

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 MARATHON COUNTY DEPARTMENT OF SOCIAL :  
 SERVICES and COURTHOUSE EMPLOYEES, :  
 LOCAL 2492, : Case 168  
 : No. 43596  
 and : MA-6014  
 :  
 MARATHON COUNTY :  
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Appearances:

Mr. Phillip Salamone, Staff Representative, Wisconsin Council 40, AFSCME,  
 AFL-CIO, N-419 Birch Lane, Hatley, Wisconsin 54440, appearing on  
 Mulcahy & Wherry, S.C., by Mr. Dean R. Dietrich, First Wisconsin Plaza,

behalf  
 P.O. B

ARBITRATION AWARD

Marathon County Department of Social Services and Courthouse Employees, Local 2492, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Marathon County, hereinafter referred to as the County, are parties to a collective bargaining agreement, effective January 1, 1989 through December 31, 1990, which provides for final and binding arbitration of grievances over the interpretation and application of the provisions of the agreement. Pursuant to a request for arbitration the undersigned was appointed by the Wisconsin Employment Relations Commission to arbitrate a dispute over the discharge of an employe. Hearing was held in Wausau, Wisconsin on April 10, 1990. Post-hearing arguments and reply briefs were received by the undersigned by June 8, 1990. Full consideration has been given to the testimony, evidence and arguments presented by the parties in rendering this Award.

ISSUE

The parties agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

Did the County have just cause to terminate the grievant's employment for failure to properly perform her duties? If not, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

. . . .

ARTICLE 2 - MANAGEMENT RIGHTS

The County possesses the sole right to operate the department and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract. These rights include but are not limited to the following:

- A. To direct all operations of the Social Services Department;
- B. To establish reasonable work rules;
- C. To hire, promote, transfer, assign and retain employees.

- D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause;

. . .

#### BACKGROUND

Among its various governmental functions the County operates an Income Maintenance Unit within its Department of Social Services. Clients who need to meet with the Unit's Income Maintenance Workers must first register with the Unit's Receptionist. Sally Kislow, hereinafter referred to as the grievant, has been employed by the County since October, 1972. In February 1979, the grievant was assigned to the Unit's Receptionist position. On December 14, 1987 she was promoted to an Income Maintenance Assistant position. However, she was unable to perform the duties of this position and was demoted to her prior position as the Unit's Receptionist. The Unit has a policy that the needs of clients are to be addressed as soon as possible and, specifically, clients are not to be kept waiting in the Receptionist area for lengthy periods of time. This policy is based upon three (3) considerations. First, some clients are embarrassed by the fact they need assistance and making them wait in a Receptionist area is inappropriate. Second, making a client wait more than fifteen (15) or twenty (20) minutes is an infringement on the clients' time, but also may cause the Unit to be viewed as inefficient. Lastly, in some situations, such as those involving food stamps or fuel needed for home heating, the need may be critical and requires immediate attention. The Receptionist is provided a listing of Income Maintenance Workers and has materials available to her to provide updated information concerning client assignments. There is a logging system which informs her whether an Income Maintenance Worker is busy with a client or not at their desk. The Unit's phone system is such that the Receptionist can determine whether the Income Maintenance Worker is using the telephone. The Unit also has a paging system. The Receptionist is not to page or telephone an Income Maintenance Worker if the Worker is busy with a client. However, if the client has been waiting longer than fifteen (15) or twenty (20) minutes she is to contact her supervisor or the Income Maintenance Supervisor and inform them of the problem to see if anything can be done to assist the client. The grievant is required to log the time when a client registers, required to keep track of whether she has paged an Income Maintenance Worker, and Income Maintenance Workers are to inform her when they have completed a meeting with a client.

The following is a summary of events leading up to the instant matter:

June 23, 1988: Grievant counseled concerning proper reception duties.

August 23, 1988: Grievant received written reprimand for poor job performance, including failure to advise Income Maintenance Worker that a client was waiting. Client waited one and one-half (1 1/2) hours.

October 5, 1988: Grievant counseled concerning continued poor job performance and failure to comply with procedures.

February 9, 1989: Grievant counseled concerning proper reception duties.

March 2, 1989: Grievant issued written reprimand for poor attendance.

March 6, 1989: Grievant received below average job performance evaluation.

April 18, 1989: Grievant received a one (1) day suspension for failure to follow proper procedures. Failure to notify Income Maintenance Worker of clients' presence, resulting in clients waiting over two (2) hours to see Worker.

April 26, 1989: Grievant received a three (3) day suspension for failure to follow proper procedures. Client waited thirty-five (35) minutes prior to Worker's notification that client was present.

Grievant was also advised that continued problems with her performance would likely result in her discharge.

The grievant returned to work from her three (3) day suspension on May 5, 1989. On this same day an incident occurred which led to the disciplining of the grievant in the instant matter.

At 1:38 p.m. a client registered with the grievant to see Income Maintenance Worker Jan Alft. At 2:15 p.m., Alft went to the Receptionist desk

and noticed the client sitting in the waiting area. Alft complained to the grievant's supervisor, Jo Pade, that she had not been informed a client was waiting to see her. Pade and Linda Berna then met with the grievant and her representative, Barb Greenquist. Pade asked the grievant to explain why she had not informed Alft that a client was waiting to see her. The grievant initially responded that she was busy with clients and the phone. When a review of the registration log demonstrated the grievant had an opportunity to contact Alft, the grievant informed Pade she had attempted to page Alft, then noticed Alft's phone was busy, and then Alft came up to the reception area. Pade then pointed out the grievant still had ample opportunity to contact Alft. The grievant then informed Pade that she had paged Alft twice. Berna asked the grievant when she paged Alft the second time to which the grievant responded, "fifteen to twenty minutes after the first page". Pade pointed out to the grievant that the register the grievant maintains, contrary to procedure, did not show a "P" for paged worker on it.

Berna and Pade then met with Alft. Alft informed them she was in her office during the time in question, had one ten (10) minute phone call, and had not heard a page. Berna and Pade then had Alft return to her desk and they tested the paging system twice. Alft responded she heard both pages.

Berna and Pade also questioned Income Maintenance Worker Supervisor Jane Huebsch to determine if the grievant had contacted her to inform her of any problem in locating an Income Maintenance Worker. Standard procedure is for the grievant to contact her supervisor, Pade, or Huebsch if she is unable to locate a worker. The grievant had not attempted to contact either Pade or Huebsch.

On May 9, 1989, Berna, Pade, Department Director James Dalland and Personnel Director Brad Karger met with the County's attorney, Dean Dietrich, to discuss the possible grievant's termination due to poor work performance and failure to comply with proper procedures. On May 10, 1989, Berna, Pade and Dalland met with the grievant and Union President Pat Haskin to discuss the grievant's termination. The Union raised the possibility that the grievant's inability to perform her job duties was related to personal problems. The grievant agreed to undergo a drug/alcohol abuse assessment under the County and Employee Assistance Program (EAP). The parties also agreed to place the grievant's possible termination in abeyance pending the EAP assessment, that the grievant would continue to work during this period, and that they would meet again on May 12, 1988 to review the matter.

On May 11, 1989, Haskin met with Dalland and informed him that the grievant became nervous about the EAP assessment; that when the grievant called to make the appointment she became nervous and hung up. Haskin then initiated a second call and the grievant's assessment was scheduled for May 16, 1989 at 1:30 p.m. Haskin asked for and received permission from Dalland to accompany the grievant to her appointment. The May 12, 1989 meeting was rescheduled to May 16, 1989 at 3:00 p.m.

On May 12, 1989, at 3:59 p.m., a client registered with the grievant to see Income Maintenance Worker Lori Kostroski. Thereafter, Dalland walked through the reception area and noticed the client sitting in the waiting area. At approximately 5:00 p.m. Dalland again walked through the waiting area and noticed the client was still sitting there. Dalland asked the grievant who the client was there to see. The grievant informed Dalland that it was Kostroski and that Kostroski knew the client was there waiting to see her. Dalland then went to Kostroski's office where he found her doing paperwork. At the hearing, Dalland testified that Kostroski informed him she had not been informed the client was waiting to see her. Kostroski immediately went to the reception area and then took the client to her office. At the hearing, Kostroski testified that she saw the client sitting in the waiting area while she was checking in a new client. That she finished with the new client between 4:30 and 5:00 p.m. and that she did not go to the reception area to check-off the new client when she completed her work with the new client. She then went into another office, next met with her supervisor, and returned to her office to do paper work when Dalland informed her the client was waiting. Kostroski also testified she received neither discipline or counseling about the matter.

Thereafter Pade questioned the grievant as to why Kostroski had not been informed about the client's presence and questioned why the client had to wait one (1) hour. The grievant responded that Kostroski was aware the client was waiting to see her. A review of the grievant's registration log showed that the Income Maintenance Worker was not notified of the client's presence until 4:59 p.m.

On May 15, 1989, Berna, Pade, Dalland and Karger met to discuss the May 12, 1989, incident. In light of the May 5, 1989, incident and the grievant's previous work record they concluded the grievant should not continue to work for the County. In lieu of immediate termination the parties agreed to place the grievant on paid administrative leave until her assessment was completed.

The grievant's May 16, 1989, assessment was rescheduled to June 1. The June 1 assessment was rescheduled to June 20. On June 6, 1989, Karger sent the

following letter to Union Representative Phil Salamone:

PERSONNEL DEPARTMENT  
(715) 847-5451

June 6, 1989

Mr. Philip Salamone  
Staff Representative  
Wisconsin Council 40,  
AFSCME, AFL-CIO  
N-419 Birch Lane  
Hatley, WI 54440

Dear Mr. Salamone:

Re: Agreement Reached Concerning the Employment Status  
of Sally Kislow

This letter will serve to summarize the agreement  
reached between Local 2492 and Marathon County with  
respect to the employment status of Ms. Sally Kislow.

The terms of the agreement are as follows:

1. Ms. Kislow will be given an opportunity to use her sick leave until June 20, 1989 or until a diagnosis of her condition is completed, whichever is sooner. It is expected that a diagnosis can be completed prior to June 20, 1989. The County will work with Health Care Center officials to expedite matters as much as possible.
2. Ms. Kislow will sign a release of information which will grant the Department Director ongoing information regarding Ms. Kislow's attendance at counseling/therapy sessions, provide the Social Services Department with information as to the diagnosis and treatment plan once both are completed, and would permit discussions between the treating professional and the Department Director which may be necessary in order to make decisions relating to Ms. Kislow's employment.
3. The Social Services Department will hold in abeyance all disciplinary actions against Ms. Kislow including any decision regarding termination of employment until information is received from the Health Care Center. Once this information is received, Ms. Kislow's employment status will be reviewed at that time. Additionally, all grievances relating specifically to Ms. Kislow will be held in abeyance on an indefinite basis.

I think that this accurately summarizes the agreement of the parties. Let me know if there is a problem.

Sincerely,

/s/  
Brad Karger  
Personnel Director

On June 20, 1989, the grievant was assessed by Dr. Milo Gordon of the North Central Health Care Center. Gordon concluded that the grievant did not suffer from alcoholism or alcohol dependency. Gordon recommended that the grievant refrain from drinking and that she begin counseling in regard to the effects of alcohol use. However, the grievant did not forward the assessment to the County until after August 4, 1989.

On August 18, 1989, Karger sent the following letter to Salamone:

PERSONNEL DEPARTMENT  
(715) 847-5451

August 18, 1989

Mr. Philip Salamone  
Staff Representative  
Wisconsin Council 40,  
AFSCME, AFL-CIO  
N-419 Birch Lane

Hatley, WI 54440

Dear Mr. Salamone:

Re: Status of Sally Kislow

Marathon County has received a report from the Health Care Center regarding their appraisal of her health. That report identifies a need to stop drinking alcohol and recommends continued counseling over the effects of alcohol usage but provides no firm indication of alcoholism or alcohol dependency.

The County believes that Ms. Kislow's failures to adequately perform her job duties can support a decision to discharge her if such a decision becomes necessary. However, this proposal is being put forward as the terms under which we would consider returning her to work:

1. Upon return to work the expectation is that she will perform all of the normal and expected duties of the position.
2. Appropriate accommodations will be made for any ongoing counseling services provided sufficient notice and documentation is provided.
3. Ms. Kislow will upon return to her position be considered to be on probation for a period of six (6) months. The conditions of the probation will be same as those provided for new employees in the labor agreement.

Please respond to this proposal as quickly as you can. On August 19, 1989, the County will no longer be permitting Ms. Kislow to use sick leave nor will she be returned to work without an agreement being reached between her, the Union and the County.

Sincerely,

Brad Krager  
Personnel Director

cc: James Dalland  
Dean Dietrich

On August 25, 1989, the grievant sent the following letter to Dr. Gordon:

Re: Letter dated August 9,  
1989

Dear Mr. Gordon:

In regards to your letter of the above date, this is my reply.

I do not agree with your opinion of my assessment nor do I agree with your recommendation.

Thank you.

Sincerely,

Sally R. Kislow

cc: Brad Karger  
Dr. Western

Also on August 25, 1989, the grievant sent the following letter to Karger:

Re: Letter of August 19, 1989

Dear Mr. Karger:

Although I do not agree with Mr. Gordon's assessment, I am willing to cooperate for counseling through a recommendation of my own physician at this time.

Also, I am ready, willing and able to return to employment and wish to do so immediately and since I indicated this some time ago, I request my pay be reinstated effective August 21, 1989.

Sincerely,

Sally R. Kislow

cc: Dr. Western  
Mr. Salamone

On August 25, 1989, Dalland sent the following letter to the Grievant:

Ms. Sally Kislow  
809 N. 10th Avenue  
Wausau, WI 54401  
RE: Termination of Employment with Marathon County

Dear Ms. Kislow:

The purpose of this letter is to terminate your employment with Marathon County due to your continuing failure to follow departmental procedures on client registration. The most recent incident occurred on May 12, 1989, when a client (Mr. Darwin Swope) was discovered to have been in the waiting room from 3:59 p.m. to 4:45. During that period you failed to follow the procedures for registering clients and the Income Maintenance Worker was not made aware of Mr. Swope's arrival. I might also note that at the time of this incident Mr. Swope was the only client in your waiting area. Your failure in properly performing this task resulted in an unnecessary delay for this client which reflects poorly upon the Department. Also on May 5, 1989, you left Mr. Vue Yang wait from 1:38 p.m. to 2:15 p.m. when Ms. Jan Alft noticed that he was waiting for her and hadn't been notified by you of his arrival.

This is not a new problem and other attempts to correct this job performance deficiency have not been successful.

On August 23, 1988, you received a written reprimand for poor job performance. One of the areas of deficiency included on that reprimand was an August 8, 1988, incident in which you left a client waiting for 1 1/2 hours without informing the Income Maintenance Worker.

On April 10, 1989, you left a client waiting for two (2) hours before notifying the Income Maintenance Worker. You received a one (1) day suspension for this incident.

On April 24, 1989, you left a client waiting for thirty-five (35) minutes without informing the Income Maintenance Worker. You received a three (3) day suspension for this incident and were notified that any additional incidents of this nature would result in the termination of your employment.

There have been other problems related to your job performance. On March 6, 1989, an appraisal was conducted on your job performance which indicated that you were performing at a very poor level in many areas. On March 2, 1989, you were issued a written reprimand for failure to maintain a reasonable pattern of attendance in your job.

Department staff has made an effort to work with you in attempting to improve your job performance. Since May 18, 1989, you have been allowed to use sick leave in order to seek an assessment for a possible diagnosis of alcohol dependency. On 8/9/89 the County received a copy of a letter from the Health Care Center which indicated some suspected problems associated with alcohol but did not diagnose you as being alcoholic. In your letter of August 24, 1989, responding to the assessment, you seem to deny the existence of any problems associated with alcohol. Based upon this, the Department can only conclude that your performance

problems were not associated with alcohol dependency.

Given the series of incidents involving client registration and the whole of your work record, I feel I have no choice but to take this action which terminates your employment relationship with the Marathon County Department of Social Services.

Sincerely,

/s/  
James E. Dalland  
Director

cc: Phil Salamone  
Personnel File

Thereafter, the instant grievance was filed and processed to arbitration in accordance with the parties' grievance procedure.

#### COUNTY'S POSITION

The County asserts it had just cause to discharge the grievant for continued poor job performance and failure to follow established Income Maintenance Unit procedures. The County argues arbitral law clearly establishes that an employer may discharge an employe for continued poor job performance and failure to comply with established procedures. Particularly when the employer has used progressive discipline, but without avail, to correct the employe's behavior. The County contends the record herein demonstrates both of these elements are present in the instant matter.

The County argues the record demonstrates the following. The grievant's job performance was substandard and she continually refused to comply with established procedures. The grievant's supervisors counseled her in regard to her deficient job performance, warned her that her job was in jeopardy, and attempted to help her overcome any physical or personal problems. The County attempted progressive discipline but the grievant's performance did not improve, but in fact deteriorated as demonstrated by the fact that she failed to notify Income Maintenance Workers that clients were waiting to see them four (4) times during her last four (4) weeks of employment. When the County attempted to give the grievant one last chance to go through an EAP assessment to determine if she had personal problems the grievant threw this opportunity out. She missed or cancelled appointments, failed to submit the assessment to the County in accordance with the parties' agreement until she was threatened with the loss of employment, and then she rejected the EAP's conclusion and recommendations. The County argues the grievant's termination was the only reasonable alternative. The County also argues the undersigned must defer to the County's determination as to the proper penalty to be imposed for the grievant's misconduct.

#### UNION'S POSITION

The Union contends the Receptionist position is a vigorous and stressful job as demonstrated by the testimony of witnesses who filled in for the grievant and the fact that twelve (12) employes have opted out of this position since the grievant's termination.

The Union also argues the fifteen (15) to twenty (20) minute guideline is neither a written nor hard and fast rule. The Union points out the thirty-seven (37) minutes that the client waited on May 5, 1989, is only marginally errant at most. The Union asserts that it is often very difficult if not impossible for the Receptionist to contact an Income Maintenance Worker. Workers cannot be interrupted when they are with clients, which prohibits phone calls and pagings. Further, the Receptionist cannot leave her desk. The Union also points out that Workers and the Receptionist are allowed fifteen (15) minute breaks and a one (1) hour lunch. The Union argues that it is entirely conceivable that the employes involved in the May 5 and 12, 1989 incidents may have been on breaks or in the restroom during the thirty-seven (37) and fifty-five (55) minute periods of client waiting. The Union asserts that pagings are extremely difficult to hear in certain areas of the building, especially the breakroom.

The Union also argues that the grievant claimed to have attempted to contact Alft twice on May 5, 1989. The Union asserts there is no evidence to dispute this claim and the Union points out Alft did not testify at the hearing. The Union contends the County failed its burden of proof by not having Alft testify. The Union also claims that Pade's notes of the incident acknowledge that Alft was on the phone for ten (10) minutes during the thirty-seven (37) minute time period. The Union further claims that the work rule requiring a "P" to be denoted on the log sheet when a page is made is not only unwritten but unknown to the many other employes who perform the duties of this position.

The Union also contends the County's claim that there was five (5)

minutes in which the grievant could have contacted the Worker on May 5, 1989, when the client initially arrived at 1:38 p.m. is an extremely slender thread to hang nineteen (19) years of employment. The Union argues there was no harm done to the County's operation by a mere five (5) minute delay.

The Union further contends that the fifty-five (55) minute delay on May 12, 1989 cannot be placed on the grievant. The Union claims, contrary to the County, that Kostroski was aware the client had arrived as she so testified at the hearing and it was Kostroski's failure to notify the grievant she was available to see the client that caused the delay. The Union asserts no one from management contacted Kostroski to investigate this incident and points out Kostroski, a relatively new hire, was not disciplined. The Union also asserts that Kostroski was not notified of the client's presence until 4:54 p.m., was because the grievant believed Kostroski was still with her previous client. Such an error in logkeeping is at most de minimus, particularly when the grievant knew Kostroski was with a client. The Union concludes there was no wrongdoing by the grievant and would have the undersigned sustain the grievance.

#### COUNTY'S REPLY BRIEF

The County contends the allegations raised by the Union are unsupported by the record and should be given no weight.

The County argues that rather than twelve (12) employees having opted out of the Receptionist position as claimed by the Union, the employees are merely a list of employees who filled in for the grievant. The County argues employees who fill-in cannot be expected to master all the duties of a position. To counter the Union claim there is no hard and fast rule concerning client waiting time the County points to the unfettered testimony of Dalland and Pade and the grievant's previous discipline. The County points out that in neither incident did the grievant attempt to contact the Clerical or Income Maintenance supervisors. Nor is there any evidence that Alft or Kostroski were on break or in the restroom. Furthermore, Pade's notes and testimony of her investigation of the May 5, 1989 incident, particularly concerning Alt's availability were not refuted by the Union and the Union did not object to the introduction of Pade's notes as an exhibit. The County argues that if the Union believed Alft was unavailable the Union presented no evidence to demonstrate such a fact.

The County also argues that the grievant presented no claim at the hearing that she did in fact attempt to contact Alft and points out the grievant did not testify. The County asserts that on May 5, 1989, when the incident was investigated that the grievant changed her story several times. The County argues the grievant should have been able to recall what actions, if any, she did take, particularly when she was aware she was facing discipline. The County also points out that while other employees who fill-in for the grievant were unaware of the necessity of placing a "P" in the log when an Income Maintenance Worker has been paged, there is no evidence that the grievant was unaware of this requirement nor is there any evidence the grievant either stated or claimed she was unaware of this requirement.

Turning to the May 12, 1989 incident, the County asserts there is no evidence that the grievant motioned to Kostroski that a client was waiting to see her. The County, acknowledging that Kostroski did testify that Kostroski felt the matter was her fault because she failed to log out the client she was with, points out the grievant took no action for the entire time the client waited to see Kostroski, even though procedures required the grievant to contact a supervisor after the client had waited twenty (20) minutes. The County argues, that had Dalland not acted, the client would never have seen Kostroski, as the normal workday ended at 5:00 p.m.

The County also claims the Union's argument that the grievant noted on her log that the Income Maintenance Worker was notified at 4:54 p.m. because the grievant thought Kostroski was with her previous client is mere speculation. The County points out again, the grievant did not testify and asserts there is no evidence as to what the grievant thought. The County argues the undersigned should draw a negative inference from the grievant's failure to rebut the County's allegations and explain her actions during the May 5 and 12, 1989, incident.

#### UNION'S REPLY BRIEF

The Union reasserts that there is no hard and fast rule concerning the fifteen (15) to twenty (20) minute guideline and asserts this has not been communicated to employees. The Union again points out there was at most a five (5) minute time period when the grievant could have contacted Alft on May 5, 1989. The Union argues this delay is within the alleged guidelines and clearly is insufficient to cause the discharge of the grievant. The Union also reasserts that the May 12, 1989 incident was not primarily misconduct on the part of the grievant, but rather the result of Kostroski's conduct. The Union points out the County's case fails to acknowledge that the grievant had communicated to Kostroski that the client was waiting and that Kostroski had forgotten about the client. The Union concludes the County was clearly out to get the grievant. The Union also argues the grievant's failure to use the EAP



program is irrelevant as the grievant was not discharged for failure to attend EAP sessions.

#### DISCUSSION

The record in the instant matter demonstrates the following. On August 23, 1988, the grievant received a written reprimand. Pertinent therein, is the following statement:

On August 8th, you failed to inform an IM worker of a client that came in at 2:35. When the workers day ended at 4:00 she went home and had still not been informed. You should be reviewing your client register regularly. There is no excuse for someone waiting 1 1/2 hours and not being seen.

On April 18, 1989, the grievant received a one (1) day disciplinary suspension for allowing a client to wait one and one-half (1-1/2) hours. The grievant was again directed to review the client registration on a regular basis to enable clients to be attended to in a timely manner. On April 26, 1989, the grievant received the following letter concerning a three (3) day suspension:

April 26, 1989

Mrs. Sally Kislow  
400 E. Thomas St.  
Wausau, WI 54401

Re: Disciplinary Suspension for Failing to Follow  
Client Registration Procedures

Dear Mrs. Kislow:

The purpose of this letter is to issue you a three (3) day unpaid disciplinary suspension for failing to follow departmental procedures in client registration. On April 24, 1989, you left a client waiting in the lobby for a period of thirty five (35) minutes without notifying the case worker and without entering Ms. Hanke's name on the client register. It wasn't until the client approached the relief Receptionist at approximately 10:25 a.m. and asked when she was going to be seen that any action was taken to see that Ms. Hanke could meet with her case worker. This problem is not a new one. On April 20, 1989, a one (1) day suspension was issued to you for another incident involving client registration. On 8/23/88 you received a written reprimand which cited a incident where you left a client waiting for 1 1/2 hours.

We have talked about the procedures and there seems to be no question that you do understand them. You have offered no acceptable explanation for your continued failure to properly perform the registration procedure. You said that you do not know if Ms. Hanke had approached you. However, Ms. Hanke told me that she had attempted to register with you.

The County's Employee Assistance Program is available to you by calling 848-4357. If there is any possibility that this or other job performance problems may be related to personal stress, I would encourage you to take advantage of this program.

The three day disciplinary suspension will be implemented on May 2, 1989. On May 5, 1989 you are expected to return to work. This action is to be considered your final warning and you need to understand that continued problems in the area of client registration or other instances involving the failure to follow departmental procedures will in all likelihood result in the termination of your employment with Marathon County.

Sincerely,

Jo Pade  
Clerical Supervisor

cc: Phil Salamone  
Personnel File

At the hearing Clerical Supervisor Pade testified that the grievant was aware that clients were not to wait to see an Income Maintenance Worker more than

fifteen (15) to twenty (20) minutes. That if such a delay occurred, the grievant was to contact a supervisor. There is no evidence to refute Pade's testimony that she had so directed the grievant. Nor is there any evidence to refute Pade's testimony that the grievant had been directed by Pade to denote a "P" on the Income Maintenance Unit log when the grievant had paged an Income Maintenance Worker. The undersigned finds both directives as reasonable, given the grievant's previous disciplinary actions and given the County's interest in maintaining efficiency by the timely meeting of clients' needs.

The undersigned notes here that Union Representative Greenquist attended the meeting on May 5, 1989, when the question of placing a "P" on the Income Maintenance Unit log was directed to the grievant by Pade. While Greenquist testified at the hearing that she has filled-in for the grievant as relief and that she was unaware of the need to indicate on the log an employe had been paged, Greenquist presented no evidence which would refute Pade's testimony that Pade had so directed the grievant. Nor did Greenquist refute Pade's testimony or Berna's notes of the meeting. Based upon the above the undersigned concludes the grievant was aware of both directives and the grievant's failure to document pages or to contact supervisors if clients have been waiting fifteen (15) to twenty (20) minutes, are grounds upon which the County may discipline the grievant for just cause.

The undersigned also finds no merit in the Union's claim that Kostroski was at fault for the May 12, 1989, incident. Kostroski testified that she was aware of the client sitting in the waiting room and had forgotten about him. As pointed out by the County in its reply brief, Kostroski did not state the grievant informed her the client was there waiting to see her. Nor did Kostroski dispute Dalland's testimony that she had informed him on May 12, 1989, that the grievant had not informed her. The above, coupled with the Income Maintenance Unit log kept by the grievant which states that Kostroski was not informed until 4:54 p.m. leads the undersigned to the conclusion that the grievant failed to follow Pade's directives.

The undersigned also finds the Union's claim that the County's failure to produce Alft as a witness leads to a conclusion that the County failed to meet its burden of proof to also be without merit. The Union did not object to the introduction of Berna's notes of the May 5, 1989 investigation. Attached to those notes is a written statement by Alft that she was available during the times in question and that she was not paged.

The undersigned also notes that the parties attempted to resolve this matter through their EAP program. The agreement being that if the grievant needed counseling, an attempt to continue her employment would be made while she underwent counseling. An EAP assessment was made and counseling was recommended. The grievant rejected this recommendation. The Union however, correctly points out the decision to discharge was based upon her performance, not her refusal to undergo counseling. The undersigned has therefore limited the review of the record to the grievant's failure to perform her duties as she had been so directed by her supervisor.

Based upon the above and foregoing and the arguments, testimony and evidence presented by the parties, the undersigned concludes the County had just cause to discipline the grievant. Given that the County attempted to correct the grievant's problems with progressive disciplinary actions and, as the record herein demonstrates, the grievant's performance having failed to improve, the undersigned concludes the County did have just cause to terminate the grievant's employment. The grievance is therefore denied.

AWARD

The County had just cause to terminate the grievant's employment for failure to properly perform her duties.

Dated at Madison, Wisconsin this 17th day of September, 1990.

By \_\_\_\_\_  
Edmond J. Bielarczyk, Jr., Arbitrator