

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
SERVICE AND HOSPITAL EMPLOYEES :
INTERNATIONAL UNION, LOCAL 150, :
AFL-CIO :
and : Case 13
NORTH RIDGE CARE CENTER : No. 42597
: A-4479
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Appearances:

Mr. William S. Kowalski, Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, S.C., 788 North Jefferson Street, P.O. Box 92099, Milwaukee, WI 53202, appearing on behalf of Service and Hospital Employees International Union, Local 150, AFL-CIO.
Mr. Eric J. Nadworny, Attorney at Law, The Hillhaven Corporation, 450 Bedford Street, Lexington, MA 02173, appearing on behalf of North Ridge Care Center.

ARBITRATION AWARD

Service and Hospital Employees International Union, Local 150, AFL-CIO (hereinafter Union) and North Ridge Care Center (hereinafter Employer) have been parties to a collective bargaining agreement at all times relevant to this dispute. Said agreement provides for arbitration of unresolved disputes by an arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On July 20, 1989, the Union filed a request to initiate grievance arbitration with the Commission. On August 29, 1989, the Employer concurred in said request. On October 6, 1989, the Commission appointed James W. Engmann, a member of its staff, as the impartial Arbitrator in this dispute. A hearing was held in this matter on November 29, 1989, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was transcribed, a copy of which was received by the Arbitrator on December 7, 1989. The parties submitted briefs, the last of which was received on January 11, 1990, and each party waived the submission of reply briefs. Full consideration has been given to the evidence and arguments of the parties in rendering this decision.

STATEMENT OF FACTS

Anne Maki (hereinafter Grievant) is a nurse's aide employed at the North Ridge Care Center. On June 16, 1989, she was working a 5:00 a.m. to 1:00 p.m. shift. At approximately 6:15 a.m., the Grievant approached her supervisor, nurse Linda Linari (hereinafter Nurse) in the hall. At that time the Grievant and the Nurse had a dispute as to what procedure should be used to get the patients ready for breakfast. The Grievant asked the Nurse if they could discuss their dispute in a different location. The Nurse said "No". The Grievant then left the Nurse and went to the RN Supervisor Linda Alecksen (hereinafter Supervisor). The Grievant told the Supervisor that the Grievant and the Nurse had a disagreement and asked the Supervisor to help resolve the difference between them.

The Grievant and the Supervisor met the Nurse in the hall. During the discussion of what procedure the Grievant and the Nurse should use in getting patients ready for breakfast, the Grievant became upset and at one point said "Bullshit". The Grievant then told the Supervisor that she was going to get Union Steward Cindy Filliez (hereinafter Steward) and she left the area. Later the Supervisor found the Grievant and the Steward in the beauty parlor. Some time later the Grievant returned to her work station.

Later in the day the Nurse told Director of Nursing Dona Quimby (hereinafter Director) about the incident with the Grievant. The Director discussed the matter with the Supervisor and she then advised the Administrator of the Care Center, Laurie McCullough (hereinafter Administrator), of what had happened. The Director and the Administrator then interviewed the Grievant and the Steward and asked the Grievant for a written statement of what had happened, which statement the Grievant provided. Based upon this investigation, the Administrator and the Director determined that discipline was warranted. Since the Grievant had a previous three-day suspension on appeal to arbitration, the Administrator decided not to include that suspension in determining the progressive discipline that the Grievant should be given. The Employer suspended the Grievant for five days, stating as follows:

Anne used an unnecessarily loud voice and spoke in an agitated manner with her supervisor in a patient care area. She used inappropriate language by swearing at her supervisor in the presence of the RN in charge. After intervention of the RN in charge, Anne left the floor instead of returning to work.

PERTINENT CONTRACT LANGUAGE

ARTICLE 15 -- GENERAL PROVISIONS

. . .

15.3 Employees will individually and collectively render loyal, efficient, courteous, and safe service to the facility. They will cooperate with the facility and each other in advancing the welfare of the facility and proper service to patients at all times.

. . .

ARTICLE 18 -- DISCHARGE

18.1 The Employer may discharge or suspend an employee for just cause, A Union steward will be called in when requested by an employee for all disciplinary actions up to and including discharge.

STATEMENT OF THE ISSUE

The parties stipulated at hearing to framing the issue as follows:

Whether the five-day suspension imposed on the Grievant in June of 1989 was for just cause?

If not, what is the remedy?

POSITIONS OF THE PARTIES

A. Union

The Union argues that the discipline imposed upon the Grievant was without just cause, that the discipline was based upon three factors, and that each of these charges is insufficient and lacks supporting evidence.

Specifically, the Union argues that the evidence does not support the Employer's allegation that the Grievant was speaking in an "unnecessarily" loud voice and in an "agitated" manner; that while the Grievant testified that she was somewhat upset during the incident, the only evidence of the Grievant's speaking in an unnecessarily loud voice was the Nurse's testimony that the Grievant's voice kept "getting louder"; that this hardly establishes that the Grievant was acting or speaking in a manner such as to justify discipline; that there is no evidence that any other employees or residents were aware of the discussion, even though other people were undoubtedly nearby; that the mere fact that the Grievant spoke in tones slightly louder than normal should not be the basis for discipline; that employees should be permitted some leeway in expressing the frustrations that arise from time to time, so long as they do not do so in a manner that challenges management's authority or shows a flagrant disregard for the Employer's interests; that even if the Grievant was speaking louder than usual, her conduct did not exhibit any challenge to management's authority nor did it disregard the Employer's interests; that the Grievant was attempting to see that the Employer's policies were carried out; that the Grievant sought to continue her discussion with the Nurse at a place other than the hall; that this shows that she was concerned that there not be a scene in the hall; and that the evidence, therefore, does not support this aspect of the Employer's charge against the Grievant.

In regard to the Employer's assertion that the Grievant acted improperly in leaving the floor following the incident instead of returning to work, the Union argues that the Employer can hardly charge the Grievant with wrongdoing in this regard; that the Grievant was quite upset following the incident; that because of the prior discipline imposed against her, she felt that the present situation was potentially serious; that before leaving the floor, the Grievant told the Supervisor that she was leaving the floor to seek consultation with her Union Steward; that there is no dispute that both the Nurse and the Supervisor heard the Grievant make this statement; that neither the Nurse nor the Supervisor made the slightest effort to stop the Grievant or indicate that she could not leave the floor; and that, since the supervisors present did not indicate that the Grievant should not go, the Employer cannot assert that she had no right to leave the floor at that time.

Regarding the Employer's allegation that the Grievant used "inappropriate" language during the incident, the Grievant does not dispute that she used the word "bullshit" once; that this is the only instance of profanity during the entire incident; that this single instance of admittedly inappropriate language was much less the result of a flagrantly defiant employee than it was a spontaneous response to the Nurse's accusation that the Grievant was a "liar"; and that the making of such a statement, under the facts and circumstances of this case, should not support a five-day suspension without pay.

B. Employer

The Employer argues that the suspension of the Grievant was for just cause in that the evidence establishes that the Grievant's actions were inappropriate and insubordinate; that the Grievant precipitated the confrontation with the Nurse; that the Grievant was the only one to raise her voice; that the Grievant yelled "bullshit" at the Nurse while outside a resident's room; that the Nurse did not provoke the Grievant into the confrontation; that both the Nurse and the Supervisor testified that the Grievant's behavior was insubordinate, abusive and inappropriate for a nursing assistant; that when the Grievant left the area, she did not ask permission to leave the floor; that the Supervisor did not know immediately where the Grievant had gone; that previously the Grievant was given a written warning for use of the word "asshole" to a nurse and refusing to leave the floor; that the discipline in this case was progressive; that it was given only after an investigation which included discussions with the Grievant and the opportunity for the Grievant to submit a statement; that the Grievant's outburst was unprovoked and uncalled for and warranted discipline; and that the Grievant's reaction to her outburst fully suggests that she knew that what she had done was inappropriate.

In addition, the Employer argues that the Grievant's testimony was inconsistent and not credible; that the Grievant's version of the events are so contradictory that it cannot be believed; that the Grievant testified that the Nurse called her a "liar"; that the Grievant did not mention this in either her June 19, 1989, statement or in the grievance; that, in fact, her statement, written with the assistance of a union steward, states there was no unprofessional behavior at all; and that she obviously changed her story at hearing.

DISCUSSION

The Union asserts that the Employer's discipline against the Grievant was based upon three factors: using an unnecessarily loud voice and speaking in an agitated manner; using inappropriate language; and leaving the floor instead of returning to work. It attacks each factor individually, arguing that the charges are insufficient and the evidence does not support them.

As to speaking in an unnecessarily loud voice and speaking in an agitated manner, the Union argues that the only evidence of the Grievant's speaking in this way was the Nurse's testimony that the Grievant kept getting "louder and

louder". However, the record is clear that the Supervisor also testified that the Grievant's voice got "louder and louder", culminating in her yelling "bullshit".

In terms of the inappropriate language, the Union does not deny that the Grievant used inappropriate language, but argues that it was a single instance resulting from the Nurse calling her a "liar". The record does not support the Grievant's contention that the Nurse called her a "liar". The Grievant never mentioned this in her pre-disciplinary interview with the Employer, nor did she mention it in her written statement. Even after she had been disciplined, she did not mention in her grievance that the reason she used the inappropriate language was because she had been called a "liar", a significant fact in the case. In fact, in her grievance she denied the use of inappropriate language, weakening her credibility.

As to the Union's allegation that the Grievant should not be disciplined because she told the supervisor that she was going to talk to the Union Steward, I agree. The Employer could have told the Grievant to return to her job when she said she was going to see the Steward; by not doing so, the Employer acquiesced to her doing so.

Nonetheless, the record is clear that the Grievant approached the Nurse, started a discussion with her in which she became upset, went to the Supervisor, returned with the Supervisor, raised her voice in a loud manner and, finally, yelled the word "bullshit". The Employer investigated the complaint against the Grievant by questioning the Nurse and the Supervisor, and then questioning the Grievant herself and allowing the Grievant to present a written statement. Procedurally, the Employer carried out the mandates of just cause when it issued the progressive discipline of a five-day suspension. As to the merits of the Employer's complaint, arguing with a supervisor and using profanity is certainly cause for discipline where such an incident occurs outside a patient's room in a health care center. If this was the Grievant's first offense, a written reprimand might be sufficient to assist the Grievant in changing her behavior; however, the Grievant has been disciplined at least twice before, once before for using inappropriate language. Thus, a five-day suspension is not too much of a penalty where the Grievant has been previously reprimanded for inappropriate use of language.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issues the following

AWARD

1. That the five-day suspension imposed on the Grievant in June of 1989 was for just cause.
2. That the grievance is hereby denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 4th day of April, 1990.

By _____
James W. Engmann, Arbitrator