

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:
of a Dispute Between	:
	:
RUSK COUNTY COURTHOUSE EMPLOYEES	:Case 73
AND SOCIAL SERVICES SUPPORT STAFF	:No. 49384
LOCAL 2003, AFSCME, AFL-CIO	:MA-7926
	:
and	:
	:
RUSK COUNTY	:
	:

Appearances:

Mr. Guido Cecchini, Staff Representative, on behalf of the Union.
Weld, Riley, Prenn & Ricci, by Mr. James M. Ward, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Ladysmith, Wisconsin, on October 5, 1993. The hearing was not transcribed and the Union presented oral argument in lieu of filing a brief. The County thereafter filed a brief which was received by October 15, 1993.

Based upon the entire record, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Did the County have just cause to suspend grievant Delores Stevens and, if not, what is the appropriate remedy?

DISCUSSION

Stevens works in the County Clerk's office as a Deputy I.

On April 15 and 16, 1993, 1/ County Clerk Melanie Meyer and Deputy Clerk Gerri Nelson were absent from work. As a result, Stevens and Deputy County Clerk Kimberly Petska, a new employe finishing her probationary period, were the only ones working in the Clerk's office that day. Throughout those days, Stevens was

1/ Unless otherwise stated, all dates hereinafter refer to 1993.

absent from the office for long periods, the exact time of which is unknown because Stevens chose not to testify here and because no one kept track of the total time that she was missing from the Clerk's office.

Nevertheless, Petska testified that Stevens was gone for at least half of the day on April 15, but that she did not "remember a lot about April 16"; that her office was very busy on April 15; that Stevens' duties sometimes take her to other parts of the courthouse; and that no one had asked her to keep an eye on Stevens. Two other employes from other departments asked Petska where Stevens had gone, with one of them saying that Petska should report the matter to Meyer when she returned. One of them, Ruth Neisler, testified here that Stevens on one occasion was missing from the Clerk's office for about 45 minutes. Meyer, who had been told about the situation from someone else, subsequently spoke to Petska and told her to write a report about what had happened. Petska a few days later then prepared the following written statement which she gave to Meyer:

On April 15 and 16, 1993, Gerri Nelson, Deputy II, was on vacation. Delores Stevens, Deputy I, and myself, Kim Petska, Deputy I, were the two remaining persons in the department.

The department was busy the two days Gerri Nelson was gone, partly because our department was a person short. I noticed Delores was "in and out" of the office for most of the day, and most of the phone calls that came in, I picked up. I also handled a majority of the counter work. I did not confront Delores or report this to anyone else. A supervisor came from another department on two separate occasions and asked me where Delores Stevens had been for most of the day. I told the supervisor that I did not know. The supervisor asked me to report Delores Stevens to my supervisor, Melanie Meyer, County Clerk.

An employee, from the treasurer's office, said she had timed Delores when Delores went for break, she said Delores Stevens was gone a length of 45 minutes on her afternoon break.

Delores Stevens confronted me one afternoon in the County Clerk's office and accused me, Kim Petska, of reporting her, Delores Stevens, to Melanie for not doing her work "it had to have been you since you were the only one in here" Delores told me. I told Delores I was not the one who had "reported" her. Right after this

incident, a rumor was started about Mike Naczas, Building and Grounds Supervisor, and myself, Kim Petska. It was a very untrue, vicious rumor. Delores Stevens was the source of that rumor according to other employees of the courthouse.

I write this document without discrimination to Delores, any other co-worker, or myself.

Kim Petska, Dep. Co. Clerk /s/

On April 22, Meyer met with Stevens, along with Union stewards Lynn Mataczynski and Lisa Podgornik for about three hours. At the outset of their meeting, Meyer gave Stevens the following letter:

DATE: April 22, 1993

TO: Delores Stevens

FROM: Melanie Meyer

I am, by this letter, suspending you from work for a period of one (1) working day, without pay, as disciplinary action, commencing April 23, 1993. On April 15 and April 16, 1993, in the morning you took approximately 45 minutes for each morning break. You were observed to be away from your desk more than usual during the entire day. As only two staff were in the office and you were the most senior, this is not the correct behavior. When you were at your desk at least two phone calls were made which were not of a business nature. I am imposing a disciplinary suspension of one (1) day from work, commencing April 23, 1993.

You will report back to work on April 26, 1993, your regular starting time. I expect you will take this opportunity to correct your improper conduct in the future, fully meet the duties and responsibilities required of you and observe all the rules of employment. If you fail to do so, you will subject yourself to further disciplinary action, including discharge and termination of your employment with Rusk County.

Meyer testified here that she did not speak to Stevens before writing the letter; that her mind remained open during the meeting

as to whether to suspend Stevens, saying "If something came up, I would have reduced it to an oral reprimand"; that she does not believe that she ever told anyone in the meeting not to take notes; that the purpose of the meeting was to tell Stevens that "being away from her desk was very inappropriate"; that Stevens replied, "I could have used my comp. time"; that she, Meyer, replied, "I don't want to hear about it"; and that Stevens never explained her whereabouts on April 15 and 16.

Mataczynski testified that Meyer never asked Stevens for an explanation; that Meyer told her that notes of the meeting would be unnecessary; that Meyer's mind was made up to suspend Stevens at the beginning of the meeting; that she and fellow Union officer Podgornik then asked Stevens for an explanation; and that Stevens replied that she had made certain telephone calls and that she visited the Ambulance Coordinator and the Department of Social Services.

Podgornik corroborated Mataczynski's testimony and added that Stevens "explained herself at the meeting"; that Meyer told them to stop taking notes because their discussion was "off the record"; and that Meyer didn't want to get into a detailed explanation of what had happened.

Thereafter, Stevens served her one-day suspension without pay, hence leading to the instant grievance.

In support of Stevens' grievance, the Union primarily contends that this entire episode is a "comedy of errors" because there is no proof that Stevens either abused her break privileges or made inappropriate telephone calls; that the County violated Stevens' due process rights by failing to speak to Stevens before Meyer decided to suspend her and by prohibiting Union representatives from taking notes of their April 22 meeting; that the County still has no idea of what "the facts are"; and that the Personnel Committee never answered the grievance, as it is required to do under the contract. As a remedy, the Union asks that Stevens' suspension be overturned; that she be made whole; and that the suspension be expunged from her personnel file.

The County, in turn, argues that the Union's attempt to dwell on procedural matters is "disingenuous" because the County, in fact, did not violate any of Stevens' procedural rights since Meyer properly investigated this incident before meeting with Stevens on April 22 and since Stevens during that meeting was given sufficient time to explain herself. As for the merits, the County asserts that it had grounds to discipline Stevens because she has failed to offer any plausible explanation as to why she spent so much time out of her office on April 15 and 16; that Stevens herself has tacitly acknowledged her wrongdoing by asserting that she could have taken compensatory time off for that time; that based on Petska and Neisler's uncontroverted testimony,

it has presented a prima facie case for her suspension even though Stevens chose not to testify; and that it must be presumed that Stevens "did not testify for the simple reason that she cannot account for her whereabouts in a manner inconsistent with Ms. Meyer's conclusion that she was loafing on the job."

The County has, indeed, made a prima facie case, as I credit the testimony of both Petska and Neisler who testified that Stevens was gone for long stretches of time. Since Stevens chose not to testify, their testimony stands un rebutted. Further proof of this is reflected by the fact that Stevens on April 22 offered to take compensatory time for April 15 and 16, something she would not have done if she were not in the wrong.

But at the same time, I credit Podgornik and Mataczynski's testimony that Meyer prohibited them from taking notes in the April 22 meeting and that Meyer made up her mind to discipline Stevens before the meeting started. Meyer's predisposition thus violated one of the important procedural steps encompassed by a just cause standard because it is axiomatic that an employer must fully investigate and speak to an employe before discipline is imposed.

The penultimate question here then becomes whether these errors are sufficient to negate Stevens' misconduct in leaving her job for large stretches of time on April 15 and 16.

There are three possible approaches to this problem: one is to set aside any discipline in the face of such procedural problems; the second is to totally ignore such problems and, instead, only focuses on the alleged wrongdoing; and the third calls for setting aside discipline only when such procedural errors, in fact, prejudice a grievant.

I believe that the third approach is best because it balances a grievant's due process rights and an employer's concomitant right to discipline employes for proven wrongdoing. That, in turn, can only be done by focusing on the facts of each case to determine where this balance should be struck.

Here, there is no evidence that Meyer's prohibition on the taking of notes and her predisposition to judge Stevens in fact, were prejudicial, as the one-day suspension levied is entirely appropriate for the offense. Moreover, Stevens has failed to show that she was not guilty of the offense charged. To the contrary, she herself tacitly acknowledged her wrongdoing by claiming on April 22 that she simply could have taken compensatory time during her long absences. Absent any reasoned explanation to justify her absences, it therefore must be concluded that there is insufficient proof in this record that the County's errors were in fact prejudicial. Hence, the one-day suspension stands.

In so finding, however, it must be further noted that the County in the future must follow the procedural safeguards encompassed by the just cause standard and that, furthermore, it cannot prevent Union officers from keeping notes of any grievance meetings.

AWARD

That the County had just cause to discipline grievant Delores Stevens; the grievance is therefore denied.

Dated at Madison, Wisconsin this 17th day of December, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator