

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME LOCAL 67

and

CITY OF RACINE

Case 616
No. 60066
MA-11509

(Gabriel Simpson Suspension Grievance)

Appearances:

Mr. John P. Maglio, Staff Representative, AFSCME Council 40, on behalf of the Union.

Mr. Guadalupe G. Villarreal, Deputy City Attorney, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “City”, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Racine, Wisconsin on December 6, 2001, at which time the parties agreed I should retain jurisdiction if the grievance is sustained. The hearing was transcribed and both parties filed briefs that were received by March 18, 2002.

Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have stipulated to the following issue:

Did the City have just cause to suspend grievant Gabriel Simpson for 30 days and, if not, what is the appropriate remedy?

DISCUSSION

Grievant Simpson, a Tire Repair and Mechanic's Helper, has been employed by the City since May, 1991. Throughout his employment, Simpson received the following discipline for the following offenses (City Exhibit 7):

1 DAY SUSPENSION	08-16-00	Notification of Absence
WRITTEN REPRIMAND	06-24-99	Vehicle Safety Violation
ORAL REPRIMAND	05-06-99	Work Performance
WRITTEN REPRIMAND	04-19-99	Absenteeism
ORAL REPRIMAND	03-30-98	Work Performance
WRITTEN REPRIMAND	08-04-97	Absenteeism
1 DAY SUSPENSION	07-31-97	Notification of Absence
WRITTEN REPRIMAND	06-26-97	Notification of Absence
WRITTEN REPRIMAND	01-26-97	Notification of Absence
WRITTEN REPRIMAND	07-16-96	Absenteeism
ORAL REPRIMAND	04-16-96	Work performance - engaging In unauthorized personal Business
ORAL REPRIMAND	12-19-95	Absenteeism
1 DAY SUSPENSION	12-08-95	Personal actions; lying, cheating, giving false or incomplete information
ORAL REPRIMAND	08-04-95	Tardiness
ORAL REPRIMAND	11-04-94	Absenteeism
ORAL REPRIMAND	09-28-94	Work performance - engaging In unauthorized personal Business
ORAL REPRIMAND	07-01-94	Work performance - failure To carry out his assignments or Instructions
WRITTEN REPRIMAND	07-22-92	Notification of Absence
ORAL REPRIMAND	01-13-92	Operating City vehicle without driver's license
ORAL REPRIMAND	01-06-92	Notification of Absence

Simpson in the year 2000 also worked part-time at Jeff's Fast Freight. On or about August 30, 2000, Simpson injured his shoulder while working there (Union Exhibit 3). He

then filed a claim with AFLAC, which is under contract with the City to provide supplementary insurance to cover the wages for those employees who are disabled either on or off the job. Employees like Simpson pay that entire insurance premium themselves. Hence, no City funds are spent on that insurance.

Simpson subsequently received disability payments from AFLAC from September, 2000 – January 21, 2001. Throughout that time, Simpson provided AFLAC Representative Diane E. Brolin with faxed forms stating that Simpson was disabled and thus was unable to return to work to his City job. Those forms (Company Exhibits 2-6) contained the purported signatures of Simpson’s supervisors Ward Hinze and Joe Miller which attested to Simpson’s supposedly continuing inability to work. Simpson returned back full-time to his City job on or about November 15, 2000. He continued to receive disability payments after that date from AFLAC because AFLAC believed that he was still disabled and unable to work because of the forms submitted on his behalf (Company Exhibits 2-6).

Brolin learned in January, 2001, that Simpson had returned to work on or about November 15, 2000. She then contacted supervisor Jeff Fidler in the City’s Department of Public Works and related that Simpson was still receiving disability benefits.

Brolin testified she received faxed reports from Simpson that already had his supervisors’ signatures when she received them (City Exhibits 1-6); that Simpson tried to receive benefits for January 22 – February 21, 2001, when he was already at work for the City; that she was alerted via e-mail that Simpson was short in paying his insurance premium; and that she subsequently learned that Simpson already had returned to work and that supervisors Hinze and Miller had never signed Simpson’s disability forms. She also said that she spoke to Simpson by telephone in January, 2001, at which time she had a “screaming match on my part”; that Simpson then tried to stop her from reporting to AFLAC what he had done by saying he would pay her back; and that she refused his request because she did not want to lose her insurance broker’s license. She added that she subsequently told City representatives that Simpson’s claim forms (City Exhibits 1-6) were not blank when she received them and that they, instead, had the purported signatures of supervisors Hinze and Miller. She also said that she filled out the top portion of some of those forms and that she sometimes fills in a supervisor’s signature.

On cross-examination, Brolin testified that she did not know whether AFLAC has sought restitution for some of the monies it paid Simpson; that disability claims represent the only time an employer’s verification is needed before a claim is paid; that AFLAC pays lump sum benefits; and that she told Simpson to fax her the forms even though AFLAC’s official policy calls for them to be faxed to headquarters.

Page 4
MA-11509

Supervisors Hinze and Miller both denied ever signing the forms submitted by Simpson (City Exhibits 1-6). Hinze also said that City Exhibit 1 misspells his last name and Miller said

that he was not authorized to ever sign those forms.

Street Superintendent Joseph Golden testified that he spoke to supervisors Hinze and Miller and that they denied ever signing City Exhibits 1-6; that he spoke to Carl S. Tidwell, the City's then-new Human Resources Director about the matter; and that when he spoke to Simpson about the funeral leave issue described below, Simpson admitted that his supposed fathers-in-law were not real and that he then pleaded for a suspension, rather than a termination. He also said that he and Tidwell initially planned on giving Simpson a ten-day suspension for falsely signing the AFLAC claims, but that they subsequently decided Simpson should be suspended for 30 days after they learned about the funeral leave problem.

On cross-examination, Golden testified that the City follows progressive discipline and that Simpson had only received a one-day suspension before the instant 30-day suspension.

Human Resources Director Tidwell testified that he reviewed Simpson's personal file, at which time he learned that Simpson over the years had requested funeral leave pursuant to Article IX of the contract for three different supposed father-in-laws., i.e., Edward Jones, Jr., on July 29, 1999; Robert Edward Jones on December 4 and 5, 1997; and John Sabir on August 2, 1996 (City Exhibit 8). He also said that when he met with Simpson, Simpson denied ever signing the AFLAC forms and that Simpson then admitted that the three people involved were not his fathers-in-law and that he would pay the monies back.

By letter dated February 27, 2001 (Joint Exhibit 4), Tidwell suspended Simpson for 30 days without pay and then informed him:

. . .

It has come to our attention that you have improperly used the signatures of two DPW supervisors on medical documentation and have also submitted to your employer, the City of Racine, false documentation for funeral leave time off and pay. These actions are violations of our work rules and constitute misconduct.

Therefore, you are being given a 30-calendar day suspension without pay for your misconduct as described in the above paragraph in conjunction with your overall disciplinary record that includes numerous disciplinary notices and suspensions for attendance problems, work performance, vehicle safety violation, and giving false information. Your suspension is effective tomorrow, Wednesday, February 28, 2001 through Thursday, March 29, 2001. Report back to work on Friday, March 30, 2001.

Page 5
MA-11509

In the past, your supervisors have counseled you, and you have been given reprimands and suspensions. However, you have failed to improve your overall

conduct. Therefore, you are being given this suspension as a “last chance” opportunity to reassess your employment status with the City of Racine.

After you return to work, you will be expected to comply with the following:

1. Good attendance and punctuality.
2. Compliance with all supervisors’ instructions and/or directives.
3. Adherence to all department and City work rules

You should understand that any sub-performance in the above areas or other work rule violations will result in your termination from City employment.

If you have any questions regarding the contents of this letter or its intent or meaning, please feel free to contact me.

. . .

For his part, Simpson testified that he did not encounter any difficulty with the City when he asked for sick leave because of his August 30, 2000 injury; that after he used his sick leave, he received payments from AFLAC; that Brolin originally told him he was ineligible for payments; that she subsequently told him “hon, I am putting my ass on the line for you”; and that he finally received payments from AFLAC. He also said that AFLAC has not tried to recoup any monies it paid him and that he believed Brolin had the authority to sign his supervisor’s names. He also flatly denied ever telling Tidwell or Golden that what he did was wrong and that he would pay back to the City the three funeral days in issue.

On cross-examination, Simpson said he returned the AFLAC forms blank to Brolin; that the funeral home must have returned one of the funeral leave forms back to the City; that he had never seen the funeral leave form for Robert Edward Jones; and that he did not recall whether he was paid for attending the John Sabir and Robert Edward Jones funerals.

Simpson grieved his suspension on April 11, 2001 (Joint Exhibit 2), hence leading to the instant proceeding.

POSITIONS OF THE PARTIES

The Union claims that the City lacked just cause to suspend Simpson over his AFLAC claims because the City has failed to meet its burden of proving that he signed any of those forms; because “There is no accusation of fraud against Simpson by AFLAC”; because “The

Page 6
MA-11509

City is not out any money”; and because Brolin’s testimony must be disregarded. The Union also asserts that the City cannot discipline Simpson over the funeral leave issue because it arose

some time ago and because “The passage of time must be considered”; and that the City in any event lacked just cause to impose such a lengthy suspension because it failed to follow progressive discipline.

The City asserts that its suspension must stand because Simpson fraudulently submitted his supervisors’ signatures to AFLAC and because he falsely requested funeral leave to attend three of his supposed fathers’-in-law funerals.

DISCUSSION

Much of this case turns on the heads-on credibility clash between Simpson and the various management witnesses who testified against him. For the reasons stated below, I discredit Simpson’s disputed testimony and find that the City has met its burden of proving that Simpson engaged in the misconduct alleged.

Thus, it is inherently implausible to believe Simpson’s claim that a funeral home submitted a funeral leave request to the City for one of his supposed fathers-in-law. It also is impossible to believe his claim that he did not know about the other two funeral leave requests for his two other supposed fathers-in-law. His lack of candor establishes that he has no truthful explanation as to why he sought funeral leave for three bogus fathers-in-law under Article IX of the contract. Contrarywise, I credit Tidwell and Golden’s testimony that Simpson told him he was guilty of defrauding the City by submitting bogus funeral leave requests and that he was willing to pay the money back.

The Union asserts that the City has erred in punishing Simpson for the funeral leave issue that happened long ago. I disagree. The City acted as soon as possible once it had learned that Simpson had defrauded the City by receiving funeral leave for three different fathers-in-law. The City’s brief therefore correctly points out:

. . .

“The Grievant’s lack of integrity and complete dishonesty causes the Employer to disbelieve honest employees. The Union’s argument is that the Employer should have addressed the funeral leave earlier and that somehow it should be ignored is untenable. The Employer acted on the Grievant’s misdeed as soon as it became aware of the Grievant’s action. It is important to note that both of the Grievant’s fraudulent actions were discovered by happenstance and probably would not have been discovered had Brolin not received an e-mail that prompted her concern and subsequent inquiries.”

...

The City's delay in uncovering what Simpson did is therefore entirely reasonable, as Tidwell explained that the City ordinarily takes employees at their word and that it usually does not try to investigate leave requests. It ended up doing so here only as part of its investigation into how much discipline Simpson should receive over the AFLAC matter.

As to the latter, I credit all of Brolin's testimony and find that the disability forms she received from Simpson had the signatures of Simpson's supervisors when she received them. Since no one else but Simpson could have submitted their signatures, it therefore follows that he had their signatures forged in order to receive AFLAC payments even though he had already returned to work for the City. I also credit Brolin's testimony that Simpson at one point admitted what he had done and that he then offered to repay AFLAC.

It certainly is true that this did not cost the City any money, just as the Union correctly points out. Nevertheless, the City has the inherent right to discipline any employee who forges a supervisor's signature no matter what the reason. Hence, the City had just cause to discipline Simpson over such a serious matter, one that directly implicated the City by falsely claiming that Simpson was too disabled to return to work to his City job.

As for the degree of discipline imposed, I conclude that the City had just cause to suspend Simpson for 30 days, as either of the two charged offenses would be enough to warrant a suspension of that length. Contrary to the Union's claim, such a lengthy suspension is warranted under the City's progressive disciplinary system even though Simpson was never suspended for more than one day, as it is well established that some steps of the disciplinary chain can be advanced when, as here, an employee engages in egregious conduct not once, but twice.

In light of the above, it is my

AWARD

1. That the City had just cause to suspend grievant Gabriel Simpson for 30 days.
2. That his grievance is therefore denied.

Dated at Madison, Wisconsin, this 18th day of June, 2002.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

AAG/gjc
6389.doc

