

AMERICAN ARBITRATION ASSOCIATION

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| In the Matter of the Arbitration | : | AAA Case No. |
| | : | 01-20-0000-6883 |
| between | : | |
| | : | Opinion & Award |
| FRATERNAL ORDER OF POLICE, LODGE NO. 5, | : | |
| | : | Re: Jason Reid - |
| “Union” | : | Discharge |
| | : | |
| - and - | : | Hearings: January 10, 2025 and |
| | : | January 23, 2025 |
| | : | |
| CITY OF PHILADELPHIA, | : | |
| | : | |
| “City” | : | |
| -----X | : | |

APPEARANCES

For the Union

WILLIG, WILLIAMS & DAVIDSON
Thomas M. Gribbin, Jr., Esq.

For the City

CITY OF PHILADELPHIA LAW DEPARTMENT
Deborah Neary, Esq., Deputy City Solicitor

BEFORE: David J. Reilly, Esq., Arbitrator

BACKGROUND

The City discharged Sergeant Jason Reid, effective January 8, 2020. It took this action upon finding that he had violated three sections of the Police Department's Disciplinary Code. These included: (1) Conduct Unbecoming, Section 1-§010-10 (knowingly and willfully making a false entry in any Departmental record or report); (2) Conduct Unbecoming, Section 1-§012-10 (unauthorized and/or excessive use of force in official capacity); and (3) Conduct Unbecoming, Section 1-§026-10 (engaging in conduct constituting a felony or misdemeanor carrying potential sentence of more than one year). (Joint Exhibit 1 & City Exhibit 7.) All three charges relate to a call to which Reid responded on [REDACTED].

The Union contends the City lacked just cause to discharge Reid. It asks that he be reinstated to his former position with the Department and be made whole for all pay and benefits lost as a consequence of his discharge. It also requests that the City be directed to revise his personnel records to expunge all reference to his discharge to the extent consistent with governing law.

The basic facts of this case, including the areas of dispute, may be set forth succinctly.¹

Reid's Employment History

At the time of his discharge, Reid had been employed by the Department for nearly seventeen years.² (Tr. II-7.) He testified that his annual evaluations had always

¹ References to the transcript of the January 10 and January 23, 2025 hearings in this case will be designated as "Tr." followed by the applicable volume and page number. The January 10, 2025 and January 23, 2025 transcripts will be identified as volumes I and II, respectively.

² Prior to joining the Department, Reid completed seven and one-half years of distinguished service in the United States Marine Corp. (Tr. II-5.) During his service, he received a Purple Heart and various other medals and commendation (i.e., Presidential Seal; Navy and Army Achievement Medals; Marine Corp.

been “outstanding.” (Tr. II-8; Union Exhibit 1.)³ He also averred receiving ninety-six commendations during his career. (Tr. II-9.) Further, he confirmed having no prior discipline or sustained civilian complaints. (*Id.*)

After graduating first in his class from the Academy and receiving a leadership award, Reid began his tenure with the Department by serving as patrol officer in the 35th District, which he identified as having a high incidence of violent crime. (Tr. II-12.) During his time there, he reported being assigned to an elite tactical squad. (Tr. II-9.)

Subsequently, Reid served in the Narcotics Unit and later the Northwest Tactical Task Force. (Tr. II-9 -17.) In 2011, the Department transferred him to the Highway Patrol Unit, its most elite unit. (Tr. II-10.)⁴

In 2018, the Department promoted him to the rank of Sergeant. (Tr. II-11.) Following that advancement, he returned to the 35th District. (Tr. II-13.)

Call⁵

At approximately 6:45 a.m. that morning, Reid responded to a Priority 1 call (“person with a gun”) at ██████████ Street, along with other Police Officers from the 35th District. (Tr. II-20-22.) According to Reid, upon arriving at the scene, he and his fellow officers encountered the suspect (“RW”), who appeared to be high on PCP (phencyclidine) and was standing in the street making loud, violent threats against an area

Expeditionary Medal; Joint Military Unit Service Awards; Special Operations Commendations). His service assignments included, among others, working as a Marine White House guard. (Tr. II-5-6.)

³ His two most recent evaluations reflected positive comments such as: “He is thorough when handling his everyday duties and can be counted on to handle any detail with professionalism;” “You are an outstanding officer and an asset to the squad.” (Union Exhibit 1.) In both instances, the rating officer encouraged him to pursue promotional opportunities. (*Id.*)

⁴ Reid related that Highway Patrol is commonly known as the “Commissioner’s Unit,” since the Police Commissioner selects the officers assigned to it. (Tr. II-10.)

⁵ The facts recited here are largely based upon Reid’s testimony, as he was the only witness with first-hand knowledge of the relevant circumstances. The videos recorded by the bodycam devices worn by Reid and other responding officers are addressed below. (City Exhibits 1 – 3; Union Exhibits 2 – 3.)

resident. (Tr. II-24-26.) During the encounter, RW remained hostile and also directed violent, racially charged language and other slurs at the responding officers. (Tr. II-26-27, 34.)⁶

After determining that RW did not have a gun and having observed him drop a steak knife, Reid arrested him, placing him in handcuffs. (Tr. II-27-29; 35-37.) Reid then escorted RW to and placed him in a patrol car. (Tr. II-40-41.) While proceeding there and continuing once at the vehicle, RW spat multiple times at Reid, first striking his clothing and eventually hitting his face, eye and mouth. (Tr. II-40-41, -44.)

While Reid placed RW in the patrol car, physical contact occurred between them, with Reid's right hand striking RW's face/mouth (Tr. II-41, -45.) Describing his actions in this regard as a response to RW's spitting, Reid related, "I swung my hand. It was quick, it was like a reaction... It's a punch but it's not intentional." (Tr. II-45.)

A few minutes later, Reid returned to the vehicle to perform a pat search of RW. (Tr. II-50, -53.) At that time, RW was banging his head on the window, spitting and making further threats. (Tr. II-56-57.) When Reid attempted to begin the pat down, RW growled and lunged toward him, saying he was going to "bite the shit outta [him]." (Tr. II-57.) In response, Reid attempted to punch RW, but missed striking the patrol car, causing a loud bang. (Tr. II-57.)

Reid then removed RW from the vehicle and called for a police wagon to transport him. (Tr. II-58-60.) When Reid subsequently escorted RW to the police wagon, RW kicked him several times and attempted to bang his own head on the doorframe of the wagon, claiming police brutality. (Tr. II-68-71.)

⁶ These remarks included such statements as, "I don't give a fuck about the cops" and "White boy, you touch me I'll blow your fucking head off." (Tr. II-26-27 & -34.)

Use of Force/Hospital Case Summary

Once RW was placed into the police wagon, Reid notified Operations Room Supervisor (“ORS”) Sergeant T ■■■ B ■■■ of the incident, so she could complete a “Use of Force/Hospital Case Summary.” (Tr. II-72.) According to Department protocol, such report must be completed whenever an assault on a police officer occurs. (*Id.*) In such event, the applicable detective squad must also be notified, as the scene must be held. (*Id.*) In this case, Reid contacted Lieutenant J ■■■ B ■■■ at Northwest Detectives to have the scene cleared. (Tr. II-75-76.)

Reid confirmed providing ORS B ■■■ with a brief summary of what had transpired with RW. (*Id.*) B ■■■ Report includes a “Summary – Actions of Defendant and Officers,” which recounts:

(1) upon arrival at the scene, Reid encountered RW, who was intoxicated and making threats of violence; (2) RW, after being handcuffed, continued his combative behavior, which included kicking police officers; (3) upon being escorted to the vehicle, RW spit in Reid’s face and continued to do so as Reid covered his mouth; (4) after being placed in the car, RW banged his head on the window and spit blood; (5) when removed from the vehicle, RW bit Reid on the right forearm breaking skin and spit directly in his face; (6) when transferred to the wagon, RW banged his head on the wagon door, claiming he had been hit; and (7) RW was transported to an area hospital, where he was seen and released.

(City Exhibit 4.)⁷

Medical Treatment Sought by Reid

Fearing he may have been exposed to diseases from RW spitting in his face and biting his arm (e.g., hepatitis), Reid, upon leaving the scene, traveled to a local hospital to seek treatment. (Tr. II-77.) The nurse who examined him, he recalled, identified the mark on his right forearm as a bite, but noted the skin had not been broken. (Tr. II-78.) The nurse, he said, also advised that disease is not easily transmitted by spit. (Tr. II-78-

⁷ Sergeant B ■■■ did not testify at the hearing in this case.

79.)

While at the hospital, he reported that a disruption occurred in an adjacent room, where RW was being examined. (*Id.*) According to Reid, the treating physician directed RW be removed from the hospital after attempting to bite a nurse and presenting with a quarter inch cut on his lip that did not require stitches. (*Id.*)⁸

Reid's Initial Statement to Detectives

Upon leaving the hospital, Reid responded to a call for a “missing tender age” and then returned to the 35th District. (Tr. II-79-81.) Once there, he immediately gave a statement to Detective C [REDACTED] C [REDACTED] regarding RW, so the detectives could proceed with clearing the scene. (Tr. II-82-83.)⁹

In his statement, Reid reported: (1) RW had spit on his clothes and in his face multiple times and kicked at him as he was being placed in the patrol car; (2) in response, he “swung” at RW but missed; (3) once in the car, RW banged his head against the window and threatened a lawsuit for being hit by Reid; and (4) after removing RW from the car and calling for a police wagon, RW spit blood in his face and bit his right forearm. (City Exhibit 4.)¹⁰

Reid's Meeting with Staff Inspector J [REDACTED] T [REDACTED] and Lieutenant B [REDACTED]

Later that day, Reid met with Staff Inspector T [REDACTED] and Lieutenant B [REDACTED] to review the video recorded by his BWC during the incident with RW. (Tr. II-96.)

⁸ W [REDACTED] medical records from this hospital visit are included in City Exhibit 4.

⁹ According to Reid, as a matter of practice, officers are permitted, and, in fact, encouraged to review the video recorded by their body-worn camera (“BWC”) before making such a statement or filing a report. (Tr. II-83.) However, he did not have an opportunity to do so in this instance. (*Id.*)

¹⁰ As a result of his conduct on [REDACTED] including his interaction with Reid, RW was charged with aggravated assault, assault of law enforcement, terroristic threats and simple assault. (City Exhibit 4.) These charges are detailed in the Police Department Arrest Report (“PARS”) prepared by Detectives C [REDACTED] C [REDACTED] and K [REDACTED] G [REDACTED]. (*Id.*)

According to Reid, after watching the full video, it became clear to him that RW had not bitten him. (*Id.*) At that point, he reported concluding that the bruise marks on his right forearm may have resulted from hitting his arm on the doorframe of the vehicle. (*Id.*)¹¹

Recognizing he had erred in informing Detective C [REDACTED] that RW had bitten him, he recounted leaving the meeting and immediately providing an amended statement to a Detective C [REDACTED] S [REDACTED]. (Tr. II-97-100; City Exhibit 4.)¹²

Reid's Use of Force Report

Before leaving the 35th District that day, Reid also completed a Use of Force Report. (Tr. II-100-101; City Exhibit 1; Union Exhibit 4.)¹³ The Report identifies the “Force or Threat Against Police Officer” as: (1) active resistance; (2) kicks/punches; and (3) attempted biting. (City Exhibit 1.) The “Summary of Incident” section details:

(1) upon arriving at the scene, Reid encountered an irate RW, who was threatening to shoot a female area resident; (2) in response, Reid arrested and handcuffed RW; (3) after escorting RW to a patrol car, where Reid attempted to frisk him, RW repeatedly spit at Reid, hitting his face, eyes and mouth; (4) Reid responded by putting his left hand in RW's face and pushing it sideways, while his right hand was on RW's neck or chest; (5) when RW continued spitting, Reid “did push and punch” RW in the face area to stop him from further spitting in Reid's face; (6) once secured in the vehicle, RW spat blood and banged his head on the car window; (7) when Reid returned to the vehicle to complete a pat search of RW: (a) RW remarked that “he was going to bite the shit out of him,” at which point he lunged at Reid “in an aggressive attempt to bite [him on the] arm;” (b) Reid, in turn, threw a defensive punch with his right hand, missing and striking his arm

¹¹ In testifying, he reported discovering subsequent to his discharge that the bruise marks had actually been caused by one of the three bracelets he wears on his right wrist. He described that the bracelet had slid up on his forearm and become pressed against his skin, as he used a control hold on RW after removing him from the patrol car and awaiting the arrival of the wagon. (Tr. II-105-106.) This eventual discovery, he said, occurred while performing a home repair, during which his right arm was pressed against the ground. When he released his arm from that position, he saw the same bruise mark on his right forearm. (Tr. II-106.)

¹² In his amended statement, Reid averred, “From reviewing one of the secondary officer's footage, it shows the male lunge at me and attempt to bite me. I threw a defensive punch, striking the inside of the car causing the bruise to my arm. Prior to viewing the camera footage, I believed the male bit me do (sic.) to the shape and size of the bruise, his lunging action and the males (sic.) repeated threat that ‘He was going to bite the shit out of me.’” (City Exhibit 4)

¹³ The IAD Report of this matter contains only the first page of Reid's Use of Force Report, which is a two-side document. (City Exhibit 4.) The second page or second side of Reid's Use of Force Report has been identified and received as Union Exhibit 4.

on the car's plastic interior trim; (c) RW tried to spit again; and (d) Reid then removed him from the vehicle and completed the pat search; and (8) (a) after doing so, Reid then called for a police wagon to transport RW to the hospital; (b) following its arrival, RW kicked Reid's legs, as he escorted him to the wagon; and (c) when being placed into the wagon, RW attempted to bang his head on the door.

(Union Exhibit 4.)

Internal Affairs Division (“IAD”) Investigation

In her testimony, Sergeant Dara Gambrell, a member of the Department's IAD", averred being assigned on or about June 10, 2019, to investigate a possible excessive use of force incident involving Reid's interaction with RW a few days earlier. (Tr. I-40.)¹⁴ The matter, she stated, was brought to IAD's attention by Staff Inspector T [REDACTED] because of inconsistencies that he and Lieutenant B [REDACTED] had found between Reid's statement and the video of the incident recorded by the BWCs of Reid and other responding officers.

(*Id.*)¹⁵

Recounting her steps in conducting this investigation, she reported beginning with a review of the video recorded by the BWCs of the various officers who responded to the [REDACTED] call involving RW. (Tr. I-42.) Referencing the video from Reid's BWC, she reported that it depicted: (1) Reid attempting to place RW, who was then handcuffed, into a patrol car, at which time Reid's "hand [was] either on [RW's] throat or at the bottom of his face;"¹⁶ (2) Reid punching RW in the area of his face with a closed fist; and then (3)

¹⁴ Sergeant Gambrell, whose service with the Department dates to 1996, has been assigned as an IAD investigator for ten years. (Tr. I-35.) The unit on which she has served for the last six or seven years is dedicated to investigating every use of force by a member of the Department. (Tr. I-35-37.) She described her investigatory process in such cases as gathering as much information as possible regarding the use of force incident in question (e.g., documents; witness statements; BWC video) to substantiate what occurred, and determine whether the force used was excessive and, if so, the appropriate response (i.e., training; discipline). (Tr. I-36.)

¹⁵ Neither Staff Inspector T [REDACTED] nor Lieutenant B [REDACTED] testified at the hearing in this case.

¹⁶ She subsequently learned from Reid that he took this action to cover RW's mouth in order to prevent RW from continuing to spit at him. (Tr. I-46.) She also reported that her investigation confirmed RW was

RW bleeding from his mouth. (Tr. I-44-48; City Exhibit 1.)

According to Gambrell, she found Reid's actions, as shown in this video, constituted an excessive use of force. Explaining this conclusion, she stated, "[b]ecause [RW] was handcuffed. [RW] was not in a position to do any harm that could not be controlled ... with other tactics. He could have been put in the car and had the door closed." (Tr. I-48.) She also identified other tactics to stop a suspect from spitting that do not involve the use of physical force, such as pulling the suspect's shirt over his face and placing him in a patrol vehicle with the door closed. (Tr. I-49, -54-55.) In sum, she averred, Reid's use of force was excessive because he had other tactics to prevent RW's spitting, which did not involve punching him. (Tr. I-55.)

Explaining the permissible use of force by a police officer, Gambrell related that when a suspect exhibits a lack of physical compliance (e.g., struggling; evading arrest; attacking the officer); an officers is permitted and trained to use force "to physically put their hands on [the suspect] in some way ... going from control holds all the way up to lethal force to stop the [suspect's] aggression." (Tr. I-49.)

In regard to the training officers receive relative to the use of force, she stated that it begins at the Academy. (Tr. I-50-51.) Further, she said, the Department provides an annual training update to all officers, which, on occasion, includes the use of force. (Tr. I-51.) This instruction, she noted, identifies a spectrum of permissible use of force tactics and what types of behavior warrant an officer escalating through that spectrum. (Tr. I-53.)

When the suspect is handcuffed, she asserted, the officer's use of force options

being "extremely combative [and] uncooperative," which included spitting and directing verbal abuse at Reid. (*Id.*)

are “a little bit limited, but everybody’s behavior, the person’s – the individual you’re dealing with, their behavior determines how you physically handle them.” (*Id.*) She continued by confirming, “If someone is enough of a threat even handcuffed that they could possibly cause you serious bodily injury, then you do have more leeway You should be able to put your hands on someone if they are going to cause serious bodily injury or they have caused you serious bodily injury, even if they’re handcuffed.” (*Id.*) She specified, however, that verbal abuse never supports the use of force. (Tr. I-54.)

Returning to Reid’s [REDACTED] interaction with RW, she opined that with RW being handcuffed, Reid was permitted to respond to his spitting, beginning with non-force tactics, such as covering RW’s face, which, as previously noted, could have been accomplished by pulling his shirt over his head. (Tr. I-54-55.)

Continuing the recounting of her investigation, Gambrell confirmed watching the videos recorded by the BWCs of all of the other responding officers. (Tr. I-68; City Exhibits 2-3.)¹⁷ On one of the videos, she reported observing Reid, after placing RW in the rear seat of a patrol vehicle, slam the rear door and strike RW in the face. (Tr. I-69.)¹⁸ Reid’s actions in this regard, she said, represented another instance in which he used excessive force in interacting with RW. (*Id.*)

As part of her investigation, Gambrell stated that she interviewed all of the

¹⁷ During her testimony, Gambrell identified the videos from the BWCs of Police Officers K [REDACTED] G [REDACTED] and N [REDACTED] C [REDACTED], which were played during the hearing. (Tr. I-57-69; City Exhibits 2-3.) Referencing a loud bang audible on the C [REDACTED] video, she related that it resulted from Reid’s hand or forearm striking the interior of the vehicle door when he attempted to strike RW and missed, after RW had threatened to bite him and then lunged forward. (Tr. I-62-63.) She also noted that Reid could be heard on the video, saying, “he tried to bite me.” (Tr. I-62.) According to Gambrell, this portion of the video conflicted with Reid’s initial statement to Lieutenant B [REDACTED], recounting that he had struck RW after RW had bitten him. (Tr. I-63-64.) In regard to the C [REDACTED] video, Gambrell related it showed the same content as the G [REDACTED] video, albeit from a different angle (Tr. I-65-66.)

¹⁸ The video referenced by Gambrell, which she stated was recorded by Police Officer W [REDACTED] W [REDACTED] BWC, was not introduced and made a part of the record in this case.

responding officers, as well as RW, the complainant, Staff Inspector T ■■■, Lieutenant B ■■■, Detective C ■■■ and Sergeant B ■■■. (Tr. I-69-70; City Exhibit 4.) In addition, she reported collecting and reviewing various documents, including Sergeant B ■■■ Use of Force/Hospital Case Summary; Reid's statements to Detectives C ■■■ and S ■■■; the arrest report regarding the criminal charges filed against RW; and photographs of Reid and RW taken by the Detectives. (Tr. I-76-92; City Exhibits 4 & 4A-1 – 4A-3.)¹⁹

Upon completing her investigation, Gambrell reported sustaining the allegations of physical abuse by Reid of RW. (Tr. I-72; City Exhibit 4.) Further, her IAD report states the investigation sustained that Reid violated Department Disciplinary Code Section 1-§009-10 (i.e., lying during an official investigation); and Section 1-§010-10 (knowingly and willfully making a false entry in any Departmental record or report).²⁰ (Tr. I-72; City Exhibit 4.)²¹

In connection with her investigation, she also reported providing a submission to the District Attorney's Office for its consideration in deciding whether to bring criminal charges against Reid. In response, the District Attorney, on or about December 11, 2019, charged Reid with five offenses, which included: tampering with public record;

¹⁹ On cross-examination, Gambrell testified to reviewing Reid's Use of Force Report. (Tr. I-133-135.) Although acknowledging that the Use of Force Report is a two-sided document, she could not explain the reason only the first page was included in her investigation report. (Tr. I-138-143; City Exhibit 4.)

²⁰ In testifying regarding these findings, Gambrell reported concluding that Reid was not "honest" in advising Sergeant B ■■■, Detective C ■■■ and Lieutenant B ■■■ that RW had bitten him. (Tr. I-95-96.) In addition, she cited: (1) his failure to report striking RW until after he had been informed of the inconsistencies between the BWC videos and his statement; and (2) his statement to B ■■■ indicating he struck RW because of the bite, as opposed to doing so prior to the attempted bite. (Tr. I-96.) The charge of falsifying a Department record or report, she said, stemmed from his false victim statement to Detective C ■■■, erroneously advising that RW had bitten him, which was used in charging RW with assault on a police officer. (Tr. I-96-97.)

²¹ Gambrell testified that as a matter of protocol, her IAD report is circulated through the chain of command for formal approval. (Tr. I-94-95; City Exhibit 4.)

obstruction administration of law/government function; unsworn falsification to authorities; false report incriminating another; and simple assault. (City Exhibit 4.)²²

Termination of Reid's Employment

On December 30, 2019, the Department issued Reid a Notice of Intention to Dismiss, charging him with the following violations of the Department Disciplinary Code: (1) Conduct Unbecoming, Section 1-§010-10 (Knowingly and willfully making a false entry in any Departmental record or report; (2) Conduct Unbecoming, Section 1-§012-10 (Unauthorized and/or excessive use of force in your official capacity); and (3) Conduct Unbecoming Section 1-§026-10 (Engaging in any action that constitutes the commission of a felony or misdemeanor which carries a potential sentence of more than one (1) year). (City Exhibit 6.)²³ As stated in the Notice, all three charges stem from Reid's interaction with RW on [REDACTED] and the statements he made relative to that encounter. (City Exhibit 6.)

Subsequently, by a Commissioner's Direct Action, approved by then Acting Commissioner Christine Coulter, the Department discharged Reid, effective January 8, 2020. (City Exhibit 7.)²⁴

Captain Gregory Malkowski, the Commanding Officer of Police Labor Relations since in or about 2007, testified as the Department's disciplinary procedure. (Tr. I-157; City Exhibit 5.) He related that the process begins with an IAD investigation, which

²² Reid testified that the judge assigned to his criminal case dismissed all of the charges, except the simple assault offense, as lacking "validity." (Tr. II-110-111.) Approximately three years later, he said, the District Attorney withdrew the simple assault charge. (Tr. II-111-112.)

²³ Reid testified that in response to the [REDACTED] incident, he was placed on restrictive duty the following day and remained in that status until on or about December 4, 2019, when he was hospitalized. (Tr. II-108-109.)

²⁴ Former Acting Commissioner Coulter did not testify at the hearing in this case.

reports its findings to the Commissioner, who, in turn, refers the matter to the police charging unit, if IAD has sustained violations of the Department's Disciplinary Code. (Tr. I-158, 169.) The charging unit, he continued, then informs the Commissioner of the charges proffered against the officer based upon the sustained violations. (*Id.*) At this point, he related, the Commissioner either imposes discipline through a Commissioner Direct Action ("CDA") or refers the matter to the Police Board of Inquiry ("PBI") for a hearing and recommended discipline on any charges sustained at hearing. (Tr. I-158-159, 169.)

Malkowski also testified that when the District Attorney files related criminal charges against an officer, the Commissioner generally discharges that officer by CDA for the corresponding Disciplinary Code violations sustained by the IAD investigation. (Tr. I-161.) According to Malkowski, he understood that factor to be one of the reasons for then Acting Commissioner Coulter's decision to discharge Reid by CDA (Tr. I-170.)²⁵

He recounted further that during his tenure, the Department has discharged police officers for a single infraction of any of three offenses with which Reid was charged in this case; namely: (1) Section 1-010-10 (knowingly/willfully making a false entry in a Department record or report); (2) Section 1-§012-10 (unauthorized/excessive use of force in an official capacity); or (3) Section 1-§026-10 (engaging in conduct constituting the commission of a felony or misdemeanor carrying a potential sentence of more than one year). (Tr. I-164-168.)

²⁵ Malkowski also testified to his understanding that in deciding on discipline, the Commissioner gives consideration to the IAD Report, the officer's performance report and all other relevant information (e.g., BWC videos), while weighing the charges and the prescribed penalty under the Department's Disciplinary Code. (Tr. I-178.)

As to the first, he related, the decision on penalty generally involves weighing the severity of the false entry and the resulting consequences (e.g., arrest of a suspect). (Tr. I-165) In regard to the second, he said, discharge has typically involved shooting cases resulting in a death. (Tr. I-166.)

Procedural History

In response to Reid's discharge, the Union filed the instant grievance contesting that action. (Joint Exhibit 2.) When the parties were unable to resolve the matter at the lower stages of the grievance procedure, the Union demanded arbitration. (Joint Exhibit 3.) Pursuant to their contractual procedures, the parties selected me to hear and decide the case. (Joint Exhibit 1.)

I held a hearing commencing on January 10, 2025, and continuing on January 23, 2025, at the offices of American Arbitration Association in Philadelphia. At the hearing, the parties each had full opportunity to present evidence and argument in support of their respective positions. They did so. Upon the conclusion of the hearing, I held the record open for the parties' submission of post-hearing briefs. With the receipt of those briefs on June 11, 2025, I declared the record closed as of that date.

DISCUSSION AND FINDINGS

The Issue:

The parties have stipulated that the issues to be decided are as follows:

1. Did the City have just cause to discharge the grievant, Sergeant Jason Reid, effective January 8, 2020?
2. If not, what shall be the remedy?

Positions of the Parties

The parties' respective positions, which are set forth in their post-hearing briefs, may be summarized as follows:

The City's Position

The City contends that its discharge of Reid was for just cause. It maintains that the evidence conclusively demonstrates his guilt on each of the charged violations of the Department's Disciplinary Code.

The record here, it asserts, confirms that on [REDACTED], Reid used excessive force and engaged in criminal conduct by punching RW while he was in handcuffs, and then, subsequently made a false Department report omitting that fact and misrepresenting the surrounding circumstances (i.e., being bitten by RW). These actions, it contends, represent an egregious disregard by Reid of his duties as a City police officer, and warrant his dismissal per penalties prescribed by the Department's Disciplinary Code.

The just cause concept, it explains, "essentially imposes a requirement of fairness," and thereby "prevents an employee from arbitrary discharge." *Earthgrains Company*, 2010 WL 6772805 (Snider 2010). It notes further that a determination of just cause is generally based upon an analysis of seven factors; namely:

(1) did the employee have notice of the work rule applied; (2) was the work rule reasonably related to the orderly, efficient and safe operation of the employer's business; (3) did the employer investigate the charged misconduct; (4) was the employer's investigation fair and objective; (5) was there substantial evidence or proof supporting the employer's finding of misconduct; (6) does the employer apply its rules fair and reasonably to all employees; and (7) was the discipline meted out proportionate to the offense and the employee's record.

See, e.g., American Federation of State, County & Municipal Employees, District Council 88, AFL-CIO v. City of Reading, 568 A.2d 1352, 1355-56 n.3 (1990).

On the evidence presented, it maintains, each of these factors has been clearly satisfied. As such, it concludes, Reid's discharge should be sustained.

In support, it references to the following:

1. The rules at issue here proscribing making a false entry in a Department report, using excessive force and engaging in criminal conduct are contained in the Department's bargained-for Disciplinary Code, which is a part of the Agreement. (Joint Exhibit 1.) As such, it concludes, there can be no dispute that Reid had notice of the rules. Further, it stresses, Reid has received regular training on the Department's use of force standards. In fact, it notes, Reid, in testifying, defined the use of force continuum as "the minimum amount of force necessary to neutralize a threat." (Tr. II-14.) Also, it asserts, common sense dictates that Reid was on notice that as a condition of employment, he could not lie or make a false report.
2. The rules at issue, it states, advance obvious interests of the Department to ensure its records are honestly prepared and accurate and its officers refrain from using excessive force. The Department, it reasons, could not function and fulfill its mission absent compliance with these standards by all of its officers.

3 – 5. The evidence presented overwhelming establishes that Sergeant Gambrell's IAD investigation was fair and objective and yielded substantial evidence supporting the charges that the Department proffered against Reid. In particular, it cites Gambrell's efforts in gathering and carefully reviewing all of the relevant information, which included documents concerning the [REDACTED] incident, BWC videos, witness statements, and documents underlying RW's arrest. (Tr. I-42, 72-73, 80, 82-83.) From her analysis of this data, it submits, she reasonably concluded Reid used excessive force in interacting with RW and falsely reported being bitten by RW, including in his statement to the Northwest Detectives. (Tr. I-83, 95-96.) Further, on the basis of the information she supplied, the District Attorney brought related criminal charges against Reid. (Tr. I-74-75.) In contrast, it contends, Reid's testimony was obviously self-serving and should be rejected as unworthy of belief. For example, it points out, Reid offered three different explanations for the bruising on his right forearm, which in his initial statement, he falsely claimed was a bite mark.

6 – 7. Captain Malkowski's credible testimony, it maintains, substantiates that the Department fairly and reasonably applies the rules at issue here and Reid's discharge represents a proportional response to his established offenses and his employment record. Under the Department's Disciplinary Code, it stresses, discharge is within the prescribed penalty range for a first offense as to each of Reid's violations. (Joint Exhibit 1.) Further, it notes, as Malkowski testified, the Department has discharged other officers for any one of these same offenses. (Tr. I-164-168.) Also, as a matter

of practice, he confirmed, the Department discharges officers facing criminal charges because they cannot perform their duties. (Tr. I-161, -193-194.)

In sum, it concludes, the evidence presented unquestionably demonstrates that Reid committed all three of the charged offenses, the circumstances of which clearly called for his discharge. Indeed, it expresses, his retention by the City would have had a detrimental effect not only on the Department, but also on the citizens of Philadelphia. Having a Sergeant who engaged in excessive use of force and then lied to cover it up, it states, would contravene the Department's core values.

Accordingly, for all these reasons, it asks that Reid's discharge be sustained, and the grievance be denied.

The Union's Position

The Union, on the other hand, maintains that the City lacked just cause to discharge Reid based upon his [REDACTED] interaction with RW and/or his subsequent statements entered in Department reports. The City, it submits, has failed to meet its burden of demonstrating that Reid committed any of the three charged offenses.²⁶

In establishing just cause, it states, the City's required showing is two-fold. Namely, the evidence presented must substantiate: (1) Reid committed the offending conduct; and (2) the discipline imposed was just to a reasonable and fair-minded person, such that it can be said, "the punishment fits the crime." *Mississippi Valley Gas*

²⁶ The Union submits that in view of the nature and gravity of the alleged misconduct with which Reid has been charged, the City should be held to a heightened standard of proof. *Discipline and Discharge in Arbitration*, Chap. 2 (Brand & Biren eds. 3d ed. 2015); Elkouri & Elkouri, *How Arbitration Works*, Chap. 15, §3.D.ii.a n. 157 (2021). Such elevated standard, it argues, is also supported by the City's claim that Reid's offenses were so reprehensible that they called for summary discharge. *Champion Spark Plug Co.*, 93 LA 1277 (Dobry 1989). It concludes that given the Agreement's silence on the issue and the allegation of criminal assault, the appropriate standard should be "beyond a reasonable doubt," or at a minimum, "clear and convincing evidence." It argues, however, that even under the less stringent preponderance of the evidence standard, the City has failed to meet its burden of substantiating just cause for Reid's discharge.

Company, 41 LA 745, 750 (Herbert 1963).²⁷

It highlights that the City's only justification for discharging Reid was the criminal charges brought against him by the District Attorney. The City's continued reliance on those charges as the basis for the alleged violations of the Department's Disciplinary Code, it argues, is fundamentally flawed, as all of these charges have been withdrawn and/or dismissed. Moreover, it submits, the evidence proffered by the City here fails to substantiate these charges.

Under the applicable standard, it asserts, the City must present credible, first-hand proof that Reid engaged in the charged misconduct, which was so severe that it warranted the end of his lengthy career with the Department. Speculation and/or interpretation of BWC videos, it posits, does not suffice for this purpose. Yet, the City's entire case, it states, rests solely on unsubstantiated hearsay and circumstantial evidence. Although hearsay is admissible in arbitration, it notes, arbitral authority confirms that an employer cannot satisfy its burden of proving just cause by relying exclusively on hearsay.

Bamberger's, 59 LA 879, 882 (Glushein 1972).

The Union, in support of its position that the City has failed to substantiate any the charges proffered against Reid, argues:

1. The City did not present any eyewitness testimony confirming Reid used excessive force on RW. Further, it notes, the City did not introduce the Department's Use of Force Policy, and, as such, the record contains no standard by which to evaluate Reid's conduct. Moreover, it submits, Reid's undisputed testimony confirms the force used was minimal, reflexive and in direct response to a physical and biological assault. (Tr. II-46-47.) Simply put, it explains, RW's spitting on Reid constituted an assault, thereby authorizing him per the use of

²⁷ It states further that the determination of just cause commonly involves applying the seven tests referenced above by the City, and which were first articulated by Arbitrator Daugherty in *Enterprise Wiring*, 46 LA 359, 364 (Daugherty 1966).

force continuum to utilize the forceful tactics he deployed.²⁸

2. The City, it maintains, cannot rely on BWC videos as a substitute for eyewitness testimony. The videos introduced, it explains, are subject to varying interpretations of Reid's depicted actions based upon the reviewer's background, experience and training. As such, it concludes, BWC videos, standing alone, are legally insufficient to satisfy the City's burden of proof.
3. It contends that insofar as the City claims Reid used excessive force by slamming the rear door of the patrol car, thereby striking RW in the face, the record is wanting. The City, it highlights, failed to present any testimony or BWC video to substantiate this allegation. (Tr. I-129.)
4. Turning to the false reporting charge, it begins by noting that contrary to Department Policy, Reid did not have an opportunity to review his BWC video before making the statements at issue. (Tr. I-122, 187; Tr. II-83.) As a result, it asserts, weighing all of the circumstances compels a finding that Reid's erroneous statement that RW had bitten him represents a mistaken belief and not a knowing and willfully false statement. In addition, it stresses, Reid immediately provided an amended statement to the detectives upon reviewing his BWC video and recognizing his error.
5. Finally, as to the charge of engaging in criminal conduct, it states that here, too, the City has failed to meet its burden. The dismissal and/or withdrawal of the criminal charges brought against Reid, it submits, demonstrates a confirmation/acknowledgement that sufficient evidence was lacking to proceed to trial. The City, it contends, cannot rely on that same deficient evidence to achieve a contrary ruling here. Further, it points out, the City failed to present testimony from former Acting Commissioner Coulter, explaining her reasoning in discharging Reid by CDA on this charge, as well as the first two.

Concluding that the grievance should be sustained, and Reid's reinstatement should be ordered, the Union turns to the matter of remedy and, more particularly, back pay. In doing so, it asserts that no basis exists on the record here to toll Reid's backpay for the period during which the criminal charges were pending against him.

²⁸ The Union also highlights that not only did the hearsay evidence presented by the City fail to substantiate the excessive use of force charge, it actually supported Reid's account. For example, multiple officers interviewed by Sergeant Gambrell confirmed RW's assault on Reid, as well as his threatening statements and other behavior. (City Exhibit 4.) It also asserts that I should draw a negative inference from the City's failure to present testimony from any of the eyewitnesses, as to whom it had direct control or subpoena power. *Smith's Food and Drug Centers*, 129 BNA LA 1384, 1398 (Jennings 2011)

The City, it contends, has not demonstrated that Reid was unable to perform police duties during the five years that the criminal charges remained active. Reid, it points out, maintained his MPOETC certification notwithstanding the pending criminal charges, and, as such, could have continued working for the Department in a restricted duty status during the pendency of those charges.

As such, it argues for application of the generally accepted rule in labor arbitrations that monetary damages should “normally correspond to specific monetary losses suffered,” absent a finding of fault by the grievant Elkouri & Elkouri, *How Arbitration Works*, Chap. 18.3.A.i and iii (8th ed. 2019); *see also*, *International Harvester*, 15 BNA LA 1, 1 (Seward 1950). In support, it notes that nothing in the Agreement supports handling the issue of remedy differently based on whether the officer had faced related criminal charges. (Joint Exhibit 1 at 83-84.)

This accepted principle regarding remedy, it avers, has been followed by arbitrators in many awards issued in matters involving the parties here, including cases where the officer had faced related criminal charges that were ultimately dismissed or withdrawn. *See, e.g.*, AAA Case No. 01-21-0016-5558 (De Treux 2024) (sustained grievance and ordered back-pay for period from discharge through reinstatement for officer acquitted of criminal charges, including aggravated assault).²⁹

Accordingly, for all these reasons, the Union submits that its grievance should be granted, and the requested relief be awarded.

²⁹ The Union acknowledges that in other cases involving the parties here, arbitrators have tolled backpay for the period during which the grievant/officer faced criminal charges. *See, e.g.*, AAA Case No. 01-17-0005-3380 (Reilly 2023).

Opinion

There can be no question that the City's Police Department has a right and a duty to ensure that its officers adhere to certain standards of conduct when acting in their official capacity. The appropriate use of force is undoubtedly one area in which the enforcement of such standards is of paramount importance. The Department's obligation to safeguard the public, while also shielding itself from civil claims, demands as much.

Likewise, the Department is, no doubt, entitled to set an expectation that its officers will conduct themselves with rigorous honesty in all aspects of their employment. The reason is obvious. An officer's reputation for truth and veracity is critical to his/her ability to fulfill the responsibilities of the position. An officer who breaches this obligation by knowingly and willfully falsifying a Department report becomes a liability. Indeed, such transgression can compromise an officer's ability to testify in court on behalf of the Department and the City's District Attorney, which is obviously an essential function of the job.

It thus follows that an officer who breaches such fundamental responsibilities can and should expect that serious discipline will follow. Indeed, under the Department's Disciplinary Code, these offenses carry a penalty range of up to dismissal on a first offense, depending on the circumstances. (Joint Exhibit 1.)

The City, of course, carries the burden of proof here. It must demonstrate by a preponderance of the credible evidence that Reid committed the charged offenses. It must also establish that the level of discipline imposed is appropriate.

The Union, on the other hand, has no corresponding burden. It need not disprove the charges against Reid. Indeed, he is entitled to the presumption of innocence.

After a careful review of the record and thorough consideration of the parties' respective arguments, I am convinced that the City has not met its burden.³⁰ My reasons for this conclusion follow.

Excessive Use of Force

The City's proof of this charge rests entirely on the video evidence presented. City witnesses, Sergeant Gambrell and Captain Malkowski, did not possess any first-hand knowledge of the events of [REDACTED]. Moreover, from Gambrell's testimony and the IAD report, it is apparent that she relied on the BWC videos in sustaining this charge.³¹

Of the three BWC videos introduced by the City, only one captures the first of the two bases cited by Sergeant Gambrell for her conclusion that Reid used excessive force towards RW; namely, Reid's act of striking RW in the face/mouth as he placed him in the rear seat of a patrol car at the scene. (City Exhibits 1 – 3.)³²

This video, which was recorded by Reid's BWC, does not present a good angle from which to assess the critical interaction between Reid and RW, at the moment the latter was being placed into the patrol car. More specifically, given the proximity

³⁰ As detailed above, the Union argues for the application of a heightened standard of proof here; namely, beyond a reasonable doubt or clear and convincing evidence. I find that it is unnecessary to resolve this issue, as I conclude that on the record established, the City has failed to demonstrate Reid's guilt on the charges by the less stringent preponderance of the relevant evidence standard.

³¹ When interviewed by Gambrell, none of officers who responded to the [REDACTED] call at issue confirmed that Reid used excessive force towards RW. Transcripts of their interviews are included in Gambrell's IAD report. (City Exhibit 4.)

³² The most salient content of the other two videos, which were recorded by Police Officers G [REDACTED] and C [REDACTED] BWCs, is a loud bang that can be heard after Reid is depicted removing RW from the patrol car and performing a pat search of him. (City Exhibits 2 – 3.) On the basis of Reid's testimony, this sound appears to correspond to the loud bang that occurred when he attempted to strike but missed RW when the latter growled, lunged and threatened to "bite the shit out of him." (Tr. II-57.) Reid's actions in that regard are not relevant to the excessive use of force charge. Indeed, in her IAD Report, Gambrell does not cite this conduct by Reid as a basis for sustaining that charge. (City Exhibit 4.) Nor is it referenced in the Notice of Termination. (City Exhibit 7.)

between Reid and RW in that instant, the video recorded by Reid's BWC presents an extreme close-up. As a consequence, it is difficult to discern Reid and RW's precise movements during this key sequence.³³

Ultimately, upon careful and repeated review of the video, at both regular speed and in frame-by-frame mode, I can make the following findings: (1) RW was handcuffed as Reid placed him into the back seat of a patrol car; (2) while doing so, Reid, whose left hand was on the upper portion of RW's right arm, had his right hand closed; (3) Reid's closed right hand then moves forward and appears to make contact with RW's face; and (4) when RW's face comes back into the camera view, he appears to have blood on his lip. (City Exhibit 1 at 0:20 – 0:24.)

In determining whether my findings regarding the content of the video substantiate the conclusions drawn by the Department, I must also give consideration to the balance of the evidence presented. Stated otherwise, the question to be addressed is whether the context provided by the record as whole allows me to conclude that Reid used more force than was necessary in responding to the threat posed by RW's conduct (i.e., repeatedly spitting at Reid). I find the answer is no.

In particular, I take note of Reid's un rebutted testimony of what was transpiring when his right hand struck RW's face/mouth (Tr. II-41, -45.) Namely, as he described: (1) while escorting RW to the patrol car, RW began spitting on him; (2) while placing RW into the rear seat of the vehicle, RW released a large quantity of spit, which struck Reid's left eye and went into his mouth; and (3) in response, while pushing away with his

³³ In evaluating this video, I take note that it depicts a male police officer standing to Reid's immediate right, as he placed RW into the patrol car. (City Exhibit 1.) As such, this officer, who was not identified and did not testify in this case, appeared positioned to have a much better view of the critical interaction between Reid and RW than was captured by Reid's BWC. (*Id.*)

left hand, he quickly swung his closed right hand, describing it as “like a reaction” and not an “intentional” punch. (Tr. II-42-46.)

On this basis, it is equally plausible that Reid’s action constituted a reflexive response to block and protect himself from the spit RW was spewing, as opposed to an intentional use of force.

However, even assuming *arguendo* that I could find that Reid engaged in an intentional use of force when he brought his closed right hand forward and struck RW’s face/mouth, the record does not permit me to find it constituted an excessive use of force. Instead, when all the relevant circumstances are evaluated in context, I am persuaded that RW, despite being handcuffed, posed a threat of physical harm to Reid. Simply put, his spitting at Reid constituted an assault to which Reid was permitted to respond with force to defend himself.

Further and most significantly, on the record here, I find insufficient evidence to conclude that the responsive force used by Reid was excessive. Stated otherwise, I am not convinced that he employed more force than was necessary to repel the threat posed by RW’s spitting at him. Indeed, Reid’s account, which is not inconsistent with, let alone refuted by the video, substantiates that the movement of his right hand, which made contact with RW’s face/mouth, represented a reasonable effort to protect himself from RW’s repeated spitting in his face.

Also, I am unpersuaded by Sergeant Gambrell’s assertion that Reid had tactics available by which to respond effectively to RW’s spitting that did not involve the use of physical force. In reaching this conclusion, I take note that no proof was offered to substantiate that the Department trains officers in the technique she suggested (i.e.,

pulling individual's shirt over his/her head to prevent him/her from spitting). Nor is there any evidence confirming the safety and efficacy of this measure. Further, contrary to Sergeant Gambrell's claim, this tactic would have required Reid to use physical force in grabbing/holding RW, who was behaving very combatively, in order to position RW's shirt in the manner described, while leaving Reid exposed to RW's continued spitting during the process.

In sum, I am compelled to find that the evidence presented fails to substantiate that Reid used excessive force when his right hand struck RW in placing him into the rear of the patrol car, while fending off his spitting attack.

Moving on to second alleged act of excessive force cited by Gambrell, I am convinced that it too is insufficient to substantiate this charge. The allegation that Reid committed this offense by slamming the patrol car door and striking RW in the face, as he was seated in the rear of the vehicle, fails for two reasons.

First, although Gambrell's IAD report references this allegation, it does not appear in the Notice of Dismissal's statement of this charge. (City Exhibit 8.) Instead, the factual basis for this charge, as set forth there, is limited to the assertion that Reid punched RW in the mouth while placing him into a patrol car. As such, I must reject this effort to expand the scope of the charge at arbitration. Indeed, basic principles of just cause command as much.

Second, even if the Notice of Dismissal's statement of this charge could be construed to include this allegation, the record lacks sufficient supporting evidence for me to conclude that it has been substantiated. Although Sergeant Gambrell reported seeing a BWC video depicting Reid slamming a patrol car door and striking RW's face,

she acknowledged that it was not one of the three videos introduced by the City. (Tr. I-129; City Exhibits 1 – 3.) Her testimony in this regard cannot substitute for the referenced video or, in the alternative, confirming eyewitness testimony. Stated otherwise, Sergeant Gambrell’s testimony, standing alone, falls short of the required proof to substantiate this allegation.

Accordingly, for all these reasons, I find that the City has not satisfied its burden of proof on the charge of an excessive use of force.

False Entry in Department Record

As the Notice of Dismissal reflects, the City bases this charge on Reid’s [REDACTED] statement to Detective C [REDACTED] that RW had bitten him during their interaction earlier that day, which, in part, formed the basis for charging RW with assault on police. There is no dispute that Reid’s statement to that effect was not true. Indeed, he acknowledged as much hours later after reviewing the relevant BWC video. As a result, he gave an amended statement to Detective Sw [REDACTED], confirming that RW had not bitten him.

The question to be answered then is whether Reid, in initially informing Detective C [REDACTED] that RW had bitten him, acted knowingly and willfully for the purpose of making a false entry in a Department Report. I find the evidence insufficient to substantiate such intent.

From my review of the record, I am persuaded that Reid’s erroneous statement to Detective C [REDACTED] was not intentional. To the contrary, I am satisfied that at time Reid informed Detective C [REDACTED] that RW had bitten him, he believed that assertion to be true, albeit in error.

In reaching this conclusion, I take note that from the video evidence and Reid's testimony, no dispute exists that RW lunged and attempted to bite him. As such, it is certainly plausible that when Reid later saw the bruising on his right forearm, he honestly concluded that RW's attempt to bite him had actually succeeded. Stated otherwise, it is not uncommon for a person to sustain injuries during a high-stress situation that he/she does not realize occurred until after the heat of the moment has subsided. On this basis, I cannot conclude that Reid's remark during the encounter with RW that "he tried to bite me," confirms that his subsequent statement to Detective C [REDACTED] of having been bitten by RW was knowingly and willfully false. (City Exhibit 2 at 06:40.)

Further, his belief in this regard, albeit mistaken, was validated by a health professional. It stands unrefuted that the nurse who examined Reid at the hospital on [REDACTED] identified the bruising on his forearm as bite marks that had not broken the skin.³⁴ With such independent medical corroboration supporting Reid's errant belief that RW had bitten him, I am convinced that in making that assertion to Detective C [REDACTED], he did not knowingly and willfully make a false entry in a Department record.

In view of these circumstances, I am compelled to find that this charge has not been substantiated on the evidence presented.

Actions Constituting Felony or Serious Misdemeanor

The statement of this charge, as set forth in the Notice of Dismissal, plainly reflects that it rests on the same factual predicate as the first two charges. (City Exhibit 7.) More specifically, it effectively alleges that Reid, by using excessive force on RW

³⁴ Reid's testimony regarding the nurse's statement to this effect does not constitute hearsay, inasmuch as it was not offered for the truth of the matter asserted, but rather for the fact that the statement was made. More specifically, the statement's relevance concerns the effect on the person who heard it; namely, Reid.

and making a knowingly and willfully false statement to Detective C [REDACTED] that RW had bitten him, engaged in criminal conduct, thereby violating Department Disciplinary Code Section 1-§026-10.

Therefore, having found a lack of record support to substantiate either of these two charges, it necessarily follows that this third charge fails too. Stated otherwise, the City's failure to demonstrate that Reid used excessive force on RW or made a knowingly and willfully false statement to Detective C [REDACTED] precludes finding Reid engaged in actions constituting a felony or misdemeanor carrying a potential sentence of more than one year, as charged.³⁵

Conclusion

In sum, for all the reasons stated, I conclude that the charges proffered against Reid have not been substantiated on the evidence presented. As such, the City lacked just cause to discharge him. Accordingly, the Union's grievance is granted.

In regard to remedy, I direct the City to promptly reinstate Reid to his former position within the Department without loss of seniority. In addition, I instruct the Department to revise his personnel record to delete all references to his discharge to the maximum extent permitted under the governing law.

As to the matter of make whole relief, the City is directed to make payment to Reid for all wages and benefits lost, including overtime, as a consequence of his discharge, through the date of his reinstatement, but excluding the period during which

³⁵ I recognize that under the Department's Disciplinary Code, a Section 1-§026-10 charge does not require a criminal conviction or the pendency of criminal charges. However, it does necessitate proof substantiating that the charged officer engaged in actions that constitute a felony or misdemeanor carrying a potential sentence of more than one year. For the reasons stated, I find the evidence presented here fails to meet such standard.

the criminal charges filed in connection with his conduct on [REDACTED] were pending and any subsequent period when he was not available for duty relative to the disposition of those charges.³⁶

In declining to award Reid back pay for this period, I do not take the matter lightly. To the contrary, I have carefully weighed the competing arguments bearing on this decision. Ultimately, notwithstanding the Union's claim that the City could have placed Reid in a modified assignment during this period, I am not persuaded that the City acted unreasonably in not doing so under the circumstances. In this regard, I take note of the nature of the charges pending against Reid, as well as that the filing of such charges represented an act of prosecutorial discretion by the District Attorney, which stands outside the City and the Department's control.³⁷

³⁶ The record does not include evidence of Reid's actual damages. As such, the parties will need to meet and confer to determine the amount due him or return to me for a ruling in the event they are unable to do so. In addressing the matter of lost overtime, I note that the make whole award requires proof that is more than speculative. Instead, it necessitates showing to a reasonable degree of certainty that but for Reid's discharge, overtime would have been offered to him, and he would have worked such overtime.

³⁷ I have considered the arbitration awards cited by the Union, in which the arbitrator, after finding the officer had been dismissed without just cause, awarded full backpay despite that criminal charges had been pending against the officer during a portion of that period before being dismissed or withdrawn. I do not find these awards persuasive, as they do not expressly analyze the conflict of maintaining an officer in a modified duty assignment, while he/she has criminal charges pending against him/her. *See, e.g.*, AAA Case No. 01-21-0016-5558 (De Treux 2024).

AWARD

1. The grievance is granted.
2. The City did not have just cause to discharge Jason Reid, effective January 8, 2020.
3. The City will promptly reinstate Jason Reid to his former position with the Department without loss of seniority, and revise his personnel records, to the maximum extent permitted under governing law, to expunge all references to his January 8, 2020 discharge. In addition, the City will make him whole for all wages and benefits lost as a consequence of his discharge, including overtime, through the date of his reinstatement, but excluding the period during which the criminal charges filed in connection with his conduct on [REDACTED] were pending and any subsequent period when he was not available for duty due to the disposition of those charges. Such make whole relief will also be reduced by all outside wages and other earnings received by him as to the back pay period. I will retain jurisdiction of this matter to resolve any dispute as to the monies to be paid to Jason Reid based on this award, including the issue of whether he satisfied his obligation to mitigate his damages.

July 28, 2025



 David J. Reilly, Esq.
 Arbitrator

STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) ss.:

I, DAVID J. REILLY, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

July 28, 2025



 David J. Reilly, Esq.
 Arbitrator