

AMERICAN ARBITRATION ASSOCIATION (“AAA”)

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In the Matter of the Arbitration between:

FRATERNAL ORDER OF POLICE, LODGE #5,
 (“Union”),

-and-

CITY OF PHILADELPHIA
 (“City” or “Employer”),

Grievant: P/O Rahim Montgomery (238569)

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ARBITRATOR’S

**OPINION
and
AWARD**

AAA Case No.
01-23-0005-9383
PTAB

BEFORE: Robert A. Grey, Esq., Arbitrator

HEARING: September 3, 2025, at American Arbitration Association
230 South Broad Street, Philadelphia, PA

APPEARANCES:

FOR THE UNION:

Willig, Williams & Davidson
By: John R. Bielski, Esq.

FOR THE EMPLOYER:

Ahmad Zaffarese LLC
By: Peter G. Erdely, Esq.

INTRODUCTION

The Philadelphia Police Department (“PPD”) discharged Grievant from employment for alleged violation of PPD Disciplinary Code for Conduct Unbecoming, 1-§021-10 and 1-§026-10. The Union seeks that the charges be rescinded and expunged, and Grievant be made whole in all respects. The City seeks denial of the grievance in all respects.

Consistent with the parties’ collective bargaining agreement (“CBA”), the hearing of this grievance took place on September 3, 2025, upon mutual agreement. Both parties were ably represented by counsel, and afforded ample opportunities to present and challenge evidence, examine and cross-examine witnesses, argue their positions, and present rebuttals. The parties availed themselves of these opportunities. Neither party questioned the fairness of the proceedings.

All testimony was given under oath or affirmation and direct observation by this Arbitrator. The proceedings were transcribed by a court reporter, and a transcript produced. The record closed upon receipt of the parties’ post-hearing submissions, which are fully incorporated herein by reference.

This Opinion and Award is based upon detailed and thorough review and analysis of the entire record, including the Arbitrator’s assessment of witness credibility, conflicting testimony, and the relative probative value of all evidence admitted, as well as all objections and rulings thereon. All testimony, exhibits, party positions, and arguments—including the parties’ respective post-hearing submissions—have been fully considered in rendering this Opinion and Award, whether or not specifically referenced

herein.

STIPULATED ISSUES

The parties submitted the following stipulated issues for final and binding determination:

Was the Grievant, Rahim Montgomery, discharged from employment at the Philadelphia Police Department for just cause?

If not, what shall be the remedy?

STIPULATED FACTS

The parties stipulated to the following facts at the hearing: Grievant began employment at the Philadelphia Police Department on April 17, 2000. He remained in the classification of a police officer for his entire career. An investigation about his conduct began on May 16, 2020. He was criminally charged on January 21, 2021. A Notice of Intent to Dismiss was intended to be effective on January 25, 2021, but due to an administrative error, it was effective March 23, 2021. Grievant was discharged from employment with the Philadelphia Police Department on April 18, 2021. His criminal trial was held on December 11 and 12, 2023. He was acquitted of all charges on December 12, 2023.

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RELEVANT AUTHORITY

Home Rule Charter, Article VII

§ 7-303. Dismissal, Demotion and Suspension.

Any dismissal or demotion after the completion of the required probationary period of service, or suspension of any employee in the civil service shall be for just cause only.

Joint Exhibit 6.

CBA Article XX. Discipline and Discharge

A. General

No employee shall be disciplined or discharged except as is consistent with the Home Rule Charter and the Regulations of the Civil Service Commission.

Joint Exhibit 4.

PPD Disciplinary Code [CBA Attachment M], Article I, Conduct Unbecoming

1-§021-10: Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.
Penalty for 1st Offense: 30 Days or Dismissal.

1-§026-10: Engaging in any action that constitutes the commission of a felony or a misdemeanor which carries a potential sentence of more than (1) year....Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.

Penalty for 1st Offense: 30 Days or Dismissal.

Joint Exhibit 5.

DISCUSSION AND OPINION

The burden of proof is on the City, as the employer, to show that it had just cause for the discipline it imposed upon Grievant, an employee. The parties dispute whether the City met its burden.

The charges stem from a single off-duty incident which allegedly occurred approximately six (6) years before being reported to authorities, following a mandated-reporter disclosure [REDACTED]. The purported victim was Grievant's stepdaughter [REDACTED]. In 2020, [REDACTED] told investigators that she was [REDACTED] at the time of the alleged incident. In 2023, [REDACTED] testified at Grievant's criminal trial that she was [REDACTED] [REDACTED] at the time of the alleged incident.

In either account, [REDACTED] did not report the alleged incident at the time. In [REDACTED] disclosed the alleged incident to a therapist, who, as a mandated reporter, notified authorities.

PPD promptly conducted an Internal Affairs investigation, leading to Grievant's arrest on criminal charges and to these disciplinary charges in January 2021. In December 2023, Grievant was tried by a jury on one felony and two misdemeanor counts arising from the alleged incident and was acquitted of all charges. The Arbitrator notes that the criminal acquittal is not dispositive of, and does not influence, the analysis or determination of just cause in this arbitration.

[REDACTED] testified at the criminal jury trial. City Exhibit 7. [REDACTED] did not testify at this arbitration.

Counsel for the City made diligent efforts to have [REDACTED] voluntarily testify at this arbitration proceeding, and caused a subpoena *ad testificandum* to be issued to compel [REDACTED]'s testimony (City Exhibit 6), all to no avail. [REDACTED] did not attend this arbitration hearing and did not testify. [REDACTED] did not provide the City, AAA, nor this Arbitrator with any reason why she could not attend or testify. [REDACTED] did not request any accommodations or adjournments to facilitate her testifying at this arbitration proceeding.

It is undisputed that [REDACTED] is the only witness to Grievant's alleged misconduct. Because [REDACTED] was not subject to the test of cross-examination in this arbitration proceeding, her investigation statements and criminal trial testimony (City Exhibit 7) constitute hearsay that is accorded limited weight.

In the absence of probative corroborating non-hearsay evidence of Grievant's alleged misconduct, the City's case rests on hearsay evidence. Although hearsay evidence is generally admissible in arbitration, it is insufficient under the facts and circumstances of this record to satisfy the City's burden of proving just cause for discharge. This determination is an assessment of the evidentiary record presented in this arbitration. It does not establish or imply a categorical corroboration requirement.

While the City made diligent efforts to secure [REDACTED]'s testimony, [REDACTED]'s absence deprived the Union and the Grievant of a meaningful opportunity to test [REDACTED]'s credibility, probe inconsistencies, or develop a full evidentiary record before the Arbitrator. Accordingly, upon thorough review of this arbitration record, there is insufficient competent evidence to establish that the City discharged Grievant for just cause. Thus, the City did not meet its burden of proof.

REMEDY

Counsel provided several arbitration awards between these parties, by various arbitrators, regarding back pay for Grievants who faced criminal charges. Some awards excluded the period during which criminal charges were pending against a Grievant. Some awards *included* said period.

One such exclusionary award cited by the City was issued by this Arbitrator (AAA Case No. 01-15-0003-0329 (2016)). However, that award found just cause for discipline though not for discharge. Moreover, that award explicitly stated: “This back pay award is non-precedent setting and shall not be cited by either party in any other grievance, proceeding or context.” Page 49.

After full consideration of the parties’ back pay and remedy arguments, and the facts and circumstances of this record, Grievant’s back pay shall *include* this period.

Accordingly, the following Award is issued:

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AWARD

For the reasons set forth in the accompanying Opinion, the grievance is sustained.

Grievant, Rahim Montgomery, was not discharged from employment at the Philadelphia Police Department for just cause.

REMEDY

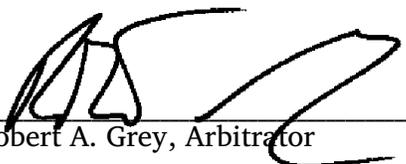
The City shall rescind Grievant's discharge and expunge it from Grievant's records and personnel file to the extent permitted by applicable law.

The City shall reinstate Grievant to his former position without undue delay.

The City shall make Grievant whole for lost wages, benefits, and seniority, from the date of discharge to the date of Grievant's reinstatement.

The Arbitrator retains jurisdiction for sixty (60) days to resolve any questions that may arise over application or interpretation of remedy.

Dated: December 22, 2025


Robert A. Grey, Arbitrator