

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**IRON COUNTY PUBLIC EMPLOYEES
LOCAL 728-D, AFSCME, AFL-CIO**

and

IRON COUNTY

Case 54
No. 57570
MA-10676
(David Aijala Grievance)

Appearances:

Mr. James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

Ms. Jodie Bednar, Acting Iron County Coordinator, on behalf of the County.

ARBITRATION AWARD

The Iron County Public Employees Local 728-D, AFSCME, AFL-CIO (herein the Union) and Iron County (herein the County) are parties to a collective bargaining agreement, dated March 15, 1999, covering the period January 1, 1999, to December 31, 2001, and providing for binding arbitration of certain disputes between the parties. On November 1, 1999, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration on discipline imposed upon David Aijala (herein the Grievant) and requested the appointment of a member of the WERC staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on November 16, 1999. The parties presented oral arguments at the hearing and no briefs were filed.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Employer have just cause when it gave the Grievant a three-(3) day suspension without pay?

The parties further stipulated that in the event just cause was not found, the Grievant should be made whole for any and all lost wages and benefits incurred as a result of the suspension.

PERTINENT CONTRACT PROVISION

ARTICLE 7- DISCHARGE

Section 1. The parties recognize the authority of the County to initiate disciplinary action against employees for just cause.

Section 2. The Employer and the Union both recognize the principle of progressive discipline when applicable to the nature of the misconduct giving rise to the disciplinary action.

. . .

Section 4. If any disciplinary action is taken against an employee, both the employee and the Union will receive copies of the disciplinary action. After a written warning has been on file for one (1) year without intervening disciplinary action, it will be removed from the employee's personnel file.

Section 5. Employees shall comply with all reasonable work rules. The Employer retains the right to determine and enforce reasonable rules and regulations and the right to make reasonable changes in such rules and regulations and to enforce such changes. A copy of said rules and regulations and any changes thereof shall be sent to the Union.

OTHER PERTINENT PROVISIONS

IRON COUNTY WORK RULES

All employees of Iron County are prohibited from committing any of the following acts:

1. Abusive, discourteous, insulting or inflammatory communication or conduct toward a client, inmate, fellow employee(s), or the public.
2. Insubordination, disobedience, inattentiveness, willful misconduct or refusal to carry out written or verbal assignments, directions, or instructions.

3. Disorderly or illegal conduct that adversely affects the operation of County business including, but not limited to, the use of loud, profane, or abusive language; horseplay; gambling; or harassment.

Violations of Work Rules

Violations of Work Rules are considered sufficient grounds for disciplinary action ranging from reprimand to immediate discharge, depending on the seriousness of the offense and/or the number of infractions and/or any other relevant reasonable factors that are fairly considered. The County Coordinator should be consulted in such cases.

BACKGROUND

The essential facts of the grievance are not seriously in dispute. Iron County has employed the Grievant, David Aijala, as a custodian in the County Courthouse for over 19 years. Prior to May 1998, the Grievant did not have a direct maintenance supervisor, and was essentially autonomous in the conduct of his job. To the extent that oversight and supervision was needed, it was provided by the County Board Chairman, County Coordinator or County Finance Director. It appears that for most of his tenure with Iron County, the Grievant has not had an immediate supervisor. He was the sole Courthouse maintenance worker and had considerable latitude in deciding how and when to complete his various tasks. It is also apparent that the Grievant was frequently at odds with the County administration regarding his job performance, as evidenced by the correspondence in his personnel file. The record does not reflect that this was due to malingering, however, but grew out of differences of opinion over the priority to be given to different tasks and the Grievant's conviction that his expertise put him in a better position to make these determinations than the administration.

In May 1998, the County created the position of Maintenance Supervisor, in part to directly monitor the Grievant's work, and appointed John Carli to the position. The Grievant was disappointed, and perhaps somewhat resentful, over this turn of events, in part due to his desire to have received the position himself, and in part due to the implication that he needed supervision after 18 years employment with the County. This situation colored their working relationship and provides context for the events in question.

Over the year prior to the incident, which is the subject of this grievance, the County has documented a number of occasions where the Grievant got into a conflict with supervision over an assigned task. They may be summarized as follows:

- On April 28, 1998, after the Grievant had apparently ignored verbal instructions, David Morzenti, the Iron County Coordinator, issued a letter of reprimand to the Grievant and instructed him to clean and remove trash from the boiler room as the

telephone company technician was unable to service the equipment due to the amount of garbage in the area. Morzenti gave the Grievant until April 30 to do the work or "I will recommend to the Finance Committee that you be suspended without pay or benefits for such time as they deem appropriate."

- On June 11, 1998, Maintenance Supervisor John Carli instructed the Grievant to clean the floors, toilets and walls in the bathrooms by 8:00 a.m., Monday June 15, which was not done. At 8:20 on June 15, Carli again ordered the Grievant to do the work and documented the incident to the Grievant's file.
- On July 7, 1998, Carli contacted the Grievant, who was on vacation, to ask about the whereabouts of certain keys the Grievant was to leave at the Sheriff's Office prior to leaving. The Grievant responded that he had the keys, but didn't want to bring them in and that Carli should get a spare from a locker in the furnace room. Carli was unable to find the spare and again called the Grievant to ask him to bring in the keys, which he again refused to do, whereupon Carli ordered him to bring in the keys and the Grievant again refused. Carli then contacted the County Board Chairman, James Butterbrodt, for assistance and Butterbrodt called the Grievant to instruct him to bring in the keys to which the Grievant replied, "Goddamn keys," and "Jesus Christ," whereupon Butterbrodt hung up on him. Carli then placed a memo in the Grievant's file recording the incident.
- On September 14, 1998, Carli called the Grievant, who was on vacation, to instruct him to strip the hallway floors when he returned to work the next day and reminded him again the following afternoon. On the morning of September 16, the work had not yet been done so Carli ordered the Grievant to do it immediately. The Grievant ignored Carli's specific instructions as to how to do the work and did not complete the task by the end of his shift. Carli noted the incident in the Grievant's file and, on September 16, Morzenti issued a letter of reprimand to the Grievant advising him to follow Carli's instructions to the letter in the future and warning him that further disciplinary action could result from the incident.
- On September 29, 1998, Carli instructed the Grievant to repair a stuck faucet in a jail cell. Some time later, Carli found the Grievant cleaning bathrooms and asked if he had repaired the faucet. The Grievant said he had not and that he intended to finish the bathrooms first. Carli told him to repair the faucet immediately or he would be written up, to which the Grievant replied, "Write yourself up," and went back to cleaning. Carli noted the incident in the Grievant's file.

The incident, which is the subject of this grievance, occurred on February 5, 1999. At approximately 9:30 a.m. on that day, Carli sought out the Grievant, who was finishing his break, and told him he had a job for him to do and to come to the Sheriff's Department as soon as he was done with his break. Twenty minutes later, Carli discovered the Grievant wiping up

the floor of the break room, told him to come at once and asked him why he was late. The Grievant replied that he had to go to the bathroom and then wanted to wipe up some wet spots on the break room floor. Carli commented that the Grievant should go to the bathroom while on break, not after it was over, which the Grievant claims had not been discussed before. The Grievant replied, "Oh, fuck you! Why is that a problem?" Carli then gave him a paint can and brush and told him he wanted him to paint the trim in the hall near the Sheriff's Department. The Grievant objected because there were other tasks he had intended to perform and he wasn't wearing painting clothes, so Carli then instructed him to do the painting at once, to which the Grievant replied, "Fuck you, do it yourself!" Carli then told the Grievant he would be written up for insubordination and left, while the Grievant remained to do the painting.

While the Grievant was continuing painting, he encountered County Board Chairman Butterbrodt in the hall and complained to him about Carli's treatment. Butterbrodt responded that Carli was his superior and that he should do as he was instructed. The Grievant replied that after this many years on the job he knew what needed to be done without being told and began arguing with Butterbrodt, at which time he again used abusive language, criticized Butterbrodt's performance on the County Board and commented that "he could be replaced."

Sometime later on February 5, Carli returned with a written statement regarding the incident and asked the Grievant to sign it, which he initially refused to do. The two again got into a heated argument in the hall at which time the Grievant again swore at Carli. During the argument, the Sheriff came out of his office due to the noise and ordered the two to leave the area. At a later, time the Grievant did sign the letter. As a result of the foregoing incident, on February 10, the Acting County Coordinator, Jodie Bednar, suspended the Grievant for 3 days without pay and issued the following letter:

Mr. Aijala:

As Acting County Coordinator, I have been advised that, on Friday, February 5, 1999, you engaged in conduct which constituted violations of Iron County Work Rules prohibiting "Insubordination, disobedience, inattentiveness, willful misconduct or refusal to carry out written or verbal assignments, directions, or instructions (I.C.W.R. 2) and "Disorderly or illegal conduct that adversely affects the operation of County business including, but not limited to, the use of loud, profane, or abusive language . . . (I.C.W.R. 3)".(sic) Specifically, you disobeyed your immediate supervisor, John Carli, Jr., by failing to report to the Iron County Jail facility, as directed by Supervisor Carli to perform assigned tasks. When Supervisor Carli escorted you to the dispatch area of the jail facility and instructed you to paint a portion of the wall trim, you told him to do it himself, in a loud manner, utilizing profane and abusive language. You later confronted County Board Chairman James Butterbrodt regarding the matter, again utilizing abusive language.

This is not the first time that you have violated the foregoing Work Rules, nor is it the first time that you have received notice of the unacceptability of your conduct. Indeed, you have previously received numerous letters of reprimand, and written notification that your conduct could result in suspension without pay or benefits.

Due to the seriousness of the infractions referenced herein, please be advised that you are hereby suspended without pay or benefits for a period of three days, to-wit: February 11, 12, and 15, 1999. Further, please be advised that any future violations of Work Rules will result in discipline, including suspension without pay.

By copy of this letter, a copy of the letter reporting your conduct, from Supervisor John Carli, is being provided to your union president and representative.

Sincerely,
Jodie L. Bednar
Acting Iron County Coordinator

The Grievant signed the letter, acknowledging receipt and copies were provided to the local Union President, the Union Staff Representative and the members of the County Finance Committee. The Union filed a grievance, alleging that the County did not have just cause for imposing the discipline, which was denied, and the matter proceeded to arbitration. Additional facts will be referenced, as necessary, in the discussion section of the award.

POSITIONS OF THE PARTIES

The Union

The Union does not believe the County had just cause for imposing discipline on the Grievant in this case due to extenuating circumstances. At the time of the incident, the Grievant was assigned to the task of painting floorboards, which he accomplished, but at the same time he was concerned about other jobs which needed immediate attention. In particular, he was concerned about the need to clean a jury room before the morning court session and a safety hazard posed by spilled water on the break room floor. His frustration, which led to the confrontation, was due to the fact that he had asked his supervisor, John Carli, for assistance, which he was unwilling to give.

It is not true, as the County contends, that the Grievant does not recognize or accept the authority of his supervisor. The issue is not one of authority, but rather is one of communication, or the lack thereof. The record shows that the Grievant is a 19-year employe, with a minimal disciplinary record, and that when instructions are properly given, he complies

with them. Past confrontations cited by the County are, likewise, the result of misunderstandings and do not rise to the level of formal discipline, except in one instance. Moreover, the principle of progressive discipline requires that the employe understand what the expectations and consequences are for certain behaviors. This was not done here. Past incidents have been blown out of proportion and there is no indication that the Grievant was ever adequately informed that discipline could result from his actions. As an employe of long standing with an insignificant disciplinary record, therefore, the Grievant should receive the benefit of the doubt and deserves a reduction or remission of his suspension.

The County

The facts of the case are not in dispute. The Maintenance Supervisor, John Carli, had the authority to instruct the Grievant to paint the trim area around the jail. The Grievant, however, objected to doing the job, confronted Carli and was abusive and profane. He later confronted Carli again upon receiving a reprimand for the first incident and also got into an argument with the Chairman of the County Board of Supervisors regarding the same matter. The County views this behavior as gross insubordination, disobedience and willful misconduct on the part of the Grievant. This is an express violation of the Iron County Work Rules.

The Grievant's work record is replete with reprimands received in the past. His long tenure with the County, therefore, is an aggravating circumstance, not a mitigating one, because he knows the work rules and has received copies of them. The underlying issue is that the Grievant does not want a supervisor and has been consistently uncooperative, even though he has never received an unreasonable order or request from his supervisor.

The County affirms the principle of progressive discipline, as defined in the contract, but notes that there have been ten documented past incidents wherein the Grievant has been reprimanded. This is not, therefore, a situation where the County acted precipitously or without justification. Given the Grievant's history and the seriousness of the violations, the County was given no alternative and the suspension issued here was the least restrictive appropriate disciplinary action available. The record bears out that the Grievant needs structure in the workplace, that the discipline administered was appropriate and that the Grievant has become a better employe as a result, therefore, the grievance should be denied.

DISCUSSION

This case resolves itself into essentially two issues. In the first place, the question is raised whether, under all the facts and circumstances, the County had just cause to discipline the Grievant for his conduct on February 5, 1999. Assuming that just cause is found, however, a secondary question is whether the County violated its contractual commitment to the principle of progressive discipline by issuing the punishment it did.

The County's stated grounds for the suspension were the Grievant's alleged violations of County Work Rules #2, which prohibits "insubordination, disobedience, inattentiveness, willful misconduct or refusal to carry out written or verbal assignments, directions, or instructions," and #3, which prohibits "disorderly or illegal conduct that adversely affects the operation of County business including, but not limited to, the use of loud, profane, or abusive language; horseplay; gambling; or harassment." The County has the burden, therefore, to establish that the Grievant committed the acts complained of, that such acts did violate the Work Rules and that the discipline administered was fair and reasonable under the circumstances.

As to the facts of the incident, there is little dispute. By the Grievant's own admission, the alleged altercations with Carli on February 5 did occur as described and he did curse at Carli as alleged on those occasions. He likewise concedes that the confrontation with Butterbrodt occurred. In both cases, the Grievant's testimony does not differ significantly from that of Carli or Butterbrodt. The dispute, therefore, does not arise from differing versions of the essential facts, but rather, stems from the Grievant's view that Carli, and the County Coordinator as well, over-reacted to the situation and that the County violated the principle of progressive discipline by suspending the Grievant without first employing a less severe method of discipline.

The precipitating event to the entire episode was clearly the Grievant's decision to go to the bathroom and then wipe up the break room floor before reporting to the jail area for assignment as directed by Carli. He then swore at Carli after Carli rebuked him and again when Carli directed him to paint the trim in the hall. In these instances, he testified that he reacted as he did because he thought Carli's criticism was unreasonable and because he felt there were other jobs requiring more immediate attention. At this point, Carli determined that the Grievant's conduct warranted discipline and told him he would be receiving a written reprimand. While Carli was preparing the reprimand, the Grievant argued with and verbally abused the County Board Chairman over his treatment by Carli. Finally, he got into another loud and profane argument with Carli upon receiving the written reprimand for the previous incident. This incident resulted in intervention by the Sheriff. In all, there were no less than five occasions on which the Grievant either ignored instructions from persons in authority or confronted them in an abusive and profane fashion. The County Coordinator was informed of the incident and, taking into account the fact that the Grievant continued to act in an insubordinate and abusive manner even after being reprimanded, decided to suspend him.

At the very least, the Grievant's initial confrontation with Carli over the painting job included violations of Work Rule #3, which expressly proscribes loud, profane, or abusive language. In my view, his behavior also constitutes insubordination, in violation of Work Rule #2. Insubordination involves the refusal or failure to follow an express directive from a person in authority. This requires that a) a clearly expressed directive be given, b) the person giving the directive have the authority to do so and c) the employe refuses to comply. In the first instance, the Grievant elected to attend to other business rather than follow his supervisor's instruction to immediately report to the jail area for assignment, eventually

requiring the supervisor to return a second time to get him. He argued with his supervisor over the priority to be given to different tasks and, at one point, refused to do the painting, although he later completed the task after he was informed that he would be receiving a reprimand. It is axiomatic that the workplace is rarely, if ever, a democracy. Supervisory personnel, by definition, have authority to give orders regarding the work to be done and the right to expect them to be carried out. If the Grievant felt the order was improper or violated the contract, his proper course was to comply and then grieve the Supervisor's action if he felt it was warranted. Under the circumstances, therefore, I find that Carli had just cause to issue the reprimand to the Grievant.

At that point, however, the Grievant escalated the situation by complaining about Carli's treatment to the County Board Chairman and then verbally abusing him when he proved unsympathetic and again when he resumed his argument with Carli over the reprimand outside the Sheriff's office. These instances, too, constituted violations of Work Rule #3 due to the Grievant's ". . . use of loud, profane, or abusive language," beyond the initial infractions which led to the reprimand in the first instance and would, standing on their own, merit discipline. It is significant to this case, however, that the Grievant continued in this fashion after being informed that he was already going to receive a reprimand and again after receiving the reprimand. These subsequent events resulted in the Coordinator giving him a 3-day suspension.

The Grievant argues that the degree of discipline was unwarranted and did not adhere to the principle of progressive discipline set forth in the contract. It is the Grievant's position, therefore, that, even in the event just cause existed, the 3-day suspension meted out was excessive and that, presumably, he should have received at most another reprimand. I do not concur.

By the time the Grievant confronted Chairman Butterbrodt he was already aware that he was getting a reprimand from Carli. In fact, it was that knowledge that prompted him to accost Butterbrodt in the first place. Nevertheless, he engaged Butterbrodt in a loud and abusive argument, which he was already aware violated the Work Rules and was subject to discipline. He repeated this behavior when he later argued again with Carli over the issue of signing the reprimand. It would appear at that point that either the Grievant's temper was out of control or he was completely indifferent to the significance of a reprimand. In either event, once the reprimand had been issued, the next logical step in the disciplinary progression for repeated infractions would be a suspension.

Additionally, as set forth above, the Grievant's tendency to second-guess his superiors by either refusing to follow their instructions or ignoring them, has been a point of contention for some time. In the year prior to this incident the Grievant received numerous warnings regarding refusal or failure to perform assigned tasks. On two occasions he was issued formal letters of reprimand. Both letters clearly state that further disciplinary action might result. Since neither letter was grieved, both were presumably warranted. A suspension, therefore, was appropriate, both as a response to the incident in question and in light of the Grievant's overall disciplinary history and was not violative of the principle of progressive discipline.

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

AWARD

The County had just cause for issuing a 3-day suspension to the Grievant. The grievance is, therefore, denied.

Dated at Eau Claire, Wisconsin, this 9th day of February, 2000.

John R. Emery /s/

John R. Emery, Arbitrator