

ARBITRATION DECISION NO.:

29

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health
Cambridge Mental Health Center

DATE OF ARBITRATION:

DATE OF DECISION:

June 11, 1987

GRIEVANT:

Dyanne Kuster

OCB GRIEVANCE NO.:

G86-1012

ARBITRATOR:

Frank A. Keenan

FOR THE UNION:

Daniel S. Smith
Legal Counsel

FOR THE EMPLOYER:

Barbara A. Serve
Asst. Atty. General

KEY WORDS:

Removal
Just Cause
Aid in Escape

ARTICLES:

Article 24-Discipline
§24.01-Standard

FACTS:

Grievant was employed as a TPW at the Cambridge Mental Health Center. Grievant was removed from that position on October 28, 1986. The Employer had charged Grievant with helping an escaped patient remain AWOL, making false statements to police officers and violation of Center Policy P-17 which provides guidelines for staff patient socialization, and which in pertinent

part reads, "all staff must avoid any relationship with any patient that could be reasonably interpreted as being exploitive and/or as having sexual overtones either on or off grounds."

The testimony which was presented and accepted by the Arbitrator was that of a friend of the Grievant. This witness stated that Grievant had confided to her that Grievant was in love with one of the patients and that Grievant planned on helping the patient get out of the hospital. Grievant asked the witness whether she would hide the patient for Grievant until the 14-Day AWOL period (for involuntary patients) was over. This witness additionally testified that she agreed to allow the patient and the Grievant stay with her.

This witness also had a teenage son who testified. His testimony corroborated that of his mother. Additionally, he stated that Grievant had told him that Grievant took the patient out of the Center and later picked up the patient down the road. The Grievant also discussed with this witness various explanations to be given to anyone who might come to the house looking for the patient, as the patient could not be seen in the Cambridge area for 14 days.

ARBITRATOR'S OPINION:

The Union argued that these witnesses were unreliable as there was "bad blood" between the Grievant and these witnesses for various reasons. The Arbitrator noted that although this was true, he applied the closest scrutiny, and found that the testimony of both witnesses was credible, therefore finding it a fact that Grievant helped the patient escape from the hospital. The Arbitrator also found by a preponderance of the evidence that Grievant did make false and misleading statements to the Center's police officers regarding the patient. Finally, he found that Grievant did have a relationship with a patient that violated the Center's policy outlined earlier.

Therefore, all charges against Grievant were proved. The discharge was upheld.

AWARD:

The Arbitrator denied the grievance finding that the charges were proved by the evidence presented. The Grievant's testimony was in conflict with that of other witnesses and according to the Arbitrator, less credible.

The Arbitrator based his decision on the various witnesses testimony and their demeanor on the stand. He also took into consideration the reasons any of the witnesses would have to present false testimony. The decision thus hinged primarily on credibility and the Arbitrator, upon review of all testimony, found the Grievant to be less credible than the witnesses against her.

TEXT OF THE OPINION:

ARBITRATION BETWEEN

**THE STATE OF OHIO,
DEPARTMENT OF MENTAL HEALTH
(CAMBRIDGE MENTAL HEALTH CENTER)**

and

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 11, AFSCME, AFL-CIO**

O.C.B. GR #G86-1012
and
Dept. GR #MH-CA-OCSEA-45-86

OPINION AND AWARD OF THE ARBITRATOR

FRANK A. KEENAN
PANEL ARBITRATOR

APPEARANCES:

FOR THE STATE:

Barbara A. Serve, Attorney
Assistant Attorney General
Ohio Attorney General's Office
Columbus, Ohio

FOR THE UNION:

Daniel S. Smith, Attorney
Legal Counsel
O.C.S.E.A/A.F.S.C.M.E.
Columbus, Ohio

I. STATEMENT OF THE CASE:

This case arose at the Cambridge Mental Health Center, Cambridge, Ohio, which is administered by the Ohio Department of Mental Health. The Grievant in the case, Dyanne Kuster, was employed as a Therapeutic Program Worker. She was removed from that position effective October 28, 1986. Her removal letter read in pertinent part as follows:

"TO: Dyanne Kuster

This will notify you that you are: removed from the position of Therapeutic Program Worker effective October 28, 1986.

The reason for this is that you have been guilty of: Aiding an Escaped Patient Remain in AWOL Status, Violation of Center Policy P-17, giving false statement to Center Police Officials in the following particulars, to wit: That you did aid a former center client maintain his then AWOL status from March 29, 1986, thru April 11, 1986. You did so by conspiring with others on or about March 29, 1986, to provide the client with lodging in the home of a friend. That you provided same client with lodging in your own home. That you did violate center policy P-17 in that you did between March 29, 1986 and April 11, 1986 fail to "avoid any relationship with any patient that could be reasonably interpreted . . . as being exploitive and/or having sexual overtones, either on

or off grounds."

You are charged with dishonesty for making false statements to a center police officer on April 24, 1986, regarding contact that you had with a client from March 29, 1986, thru April 11, 1986."

Policy P-17, referred to in the Grievant's removal letter, reads in pertinent part as follows:

"POLICY NUMBER: P-17

REVIEWED: October, 1984

REVIEWED: October 31, 1985

SUBJECT: Socialization Between Staff and Patients

I. PURPOSE

A. To establish guidelines for the employees of the Center concerning their personal interaction with patients.

B. To provide for appropriate disciplinary action for these employees shown to have engaged in inappropriate activities with patients.

II. GUIDELINES

A. All staff must avoid any relationship with any patient that could be reasonably interpreted by staff, patients, or visitors as being exploitive and/or as having sexual overtones, either on or off grounds.

B. Staff members, especially clinical staff, must not allow themselves to develop a social relationship which would jeopardize the objective treatment of and clinical judgment about the patient. Professional codes of conduct will prevail and be expected.

C. Any incident of misconduct, alleged or otherwise, which a staff member or patient reasonably feels may have occurred between a staff member and a patient is to be reported on an "Incident Report" form (Exhibit A). The appropriate Unit Director, Consultant or Department Head is to be notified of the incident immediately.

III. DISCIPLINARY ACTION

A. Any staff member who displays inappropriate behavior toward a patient will be disciplined according to the severity of his/her offense.

B. The Security Department will investigate alleged violations. If the staff member is found guilty of any misconduct with a patient, he/she may be suspended, terminated from State Service and/or criminal charges may be filed by the Center on behalf of the abused patient.

IV. IMPLEMENTATION

This directive is consistent with Departmental and Center policies and becomes effective immediately."

The record reflects that the Grievant, through orientation and training, was familiar with this policy and indeed she does not so much as contend otherwise. As part of her training she was advised to seek counsel from her supervisors if she ever felt herself becoming involved with a patient. She never did so.

Another pertinent policy is Policy Number A-9. It provides in relevant part:

"I. PURPOSE

. . .
B. To provide for the immediate notification of the appropriate personnel in the event that a patient is missing, and to establish systematic procedures for conducting a search to locate the missing individual.

* * *

III. SEARCH PROCEDURE

* * *

B. If a voluntary patient is missing, all of the steps under Section III. A. of this Policy, with the exception of 6, 7, and 12, will be implemented. The search however, will be confined to the grounds of this Center. If a voluntary patient has not been located within forty-five (45) minutes, he/she will be dropped from the rolls and considered discharged unless the following circumstances exist:

1. If a voluntary patient is considered by a physician and his/her treatment team to be a danger to self or others, the local authorities should be contacted by the Security Department to return the patient to the Center when located. . . .

Prior to the Grievant's removal, the Grievant was formally disciplined only once, receiving on that occasion a written warning for not charting properly.

One William Arther Jones became a patient at the Cambridge Mental Health Center, herein the CMHC or the Center, in July 1985. Jones, was from upstate New York and passing through the Cambridge, Ohio area when he became drunk and suicidal. He was brought to the CMHC by law enforcement officers on an emergency basis. As Jones concedes, he'd had a history of drug and alcohol abuse. Entering on an emergency basis and in a state of intoxication, Jones' admission was regarded as involuntary. When Jones recovered lucidity some three days later, he requested, and was allowed, to fill out voluntary admission papers. Thereafter he was regarded as a voluntary patient.

Jones first met the Grievant when he was transferred onto her ward, ward #217, in August, 1985. Ward #217 was the location to which patients about to leave the institution were assigned. As the Grievant volunteered, Jones, among others, was a "pet" patient of hers.

According to Jones he "walked away" from the Center in the early morning of March 29th, 1986. It was Jones's testimony that he had "attempted AWOL" three (3) times prior thereto and while a patient at the Center. It was further Jones's testimony that patients at the Center had given him money and that he had made money selling (without the Center's permission) tea to other patients, amassing thereby some forty dollars (\$40.00) to make good his escape from the Center. According to Jones he made his way to a telephone on the Interstate and called a taxi. The taxi

drove him to Day's Inn on Southgate Parkway in Cambridge where Jones asserts he spent the night. A receipt from Day's Inn reflects that Jones checked in on March 28th and checked out March 29th, paying \$30.38 for a room. Jones denied that the Grievant in any way assisted him in his escape. It was Jones's testimony that on March 29th he hitched a ride to his mother's residence in New York, arriving on March 31st. His mother informed him that the Center had called there to tell her that he was in AWOL, status, and that he was in no danger to himself or to others. According to Jones he returned to Cambridge, Ohio in order that he might express his feelings for the Grievant to the Grievant, claiming he had not done so prior thereto. It was Jones's testimony that he arrived back in Cambridge on April 3rd, whereupon he slept behind Kroger's supermarket. It is noted that Jones indicated that he believed that as a voluntary patient he would be dropped from the rolls in three days. On the following day, asserts Jones, he ran into the Grievant at Kroger's. She was with a friend. Jones and the Grievant made arrangements to meet at McDonald's. While at McDonald's, according to Jones, he told the Grievant that he loved her and she replied that at that point she wanted only to be friends. Jones also indicated that he had no place to stay, whereupon the Grievant indicated that he could stay at her place "without strings and on the couch." According to Jones, he stayed with the Grievant a couple of weeks until mid-April, 1986, whereupon he, the Grievant, and the Grievant's three daughters from a prior marriage, went to stay with one Cheryl Ann Burkhart and her family, because the Grievant had fallen behind in her rent and water bill. All of the above stayed with Burkhart until June, when they moved into a \$40,000.00 home that the Grievant had purchased. As the Grievant explained, she paid no rent to Burkhart; she was saving her money to buy a home.

Events as testified to by Jones from and after April 4, 1986, were essentially corroborated by the Grievant. Additionally, the Grievant indicated that prior to Jones's leaving the Center on March 28th, she'd "had no romantic relationship with him," and that it was "a good month" following her encounter with Jones on April 4th before she and Jones "shared a bed." According to the Grievant she was not "in love" with Jones prior to his leaving the Center. The Grievant also specifically denied having given Jones any help in escaping from the Center in March, 1986. Similarly, the Grievant specifically denied ever talking to Cheryl Burkhart's son Timothy Burkhart about Jones. According to the Grievant, she regarded Jones as no longer a patient at the Center as of 45 Minutes following the Center's failed efforts to locate Jones as per paragraph III. B. of the CMHC's Policy Number A-9.

It is noted that on April 24, 1986, the following questions and answers were put to, and elicited from, the Grievant by Ron Dowling, the Center's Chief of Police:

" . . .

Q. - Did you have any contact with Bill Jones during AWOL status of 3-29-86 to 4-11-86?

A. - No

Q. - Has Bill Jones ever visited you at your home residence in Cambridge, Ohio.

A - Two or three months ago while on a shopping trip with patients from 217 I stopped at my house to feed my rabbits"

It was the Grievant's testimony that she answered in the above fashion because she assumed the questions embraced only the time frames when Jones was a patient.

It is also noted that on March 30, 1986, pursuant to the instructions of the nurse on duty, the Grievant charted Jones as in AWOL status.

It is noted that the Grievant and Jones were married in November 1986.

Cheryl Burkhart approached the Center and divulged various alleged conduct of the Grievant vis a vis former Center patient Jones. Thus it was Cheryl Burkhart's testimony that while driving to Columbus, Ohio, with the Grievant in March, 1986, the Grievant confided that she was in love with Bill Jones, a patient at the Center, who was to be released in the near future. The Grievant indicated to Burkhart that Jones was being treated for drug and alcohol abuse and a mental problem. Then around the first of April, 1986, asserted Burkhart, the Grievant confided that she'd helped get Jones out of the hospital and would she, Burkhart, hide him out for her. According to Burkhart the Grievant stated that the Center might regard Jones as AWOL; that they might be looking for him; and that such a situation would last some fourteen (14) days. According to Cheryl Burkhart, the Grievant indicated to her that she had given Jones some clothes and some money to put him up at Day's Inn. It was further Burkhart's testimony that she agreed to allow Jones to stay at her place, and from the outset the Grievant would frequently stay over too.

Cheryl Burkhart's son Timothy T. Burkhart is 19 years old and lives with his mother. It was his testimony that the Grievant told him that she had gotten Jones out of the Center and that once he got on down the road she and another employee at the Center picked him up. According to Timothy Burkhart the Grievant discussed with him various explanations to be given to anyone who might come to the house looking for Jones as to how Jones came to be there, such as that he, Timothy, had picked him up hitch hiking near Zanesville, or that Timothy had picked him up hitching a ride after a concert in Wheeling, this latter explanation being deemed the most plausible by the Grievant. According to Timothy Burkhart, upon being introduced to Jones, the Grievant explained that he wasn't allowed to be seen in the Cambridge area for 14 days or the Center could take him back.

Various CMHC managerial staff personnel testified at the hearing.^[1] An amalgam of their testimony reveals that upon discovery of Jones' absence from the facility his treatment team was gathered to discuss Jones's case, and it was determined that he was not dangerous to himself and others and hence he would be placed in AWOL status for fourteen days, until April 11, 1986, at which time, if he had not returned to the facility, he would be officially discharged pursuant to a written order from his attending physician at the Center. This was in accord with well established practice. As Assistant Superintendent Pearsin succinctly put it, the literal language of Policy of Number A-9, III. B. whereby a voluntary patient is discharged after 45 minutes, had not been applied in the eight (8) years of his association with the Center; that rather 14 days in AWOL status was the minimum before a patient was discharged.

It is noted that there is "bad blood" between the Grievant and Cheryl Burkhart. This arose in part at least from the Grievant's perception that Burkhart was instrumental in depriving one of her daughters from competing in a 4-H project dear to her heart. This matter arose in July 1986. Additionally, it was the Grievant's perception that Cheryl Burkhart was jealous of her new home. Furthermore, according to the Grievant, she, the Grievant, was in a position to testify as to some critical testimony for a civil lawsuit Cheryl Burkhart was pursuing, and that the Grievant declined to testify. It is additionally noted that the Grievant swore out a criminal trespass complaint against Cheryl Burkhart and that Burkhart was convicted of such.

William Jones's mother, Betty Crandle, was of the opinion that her son's relationship with the Grievant was beneficial for him, and not exploitive.

II. THE DEPARTMENT'S POSITION:

The Department takes the position that the Grievant violated Policy Number P-17 proscribing socialization with patients, and furthermore, lied about such patient involvement to Center

investigators. The Department emphasizes that the Grievant was well aware of such policy. It is the Department's position that William Jones remained in "patient" status up until April 11, 1986, and that between March 29th, when he walked away from the Center, and April 11th, the Grievant maintained a relationship with Jones that "could be reasonably interpreted . . . as being exploitive and/or having sexual overtones . . ." In this manner then the Department asserts that it had just cause to discharge the Grievant. So it is that the Department urges that the grievance be denied.

III. THE UNION'S POSITION:

The Union tackles the position that any and all interaction and socialization between the Grievant and William Jones occurred at a time when the Grievant, in good faith, and based upon Policy Number A-9, III. B., believed that Jones was no longer a patient. There is no proof of any relationship between the Grievant and Jones while he was a patient asserts the Union. The Union asks rhetorically that given Jones's voluntary patient status and therefore his possession of the right to leave the Center within 3 days, is it not improbable that the Grievant would endanger her job by assisting Jones escape or by harboring him while a patient? Pointing to the "bad blood" between Grievant and Cheryl Burkhart, and the motive therefore to fabricate testimony, the Union urges that her testimony, and that of Timothy Burkhart, Cheryl's son, not be credited. There is no "exploitive" or "sexual overtone" conduct with a "patient" involved here, asserts the Union.

So it is that the Union urges that the grievance be sustained.

IV. DISCUSSION & OPINION:

As a logical starting point it is noted that Policy P-17 is designed, as its title expressly provides, to proscribe "socialization between staff and patients." What is particularly proscribed is "any relationship with any patient that could be reasonably interpreted . . . as being exploitive and/or as having sexual overtones, either on or off grounds" and "a social relationship which would jeopardize the objective treatment of and clinical judgment about the patient."

Three grounds were given by the Department for the Grievant's removal: aiding an escaped patient remain in AWOL status; violation of Policy P-17; and giving false statement to Center police officials. In its statement of particulars, the Department asserts that the above conduct (except for the alleged false statements) transpired between March 29th and April 11, 1986. These dates coincide with what the Center contends is patient William Jones's AWOL status following his fourth escape from the Center.

Relying on Policy A-9, III. B., the Union's defense of the Grievant is grounded on the premise that Jones was not a patient during the above time frames and that the Grievant was afraid and upset at the time she was questioned by the Center's police officers, and further that she thought the police officer's questions were confined only to the time that Jones was a "patient".

With respect to the allegation that the Grievant gave a false statement to the Center's police officials, I believe the record clearly establishes that she did so. Thus the questions put to her were both clear and broad in scope - "has Bill Jones ever visited you" and - "did you have any contact with Bill Jones during . . . 3-29-86 to 4-11-86" - and simply not subject to the strained construction the Grievant would have me believe she put on them, namely, that they were confined to Jones's status as a "patient", which she in good faith believed ended within 45 minutes of the Center's failure to locate him after discovering that he was missing, i.e. as of March 29, 1986. Based on the Grievant's and Jones's own testimony to the effect that the Grievant had Jones stay with her in her residence from and after April 4, 1986, it is clear that her negative and/or incomplete replies to the Center's police officials questions of April 24, 1986, were false and misleading.

With respect to the aiding an escaped patient remain in AWOL status and violating Policy P-17 allegations, it is clear that the Department's case is in large measure contingent upon the credibility of Cheryl Burkhart and Timothy Burkhart. With respect to the Union's defense, it is clear that it is contingent upon accepting as valid the Union's position that a "good faith belief" that an individual was no longer a patient suffices to shield one from the sanctions set forth in Policy P-17, and upon finding as a "fact" that indeed the Grievant harbored such a good faith belief.

Turning to the credibility of the Burkhart's, to be sure Cheryl Burkhart's credibility is subject to the closest of scrutiny given the substantial motive she had to fabricate in light of the hostility she had for the Grievant as a result of: the "falling out" she had with the Grievant over the 4-H Club matter; the Grievant's failure to testify on her behalf in a civil lawsuit; the Grievant's complaint of criminal trespass, of which Burkhart was found guilty; and finally, the resentment she must surely have born upon learning that after a considerable period of time of in effect living off the Burkhart's charity, the Grievant up and purchased a home of significant value. Similarly, Timothy Burkhart, who lived with his parents, was likely privy to the above related matters between his mother and the Grievant; his natural loyalties would be with his mother, thereby supporting the inference which I draw, that he too bore some, albeit likely less intense, hostility toward the Grievant.

Subjecting Timothy Burkhart's testimony to such close scrutiny, I am persuaded that he was telling the truth when he testified. Thus he testified in a candid and straight forward manner. Still a teenager, it is readily apparent that he was unschooled as a witness and in the giving of sworn testimony. An example of his candor and lack of evasiveness was his ready concession that he was aware of his mother's "falling out" with the Grievant, a matter which, as noted above, could only serve to call in question both his mother's testimony and that of his own, for the reasons also noted above. Yet despite his inexperience his testimony was delivered in a confident manner. These characteristics inspired confidence in the veracity and reliability of his testimony. This being so I find as a "fact" that, as the Grievant confided to Timothy Burkhart, the Grievant assisted William Jones to make his escape from the Center. And logic dictates and gives rise to the inference, which I draw, that such extraordinary conduct could only come about as the result of a special relationship between the Grievant and Jones. Surely the Grievant was not in the habit of assisting patients to escape the Center. This inference in turn lends credence to Cheryl Burkhart's testimony that in March, and prior to Jones's escape, the Grievant confided in her that she was "in love" with Jones. I therefore find that indeed the Grievant so confided in Cheryl Burkhart and further that such confidence was a true statement. Indeed only such a feeling could motivate one situated as was the Grievant to undertake so inappropriate an endeavor as that of assisting a patient to escape. Moreover, harboring such a feeling clearly had "sexual overtones" and hence was violative of Policy P-17. Significantly the Policy proscribes "overtones" and hence does not require a showing of overt sexual behavior. Further crediting Timothy Burkhart, I find as "fact" that she told him in early April 1986, and further that she truly so believed at that time, that Jones could be taken back if found within the Cambridge area within 14 days of his escape. But this tells me that the Grievant was well aware of the Center's policy and practice of carrying patient's in AWOL status for 14 days, and thus regarding them as still being patients within that time frame. Any doubt in that regard is laid to rest by the Grievant's charting Jones as AWOL following his escape, as more particularly noted above. In light of the foregoing conclusion it is clear that on and about the time of Jones's escape the Grievant had in mind the 14 day AWOL policy and not the Policy A-9, III. B., with the consequence that she did not in good faith believe that Jones was not a patient at the time she gave him shelter and/or provided same through a friend. In this manner then, the allegations of the Grievant's removal letter are made out.

Finally it is noted that even assuming for the sake of analysis that the Grievant did in good faith believe that Jones was not a patient from and after March 29th, based on a reading of Policy A-9,

III. B. (found hereinabove to not be so), her conduct preceding March 29th, namely her falling in love with Jones and acting out that love by assisting him in his escape, was, standing alone, clearly violative of Policy P-17.

In sum the record fully supports the allegations of misconduct set forth in the Grievant's removal letter. Since this misconduct is totally inimical to the Grievant's duties and responsibilities, it must be said that the Grievant's removal/discharge for such misconduct was for "just cause", and I so find. The grievance therefore, must be denied.

V. AWARD:

For the reasons more fully set forth above, the grievance is denied. The Grievant was discharged for "just cause".

DATED: June 11, 1987

Frank A. Keenan
Panel Arbitrator

[\[1\]](#) CMHC Police Officer Herbert H. Stevens; Ron Dowling, Chief of CMHC Police; Ruth Sherrick, CMHC Nursing Supervisor; Stephen Pearsin, CMHC Assistant Superintendant and Chief of Psychology.