

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS'
ASSOCIATION

and

COUNTY OF MILWAUKEE

1-day and 2-day suspensions
of Richard Sielaff
issued May 15, 1989

WERC Case 271

No. 42249

MA-5628

Appearances:

Ms. Marna M. Tess-Mattner, Gimbel, Reilly, Guerin & Brown, Attorneys at Law, 2400 Milwaukee Center, 111 East Kilbourn Avenue, Milwaukee, WI 53202, appearing on behalf of the Association and Richard Sielaff.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County Office of Corporation Counsel, Courthouse Room 303, 901 North 9th Street, Milwaukee, Wisconsin 53233

ARBITRATION AWARD

The Wisconsin Employment Relations Commission designated the undersigned Arbitrator to hear and determine disputes concerning the above-noted disciplinary suspensions arising pursuant to the grievance arbitration provisions of the parties' 1987-88 and 1989-1990 collective bargaining agreements.

The parties presented their evidence and arguments to the Arbitrator at a hearing held in Milwaukee, Wisconsin on September 22, 1989. By agreement of the parties, the Arbitrator recorded the hearing on cassette tape for his exclusive use in award preparation. The parties' presented their closing arguments at the hearing, marking the close of the record.

This arbitration arises out of a Notice of Suspension issued by Sheriff Richard E. Artison on May 15, 1989. It imposed a disciplinary suspension (without pay) on May 17, 18 and 19, on Deputy Sergeant Richard Sielaff, a member of the non-supervisory law enforcement bargaining unit represented by the Association, with 23 years of service as a Deputy Sheriff and 9 years in the rank of Sergeant. The parties agree that the three-day suspension was comprised of two separate suspensions, each of which is disputed. The charges contained in the Notice of Suspension are separately set forth and ruled upon below.

THE ONE-DAY SUSPENSION

STIPULATED ISSUES

At the hearing, the parties stipulated to the following issues:

1. Did Richard Sielaff violate the Rules as alleged?
2. If so, was the one-day suspension the appropriate discipline?
3. If not, what shall the remedy be?

PERTINENT PORTIONS OF THE NOTICE OF SUSPENSION

II. Violation of Sheriff's Department Policy and Procedure

11.17(C) - Law Enforcement Action While Off Duty

..... Should an off-duty member become aware of an incident which requires law enforcement action, and life and property is not endangered, they shall report that incident to the appropriate law enforcement agency and render such aid as required.....

11.171(D) - Disputes

Members of the Department shall not resolve their personal disputes, by use of their official law enforcement authority.

TO WIT: On Sunday, October 16, 1988, at approximately 4:15 PM, Sgt. Sielaff while off-duty, entered Children's Hospital, 1700 West Wisconsin Avenue for the purpose of conducting an investigation of a theft of money from his private business.

(1 Day Suspension)

FACTUAL BACKGROUND

The facts are entirely stipulated and undisputed.

Since 1984, the Grievant, Sgt. Sielaff, has owned a private business called Dick's Ice Cream Parlor and Postal Center located on East Brady Street in Milwaukee. On October 15,

1988, Grievant was off-duty and at that place of business. Frank S____, 18, an employe of Grievant's in that business, was at work that day and told Grievant that he felt ill and believed he was experiencing symptoms associated with sickle cell anemia. Grievant then took S____, to Children's Hospital then located at 17th Street and Wisconsin Avenue in Milwaukee. Either later that day or the next morning, Grievant realized that \$50 to \$70 was missing from his private business, and Grievant suspected that S____, had taken that money.

Grievant went back to Children's Hospital on the afternoon of October 16 to question S____, about the missing money. (It is undisputed that Sielaff's off-duty status at that time did not render him without legal authority to investigate a crime.)

No one would have prevented Grievant from approaching S____, in the Hospital directly without first speaking with Hospital personnel. However, Grievant knew from other experiences that a sickle cell condition can be aggravated by stress. Grievant approached S____' nurse and asked whether it would be harmful to S____, if Grievant asked him some questions. In his conversation with the nurse, Grievant identified himself as a Sheriff's Deputy and showed his badge; told the nurse that he was wearing both the hats of a private citizen and of a Sheriff's Deputy and that he wanted to ask S____ some questions; and told her further that he intended to advise S____ of his Miranda rights in connection with the questioning. The nurse told Grievant that S____' condition did not preclude such questioning, but that Grievant should check with Hospital security personnel before approaching S____.

Grievant met with a representative of Hospital security for some 15-20 minutes. That representative informed Grievant that it was Children's Hospital's policy that law enforcement officers are to check with hospital security before interviewing a patient in the Hospital. There is no evidence that Grievant was aware of that policy before hearing of it at that time.

Ultimately, a Hospital security supervisor was contacted about the situation. That individual, in turn, contacted Lt. McFarland at the Sheriff's department and informed him of Grievant's request. Lt. McFarland, in turn, asked to speak to Grievant and told Grievant to leave the Hospital and to let the Milwaukee Police Department (herein MPD) investigate the missing money. After speaking with McFarland, Grievant left the Hospital immediately.

Lt. McFarland filed a report about the matter so that the commanding officer would be familiar with the situation because the head of Hospital security had told McFarland that he planned to file a complaint about the incident. McFarland did not ask Grievant to write a report about it because he was off-duty at the time.

Grievant did not thereafter report the alleged theft to the MPD because, based on prior experiences, he knew it to be too trivial a matter for MPD to investigate unless all of the necessary proof was assembled and provided to them.

Grievant was at all times courteous with the Hospital staff and with Lt. McFarland. There was no swearing and no foul language of any kind used.

The Department's Internal Affairs Unit received a complaint about the incident complaint sometime in October of 1988 but conducted no investigation concerning it until sometime in December of that year. In the normal course of an Internal Affairs investigation, a Captains Review Board considered the matter and recommended the one-day suspension that the Sheriff ultimately imposed by the May 15, 1989 Notice of suspension noted above. The Grievant and Association challenged that suspension, and the matter was ultimately submitted to arbitration as noted above.

POSITION OF MANAGEMENT

Under the Department's written rules, a Deputy has the authority and obligation to enforce the law and to take appropriate law enforcement action whether on- or off-duty. However, Grievant was, as he described himself to the Hospital staff, "wearing two hats," appearing at the Hospital as both a Deputy Sheriff and as a private citizen victim of a crime. Since this was not a situation of hot pursuit or imminent danger, the rules clearly call for Grievant to report the alleged crime to the appropriate law enforcement agency, rather than taking any law enforcement action himself. His failure to report the matter to the appropriate law enforcement agency violated 11.17(C), regardless of his motivation or rationale for not reporting it to MPD. In addition, by "wearing both hats," Grievant used his official law enforcement authority to resolve a private dispute concerning the whereabouts of the missing money. He thereby clearly violated 11.17(D) which is designed to prevent Deputies from using their badge for personal gain or to resolve their personal disputes. This was clearly a matter that should have been referred to the MPD rather than investigated by the Grievant operating in whole or in part as a Deputy Sheriff.

The one-day suspension penalty imposed properly recognizes that this was not a major rule violation such as would warrant a lengthy suspension or discharge, but rather is one unlikely to recur if meaningful corrective discipline is taken.

For the foregoing reasons, the one-day suspension should be upheld.

POSITION OF THE ASSOCIATION AND GRIEVANT

The disciplinary action at issue is fatally flawed from the beginning because of the lengthy delay between the time Internal Affairs received the complaint in October and the time it investigated the matter in December. Such a delay allowed the memories of Grievant and others involved to fade and prevented Grievant from preserving needed statements and other evidence. The unexplained and lengthy delay should constitute laches and render imposition of any penalty inequitable and inappropriate.

The rules at issue are intended to keep officers from using their official status for personal gain. Grievant was not acting for personal gain. His actions were entirely straight-forward and well-intentioned. Rather than surreptitiously approaching S_____, without making sure that questioning him would not aggravate his condition, Grievant presented the situation to the nurse

first, informing her of the precise nature of the interaction he intended so that the nurse could accurately assess its potential impact on S___' condition. Rather than concealing the fact that he was not only a private citizen but also a Sheriff's Deputy Sergeant, Grievant

openly acknowledged that fact. Rather than proposing to proceed in a manner that might compromise future judicial proceedings against S___, Grievant made it clear that he intended to advise S___, of his Miranda rights before questioning him.

The questioning Grievant intended to conduct was solely personal, however, and not at all pursuant to his official law enforcement authority. The Hospital personnel complained because they apparently misunderstood Grievant's wholly personal mission and thought that he was a law enforcement officer attempting conduct an official interrogation of a Hospital patient while in plain clothes and without going through the proper Hospital channels.

It is admitted that the rules require Deputies to report incidents which require law enforcement action to the appropriate law enforcement agency. However, Grievant's experiences with the MPD regarding previous instances of theft from his shop made it clear to Grievant that the MPD does not have time to attempt to get to the bottom of \$50-\$70 retail thefts unless conclusive proof is provided to them. For that reason, Grievant reasonably concluded that it would have done no good to report the matter since he did not have conclusive proof.

Even if a violation is found in these circumstances, the breach is not a serious one, as Management itself acknowledged at the arbitration hearing. Yet, in the absence of any showing that Grievant has been orally counselled or warned in writing about any such violation in the past, a suspension has been imposed. A suspension is a serious penalty. It involves a loss of pay and can be the prelude to much more serious disciplinary actions including discharge. In light of all of the undisputed circumstances of this case, counselling or a written warning would surely have been sufficient to assure that Grievant would not place himself in similar circumstances in the future. The instant suspension, being both inconsistent with progressive discipline and not proportionate to the violation alleged, cannot be allowed to stand.

DISCUSSION

The Arbitrator is not persuaded that Management is guilty of laches. Grievant has not been shown to have been meaningfully prejudiced by the passage of time prior to the initiation of an investigation. Significantly, Grievant's October 16 phone conversation with Lt. McFarland put him on notice that his attempted interrogation of S___ was a matter of concern to the Department. Indeed, it was of sufficient concern that Grievant was told to leave the Hospital and to let the MPD investigate the missing money.

The Arbitrator finds a violation of 11.17(D) clearly made out on the stipulated facts. As Grievant told Hospital personnel, he was wearing two hats, not just one. That seems clearly to mean that he understood and intended that he was acting both as a private citizen crime victim and in his official capacity as a law enforcement officer. Grievant not only identified himself as a Sheriff's Deputy Sergeant and showed his official identification, but he also expressed his intention to give S___ Miranda warnings before questioning him. That is the same sort of precaution law enforcement officers take when they act in their official capacity to avoid adverse legal consequences of interrogations. It is not a customary precaution taken in purely private inquiries

by private citizens or victims of crimes. The subject matter of Grievant's intended inquiry appears clearly to have been an attempt to resolve his personal dispute with S_____ concerning the disappearance of the money from the shop. Thus, the elements of a violation of 11.17(D) have clearly been proven.

A violation of 11.17(C) is also made out on the stipulated facts. Grievant became aware that \$50-\$70 was missing and Grievant suspected--for reasons not specified in the record--that S____ had wrongfully taken it. The Arbitrator is satisfied that that constitutes, at least in the technical sense, "an incident which requires law enforcement action" within the meaning of 11.17(C). However, Grievant's explanation, that no meaningful law enforcement action could be expected to be taken by MPD because Grievant lacked proof to support his suspicions, substantially reduces the significance of the Grievant's failures to report the matter to MPD, both before and after his visit to the Hospital.

Taken together, the Grievant's violations constitute a course of conduct directly contrary to the manner in which the rules would have had him proceed when he realized the money was missing. He should technically have reported his problem to the appropriate law enforcement agency, the MPD. More significantly, however, he should have refrained from using his official law enforcement authority to attempt to resolve the matter himself.

Although Grievant had been counselled earlier in 1988 regarding his having called a fellow employe a foul language name, there is no evidence to suggest that Grievant had been counselled or warned or otherwise disciplined about any violation such as the one at issue here in the past or that he had ever had, so much as a written disciplinary warning on any subject. The absence of evidence of prior disciplinary actions makes Grievant's length of service a potential mitigating factor concerning appropriate discipline. On the other hand, Management could reasonably have expected that so veteran an officer and Sergeant would have known that what he was attempting to do in this case was a clear violation of the Department's rules, making Grievant's length of service a countervailing factor, as well.

While a one-day suspension is not the only disciplinary action that would have been appropriate in the circumstances, the Arbitrator is satisfied that it is not, in all of the circumstances, outside the range of reasonable discretion that Management is ordinarily entitled to exercise in determining appropriate discipline for a proven violation.

Accordingly, the one-day suspension shall stand as issued.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that

1. Richard Sielaff did violate the Rules as alleged in the Notice of Suspension.

2. The one-day suspension was appropriate discipline for that violation.

3. The one-day suspension shall stand as issued.

THE TWO-DAY SUSPENSION

STIPULATED ISSUES

At the hearing, the parties stipulated to the following issues:

1. Did Richard Sielaff violate the Rules as alleged?
2. If so, was the two-day suspension the appropriate discipline?
3. If not, what shall the remedy be?

PERTINENT PORTIONS OF THE NOTICE OF SUSPENSION

I. Violation of Sheriff's Department Policy and Procedure

1.07.02 - Conduct Toward the Public

Members shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, avoiding harsh, violent, profane or insolent language, and shall always remain calm regardless of provocation to do otherwise

TO WIT: On Friday, September 9, 1988 between 7:30 PM and 8:00 PM, Sgt. Sielaff, while on duty and in uniform, entered Kentucky Fried Chicken Restaurant located at 10633 West North Avenue, Wauwatosa, WI. Sgt. Sielaff engaged in conduct unbecoming a Deputy Sheriff.

(2 Day Suspension)

FACTUAL BACKGROUND

The parties stipulated to most of the facts, with testimony limited to a few disputed points.

Grievant was on duty at the County Institution Grounds on the evening in question. He took his dinner break on that night later than usual because there had been some unspecified developments at the workplace that kept him from doing so at the usual time. He went, in uniform, to the KFC Restaurant on 106th and North (herein Restaurant) for a meal as was his

custom on about a once-per-week basis both before and after the incident in question, always without incident except on the evening in question.

Grievant placed an order with the cashier across a waist-high counter. After the cashier entered the order into the register, she informed Grievant that there would be a wait for the gravy but that he could have butter substituted without any delay. Grievant was mildly frustrated at this news. He said something to the cashier in a louder than conversational voice, made contact with the counter with the top of his fist, turned away from the cashier and muttered something under his breath on his way out of the Restaurant. Grievant went to a different KFC restaurant, got his dinner and returned to the Institution grounds.

The Department received a complaint from the Restaurant staff that same evening, but Grievant was not identified as the officer involved until a few days later when he returned to the Restaurant on September 13th for another meal. The Restaurant staff made note of his name at that time and phoned in that additional information to the Department at that time.

It is undisputed that no Department investigation of this incident was undertaken until December 7, 1988. Grievant was first questioned about the matter on December 14, 1988. On April 24, 1989, Lt. George Paras, then Grievant's immediate supervisor, told Grievant that he should consider himself counselled on the matter and that Paras intended to recommend to their Captain that the matter be considered closed. Paras then discussed it with the Captain on April 28, 1989, at which time they agreed to recommend that Grievant be given a written reprimand in the matter. Thereafter the Sheriff issued the two-day suspension that has given rise to the instant arbitration.

The cashier was called as a witness by Management. She is a nineteen year old, currently-unemployed woman who worked as a cashier for KFC for approximately three months including all of September of 1988. She recalls that Grievant had been in the store before and had ordinarily ordered something different than he ordered on the night in question, and that his attitude was typically uptight and seemingly under stress. She recalls that on the date in question Grievant's behavior was fine until she told him that he would have to wait ten minutes for gravy. At that point Grievant became angry, swore, hit the counter with his fist, turned and swore again under his breath on his way out. She recalled that Grievant said "God damn it" while still facing and looking at her across the counter and that he muttered less loudly, "Well, just fuck it then" as he was on his way out. She described Grievant's initial response as upset and frustrated--not screaming, but louder than a conversational tone of voice. She stated that she was shocked that a uniformed law officer would speak and act that way, though she stated that she would not have been shocked by such conduct from other customers. She also stated that she was angry with Grievant because his cancellation meant that she had to void the whole order which she says took her ten minutes. She stated that she reported the incident to the Department when her supervisor suggested that she do so after she explained to the supervisor what had happened. On cross examination, the cashier acknowledged that "anything is possible" when asked if it was possible that Grievant had muttered only "Well forget it then." She also acknowledged that there was no loud sound when Grievant's fist contacted the counter and that to her recollection there were no

other customers at the counter when the incident occurred.

In his testimony, Grievant admitted being in the Restaurant sometime after 7:30 PM on the evening in question, and that he usually takes his dinner break around 6:30 or 7:00 PM. His testimony about the incident was halting in many respects, and he qualified most of his recollections in terms of "I believe", "I would have . . .", "I would not have . . .", etc. He thinks he ordered gravy as part of his order. He thinks there were other customers in line ahead of him and that some of them were told that the Restaurant was out of certain other menu items besides gravy before he ordered. He recalls that the cashier said it would be twenty minutes for gravy and that she offered butter as a substitute which Grievant did not find acceptable. Grievant believes he would not have wanted to be gone from the workplace for an additional twenty (20) minutes, so he chose not to wait that long for his order.

Grievant acknowledges that he was mildly frustrated, admits that he contacted the counter with his fist and said something like "damn", though he admits it would not have been out of character for him to say "God damn it," and that when he was interviewed about the incident by Sgt. Schaefer in December of 1988 he admitted that he "probably said 'God damn it'." Grievant denies saying "well fuck it then," asserting that he would never have said those words in uniform in public but thinks he might have said "well forget it, then" on his way out.

Grievant asserted that he normally has no problem with his temper and that he could not recall anything in particular that would have put him in an angry frame of mind when the incident took place. He did note, however, that something must have happened at work to delay his dinner break, but he could not recall what it was.

Lt. Paras was called as a Management rebuttal witness. He testified that he had not personally observed any outbursts of temper by Grievant in the two years he directly supervised him and in the twenty years he had known him as a fellow member of the Department. However, over objection, Paras testified that he has received some reports from other County employes that Grievant on occasion has manifested a short temper and offensive language in interactions with other employes at the workplace. Paras admitted that he never considered any of these instances serious enough for disciplinary action to be taken about them, except that in February of 1988, Paras had Grievant write a report about an incident in which Grievant was reported to have called another County employe an "asshole." Paras orally counselled Grievant about that incident, but no written reprimand was issued to Grievant in the matter.

POSITION OF MANAGEMENT

Regardless of which account of the event is credited, it is undisputed that Grievant became openly angry while on duty in uniform in a public place, used profane language in a raised voice, and struck the counter with his fist. Such conduct is violative of the 1.07.02 requirements that Department members be courteous in dealing with the public, perform their duties quietly, avoid the use of harsh gestures and profane language, and remain calm regardless of provocation. It is particularly surprising that a veteran officer, who claims to have heard other customers being told

that the Restaurant was out of certain other items, would exhibit this kind of behavior. The degree of intensity of the interaction, while disputed in some respects, was enough to lead the cashier involved to complain to the Department about it.

Because the Sheriff reviewed this and the one-day suspension matter almost simultaneously, it was appropriate that the second penalty imposed be progressively higher than the first. Grievant had previously been cautioned by Lt. Paras about his use of foul language. Department members represent the Sheriff and the Department, and their words and actions in public are an important component in maintaining effective relationships with the public.

POSITION OF THE ASSOCIATION AND GRIEVANT

While the Grievant used the term "damn" or perhaps "God damn" in frustration at the further delay represented by the fact that the gravy he wanted would not be available for 10 or 20 minutes, it is not clear by any means that the incident involved the sort of offensiveness, vehemence, violence or profanity that would constitute a violation of 1.07.02, at all.

If a violation is found, a two-day suspension is clearly an excessive penalty in the circumstances. Lt. Papas recommended that oral counselling should end the matter. He and the Captain later agreed that a written reprimand was the appropriate penalty. Higher authorities, without explanation, imposed a substantially more severe penalty amounting to a loss of approximately \$300 in pay. Management's reliance on the progressive nature of their discipline seems misplaced since the one-day suspension was imposed at the same time as the two-day and as regards an entirely dissimilar and unrelated incident that occurred and was reported to the Department later in time than the incident giving rise to the two-day suspension.

Further undercutting the propriety of the penalty imposed is Management's lengthy and unexplained delay, from September 13 to December 7, in investigating this matter and to December 14 in putting Grievant on notice that it was of possible concern to the Department. Management's delay constitutes laches and warrants dismissal of the charges, especially where, as here, personal impressions about the severity of the incident play so big a part in determining whether and how serious a violation was involved. Management would have furthered its expressed concerns about maintaining effective relationships better had it timely alerted the Grievant that a complaint had been received rather than allowing Grievant to continue to frequent the same Restaurant without that knowledge.

The appropriate penalty, if any, in these circumstances would be oral counselling.

DISCUSSION

The Arbitrator finds merit in the Union's contention that Management's lengthy and unexplained delay in notifying Grievant that his conduct in the Restaurant was under disciplinary scrutiny was prejudicial to Grievant in that he had no reason to focus on the incident or to preserve evidence concerning it at a time reasonably proximate to the events involved. The Arbitrator has

taken that factor into account both as it bears on finding the facts and as an overall mitigating factor. However, the Arbitrator rejects the Union's contention that the delay was so prejudicial as to require the conclusion that no disciplinary action of any kind can be permitted to stand.

The Arbitrator is persuaded that Grievant's conduct on the evening in question violated the requirements of 1.07.02. It is clear by all accounts that Grievant was discourteous, used profane or insolent language and failed to remain calm in the face of a seemingly minor frustration. Based on Grievant's own testimony that he would not rule out the possibility that he had said it, the Arbitrator finds that the Grievant said "God damn it"--rather than merely "damn"--to the cashier across the counter in an angry and louder-than-conversational tone of voice punctuated by bringing his fist into contact with the counter. The cashier's demonstration at the hearing regarding the nature of Grievant's gesture showed it to have been a relatively moderate one that does not rise to the level of "violent" or "harsh" but that can nonetheless was inconsistent with the standards of being courteous and of remaining calm.

The evidence also establishes that Grievant said something in a lowered voice after he turned and was on his way out. It seems only natural and logical that Grievant would say something to cancel the order he had been placing. The cashier understood Grievant to have said "Well fuck it then," as opposed to the "Well forget it then" which is what Grievant believes he could have said in the circumstances. While the cashier was far more certain about what she understood Grievant to have muttered than Grievant was about what he said, Grievant's ability to clearly and confidently recall the incident was adversely affected by Management's unexplained and lengthy delay in advising Grievant that his actions on that evening were under scrutiny. Because the cashier, unlike the Grievant, had occasion to focus on and recount the incident proximate in time to its occurrence, it stands to reason that she would appear to recall it more clearly and confidently. On the other hand, this would hardly seem an incident that would stand out in Grievant's mind or be one on which he would have had occasion to focus his recollections during the two month period that separated the incident from the first time he was questioned about it. Rather than permit Management to benefit from its prejudicial delay in notifying Grievant, the Arbitrator resolves the fact issue against management, finding that Grievant muttered only "Well forget it then."

The County's arguments indicate that a two-day suspension was imposed, in part, because Grievant was being issued a one-day suspension in connection with another disciplinary matter pending at or about the same time. However, as the Union has argued, the one-day suspension involved a wholly-unrelated kind of misconduct that occurred later in time than the Restaurant incident at issue herein, somewhat reducing the persuasiveness of the County's rationale.

With due regard for Management's legitimate concern for maintaining courteous and effective relations with the public, the Arbitrator is nonetheless persuaded that the Restaurant incident in question was a relatively minor violation of the rules. Management's unexplained and prejudicial delay in notifying Grievant that his Restaurant incident conduct was of possible concern to the Department is also a generally mitigating factor and one which reduces the deference accorded in this particular instance to Management's judgment regarding appropriate penalty. For those reasons and in light of the record as a whole, the Arbitrator concludes that the two-day suspension imposed herein was an excessive penalty.

On the other hand, the Arbitrator rejects the Union's assertion that oral counselling is the

maximum permissible penalty in the circumstances. Although that was the initial conclusion reached by Lt. Paras, the Lieutenant forthrightly noted that he is not called upon for such recommendations on a regular basis and when he has given them, they have not been followed very often. The record reveals that Grievant was orally counselled in February of 1988 for an incident in which he called another County employe a foul language name. The need for Grievant to remain calm and avoid profane or insolent language had thus been called to his attention orally by supervision earlier in the year. In light of that fact, Grievant's Restaurant incident, while not particularly aggregious on its own, appears to the Arbitrator to have been a part of a possible repeating pattern of conduct on Grievant's part warranting a somewhat more severe disciplinary response than the oral counselling urged by the Union. Specifically, a written warning would have been entirely justified and the appropriate discipline in the circumstances.

Accordingly, the Arbitrator has ordered the suspension reduced to a written warning.

As it happens, the progression from a written warning for the September Restaurant incident to a one-day suspension for the October incident above is more logical and consistent with progressive discipline principles than was the progression that the County had noted as contributing to its determination of penalty for the Restaurant incident.

DECISION AND AWARD

1. Richard Sielaff did violate the Rules as alleged on the face of the Notice of Suspension.
2. The two-day suspension was not appropriate discipline for that violation.
3. The two-day, suspension shall be removed from Sielaff's record and replaced with a May 15, 1989 written reprimand consisting either of the above-noted portion of the Notice of Suspension or a copy of this Award. In addition, Management shall make Grievant whole (without interest) for the loss of two days pay he experienced by reason of the suspension.

Dated at Madison, Wisconsin this 28th day of September, 1989.

By _____
Marshall L. Gratz, Arbitrator

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