BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

HILLHAVEN CORPORATION d/b/a NORTH RIDGE CARE CENTER

and

SERVICE AND HOSPITAL EMPLOYEES INTERNATIONAL UNION, LOCAL 150

Case 14
No. 42598
A-4480

Appearances:

Mr. Michael Manning, Labor Relations Director, Western Division, Hillhaven Corporation, appearing on behalf of the Employer.

Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, S.C., by Mr. William S. Kowalski, appearing on behalf of the Union.

ARBITRATION AWARD

The Company and Union above are parties to a 1988-90 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the discipline grievance of Cindy Filliez.

The undersigned was appointed and held a hearing on November 15, 1989 in Manitowoc, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on January 24, 1990.

STIPULATED ISSUES

1. Was the grievant disciplined for just cause?
2. If not, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 18 -- DISCHARGE

18.1 The Employer may discharge or suspend an employee for just cause, but in respect to discharge, shall give a warning of the complaint against such employee, except that no warning notice need be given to an employee if the cause of such discharge is dishonesty; drinking; or recklessness resulting in an accident to a patient; abuse of a patient, verbal or physical; sleeping on the job; or leaving patients unattended. A Union steward will be called in when requested by an employee for all disciplinary actions up to and including discharge.

DISCUSSION

On July 5, 1989, Cindy Filliez, a nurse's aide and Union steward at the Company's North Ridge Care Center, received a written warning for making allegedly false statements in the Company's investigation of an incident involving another employe.

The incident in question can be summarized as follows. On June 16, 1989, nurse's aide Anne Maki had an altercation with nurse Linda Linari. Maki became upset during the discussion and went to find the grievant herein, Cindy Filliez, who was working in another part of the building. Filliez and Maki had a brief discussion, which was interrupted even more briefly by the arrival of nurse Linda Alecksen, who was investigating what had happened between Maki and Linari. Later in the day, Filliez told Maki that based on comments she had overheard while passing the nurses' station and the break room that she believed no discipline would result in Maki's incident.

Subsequently, the nursing home's administrator, Laurie McCullough, investigated the Maki incident, and obtained statements from several persons involved in that discussion. on June 23, McCullough interviewed Filliez, and concluded that Filliez's account of her discussion with Maki on the day in question, and also of the means by which she heard that no discipline would issue to Maki, were at variance from the statements made by other persons. McCullough then questioned Alecksen again, on or about July 3, and subsequently issued a disciplinary warning to Filliez on July 5 for lying in her account of what was said to her and when the various events took place.

The Company contends, on the basis of testimony adduced from McCullough, Filliez and other witnesses, that McCullough's notes of her investigation truly reflect the statements made to her by Filliez and others, that Filliez deliberately lied in the investigation of the Maki incident, and that this is improper conduct even though Filliez was involved in that incident solely as Union representative to Maki. The Company requests that the grievance be denied. The Union contends

that Filliez's statements were at worst inaccurate in minor ways, that she had no reason to lie in this investigation, and that the Company's investigation prior to disciplining the grievant was inadequate because McCullough simply assumed that where there was a difference of opinion or recollection, Filliez must by lying. The Union requests that the Arbitrator overturn the discipline, clear the grievant's record, and order the Company to post a notice stating that the allegation of lying was found meritless in order to protect the grievant's reputation.

Upon a careful review of the evidence in this matter, I can find nothing whatsoever to support a conclusion that the grievant deliberately lied in the investigation of the Maki incident. First, she was not questioned about that incident until a full week had elapsed. Second, Filliez credibly testified that she had told McCullough that her memory was not exact. Third, even McCullough admitted in testimony that she could think of nothing which either Maki or Filliez had to gain from the lies which were allegedly told. And fourth, the alleged lies involve interpretations, such as whether the few minutes that Filliez appears to have spent with Maki comforting her constituted a "meeting", as McCullough characterized it, or something less.

It is not necessary to relate in exhaustive detail the various accounts of the trivial incident which precipitated this discipline to conclude that where any motive at all to lie is lacking, it would be reasonable for a supervisor to conclude that probably no lie had been told. This is particularly so where there is no allegation or evidence presented by the Company to the effect that the grievant had ever lied before, and where the passage of time since the Maki incident, as Filliez pointed out, rendered her recollection unreliable.

I note that this was McCullough's first administrative-level appointment and that she had served in that capacity for only about four weeks when the incident in question arose. I conclude that the most likely explanation for this "tempest in a teapot" is the inexperience of an administrator, unaccustomed to the varying accounts of witnesses as the forces of time and entropy assert themselves. At all events, there is nothing in the record to demonstrate that the grievant was guilty of anything more than a combination of poor memory and different use of words from McCullough. The allegation that she lied in the investigation is therefore entirely unsupported.

With respect to the Union's request for notice-posting as a remedy, I note that this is a highly unusual element in arbitration remedies (as distinct from legal remedies obtainable in other fora) and that there is no evidence of bad faith on management's part, or of anything more than lack of experience on McCullough's. Furthermore, the size of the facility in question is not so large that the Union can be expected to have difficulty in communicating the finding below to employes.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the grievant was not disciplined for just cause.

2. That as remedy, all reference to the discipline shall be deleted from the grievant's personnel file.

Dated at Madison, Wisconsin this 2nd of March, 1990.

By /s/ Christopher Honeyman, Arbitrator
Christopher Honeyman, Arbitrator