

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between

AFSCME District Council 47

and

City of Philadelphia

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AAA Case No. 01-20-0000-2428

Grievance: 2187-20-06

Melissa Asamoah-Gyimah

OPINION AND AWARD

Hearing Date: June 28, 2021

Arbitrator: Thomas P. Leonard, Esquire

Appearances:

AFSCME District Council 47

Lauren Hoye, Esquire
Willig, Williams & Davidson

City of Philadelphia

Daniel Unterberger, Esquire
City of Philadelphia Law Department

Procedural History

AFSCME District Council 47 (Union) and the City of Philadelphia (City or Employer) are parties to a collective bargaining agreement for a unit of employees in the City's Department of Human Services (DHS). The CBA has a grievance procedure with the right to binding arbitration administered by the American Arbitration Association (AAA). On July 26, 2019, the Union filed a grievance, at step three of the procedure, alleging that the City terminated the employment of Melissa Asamoah-Gyimah (Grievant) without just cause. The Union then moved the case to arbitration. On August 23, 2020, AAA notified the undersigned that the parties had selected him as the arbitrator for the grievance.

The parties agreed to hold a hearing on March 11, 2021. The Arbitrator continued the hearing to July 28, 2021, at the Union's request, without objection from the City. The hearing was held on the rescheduled date, on the Zoom platform. At the hearing, the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties made closing arguments and the record was closed. The parties agreed to the arbitrator's request for an extension to August 11, 2021 to render the Opinion and Award.

Issue

Whether the City had just cause to terminate the employment of Melissa Asamoah-Gyimah? If not, what shall be the remedy?

Facts

Melissa Asamoah-Gyimah (Grievant) is a social work services trainee for DHS. She began her employment with the Department in July, 2015 in the Truancy Unit. In June, 2018, she moved to the Intake Unit when the Department dissolved the Truancy Unit.

The discipline at issue in this case is not the Grievant's first discipline. On [REDACTED] [REDACTED] the Department issued her a thirty (30) day suspension for falsification and misrepresentation of what occurred on the evening of [REDACTED], that resulted in an illegal removal of children from their home.

The Intake Unit receives calls from the Child Abuse and Neglect Hotline. DHS gives each call a Reference Number. There can be more than one call or reference number for each family "case." A General Protective Services (GPS) Report is a report of abuse or neglect that come through the Child Abuse Hotline.

The Grievant's supervisor, P [REDACTED] W [REDACTED], testified that when a Trainee receives the call from the Hotline, the work requires accurate and timely documentation of investigations. The work also requires the timely closing or referral of the case. The tasks are time sensitive because the children may be in immediate danger or subject to abuse or neglect. If the work is not completed on time, there are several possible consequences. If documentation is not in place for court hearing on dependency it will leave the child and the family waiting to know their future. Also, an agency which gets the case after Intake's referral will not be able to provide adequate services without having a thoroughly documented case file.

A social worker trainee is assigned approximately nine (9) new cases from the Hotline a month. Once a case is assigned, the social worker must call the reporter (the person who made the call to the hotline), check the history, interview the child and the parents. It is the Department's written policy that the social worker has 30- 60 days to finish a case: i.e. to determine the report is factual then make a determination whether General Protective Services (GPS) is warranted (Valid or Invalid in DHS terminology) or to send the case to an agency (A Community Umbrella Agency or CUA).

The Grievant's cases included OPCs (Order of Protective Custody) issued by a judge after the Trainee notifies the supervisor that the Trainee has observed that a child are unsafe. The supervisor decides whether to petition the Court to remove the child from the home. OPC cases involve more work than cases where the child is allowed to remain in the home. There was no evidence that Grievant had a disproportionate number of OPC cases.

P ■ W ■ is the Grievant's supervisor. By December, 2018, W ■ became concerned about the Grievant's caseload, which exceeded the caseloads of the other two employees who W ■ supervised. The one trainee had an average of 10 active investigations, the other had 23. The Grievant's caseload was in the high 20s. DHS takes the position that when the caseload is above 30, it is considered unmanageable. W ■ with the approval of her supervisors, decided to try a new approach to deal with the Grievant's high caseload. She decided to ask the Grievant to develop her own Plan of Action.

On December 3, 2018, Grievant wrote her own Plan of Action, committing herself to have 13 cases ready for transfer or closing by the end of the month. At the end of the month, Grievant only handed in three (3) cases for transfer or closing.

During this time, and at all other times of being supervised by W■■■■, the Grievant would receive suggestions and directions from W■■■■ for improving her work performance but the Grievant often did not accept the suggestions or questioned them.

The Grievant continued to receive new cases during this time. It was not until ■■■■■ that the Department stopped giving her new cases.

On ■■■■■ the Grievant's supervisor, P■■■■ W■■■■, gave her a Plan of Correction for 19 of her cases to close or transfer. Some of the cases had multiple reports to make. The deadlines were from five days to several weeks. The Department also assigned other employees, on an overtime basis, to help the Grievant with her caseload. W■■■■ testified that in this case she gave Grievant a Plan of Correction with defined steps to have the cases resolved so that the families can return to a sense of normalcy and the children are removed from harm's way.

On ■■■■■ W■■■■ "froze" the Grievant's caseload, which meant that she could not make visits to the child's home. On ■■■■■ another supervisor, E■■■■ B■■■■, informed the Grievant and Supervisor W■■■■ that the Grievant could still obtain collateral contacts with schools or medical providers, make phone calls and other tasks under W■■■■'s direction, attend court hearings and previously scheduled CUA meetings.

On April 24, 2019, Supervisor W■■ issued Grievant an Employee Violation Report (EVR), because 12 of the 19 cases in the Plan of Correction were not closed or transferred under the 30-60 day policy. Seven (7) of the 19 cases were completed by the Grievant or other employees working on an overtime basis.

The EVR listed four (4) policies that the Grievant violated: Policy 3200 GPS Assessments and Notification Required for GPS Assessments and Appeals; Safety Assessments Policy for Investigations/Assessment Tool Policy; ECMS Policy on entering structured progress notes within six (6) business days and the Accept for Service Policy.

On June 12, 2019, a Department Disciplinary Hearing was held on the charges in the EVR. The Grievant was represented by her Union. The Panel sustained the charges of insubordination and poor work performance. The Panel recommended thirty (30) days suspension with intent to dismiss.

On July 24, 2019, the Commissioner of DHS informed the Grievant the he approved the panel's recommendation to substantiate the charges. The Department then notified the Grievant that she was being dismissed from employment.

At this arbitration hearing, the Grievant admitted that she entered a guilty plea at the disciplinary hearing because she was guilty of some items in the EVR with respect to poor work performance, but she was not guilty of everything. She also did not agree that this plea meant that she was agreeing to termination.

The Grievant admitted in this arbitration hearing that the Department had to use overtime workers to complete her reporting in the case files. There were 12 cases that were still open on April 24, 2019, the date of the EVR.

Discussion

The Union challenged the dismissal of the Grievant's termination on the grounds that it is not for just cause. The Union argues that the City has not met its burden of proof.

The Union argues that the City did not prove that the dismissal was for just cause.

As a threshold matter, the Union cautions that the analysis of whether the City proved just cause should be limited to what was in the EVR and the Notice of Hearing, and not include incidents outside those documents.

The Union is correct. The analysis of just cause will be based on the written charges in the EVR and the Notice of Dismissal. The issue is whether the City proved the items in those documents, the 12 cases on that list that are at issue.

First, the Union argues that the Grievant did not engage in the misconduct alleged in the charges in the EVR. The Union contends that in several cases, the City did not prove the facts. For instance, in the "F" the Union alleges that the City did not prove that the Grievant told the mother that the father, a Tier II sex offender, could have unsupervised visits with her children. The transcript from the hearing is not persuasive that the Grievant told such a thing to the mother. However, the rest of the facts of the "F" case appear to be accurate.

Also, the City did prove that the facts of “V” case (pack and play kit not being delivered for three days). The City saw this case as a workplace performance issue that could have had serious repercussions, given that the report was of children having an unsafe sleep area and the Grievant waited from Friday until Monday to deliver the pack and play kit.

W■■■■'s credible testimony demonstrated that the Grievant has not documented her interactions with families and has not kept forms and documentations in her file

I must conclude that the City proved the overwhelming substance of the facts in the 12 incidents in the EVR. Despite a scant number of facts in the 12 cases not being accurate and despite the fact that the Grievant did enter reports and collateral contact information on some cases, the 12 cases were not finished by April 24. The Grievant admitted that overtime workers had to do her work for her. She did not document her interactions with families.

Cases are to be closed within 30 - 60 days. But at the time of the EVR, on April 24, 2019, 12 of 19 cases that were potentially closeable remained open. Despite the assistance from the Department by providing overtime workers to do the job. Grievant's poor work performance not only is by “volume” but also by the stakes at issue.

Second, the Union argues that the Department did not adequately train the Grievant how to deal with a large caseload, so it is unfair to terminate her employment.

Supervisor W■■■■ gave credible testimony that the opposite is true. The Grievant failed to follow her instructions not to rush in and out of the homes of families where she is doing instructions. or she just rejected the instructions.

The Grievant ignored directives, argued about directives, tried to find support from others why not to complete directives or to find justification for not following directives. The Grievant did not use or complete a detailed Plan of Correction, then when asked by her supervisor where her copy of the Plan of Correction was, she answered, "I do not know." Either the Grievant has failed to follow her supervisor's instructions not to rush in and out of the homes of families or she has just rejected the instructions

Third, the Union contends that the Grievant's termination is not just because it was disparate treatment. Another employee, E█████ O█████, who was late or deficient in her work only received 30 day suspension but her caseload included far more egregious allegations of parental misconduct than the Grievant's, yet she only received a 30 day suspension. I must also conclude that the case of disparate treatment is not persuasive because this is the second offense for the Grievant in two years.

Fourth, the Union argues that the City did not prove that the punishment fit the crime. The Grievant did close 7 of the 19 cases in the plan of correction. The Union showed that the Grievant was working on the open cases. It points out that she was working on the cases but she just ran out of time. Union points to Union Exhibits 2-12 to show that she did do some things on all of the cases. She was trying her best to work on the cases. The City should have made a rehabilitative discipline, not a punitive discipline such as this termination.

The City points out that her dismissal for poor work performance only came after her supervisor, P█████ W█████, tried to help her and the Grievant did not meet the goals in the Plan of

Action. She did not get the job done in a timely way as required by DHS policies. . For one case, that was assigned in October, 2018, she made her first collateral contact in April, 2019, well beyond the policy time frame.


In all of these cases, there was the potential to expose children to dangers that the law is designed to protect them from. The policies at issue here must be followed to carry out the important mission of protecting children. Not meeting the schedule for completing cases is a serious violation of the policy. Also, the City points out that the Grievant received a thirty day suspension in 2018 for another violation of policy.

In conclusion, for the reasons stated above, the City has proven that it had just cause to suspend and then terminate the employment of the Grievant.

Award

The City had just cause to terminate the Grievant's employment. The grievance is denied.

August 11, 2021
Harrisburg, Pennsylvania


Thomas P. Leonard, Esquire