AMERICAN ARBITRATION ASSOCIATION
LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between

CITY OF PHILADELPHIA

and

DISTRICT COUNCIL 47 AFSCME

AAA Case No. 01-22-0000-2854

Hearings in the above-entitled matter were held by video conference on October 20, 2022 and October 31, 2022 before Daniel F. Brent, duly designated as Arbitrator. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross examine witnesses, and to present evidence and arguments. The record was declared closed on October 31, 2022. The Arbitrator was granted an extension of time within which to submit this Award.

APPEARANCES

For the Employer:

Aleena Sorathia, Esq. of Ahmad Zaffarese, LLC

Van Mounelasy, Deputy Commissioner City of Philadelphia Department of Human Services

Frank Macrina, Human Services Program Director

Yanee Claiborne, Labor Liaison

For the Union:

Jessica R. Brown, Esq. of Willig, Williams and Davidson, Esqs.

Jessie Jordan, Union Representative

Gabriel Li, Shop Steward

Shaquoya Trego, Grievant

ISSUE SUBMITTED

Was there just cause for discipline of Shaquoya Trego?

If not, what shall be the remedy?

NATURE OF THE CASE

The Grievant was terminated from her position as a Social Worker Service Manager II in the City of Philadelphia Department of Human Services (hereafter, the Department, or the Employer) for failure to abide by departmental policies and for poor work performance. More specifically, she was charged with "leaving children at risk, falsification of time records, falsification of documentation, and poor work performance for failing to perform your essential functions." The discipline arose from the Grievant's investigation of a telephone call from an anonymous source to the Department at [redacted] reporting physical abuse of an "unknown" child. The caller alleged that a one-and-a-half to two-year-old child staying with relatives had been observed with a black eye, a "busted" lip and other indicia of mistreatment; had been forced to stand for extended periods of time as punishment; and had been deprived of food.

The Grievant was assigned to investigate this complaint [redacted], with the expectation that she would conduct a home visit within 24 hours after the original complaint was received the day before. At approximately 9:00 p.m. that evening, the Grievant visited the residence listed in the complaint (hereafter, the "R" residence) and conducted a home visit that the Department characterized as deficient because the Grievant failed to interview the five children she found in the home individually outside the presence of the adult who was present in the home, their biological mother. The Grievant also was cited for failing to ask the mother of the five children if there was another child on the

premises who might have been the unknown victim; for not checking the basement of the home; for not asking more incisive questions of the mother and children; for not making sufficient efforts to contact the reporting source after the visit; and for not entering structured case notes about this home visit in the case file until thirty-nine days after the visit.

On March 11, 2021, the Department of Human Services was notified that a child was found dead in the basement of the "R" residence that the Grievant visited on [redacted] The two-year-old victim had died of blunt force trauma and suffered multiple other injuries.

As part of its response to this discovery, the Department began investigating the Grievant's other cases and discovered nine case files with entries that the Employer characterized as reflecting material defects in the performance of her duties and actions that were inconsistent with the Department's standards and the Grievant's training and experience. When the Grievant eventually submitted on March 16, 2021 her case notes for her [redacted] visit to the "R" residence, she wrote that she had interviewed four of the five children individually, which representation was construed by the Department as a deliberate falsification. The Department also charged the Grievant with recording a false [redacted] follow-up visit to the "R" residence. After considering the Grievant's prior discipline, including an admonition and a three-day suspension for work performance, the Employer determined that just cause existed to suspend the Grievant for thirty days pending termination of her employment

The Union grieved the discipline, contending that the Grievant was being made a scapegoat because of a horrific subsequent event, the death of a young child at the same address the Grievant visited on [redacted]. The death of this child was discovered about a month later and, according to the Union, the Grievant was unfairly implicated for professional misconduct without evidence that the child had been at the premises when the Grievant visited the home on [redacted]21 or that the Grievant's decision not to explore the basement, in accordance with her understanding of safety protocols that precluded unaccompanied basement visits, would have averted this tragic death.

The Union asserted that the Department's reaction was unjustified given all of the factors involving the Grievant's visit to investigate an "unknown" child abuse report on [redacted] including her observation of a young child in the home who appeared to be the same age as the "unknown" child and whom she believed was the subject of the anonymous abuse report; the mother's refusal to permit the Grievant to speak privately with her children; and the paucity of descriptive information about the "unknown" child.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was brought to arbitration.

DISCUSSION AND ANALYSIS

The charges brought against the Grievant are serious. The Department alleged that she falsified Department records, fabricated a home visit she did not make, and negligently failed to fulfill clear protocols for home visits involving allegations of child abuse.

Several material elements of these charges have not been established. For example, the Employer's assertion that the Grievant fabricated a home visit on [redacted] was predicated on a computer entry that the Grievant testified was caused by a computer program quirk that attributed a visit to [redacted], the date she logged in to enter more information. The Employer did not dispel this assertion. The Grievant submitted a Safety Assessment on February 17, 2021, but there is no document in which she explicitly stated that she made a second home visit on [redacted]

Neither has the Department established that the Grievant violated any applicable formal protocol by not venturing alone into the basement of the "R" home when she visited on [redacted]. The desirability of fully exploring all levels of a home during an investigation is self-evident, but the requirement that Social Workers descend unaccompanied into a basement has not been established. On the other hand, a Social Worker looking for a missing abused child is obligated to report that they did not visit the basement where a child could be hidden and not simply omit this fact or fail to revisit with a co-worker soon thereafter.

The Grievant's explanation that she was told not to enter a basement alone by a judge during a previous court appearance for a different case was unsubstantiated, but her testimony was not effectively refuted by the Employer, which did not demonstrate that a formal protocol exists regarding unaccompanied entry into a basement of a home.

Nevertheless, the Grievant's testimony describing her conduct during her visit on [redacted] to the residence where an "unknown child" was reportedly being abused revealed several significant lapses. First, she misstated in her structured case notes that she had spoken to each child individually. This is a serious error and was construed by the Department as a falsification of a material fact. This erroneous statement cast doubt on the accuracy of her report regarding her home visit and her investigation of the "unknown" child abuse report, as well as her continuing reliability.

Second, she allegedly failed to ask the mother of the five children she observed if there were any other children on the premises. The Grievant stated otherwise before the Departmental Panel that recommended that she be discharged. Even if she did ask the mother this question, the Grievant admitted that she erroneously assumed that the youngest child she observed at the "R" residence on [redacted] was the "unknown" victim of abuse despite the statement of the anonymous reporting source that the "unknown" child was not the biological child of the main adult resident. The mother said that all five children present were hers.

Third, the Grievant precipitously merged the "unknown" child report into the preexisting "R" family case file, submerging and effectively discontinuing the original "unknown" child abuse complaint and investigation. Consequently, no one from the Department visited the "R" residence to follow up on the February 1st abuse report. Regardless of subsequent events, this was a significant lapse in the handling of this file.

The Employer reasonably construed the Grievant's acceptance of the mother's assurances as unjustified by the specific information reported by the anonymous reporting source. These defects created a valid basis to impose discipline. At issue is whether just cause existed to escalate the Grievant's previous discipline to termination.

The Employer predicated its analysis of documents submitted by the Grievant and its decision to discharge the Grievant, at least in part, on the conclusion that the Grievant falsely claimed she had returned to the residence for a follow-up visit on [redacted]. Although the Grievant's testimony in this regard was self-serving, she credibly explained how an entry in the computer case file stating "Seen on [redacted]" purportedly showing a home visit on [redacted] was attributable to her entry of other information into the computer case file reflecting on that date. There is no other evidence that established that the Grievant claimed she revisited the "R" home on [redacted]. Moreover, the Employer did not effectively refute her assertion that the source of this entry in the case file was a quirk in the computer program. If such a quirk did not exist, the Employer could have refuted the Grievant's self-serving testimony.

The Grievant admitted other material errors, such as unduly delaying her submission of structured case notes regarding the [redacted] visit; purportedly following directives of her supervisor that were contrary to Department policy; and failing to document that she asked detailed questions of the mother and children during her [redacted] visit to the "R" residence as she later claimed. The Grievant also defended her decision to delay her departure to investigate the "unknown" child report until later in the day. Although the Union characterized these issues as insufficient to justify termination, the Grievant's acknowledged shortcomings justified a substantial escalation in penalty from her prior discipline.

The transcript of the Grievant's testimony at the Departmental hearing recorded her lengthy description of her activities, work habits, and reliance on her supervisor's preferred methods. She testified at that hearing in a jumbled and unconvincing manner. Even if the Grievant's testimony about conforming her reports to satisfy her supervisor's management objectives was accurate, the Grievant was culpable for failing to submitting several structured case reports in a timely manner. The Grievant's testimony at the arbitration hearing did not provide a credible explanation why she did not prepare and submit her notes regarding the "unknown" child abuse investigation for thirty-nine days.

The Grievant testified at the Departmental hearing that she had asked relevant questions about who lived in the home and was told that only the "R" family consisting of the mother and her five children lived there. However, her case notes did not reflect this information. These notes also stated incorrectly that she had interviewed the children outside the presence of their mother. The Employer

reasonably viewed this inaccuracy as a deliberate falsification rather than a clerical error. The Grievant confirmed in her testimony at the arbitration hearing that she intentionally misstated having interviewed the "R" children separately because her supervisor insisted that reports reflect individual child interviews even if that was not the fact. Accepting, for argument's sake, the veracity of this testimony, relying on a supervisor's directive to lie to the Department does not insulate an employee from discipline for falsification.

Notwithstanding challenges she described in obtaining permission to interview young children outside the presence of their mother and the language barrier she confronted at the "R" residence on [redacted], her lack of due care in conducting the interview and home visit-- by not thoroughly addressing whether anyone else resided in this home, by accepting the mother's answers without further investigation, and by not revisiting the home--justified substantial discipline.

In determining the maximum appropriate penalty under all the circumstances that prevailed between [redacted] and the review of the Grievant's case files after the horrific death of a two-year old child a month later, a discussion of causality and responsibility is in order. The record contains no proof that the "unknown child" victim was in the residence on [redacted]. The revulsion felt by Department administrators about the circumstances leading to the abuse and death of this child is understandable. The Grievant's decision not to enter the basement did not render her culpable for not preventing the child's death. Nevertheless, the Employer reasonably construed her performance regarding the "unknown" child as unsatisfactory.

The Grievant's decision to travel to see a child in a facility outside of Philadelphia before visiting the "R" residence, to attend a scheduled twenty-day meeting with a community umbrella agency, to investigate another report of abuse on the way to the "R" residence, and the horrific circumstances of the "unknown" child's death do not independently mandate a finding of intentional misconduct sufficient to terminate the Grievant's employment. Neither does the premature decision of the Grievant, apparently approved by her supervisor, to merge the family file of the "R" residence and the "unknown" child abuse report, viewed in isolation, constitute intentional falsification justifying discharge.

The Grievant is, however, culpable for her error in assuming that the healthy youngest biological "R" child she observed was the "unknown" child, disregarding that the reporting source said that the victim child was living with relatives and thus not a biological child of Ms. "R". She is also culpable for her failure to return to the "R" home to verify what she had been told, her failure to make more than one quick attempt to contact the reporting source, and her prematurely merging the "unknown" child case with the "R" file, effectively removing the "unknown" child case from further scrutiny.

The Grievant cannot escape serious discipline for poor professional performance. Her delayed submission of structured case notes regarding the [redacted] visit in response to the "unknown " child abuse report, her failure to appreciate the implications of hastily merging the two files, her material misstatement in her structured case notes that she had interviewed the "R" children individually on [redacted], and the delayed submission of case notes and

failure to revisit discovered when nine of her other pending case files were examined after the "unknown" child's death supported the Employer's determination that the Grievant persistently and repeatedly failed to follow Department standards and practices and to fulfill her responsibilities in a reasonable manner.

Even considering the Grievant's conduct sympathetically, the Employer need not ignore that she did mis-stated a material fact in her case notes declaring that she had interviewed the "R" children individually when she had not. This interview was a critical factor underlying the Grievant's opinion that nothing was amiss in the "R" residence on [redacted]. It is implausible that the Grievant inaccurately recalled having separate conversations with the four older siblings apart from their mother.

Whether the Grievant's supervisor solicited this misstatement or relied on it in approving the merger of the two cases is immaterial, as the case record misrepresented an important factor in the Grievant's accepting the truth of the mother's statements. By intentionally mis-stating a fact in an official record to satisfy her supervisor, the grievant violated Department policy and an expectation of accurate reporting. The Employer reasonably construed this erroneous representation as evidence of poor job performance. These errors preclude finding that the Employer acted without just cause when it escalated the penalty to termination of employment.

Having recorded in her structured case notes that separate interviews occurred, the Grievant misled the Employer. As a result, the Employer's conclusion that the Grievant's judgment was flawed and that her written representations in official

records were no longer reliable was neither arbitrary nor unjustified. In the context of the other performance errors in several case files discovered during the Employer's investigation of the "unknown" child case, this material misstatement and the delays and errors discovered by the Employer tipped the Grievant's job performance evaluation to unsatisfactory. Her multiple failures to comply with the Employer's reasonable expectation of due diligence, especially considering the blatant misstatement that she had interviewed the biological "R" children individually, created just cause to impose substantial discipline, up to and including termination.

Therefore, based on the evidence submitted, there was just cause for discipline of Shaquoya Trego. The instant grievance is hereby denied.

December 7, 2022 Daniel F. Brent, Arbitrator

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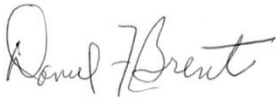
AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted, there was just cause for the discharge of Shaquoya Trego. The instant grievance is hereby denied.



December 7, 2022 _____

Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 7th day of December 2022 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.