

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between the

AFSCME DISTRICT COUNCIL 47,

"Union,"

-and-

CITY OF PHILADELPHIA,

"Employer."

**OPINION
AND
AWARD**

AAA Case No. 01-19-0001-1852
(Grievance: 2187-19-12 – Bruce Platt –
30 Day Suspension with Intent to Dismiss)

**Before
Robert C. Gifford, Esq.
Arbitrator**

Appearances:

For the Union:

Jessica Brown, Esq.
Willig Williams & Davidson

For the Employer:

Tiffany R. Allen, Assistant City Solicitor

AFSCME District Council 47 and the City of Philadelphia are parties to a collective bargaining agreement ["Agreement"]. On March 19, 2019, the City dismissed Grievant Bruce Platt, a Recreation Leader 1 assigned to the Philadelphia Parks & Recreation ["PPR"], for his actions on [REDACTED] at the [REDACTED] Recreation Center. [Ex. C-4]. The Union timely filed a grievance contesting the Grievant's dismissal. The unresolved grievance was then timely submitted for binding arbitration. On May 14, 2020, AAA notified me that I was chosen to serve as arbitrator.

An arbitration hearing was held at AAA's offices in Philadelphia, Pennsylvania on March 3, 2020, at which time the parties were afforded the opportunity to argue orally, present witnesses and submit documentary evidence into the record. Testimony on behalf of the City Sworn testimony was received from A [REDACTED] K [REDACTED] – Recreation Specialty Instructor, B [REDACTED] H [REDACTED] – Camp Counselor, L [REDACTED] B [REDACTED] – Mother of Child "JB", E [REDACTED] H [REDACTED] – Program Manager, Misty Caleb – PPR Human Resources Manager, and Orlando Rendon – PPR Deputy Commissioner. Testimony on behalf of the Grievant was received from V [REDACTED] A [REDACTED] – Program Manager, and the Grievant. The parties provided oral closing arguments.

STIPULATED ISSUE

The parties stipulated to the following issue:

Whether the City had just cause to terminate the Grievant's employment? If not, what shall be the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

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 bargaining unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2187 agree that discipline should be directed toward maintaining or improving the City's services. This clause does not apply to probationary employees. [Ex. J-1].

BACKGROUND

At the time of his dismissal, Grievant Bruce Platt was a Recreation Leader 1 with the Philadelphia Parks & Recreation Programs Division. He started out in PPR back in 2008 as a Recreation Specialty Instructor.

On March 19, 2019, the City notified the Grievant that he was dismissed from his employment effective March 20, 2019 for his actions on [REDACTED]

A report was received by Programs management that on [REDACTED] [REDACTED], you grabbed a 6-year old camper by the collar and pulled him across the room, forcibly made him sit down, and tightly squeezed his face. Upon notification of this incident to senior leadership and Human Resources, you were placed on administrative leave pending an investigation. A video of the incident was obtained and reviewed by Human Resources and Robert (Bob) Coyle, President of DC47 Local 2187 and an investigation into this matter was completed.

In light of your actions against the camper as viewed on the surveillance video, you are hereby dismissed from City employment. [Ex. C-4].

The Union timely submitted a grievance that advanced to this binding arbitration proceeding.

During the arbitration proceedings, the parties presented witnesses and documentary evidence in support of their respective positions. In addition, the

parties jointly introduced footage from a video surveillance camera that captured the [REDACTED] incident. The evidentiary record will be discussed below.

A [REDACTED] K [REDACTED] is a Recreation Specialty Instructor at the [REDACTED] Recreation Center during the summer of 2018. K [REDACTED] worked in various camp counselor positions for 10 summers. She has known the Grievant for approximately five (5) years.

K [REDACTED] testified that JB has autism and has a wraparound Therapeutic Staff Support ["TSS"] member who follows him around at camp until 2:00 p.m. each day. K [REDACTED] is responsible for following JB around when the TSS member leaves for the day. K [REDACTED] testified that on Friday, [REDACTED] a prom was held for the campers. Snacks and food were provided after the king and queen were announced. K [REDACTED] testified that as JB was dancing and bouncing his leg that he accidentally stepped on a boy's potato chips that were on a plate on the floor. K [REDACTED] testified that when the boy told the Grievant what happened, the Grievant ran over to JB, grabbed him by the face, dragged JB to the side of the room, slammed him down, and screamed at him. K [REDACTED] testified that JB was so terrified that he shut down. K [REDACTED] indicated that JB later returned to where he was sitting on the floor and sat there sulking and crying with his legs crossed.

K█████ testified that she and the Grievant have a history of confronting each other on issues related to the running of the camp program. K█████ indicated that she never spoke to the Grievant about the incident, but she reported the incident to JB's adopted mother when she picked up JB and his brother from camp between 3 p.m. and 4 p.m. K█████ reported the incident to District Manager E█████ H█████ and followed up with an email to H█████ on ██████ at 11:09 a.m.:

Bruce grabbed an autistic child by his neck and dragged him over to his desk. Then grabbed his face and proceeded to yell in his face. [Ex. C-1].

K█████ testified that she has never seen the video footage of the incident.

K█████ testified that the Grievant approached her after she reported the incident. K█████ testified that the Grievant stated, "Don't go behind my back and we won't have issues." K█████ stated that she ignored the Grievant. K█████ indicated that she did not report this to her supervisors.

B█████ H█████ was a camp counselor at ██████ Recreation Center in the summer of 2018. At the time of the incident, the Grievant was H█████'s supervisor and she had known him for approximately three (3) years. H█████ had just graduated high school, and it was her second summer at P█████.

H [REDACTED] testified that on [REDACTED] she observed JB accidentally stepping on another kid's plate as he was dancing. H [REDACTED] testified that the Grievant grabbed JB by the collar, forced him to sit down, and then grabbed him by the face. H [REDACTED] testified that she outlined her observations to H [REDACTED] in an email on [REDACTED] at 11:22 a.m.:

Bruce grabbed an autistic child by the collar of his shirt very tightly and forced him to sit on the floor. He then squeezed his face and left a mark on his cheek. The child was very upset and this was done in front of all the camp kids. [Ex. C-2].

H [REDACTED] indicated that she did not approach the Grievant about the incident because she was afraid of how he would react due to the fact that she has observed how he has reacted in previous encounters with other staff members. H [REDACTED] testified that the Grievant asked her that Monday if she reported him and said to her that she "broke his trust".

H [REDACTED] testified that she never observed the video. H [REDACTED] indicated that she did not see the boy whose plate was stepped on go over to the Grievant to report JB's conduct.

L [REDACTED] B [REDACTED] is the adopted mother of JB. B [REDACTED] testified that JB is a six (6) year old boy with high-functioning autism. B [REDACTED] indicated that JB and his twin

brother attended the [REDACTED] camp in the summer of 2018 and that each of them has a TSS member from 9 a.m. to 2 p.m. each day. B [REDACTED] testified that K [REDACTED] reported the incident to her at pick up on [REDACTED]. Based upon her conversation with K [REDACTED], B [REDACTED] was under the impression that the Grievant "drug [JB] across the floor by the back of his shirt choking him and he squeezed his face till he put marks on him because [JB] stepped on a bag of chips." [Ex. C-3].

B [REDACTED] testified that she spoke with the Grievant who denied that there was an incident with JB that day. B [REDACTED] told the Grievant that she did not appreciate him screaming at JB. B [REDACTED] called H [REDACTED] the next day. B [REDACTED] testified that she did not see the video prior to the arbitration proceedings.

E [REDACTED] H [REDACTED] is the Program Manager for PPR District 1's swimming pools and recreation centers, including [REDACTED]. H [REDACTED] is the Grievant's supervisor. H [REDACTED] testified that K [REDACTED] called his cell phone around 7 p.m. on [REDACTED] [REDACTED] to report the Grievant's conduct. He also received a voicemail from B [REDACTED].

H [REDACTED] met with K [REDACTED] at 9 a.m. on [REDACTED]. H [REDACTED] directed K [REDACTED] to put her observations down in writing. He also spoke to H [REDACTED] and other individuals at [REDACTED].

H [REDACTED] testified that he spoke to the Grievant either on Tuesday or Wednesday. H [REDACTED] testified that the Grievant did not think there was an issue on [REDACTED]. They proceeded to review video footage together that the Grievant helped download onto the computer. When the events were shown, the Grievant said, "See, I didn't do anything."

On July 26, 2018, H [REDACTED] reported the incident in writing to Deputy Commissioner Orlando Rendon. He also reported the incident to the State of Pennsylvania on a hotline but never received a response. H [REDACTED] could not recall if he requested a written statement from the Grievant.

Misty Caleb is the PPR Human Resources Manager. Caleb testified that she received an email from H [REDACTED] regarding the reported incident. Caleb indicated that after her office reviewed the written witness statements and the video footage she recommended to Deputy Commissioner Rendon that the Grievant be removed from his position pending an investigation and disciplinary hearing. Caleb testified that she did not attempt to contact the Grievant before she made her formal recommendation due to the serious allegation and the clear evidence against him. Caleb testified that the Grievant was eventually dismissed from his employment at her recommendation. Caleb indicated that the Grievant's conduct violated the City's Workplace Violence Policy. [See Ex. J-3].

Caleb indicated that based upon her review of the surveillance video that she could not see if the Grievant was grabbing JB's face. Caleb testified that her office received a written statement from the Grievant on July 25, 2018, but she could not recall when she actually read it. Caleb indicated that she probably notified the Grievant in writing of his removal from his position pending investigation and disciplinary hearing before she read the Grievant's written statement. Caleb believed that she read the Grievant's written statement before he was notified of the City's intent to dismiss him.

Orlando Rendon is the Deputy Commissioner of the PPR Program Division. Rendon testified that after he received calls and emails regarding the [REDACTED] incident he instructed staff to collect information, including written statements and video. Rendon reviewed the video and the written statements from K [REDACTED] and H [REDACTED] but he never spoke with the Grievant or reviewed his written statement.

Rendon testified that the Grievant in his capacity as a Recreation Leader 1 must serve as a mentor. Rendon indicated that the Grievant's actions in placing his hands on JB were inappropriate and unwarranted. Rendon agreed with the Caleb's recommendation to terminate the Grievant's employment because he concluded that the Grievant's actions breached the public's trust.

Rendon testified that PPR staff members do not receive training on how to treat campers with special needs.

V [REDACTED] A [REDACTED] is a PPR Program Manager. A [REDACTED] was the Grievant's supervisor for approximately four and one-half (4½) years until April of 2018. She indicated that the Grievant received a performance evaluation of "satisfactory" in 2016 and "superior" in 2017. [See Exs. C-5 & U-1]. A [REDACTED] testified that the Grievant he did not receive any form of formal discipline over the period of time that she supervised him. Additionally, A [REDACTED] indicated that she never had any concerns or received any complaints regarding the Grievant's interactions with children.

The Grievant testified that he commenced his employment with the City in 2008 as Recreation Specialty Instructor. He became a Recreation Leader 1 in 2014.

The Grievant testified that he was aware that JB was a child with special needs, but he also indicated that JB acted like a normal kid and could be mischievous at times. The Grievant testified that contrary to the claims of K [REDACTED] and H [REDACTED] that the kids were not dancing around at the time that JB stepped on the boy's plate.

The Grievant testified that the upset boy told him that JB stepped on his plate a few times. At that point, the Grievant walked over to JB, grabbed him by his shirt collar, walked him away from the center of the room, and placed him in a timeout. The Grievant testified that JB does not like to be placed in timeouts. The Grievant denied that he grabbed JB's face or having any intent to be violent.

The Grievant testified that when B [REDACTED] picked up JB from camp he told her that JB was being mischievous and he took care of the problem.

The Grievant admitted that he never asked JB what happened before he placed him in a timeout. The Grievant admitted that he told H [REDACTED] that she "broke his trust", but he denied speaking with K [REDACTED] about the incident. The Grievant indicated that he never denied the incident when he met with H [REDACTED]. The Grievant also indicated that he has a loud, booming voice that people sometimes take the wrong way.

The Grievant testified that he sent H [REDACTED] an email about the incident after they reviewed the video together:

On [REDACTED], at approximately 3:20 p.m. we were having our prom day at camp. A child approached me and said that [JB] was stepping on his plate of food and called out to [JB] and stood up and walked over to him and told him to

stand up. He got up when I put my hand on his shoulder and led him over to my desk. He started to climb up the step but I told him to stop and sit on the step. I also said to him that he can't step on other people's food, and gave him a timeout. He sat for about 5-10 minutes when I told him to get up and go play. [Ex. U-1].

The Grievant admitted that he should not have touched JB's shirt that way.

Video footage from the surveillance camera in the room shows the following. The kids are not dancing around as depicted by K [REDACTED] and H [REDACTED] during their testimony. Rather, the kids are either seated on the floor in groups of two (2) to six (6) kids or in chairs arranged in rows near the walls of the room. They are eating food from their plates and talking to one another. There are staff members in various areas of the room conversing with one another, helping the kids with their plates, or simply walking around.

JB is seated on the floor in the middle of the room with his legs crossed. He can be seen eating food from his plate. JB stands up to discard an item in the garbage can located in a corner of the room. Rather than proceeding directly to the garbage can, JB goes out of his way to walk in between a boy and a girl who are seated next to each other on the floor. JB steps on the boy's plate. JB then walks over to the garbage can in the corner and discards an item. Rather than returning directly back to the spot where he was seated, JB proceeds to walk in the boy's direction and steps on his plate again. The boy is

visibly upset about JB stepping on his plate. JB then sits down where he was previously seated. The video clearly shows that neither K [REDACTED] nor H [REDACTED] observed JB's actions. H [REDACTED] was not facing JB. K [REDACTED] was in and out of the room during this period of time and was not facing JB when she was in the room.

About a minute later, JB grabs his plate and gets up to discard it. Rather than going directly to the garbage can, JB goes out of his way again to walk in between the boy and the girl and steps on the boy's plate for a third time. JB then walks over to discard his plate in the garbage can. JB then returns to where he was seated on the floor. The video clearly shows that K [REDACTED] and H [REDACTED] were in the room, but neither of them was facing or paying attention to JB at this time.

The boy whose plate was stepped on gets up and reports JB to the Grievant who is located at his desk in another corner of the room. At this point, neither K [REDACTED] nor H [REDACTED] are aware of JB's actions, and neither of them is facing or paying attention to JB. K [REDACTED] walks across the room and, as she does so, sees that the boy is upset about something and speaks with him. K [REDACTED] is now in a position to observe what happens between the Grievant and JB. It is also around this time that H [REDACTED]'s attention is drawn towards the Grievant. They are now both within a few feet of the Grievant.

The camera view of the Grievant at his desk is obstructed by an object in the video, but as the Grievant appears in the video frame he can be observed walking over to JB who was already standing in the middle of the room. The Grievant grabs JB's shirt collar and walks him over to the area where the Grievant's desk and a chair is located on a platform that is a single step above the main floor. Given that the Grievant has JB by the shirt collar, the Grievant's walking stride requires JB to accelerate his walking pace. The Grievant and JB remain visible on the camera. As the Grievant is holding JB by the collar, JB attempts to walk up the step to where the chair is located, but the Grievant sits JB down on the step itself. The Grievant crouches over JB and appears to reprimand him for stepping on the boy's plate. As the Grievant is crouching over JB, the Grievant's back is facing the camera and is obstructing a clear view of JB's face. In addition, the Grievant's hands cannot be seen. Once the Grievant stands up and walks towards his desk, JB can be observed sitting down on the step with his hands over his eyes. JB sits in that position for approximately four minutes.

The Grievant taps JB on the shoulder at which point JB get up and walks back to the area where he was previously seated on the floor. JB sits quietly on the floor with his legs crossed. His hands are no longer over his eyes. JB remains seated without further incident for the remaining four (4) minutes of the video.

Neither K [REDACTED] nor H [REDACTED] attempted to comfort JB during his timeout on the platform or when he returned to his spot on the floor. Neither K [REDACTED] nor H [REDACTED] can be observed interjecting themselves into the incident or having a discussion with the Grievant after the incident. In fact, K [REDACTED] and H [REDACTED] show little or no visible reaction to the incident.

The parties offered the following arguments in support of their respective positions.

SUMMARY OF THE ARGUMENTS

The City's Position

The City had just cause to dismiss the Grievant from his employment. The City jeopardized the safety and welfare of JB, a child known to have autism, when he grabbed him by the collar and hovered over him. Simply put, the Grievant lost his head that day and should not have handled JB in this manner. His actions violated the City's Workplace Violence Policy. K [REDACTED] and H [REDACTED], who were in close proximity to the Grievant at the time that he grabbed JB, provided a credible account of the Grievant's actions. The City emphasizes that neither of these witnesses reviewed the video of the incident. The City, after conducting a fair and thorough investigation, concluded that the Grievant's dismissal was required under the circumstances. For these reasons, and the entire record, the City had just cause to dismiss the Grievant's employment and the grievance must be denied. The City emphasizes that all of the Recreation Director 1 positions in PPR work with children and, therefore, the Grievant's reinstatement to his position is not appropriate.

The Union's Position

The Union contends that the City did not have just cause to dismiss the Grievant from his employment. The Union maintains that the video simply does not support the testimony of K [REDACTED] and H [REDACTED] who indicated that JB accidentally stepped on the boy's plate as he was dancing around the room. In fact, the video shows that K [REDACTED] and H [REDACTED] were not paying any attention to JB at all. Comparing the video to their testimony, it is evident that K [REDACTED] and H [REDACTED] exaggerated their observations of the Grievant, an individual that neither of them was fond of. Further, contrary to their testimony, the video shows, at most, an adult disciplining a kid who acted out.

The Union submits that the Grievant's conduct, at best, warrants a warning. The Union emphasizes that Deputy Commissioner Rendon made the decision to dismiss the Grievant without reviewing the Grievant's written statement of the incident. For these reasons, and the entire record, the City did not have a just cause basis for dismissal. The Union requests that the grievance be sustained and that the Grievant be reinstated and made whole.

DISCUSSION

I have carefully considered the arguments and evidence submitted into the record. It is the City's burden to prove that it had just cause to dismiss Grievant Bruce Platt from his employment as a Recreation Leader 1. The City's notice of dismissal indicates that the Grievant "grabbed a 6-year old camper by the collar and pulled him across the room, forcibly made him sit down, and tightly squeezed his face."¹

The video clearly shows that the Grievant grabs JB by the shirt collar as he escorts him across the room. Then, when they reach the platform, the Grievant sits JB on the platform step in an awkward manner. These acts when viewed in their totality are not consistent with what the City can reasonably expect of a Recreation Leader 1 who is responsible for the safety and welfare of the children who attend the various PPR camps. Even by his own admission, the Grievant acknowledges that he should not have grabbed JB by his collar and regrets his actions. Based upon the video evidence, I conclude that the City has established a just cause basis for disciplining the Grievant.

I now address whether the penalty of dismissal is warranted. The City's decision to dismiss the Grievant from his employment is based in part upon its

¹ The City contends that the Grievant's conduct violated the City's policy on workplace violence. I simply note that this alleged violation is not included in the Grievant's notice of dismissal.

conclusion that the Grievant tightly squeezed JB's face. I conclude that this is a claim that, if proven, would require the Grievant's dismissal under the circumstances presented in this case. But this allegation rests upon the testimony of K [REDACTED] and H [REDACTED] as it is not supported by clear video evidence. The video does not show the Grievant grabbing JB's face as he escorts him across the room. Further, as for the period of time that the Grievant was placing JB in a timeout on the platform step, the video angle is obstructed by the Grievant who is crouching over JB.

The burden of proof rests with the City, and the Grievant is entitled to be given the benefit of any doubt in this case. K [REDACTED] and H [REDACTED] testified to events that they simply were not in a position to observe. I find that their accounts of the events that led up to the Grievant grabbing JB by his shirt collar were inconsistent with what can be plainly observed on the video. For these reasons and based upon the totality of the evidence, I find their testimony to be unreliable and does not serve as sufficient proof that the Grievant grabbed JB's face. In sum, I am persuaded that the Grievant engaged in conduct that requires substantial disciplinary action, but I am also persuaded that there is an appropriate penalty short of dismissal that will best serve in this instance based upon the proven conduct.


Accordingly, based upon the above and the entire record, I conclude that the City had just cause to discipline the Grievant, but his dismissal shall be reduced to a 30 day suspension without pay based upon the proven conduct. The Grievant shall be reinstated and made whole in all other respects.

Accordingly, and based upon the entire record, I conclude the evidence supports just cause to discipline the Grievant, and I find that the penalty as modified herein to be commensurate with the proven conduct.

AWARD

The City had just cause to discipline the Grievant. The penalty of dismissal shall be reduced to a thirty (30) day suspension without pay. The Grievant shall be reinstated to his position and shall be made whole in all other respects.

Dated: April 2, 2020



Robert C. Gifford