

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between the

IAFF LOCAL 22,

"Union,"

-and-

CITY OF PHILADELPHIA,

"Employer."

**OPINION
AND
AWARD**

AAA Case No. 01-21-0004-9404
(Discharge – Quinton Robinson)

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

Appearances:

For the Union:

Stephen J. Holroyd, Esq.
Jennings Sigmond

For the Employer:

Sharon Ulak, Esq.
City of Philadelphia Law Department

IAFF Local 22 and the City of Philadelphia are parties to a collective bargaining agreement ["Agreement"]. [Ex. J-1]. On June 5, 2021, the City notified Fire Fighter Quinton Robinson ["Grievant"] that he was dismissed from his employment effective June 14, 2021 for conduct unbecoming. [Ex. J-7]. On June 7, 2021, Grievant Robinson filed a Step II grievance contesting his dismissal. [Ex. J-2]. On July 27, 2021, the Union submitted the unresolved grievance for binding arbitration. On August 24, 2021, AAA notified me that I was chosen to serve as arbitrator.

The arbitration proceedings were held at One Parkway Building in Philadelphia, Pennsylvania on August 16, 2022, at which times the parties were afforded the opportunity to argue orally, present witnesses and submit documentary evidence into the record. A stenographic recording of the proceedings was taken. Testifying on behalf of the City were [REDACTED] [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

[REDACTED]¹ Testifying on behalf of the Union was the Grievant.² The parties provided oral closing arguments. On October 4, 2022, the hearing was declared closed after receipt of the transcript.

¹ [REDACTED]s testimony is located from T:13-18. [REDACTED]s is located from T:19-41. [REDACTED]s is located from T:41-54. [REDACTED]s is located from T:55-69. [REDACTED]s is located from T:69-76. [REDACTED]s is located from T:76-86.

² Grievant Robinson's testimony is located from T:86-107.

ISSUE

The parties stipulated to the following issues:

Whether the grievance is procedurally arbitrable? If so, whether the City had just cause to discharge the grievant, Quinton Robinson? If not, what shall be the appropriate remedy? [See T:7, lines 10-15].

RELEVANT CONTRACT PROVISIONS

PHILADELPHIA FIRE DEPARTMENT DISCIPLINARY CODE

VIOLATION 4.4.1 – CONDUCT UNBECOMING

	<u>Charge</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>	<u>Reckoning Period</u>
1:08	Assaulting or attempting to assault another member of the Fire Department while one or both are on duty.	48 hours to Dismissal	96 hours to Dismissal	Dismissal	Duration of Employment

[Ex. J-1].

BACKGROUND

Grievant Quinton Robinson had been employed by the City Fire Department as a Firefighter since February 2019. The basis for the Grievant's dismissal is his physical assault upon [REDACTED] while they were on duty on April 6, 2021. [REDACTED] interviewed [REDACTED] and the Grievant after the incident that day. [REDACTED] provided a written statement of the incident:

At approximately 4:20pm on 4/6/21, I, [REDACTED], was in the bunk room making beds when I heard footsteps behind me. As I turned around to see who was approaching me, Quentin Robinson threw a closed fist punch at me, without any warning, and connected with the left side of my face, splitting my lip open and potentially cracking several of my teeth. I asked him, "did you just sucker punch me?" And he replied "you're fucking lucky I missed". I then asked him again, "did you just sucker punch me?" to which he replied "let's go outside right now". While all of this was happening, Quentin had me cornered and had his fists clenched as if he was getting ready to punch me again. I then walked around him into the locker room to see the extent of the injuries in the mirror. Quentin followed me into the locker room and insisted that we "go outside and fight". I then went into the kitchen, then the apparatus floor to try to find an officer. I found [REDACTED] and [REDACTED] and explained to them I was just assaulted without warning in the bunk room. [Ex. C-2].

The Grievant also provided a written statement of the incident:

Some time ago roughly around like a month I was issued fire OT on the A platoon here at L30 on there second nightwork. During that night before dinner I had made my own bunk which is #6, it was done personally myself even obtaining my blanket from my locker. A little after midnight I got in my bunk to lay down turning left/right to get comfortable when I realized I was laying on a powdery substance. I instantly got up out of bed to see what it was not sure if it was powder or baking soda etc. I changed my clothes then went back to examine my bed thoroughly but ended up making the bed back up and going to crash on the couch in the kitchen. Woke up that morning never saying a word to anybody about what had took place. A few weeks later working the medical unit 1 out of chinatown, a friend of [REDACTED] said how am I making out and I said good but then he says [REDACTED] put in the group chat that I had got Quinton with the powder in the bunk. So I says to [REDACTED] oh thats who pulled that dumb shit on the sheets? He clearly told me yes. Eventually I said I was going to address him when I see him. Fast forward till today 04/06/21 was the 1st encounter seeing [REDACTED] to speak on it. He came in after 4pm I believe placing his stuff on the trunk. I kindly went looking for him where he was in the bunk room making beds. I asked him about it being specific yet clear and distinct on why he had put powder on my bunk. He murmured something about the bed pointing to it saying it was a prank so as he was turning back around I attempted to grab him by the collar but when he turned his head I ended up striking his mouth/lip with an open hand. He asked what did I sucker punch him for and I said if I would've connected with a punch u would have been laid out on the mattress. He proceeded out to the bathroom to look in the mirror saying that was a bitch move and how I'm a pussy for reacting like that it was a prank that I took too serious etc. It was a few sentences of explicit contact but when I asked did he want to go out back he said no so I walked up front. He followed but everybody started to intervene. [Id.].

[REDACTED] also submitted a written statement to [REDACTED]. [REDACTED]'s statement indicated that he ordered the Grievant into his office after the incident. [REDACTED] then wrote:

Once in the office I stated to him [Grievant] the [REDACTED] said that you sucker punched him. And he responded with the statement "Yes I hit him because he floured my bunk." [Id.]

[REDACTED] also submitted a written statement in which he indicated that when [REDACTED] asked the Grievant what happened the Grievant responded, "I took a swing at [REDACTED]".³ [Id.]

The incident was investigated by the Department's Special Investigations Office. On June 5, 2021, the City issued a Notice of Dismissal effective June 14, 2021:⁴

In that on [REDACTED] at approximately [REDACTED], you physically assaulted [REDACTED] while you both were on duty. This act was in retaliation for an alleged prank that happened approximately one month prior. By your own admission you went looking for [REDACTED] and located him in the members dormitory. At that time, you approached [REDACTED] while he was making bunks and inquired about the alleged prank that previously occurred. You then struck [REDACTED] in the mouth resulting in member being transported to the hospital for evaluation. After you struck [REDACTED], you followed him into the bathroom and offered him outside (an opportunity to continue to the engagement). Police were notified and fire department units were placed out of service while a preliminary investigation ensued. By your actions, you have violated the City of Philadelphia Workplace Policy which prohibits workplace violence, threats of violence, intimidation, and harassment.

³ [REDACTED]'s testimony during the arbitration proceedings was substantively similar to the contents of his written statement.

⁴ The City served the Grievant with a Notice of Suspension on May 18, 2021, and a Notice of Intent to Dismiss on June 5, 2021. [Exs. J-6 & J-5].

By these actions you have demonstrated Conduct Unbecoming a member thereby rendering yourself unfit to be a Firefighter of the Philadelphia Fire Department. For these reasons, effective **Monday, June 14, 2021** you are Dismissed from your position at the Philadelphia Fire Department. [Ex. J-7].

On June 7, 2021, the Grievant filed a grievance alleging that his termination was excessive punishment given that he "was being unnecessarily hazed and harassed." [Ex. J-2]. On July 27, 2021, Local Union Vice-President Charles F. McQuilkin notified Commissioner Adam Thiel of the Union's intent to advance the grievance to Step III "[d]ue to the timing issue and lack of response". [Id.]. The Union filed its demand for arbitration with AAA on July 28, 2021. On August 23, 2021, Monica Marchetti-Brock, the City's Director of Labor Relations, wrote the following letter to AAA:

The demand for arbitration on the above-cited case was filed on July 28, 2021. IAFF Local 22 alleges that the City violated the collective bargaining agreement by discharging Quinton Robinson. The grievance was filed to Step II on June 7, 2021. Despite attempts to schedule grievance hearings, Local 22 proceeded to file for arbitration without appearing for a Step II hearing. Therefore, the grievance was not fully processed under the collective bargaining agreement. For these and other reasons, the City asserts the matter is not arbitrable. The City returned the "List for Selection of Arbitrator" only because AAA rules require such. [Ex. J-3].

██████████ is a ██████████ with the City's ██████████ Department. ██████████ is familiar with the parties' Agreement. ██████████ testified that the Agreement requires grievances to be initially heard at Step 1 at the Department of Labor Relations Unit level, and then may advance to Step 2 at the City Labor Department level. ██████████ indicated that the Union made a demand for arbitration at Step 3 before the grievance was ever heard at Step 2. ██████████ testified that the City's "analyst was in the process of scheduling the hearing" at the time that the City "received the demand about a month later". [T:16, lines 5-8]. During cross-examination, ██████████ confirmed that a Step 2 grievance hearing must be scheduled within 15 days of the referral and that did not occur in this instance. [See T:17, line 6 to T:18, line 5].

During the arbitration proceedings, ██████████ testified that he was transported to the ██████████ approximately four (4) hours after the incident, and he was later discharged from the hospital after receiving a CT scan and getting his facial injuries cleaned up. ██████████ indicated that he received additional treatment at ██████████ on April 7 and 21, 2021. He also went to his dentist who informed him that his tooth had to be replaced because it had been knocked off its nerve. ██████████ testified that he missed approximately five (5) weeks of work as a result of the incident. ██████████ explained how the incident impacted him:

██████ On Direct]

Q. [By City Counsel Ulak] How has this incident impacted you?

A. It's impacted me greatly. I no longer love the job that I once loved. I don't feel safe at work.

I never thought anything like this would happen to me. I don't feel safe at home. He showed up at my house later on and actually chased me down in his car.

So I know that he knows where I work, where I live, when I'm working, when I'm home. I have, you know, a wife, a five-month-old baby at home and my wife is constantly in fear because of this, not knowing when he's going to show up again.

And he also showed up at the station again period. From my understanding, he was banned from the firehouses and just showed up there last week as well.

So again I constantly have to relive this. You know, I see no finish line in sight. It's something I think about every day and has a great impact on me, not only at work, but with my home life as well.

Q. Have you needed to get any treatment as a result of some of the these fears that you have expressed?

A. Yes, so I had to go to EAP, which is Employee Assistance Program, on multiple occasions.

While I was at work I had to leave feeling like I was going to have panic attacks and I also sought out therapy on my own. I talk to a psychologist on my own.

[T:31, line 13 through T:32, line 20].

During cross-examination, ██████ testified that he and the Grievant were classmates at the Fire Academy in February 2019. ██████ stated that he floured the Grievant's bed as a silly, light-hearted prank that was common amongst his classmates.

[REDACTED] has been employed by the Department for over 18 years. [REDACTED] was informed of the incident by [REDACTED]. After speaking with his supervisor, [REDACTED] commenced an investigation into the incident. [REDACTED] interviewed the Grievant in the presence of a union representative and [REDACTED]. [REDACTED] indicated that the Grievant told him the following:

[REDACTED] On Direct]

- A. [REDACTED] informs me that while [REDACTED] was making the bunk in the corner, he questioned him about the bunk, he informed me that [REDACTED] said it was a prank, then he tells me as [REDACTED] is turned around he tries to grab him by the collar with an open hand.

He was trying to grip and grab him and he catches him in the mouth, makes contact with him.

From there, [REDACTED]'s questioned him, if it's about that it was a prank, did you just hit me. Informs that if he had punched him he would have laid him out.

From there, I'm informed that Firefighter Robinson has offered [REDACTED] -- it moves into from the bunk room there's a bathroom adjacent to the bunk room.

It moves into there and he offers him out a few times. [REDACTED] leaves.

And from there, other people get involved.

[T:61, line 9 through T:62, line 4].

[REDACTED] confirmed that he took statements from the Grievant, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [See Ex. C-2]. [REDACTED] also provided a written statement. [Id.].

After completing his investigation, ██████████ concluded that the Grievant did not hit ██████████ accidentally. Moreover, ██████████ testified that the Grievant did not seem remorseful, nor did he show any emotion at the time that he was interviewed. ██████████ confirmed that there has been a long tradition of pranking at the Department.

██████████ is assigned at the ██████████ ██████████ ██████████ ["██████"] and has been employed by the Department for ██████████ ██████████ testified that ██████████ received the charge sheets for this incident through ██████████. After reviewing the package from ██████████, ██████████ interviewed ██████████ ██████████. ██████████ then conducted a disciplinary interview of the Grievant. ██████████ testified that based upon the investigation ██████████ concluded that the Grievant struck ██████████, and in light of the Department's practice of terminating the employment of firefighters who assault other firefighters while on duty, the Grievant was dismissed:

[██████████ On Direct]

Q. [By City Counsel Ulak] You said based on past practices, have there been other instances where firefighters have assaulted other firefighters while on duty?

A. Yes, there are.

Q. And what was the discipline in those matters?

A. The member was terminated.

[T:72, line 19 through T:73, line 1].

██████████ indicated that the Department has policies and procedures for raising EEO complaints. [See Ex. J-4]. ██████████ testified that cadets receive a copy of "all the directives, operational procedures electronically during their time at the Academy", and they are "also available for current members to access online at any station." [T:74, lines 10-14].

During cross-examination, ██████████ testified that his role as the ██████████ ██████████ is to assist the Deputy Chief in charge of the investigation. ██████████ confirmed that he discussed potential outcomes with the Deputy Chief. ██████████ testified that they considered the fact that the Grievant was pranked by ██████████, but this did not excuse or mitigate the Grievant's actions.

██████████ is the Department's ██████████ and has been employed by the Department for ██████████. ██████████ became aware of the incident through ██████████. ██████████ testified that he reviewed the matter and after conferring with ██████████ he concluded that termination was appropriate:

██████████, On Direct]

Q. [By City Counsel Ulak] And what made you decide on termination of employment?

A. So I had an option, you know, between certain amount of time off and termination of employment and for the most part our disciplinary code actually gives us some leeway.

But when it comes to a member coming to work and feeling safe at work, that's our priority. That's my priority that's how I look at it.

Based on everything that the [REDACTED]'s investigation had told me that this member was physically assaulted and I thought a termination was appropriate after conferring with the special investigations officer.

[T:78, line 23 through T:79, line 12].

[REDACTED] provided further explanation for his decision:

[REDACTED], On Direct]

Q. [By City Counsel Ulak] Okay, all right. You testified earlier about believing that dismissal was appropriate or termination was appropriate because a member was physically assaulted at work and you have members' need to feel safe at work.

Can you expand on that a little bit more?

A. Sure, so firefighting and I'm sure everyone in this room knows this firefighting is built on trust. I have to trust that the person I'm working next to when I go into, you know, a charged area, I can count on that person when or if things go wrong and that level of trust doesn't only exist at the company level.

But it actually exists at the city level because, you know, our members are detailed across the city all the time all over the city so you could work in Germantown and end up working the next night in South Philly so, you know, each member has to be afforded the wherewithal to know when they go to work they don't have to worry about other members or other members assaulting them or any kind of danger other than the dangers that we swore to protect citizens from, firefighting.

Q. You had just testified that member can be detailed potentially anywhere in the City. Is that why a transfer would not be appropriate here?

A. Well, that's exactly why a transfer wouldn't be appropriate. Just the mere fact that the assault happened, I mean, probably by the, I mean, it's been a long time since I've been in the field.

But probably within it was probably on social media across the department that an assault had taken place it probably was I don't know I don't search social media like that but, you know, word travels fact.

And I don't know how comfortable any member would feel knowing that they had to work with somebody who had assaulted someone else on the job.

[T:81, line 18 through T:83, line 8].

The Grievant testified that someone powdered his bed at his assigned station on [REDACTED]. As a result, the uniform that he slept in that evening was covered in powder. The Grievant stated that he went to his locker to change his clothes and discovered that his combination padlock had been turned around which made it more difficult for him to open his locker. The Grievant eventually unlocked his locker, changed his clothes, and slept on a couch in the kitchen. The Grievant testified that he hoped to discuss the matter with the culprit of the prank the next morning, but no one approached him:

[Grievant, On Direct]

Q. [By Union Counsel Holroyd]. Well, so you say you were hoping to either see who did it or have the opportunity to talk to who did it.

Why did you want to talk to the person who did it?

A. I wasn't fond of it and I wanted to let him know, like, exclude me from the games, from future pranks and stuff so I wasn't -- I didn't want to be part of it.

Q. When you say you weren't fond of it, what weren't you fond of?

A. The powder, the pranks, just I didn't want no association with it. I'm there to do a job. I just wanted to do the job.

Q. Was that the first time you had been pranked?

A. Yes.

[T:88, line 20 through T:89, line 12].

The Grievant testified that two (2) days later that he found out from

██████████ that ██████████ was the one who pranked him:

[Grievant, On Direct]

Q. [By Union Counsel Holroyd]. Did there come a point when you learned who powdered your bunk?

A. Correct. Two days later, the 25th, I found out. I was detailed. I did overtime and I was on the Medic Unit and as I was leaving the guy ██████████ he asked me about some work techniques and I answered them and then after that he alluded to, "hey so how was it."

And I'm like "how was what?" He said, "the prank" and I said, "what prank?" He said, "the powder of your bunk."

He said, "██████████ was in our group chat and you know he basically kind of elaborated on it he started laughing and, you know, I'm not going to say they was making fun of me, but they were.

And I said, "okay, don't worry. I'll talk to ██████████ myself."

[T:89, line 13 through T:90, line 5].

The Grievant confirmed that he never filed a complaint of any kind with the Department.

The Grievant testified that [REDACTED] was the first time that he saw [REDACTED] since the prank occurred. The Grievant described what occurred:

[Grievant, On Direct]

Q. [By Union Counsel Holroyd]. So now we're at April 6th of '21. You saw [REDACTED] what happened?

A. So April 6th, it was towards the end of the day. He came in and, I believe, he, like, set up his gear and he went - - I don't know where he went, but he ended up in the bunk room.

And that's where I found him and I said I was going to go talk to him man to man, casually and ask him about it.

But when I talked to him, he was making beds and he actually like turned around and I said, "hey man, what was with the prank?"

He's like, "what are you talking about?" Just completely clueless and he's like I don't know what you're talking about.

And I said please leave me out that like I don't want to be a part of it and he shifted on me like, that's when he like shifted.

Q. When you say shifted, what do you mean?

A. He like turned his back on me, like, basically, like, brushing me off, like, he wasn't trying to have the discussion about because he didn't know - - and that's when I, like, tried to turn him - - like grab him and turn him around but, you know, with force, I kind of like smacked him.

Q. So slow down. So he was turning away from you to give you the brush off. And you said you went to grab him.

Describe in some detail what happened there?

A. So, you know, when you talking to someone to face to face that's a sign of respect and then when they shift on you. You know, he, like, turned his back on me, like, you know, and I just turned with him and in the midst of that, like, you know, inadvertently I got a little to[o] close and I, like, smacked him and I said - - he said "did you sucker punch me?"

I said, "if I would have sucker punched you, you would have been laid out." That's what I said I didn't - - I didn't punch him or anything like that he said "that was a bitch move" and you know a bunch of other explicit content.

In the midst of that, he did put his hand on his face, left side of his jaw. He walked into the bathroom.

I did follow him and I'm talking to him and I said "listen I don't want to be a part of this."

And he's in the mirror, he's looking and he's like "dude that was a bitch move. It's a prank, This is what we do."

And he was going on and on and I said I heard somebody in the bathroom and I said, "well listen, we can go out back and talk about this."

He didn't do that and if I was going to apply any force or you know follow up I would have did so then.

So he came out - - I came out first. I went to the left.

[T:90, line 13 through T:93, line 1].

The Grievant testified that as he was walking away towards the front of the station, he saw [REDACTED] and told him what happened:

[Grievant, On Direct]

A. * * * As I was walking to the front, I said, "Hey [REDACTED], let me just inform you what just transpired." And he's like, "what happened."

I said, "[REDACTED] powdered the bunk I went to talk to him and it went kind of left." And he's like "no, no, no, why'd you do that."

And I'm like, yeah, I don't know why. I was like it just kind of got the bet of me. I was, like, I was trying to talk to him

and emotions came out and I was like - - he's like what did you do and I was like I kind of like slapped him and he was like, oh, no, you don't do that.

You don't handle yourself like that and I'm like, yeah, I know. * * *

[T:94, line 13 through T:95, line 2].

The Grievant indicated that [REDACTED] then approached him and asked if he assaulted [REDACTED]. The Grievant testified when he responded, "yeah, kind of", [REDACTED] said "oh man this isn't good. Go to my office." [T:95, lines 19-22].

The Grievant acknowledged that his conduct was not appropriate:

[Grievant, On Direct]

A. * * * I completely lost it just mindless behavior, just acting out, unprofessional, completely apologetic. Just I let my emotions get the best of me it just - - I don't know.

It just - - he kind of, like shifted on me, like, he wasn't trying to hear what I had to say and brushing me off and I'm just trying to talk to him, like, because as they groom it into you in the academy, you're brothers and, you know, if you got an issue with another brother you talk to them, like, you know.

So didn't take it to nobody higher. I wanted to talk to him man to man.

Like, it's not like it was a whole month ago, it was two weeks and it was still fresh. It's not like I seen him on multiple occasions and then on this day I want to react.

That was the first encounter that I seen him and I just wanted to talk to him, talk to him first and then it completely went left. Sorry for my actions, how it transpired out.

[T:97, line 7 through T:98, line 3].

The Grievant denied having stepped foot on station grounds after the incident, but he acknowledged that he was near [REDACTED]'s neighborhood one day toward the end of [REDACTED]. The Grievant indicated that he approached [REDACTED] while they were both in their cars in traffic:

[Grievant, On Direct]

A. I was driving. He was in front of me and I honked the horn. Yeah, we both were in the cars.

Q. [By Union Counsel Holroyd]. And where was this?

A. This was [REDACTED].

Q. Okay. And that's in -- so how did you manage to have this conversation you were talking about if you're both in your car.

A. That's when I honked the horn. He looked in the mirror and, you know, he pulled over and I pulled over.

I started talking to him, raising my hands, saying, hey, listen, I don't mean no harm. I just want to talk to you. He didn't get out at first.

And then ultimately he did get out, you know, he got close to me, talked to me, he shook my hand, he admitted his wrong, I admitted my wrong.

He told where he was going next what was the next process and it was like that. We just shook it off like an incident that went wrong, like, I was wrong, he was wrong and, you know, we manned up to it.

[T:100, line 4 through T:101, line 2].

The Grievant testified that he has learned his lesson, that he would never repeat his actions, and would like an opportunity to return to his job.

During cross-examination, the Grievant admitted that he invited [REDACTED] to step outside of the station during the incident of [REDACTED], but he simply wanted to "further the conversation". [T:103, line 24]. The Grievant testified, "I wanted to talk to him because I heard noises in the room over and I said listen if you want to still talk about this outback we can. It might have been misinterpreted on his end but..." [T:103, line 24 through T:104, line 4].

SUMMARY OF THE ARGUMENTS

The City's Position

The City contends that the grievance is not procedurally arbitrable. The City emphasizes that at the time the grievance was filed the City was in the process of scheduling a Step 2 hearing. Moreover, the Office of Labor Relations was still conducting its investigation. The City submits that scheduling a hearing prior to the conclusion of the investigation would have been prejudicial. Moreover, "it's speculative to say that a step two would not have resulted in something different." [T:113, lines 1-3].

As for the merits of the discharge, the City contends that it had just cause to discharge the Grievant. Put simply, "there is no tolerance for violence in the workplace." [*Id.* at lines 18-19]. The City maintains that "[i]t really is common sense somebody cannot hit their coworker especially while they're at work when they're both on duty." [*Id.* at lines 20-22]. The City emphasizes that the fire profession is built on trust, that "it requires people to believe that they are safe when they are showing up at work because the job that they do is inherently unsafe", and that the "Department simply has no place for people who assault a coworker." [T:114, lines 9-15]. The City maintains that the Grievant's claim that he

hit [REDACTED] accidentally does not comport with the testimony from [REDACTED] and [REDACTED] who concluded that the Grievant struck [REDACTED] on purpose.

As to the Union's claim that discharge is too severe of a penalty, the City stresses that the unrefuted testimony that termination of employment resulted in previous incidents in which a firefighter has assaulted another firefighter while on duty. Moreover, the Grievant failed to avail himself of the procedures that have been put in place to file internal complaints. Instead, the Grievant chose to take action on his own, he escalated the situation, and he injured [REDACTED] causing him "anxiety and needing to take time off from work to report to EAP because of the way that he no longer feels safe at work." [T:118, lines 3-6].

For these reasons, and the entire record, the City had just cause to discharge the Grievant's employment.

The Union's Position

With respect to the City's claim that the grievance is not procedurally arbitrable, the Union contends that the City did not schedule a Step 2 hearing within 15 days of the grievance's referral. The Union submits that it was compelled to move the matter to the next step without a hearing in order to preserve the grievance. Putting this aside, the grievance pertains to the Grievant's discharge. Given the import of the subject at hand, and the lack of any evidence to show any prejudice against the City in proceeding to the merits of the case, the grievance must move forward and be decided.

Turning to the merits of the grievance, the Union indicates that the Grievant's account of the incident has been largely consistent with one that he provided on April 6, 2021. Simply put, the Grievant did not appreciate the prank that was pulled on him, he chose not "to avail himself with the internal mechanisms in place within the department to register the complaint" and, instead, chose to talk to [REDACTED] "man to man". [See T:110, lines 10-15]. Unfortunately, things did not go as well as expected, and the Grievant inadvertently struck [REDACTED]. Regardless of how the strike is characterized, it is an assault, but one that cannot be viewed in a vacuum.

The Union emphasizes that the Grievant admitted his wrongdoing and that the purpose of discipline is to be a corrective, rather than a punitive tool. The Union contends "[t]here's been no evidence on this record that Mr. Robinson is an otherwise unfit firefighter." [T:112, lines 1-3]. The Union maintains that the Grievant is "deserving of another opportunity", particularly in light of his "expressed remorse". [*Id.* at lines 7-9].

For these reasons, and based upon the entire record, the Union contends that the City has not established just cause to discharge the Grievant and that a lesser form of discipline should be imposed under the circumstances.

DISCUSSION

I have carefully considered the arguments and evidence submitted into the record. Given the serious nature of the alleged offense, the severity of the penalty imposed by the City in this matter, and the lack of any evidence to support a finding that the City was prejudiced by the Union's advancement of the grievance without a Step 2 hearing once the 15-day period to schedule a hearing lapsed, I conclude that the grievance must be heard on its merits.

As this matter is disciplinary in nature, the City has the burden to prove that it had just cause to terminate the Grievant's employment for assaulting Firefighter Plover while they were both on duty, a violation of the Department's Disciplinary Code, Section 4.4.1:08 "Assaulting or attempting to assault another member of the Fire Department while one or both are on duty."

I have independently reviewed the evidence in this matter, including but not limited to the written statements compiled during the SIO investigation and the testimony of the witnesses received during the arbitration proceedings. It is undisputed that the Grievant assaulted [REDACTED] while they were on duty. The Grievant explained the basis for his actions and the reasons why he lost his composure. As the Grievant testified, "I let my emotions get the best of me". I have considered the circumstances that led to the incident. There is no doubt

that the Grievant was not pleased with the prank that ██████ played on him, but there is also no doubt that rather than availing himself of any recourse through a complaint through the chain of command or other procedure established by the City that the Grievant allowed his emotions to govern his actions when he confronted ██████ two (2) weeks after the incident and struck him with enough force to cause significant physical and emotional harm to ██████. Although the Grievant claims that his strike was accidental, the evidence in this matter does not support this assertion. I also find the Grievant's claim that he asked ██████ to step outside simply to continue their conversation is not credible given that he made this offer right after he struck ██████ in the jaw and followed him into the bathroom where he had a reasonable opportunity to apologize for his behavior and ask that ██████ refrain from pranking him in the future.

The Department has established through unrefuted testimony that the City has discharged firefighters for assaulting other members while on duty. ██████ ██████ provided credible testimony concerning the importance of safety and the need to have the Department free of the type of behavior exhibited by the Grievant on ██████. When all of the facts and circumstances are considered, I conclude that the City had just cause to terminate the Grievant's employment, and given the past history of discharge in each instance of assault while on duty, and in light of the gravity of the Grievant's


conduct, I find no reasonable basis to deviate from the penalty imposed in this matter.

Accordingly, based upon the foregoing and the entire record, the Grievant's termination is upheld and the grievance is denied and dismissed.

AWARD

The grievance is denied and dismissed.

Dated: November 4, 2022



Robert C. Gifford