

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between

AFSCME LOCAL 159

Union,

OPINION & AWARD

-- and --

**Case No. 01-17-0006-1314
(CO Suspensions)**

CITY OF PHILADELPHIA

Employer.

ARBITRATOR: James M. Darby, Esq.

APPEARANCES: For the FOP:
Thomas M. Gribbin, Jr., Esq.
Willig Williams & Davidson

For the City:
Benjamin Patchen, Esq.
Deputy City Solicitor

This case arose in May 2017, when the City of Philadelphia Prison System (“the City” or “PPS”) charged Correction Officers (“COs”) Eric Wright, Nicole Rosebough, Jarrod Cooper, Erica Fobbs, Louis Foster, Jr. and Roosevelt Johnson (“the Grievants”) with multiple violations of the PPS General Orders (“GOs”) and the Employee Code of Conduct for their roles in failing to, among other things, refer an inmate for medical attention. After a formal discipline

hearing was held on August 10, 2017, PPS issued a 30-day suspension to Grievant Wright; 20-day suspensions to Grievants Cooper, Fobbs, Foster, and Johnson; and a 10-day suspension to Grievant Rosebough. On August 11, 2017, AFSCME Local 159 (“the Union”) filed a grievance alleging that PPS’ discipline lacked just cause.

By letter dated February 21, 2018, from the American Arbitration Association (“AAA”), the undersigned was notified of his selection as Arbitrator of this dispute. Hearings were held on September 17, 2018, and February 26, 2019, at the AAA offices in Philadelphia, Pennsylvania, where the parties were afforded a full opportunity to present testimony, exhibits and arguments in support of their positions. The parties submitted post-hearing briefs and the record was closed. After fully considering all of the evidence and arguments presented, the matter is now ready for final disposition.

QUESTIONS TO BE RESOLVED

At the hearing, the parties stipulated to the following issue to be resolved by the Arbitrator:

Whether the City had just cause to issue a 30-day suspension without pay to CO Wright; 20-day suspensions without pay to COs Cooper, Fobbs, Foster, and Johnson; or a 10-day suspension without pay to CO Rosebough? If not, what shall the remedy be?

REMEDY REQUESTED

The Union requests that the grievance be sustained, that the Grievants be made whole (including lost overtime) and their disciplinary records be expunged of any references to the discipline imposed herein. It also requests that the undersigned retain jurisdiction in the event of any remedial disputes. (Union Brief p. 9.)

FACTS

PPS operates the Curran-Fromhold Correctional Facility (“the Prison”) in Northeast Philadelphia. On [REDACTED], Inmate C [REDACTED] W [REDACTED] was involved in an altercation in the Prison barbershop where he worked. He suffered severe bruising on his left eye. The following day he was diagnosed with a [REDACTED] requiring surgery and a [REDACTED].

On or about [REDACTED] and [REDACTED], W [REDACTED] filed a statement and an Inmate Grievance, respectively, alleging that he was not given any medical attention after his injury despite requesting the same (City Exhibit 11, pp. 126-127; 161-167). On February 7, 2017, Warden Gerald May referred the matter to the Internal Affairs Unit (“IAU”), and an investigation was conducted by Sergeant Alicia Abbott.

In his Inmate Grievance and IAU interview, W [REDACTED] alleged that after being involved in a fist fight in the barbershop, CO Wright left with him through a side door and directed CO Foster to return him to his cell. According

to W [REDACTED], he was locked in his cell from the time of the incident until the afternoon shift the following day. He asked Grievants Wright, Rosebough and Johnson at various points to take him to medical but they all refused to do so. W [REDACTED] also asked for medication for his pain, and Rosebough eventually returned with some Motrin. He added that COs Rosebough and Johnson approached his cell and laughed at him. Additionally, W [REDACTED] averred to IAU that the next day he told CO Wright again he was “in real pain and needed help.” Thereafter, CO Wright came to the cell and gave him a glove filled with ice. He also stated that Wright denied him an official visit with his attorney. (City Exhibit 11, pp. 34-41; 126-127; 161-167.)

PPS’ Investigation

Sgt. Abbott interviewed each of the Grievants, as well as reviewed video footage which, according to her IAU Report, adduced the following information:

CO Wright

Wright stated he did not notice any injuries to W [REDACTED] when he brought him back to his unit. He said he asked W [REDACTED] if he wanted to go to medical but did not take him there because he refused to go. Wright told Abbott that it is PPS policy that when an inmate is involved in a fight they are supposed to be sent to medical, even if they refuse. Wright stated he was aware that W [REDACTED] had a scheduled official visit but denied that he prevented W [REDACTED] from attending the same. Wright also explained that he did not prepare an Inmate Misconduct Report of the barbershop incident because “he wanted to get all the

facts.” Wright alleged he could not recall giving W [REDACTED] a glove filled with ice. Wright admitted that he did not notify any supervisor regarding the incident and that he never told anyone W [REDACTED] was “a lock-in.”

Abbott’s Investigation Report (“IAU Report”) (City Exhibit 11) alleges that Prison video footage shows CO Wright bringing what appears to be a glove filled with ice to W [REDACTED]’s cell. Additionally, in a written statement prepared by Wright after the incident, he states that on [REDACTED] he found W [REDACTED] on the barbershop floor and although he showed no injuries, “there was swelling” (City Exhibit 11, p. 137).

CO Rosebough

Rosebough told Abbott that she, CO Eric Thompson and CO Johnson visited W [REDACTED]’s cell, but never laughed at him. She also denied that W [REDACTED] ever asked to go to medical, but averred that he asked for Tylenol because he had been in a fight. According to Rosebough, CO Thompson gave her two Tylenol pills to give to W [REDACTED], which she did. She initially denied seeing any cuts or bruises on W [REDACTED], but then stated she saw a little scratch on his left eye. According to the IAU Report, video footage shows Rosebough, Johnson and Thompson at W [REDACTED]’s cell laughing at him.

CO Cooper

CO Cooper told Abbott he went to see W [REDACTED] at his cell, and acknowledged he did not have authority to enter the pod where W [REDACTED]’s cell was located. He did not recall seeing any cuts or bruises on W [REDACTED]’s face,

denied entering W█████'s cell, and denied seeing W█████ at all because it was too dark in his cell. Cooper also denied that W█████ ever asked to go to medical. According to the IAU Report, video shows Cooper on ██████ entering W█████'s cell with CO Wright and turning on the light.

CO Fobbs

CO Fobbs told Abbott that other inmates told her that W█████ had a black eye. She did not believe the inmates, but she logged this information into the computer. Fobbs stated she did not check on W█████ herself, and admitted she told someone that "she didn't want anything to do with the situation [between W█████ and CO Wright]." Fobbs stated that W█████ asked to speak to a supervisor after she refused to let him eat in his cell, a request that she denied. She also told Abbott that she received a phone call informing her that W█████ had an official visit but she did not allow him to go after she spoke to Wright who told her: "I'll take care of it." The IAU Report provides that prison video shows CO Wright speaking to Fobbs various times on ██████ including when Wright was obtaining ice for W█████ and another time when Fobbs gave Wright the key to W█████'s cell.

CO Foster

In his interview with Abbott, Foster denied observing any cuts or bruises on W█████ and claimed that CO Wright escorted W█████ back to his cell after the barbershop incident. He stated that he assumed CO Wright was responsible for W█████ being locked in his cell after the incident, during which

time W█████ was not allowed any activities, phone, shower, etc. The IAU Report states that video shows CO Foster escorting W█████ through a side door to his pod area after the incident.

CO Johnson

Johnson told Abbott that he was outside of W█████'s cell with COs Rosebough and Thompson looking through his cell window, but denied the door was open. He denied laughing at W█████ and was sure that he did not observe any injuries to his face. Johnson also denied that W█████ ever asked to go to medical and he denied speaking to W█████ at any time. The IAU Report indicates that video shows Johnson conversing with W█████ through the open cell door and also "laughing uncontrollably" at W█████.

The IAU Report shows that on ██████ at around 4:30 p.m., W█████ complained to COs A. C█████ and C. H█████ that he needed to go to medical to have his eye checked. The COs "noticed that [he] had a swollen black eye" and sent him to medical. Medical determined that W█████ had "a possible ██████" and sent him ██████.

(City Exhibit 11, p. 147.)

PPS Disciplines the COs

The record shows that each Grievant was charged with multiple GO violations, including GO 67 ("It shall be the duty of any employee supervising inmates to look after the inmates' welfare and ensure that inmates obtain proper and sufficient food, clothing and medical attention"), as well as violating

the Employee Code of Conduct. On August 10, 2017, each Grievant attended separate disciplinary hearings where Sgt. Abbott presented the charges against the CO and the results of her investigation to the Disciplinary Board. (City Exhibits 1-2; 5-10.)

The PPS maintains a Disciplinary Matrix (“the Matrix”) for determining the appropriate level of discipline based on GO violations and whether the event is the CO’s first, second or third offense (City Exhibit 4). According to Human Resource Manager Tracy Delaney, any prior violation of a GO constitutes a prior offense, regardless of the nature of the infraction. Additionally, she stated that when an employee is found to have violated multiple GOs, the Prison imposes the most serious discipline provided. The most serious discipline proposed on the Matrix for each of the Grievants was “15 Days Suspension to Dismissal.” (*Id.*)

Deputy Warden Patrick Gordon testified that he served on the Disciplinary Board, which made a discipline recommendation for each Grievant based on the Matrix. In meting out discipline the Board took into account previous discipline imposed on COs Wright (a 5-day suspension on January 18, 2017) and Cooper (a lateness warning in November 2015 and a 7-day suspension in June 2016 for a false report) (City Exhibits 6, 10). For CO Rosebough, consideration was given to her “inexperience,” as she had only been working as a CO for six months (City Exhibit 5).

Abbott's Testimony

At the arbitration hearing, Abbott testified that COs are trained that any time inmates are involved in a fight an Inmate Misconduct Report must be prepared and the inmate must be sent to medical regardless of any evidence of injury. She stated no such report was prepared involving W█████'s fight because CO Wright "swept it under the rug." Abbott also testified that COs are not permitted to provide any medical treatment to inmates – not even ice for bruises or Tylenol for pain. Also, according to Abbott inmates cannot be locked in their cells against their will (without phone, visitation, official visits) absent supervisor approval.

Abbott also testified that after reviewing all of the interviews and videos she concluded that W█████ was improperly locked in his cell and was denied medical treatment and his official visit. She added that she believed W█████ was impermissibly returned to his cell area through a side door, rather than the front door as usual, so no one would see his obvious injuries. Abbott also averred that her investigation disclosed that CO Wright improperly brought W█████ ice for his injuries and never completed an Inmate Misconduct Report.

Abbott stated that CO Foster withheld information when he failed to tell her that he had escorted W█████ to his cell. Additionally, he should have alerted a supervisor when he learned from CO Wright that W█████ was not permitted to leave his cell. Abbott was also critical of CO Fobbs failure to check on W█████ or speak to supervision after she heard that W█████ had a

black eye. She also cited CO Cooper's untruthful statement to her that he could not see into W█████'s cell because it was too dark inside. The video shows he entered the cell and turned on the light.

According to Abbott, CO Rosebough violated PPS policy by giving W█████ Tylenol rather than send him to medical. She knew he was in a fight and had a scratch on his left eye, so she was obligated to inform supervisors. Abbott testified that instead of "laughing hard" at W█████, Rosebough should have sent him to medical and notify supervision. She introduced pictures of W█████ taken on ██████████, showing an extremely swollen shut and black left eye and a darkened right eye with a small cut above (City Exhibit 11, pp. 154-156).

On cross-examination, Abbott testified that she did not interview all of the supervisors who were in charge during the relevant time period. She interviewed Sgt. J█████ and Major C█████ about the matter, but averred that no management officials were disciplined for any wrongdoing. Abbott also stated that sergeants are supposed to make two tours during a shift, and majors and captains one tour. She acknowledged that the computer log does not show that Sgt. J█████ made any tours after 7:54 a.m. on ██████████, but does show that W█████ returned to his unit with a black eye (City Exhibit 11, p. 231). Abbott testified that sergeants are required to look in every cell "but they don't." She also stated she saw the video showing Major C█████ stopping

at W█████'s cell and having a conversation, and averred that no action was taken against her.

Abbott also testified that inmates are permitted to stay in their cells if they choose. She stated that neither COs Fobbs nor Foster told her that W█████ was on lock-in status. Abbott also averred that CO Foster is seen on the video escorting W█████ for only approximately five seconds. She also did not interview W█████'s cell mate.

Grievants' Testimonies

CO Wright testified he saw no cuts on W█████'s face on ██████████ he did not prevent him from going to medical and did not place him on lock-in. He stated on the day of the incident he was at the desk outside the barbershop and heard some noise. Wright went into the barbershop and learned there had been a "verbal spat" between inmates. According to Wright, no one needed medical attention, no one was punched in the face or bleeding. He testified he suggested the involved inmates go to medical but they refused, and were not required to go. Wright stated that Lt. A█████ was with him when W█████ passed them to use the bathroom after the incident, but she did not direct W█████ to go to the med. He testified that he did not recall taking W█████ back to his cell.

Wright also averred that he did not prepare an Inmate Misconduct Report for W█████ because he needed to speak to a supervisor first. He also stated that he did not bring a glove filled with ice to W█████. On cross-

examination, Wright testified that COs are not permitted to give inmates medical care or Tylenol. He stated he did not know W█████ had been in a fight until he was told later by two inmates. According to Wright, inmates involved in a fight must go to medical, but “you can’t force them to go.” He testified that he escorted W█████ to his cell but did not recall giving him any ice. Wright averred that inmates routinely request Tylenol and are given the same by the on-duty nurse.

CO Foster testified that W█████ did not request to go to medical, nor was he prevented from going there, and he saw no cuts or bruising on W█████’s face. He stated it is not unusual for inmates to stay in their cells and W█████ often did so. On cross-examination, Foster stated that inmates involved in a fight must go to medical, COs are not permitted to give inmates Tylenol, and COs must prepare an Inmate Misconduct Report after an inmate is involved in a fight. Foster also averred that he did not know that W█████ was on lock-in status, but acknowledged that he told Abbott during his IAU interview that he assumed CO Wright put him on lock-in status.

CO Fobbs testified that she did not observe W█████ at all on ██████. She added that no one told her he was on lock-in status and she never put him on lock-in. She then testified she only saw W█████ from the rear as CO Wright was escorting him to his cell. Fobbs averred she recorded in the log on ██████ that W█████ had a black eye after she was told this by inmates. But since inmates “will say anything,” she only put the information in the log

for a supervisor to follow-up. She did not know whether W [REDACTED] had been involved in a fight, had requested to go to medical or had already been sent to medical.

According to Fobbs, when a CO observes an inmate involved in a fight, paperwork must be completed and the inmate is sent to medical whether they have signs of injury or not. She added that if a CO does not see a fight occur “it didn’t happen” because inmates cannot be trusted to tell the truth. Fobbs also stated that she saw Major C [REDACTED] speaking with W [REDACTED] but C [REDACTED] did not send him to medical. Fobbs testified that she never prevented W [REDACTED] from leaving his cell, and that he did not go to his official visit because he refused to go. She averred that CO Wright only brought W [REDACTED] a glove, but not ice.

On cross-examination, Fobbs stated that COs cannot give inmates Tylenol or medical care, only CPR or emergency care. She testified further that if she knew W [REDACTED] had been in a fight she would have taken him to medical. Fobbs also did not recall speaking to CO Wright about W [REDACTED]’s official visit, and averred that she learned from a phone call that W [REDACTED] refused to go to his official visit. She stated that something was in the glove that CO Wright gave W [REDACTED], but she did not know what it was.

CO Rosebough testified that she was never told that W [REDACTED] needed to go to medical, was in a fight or was on lock-in. She explained that she went to W [REDACTED]’s cell with COs Thompson and Johnson when they heard banging on a

cell door. On their way W█████ asked them for Tylenol. According to Rosebough, W█████ did not request to go to medical and she saw “nothing to suggest that he needed medical treatment.” She denied laughing at W█████ Rosebough stated that CO Thompson gave her a cup with a pill in it and told her to give it to W█████ When asked why she told Abbott during the IUA investigation that W█████ had a scratch on his eye, Rosebough averred that Abbott was yelling at her and she got “nervous” because she had never been in trouble before.

On cross-examination, Rosebough testified that she was trained to not give medical care or medications to inmates. She stated she just “assumed” the pill she gave W█████ was Tylenol, and she did not consider Tylenol to be a medication. Rosebough averred she has never given Tylenol to any other inmates and now knows that only nurses are permitted to do so. According to Rosebough, W█████ told her he had been in a fight, and she does not know for sure if he had a scratch on his eye. She then averred that she did not see a scratch on his face.

DISCUSSION

The parties’ positions can be briefly summarized.

The City maintains that it had just cause to impose the suspensions on the Grievants. W█████’s injuries were “immediately apparent,” and CO Wright knew that he had been involved in a fight yet he failed to send him to medical.

It also contends that CO Fobbs logged into the computer that W██████ had a black eye after he returned from the barbershop, yet she also failed to take any action on W██████'s behalf. Additionally, Prison video shows W██████ with a black eye that is swollen shut, and when interviewed W██████ stated he asked numerous times to be taken to medical. The City argues that by giving W██████ something for pain, the involved COs acknowledged he was in need of medical care.

The City also relies on pictures taken of W██████'s face a day after the incident showing the severity of his injuries. It also cites to the medical records showing that upon be examined he had severe swelling on the left side of his face. Based on all of this evidence the City asks the undersigned to reject the Grievants' testimonies that they did not see any visible injuries.

Turning to the specific suspensions imposed, the City insists that CO Wright's 30-day suspension was appropriate since he failed to send W██████ to medical, notify a supervisor and prepare an Inmate Misconduct Report, and also gave him ice. He also had a prior offense from that same day. The City contends Wright admitted five days after incident that W██████'s face was swollen. It also rejects the Union's claim that supervisors were also culpable. There is no evidence that any supervisor was aware of the fight, refused W██████'s request to go to medical or provided inmates medical care.

The City contends CO Foster lied about not escorting W██████ back to his cell from the barber shop. He had to have known that W██████ was injured and

did not send him to medical and he also acknowledged that W█████ was improperly locked-in. The City argues that Officer Fobbs knew W█████ had a black eye, yet did not send him to medical. She also denied him his right to have an official visit with his attorney. The City maintains Fobbs' explanations for not sending W█████ to medical and allowing him an official visit were not credible. Regarding CO Rosebough, it submits that she admitted W█████ was injured and did not send him to medical and also gave him Tylenol. At the hearing she incredibly stated for the first time that she told Abbott that W█████ had a scratch on his eye only because Abbott was yelling.

The City acknowledges that CO Cooper's actions were "less egregious" than others, but that this was his third offense and he had ample opportunities to notice W█████'s injuries. It asserts that CO Johnson was also in a position to see W█████'s injuries and was captured on video laughing at him. He also lied during the investigation about never having entered W█████'s cell.

The Union asserts that the City failed to satisfy the fundamental elements for establishing just cause in this case. First, the City's primary witness Sgt. Abbott conducted a biased investigation which relied entirely on an internal investigation filled with hearsay. At no time did the City establish when or how W█████ was injured, except through the unreliable hearsay of W█████. The Union also insists that there is no evidence that any of the Grievants harbored any animosity toward W█████. Additionally, the City's

claim that each of the Grievants intentionally ignored W█████'s request for medical assistance due to being in extreme pain is simply "implausible."

The Union also urges the undersigned to consider that a Major, Captain, Lieutenant and two Sergeants performed tours of W█████'s area on ██████████, and none of them referred him to medical. Abbott even admitted knowing that Major C█████ spoke to W█████ on ██████████ only hours before he was sent to medical with bleeding and pain in his eye. No action was taken against C█████ or any other equally culpable management official. The Union emphasizes that Abbott did not even interview the Captain and one of the sergeants.

The undersigned must determine whether PPS had just cause to suspend the Grievants for violating various GOs and Code of Conduct. This includes GO 67 which provides "[i]t shall be the duty of any employee supervising inmates to look after the inmates' welfare and ensure that inmates obtain proper and sufficient food, clothing, and medical attention."

At the outset, the Union takes issue with the City relying exclusively on the testimony of Sgt. Abbott and her IAU investigation for its case-in-chief against the Grievants. This point is well taken. Abbott's report contains a number of third-party "out-of-court" statements, including some from inmates. Since W█████ did not testify at the hearing, his version of the events of

██████████ are taken exclusively from his written statements and IUA interview. Additionally, no management witnesses testified regarding any interactions they may have had with W██████████ on ██████████. As a result, the Union has had no opportunity to cross-examine much of what is in the IUA investigation and it would be extremely prejudicial for the undersigned to rely solely on any hearsay contained therein to uphold the discipline in this case.

However, the IAU report is not completely unreliable. Thus, each of the Grievant's were interviewed (and signed hand-written versions of the same) and some of them submitted signed written statements. In these instances, the Grievants' prior statements are clearly reliable to the extent they support or are inconsistent with the charges. Furthermore, the videos and pictures presented in support of the charges were at all times accessible to the Union and speak for themselves.

Based on the totality of the evidence, I conclude that it is more likely than not that W██████████ was involved in a fight in the barber shop, and that CO Wright knew it. I reach this conclusion based on the fact that it is undisputed that W██████████ had a black eye and his ██████████ ██████████ ██████████, which is consistent with him having been punched in the eye. Wright also reported shortly after the incident that he saw W██████████ laying on the floor after the incident. Furthermore, at the very least both Wright and Rosebough admitted to learning later in the day that W██████████ had been in a fight. All the Grievants confirmed (at one point or another) they were aware that inmates involved in a

fight must go to medical, whether they have signs of injury or not and regardless of whether they refuse to go. So at the absolute minimum, COs Wright and Rosebough should have sent W [REDACTED] to medical after learning he had been in a fight.

I also conclude based on the credible record evidence that anyone who observed W [REDACTED] after the incident in the barbershop would have known he was injured. The video and the pictures from [REDACTED] clearly show W [REDACTED] with a severely black and swollen shut left eye. COs C [REDACTED] and H [REDACTED] also observed these injuries on [REDACTED] and wrote him a pass to medical. Wright himself acknowledged in a written statement that W [REDACTED] had “swelling” when he found him laying on the floor. Rosebough told Abbott during the investigation that she saw a scratch on W [REDACTED]’s eye.

Thus, I do not find credible any of the Grievant’s assertions that they did not see W [REDACTED]’s injuries. Wright’s denial of seeing W [REDACTED] with any injuries does not square with the convincing evidence showing that he provided W [REDACTED] with ice. (Wright’s alternating statements that he “did not recall” giving him ice and “did not” give him ice were unconvincing.) Furthermore, COs Cooper’s and Foster’s lies to IAU (about not entering W [REDACTED]’s cell, and not escorting W [REDACTED] back to his cell, respectively) demonstrate they were clearly motivated to dispel any conclusion that they were able to see W [REDACTED]’s injuries. Finally, Fobbs explanation for entering into the log that W [REDACTED] had a black eye, but not following up with anyone concerning this, made no sense. Her contention for

the first time at the arbitration hearing that Wright brought the Grievant a glove, without ice, shows the extent to which the Grievants were only willing -- at best -- to provide "half the story" to avoid culpability (and/or getting into Wright's crosshairs).

Having said this, the City has failed to provide adequate evidence showing that it is a CO's obligation to send an inmate to medical anytime an inmate appears to be injured, and if such a duty exists, how serious the injury needs to be to trigger this obligation. As stated earlier, it is undisputed that an inmate involved in a fight must go to medical. But there is no reliable evidence that COs Fobbs, Cooper, Foster, or Johnson were on notice W [REDACTED] had been in a fight. The City has presented no policy demonstrating that COs are required to send any inmate who looks injured to medical. While it appears it would be a good practice to inform a supervisor that an inmate appears injured, the evidence showing that supervisors/managers saw W [REDACTED] on [REDACTED] and did not send him to medical detracts from any assertion that an enforceable medical referral policy exists.

Based on the language of GO 67, common sense dictates that if an inmate appears injured *and* requests medical assistance a CO would be derelict in his or her duties for failing to at least notify a supervisor or send the inmate to medical. However, there is no reliable evidence in the record before me demonstrating that W [REDACTED] was ever denied the right to go to medical. Again, I must assume that if W [REDACTED] was requesting the COs for medical assistance as

alleged, he would have certainly done the same when supervisors/managers were in contact with him (like when he was conversing with Major C [REDACTED]). It is undisputed that no one other than COs C [REDACTED] and H [REDACTED] sent W [REDACTED] to medical.

Both Wright and Fobbs admitted that W [REDACTED] did not go to his official visit. Their explanations regarding this matter were evasive. While they both averred at the hearing that W [REDACTED] refused to go to his official visit, neither of them told this to Abbott during the IAU investigation. During the IAU investigation Fobbs stated she prevented W [REDACTED] from leaving his cell after CO Wright told her he “would take care of it.” CO Foster admitted to telling Abbott during the IAU investigation that he “assumed” CO Wright had placed W [REDACTED] on lock-in status. While the evidence does not support a finding that any of the COs definitively placed W [REDACTED] on lock-in status (as opposed to him merely choosing to remain in his cell), it clearly shows he was denied his official visit.

Finally, the record supports the charge that CO Wright failed to prepare an Inmate Misconduct Report after the barbershop incident. His failure to do so supports the City’s contention that he did not want management to be aware of W [REDACTED]’s fight and injuries.

The question then becomes whether the discipline imposed on the Grievants was appropriate under all of the foregoing circumstances.

To be sure, CO Wright was the most culpable for not sending W [REDACTED] to medical after fight, giving him ice, refusing to permit W [REDACTED] to go on his

official visit and failing to prepare and submit the Inmate Misconduct Report. He was also untruthful about his knowledge of W█████ being involved in a fight, being injured and his bringing W█████ ice. However, there is insufficient evidence demonstrating the existence of “prior” discipline imposed on CO Wright (allegedly levied for an earlier incident on the very same day) to support more severe progressive discipline. Finally, the City has failed to establish that W█████ requested, and Wright refused him, medical treatment or placed W█████ on lock-in. For all these reasons, CO Wright’s discipline shall be reduced to a 15-day suspension.

Fobbs is culpable for reporting that W█████ had a black eye but doing nothing to follow up. She also was complicit in denying W█████ his official visit and failing to be truthful about the same. However, the City’s discipline of her was based in large part on her failure to notify supervisors about W█████’s injuries and her stating to others that he was in “lock-in” status. As described earlier, these assertions cannot be the basis for upholding the severe discipline imposed on Fobbs. For these reasons, CO Fobb’s discipline shall be reduced to a ten-day suspension.

CO Cooper¹ was not truthful when he told Abbott that he never entered W█████’s cell and never saw W█████’s injuries. He also had previous disciplines. CO Foster was similarly dishonest in telling Abbott he never escorted W█████ back to his cell and I find that Foster and Johnson were both

¹ The City also charged and found Cooper guilty of leaving his post without authorization.

untruthful when they claimed they never observed his injuries. Cooper, Foster and CO Johnson were primarily disciplined for failing to report W█████'s injuries to supervisors, which is sustained. However, given the evidence showing that supervisors were also aware, or should have been aware, of W█████'s injuries and were not disciplined, the 20-day suspensions of COs Cooper, Foster and Johnson were overly severe. For these reasons, Cooper's discipline shall be reduced to a ten-day suspension, and Foster's and Johnson's reduced to five-day suspensions.

Finally, CO Rosebough clearly had no authority to provide W█████ Tylenol (or worse, pills she only "assumed" were Tylenol). She also should have referred him to medical once finding out he had been in a fight, and she was not truthful when she claimed that W█████ had no injuries. However, she was also charged with refusing W█████'s request for medical assistance and for not informing supervisors of his injuries, which as explained earlier were not a sufficient basis for the severe discipline imposed under the circumstances of this case. For these reasons, CO Rosebough's discipline shall be reduced to a five-day suspension.

The Grievants' pays should be restored consistent with this Award and their discipline records adjusted accordingly. The request for overtime is denied. The undersigned will retain jurisdiction for the purposes of resolving any disputes over the implementation of this remedy.

Consistent with the foregoing discussion and findings, the Arbitrator renders the following

AWARD

The grievance is sustained in part and denied in part.

The City did not have just cause to issue a 30-day suspension without pay to CO Wright; 20-day suspensions without pay to COs Cooper, Fobbs, Foster, and Johnson; or a ten-day suspension without pay to CO Rosebough. CO Wright's discipline shall be reduced to a 15-day suspension without pay; CO Fobbs' and Cooper's reduced to a ten-day suspension without pay; and COs Foster's, Johnson's and Rosebough's reduced to a five-day suspension without pay.

The Grievants' pays should be restored consistent with this Award and their discipline records adjusted accordingly. The request for lost overtime pay is denied. The undersigned will retain jurisdiction for the purposes of resolving any disputes over the implementation of this remedy.

A handwritten signature in black ink, appearing to read "James M. Darby", written over a horizontal line.

JAMES M. DARBY
Arbitrator
Lancaster, Pennsylvania
August 19, 2019