

**AMERICAN ARBITRATION ASSOCIATION
ARBITRATION BY AGREEMENT OF THE PARTIES
Before
Arbitrator Timothy J Brown, Esquire**

AFSCME DC 47 :
 :
 And : **AAA Case No. 01-22-0000-2862**
 :
 City of Philadelphia :
 :
 ([REDACTED] – Unjust Termination) :

Decision and Award

Appearances:

On behalf of AFSCME DC 47:

Jessica Brown, Esq.
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103

On behalf of City of Philadelphia:

Lisa Swiatek, Esquire
Senior Attorney
City of Philadelphia Law Department
1515 Arch Street
Philadelphia, PA 19102

Procedural Background

This arbitration arises as a result of a grievance filed by **AFSCME DC 47** (referred to as the Union herein) pursuant to the collective bargaining agreement (the Agreement or the CBA) between the Union and **the City of Philadelphia** (the Employer or the City). In its underlying grievance, the Union contends that the Employer violated the Agreement by terminating bargaining unit member [REDACTED]

(Grievant). The parties were not successful in their efforts to resolve the matter through the formal steps of the Grievance Procedure contained in the CBA and selected the undersigned pursuant to the processes of the American Arbitration Association to conduct a hearing on the grievance and render a final and binding arbitration award. The matter was heard by the undersigned in Philadelphia, Pennsylvania on February 10, 2023. All parties were afforded the opportunity for presentation of opening statements, examination and cross-examination of witnesses and the introduction of relevant exhibits. Grievant was present for the entire hearing and testified on her own behalf. Upon the close of the hearing on February 10, 2023, the parties presented oral closing argument, upon the presentation of which, the record was deemed closed.

This Decision and Award is made based upon careful consideration of the entire arbitration record in the matter, including my observations of the demeanor of all witnesses.

Issues Presented

The parties stipulated that: (1) there are no procedural bars to presentation of the matter, (2) the matter is appropriately before the arbitrator, (3) the arbitrator has the authority under the CBA to render a final and binding decision and award in the matter and (4) the issue or issues to be determined by the arbitrator may accurately be stated as:

Did the Employer have just cause to terminate Grievant, and if not, what shall be the appropriate remedy?

Evidence/Facts

Grievant

Grievant began working for the City's Department of Human Services (DHS), Children and Youth, as a Social Worker Trainee on June 17, 2019. She received satisfactory Performance Reports (evaluations) dated September 17, 2019, November 22, 2019 and August 17, 2021. On June 25, 2021, she received notice of an "In-Position Promotion" from Social Worker Services Trainee to Social Worker Services Manager 1 effective June 17, 2021. Prior to the matters at issue herein, Grievant received no discipline.

Employee Violation Report

Grievant was issued an Employee Violation Report (EVR) from supervisor [REDACTED] [REDACTED] dated February 22, 2021. The narrative portion of the report provides, in relevant part:

You are being charged with insubordination, falsification of a document and poor work performance.

You were assigned thecase and ...case on November 23, 2020. On November 24, 2020, I placed a call to you at approximately 2:15 pm to discuss the impending Order of Protective Custody (OPC) on ... I directed you to contact the DHS Nurse to confirm if newborn baby on ... was ready for discharge. Once you received this information, you were to call me back with an update. You returned my call and confirmed the newborn ... was ready for discharge. I informed you that I will provide this update to our administrator and call you back. Approximately five minutes later, I called you back to inform you our administrator approved the OPC and you were to proceed with requesting the OPC and completing the kinship care paperwork. You stated you did not have a kinship care packet and I advised you to pick up a folder of forms from the Transportation Department. At that point you disclosed you were not in the office. I was not aware you were not in the office on November 24, 2020, which was an Emergency Day

Follow-up with a City of Philadelphia vehicle. During our discussion, my administrator called, and I requested that she be added to the call. You began to question why you had to obtain the OPC for the newborn baby on the ...case and place him in kinship care. While on the conference call with you, you informed us you were at home caring for your nephew. You were directly asked if you were refusing to complete the administrative directive that was given. You did not respond and ended the call. You were in possession of a City vehicle until 3:30pm on November 24th.

During 2:28pm – 2:35pm, you documented in ECMS, you attempted a home visit with ... You also, approved these notes in ECMS without supervisory approval. During this time period, you were on conference call with me and our administrator stating you were home taking care of your nephew.

As a result of your insubordination, I had to obtain the OPC and another social work staff member had to complete the kinship placement and paperwork during overtime.

Furthermore, I was unable to submit the outcome of the following investigations to the State:...and... There were no notes documented in ECMS. Both investigations were received and assigned on November 13, 2020, were due on December 7, 2020. As of January 7, 2021, this information had not been received.

These actions are unacceptable and will not be tolerated.

Grievant received notices of suspension and intent to dismiss dated September 13, 2021, and a notice of dismissal dated September 24, 2021, containing the same narrative as contained in the February 22, 2021 EVR.

Evidence

██████████ is a supervisor in the Human services Administration Specialty Investigation Region, a division or office that handles investigations of sexual abuse in children, human trafficking, family case management services, school child abuse and high profile cases. Solebo testified that she began supervising Grievant in late 2019 and continued to supervise the employee until Grievant was moved to another supervisor in 2021. She wrote Grievant's February 22, 2021 EVR. ██████████ explained that the office has

periodic “emergency days” (referred to as “E Days”) where response times are either immediate, within hours or within 24 hours. An Emergency Day occurred on November 23, 2020¹ and consequently, the following day, November 24 was considered an “E Day Follow-up” day. ██████ recalled that Grievant had worked on a case late into the night on November 23, and that the next day had to do follow-up work. The case Grievant was working on involved a newborn whose mother had tested positive for marijuana, and for whom it was determined it would not be safe to have the child be cared for by its mother.

Solebo testified that she and Grievant communicated during the morning and afternoon of November 24 by the following text messages:

██████ to Grievant (G) at 9:01 am; “GM. Reminder day follow up is the first priority of today.]”

G at 9:10 am; “Yes heading to base to get transportation car will send request in a second.”

S gave a thumbs up.

G at 10:37 am; “At transportation about to be heading out,” and then at 11:04; ”Heading to the home.”

S at 11:27 am; “FYI, OPC ██████ has to be handled today...will discuss when we talk”

G at 11:35; “Okay talk to you prior to speaking with legal.” and at 11:58; “At the home”

S at 12:53 pm; “Appears gm address is ... Reno street And there is a phone number”

G at 12:57; “Leave a letter”

S at 12:58; “Yes” “Head to grandma house”

G at 12:59 pm; “Reporting there now.”

G again, now at 2:52 pm; “In route to the hospital do I have to take

¹ All dates hereinafter are 2020 unless otherwise indicated.

████ with me?

S at 2:57 pm; “Call █████

G at 3:29 pm; “I called you and █████ no answer, My union rep told me to take sick as I am having a panic attack...I scheduled an appointment with my therapist”

According to █████ after she reminded Grievant by text that there was an OPC that day, the supervisor called Grievant and told her to call the nurse to see if the baby had any special needs and if the baby was cleared for discharge. Thereafter, Solebo testified, Grievant call back and reported the baby was ready. Solebo then said okay and informed Grievant that █████ had to then get approval for the OPC² from the Administrator. After she gained approval from the Administrator, █████ testified, she called Grievant again and informed the employee that the OPC had been approved and that Grievant was to pick up the infant and deliver the child to the child’s aunt. According to █████, at this point she began receiving “push back” from Grievant; with the employee asking what is an OPC and why she had to do the pick-up. During the call, █████ testified, she received a call from her administrator █████ who █████ then added to her call with Grievant. During the resulting three-way call, █████ testified, Grievant continued to push-back saying she didn’t know why she had to do the transport and asking why the aunt could not pick up the child. █████ testified that she explained that DHS had responsibility for delivery of the child to the approved home and the aunt could not do so. At some point during the conversation, █████ instructed Grievant to pick up a Kinship Packet from transportation and, according to █████ Grievant then informed the supervisor and administrator for the first time, that she was

² An Order for Protective Custody (OPC) is approved by the Administrator and issued when the investigative team determines a child should be removed from its family of origin.

not at work and that she was taking care of her nephew. According to ██████ Administrator Woodbury asked; “So, are you saying you are not going to do the OPC?”³ ██████ testified that Grievant did not answer the Administrator’s question, but instead said she had not known about the OPC and had to talk to her Union about it. According to ██████ the telephone call then went silent. ██████ testified that she believed Grievant ended the call.

██████ testified that thereafter Grievant did not complete the placement and that ██████ had to arrange for a coworker of Grievant to do the OPC placement, along with all of the other work that coworker already had to accomplish that day.

██████ also testified that Grievant falsified entries into the ECSM records for November 24. ██████ explained that Grievant added two “attempted visit” notes to the ECSM for the times on November 24 that the employee was actually on the phone with ██████. It was not possible that Grievant would be making such attempts to visit while on the phone with ██████. Additionally, ██████ testified, Grievant was aware that visits had to be approved by a supervisor and here the records indicate that Grievant approved the visits. In such regard ██████ identified November 24 visit detail records of attempted visits at one address with a start time of 2:28 PM and end time of 2:35PM, and at a second address with a start time of 3:00 PM and end time of 3:15PM.

██████ explained that City records establish that Grievant returned her City car at 2:55 pm on November 24, but that according to Grievant’s text message to ██████ at 2:52 pm the employee was “in route to the hospital.” ██████ further testified that Grievant’s

³ Such would require Grievant to be accompanied by a safety person, (whom ██████ testified she had already arranged) to pick up the newborn and safely deliver the newborn to its approved receiving home. Here the home of the newborn’s aunt.

phone records show that Grievant's call with [REDACTED] and Administrator [REDACTED] ended at 2:31pm, that Grievant reported by text at 2:52pm that she was on her way to the hospital and that at 3:39 pm that she had spoken to her union rep and was having a panic attack. Grievant could not, [REDACTED] testified, be in two places at the same time.

Grievant also had performance issues, [REDACTED] testified. In this regard, at 9:53 am on January 6, 2021, [REDACTED] emailed Grievant about two tasks on separate cases (Structural Progress Notes) that were overdue; one task that had to be completed by 4:00 pm that day and the second by 12:00 pm, and that although Grievant responded at 9:54 am "Will make action," the tasks were not completed on time. [REDACTED] testified that she regularly gave Grievant supervision and told the employee that if she needed support to let the supervisor know at any time. [REDACTED] explained that she had check-ins with Grievant, coaching and learning sessions and had Grievant shadow senior employees. If Structural Progress Notes are not complete on time, [REDACTED] testified, such could result in complaints to the Commissioner and delay in required reporting to the state.

[REDACTED] testified that while she supervised Grievant she evaluated the employee and that Grievant received some "needs improvements" and was receiving an "Action Plan" relating to job performance.

On cross, [REDACTED] identified the evaluation she gave Grievant and testified that the evaluation contains all "satisfactory" and no "needs improvement" ratings. She confirmed that she had one other employee also on an Action Plan. She testified that she had told Grievant on December 7, to complete the tasks referenced in the January 6, 2021 email, but that she has no documents showing she met with the employee.

In regard to events of November 24, Solebo testified on cross that the newborn

was in the hospital, that a newborn in the hospital is safe, that they had determined the newborn's aunt would be a safe location for the child, that they received the OPC on November 24 and that under such circumstances, it was required that DHA transport the child from the hospital to the aunt's residence. ██████ testified she did not know if November 24 was the first time Grievant had to do the type of job involved on that day.

██████ testified that Grievant's conduct on November 24 amounted to insubordination. ██████ testified that she does not remember meeting with Grievant thereafter to discuss the employee's insubordination. ██████ thereafter continued to supervise Grievant until Grievant was transferred to another supervisor. In regard to the visit detail reports Grievant completed in ECSM, ██████ confirmed that it does not take long to knock on a door, determine no one is home and to leave a letter. She confirmed that phone records reflected her 7 minutes and 28 second phone call with Grievant at 2:31 pm on November 24. She was unable to determine who made the missed calls identified in the records. ██████ explained that she received the transportation report indicating when on November 24 Grievant returned her City vehicle from the Department's transportation office. She testified that she has no way of knowing if the times indicated on the report are accurate.

Human Services Administrator ██████ testified that she recalls the phone call she participated in with ██████ and Grievant on November 24. She testified that there was a placement scheduled that day for an infant and required the administrator to approve an OPC. Once she was included in the phone call, Woodbury testified, she heard a lot of back and forth between ██████ and Grievant about getting the OPC and doing the placement. Woodbury testified that at one point she asked Grievant; "are you

going to do the placement?” According to Woodbury, the back and forth thereafter continued and Grievant never directly answered the Director’s question about doing the placement, and that soon thereafter the line went dead. That was the last interaction she had with Grievant, Woodbury testified.

Woodbury testified that she was aware of the February 22, 2021 EVR completed by Solebo and further explained that completing progress reports are important because DHS has to provide reports to the state to show a completed outcome, and that if the Department fails to do so DHS could lose its license.

Woodbury testified that she recalled that at some point Grievant was transferred to a new supervisor; that she does not recall whether the transfer was at the request of the employee or not, and she does not recall if the request/transfer occurred before or after the February 22, 2021 EVR. Woodbury confirmed that Grievant received all “satisfactory” ratings in her September 17, 2019 Probationary Period Performance Report, her November 22, 2019 Performance Evaluation (completed by Solebo) and her August 17, 2021 evaluation completed by Grievant’s new supervisor and approved by Woodbury.

In regard to the November 24 three-way phone call, Woodbury testified that the three of them were “literally yelling back and forth.” After the call was ended, Woodbury testified, she and Solebo did not try to call Grievant back. Woodbury also testified that she is “almost 100% sure” that she and Solebo spoke on November 24 - after the call - about having to address Grievant’s conduct that day. Woodbury testified that she did not herself initiate discipline of Grievant.

Woodbury testified that in the past, on a case by case basis, some employees who

have been issued EVRs have been removed from the field. Grievant continued to work in the field after November 24, until her termination on September 13, 2021.

DHS Commissioner Kimberly Ali testified that she reviews recommendations from discipline panels and has sign-off authority for discipline, including discharge. She reviewed the transcript of the Discipline Panel’s hearing in Grievant’s case and supporting documents. She testified that when considering discipline, she also reviews a summary of the employee prepared by HR, the employee’s performance evaluations and prior discipline of the employee. Ali acknowledged that Grievant had no prior discipline.

Because she wanted a second set of eyes on the matter, Ali explained, she had Deputy Commissioner Sam Harris also review the transcript and documents relating to the proposed discipline of Grievant. Both she and Harris agreed with the Discipline Panel’s recommendation of a 30-day suspension with intent to dismiss. Ali testified that she was concerned about Grievant’s veracity considering the falsification issues upheld by the Panel and Grievant’s failure to complete a custody order; an order issued to assure the safety of a young person. She testified that Grievant received an “in-position promotion” in June 2021- the month after the Discipline Panel met on her case – because at the time she became eligible for the promotion Grievant had no discipline, and pending discipline is not considered.

Grievant testified that her relationship with supervisor Solebo was not very good as the supervisor would disrespect Grievant and would interrupt Grievant when Grievant was with clients. She recalled that on November 23 she had a new case involving a newborn who had been exposed to marijuana. Grievant had to go to the hospital to assess and had to assess caregivers. Grievant explained that “we” had to run clearances on all

parties in the receiving home. Grievant testified that she worked on the matter until 1:00 a.m. November 24.

Grievant testified that in the morning of November 24, an E-day follow-up-day, she went to the office that morning to get a City car. In regard the visit detail reports completed in ECSM relating to November 24, Grievant testified that the address given her was wrong and it took only a couple of seconds for her to realize such when she went to the door. Grievant testified that due to safety concerns, it was the practice for her to be on her phone when going to a door. When she went to the door of the address given her for one of her visits on November 24, Grievant testified, she had Solebo on the phone; told the supervisor no one was home and told the supervisor that she left a letter.

In regard to the three-way phone call on November 24, Grievant testified that she did not tell her two superiors that she had her nephew or that she was taking care of her nephew. What she did tell the supervisors, Grievant testified, was that she was planning on taking her nephew with her on vacation the next day. Grievant testified that during the three-way call, she asked why when Solebo knew Grievant was dropping off the City car, Solebo had not told Grievant she had to keep the City car because she had to transport the infant. Grievant denied that she hung up the phone when on the three-way call. She testified that she thereafter tried to call Solebo and also attempted to call Woodbury but her calls were not answered. Eventually she texted Solebo at 2:52 after two of her attempted phone calls to the supervisor “were ignored.” Grievant explained she was trying to coordinate and complete the OCP placement using her own vehicle.

Grievant testified that any times she inputted into her visit detail reports for November 24 would have been estimates, and that the times on the City reports

indicating she returned the City vehicle that day at 2:55 p.m. were incorrect.

Grievant testified that neither Solebo or Woodbury had any conversation with her about the events of November 24. Grievant testified that she requested a transfer from Solebo to another supervisor, and that when she did so she asked if there was any way she could make such a request without Solebo knowing. According to Grievant, she was told there was not, and that she received the EVR after she was transferred. Grievant testified that at a later point, and “out of left field,” she was transferred to adoptions. She was not told that her transfer to adoptions was discipline.

Positions of the Parties

The Employer

Grievant’s termination was for three reasons: (1) failure to complete an OPC; (2) refusal to comply with an order; and (3) falsification. The time record as explained by Grievant does not make sense. She documented that she was at what was thought to be the residence involved on Kimberly Drive at 2:28 to 2:35 p.m. Telephone records show that Grievant was on the three-way call from 3:32 p.m. to 3:38:28 p.m. At 2:52 p.m. she texted her supervisor that she was going to the hospital. But, City records establish that Grievant dropped off her City car only 3 minutes later at 2:55 p.m. She claims she was doing visits in her personal vehicle at 3:30 p.m., but the documents she completed say she was at the Reno Street address of the family at 3:00 p.m. (5 minutes after she returned her vehicle). None of it makes any sense because none of it is true, the City argued.

There is no dispute that Grievant failed and refused to complete her assigned OPC task on November 24; she falsified her reports of her conduct on November 24 claiming

she was at locations and at times she could not have been; and although she was given direct instructions by supervisor Solebo to complete important documenting by a time certain and agreed to do so, she failed.

The discipline committee and commissioner carefully reviewed the matter and concluded Grievant's lack of integrity as evidenced by her conduct was serious and warranted her discharge, The City has shown just cause for the termination of Grievant.

The Union

This entire case is the brainchild of a supervisor who clearly doesn't like Grievant, doesn't like being questioned and when she is questioned will retaliate. Going backward in time, the City's claim that Grievant failed to complete reports important for reporting to the State is entirely based upon an email late in the day the reports were due saying they were due and an email from Grievant saying sure. No other evidence was offered by the City. City witnesses who testified of the importance of completion of timely reports to the interests of the City testified that they did not know if there was any follow up or whether or not the two relevant reports were ever completed and communicated to the State. As for the content of the ECM reports, both reports were apparently filled out on December 14 well after November 24. There is no evidence that Grievant completed the report stating that a visit was made between 3:00 and 3:15 p.m. on November 24. Although completed well after the fact, the report stating that a visit was made between 2:28 and 2:35 p.m. on November 24 nevertheless makes room for the time it would have taken Grievant to knock on a door. And there is no evidence in the record to support the claim that Grievant "approved" either report. As for the City's car

return record, the record doesn't establish who filled out the forms and what the forms even mean.

Most importantly, in regard to the City's claim that Grievant refused to complete an assignment, there was no action by the City to address the claimed failure of Grievant for an entire three-month period. At worst, the record shows there was a heated conversation between the employee and supervisors. But, contrary to the claim that Grievant just ended the call and refused to engage with Solebo and Woodbury, the evidence establishes that Grievant made multiple calls trying to call back both managers. Such may be the conduct of a nervous employee trying to figure out what is expected of her, but it is not the conduct of an employee refusing to perform a task.

The timing of the City's conduct toward Grievant is suspicious. Solebo did not issue Grievant's EVR until after Grievant requested transfer to another supervisor. Administrator Woodbury approved Grievant's satisfactory performance review even though Woodbury was a participant in the November 24 phone conversation and would have had knowledge that Grievant refused an order and falsified documents. It doesn't make sense.

Similarly, the decision of the Commissioner to terminate Grievant was not based upon what actually happened. Rather the Commissioner's decision was made in a vacuum composed only of documents. All the Commissioner knew was that it was claimed that Grievant refused to complete an OCR and falsified documents. But the actual evidence does not support such conclusions.

The Employer has failed to demonstrate just cause for the termination of Grievant. Grievant should be reinstated and awarded backpay.

Discussion

Introduction

An analysis of whether or not Grievant's discharge was for just cause under generally recognized standards in labor arbitration requires consideration of all of the circumstances in determining whether the issuance of discipline was "fair." Some of the several factors often considered by arbitrators when applying the just cause standard include whether or not: (1) the rule or policy being enforced is reasonable; (2) there was prior notice to the employee of the rule and the consequences for its violation; (3) the disciplinary investigation was adequately and fairly conducted and the employee was afforded an appropriate level of due process under the circumstances; (4) the employer was justified in concluding that the employee engaged in the conduct as charged; (5) the rule has been consistently and fairly enforced and (6) whether or not the discipline issued was appropriate given the relative gravity of the offense, the employee's disciplinary record and considerations of progressive discipline.

It is well recognized that in arbitrations of cases presenting questions of discipline or discharge for cause, it is the employer's burden to show that its discipline satisfies all of the requirements of just cause. In the instant matter, considering the record as a whole, including all evidence and argument offered by the parties as well as my observations of the demeanor of all witnesses, I find that the Employer has failed to meet its burden of showing just cause for the termination of Grievant. In making this decision, I particularly rely upon my finding that the City did not prove by a preponderance of the evidence that Grievant engaged in all of the conduct upon which her discipline was based, and that

Grievant was not provided the progressive discipline or the minimum due process required by the just cause standard.

The City's Documentary Evidence Was Not Shown to be Reliable

I agree with the City that the timing of events, when considered within the context of times indicated on City records, is confusing. But, I do not find under the circumstances of this record that such confusion should be interpreted as evidence in support of the City's claims.

I am persuaded by the Union's arguments that the documentary evidence submitted by the City was not sufficiently reliable for me to find that Grievant fabricated or misrepresented her conduct on November 24. In this regard, the City did not offer sufficient evidence to establish the documents were admissible for their truth under the business records exception to the hearsay rule or otherwise. On their face, the In-Home Visit records show they were neither contemporaneous records nor completed soon after the conduct allegedly recorded. Instead, the forms are dated December 14, 2020; some three weeks after the events at issue. Additionally, the Visit forms do not indicate who completed them. Nor do the vehicle return forms offered by the City indicate who completed the forms and there was no testimony as to the process by which the forms are completed or that the individual or individuals who completed the vehicle forms are held to a standard of accuracy. Without proper foundation, I am not persuaded that the detailed time-related statements contained on the forms should be credited.

As to the City's claim that Grievant inappropriately "approved notes" on In-Home Visit records, no documents reflecting such an approval were offered. I find there is

wholly insufficient evidence in the record to establish that Grievant “approved” any ECSM report.

The Three-Way Call

Considering the timing and context of the November 24 three-way call, I am persuaded that the circumstances were stressful and that the conversation was challenging on all sides. Grievant was annoyed that her supervisor had not told her she would have to transport the infant prior to Grievant returning her City vehicle; the transport of the newborn was a task that Grievant did not have substantial, if any, experience performing; the day was an E-Day follow-up day and the managers had strong interests in having the infant safely moved in a timely manner; and Grievant had questions concerning her means of fulfilling the OPC. I find that Grievant may have conducted herself in an animated manner during the November 24 phone call with her supervisor and administrator,⁴ but I am not persuaded that Grievant engaged in insubordination by “refusing an order” outright by simply, intentionally hanging up on her two superiors as claimed by the City. In this regard, although Grievant did not plainly state during the call that she was going to complete the OPC, neither Solebo or Woodbury testified that Grievant said she was not going to complete the OPC. Instead, both management witnesses testified that Grievant engaged in back-and-forth, asking questions and complaining. Although both management witnesses assert that at some point the call abruptly ended, I find there is insufficient evidence in the record to find that Grievant “hung up” on her superiors or that the call ending was intentional. In contrast, I find the

⁴ Because the City did not issue any discipline relating to Grievant’s November 24 conduct within a period of time considered reasonable under the just cause standard, I find any order by the undersigned to now issue discipline would be inappropriate.

evidence supports a finding that Grievant did not intend to end the November 24 call. Primary considerations leading to my finding in such regard, include my finding that: (1) Grievant was on a cell phone and dropped calls on cell phones are not uncommon; (2) Grievant soon thereafter twice attempted, without success, to call her supervisor Solebo back; (3) Grievant similarly attempted to call her administrator; and (4) Grievant also continued to engage with her supervisor by text message. Such conduct is not the conduct of an employee who refused an order and brushed off her superiors by intentionally hanging up on them.

The Corrective Nature of Progressive Discipline

It is widely recognized that in all but the most egregious cases, discipline in the context of just cause is primarily intended to be corrective in nature; discipline is an effort by an employer to correct questionable conduct or poor performance by employees. Under the just cause standard, discipline is not a means to punish an employee or gain retribution for an employee's conduct. Only when efforts to correct have failed through reasonable efforts under the circumstances, is discipline justly used to terminate the employment relationship.

Necessary to any effort to correct conduct is the understanding that once the employee has received corrective discipline, the employee actually be given the opportunity to modify and correct his or her conduct. It is fundamentally contrary to any concept of due process and justice in the workplace for an employee to receive further discipline for conduct before the employee has had a fair opportunity to reform his or her behavior. Nor is it consistent with either progressive discipline or due process for an

employer, as the City did here, to collect and horde incidents of an employee's misconduct and/or poor performance until the collection accumulates to a sufficient weight or quantity to warrant a decision to dismiss. Discipline – if it is to retain any semblance of being fair or corrective - must be issued on a timely basis; when the incident is fresh and discipline can have its corrective impact.

I find that the discipline of Grievant here was issued outside of the period of time that could fairly be considered timely within the context of the just cause standard. Grievant was not been given the opportunity to correct her conduct. I find the City's accumulating incidents of Grievant's conduct over a period of months without communicating to Grievant about her claimed misconduct was inconsistent with the underlying goals of progressive discipline. If Grievant did not know her conduct was contrary to the legitimate expectations of her employer, it is unfair to expect her to change her behavior.

Based upon the record as a whole, I find that contrary to the considerations and goals that underlay principles of progressive discipline, the City's decision to terminate Grievant was primarily punitive in character. As a result, I find that the City failed to satisfy the standard of just cause for its discipline of Grievant.

Conclusion

Based upon my close consideration of the entire record in this matter, including all testimonial and documentary evidence, my observation of the demeanor of witnesses and the arguments of the parties, I find the Employer has failed to meet its burden of showing just cause for the termination of Grievant. I will issue an Award accordingly.

**AMERICAN ARBITRATION ASSOCIATION
ARBITRATION BY AGREEMENT OF THE PARTIES
Before
Arbitrator Timothy J Brown, Esquire**

AFSCME DC 47 :
 :
And : **AAA Case No. 01-22-0000-2862**
 :
City of Philadelphia :
 :
([REDACTED] – Unjust Termination) :

AWARD

The Grievance is Granted.

The City is ORDERED to;

- 1) Rescind its termination of Grievant;
- 2) Offer Grievant reinstatement to her former, or substantially equivalent position;
- 3) Expunge all reference to the subject termination from Grievant’s disciplinary records; and
- 4) Make Grievant whole for pay and benefits she lost as a consequence of her termination.

The undersigned shall retain jurisdiction of the matter for purposes of remedy only.



Dated: March 1, 2023

Timothy J. Brown, Esquire
Arbitrator