

Arbitration Between:

State of Ohio, Department of Mental Health and Addiction Services

And

Ohio Civil Service Employees Association, AFSCME Local AFL-CIO,

Sherria Neel-Black

Case No.: DMH-2020-02161-07

Department of Mental Health Representatives

Todd M. Viars, DMH

Joe Dina, DMH

Victor Dandridge, Office of Collective Bargaining

Robert Patchen, Office of Collective Bargaining

OCSEA Representatives

Bruce Thompson, Staff Representative, OCSEA Local 11

Jennie Lewis, OCSEA

Witnesses for the Grievant: Grievant, Denise Laser

Witnesses for the DMH: Joe Dina, Olivia Sampsel, Becky Harmon, Ester Townsend

ARBITRATOR OPINION AND AWARD

The Ohio Department of Mental Health and Addiction Services (DMH) terminated the Grievant, Sherria Neel-Black, who was then employed as a Laboratory Technician 2, for a violation of Work Rules 4.1 and 3.3. Work Rule 4.1 addresses failure to follow policies and procedures and includes a policy, LOG-01, that focuses on the violation of the principles associated with Workplace Violence Prevention, stating that the employer has zero tolerance for workplace violence. Work Rule 3.3. prohibits dishonesty, which is defined as “[b]eing dishonest while on duty or engaged in state business, including but not limited to, deliberately withholding

information, giving false or inaccurate information verbally or in writing, to a supervisor or appropriate authority, i.e., administrative investigation, State Highway Patrol, etc.” At the time of her termination, the Grievant had two active Written Reprimands for violating Work Rule 4.3, inappropriate communication/correspondence with a member of the public or staff, use of obscene, abusive, or insulting language or gestures toward a member of the public or staff. The Grievant challenges her termination, alleging that DMH did not have just cause to terminate her. The parties agreed on the issue: Was the Grievant, Sherria Neel-Black, removed for just cause? If not, what shall the remedy be?

The arbitrator finds that DMH had just cause to terminate the Grievant, for the reasons stated below and, therefore, upholds the termination.

Background

The Grievant was an employee at Heartland Behavioral Healthcare for over 29 years. Her position at the time of her termination was Laboratory Technician 2. On April 16, 2020, Olivia Sampsel (Sampsel) and Ester Townsend, both Therapeutic Program Workers (TPW), were discussing whether a doctor’s laboratory coat is considered Personal Protective Equipment (PPE). Sampsel brought the Grievant into the conversation, asking her if she thought lab coats were considered PPE. The Grievant asserted that lab coats were PPE. Sampsel, who disagreed with the Grievant, contacted Amy Boyd, another employee, on the VOCERA to discuss the issue. Sampsel, who testified that Boyd confirmed that a doctors’ coat was not PPE, relayed that information to the Grievant. From that point, the testimony of Sampsel and Grievant diverged dramatically. Sampsel testified that Grievant became upset and asserted that she was talking about her own lab coat being PPE, not a doctor’s lab coat. In response, Sampsel testified that she

told the Grievant that she was tired of her changing her stories and tired of the way the Grievant speaks to others. She testified that the Grievant became irate and told her that she was going to “fuck you up” and then double-tapped Sampsel on the cheek with her hand. Sampsel alleged that she took her left hand and swung it in front of her face to remove the Grievant’s hand and told her not to touch her again. Sampsel contends that the Grievant double-tapped her face again and that, again, Sampsel swung her left hand in front of her face to remove Grievant’s hand. Sampsel stated that Ester Townsend, another TPW who was present, exclaimed, “oh shit”. In response, the Grievant stated, “I was just joking. Where did all this madness come from.” The altercation ended and the parties dispute how the various participants left the office (whether together or separately). Sampsel reported the incident to her Supervisor, Dawn Walton, and an investigation of the matter began, which ultimately resulted in the Grievant’s termination.

The Grievant’s version of events varies considerably from Sampsel’s recollection. She testified that Sampsel approached her and asked if lab coats are considered PPE. The Grievant observed that Sampsel was agitated. Later, Sampsel told the Grievant that she had spoken with Amy Boyd and you (Grievant) are wrong about lab coats being PPE. The Grievant testified that she did not know what Sampsel was talking about but again observed that Sampsel was agitated and “ranting.” The Grievant testified that she said in response to Sampsel that “I’m not mad; I don’t want to be part of [the] drama”. She patted Sampsel’s shoulder and told her to calm down and that, in response, Sampsel told her to get her hands off her (Sampsel). The Grievant testified that she responded, “Why are you so mad? What do you want? Where is this coming from?” Then, the Grievant testified that she left the scene.

Ester Townsend, who is now retired, also testified about the incident. She confirmed that she and Sampsel were discussing whether lab coats are considered PPE. She testified that the

Grievant came over to where they were conversing and asserted that all lab coats are PPE. Sampsel disagreed. Sometime later, Ms. Townsend, who was near Sampsel, testified that she heard the Grievant tell Sampsel that she would “fuck her up” and also observed the Grievant double tap the side of Sampsel’s face followed by Sampsel’s defensive reaction and another double tap by the Grievant, followed by another defensive action from Sampsel.

The Union attempts to discredit Townsend, asserting that she changed her story “based on the time of day and to whom she was speaking” and wanted the Grievant to be terminated. Yet the Union concedes that Ms. Townsend’s testimony at the hearing corroborated the “allegation [that] the Grievant double-tapp[ed] Ms. Sampsel on the face. Miss Townsend also stated she heard the Grievant tell Ms. Sampsel ‘I’m going to f*** you up.’” But the Union claims that, during her testimony, Ms. Townsend “appeared less than sure of what happened on the date of the incident.” The Union’s only factual support for this contention, though, is that Townsend’s previous statement had asserted that “Ms. Sampsel used her left arm to block the Grievant,” while later she stated that she was “unable to see [Sampsel] block the Grievant”. The Union further points to her admission that she didn’t intervene or seek help during the incident and claims that this undermines any assertion that she believed the incident to be noteworthy in any way.

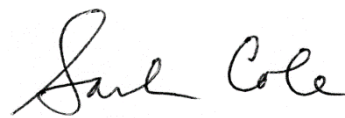
The Union’s contentions do not discredit or undermine Ms. Townsend’s testimony, which largely mirrored Sampsel’s testimony regarding the events at issue. That Ms. Townsend may misremember minor details associated with that day does not discredit her clear recollection of the general nature of the incident. Likewise, the Union does not present any evidence suggesting that Ms. Townsend had any reason to be untruthful or desirous of the Grievant’s termination. Nor does there appear to be any such reason, particularly as Ms. Townsend is no

longer a DMH employee. That Ms. Townsend did not attempt to intervene or call for help is also irrelevant. She did not have an obligation to intervene to stop this interaction and, in fact, it may have been unwise to do so. Moreover, by all account, the incident was over quickly, so it would have been difficult for Ms. Townsend even to begin the process of getting help. At bottom, I find the Union's argument on this point unconvincing.

The Union also contends that there were some procedural irregularities in the course of the investigation, including the failure of DMH to provide certain records, including a video, to the Union in a timely fashion. Because I find that any procedural irregularities in this grievance are minor and, ultimately, irrelevant to the investigation of the incident, the termination decision or the disciplinary process that followed the termination, the Union's argument fails.

Because I find that Ms. Townsend's testimony convincing, I also find that the Grievant was dishonest in her reporting of these events to OHSP Lt. Michael Horvath. Thus, Grievant was in violation of both work rules and, given her previous Written Reprimands, I find that the termination was for just cause and should be upheld.

October 25, 2021

A handwritten signature in cursive script, reading "Sarah Cole". The signature is written in dark ink and is positioned above a horizontal line.

Arbitrator Sarah R. Cole