

American Arbitration Association
Case Number: 01-20-0000-2517

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In The Matter of the Arbitration

Between

AFSCME DISTRICT COUNCIL 47
"UNION"

OPINION

-and-

AND

CITY OF PHILADELPHIA
"CITY"

AWARD

Grievance 2187-20-04
Antoinette McIntosh – Notice of Intent
And Suspension

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BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES

For the City

Tiffany Allen, Esq.

For the Union

William Campbell, Esq.

Willig Williams Davidson

Pursuant to the provisions of the collective bargaining agreement between THE CITY OF PHILADELPHIA (hereinafter, "the City") and AFSCME DISTRICT COUNCIL 47 (hereinafter, "the Union"), the above-named arbitrator was designated by the American Arbitration Association as Arbitrator to hear and decide the matter in dispute between the above-identified parties.

A hearing was held by ZOOM, with consent of all parties, on September 15, 2020. The parties were represented by counsel and were afforded a full and fair opportunity to conduct direct and cross examination of sworn witnesses, to present relevant evidence and to argue their relative positions. The record was closed after oral closing arguments. All matters, while not necessarily cited in this Opinion and Award, have been considered. All Claims not expressly granted herein are denied.

Some quotation marks ("") may be used to denote parts of testimony or argument. While no court reporter or stenographer was present and no actual record was taken of the proceedings, the quotation marks denote portions of the notes taken by the Arbitrator during the course of the hearing and represent a close approximation of what was said by a witness or by counsel. Those notes and all attendant materials will be destroyed at the time this Opinion is disseminated.

The Issue:

Did the City have just cause to terminate Ms. Antoinette McIntosh?

If not, what shall be the remedy?

BACKGROUND

While the parties did not stipulate to any facts, certain facts are not disputed by either party. On [REDACTED], Ms. Antoinette McIntosh, a Revenue Examiner 2, was conducting a field audit for [REDACTED] at the offices of it's CPA, Mr. J [REDACTED] B [REDACTED], in Glenside, PA. Ms. McIntosh took multiple busses to get from her home and to the audit. At some point, she was returning to Center City, by bus and train, to return to her office, when she determined it was too late in the day to return to the office. She called the office, turned around in her travels and returned home, concluding her workday. The City determined that Ms. McIntosh had stolen time and charged her with theft of time, issuing a thirty (30) day suspension with Intent to Dismiss. The case proceeded through the grievance process, resulting in the instant arbitration.

Mr. J [REDACTED] B [REDACTED] is a CPA. On [REDACTED], Ms. McIntosh was scheduled to go to his office to follow up on an audit that she had done in December 2018, to correct some errors. Mr. B [REDACTED] recalled that Ms. McIntosh began her work at around 9:30 a.m., and that she left his office around 11:00 a.m. He does not believe that she returned to his office after leaving. Thereafter, Mr. B [REDACTED] received a Quality Assurance (QA) phone call from Mr. J [REDACTED] S [REDACTED], Ms. McIntosh's superior. "He called to ask me if the auditors were there...I said they had been there and had left

within the last 15 minutes...he said thank you." Subsequently, Mr. B [REDACTED] confirmed this with an email to Mr. S [REDACTED], at 12:56 p.m.

J [REDACTED] S [REDACTED]

From: J [REDACTED] B [REDACTED] <[REDACTED]>
Sent: Monday, [REDACTED] 12:56 PM
To: J [REDACTED] S [REDACTED]
Subject: [REDACTED] audit.

J [REDACTED]
As a follow up to your phone conversation today; Antoinette McIntosh lead auditor from the City was at my office today with another auditor as a follow up to finalize the examination of our client [REDACTED]. We resolved an open issue and she then issued a NO CHANGE report. They left our office shortly after 11am. They were polite and courteous and a pleasure to work with.

(City Exhibit #1).

On cross examination, Mr. B [REDACTED] acknowledged that he could not see the reception area from his office so if, in fact, Ms. McIntosh had returned to the office, later in the day, to pick up a bag she had left behind, he would not have known. However, he did say that there is a secretary who sits near the front door and, also, if Ms. McIntosh had left anything in the conference room, then his secretary would have mentioned that she returned.

Mr. Glenn Harper is retired from the City. Prior to his retirement, he worked as the Department of HR Manger for the Department of Revenue and had been in that position for approximately one (1) year, but he had worked in HR for the City for thirty two (32) years. Mr. Harper became involved in the discipline of Ms. McIntosh when her manager, Mr. S [REDACTED], "brought to my attention some areas of concern...he advised me that he had conducted a follow up of two audits in which she was involved...left

from the field never having returned to the office...audits hadn't taken all day....had time to return to the office...leaving from the field was not appropriate." Mr. Harper scheduled an interview with Ms. McIntosh "who admitted that the audit in question...concluded about midday...said she and her coworker went to lunch...she began her commute back to Center City...at some point she realized she would return to work after close of end of the business day...and concerned with having to pick up her child at day care...rather than returning she left for the day. At that interview I had never seen that policy...policy specific to her division...S█████ was in attendance at that interview and made all parties aware of the practice of conducting field audits and how to account for time...leave for the day."

Field Audits

- The hours for regular field audits are 9-4.
- An Audit Unit employee leaving the office for a field destination will sign out (your name, name of taxpayer's representative, audit location, phone and appointment time) on the Auditor's Assignment Sheet, which is located where the daily sign-in sheets are kept.
- If returning to the office from a field destination, the employee must record on the Auditor's Assignment Sheet the time of his/her return to the office. The employee signs out on the same sheet at the end of the day. (A sample is included in the Appendix.)
- An Audit Unit employee in the field must call the unit secretary at 9:00 a.m. upon arrival at the taxpayer's location and at 4:00 p.m. when leaving the taxpayer's location.

(City Exhibit #2).

Mr. Harper added that Ms. McIntosh's explanation was problematic, "essentially considering the time line she reported, it seemed like having concluded an audit at midday and...having insufficient time to return to the office...was implausible, even using public transportation." Mr. Harper recalled Ms. McIntosh saying she did not have a Regional Rail pass, so she did not use the train. Mr. Harper ultimately reported his findings to the Deputy Commissioner, and, although he did not make the decision to discipline, he was tasked with executing the decision. He signed the thirty (30) day suspension with intent to dismiss notice. (City Exhibit #4). He was also familiar with the notice in which Ms. McIntosh grieved the action taken by the City. (City Exhibit #6).

Mr. Harper recalled the various grievance meetings, and specifically the Level 4 meeting, at which the Commissioner and both Deputy Commissioners were present. He recalled discrepancies between and among the various meetings, including the fact that Ms. McIntosh had not mentioned returning to the CPAs office in her first meeting, including her mention of continuing to work in the conference room and no one being there to corroborate it. "Always some fuzziness when the audit ended, when lunch began, when lunch ended and when the return back to the office commenced." Ultimately, Ms. McIntosh was dismissed for what amounted to five (5) hours being unaccounted for during the day of the audit. (City Exhibit #9).

When asked about the time sheets filled out by the employees, Mr. Harper said that the notation "direct 7.5" on Ms. McIntosh's sheet meant that she went directly to do the audit off site, rather than coming into the office first and leaving from there.

CITY OF PHILADELPHIA		DEPARTMENT REVENUE	DATE <i>Jan 4, 2019</i>										
REPORT (OFFICES)		DIVISION AUDIT	CLASS										
SECTION		FUND BA-09-60											
LEGEND: ABSENCE WITH PAY Annual Admin. Leave ET - Training Leave S - Sick Leave Administrative Leave F - Funeral Leave V - Vacation Emergency Leave I - Disability Leave		ABSENCE WITHOUT PAY (A) - A.W.O.L. (W) - Leave of Absence (L) - Lateness (Z) - Leave of											
NOTE: <i>Timekeeper is to express all absence in DAYS and/or Sixteenths.</i>													
PAYROLL#	INIT.	NAME OF EMPLOYEE	IN	LUNCH		DINNER		OUT	COMPENS. TIME		TOTAL		TOTAL UNPAID DAYS
				OUT	IN	OUT	IN		EARNED	USED	PAID DAYS	A/C CODE	
		FLEX TIME PILOT											
		McIntosh, Antoinette						<i>DIRECT</i>				<i>7.5</i>	

(City Exhibit #3).

"Based on my investigation...it was my determination she did not" work the full 7.5 hours. According to Mr. Harper, when an auditor does not return to the office, "they would need to call and request paid leave time" for the difference between what was actually work time and what was not worked. As to whether or not Ms. McIntosh had ever corrected the issue, Mr. Harper said he was not aware that she ever had.

On cross examination, Mr. Harper reiterated that there were approximately five (5) hours of time that was unaccounted for. Mr. Harper said that he thought that the time spent from when Ms. McIntosh left her home to when she arrived at the audit would be paid time. However, he also admitted that he was not aware of the department procedure vis a

vis this, and also with regard to taking lunch time. Mr. Harper did say that if Ms. McIntosh had retrieved belongings from the office then that time would be considered work time. Mr. Harper also said that he expected Ms. McIntosh to have exercised "due diligence" in determining the best and most expeditious way to get back to Center City from Glenside, and noted that she had not. When asked about the initial interview with Ms. McIntosh, Mr. Harper said that Ms. McIntosh had not been told the subject of it, only that she should come with Union representation. And, Mr. Harper said that he was not completely familiar with how the timesheets were done, only that employees initial when they are accurate, while acknowledging that there were no initials next to Ms. McIntosh's name on the "direct 7.5" entry. (City Exhibit #3). He acknowledged Mr. Z [REDACTED] was the supervisor of employees, responsible to ensure the accuracy of the timesheets. As to the Union's contention that Mr. S [REDACTED] did not want Ms. McIntosh to be fired, Mr. Harper said he did not have "any specific recollection ...not to say he didn't say it." However, Mr. S [REDACTED] no longer works with the City, and, according to Mr. Harper was "no longer a city employee when this was brought to my attention."

Ms. Kathleen McColgan is the First Deputy Revenue Commissioner, reporting to the Commissioner. As an initial matter, she noted that Mr. S [REDACTED] is "no longer with the City..." but that he had reported directly to her. She learned about the [REDACTED] incident when "Mr. S [REDACTED] reported it

to me...came into my office...did a routine follow-up on an audit...reaches out to auditee and confirms...QA of investigation with the auditor...recording what time they got there and what time they left....”

Although she said she was kept informed, Ms. McColgan did not officially become involved until the 3rd level grievance. “Harper reported to me that during the initial interview...Ms. McIntosh...reported that she completed the audit a little before 12 and then went to lunch from 12-1 before leaving to return to the office...after the 3rd level...she said she went to lunch from 1-2 and then began her trip back to the office....”

When asked about what she had been told Ms. McIntosh had said she did from 11 a.m. to 1 p.m., Ms. McColgan said “she said she finished the audit and then went to lunch at 1. I recall she said she caught the bus around 2:20. She had transportation delays...concerned about picking up her son from daycare...since time got close to 4:00 she called into the office to say she was finished work.” Ms. McColgan pointed to the procedures Ms. McIntosh should have followed, based on the “field book...which auditors record in that they have a field audit, the prior day...record location of the auditee, date,, name of person, contact phone number.”

Although Ms. McColgan was not familiar with the actual book, she did know the procedure. (City Exhibit #2). More importantly, Ms. McColgan said that on the day of a field audit, the auditor is “not paid travel time to the site...the time starts when they arrive at the site...audit schedule starts

at 9:00 a.m., when they arrive...are expected to call the office so there is a record of time...before leaving they are per policy, to call and they are on site and they are leaving. Ms. McColgan did take note of the Flex Time Policy. (City Exhibit #13, 13A). Among other things, it shows that an employee is not paid for travel to and from the site when coming from home. However, Ms. McColgan did say that an auditor would be paid for the time travelled from the end of the audit and back to the office. If an employee were not returning to the office "you need to call while still on site at the audit and indicate they are using leave time to make up for the hours they are not working. Time you need to account for either through work or through leave." Therefore, Ms. McColgan insisted that Ms. McIntosh did not work and was not entitled to be paid for 7.5 hours. "She called at 3:50 and stated, during the 3rd level grievance...she was finished for the day.... She was aware of the policy, yes...her rep stated she was aware of the policy and she followed it. She said she had gone on two audits on her own...confirmed she called on arrival...called at 4 to say she finished work...she demonstrated she was aware of the policy." As to the specific day in question, Ms. McIntosh "explained she had transportation issues...unconfirmed and did not follow policy which was to call when leaving the site. ...She had the opportunity to correct the record when she returned to the office...we received inconsistent stories."

With regard to the disciplinary action taken, Ms. McColgan said the Commissioner makes the ultimate determination, but that she agreed with him. "In the Department of Revenue, theft of time is an egregious offense...misuse of taxpayer dollars...expected to demonstrate integrity and honesty.... We are tasked with trying to ...gain the trust of the citizens...really important that someone in that role accurately represents themselves. Any lesser discipline shows that the Department doesn't take a hard stance on theft of time. ...Falsification is misrepresenting the hours you worked...stealing taxpayer funds."

Ms. McColgan reviewed the Notice of Suspension and Intent. She said Ms. McIntosh was aware of what the charges were. Ms. McColgan said, in the most generous reading, Ms. McIntosh could have been charged with stealing four (4) hours of time, which would still be theft of time. (City Exhibit #7).

On cross examination, Ms. McColgan reiterated that Ms. S [REDACTED] had been engaging in a routine QA, something he did a few times a week, but about which she was only aware because he told her. When asked why Mr. S [REDACTED] was no longer with the City, Ms. McColgan said that he resigned over a residency issue.

Ms. McColgan reiterated the policy regarding signing in and out for field audits, that failure to do so properly led to this investigation and to the discharge, and that she is aware of at least two other instances of

personnel being terminated for theft of time. She also insisted that a lesser disciplinary action would set a negative precedent, although she denied making an example of Ms. McIntosh.

Ms. M██████ H██████ worked for the City for eight (8) months, in the Audit Department, as a member of the clerical staff, beginning in December 2019. One of her tasks was answering the phone, from both citizens as well as the Department employees. Her knowledge of the timesheets was limited to what she learned on the job: employees were to sign in, sign out for lunch, sign in from lunch, and sign out at the end of the day. Time sheets were filled out on a daily basis, in the office. As for when an employee was working in the field, that employee was tasked with filling out the Field Book prior to the day in the field, but employees would typically call in to remind Ms. H██████ where they were, so that she could pass on the information to the supervisors. Similarly, they would call her when they finished in the field and let her know their time of return. "I kept a pad on the desk...if their supervisor asked me...this was just so everybody knew where everybody was...basically they were in charge of filling in that information when they came back, in that binder, it was sacred...I wasn't to touch it...it was up to them. ...the last couple of months I was there they kept it locked...it was very casual the way they kept their records and all of a sudden it was locked in Mr. S██████'s office. I

think things had gotten a little bit loose and people weren't following what they were doing.”

On cross examination, Ms. H [REDACTED] acknowledged that she had not been taught Department policy, but had learned while doing. She did not have to ask the employees what they were doing when they called in; she was only supposed to take the message. As for the time sheets, she would not fill them out, but would only collect them, sometimes, and turn them into HR. “Each supervisor had a page.” She also recognized the Field Book, but reiterated that she did not fill it out, either. (City Exhibit #3).

Ms. McIntosh testified on her own behalf. She began working as a Revenue Examiner Trainee in November 2015 and ultimately moved up to Revenue Examiner 2. Ms. McIntosh explained that she had not done field audits during her first few years, and, prior to the one in [REDACTED], had only done two (2) on her own. Additionally, Ms. McIntosh contended that she had never been trained on conducting a field audit. “I just walked into the office one day and there was a stack of folders on my desk. I may have been on maybe four or five audits, shadowing other people...in my entire time.” With regard to the signing in/signing out, Ms. McIntosh maintained that the lead auditor would call the office in the morning and tell whoever answered where they were, and the same at the end of the day. Ms. McIntosh said that, to go to work in Center City, she would

typically drive her car to the train station near her home, and then take the train the remainder of the way. If she had an audit outside of the office, she would also want to drive. However, on [REDACTED], her car was in the shop and she had to take mass transit out to Glenside for the audit. Ms. McIntosh maintained that she was not very familiar with mass transit. Although she was unfamiliar with how to get to Glenside from her home, "I thought it would be less ethical to call that morning and tell the CPA I'm not coming. ...I took the 18 bus and then the XH bus ...and then the 22...left 7, 7:30...took about an hour, hour and a half." Ms. McIntosh looked at a map of her putative route and acknowledged that was it. (Union Exhibit #2). Once she arrived at the audit, she met up with her coworker, M [REDACTED], "checked in with the receptionist...who let Mr. B [REDACTED] know we were here...he came and got us...I had to redo the audit because I messed it up the first time...I don't remember the exact time we finished...we walked down to a pub to have lunch." Ms. McIntosh recalled beginning the audit at 9:00-9:15 a.m., that it took "2, 2 ½, 3 hours or so...left after 11...an hour, we got lunch in the field...walked back to the offices so I could get my laptop bag with my cases in it." When they returned to the office, Ms. McIntosh said there was no one in the entry/reception area, so "I just went in and grabbed my bag from the little entry way...from the vestibule...they had a receptionist when I got there in the morning, but when I came back for my bag no one was

there...like 1:30 or so, I guess...I walked back to the bus stop, the 22, back the same way I came...got on the 18 bus to Broad Street Transportation Center...that's where I always get the train, thinking I was coming back to work, I got off the train at either Erie or Gerard Station...and proceeded to go back in the other direction...it was so late in the day...called M█████...called the office to let them know I was out for the day."

Ms. McIntosh insisted that she had fully intended to return to the office when she left Glenside. However, based on the busses and the transportation, it was "already the end of the day," when she determined she would not return to the office. When asked why she did not call the office immediately upon conclusion of the audit, Ms. McIntosh said that she "never saw anybody else do that...only saw them call at the end of the day...pretty much everybody that I ever went out with...." As for the Field Book, "just put the auditor's name, address, and phone number of the place you're going to and the person you're meeting with and the company it's for, the day before the audit." As for the time sheets, Ms. McIntosh said that they would not be there when she returned to the office the next day, having been taken at the end of each workday.

On cross examination, Ms. McIntosh reiterated that she had only shadowed people for four or five audits, had only held two field audits on her own prior to this, and had never returned to the office after a field audit because they had all concluded at the end of the day. When

asked if she had signed herself and M [REDACTED] in and out for the day of the audit, Ms. McIntosh said that she had put them both in the Field Book, but had not actually signed the time sheets for either of them. She did recall receiving the Flex Time policy, but had never asked a supervisor about the time keeping policies. (City Exhibit #s 13, 13A). She acknowledged that she did not call the office when she left the field audit. She acknowledged that she had called from the subway. She reiterated that she was not familiar with the SEPTA bus system, and said she did not know there was a regional rail center that would have made the trip shorter and easier. She reiterated that she was not in Mr. B [REDACTED]'s office at 11:15 when Mr. S [REDACTED] made his QA call, that she did take a one hour lunch, that she walked back to the office to pick up her bag and did not see and was not seen by anyone, and that she called out at 4:00. She explained that the walk from the CPA's office to the bus stop was approximately fifteen (15) minutes, and that she had to wait for the bus. Finally, she acknowledged that she did not call anyone during her return trip, regarding her transportation issues; nor did she mention them to anyone the following day when she returned to the office.

Ms. McIntosh was asked if she recalled saying, at the 3rd level grievance, that she had lunch between 1:00 and 2:00. She said, "it was so long ago I don't remember details of any of it...can't say I said that or can't say I didn't." As for why she never made any attempt to correct

her time sheet, Ms. McIntosh said “I was never offered that chance. If I knew, I would’ve done it and we wouldn’t be here today. ...we were reprimanded right away...I didn’t know it...this is the first time I heard that...no one ever said to me I could’ve done it...no one ever offered it to me...I had no idea it was an option...I had plenty of vacation time, sick time...I’ve never done this before.” Finally, Ms. McIntosh concurred that she should not have reported working 7.5 hours if she did not actually work that many hours.

RELEVANT PORTION OF THE CBA

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.

(Joint Exhibit #1)

POSITIONS OF THE PARTIES

The City:

The City maintains that it had just cause to suspend and to discharge Ms. McIntosh. “The City Department of Revenue expects its employees to be honest and act with integrity. This is true for all employees, especially those in a position of trust. ...A Revenue Examiner 2 is in a position of trust and has a duty, at the very least, to record hours accurately.

The City first examined the testimony of Mr. B [REDACTED], who it notes, has no reason to fabricate. Mr. B [REDACTED] remembered the audit, when the auditor left, the QA call, and even wrote an email subsequent to the entire event. “The Grievant was not present in the office when Mr. B [REDACTED] took the phone call, which means the audit ended” shortly after 11:00 a.m., well before Ms. McIntosh said it did, and, additionally, Ms. McIntosh was not in the office when Mr. B [REDACTED] sent his email. According to the City, these are just a few of the inconsistencies in Ms. McIntosh’s version of events. As to Mr. S [REDACTED]’s Quality Assurance (QA) call, the City reasons that is not the issue, the issue is Ms. McIntosh.

As to the Union’s contention and Ms. McIntosh’s contention that she did not intend to fabricate the time records or to steal time, the City counters by claiming that “at no time in the months leading up to her dismissal...did she bring up to her supervisor any issue with the time

sheet...did not inquire about proper time keeping...did not ask to use leave time instead of regular hours. ...She doubled down on her story...lunch from 11 to 12...lunch from 1 to 2...working in the conference room after lunch...went back to pick up her bag and no one was there. Instead of admitting she did not work 7 ½ hours.”

While the Union might argue that discharge is not the appropriate discipline, the City highlights the testimony of Ms. McColgan and the fact that “the Department has drawn a hard line with regard to theft of time. The Department of Revenue understands its taxpayers are its clients...expects honesty, fidelity and integrity. ...This case is simple. The Grievant accepted payment for 7 ½ hours but only worked 2 ½. She didn’t return to work the next day and say I didn’t do any work after 11:00 or 12:00, how do I correct it? She accepted payment.”

According to the City, Ms. McIntosh's alleged ignorance of the way things worked is no excuse. It is not persuaded that she made honest efforts to return to the office, especially since she “got off the train mere stops before Center City, where she could have gone to the office and explained...she just crossed over and made a call and went home.” Hand in hand with that, the City points to Ms. McIntosh's own testimony, wherein she acknowledged receipt of the email and the Flex Time schedule, as well as the fact that Ms. H [REDACTED] admitted that she was not responsible for verifying where the auditors were and how long they were

there. Ms. H [REDACTED] said she was only responsible for taking a message when an auditor called incase a supervisor asked.

Finally, the City argues that, even at the arbitration, Ms. McIntosh “has no true memory of any of that time. So many inconsistencies, it is hard to know the timeline. She did not report back to work but accepted the money. The Revenue Department's hard line means that they would not put somebody back in a position who cannot be trusted. This is about trust and its trickle down effects. Trust has been lost.”

Therefore, the City demands that the grievance be denied.

The Union:

The Union avers that the burden of proof is on the City and that the City “has failed to show by clear and convincing evidence that there was just cause to discharge” Ms. McIntosh. It maintains that what the City did show is that Ms. McIntosh failed to call out properly on [REDACTED], which is not grounds for discharge.

The Union argues that taking an indirect, and possibly somewhat circuitous, route from her home to Glenside and back towards the office might have been unnecessary but is not grounds for disciplinary action. It points out that Ms. McIntosh would have driven, avoiding all this, if her car had not been out of service. However, the fact of taking the wrong route and of not taking a train that might have been more direct “does not

show that the Grievant was shortening her time and that she was trying to be deceitful. ...Was it indirect...was it slower...was there a better way to go? Yes...but she did get there and conducted the audit for a few hours and then went to lunch.” The Union notes that there are no time sheets from that day that Ms. McIntosh signed, no exact notation of the hours she spent. It points out that Mr. B [REDACTED] said that Ms. McIntosh finished sometime after 11 a.m., a time that is “approximate.”

While the City may dispute Ms. McIntosh's belief that she did begin her workday at 7:30 a.m. when she left her home, “there was no intent to deceive the City. Even Mr. Harper thought it was paid time. The fact that Ms. McIntosh thought the same is not a show of intent.” Additionally, according to the Union, Ms. McIntosh was new to field audit work, having only trained with a few colleagues but not specifically on the issue of keeping time sheets. After Ms. McIntosh went to work with her coworker, the Union says that she went back to Mr. B [REDACTED]'s office to get her computer bag, went into the vestibule, and did not encounter anyone from Mr. B [REDACTED]'s office including Mr. B [REDACTED], which the Union argues is credible testimony since Mr. B [REDACTED] testified that he could not see the front of the office from his desk and he did not know whether or if anyone had seen Ms. McIntosh return.

While agreeing that Ms. McIntosh's return trip “probably took longer than it should have...she made an effort to go back to work. At 3:50 she

made a phone call to Ms. H [REDACTED], informing her that she would be done at 4:00. What we don't know is what role Mr. S [REDACTED] played. We don't know his process with the routine QA calls...there is no written policy, no motivation for him against her...without him, clearly a critical witness, the City is missing critical evidence in support of its case."

Turning to the documentary evidence, specifically the timesheets, the Union argues that they were not created by Ms. McIntosh, that other employees did initial the sheet but that the other employee who was not in the office did not initial his sheet either. The Union shines a light on the supervisor who signed the sheets, who has the responsibility of ensuring the accuracy of the sheets, and the fact that he took no steps to ensure that accuracy. As to the Auditor's Assignment sheet, otherwise known as the Field Book, the Union makes the case that the recordkeeping was sloppy and not taken seriously by the Department, such that a new field auditor like Ms. McIntosh would not know how to ensure that it was completed properly.

Turning to the penalty, the Union insists that it is too harsh, especially since the time alleged to have been stolen is only five (5) hours. "This was an honest mistake. The facts of this case should not result in termination."

Therefore, the Union argues that the discipline imposed is not supported by just cause. The Union requests reinstatement, full back pay,

and removal of the Notices from Ms. McIntosh's personnel file and wherever else they may be located.

OPINION

After a complete review of all the evidence and testimony, I find that the City did have just cause to discharge Ms. McIntosh. My reasoning follows.

Ms. McIntosh acknowledged having seen the Flex Time sheets and addendum. She was responsible for the contents. Ms. McIntosh acknowledged having seen timesheets. She would have been aware or should have been aware that she was going to be paid for the full 7.5 hours of time on the day she conducted the field audit, even though she did not work for that entire time. Ms. McIntosh did not call the office when she left Mr. B██████'s office, or even when she left Glenside. She did not call until it got close to 4:00 and she determined that the workday would be over before she got back to the office. The Flex Time policy specifically states:

- All employees must work or have approved leave to cover 7.5 hours of work each day. ...
- Employees must follow timekeeping rules by signing in upon arriving to work, signing out at the end of the work day and signing in/out for lunch breaks. Revenue Examiners in the field should follow the current policy that requires them to sign/notate the field book the day before the field audit and call the office when they arrive and leave the field site.

(City Exhibit #13A).

When speaking of theft, whether of things or of time, parties often ask when does it actually become theft – with one pencil or with a pallet of pencils, with one minute, five hours, one week? The question belies the answer, which is that, by its nature, any theft is like a snowball rolling down a slope. Whether it rolls slowly or quickly, far or not so far, it is still rolling. The slippery slope of theft is much the same. To begin to draw distinctions is like saying a little theft is ok but a lot of theft is not. Whether pencils or time, the answer should be the same. There is credible and unrebutted testimony that, throughout the entirety of the grievance machinery, Ms. McIntosh did not ask how, if at all, she could remedy the error. During her testimony, she said she was not aware that she could ask to change the sheets to reflect the true time for which she should have been paid. However, she never made efforts to find out. Ms. McIntosh's contention that she was new to the work of a field auditor is also not persuasive. She contended that, on the few field audits she attended, the auditor would call the office at the end of the day. However, since her audit ended well before the end of the day, and since she knew she was supposed to go back to the office, and since she knew that she was supposed to call the office in the morning when she began her audit, it is unrealistic to think that she should not have called the office when the audit ended. Her

timeline of events, and the testimony of Mr. B [REDACTED], as well as Mr. B [REDACTED]'s email, also do not benefit her.

The City had just cause to discipline and to discharge Ms. McIntosh.

In view of the foregoing, I issue the following

AWARD

The grievance is denied



Randi E. Lowitt
Arbitrator

Dated: October 10, 2020

State of New Jersey)
) ss.:
County of Morris)

I, Randi E. Lowitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.



Randi E. Lowitt
Arbitrator

Dated: October 10, 2020