

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
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SAWYER COUNTY COURTHOUSE EMPLOYEES, : Case 103
LOCAL 1213-C, AFSCME, AFL-CIO : No. 48834
 : MA-7729
and :
 :
SAWYER COUNTY :
 :
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Appearances:

Mr. James Mattson, Staff Representative, Wisconsin Council
40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Ms. Kathryn Prenn, Attorney at Law, appearing on behalf of
the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the County or Employer, respectively, were signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear the instant grievance. A hearing, which was not transcribed, was held on May 5, 1993, at Hayward, Wisconsin. Afterwards, the parties filed briefs and reply briefs which were received by September 8, 1993. Based on the entire record, the undersigned issues the following Award.

ISSUE

At the commencement of the hearing, each side gave its version of the issue involved here. The Union stated the issue as:

Did the Employer discharge the grievant from her position in the County's Computer System Department for just cause on February 9, 1993? If not, the remedy is that the Employer reinstate the grievant in her position as a Computer Systems Operator. Likewise, the grievant to be made whole for any and all lost wages and benefits. The Employer to remove from any and all records any references related to this matter.

The County stated the issue as:

1. Did the County have just cause to terminate Gayle Jorczak?
2. If not, what is the appropriate remedy?

Since there was no stipulation on the issue to be decided, the parties asked that the undersigned frame it in the Award. From a review of the record, the opening statements at hearings, and the briefs, the undersigned has framed the issue as follows:

Did the County violate the just cause provision of the parties' collective bargaining agreement when it discharged the grievant? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1991-92 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 5 - MANAGEMENT RIGHTS

The County possesses the sole right to operate the County and all management rights repose in it, subject to the provisions of this contract and applicable laws. These rights include the following:

. . . .

- J. To suspend, demote, discharge or take other disciplinary action against the employees for just cause.

The reasonableness of County action taken pursuant to this Article is subject to the grievance procedure.

. . . .

ARTICLE 14 - DISCIPLINE AND DISCHARGE

- A. The parties recognize the authority of the Employer to initiate disciplinary action against employees, provided such disciplinary action is for just cause.
- B. The Employer recognizes the principle of progressive discipline.
- C. An employee shall be entitled to appeal

any disciplinary action through the grievance procedure.

- D. If any disciplinary action is taken against an employee, both the employee and the Union will receive copies of this disciplinary action.

FACTS

The Union is the exclusive bargaining representative for the County's Courthouse employees. Grievant Gayle Jorczak was employed by the County for twelve years in the Courthouse until her discharge in February, 1993. Prior to her discharge, she had never received any formal discipline.

At the time of her termination, Jorczak worked as the County's Computer Systems Operator and Tax Lister. She had held that job for about two years. Prior to that, she worked about ten years in the County's Zoning Department as the Assistant Zoning Administrator/Sanitarian. In her position as Assistant Zoning Administrator/Sanitarian, her duties included reviewing certified soil test reports, issuing sanitary permits, filing mandated forms and permits, performing zoning inspection work and enforcing the relevant codes and ordinances.

The incidents which resulted in the grievant's discharge occurred when she worked in the Zoning Department.

During the annual audit of the County's financial records for 1991, the County's auditor found \$2,200 in private septic system grant monies which remained on account with the County and had not been dispersed. The \$2,200 was for a (State) septic system grant for a County resident named Nancy Marks. Upon learning this, the County investigated the circumstances that led to these monies ending up in the County's coffers.

The County's investigation revealed the following circumstances. One of the grievant's work duties was to assist eligible County residents apply for a private septic system grant from the State. In the spring of 1989, the grievant prepared a private septic system grant application in her mother's name, Nancy Marks. This private septic system grant application was fraudulent in that it contained intentionally false and incorrect information concerning Nancy Marks' septic system. What the grievant did was take data from another file, namely the sanitary permit prepared and filed by Sawyer County Contractor Donald Thompson on behalf of County resident Joe Gruber, and transpose the data thereon and Thompson's signature onto Marks' application. This was done without Thompson's knowledge or authorization.

After the grievant prepared the grant application in her mother's name, she filed it with the State. This document sought a State grant of \$2,200 for replacing Nancy Marks' existing septic system.

The State ultimately approved the grant and sent the amount sought (i.e., \$2,200) to the County where it was placed in the County's treasury earmarked for Nancy Marks. Neither the grievant nor her mother ever claimed these monies from the County's treasury. The grievant then filled out a "payment claim sheet" and wrote on it that the \$2,200 for Nancy Marks had been "returned" (to the State). After writing this though, she did not make any arrangements for the money to be returned to the State, nor did she tell anyone in the County about the grant money being in the County's treasury earmarked for her mother. Thus, the \$2,200 was not "returned" (to the State) at that time by Jorczak.

Instead, it stayed in the County's treasury earmarked as grant monies for Nancy Marks. The grievant then removed all the documents relating to Nancy Marks' grant application from the Zoning Department's files (i.e., the inspection report, the sanitary permit and the grant application). This removal of documents was contrary to both departmental procedure and the caption on the grant application that says: "Retain in County file for audit." The County later obtained copies of Marks' grant application from the State agency that processed the application.

The grievant admitted at the hearing that the grant application which she prepared in her mother's name contained false information. She also admitted that she knew this was wrong when she did it. The grievant testified at the hearing that the reason she prepared this fraudulent application was that she felt she did not have time to prepare a legitimate application. She acknowledged that if someone else had filed a sanitary permit application like she did that contained incorrect and inaccurate property descriptions and data, she would not have approved it. She also acknowledged that she was not aware of any other septic system grant application filed with the County which had been altered or doctored. The grievant testified that the reason she never claimed the grant monies from the County's treasury was because she forgot about it (i.e., the monies earmarked for her mother being in the County's treasury). The grievant also testified that the reason she wrote that the grant monies had been "returned" was that it turned out that her mother's septic system did not need to be replaced after all.

While the County was investigating the grant application matter, it became aware of irregularities with some soil tests which had been filed with the County's Zoning Department. These irregularities came to light when a soil test submitted under the name of soil tester Ronald Spreckels was filed about a year later than required. The County therefore initiated another investigation in the Zoning Department, this one dealing with the

soil tests irregularities.

The County's investigation revealed the following circumstances. Jorczak worked on the side as a soil tester for area plumbers. A soil test has to be done when a septic system is replaced. In 1990, Jorczak performed 14 soil tests in conjunction with Sawyer County plumber Al Gidley for which she was paid \$75 each. These soil tests were for various Sawyer County residents.

In each instance, Gidley dug the holes necessary to perform the soil tests and Jorczak did the actual soil testing. After Jorczak performed these 14 soil tests, she did not sign the follow-up reports in her own name. Instead, she submitted them under the name and soil tester number of Ronald Spreckels, another Sawyer County soil tester, and signed his name to most of the aforementioned 14 soil test reports. These 14 soil test reports were then filed with the Sawyer County Zoning Department by Gidley, who paid the filing fee. One of Jorczak's work duties as Assistant Zoning Administrator was to review the soil test reports filed with the Department. When Jorczak reviewed the aforementioned 14 soil tests she had done, she was reviewing her own work.

The grievant admitted at the hearing that she signed Spreckels' name to the soil test reports. She also admitted that she knew this was wrong when she did it. She acknowledged that if someone else had filed a soil test report with the Zoning Department like she did that had not been performed by the soil tester indicated on the report, she would not have approved it. Jorczak testified at the hearing that Spreckels authorized her to sign his name to the soil test reports in question. Spreckels testified that he had no knowledge beforehand that these 14 soil test reports had been filed under his name, and that he did not authorize Jorczak to sign his name to them. Jorczak acknowledged that Spreckels did not get any of the money paid to her for the 14 soil tests.

The County completed both investigations at the end of 1992. On December 30, 1992, Jorczak was given written notice of a disciplinary hearing and of the charges against her. The charges are summarized as follows:

- 1) That in the spring of 1989, she knowingly and intentionally prepared and filed a private septic system grant application for her mother which contained false, untrue and incorrect information;
- 2) That during 1990, she prepared 14 soil tests but submitted the test results under the name of another soil tester,

Ronald Spreckels, without his knowledge or authorization;

- 3) That some or all of the soil tests referenced in Section 2 above were performed on work time;
- 4) That performing such soil tests within Sawyer County, regardless of whether they were performed on work time, was contrary to a directive from Zoning Administrator Heath to not conduct soil tests within Sawyer County because it created a conflict with her duties and responsibilities within the Zoning Department.

On February 9, 1993, an investigatory hearing on the above-noted charges was conducted by a special committee of County Board members. At the conclusion of this hearing, the committee upheld charges 1 and 2; it made no formal findings on charges 3 and 4. The committee concluded that these actions were grounds for discharge. It then discharged the grievant that same day. Thereafter, a grievance was filed challenging the discharge which was processed to arbitration.

The grievant testified at the hearing that it was standard operating procedure to take shortcuts in the Zoning Department, including backdating so-called "order letters." 1/ Contractors Don Thompson and Ron Spreckels testified they were not aware of Zoning Department employees cutting corners in terms of paperwork or backdating documents. Zoning Administrator Heath testified that to the best of his knowledge, the dates on documents kept in the Department are accurate with the exception of "order letters" which may have been backdated.

POSITIONS OF THE PARTIES

The Union's position is that the County did not have just cause to discharge the grievant. It characterizes the grievant's actions in falsifying the grant application and signing Spreckels' name to the soil tests as "indiscretions" involving poor judgment.

With regard to the forged grant application, the Union emphasizes that the grievant did not steal any money. In the Union's view,

1/ "Order letters" are essentially form letters wherein the Zoning Department advises a property owner that their existing septic system is bad and has to be replaced within a certain time frame.

this shows that the grievant never had any criminal intent to defraud the County or the State of any money. With regard to the matter of the soil tests, the Union notes that there was no State prohibition at that time against the grievant doing soil tests and then reviewing/regulating those same tests. Next, the Union contends the Arbitrator should view these "indiscretions" of a good employe within the context of the grievant's working environment. According to the Union, that environment was that it was standard operating procedure in the understaffed Zoning Department to cut through red tape and take shortcuts to serve the needy and poorer residents of the County. The Union contends the grievant was following this standard operating procedure when she processed her mother's septic system grant application. The Union also asserts that the responsibility for the grievant's "indiscretions" rest with the County, and not the grievant, because the grievant was never given "clear and concise direction" by the Department head regarding the "proper procedures and standards of conduct" as it relates to these matters. The Union believes the grievant was made the scapegoat for the County's mismanagement. Finally, the Union argues in the alternative that even if discipline is warranted under the circumstances, the penalty which the Employer imposed (i.e., discharge) is too severe given the grievant's twelve years of service and excellent work record. In the Union's view, the Employer simply overreacted when it discharged the grievant for her bad judgment calls. The Union also calls the Arbitrator's attention to the fact that the incidents in question occurred when the grievant worked in the Zoning Department and that she transferred out of there two years ago. The Union submits that her work in the Computer Department has been without incident. The Union therefore requests that the grievant be reinstated with a make-whole remedy.

The County's position is that it had just cause to discharge the grievant. It notes at the outset that the key facts are not in dispute because the grievant admitted at the hearing that she did what she was charged with doing. In this regard, the County emphasizes that the grievant admitted preparing a phony grant application and also submitting 14 soil tests under someone else's name. The Employer believes these actions were blatantly dishonest and represented a severe breach of trust vested in her position. According to the County, there is no excuse for the grievant's misconduct. In its view, none of the following excuses offered by the grievant have merit. First, in response to what it characterizes as the Union's welfare theory, the County asserts that the grievant was not on a mission to serve the County's disadvantaged residents as she claimed when she prepared the fraudulent grant application, but was instead out for her own personal gain. The County submits that the grievant's testimony on this point is simply not credible. It notes in this regard that the only two County residents who could have benefited from

her actions were the grievant and her mother. Second, in response to the Union's argument that it was standard operating procedure to cut corners in the Department, the Employer contends the grievant failed to offer any proof to substantiate this allegation. The County also submits that the grievant's testimony on the point is not credible. It notes in this regard that witnesses Heath, Thompson and Spreckels testified just the opposite, namely that they were not aware of Zoning Department employees cutting corners in terms of paperwork. The County further notes that the grievant acknowledged at the hearing that her allegations about corner cutting had no bearing whatsoever on the matter of the forged soil test reports. Third, in response to the Union's argument that responsibility for what happened here rests with management, the Employer asserts it expects its employees to know right from wrong. The Employer contends the grievant knew her actions were wrong, but she did them anyway. Fourth, in response to the Union's argument that the grievant should be exonerated because she did not intend to defraud the County or State of money, the County submits that this is not a criminal case, so intent is not an issue. With regard to the level of discipline imposed, the County believes termination is supported by the record. In its view, the grievant's actions standing individually constitute grounds for discharge since there were numerous falsifications spanning several months. It argues that under these circumstances, progressive discipline is not applicable. The County therefore contends that the grievance should be denied and the discharge upheld.

DISCUSSION

The just cause provision of the parties' labor agreement requires that the County have just cause to discharge an employee.

The elements to a just cause analysis have been variously stated.

In my opinion, where the agreement does not specify the standards to be applied and where the parties have not otherwise stipulated to them, the just cause analysis must address two elements. The first is that the Employer demonstrate the misconduct of the employee and the second, assuming this showing is made, is that the Employer establish that the discipline imposed was contractually appropriate.

The Employer discharged the grievant for conduct which occurred when she worked in the Zoning Department. The Employer contends the grievant prepared and filed a private septic system grant application for her mother that contained intentionally false and incorrect information. The Employer also contends the grievant performed 14 soil tests in the County and submitted them under the name and signature of another soil tester without his knowledge or consent. These allegations are addressed in detail

below.

My analysis begins with the premise that the County certainly has a legitimate interest in insuring that official documents filed with it and the State are correct, truthful and accurate. Some of the documents involved herein even contain a printed statement to this affect. The County also has a justifiable interest in insuring that its official records are not falsified by employes. The reason for this is obvious: falsified records damage the integrity of the overall system and undermine the public's confidence in same. In the context of this case, the official records involved are a private septic system grant application and a soil test report.

With these interests in mind, the first element of the just cause determination turns upon whether the grievant did what she is charged with doing, namely, preparing a phony septic system grant application for her mother and submitting 14 soil tests under someone else's name. As noted above, this first component of the analysis requires a demonstration of the grievant's misconduct. This determination obviously turns upon the facts involved.

Attention is focused first on the matter of the grant application. The grievant admitted at the hearing that she prepared a phony grant application in her mother's name. Given her admission, there is no question that the grievant did what she is charged with doing. There is also no question that she knew this was wrong when she did it. What she did was take information from another sanitary permit on file in the office and transpose the data thereon onto her mother's application. She also transposed the signature of the contractor who prepared the original document (Donald Thompson) onto her mother's application. She did this without Thompson's knowledge or authorization. After it turned out that her mother's septic system did not need to be replaced, she then removed all the fraudulent documents she had constructed relating to the grant application from the Department's files. When she did this, she knew it was contrary to the Department's long-established practice of keeping all official records. After the State approved the requested grant, it sent the amount sought (\$2,200) to the County, where it ended up in the County's treasury earmarked for Nancy Marks. The grievant then made a notation on another document that this money had been "returned" to the State. This statement was false because, in point of fact, the grievant never stopped the grant application process from proceeding, never told anyone else about the phony application so they could stop it, and never made arrangements for the grant money to be returned to the State. Although the monies stayed in the County's treasury until it was discovered by the County's auditor, the grievant never "returned"

it to the State before the scheme was uncovered.

The County speculates that the reason the grievant left the grant money in the County's treasury was either that she believed her scheme would not be discovered or that she transferred out of the Zoning Department to the Computer System Operator position before she could complete the coverup and arrange for her or her mother to get the money. Frankly, although both proposed scenarios are plausible, the undersigned does not know why the monies stayed in the County's treasury. What is not plausible though, in the opinion of the undersigned, is the explanation offered by the grievant, namely that she simply forgot about it (i.e., the money) being in the County's treasury. In my view, it strains credibility beyond belief to conclude that after going to all the work of constructing the phony grant application, and then disposing of it afterwards so that there was no record of it in the Employer's files, and then falsely noting on another document that the grant money had been "returned" to the State, that the grievant then simply "forgot" why she was doing all this.

Attention is now turned to the matter of the soil tests. The grievant worked on the side as a soil tester for area plumbers. She admitted at the hearing that in 1990 she submitted 14 soil tests she performed for various Sawyer County residents under the name and soil test number of Ron Spreckels, another Sawyer County soil tester, and signed his name to most of the 14 soil tests. Given her admission, there is no question that the grievant did what she is charged with doing. There is also no question that she knew this was wrong when she did it. The reason she signed Spreckels name to the tests rather than her own was that she knew, at a minimum, that since she reviewed soil test reports filed with the Department it would look bad for her to review her own soil tests reports.

The grievant testified that although she signed Spreckels name to the soil tests, he authorized her to do so. Spreckels, on the other hand, denied that such was the case. Obviously, given the foregoing, there is conflicting testimony on this point.

After weighing the conflicting testimony, the undersigned concludes that Jorczak's testimony that Spreckels authorized her to sign his name to the soil tests should not be credited for the following reasons. First, no evidence was offered why Spreckels would testify falsely against Jorczak. There was no showing of any animosity between them. Thus, there is no apparent reason for Spreckels to lie or fabricate on this point, while the grievant is trying to save her job. Second, insofar as the record shows, there was nothing in such an arrangement for Spreckels. The grievant acknowledged that while she was paid \$75 for each of the 14 soil tests, Spreckels received no money for any of the tests.

In fact, since the performance of a soil test often leads to an accepted bid for the installation of a septic system, (contractor) Spreckels actually lost out on the septic system installation work which resulted from the soil tests prepared by the grievant. That being the case, there was no financial incentive for Spreckels to authorize her to use his name. Finally, by his name appearing on the soil test reports, Spreckels no doubt knew he could be held liable for damages if there were any problems with the soil test work done by Jorczak. If a problem arose, Spreckels would have the difficult burden of proving someone had forged his signature.

Given all of this, it makes no sense to the undersigned that Spreckels authorized Jorczak to either sign his name to soil test reports or to submit them under his name to the Sawyer County Zoning Department. Consequently, it is held that Jorczak submitted the 14 soil tests under Spreckels' name without his knowledge or consent.

Assuming for the sake of discussion that Spreckels did, in fact, authorize the grievant to file soil test reports under his name, that fact would not make the grievant any less culpable. As noted earlier, the grievant knew it was wrong to sign someone else's name on a soil test report. If Spreckels had authorized the grievant to submit soil test reports under his name, the only thing this would change would be that both Jorczak and Spreckels would be in trouble instead of just Jorczak.

The Union offers several defenses for the grievant's conduct which it believes should excuse or justify her actions. Based on the following rationale, I find none of them persuasive.

The Union's first defense can be characterized as its welfare theory. According to the Union, the County's Zoning Department acted in a fashion similar to a social services agency because employees assisted the County's poorer residents secure State funds to replace failed septic sewerage systems. Assuming for the sake of discussion that this was indeed the way the grievant saw her job in the Zoning Department, and that she truly felt she was on a mission to serve the County's poorer residents secure funds to replace failed septic systems under the State's septic system grant program, this nevertheless has no bearing on what happened here. This is because the beneficiary of the grievant's phony grant application was not a total stranger to the grievant. To the contrary, it was her mother. Thus, when the grievant prepared and filed the phony grant application in her mother's name, there were only two County residents who stood to benefit from that conduct: the grievant and her mother. That being the case, it is obvious that the grievant was out for her own personal gain.

The Union's second defense can be characterized as its standard operating procedure theory. According to the Union, it

was standard operating procedure to take shortcuts with the paperwork in the Zoning Department to cut through the red tape. It is noted at the outset that the grievant acknowledged at the hearing that this allegation (about corner cutting in the Department) had no bearing whatsoever to the matter of her signing Spreckels' name to the soil tests. That means then that this defense is applicable only to the other matter, namely the phony grant application. If the grievant had shown that it was commonplace for employees to prepare fraudulent grant applications, her standard operating procedure defense would obviously have some merits. However, she did not come close to proving it. At most, the grievant showed that one document in the septic system grant application, namely the so-called "order letter", was sometimes backdated. 2/ Even if "order letters" were backdated though that does not excuse or justify the grievant's actions because she did much more than simply backdate her mother's "order letter"; she prepared an entire grant application that was fraudulent from beginning to end!

Next, the Union contends that responsibility for what happened here rests with the County. This contention is based on the premise that the grievant was not given clear directions regarding proper procedures and standards of conduct. Suffice it to say that I find no merit in this argument. In my view, the Employer does not need to have rules saying: "don't prepare and file phony grant applications" or "don't forge someone else's name to official documents." The concepts just noted are so basic and fundamental that the Employer has the right to expect its employees to both know them and comply with them. Obviously, as the facts herein show, the grievant had trouble with the latter.

The Union also contends that the grievant had no criminal intent to defraud the County or the State of any money. This argument misses the mark. The undersigned is not empowered to decide, and in point of fact is not deciding, whether a crime was committed here. That question is for the courts to resolve. That being so, the undersigned will not decide whether the grievant had a criminal intent when she committed the acts involved here.

Finally, the Union places great emphasis on the fact that the grievant did not actually steal any money. In the Union's view, this exonerates the grievant. I disagree. In point of fact, the Employer did not fire the grievant for stealing money. Instead,

2/ The Union mistakenly asserted in their brief that Jorczak testified that soil tests were commonly backdated. In point of fact, Jorczak testified that "order letters" were backdated, and this point was not disputed by Zoning Administrator Heath.

as previously noted, it fired her for preparing and filing a phony grant application and for submitting 14 soil tests under the name of another soil tester without his knowledge or authorization. The fact that she did not steal any money does not lessen or mitigate those charges against her.

Having concluded that the grievant did what she was charged with and that none of the Union's defenses excuse that conduct, it is held that the grievant's actions constitute misconduct warranting discipline. The fact that this misconduct occurred several years before it was discovered does not affect this conclusion.

The second component of a just cause analysis requires that the Employer establish that the penalty imposed be contractually appropriate. Said another way, the punishment must fit the crime.

The Employer argues that its discharge of the grievant was proper under the circumstances. I agree. First, while the normal progressive disciplinary sequence is for employees to receive warnings and suspensions prior to discharge, that does not mean that all discipline must follow this sequence. Some offenses are so serious that they are grounds for summary discharge even if, like here, the employee has a good work record and not been previously disciplined. In the opinion of the undersigned, that is the case here. Although the Union characterizes the grievant's actions as mere "indiscretions" involving "poor judgment" on her part, I believe it was much more serious than that. The grievant's conduct involved falsifying documents, forging signatures and dishonesty. All are so-called cardinal offenses of employee misconduct which do not require progressive discipline prior to discharge. Next, there is nothing in the record which indicates that the grievant was treated in less than an even-handed fashion. Other than the incidents noted herein, there is nothing in the record indicating that the Employer knew of, or had tolerated, similar incidents. That being so, it does not appear that the grievant herein was subjected to any disparate treatment in terms of the punishment imposed. Finally, it cannot be overlooked that the incidents involved here were not single, solitary instances, but instead were numerous and repetitive. As such, they are indicative of what could happen in the future if the grievant continued to work for the County, even in a different position. Accordingly, then, it is held that the severity of the discipline imposed here (i.e., discharge) was neither disproportionate to the offenses nor an abuse of management discretion, but was reasonably related to the seriousness of the grievant's proven misconduct. The County therefore had just cause to discharge the grievant.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the County did not violate the just cause provision of the parties' collective bargaining agreement when it discharged the grievant. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 15th day of November, 1993.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator