN THE MATTER OF THE ARBITRATION**

**between**

**ASSOCIATION OF FEDERAL, STATE,  
COUNTY AND MUNICIPAL EMPLOYEES  
DISTRICT COUNCIL 47  
LOCAL 2186**

**and**

**THE CITY OF PHILADELPHIA**

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**OPINION**

**AND**

**AWARD**

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**American Arbitration Association No. 01-18-0003-5092 (Discharge – Jimmie Harmon)**

**BEFORE: Lisa C. Charles  
Arbitrator**

**HEARING DATE: July 24, 2019**

**HEARING PLACE: American Arbitration Association, Philadelphia, Pennsylvania**

**AWARD DATE: August 20, 2019**

**APPEARANCES: Markowitz & Richman  
For the Union  
By: Claiborne S. Newlin, Esq.  
  
City of Philadelphia  
For the Employer  
By: Christopher H. Rider, Esq.**

## **ISSUE**

The parties agreed to the statement of the issue as follows:

Whether the City had just cause to suspend and discharge Jimmie Harmon? If not, what shall be the remedy?

## **BACKGROUND**

The City of Philadelphia (hereafter referred to as the City) is located in southeastern Pennsylvania. Jimmie Harmon was employed in the Revenue Department for approximately 10 years until he was suspended and subsequently discharged on August 7, 2018, for allegedly stealing time and inappropriate use of a City parking placard in his personal car. The Union filed a grievance on Mr. Harmon's behalf to have him reinstated asserting there was no theft of time since his supervisor gave him permission to move his car during work hours, and because he routinely worked late to make up the time he used to move his car. The Union insists that Mr. Harmon was unaware that use of a City parking placard in his personal vehicle violated the policy, that other employees who committed the same and more egregious offenses received lesser penalties, and that progressive discipline would be more appropriate to address the alleged infractions. The matter was not resolved, which led to this arbitration. The hearing was held on July 24, 2019, at the offices of American Arbitration Association located at 230 Broad Street, Philadelphia, PA. Both parties appeared through their representatives who presented witnesses and evidence, made arguments, and the record was closed.

## FACTS

Mr. Harmon was hired in the Revenue Department in 2008, and was promoted to the Revenue Investigations Supervisor in 2016. His normal work hours were 8:00 a.m. to 4:30 p.m., and his duties as a Supervisor included assisting in tax collection, conducting field training for new hires, supervising three to four Revenue Investigators responsible for collecting taxes owed to the City, distributing letters to taxpayers regarding delinquent taxes, and accompanying police officers to enforce cease and desist orders on businesses. Mr. Harmon was a long service employee with no prior discipline.

The City and the Union are parties to a Collective Bargaining Agreement (CBA) that states the following:

### **16. DISCIPLINE AND DISCHARGE**

**A. Just Cause.** It is agreed that management retains the right to impose disciplinary action or discharge provided that this right, except for an employee in probationary status, is for just cause only.

**C. Progressive Discipline.** The City shall have the right to discipline or discharge any employee in the meet and discuss unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2186 agree that discipline should be directed toward maintaining or improving City's services. This clause does not apply to probationary employees.

The City Vehicle Use Policy states the following:

#### **4.8 Fleet Liaisons**

**4.8.4 Distribute copies of this directive to all employees using City vehicles, and obtain the written acknowledgement of each employee that they have received the directive by obtaining the employee's signature on the final page of this directive and retaining the signed page on file in either scanned electronic or paper format.**

## **10. Parking**

**10.1 All City vehicle and employee personal vehicles approved for parking will be issued a placard permit to park in authorized zones.**

## **11. Rules for Disposition of parking tickets**

**11.6 Employees shall pay fines and late fees in a timely manner. Refusal to pay or accept responsibility for an outstanding violation will be subject to disciplinary action and/or loss of vehicle operating or parking privileges.**

Will Washington is an Office of Inspector General (OIG) Investigator for the City. He is responsible for investigating allegations of fraud, corruption and abuse perpetrated by employees and contractors. He testified that the OIG received a complaint in November 2017 that Mr. Harmon was stealing time and misusing a City parking placard. Mr. Washington testified that he and the lead investigator watched Mr. Harmon on four occasions arrive at work in his personal vehicle at the Municipal Services building, park his car, enter the building, and shortly thereafter, exit the building, go back to his car, drive to the Fairmount area to park his car, and take the subway back to the building. He testified that he watched Mr. Harmon on [REDACTED] and [REDACTED], that Mr. Harmon was gone from work for about 30 minutes each time, that he saw Mr. Harmon conduct personal errands on his way back to the building, but that he did not observe Mr. Harmon use a City parking placard. Mr. Washington further testified that as part of his investigation he learned that Mr. Harmon received two parking tickets in April 2017 for using a copy of a City parking placard.

Mr. Washington testified that he interviewed Mr. Harmon, who acknowledged after he was confronted with photos and two parking citations, that he left work to park his car, and that he received parking tickets for using a copy of a parking placard. Mr. Washington testified that

Mr. Harmon said that his supervisor gave him permission to leave work to park his car, and that it was common practice in his unit to use parking placards in personal cars. Mr. Washington testified that he interviewed Mr. Harmon's supervisor, who confirmed that she gave Mr. Harmon permission to move his car, but that she was unaware that he was parking across town. Mr. Washington testified that the supervisor described Mr. Harmon as a hard worker, who stayed late on a regular basis.

Kathleen McColgan is the Deputy Revenue and Integrity Commissioner. She testified that Revenue Investigators go out in the field to collect data and evidence to determine if businesses are in compliance with paying assessed taxes and fees, that Investigators have access to confidential taxpayer information, and that they have a high level of authority. Ms. McColgan testified that Mr. Harmon is a Supervisor of the Investigators, that he has a high level of discretion and authority, that there is very little supervision of the Supervisors, and that there is no tracking of Supervisors or logs of their activities.

Deloris Davis is the Department of Revenue Deputy Commissioner. She testified that the Department of Revenue issues parking placards for the City, that photocopies of parking placards are not issued to employees, and that she was unaware of employees using copies of parking placards before this case. She testified that she received the OIG investigation report, and that she was involved in the third level review of the allegations. The investigation report, submitted by the lead Investigator on March 26, 2018, states that the OIG received a complaint from six Department employees in November 2017, that the OIG investigated the complaint and concluded that Mr. Harmon regularly stole 30 to 45 minutes from the City, and that he used a parking placard for personal benefit.

Ms. Davis testified that she interviewed Mr. Harmon, and that he denied that he stole time but acknowledged that he left the building to park his car after he swiped into the building. Ms. Davis testified that she reviewed Mr. Harmon's swipe card information and found that there was a pattern of 16 occasions when he left the building shortly after swiping in. She testified that the Department and the public needs to trust Revenue Supervisors because they have access to sensitive taxpayer information, and that the Department lost trust in Mr. Harmon because he falsified his time and inappropriately used a parking placard. She testified that he was discharged because of his level of authority, and that several other employees who violated Department rules were not discharged because they did not have Mr. Harmon's level of authority. Five other employees' discipline records were entered into evidence.

On cross examination, Ms. Davis testified that Mr. Harmon's supervisor confirmed that she gave him permission to move his car during work hours, but that she assumed he was parking close by, and that the City did not know what Mr. Harmon was doing on the other 16 occasions when he swiped out shortly after his arrival to the building. Ms. Davis testified that the swipe records note entrance to the building but do not note exit from the building, that the swipe records were used to conclude that Mr. Harmon stole time, but that the swipe records are not used to pay employees. Ms. Davis testified that the Daily Time Reports are used to pay employees, that Mr. Harmon is a non-flex employee who must record a lunch break on the Daily Time Report whether or not he actually takes a lunch break, that overtime must be pre-approved by two levels of supervisors, and that Mr. Harmon signed the Daily Time Reports to be paid for eight hours per day even if he did not take lunch and regularly worked more than eight hours. She testified that the Department does not permit employees to stay late off the clock, that Mr. Harmon's supervisor was responsible for enforcing his overtime practices, and that his

supervisor was questioned about the matter and disciplined with a one-day suspension.

Ms. Davis further testified that Revenue Investigators are not allowed to use parking placards, that the Department did not issue a parking placard to Mr. Harmon, that Mr. Harmon said he purchased the parking placard from another Revenue Investigations Supervisor, who has since been promoted, and that there is nothing in the policy that states employees cannot use a parking placard in their personal vehicles. Ms. Davis testified that only one other employee has been disciplined since 2015 for misuse of a parking placard in addition to other violations, and that the employee received a five-day suspension. She also testified that four other Department employees have received progressive discipline for fraudulent claims of sick time and medical leave, and for falsifying their timesheets. She testified that those employees were given suspensions and/or last chance agreements, but that Mr. Harmon was not offered a last chance agreement.

Mr. Harmon testified that when he was promoted to a Supervisor in 2016, he received no training on how to supervise his staff or generate field reports, that he routinely stayed after his normal work hours to efficiently plan and organize his Investigators' work for the next day and complete field reports, and that he clashed with the Investigators after his promotion because he set standards for them and held them accountable for arriving at work on time and for their productivity. Mr. Harmon testified that his supervisor knew he stayed after hours for a half hour to an hour almost every day, that no one told him he was not allowed to do that, and that his supervisor signed his Daily Time Reports, which indicated that he worked eight hours per day.

Mr. Harmon testified that sometimes he was late to work, that he swiped in, distributed work to his Investigators, and then went to park his car. He testified that he asked his supervisor

before he did it, that she said okay, and that he would not have done it without her permission. He testified that he enjoyed his job and would not do anything to jeopardize it, that other employees left work to move their vehicles, for cigarette breaks, or to get lunch, and that they were not disciplined.

Mr. Harmon further testified that his swipe code gave him entry access to the building and to certain areas within the building, that he left the building for a variety of reasons such as to retrieve City vehicles at his supervisor's request or to go to field locations, and that he could have 18 swipes in a single day because he went upstairs to use the color copier and had to swipe to get back to his work area. Mr. Harmon testified that his supervisor told him he was doing a good job, that he consistently received satisfactory performance reviews, and that several taxpayers wrote letters about his professional handling of their cases.

Mr. Harmon testified that when he was an Investigator, they used City cars to perform their duties, later the City switched to using Zip Cars, and then switched to Investigators using their personal cars. He testified that he did not know about City parking placards until he became a supervisor and a peer supervisor told him about them and sold him a placard. He testified that he received two parking tickets in April 2017 for use of a copied parking placard and he paid the tickets. He testified that no one told him that he could not use a parking placard in his personal vehicle, that other Department employees used parking placards, and that other employees had their cars ticketed for using parking placards when they were not performing City business. Mr. Harmon testified that he had not seen the City Vehicle Use Policy and did not sign an acknowledgment form that he had received it.



## **Management Position**

The Employer argues that there is just cause for Mr. Harmon's discharge because: (a) the OIG investigation concluded that he stole time by leaving work to move his car and run personal errands after he swiped in; (b) that he bought a copy of a City parking placard and used it in his personal vehicle, which violated the City Vehicle Use Policy; and (c) that Mr. Harmon's misconduct violated the City's trust in him as a Supervisor. The Employer requests that the discharge be upheld.

## **Union Position**

The Union argues: (a) that there was no theft of time since Mr. Harmon's supervisor gave him permission to take time to move his car after he swiped in; (b) that his supervisor knew he routinely worked after his normal hours to complete his work and prepare work for his staff; (c) that disgruntled employees made the accusations against Mr. Harmon because he held them accountable for their late arrivals and productivity; (d) that Mr. Harmon did not receive notice that he could be disciplined for using a parking placard in his personal vehicle; and (e) that there was disparate treatment since other employees committed more serious offenses but received less severe penalties. The Union requests that Mr. Harmon be reinstated with full back pay and benefits, and that the discipline be removed from his file.

## DISCUSSION

The facts in this case are not in dispute. The evidence established that Mr. Harmon moved his car after he swiped in, and that he used a City parking placard in his personal vehicle. The question in this case is whether the suspension and subsequent discharge were too severe for his actions. On the basis of the evidence presented, I find they were.

The City has the right to discipline and discharge employees for just cause, but also has the responsibility to administer discipline in a fair and consistent manner. The evidence revealed that the OIG investigation based its conclusion that Mr. Harmon stole time by reviewing his swipe access records and surveillance reports for four days. However, the Department Deputy Commissioner acknowledged that the swipe records are not used to pay employees, and that the City was unaware what Mr. Harmon did on the other 16 occasions when he swiped out shortly after his initial arrival. Moreover, the Department Deputy Commissioner acknowledged that Mr. Harmon's supervisor gave him permission to move his car after swiping in, that his supervisor was aware that he routinely worked up to an hour after his shift without additional pay, that his supervisor signed his Daily Time Reports, which are used to pay employees, and that the reports indicated that he only worked eight hours per day. Furthermore, the City conceded that Mr. Harmon's supervisor was responsible for overseeing his overtime practices. Thus, it is unreasonable to discipline Mr. Harmon since he obtained permission to move his vehicle after swiping in, especially since the City knew he consistently worked late, and since he made up any work time that he occasionally took to move his car.

Similarly, Mr. Harmon's severe discipline for use of a parking placard in his personal car is unreasonable. Although it was inappropriate for him to purchase and use a copy of a parking

placard, the Union provided unrefuted evidence that it was common practice in the Department for employees to use copied parking placards in their personal vehicles, but there was no evidence that the other employees were disciplined. In addition, the Deputy Commissioner acknowledged that the supervisor who sold Mr. Harmon a copy of a parking placard is still employed and has been promoted, although that supervisor's action contradicted the Deputy Commissioner's testimony regarding proper distribution of parking placards to employees.

Furthermore, a year after Mr. Harmon was disciplined one employee received a five-day suspension for use of a parking placard in his personal car. In addition, the Deputy Commissioner acknowledged that four other Department employees who committed more egregious offenses between 2017 and 2019 received less severe discipline and/or last chance agreements, but a last chance agreement was not offered to Mr. Harmon. The Deputy Commissioner's explanation that Mr. Harmon received the severest discipline because he was in a higher position of authority is unpersuasive since his supervisor is in a higher position than him but received a one-day suspension in relation to this matter. Thus, the evidence established that there was disparate treatment since Mr. Harmon was severely disciplined while other employees who committed the same offense were either not disciplined or received less severe discipline, and since still other employees who committed more egregious offenses received less severe penalties.

Moreover, the Deputy Commissioner acknowledged that the City Vehicle Use Policy does not prohibit use of parking placards in personal vehicles, and the City presented no evidence that Mr. Harmon received the policy. In sum, the City has not met its burden that Mr. Harmon stole time or violated the policy about use of parking placards, or that it administered discipline to him in a fair and consistent manner. Finally, it is undisputed that Mr. Harmon is a

long service employee with an unblemished record prior to this incident.

Therefore, based on the facts and circumstances of this case, and for the reasons explained, I issue the following:

**AWARD**

The City did not have just cause to suspend and discharge Jimmie Harmon. The City of Philadelphia is ordered to reinstate Mr. Harmon, forthwith, with full back pay and benefits from the effective date of his suspension, which was July 23, 2018. The Arbitrator shall retain jurisdiction over any issues that may arise in the implementation of the Award.



By: \_\_\_\_\_  
Lisa C. Charles  
Arbitrator

Date: August 20, 2019