

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 150

and

UNICARE HOMES, INC., d/b/a
HEARTSIDE REHABILITATION CENTER

Case 16
No. 53201
A-5415

Appearances:

Mr. Thadd Hryniewiecki, Representative, for the Union.

Mr. C. William Isaacson, Senior Labor Counsel, for the Employer.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "Employer", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held on March 1, 1996, in Milwaukee, Wisconsin. The hearing was not transcribed and both parties there presented oral argument in lieu of briefs.

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

ISSUE:

The parties have agreed to the following issue:

Did the Employer have just cause to discharge grievant Mark R. Brown and, if not, what is the appropriate remedy?

DISCUSSION:

The Employer operates a 232-bed nursing facility in Milwaukee, Wisconsin, where Resident Aide Brown has been employed for about four (4) years. He was disciplined on March 20, 1995, for being disrespectful to management and for leaving his duty station and on June 18, 1995, for being away from his duty station when he was suspended for three (3) days. Brown did not grieve either disciplinary action.

Shift Manager Pearly Steinert testified that on August 20, 1995, 1/ she saw Patient "N" -

who has seizure disorders - sitting in a shower chair over a toilet where he was "left alone"; that employees are not allowed to leave disabled patients alone in that fashion; that she and an aide took him off the shower chair and put him in a wheelchair; and that Patient "N" had red marks on his buttocks from sitting in the chair so long. Steinert subsequently saw and spoke to Brown about the incident, who replied, "Oh, I'm so sorry. I forgot about him" and, "I left him up there for about an hour." She stated that Brown at that time never implicated any other employees as to why he left the patient alone.

Nursing Supervisor Myrtle Olson testified that she saw Patient "N" that day and that he had red marks on his buttocks. She immediately spoke to Brown about the incident who at that time never implicated any other employees as to why Patient "N" was left alone.

Resident Aide Bertice Ziegler testified that she worked the same shift as Brown on August 20 and that he that day never asked her to watch Patient "N".

Administrator Jill Archambo testified that Brown was fired over this incident and that he would have been fired even if he had not been previously suspended because it was a Class 2 offense warranting immediate discharge under the Employer's work rules. She added that Brown at the third step of the grievance procedure for the first time claimed that he had asked Resident Aide Ziegler to look after Patient "N" so that he could work elsewhere and that Brown then claimed that he did not mention Ziegler earlier because he assumed that he would be fired in any event.

Director of Residential Services Stacy Englund corroborated Archambo's testimony by saying that Brown first mentioned Ziegler at the third step of the grievance procedure.

For his part, Brown testified that he reported to work late on August 20 and that he was put on another floor; that he toileted and strapped down Patient "N"; that he then went to shower another resident and that he asked Ziegler to look after Patient "N", to which she agreed. He further stated that he did not mention Ziegler when supervision first confronted him over this incident; that he is a good employee and has gotten good evaluations; and that he knows that residents such as Patient "N" cannot be left alone for any period of time, which is why he asked Ziegler to stay with him.

On cross-examination, Brown admitted that his August 20 statement regarding the incident - wherein he stated "I just forgot about" the patient - is "somewhat incomplete" because "I left Bertice [Ziegler] out of it."

The Employer on August 20 suspended Brown over this incident pending a further investigation. On the next day it fired him.

In support of Brown's grievance, the Union basically asserts that the Employer has failed

to meet its burden of proof; that Brown is a good employee who had "no pattern of neglect"; and that he merely exercised "poor judgement" when he asked Ziegler to look after Patient "N". The Union therefore requests that Brown be reinstated and made whole.

The Company, in turn, contends that "talk is a good game" and that Brown's lack of credibility is an "open and shut book"; that Brown in fact was guilty of leaving a patient alone; and that even if his offense was not a Category 2 offense warranting immediate discharge, it at a minimum was a Class 1 offense which, when combined with his other two serious disciplinary offenses within a twelve (12) month period, still warranted his discharge under its disciplinary procedure.

In this connection, it is undisputed that the Employer's patient rules require Resident Aides to remain with patients when they are placed on a toilet. It also is undisputed that Brown was well aware of this rule. Brown's only defense therefore centers on his claim that he on August 20 asked fellow Resident Aide Ziegler to look after Patient "N".

I am unable to accept Brown's claim because he did not mention Ziegler on August 20 when he spoke to supervision or when he filed a written statement that day which admitted "I just forgot about" Patient "N". These contemporaneous actions have far more weight than Brown's subsequent attempt to shift the blame to Ziegler whose denial I credit.

Having therefore violated the Employer's work rule which requires Resident Aides to remain with disabled patients when they are put on a toilet, Brown subjected himself to discipline. Since he was previously suspended on June 18, the Employer had just cause to impose discipline at the next step of the disciplinary chain irrespective of whether his offense was under Class 1 or 2.

In light of the above, it is my

AWARD

That the Employer had just cause to terminate Grievant Mark R. Brown; his grievance therefore is denied.

Dated at Madison, Wisconsin, this 20th day of March, 1996.

By Amedeo Greco /s/
Amedeo Greco, Examiner