

AMERICAN ARBITRATION ASSOCIATION
AAA Case No. 01-18-0003-5093

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| In the Matter of the Arbitration | : | |
| | : | |
| Between: | : | Opinion and Award |
| | : | |
| AFSCME District Council 47, Local 2187 | : | Grievance: Onye Osuji Discharge |
| | : | |
| and | : | |
| | : | |
| City of Philadelphia | : | |

Before: Lawrence S. Coburn
Arbitrator

Appearances:

For the Union:

Markowitz & Richman
By: Claiborne S. Newlin, Esquire

For the City:

Erica Kane, Esquire, Assistant City Solicitor

* * * *

I. Introduction.

Pursuant to the Collective Bargaining Agreement between the parties, I was designated to arbitrate the grievance in this case, which involves a claim by AFSCME District Council 47 (the “Union”) that the City of Philadelphia (the “City” or the “Employer”) violated the Collective Bargaining Agreement by discharging Onye Osuji (“Grievant”) without just cause. On June 18 and August 30, 2019, I conducted a hearing at which both parties were afforded full opportunity to present evidence and argument in support of their respective positions. The parties made oral arguments at the close of the hearing on August 30, 2019. The transcript of the second day of hearing was issued on September 23, 2019, at which time the hearing was declared closed.

II. The Issues.

The issues for determination, as stipulated by the parties, are as follows:

1. Did the City have just cause to discharge Grievant, Onye Osuji?
2. If not, what shall be the remedy?

III. Pertinent Contractual Provisions.

The Collective Bargaining Agreement between the City and AFSCME District Council 47, Local 2187, provides in pertinent part:

Section 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.

IV. The Philadelphia Department of Human Services Policy and Procedure Guide for the Use of Overtime (the “Use of Overtime Guide”).

A. Pertinent Provisions of the Use of Overtime Guide effective January 9, 2009.

Administrators and managers will be responsible for managing overtime in their area(s) of responsibility.

Overtime shall be assigned and authorized only by management (defined as “any supervisors with the ability to authorize overtime). It is within management’s discretion to assign additional work for which employees may earn overtime . . .

Overtime work, for either pay or compensatory time off, must be approved in advance except in case of emergency or in the interests of public health and safety. The assignment of overtime shall be limited to extraordinary circumstances which cannot be anticipated, or where staffing requirements cannot be met through normal scheduling and assignment of available staff.

Supervisors/managers should review work practices to ensure that work is performed as efficiently as possible in order to avoid/limit the use of overtime. Supervisors/managers should track the overtime used by each subordinate . . .

Procedures

- It is the responsibility of management to monitor overtime.
- Overtime slips must be submitted in the pay period in which the overtime

was worked.

- It is the responsibility of each employee to comply with policies and procedures governing the use of overtime.
- Inappropriate use of overtime shall be reported to the Director of Human Resources.
- Overtime abuses and failures to comply with policies and procedures will be subject to discipline.

Planned, discretionary overtime

- Before overtime is worked employees must have written approval from immediate and 2nd level supervisors. Approval may be required at the Director level at the discretion of management. Employees who anticipate the need for overtime to complete work assignments must notify the supervisor and administrator/manager in advance and obtain approval PRIOR to working hours that extend beyond their normal schedule.
- Supervisors must obtain details on why the work could not be completed during regular work hours before approving overtime or compensatory time.
- Employees must use the form “Planned Overtime/Compensatory Time Request Form” (copy attached) to request the planned overtime and a copy must be attached to the timesheet.

Upon completion of the overtime assignment, the form “Authorization for Overtime or Compensatory Time” form should be completed and signed by the 1st and 2nd level supervisors. The form should include specific details on the assignment performed. For casework related overtime, the case number and the type of work completed must be specified . . .

B. Pertinent Provisions of the Use of Overtime Guide effective May 10, 2018.

Administrators and other managers are responsible for managing overtime in their areas of responsibility.

Overtime is assigned and authorized only by management (defined as “any supervisors with the ability to authorize overtime). It is within management’s discretion to assign additional work for which employees may earn overtime . . .

Overtime work, for either pay or compensatory time off, must be approved in advance, except in case of an emergency or in the interests of public health and safety. The assignment of overtime shall be limited to extraordinary circumstances which cannot be anticipated, or where staffing requirements cannot be met through normal scheduling and assignment of available staff . . .

Planned overtime

- With the exception of E-day Investigations and E-day follow-up, all overtime for either pay or compensatory time must be pre-approved by the employee's immediate and 2nd level supervisors. Pre-approval must be documented on the "Planned Overtime/Compensatory Time Request Form (copy attached). Approval may be required at the Director level at the discretion of management.
- Employees who anticipate the need for overtime to complete work assignments must notify the immediate and 2nd level supervisor (administrator or other manager) in advance and obtain approval PRIOR to working overtime.
- Before approving the request for planned overtime or compensatory time, Supervisors must review the request form and ensure that it contains details on why the work could not be completed during regular work hours.
- Employees must attach a copy of the approved "Planned Overtime/Compensatory Time Request Form" to the timesheet.
- Upon completion of the overtime assignment, the form "Authorization for Overtime or Compensatory Time" (overtime slip) must be completed and signed by the Immediate and 2nd level supervisors. The form must include specific details on the assignment performed. For casework related overtime, the case number and the type of work completed must be specified.
- Overtime slips must be submitted in the pay period in which the overtime was worked.
- Inappropriate use of overtime must be reported to the Director of Human Resources.
- Overtime abuses and failures to comply with policies and procedures will be subject to discipline . . .

V. Background.

The Union represents professional employees employed by the City, including Social Workers and Social Worker Supervisors in the Department of Human Services (the "Department.") Grievant worked for the Department as a Social Worker I, a Social Worker II, and a Social Worker Supervisor for about 18 years. She served as a Social Worker Supervisor from 2008 to March 23, 2018, the effective date of her discharge.

While working as a Social Worker Supervisor, Grievant was responsible for supervising a staff of approximately five Social Work Services Managers who were engaged in performing a variety of duties including protective service investigations, counseling and referral services, and emergency placements related to children and youth. Grievant's supervisory responsibilities included training subordinate staff and ensuring that they complied with department policies and

regulations as they carried out their important work.

A significant portion of Grievant's work was to supervise her subordinates' investigations of reports of alleged abuse and/or neglect of children, which necessitated prompt action to ensure the children's safety. Such investigations often entailed multiple trips by Social Work Services Managers to the domiciles of the children during hours beyond the normal workday.

According to Grievant, she monitored closely the use of overtime by her subordinates. In that connection, she sent an email dated July 18, 2016 to four subordinates, including C [REDACTED], R [REDACTED], K [REDACTED] and D [REDACTED] N [REDACTED], with a copy to L [REDACTED] W [REDACTED], reminding them that they were required to obtain her signature on their overtime slips (and not the signature of another supervisor) if Grievant was on duty. She also advised them that they should not submit overtime slips to her for signature unless they had: (a) obtained her approval for the overtime in question; and (b) inputted their notes of the reason for the overtime in the electronic case management system.

Similarly, Grievant wrote L [REDACTED] W [REDACTED] an email on August 3, 2016 outlining the talking points of a meeting she would have with R [REDACTED] K [REDACTED] the following day, including reminding her of the need to have overtime pre-approved by her direct chain of command.

On November 7, 2016, G [REDACTED] M [REDACTED] conducted an Intake Supervisors Meeting that Grievant attended. One of the topics addressed was M [REDACTED]'s concern about the timeliness and content of the Structured Case Progress Notes that Social Workers were required to complete and for which Social Worker Supervisors ultimately were responsible.

In an email dated February 15, 2017 to Grievant and other Social Worker Supervisors, Program Administrator L [REDACTED] W [REDACTED] reminded the Supervisors including Grievant that they were required to make sure that their subordinates' overtime was properly documented and that the overtime work actually was being performed when they said it was:

Please be reminded of the overtime policy that has been in place since 2009. Pay particular attention to caption below. The entire policy has been placed in your mailbox for your review. Included is the overtime request form. While I am flexible with Supervisors consistently using the form, ADVANCE APPROVAL is still required from your immediate chain of command. Emails, or text messages are acceptable as a last resort, but I prefer the form, in advance. Your SWSMs are required to use the form, except for E-days and Emergencies.

With that said, it is imperative that overtime be monitored more closely. The OT that is being approved, for paperwork especially, is expected to amount in a decrease in outstanding work and caseload size. So please pay closer attention to your staff's request forms and ensure the times they list are actually being

completed when they say they are. Documentation for the work must be completed at the time the slip is signed.

[Portions of the OT Policy were then quoted].

As a Social Worker Supervisor, Grievant received annual performance reports that set forth an overall rating along with ratings for various categories of performance such as quality of work, quantity of work, relationship with people, initiative, dependability and analytical ability. Brief summaries of Grievant's performance reports from 2013 to 2017 are as follows:

- 2013 - Overall Satisfactory, with recommendations that Grievant communicate better with her supervisor and overcome her hesitation to hold her staff accountable. Rater: V [REDACTED] G [REDACTED].
- 2014 - Overall Superior, with praise for her handling of staff, including two strong-willed employees, and for working many hours of overtime on weekends to keep up with the workload. Rater: V [REDACTED] G [REDACTED].
- 2015 - Overall Superior, with verbatim comments from the 2014 performance report. Rater: L [REDACTED] W [REDACTED], Human Services Program Administrator
- 2016 - Overall Superior (ratings of satisfactory in four categories, and ratings of superior in four categories), with a comment that Grievant should strive to ensure that Outcomes are submitted in a timely fashion, and a suggestion that she be "mindful of your tone and body language." Rater: L [REDACTED] W [REDACTED].
- 2017 - Overall Satisfactory (ratings of unsatisfactory in two categories, and satisfactory in six), with extensive comments regarding a need to be more timely in completing work and to be cordial and responsive in communicating with members of the chain of command. Rater: L [REDACTED] W [REDACTED], also signed by G [REDACTED] M [REDACTED] into whose region Grievant entered in 2016.

VI. The Facts Surrounding the Filing of the Grievance.

In 2018, Grievant asked G [REDACTED] M [REDACTED], the administrator to whom her supervisor L [REDACTED] W [REDACTED] reported, for permission to transfer to a different region. According to M [REDACTED], such a transfer, which would entail a switching of Supervisors from region to region, required an audit of the cases for which Grievant had been responsible. M [REDACTED]'s audit entailed a review of case loads. In addition, M [REDACTED] conducted a comparison of three of Grievant's subordinates' overtime slips with the data they inputted into the electronic case management system. The comparison yielded results that were of grave concern to M [REDACTED].

The results relating to the three Social Work Services Managers in question, covering the period [REDACTED] through [REDACTED], included:

- C [REDACTED] C [REDACTED]
 - 47 instances where C [REDACTED]'s overtime was approved with no documentation in the ECMS [electronic case management system] regarding the overtime work, and the reports had been closed at the time of the audit. (In 18 of the 47 instances, Supervisors D [REDACTED] A [REDACTED] or K [REDACTED] L [REDACTED], apparently filling in for Grievant, signed the overtime slips in question. In the remaining 29 instances, Grievant approved the overtime).
 - One instance, on [REDACTED], when Grievant approved overtime for C [REDACTED]'s visits to two homes in different areas (those of C [REDACTED] and D [REDACTED]) from 1:00 -2:00 p.m.
 - 11 instances where C [REDACTED]'s overtime was approved with no documentation in the ECMS regarding the overtime work, but there remained time, as of time of the audit, for C [REDACTED] to input the required supporting data. According to M [REDACTED], a couple of months later, she checked the ECMS records and found that C [REDACTED] had not added the required documentation within the required six business days.
- R [REDACTED] K [REDACTED]
 - 24 instances where K [REDACTED]'s overtime was approved with no documentation in the ECMS, and one instance with insufficient documentation, regarding the overtime work, and the reports had been closed at the time of the audit. (In four of the 24 instances, Supervisors D [REDACTED] A [REDACTED] or K [REDACTED] L [REDACTED], apparently filling in for Grievant, signed the overtime slips in question. Grievant approved the overtime in the remaining 20 instances).
 - 17 instances where K [REDACTED]'s overtime was approved for her visits to multiple homes in different areas during the same time span. (In 7 of the 17 instances, Supervisors D [REDACTED] A [REDACTED] or K [REDACTED] L [REDACTED], apparently filling in for Grievant, signed the overtime slips in question. Grievant approved the overtime in the remaining 10 instances).
- D [REDACTED] N [REDACTED]
 - 48 instances where N [REDACTED]'s overtime was approved with no documentation in the ECMS regarding his overtime work, and the reports

had been closed at the time of the audit. (In four of the 48 instances, Supervisor D [REDACTED] A [REDACTED], apparently filling in for Grievant, signed the overtime slips in question. Grievant approved the overtime in the remaining 44 instances).

- 18 instances where Grievant approved N [REDACTED]'s overtime for his visits to multiple homes in different areas during the same time span.

The comparison of the three Social Work Services Managers' overtime slips with the data inputted into the electronic case management system also revealed that overtime had been paid in many instances to the Social Work Services Managers without the required documentation, but, as of the close of the audit, the case files were still open and the Social Workers could have added the required data. In addition, the audit revealed that in some instances assignments were "questionable."¹

After M [REDACTED] completed the audit on September 18, 2017, she issued an email dated October 5, 2017 entitled "Intake is NOT a 9 to 5 Job to staff including Grievant and Grievant's subordinates. In the email, M [REDACTED] acknowledged that department staff must exhibit a high level of commitment and sacrifice to visit families, secure placements and complete case documentation outside the regular workday. But M [REDACTED] also expressed her concern regarding completion of overtime tasks and timely documentation. In that connection, M [REDACTED] announced that, effective immediately, supervisors and administrators must refrain from signing overtime slips unless the required documentation had been completed:

It has come to my attention that there are some serious concerns regarding completion of overtime tasks and timely documentation. For that reason, effective immediately, I am directing Supervisors and Administrators to refrain from signing overtime slips if the contracted work (Overtime requested in advance) is not completed. For example, if a worker has requested to visit the Smith family this evening, it is my expectation that there will be notes in ECMS [the electronic case management system] to support that the visit occurred before an overtime slip is signed . . .

Supervisors, please review the work submitted and only sign for the hours that are appropriate and supported in the documentation submitted. Please know that if your signature is on an overtime slip I am going to assume that you are in agreement with what has been documented and that the work identified has been

¹ The audit also revealed numerous instances where Grievant allegedly improperly claimed and received overtime for herself. I have not addressed those allegations here because I found at the hearing that the notice of discharge, which plainly charged Grievant with improper oversight of her three subordinates' overtime, failed to place Grievant on sufficient notice that the reasons for her discharge also included her own improper receipt of overtime.

completed. Administrators are expected to complete a similar review for the overtime slips submitted by Supervisors. I know that for some of you this may be a new practice . . .

On October 18, 2017, M [REDACTED] issued a six-page, single spaced Employee Violation Report detailing claims that Grievant, as shown by M [REDACTED] 's audit, violated numerous department policies. In addition, Grievant was charged with "falsification of overtime and falsification of visitation":

More specifically, caseload audits completed on 9/18/17 revealed some serious concerns about the lack of documentation found in the Electronic Case Management System (ECMS) for 3 of the workers in your unit (unit 53). Failure to promptly document the investigative process is unacceptable and is in direct violation of the policies and memorandums identified. The volume of incomplete work prompted further assessment. At that time, it was learned that you and the identified social work services managers had regularly worked beyond normal business hours and received overtime compensation for the hours worked. This prompted a closer review of your use of overtime and the use of overtime for the three identified workers within the unit that you supervise.

Toward the close of the Employee Violation Report, M [REDACTED] stated:

In addition to the issues identified above, there is a questionable pattern of overtime usage inconsistent with expectations identified in the "Use of Overtime" policy.

Your failure to adhere to the Departmental and City policies regarding investigations, the safety assessment process, documentation, the use of overtime and supervisory oversight is unacceptable and will not be tolerated.

The Employee Violation Report listed in detail each of the instances where Grievant's three subordinates had failed to provide documentation for their overtime work in ECMS. The Report, however, did not list any overtime violations on the part of Grievant relating to her own overtime work. Grievant, in the presence of her Union representative, refused to sign the Report. After Grievant failed to show up at the Preliminary Hearing on the charges, the matter was referred for formal disciplinary action.

A formal disciplinary hearing was held on January 18, 2018 to address the alleged violations referred to in the Employee Violation Report. The hearing panel upheld the charges and recommended that Grievant be issued a 15-day suspension. However, because of the seriousness of the charges, the Department decided to suspend Grievant for 30 days, pending termination:

As a Social Work Supervisor for the Department of Human Services, you are

expected to provide proper oversight of your subordinates and report true and accurate information. Your failure to properly supervise your subordinates and your deliberate falsification and misrepresentation of overtime hours and client visits is a direct violation of this expectation and is unacceptable and cannot be tolerated. Therefore, you are being dismissed from the Department of Human Services.

As a result, Grievant was discharged effective March 23, 2018.

The Union grieved the discharge. Because the parties were unable to amicably resolve the matter, it was referred to arbitration for a final and binding resolution. After her discharge, Grievant retired from the City, but was told that, if she were reinstated in arbitration, she could resume her employment with the City. Grievant testified that, because she has an [REDACTED] daughter, she would not have retired if her employment had not been terminated.

Meanwhile, Program Administrator L [REDACTED] W [REDACTED], who, along with Grievant, signed most of the three Social Work Services Managers' overtime slips that lacked the proper documentation, received a written warning on January 26, 2018 for failing to engage in proper oversight of the overtime that she, along with Grievant, approved:

Per policy, management is expected to obtain details on why the [overtime] work could not be completed during regular work hours before approving overtime or compensatory time. For 3 of the social work services managers in unit [REDACTED] and their supervisor, there was a distinctive pattern of overtime use surrounding "E-days." The supervisor and her staff consistently billed until 11:30 PM on the majority of the unit's E-days and often late night hours the following day. Although staff are mandated to work late nights on occasion this pattern is very unusual and not easily explained. It is highly unlikely that working until 11:30 PM would happen as frequently as it has been documented on the overtime notes presented to support that time frame for any of the workers identified, outside of an occasional late night placement. In addition to the late night overtime that was approved, several of the staff in unit [REDACTED] consistently worked on Saturdays and failed to submit documentation that would support the need to do so or evidence to support that the work contracted for was completed. In fact, one of the workers (D.N.) Worked an average of 6 hours for 16 out of the 19 Saturdays looked at during this review period, and a review of the overtime slips submitted has revealed that you signed the majority (10) of those overtime slips. The pattern of overtime usage for unit [REDACTED] is beyond the norm and your failure to monitor the use of overtime is negligent.

Your failure to adhere to the Departmental and City policies regarding your responsibility to provide supervisory oversight and monitor the use of overtime is unacceptable and will not be tolerated.

VII. Discussion.

The issue before me is whether the City had just cause to discharge Grievant. In a discharge case, I must determine whether the City has met its burden of proving that: (1) Grievant was aware of the policies, the breach of which resulted in her discharge; (2) Grievant engaged in the misconduct with which she was charged; and, if so, (3) the penalty of discharge is appropriate under all the circumstances. I will address each of these elements in turn.

A. Was Grievant aware of the policies that she was alleged to have violated?

The documentary evidence showed clearly that Grievant was aware that her subordinates were required to: (1) seek approval from her or another supervisor before performing overtime work; (2) input, in a timely manner in the ECMS, information showing the need for and nature of the overtime work; and (3) obtain their supervisor's signature on an overtime slip covering the overtime work in question.

As recently as February 15, 2017, Program Administrator L [REDACTED] W [REDACTED] sent an email, which attached a copy of the Use of Overtime Guide, to Grievant and other Supervisors emphasizing the need to ensure that their subordinates: (1) obtain prior approval for overtime; (2) submit the overtime slips for their Supervisor's signature; and (3) input into the ECMS the necessary documentation to support the overtime work. Importantly, too, Grievant herself had written an email dated August 3, 2016 to her supervisor, Program Administrator L [REDACTED] W [REDACTED], that she was going to remind her subordinate R [REDACTED] K [REDACTED] the following day of the requirement that she obtain pre-approval from her Supervisor to perform overtime. Under these circumstances, it is clear to me that Grievant had been placed on sufficient notice of the relevant requirements relating to her obligation to monitor and control the use of overtime by her subordinates.

The Union argues that the Use of Overtime Policy in effect at all material times, which was tightened up following M [REDACTED]'s audit covering the months of May through September 2017, provided more latitude in terms of Grievant's oversight of her subordinates' overtime. In that connection, after the audit the word "should" was replaced by "must" in several places. I find that such changes, however, did not substantially change the requirements of a Supervisor to monitor her subordinates' overtime, particularly because in her February 15, 2017 email to Grievant and others L [REDACTED] W [REDACTED] made clear that Supervisors were required to ensure that documentation for overtime work was completed at the time an overtime slip was signed:

With that said, it is imperative that overtime be monitored more closely. The OT that is being approved, for paperwork especially, is expected to amount in a decrease in outstanding work and caseload size. So please pay closer attention to your staff's request forms and ensure the times they list are actually being completed when they say they are. Documentation for the work must be completed at the time the slip is signed.

B. Did Grievant engage in the misconduct that resulted in her discharge?

Grievant was charged with failing to properly supervise the receipt of overtime by her subordinates. She also was charged with deliberate falsification and misrepresentation of overtime hours and client visits. The City presented overwhelming evidence that Grievant on numerous occasions failed to properly supervise the receipt of overtime by her subordinates by signing overtime slips for three of her subordinates – C [REDACTED] C [REDACTED], R [REDACTED] K [REDACTED] and D [REDACTED] N [REDACTED] – even though they had failed to input into ECMS appropriate documentation for the overtime work in question.

On the other hand, the City sought to hold Grievant responsible for numerous other instances when another Supervisor – D [REDACTED] A [REDACTED] or K [REDACTED] L [REDACTED], apparently filling in for Grievant – had signed overtime slips for Grievant’s three subordinates although they had failed to input into ECMS appropriate documentation for the overtime work in question. The City failed to meet its burden of proving why Grievant should be held responsible for negligence on the part of other Supervisors.

But even after carving out the acts of negligence by other Supervisors, I find that Grievant was negligent in approving overtime in numerous instances over a five-month period for the three subordinates. The City had a right to expect Grievant to hold her subordinates to account for following the prescribed overtime procedures.

On the other hand, I find that the City failed to meet its burden of proving that Grievant engaged in deliberate falsification and misrepresentation of overtime hours and client visits. Negligent and sloppy supervision do not equate to falsification and misrepresentation, which require proof of malicious intent, which is lacking here. Accordingly, I conclude that the City met its burden of proving that Grievant engaged in negligent oversight regarding her three subordinates’ receipt of overtime, but that the City failed to meet its burden of proving that Grievant engaged in falsification and misrepresentation.

C. Was the penalty of discharge appropriate?

In its decision to discharge, the City made clear that it was basing that decision on the seriousness of the charges lodged against her, including alleged falsification and misrepresentation. Because I have found that the most serious charges – those of falsification and misrepresentation – were not supported by the evidence, there is substantial doubt whether the penalty of discharge was appropriate.

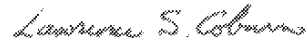
Furthermore, the discipline of a written warning imposed on Program Administrator L [REDACTED] W [REDACTED], who was charged with having failed to “to provide supervisory oversight and monitor the use of overtime,” is instructive, though not determinative. I find that, as the direct supervisor of the three subordinates in question, Grievant had a heightened responsibility to review the appropriateness of their overtime slips. In addition, Grievant signed far more overtime slips with no documentation than did W [REDACTED].

Under all the circumstances, I find that the penalty of discharge was inappropriate. Rather, I conclude that an appropriate penalty is a one-week suspension without pay. Such a penalty underscores the seriousness of Grievant's extensive failure to properly monitor her subordinates' overtime, and yet, as progressive discipline, provides Grievant an opportunity to show that she is willing and committed in the future to complying with the Department's policies and her supervisors' directives.

VII. Award

For the foregoing reasons, I conclude that the City did not have just cause to discharge Grievant, Onye Osuji. Accordingly, the City is directed to forthwith: (1) reinstate Grievant to her former position, with full seniority; (2) make her whole; and (3) remove from her personnel file all references to her discharge, to be replaced by a one-week suspension without pay in connection with her failure to properly monitor her subordinates' overtime compensation.

October 4, 2019



Lawrence S. Coburn