

BEFORE THE ARBITRATOR

In the Matter of the Arbitrations of Disputes Between

SERVICE EMPLOYEES LOCAL 150

and

THE WILLOWS OF SUN PRAIRIE, INC.

Case 7

No. 62229

A-6061

Case 8

No. 62230

A-6062

Appearances:

Andrea F. Hoeschen, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appeared on behalf of the Union.

David W. Miller, Baker & Daniels, Attorneys at Law, 300 North Meridian Street, Suite 2700, Indianapolis, Indiana 46201, appeared on behalf of the Employer.

ARBITRATION AWARDS

On March 19, 2003, Service Employees International Union Local 150 filed requests with the Wisconsin Employment Relations Commission seeking to have the Commission appoint a member of its staff to hear and decide two grievances pending between that union and the Willows of Sun Prairie. The Commission appointed William C. Houlihan, a member of its staff, to hear and decide the matters. A hearing was conducted on July 8, 2003, in Madison, Wisconsin. The proceedings were not transcribed. Post-hearing briefs were submitted by August 11, 2003.

This Award addresses the termination of two employees, Gary Galvin and Andrea Dement.

BACKGROUND AND FACTS

Extendicare Health Facilities, Inc. operates licensed facilities for the residence and care of the elderly and disabled. The Willows of Sun Prairie, located in Sun Prairie, Wisconsin, is one of those facilities. The Willows provides comprehensive care to approximately 55 residents, and is a federally-licensed Medicare and Medicaid facility.

Sondra Swiney has been the Willows administrator since January of 2003. The Willows employs approximately 70 employees. Those employees include registered nurses, licensed practical nurses, certified nursing assistants, activity aides, housekeepers, laundry personnel, dietary aides, cooks and maintenance employees. The Union, Local 150, Service Employees International Union, represents the employees other than the Registered Nurses and LPN's.

The grievants, Gary Galvin and Andrea Dement, both CNA's, were terminated for the events of February 19, 2003. Mr. Galvin was first employed by the Willows in February of 1998. He worked until May of 1999 when he quit his employment. He returned to the Willows in May of 2002, and worked on a part-time basis. Beginning in January of 2003, he returned to full-time status and worked on a P.M. shift (2 - 10:30 p.m.). Mr. Galvin has previously been disciplined for failing to use a gait belt, and for absenteeism. In January of 2003, Mr. Galvin was terminated for insubordination. The termination was grieved and was rescinded. Mr. Galvin was reinstated with his lost wages. The reference to discipline was downgraded from a Class 3 to a Class 1 violation.

Andrea Dement was hired as a full-time CNA in July of 2002, and worked the P.M. shift. Ms. Dement has received a series of disciplinary notices for her attendance, and, as of January 29, 2003, was one absence from discharge under the Employer's progressive system.

Danny Spencer, RN, worked the P.M. shift on February 19. Spencer is normally assigned days. Karen Krueger, LPN, also worked the P.M. shift on February 19.

At approximately 5:15 p.m. on February 19, a resident fell. Nurse Spencer responded to the resident and assisted that resident back into his wheelchair. Simultaneously, Spencer, who has supervisory authority with respect to the CNA's, asked Dement to go into the dining room and to find the CNA responsible for the resident and ask that CNA to put the resident to bed. Dement went to the dining room and told Marita Zeblewski, another CNA, to attend to the resident. Zeblewski indicated that she needed to finish her intake charting and would respond in a minute. In addition to Dement and Zeblewski, CNA's Erica Thompson, Gary Galvin, and Sarah Franke, and a number of residents were in the dining room.

Nurse Spencer became agitated after five to ten minutes had passed and no one came to put the resident back to bed. It was his testimony that he was angry, that he proceeded to the dining room, and in a voice loud enough for all to hear said, "You are lazy. Someone needs to put 'P' to bed." His comments were directed at Erica Thompson and Gary Galvin, who he observed not to be busy. He was not then aware that the resident was Marita Zeblewski's.

Sarah Franke did not testify, but did prepare a statement relating to the day's events. That statement included the following:

On February 19, 2003, Danny (RN) was running a little behind and began the day at work with everyone by being a little snappy with all of the CNA's by reminding us as we walked by that there were call lights on (as he sat at the nurse's station) after most of the people were out of the dining room Gary, Erica and I came back into the dining room after taking many people to their rooms and saw many of the usual faces still finishing up their dinner. I sat down to encourage (R) to eat her dessert and to chat for a few minutes. Gary and Erica did the same thing with two other residents. Marita was charting the appetites. Andrea came in the dining room a minute later and said "Danny says that he wants you to put P. to bed, Marita." Marita said, "Just give me a minute. I am almost done charting, and then I will." Just then Danny walked in and said "I just told you to put P. to bed. I see how you people are. The more of you there are the more lazy you get." We all proceeded to leave the dining room. Then, as we were leaving with or without the residents that were still eating, Danny said "All these lights are on and you people are sitting on your asses." When we were about ten feet away from the nurse's station I said to Danny who was to the side of me, "You know, that comment was really out of line." Danny stopped immediately and started to yell at me "Who do you people think you are? You need to shut up and do your job."

Erica Thompson did not testify but she also provided a written statement which in relevant part provided as follows:

When we were waiting for people to finish eating in the dining room, the RN came into the dining room and started yelling at all of the CNA's in there. He said, "I told you people that P. needed to go to bed right away. You guys are just sitting in the DR doing nothing but talking. You people are so lazy. This just proves that you can't have so many CNA's."

Galvin testified that he was sitting in the dining room talking with a resident when Danny came in and said "Didn't I ask someone to put P. to bed?" It was his testimony that Danny addressed the remark to him.

Andrea Dement testified and provided a written statement. Her statement included the following:

“ . . . When Danny stormed in, not even five minutes after I had talked to him up at the nurse’s station and said to all of us in a really loud voice, just about yelling in front of the residents, ‘I told you I needed someone to put P. to bed’, it proves to me the more CNA's you guys have on, the lazier you guys get.” All of us were very surprised at Danny’s temper, and we got up and followed him out the dining. Danny, still yelling, said, “You guys have all those call lights going off. Why don’t you guys just shut up and do your jobs.” When there was only two call lights going off and there were still some aides on the floor.

Her testimony was that Spencer had been cranky all day and that the comment he directed at Galvin and Thompson included that they were “sitting on your asses.” Her testimony was that there were five residents in the immediate proximity of the remarks.

Karen Krueger provided a statement which included a reference to her observation that Sarah Franke was crying at the end of the shift over the “lazy” remark. Sondra Swiney testified that she counseled Danny on the appropriate way to address staff.

Galvin testified that as the CNA's followed Spencer out of the dining room and down the hall, he told Spencer “You shouldn’t talk to us that way.” According to Galvin, Spencer replied, “I am a supervisor, and can do what I want.” Dement testified that Franke said, “You make me sick.” and “Your mother didn’t raise you right.” Both remarks were directed at Spencer. Spencer did not testify about any exchange on the way out of the dining room.

Franke’s statement indicated the following: “From then on, every time during the rest of my shift, every time I would walk past Danny, he would make snide remarks, such as ‘Don’t you see these call lights?’ and ‘Some people just don’t have the brains to do their job.’”

At approximately 7:00 p.m., Spencer saw Dement and Franke walking down a hall. It was Dement’s testimony that she was on her way to a resident’s room. Spencer directed the two of them to get to work. It was his testimony that the two women rounded a corner, and once they believed they were out of sight, Dement began to make mock hissing noises and clawing gestures. Spencer testified that while he could not hear what she was saying, he believed she was mocking him. He observed her by peeking around a corner. Dement denies that she engaged in any hissing, clawing or other gestures mocking Spencer.

Karen Krueger’s statement provides the following:

Around 7:30 three call lights were on in the south hall – 2A Erica or Kim can't remember for sure, were walking into V.S.'s room – Danny said there are three lights on and no one is answering them. Erica became defensive and said "I haven't done anything. You don't need to talk to me that way" and "I wasn't down in the D.R. earlier."

At approximately 9:30 p.m. Spencer entered the Badger Room, an employee lounge, and saw Andrea Dement, Gary Galvin, and Sarah Franke in the lounge. He testified they were socializing and charting. It was his testimony that he indicated there were three call lights on and they needed to be attended to. Spencer testified that Galvin replied, "What are you trying to do? Egg me on?" He responded to Galvin that he should answer the light. According to Franke's statement, Spencer said "there are three call lights on and you people are just sitting in here." According to Franke's statement, Galvin got up immediately and answered the lights. Dement's statement parallels Franke's. It was Dement's testimony that Spencer said "There are three call lights going off in the hallway, and you guys are sitting here on your ass." According to Dement, Galvin had just finished his charting. Galvin's testimony on direct was to the effect that Spencer came in and indicated there were three lights on and the employees are just sitting here doing nothing. He replied, "I'll answer the calls." On cross-examination, Galvin indicated that Spencer had told the employees they were "sitting on your lazy asses."

Spencer's written statement included the following:

At 9:40 p.m. I asked Gary, Andrea and Sarah to attend to three call lights on the south side. I said, "There are three call lights on and they on the south side" and as I noticed them talking and socializing in the Badger Lounge. At 9:50 p.m. Gary approached me and said "You are just trying to egg me on. Can I leave now before I do something I shouldn't?" I took this as a threat. He then proceeded to lecture me on how bad an RN I am as I shouldn't approach the three CNA's while they were doing their charting, and that I was way out of line. All the while he was standing at the N.S. with his finger in my face and I asked him to "Get your finger out of my face." He proceeded to put his headphones on very loud and walked out of the building but came back ten minutes later. . .

At hearing, Spencer testified that Galvin said, "What are you trying to do...egg me on?" in the Badger Room as a response to Spencer's direction to answer call lights.

Karen Krueger's testimony is that at the end of the shift Galvin pointed his finger at Spencer and said "I had better leave before I do something I regret." According to

Ms. Krueger Spencer replied, "If you leave, I will write you up." Her written statement has no reference to this incident.

Ms. Franke's statement contains the following version of the exchange:

. . . Gary came up to the nurse's station and said "Karen, can I go home? I would like to leave before I say something I have no business saying. All of my people are -----, my charting and my linens and trash are emptied." "Can he go home?" Karen asked Danny. "I am sure he has all of his work done." "It wouldn't be like him not to finish his work." said Karen. "No, and if he does, I will write him up." said Danny. I said to him "I don't really think that we should be treated like this." Danny said "I really don't care what you think." Next, he pointed at Andrea and said "I am surprised that you have an attitude with me. That's okay. I will make sure that all of you are suspended or, if not fired tomorrow."

Galvin testified that normally employees are permitted to leave early under circumstances where their work is done and their patients are bedded down for the evening. It was his testimony that he asked Krueger "Can I leave early before I say something I shouldn't say?" It was his testimony that Spencer replied saying, "No, if you leave I will write you up." According to Galvin, Spencer was pointing his pen at Galvin's face, and that he (Galvin) was pointing his finger at Spencer's face. Spencer directed him to stop and he did. Galvin testified that he knew he was in trouble and that he simply wanted to avoid the situation, which is why he asked Krueger if he could leave.

Andrea Dement testified that at the nurse's station, everyone was arguing with Spencer. It was her testimony that Galvin asked, "You better let me leave or I am going to say something I shouldn't" and that Spencer replied, "If you go home, I will write you up." She testified that Galvin walked away. It was her testimony that Spencer was pointing his pen in Galvin's face, and that Galvin was pointing his finger at Spencer. Her written statement included the following:

We finished our charting and went back up to the nurse's station and Gary asked, 'Karen, may I go home so that I don't say something that shouldn't be said'." Karen said, "I don't see why not, if you have all of your work finished." She said, "Danny, is that okay?" Danny said, "No, and if you do leave, I will write you up." After that, Gary walked down the hall.

At some point in the exchange, Dement said to Spencer "You're making twice as much as us, and sitting on your ass."

Sondra Swiney conducted an investigation of the events of February 19. Following the investigation she concluded that Galvin and Dement should be terminated for Class 3 infractions – serious disrespect to a supervisor in the presence of others. Her investigative report on Galvin consists of the following:

On 2/19/03 p.m. shift, Gary failed to answer call light in a timely manner. Gary was sitting in the dining room as call lights were on. When the RN Supervisor asked the CNA's to answer the lights, the supervisor called the aides “lazy”, to which Gary responded many disrespectful statements. Late in the evening, Gary asked the supervisor if he could go home early, to which the supervisor responded “no.” Gary made many disrespectful remarks to his supervisor and pointed his finger in his supervisor’s face in the presence of others.

Swiney’s investigative report on Dement consists of the following:

On 2/19/03 p.m. shift, Andrea failed to answer call lights in a timely manner. When given an order by the RN supervisor, Danny Spencer, Andrea failed to carry out the order. After the supervisor called the aides “lazy”, Andrea made several severely disrespectful comments to her supervisor. Throughout the shift, Andrea made several more disrespectful comments and gestures toward Danny, and failed to respond when he gave her directives through the night. Andrea was found in the dining room and badger lounge while there were several call lights on, insisting that the other aides on the floor should answer them.

The terminations were grieved and led to this proceeding.

ISSUE

The parties stipulated to the following issue:

Did the Employer have just cause to terminate Andrea Dement or Gary Galvin?
If not, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 10 – SUSPENSION, DISCHARGE, RESIGNATION

Section 10.1 – The Employer may discipline an employee for just cause, but in respect to discharge shall give a warning of the complaint against such employee in writing, and a copy of the same to the Union, except that no warning notice needs to be given to an employee if the cause of the discharge is for such reason as:

- a. dishonesty
- b. drinking, possession of illegal drugs or being under the influence of illegal drugs or alcohol while on company property
- c. recklessness that could result in an accident to a patient
- d. abuse of a patient, verbal or physical
- e. sleeping on the job
- f. leaving patients unattended
- g. disclosing privileged information
- h. the second time an employee does not report unavailability for work at least one (1) hour before starting time. However, no such action shall be taken if the employee can show to the reasonable satisfaction of the Employer that s/he was physically prevented from coming to the nursing home due to illness or other emergency.

...

RELEVANT PROVISIONS OF THE EMPLOYEE HANDBOOK

EMPLOYEE DISCIPLINE PROCEDURE (FOR NON-INTRODUCTORY EMPLOYEES)

The safe and efficient operation of the facility requires that all employees comply with our work rules. These rules are designed to maintain a safe and pleasant environment for residents/patients, visitors, and staff.

The purpose of the Discipline Procedure is to correct improper employee behavior by the use of the least severe penalty possible, consistent with the employee's offense. Employees will be subject to disciplinary penalty for violations of employer work rules. The right to fair and impartial discipline does not establish any actual or implied contract of employment with the employer. All employment is at will.

...

Work rules, and the penalties associated with their violations, are grouped into three (3) general categories as follows:

Class I: These are normally lesser breaches of policy which can be simply corrected without serious disciplinary measures. Supervisors will issue a notice to employees for minor violations with an emphasis on correcting the behavior.

Class II: These are violations which necessitate immediate disciplinary action in the form of a final written notice for the first offense. Because Class II infractions are more serious, the first and second notice steps are skipped.

Class III: These are serious violations of facility rules or employee misconduct which justify discharge without regard to the employee's length of service or prior conduct.

...

GROUPS OF OFFENSES AND ASSOCIATED PENALTIES

CLASS I OFFENSES: Examples of these offenses include, **but are not limited to:** (other offenses may also merit these penalties)

...

6. Minor disrespect to any supervisor.

...

Penalties for Class I Offenses:

First Offense: First notice.
Second Offense: Second notice.
Third Offense: Final notice.
Fourth Offense: Discharge warning.
Fifth Offense: Discharge

...

CLASS II OFFENSES: Examples of these offenses include, **but are not limited to:** (other offenses may also merit these penalties)

4. Verbal abuse or serious discourtesy to any other employee, supervisor, or any other individual in the facility;

...

6. Serious disrespect to any supervisor.

...

Penalties for Class II Offenses:

First Offense: Final notice.

Second Offense: Discharge warning.

Third Offense: Discharge from employment.

...

CLASS III OFFENSES: An employee will be subject to discharge for a Class III offense. Other offenses may also merit discharge. Class III examples include, **but are not limited to:**

1. Verbal, mental, physical or sexual abuse of any resident/patient of the facility, family member, visitor, or fellow employee, or neglect or mistreatment of any resident/patient of the facility;

...

11. Serious disrespect to any supervisor in the presence of others.

...

DISCUSSION

Article 10 of the collective bargaining agreement provides that the Employer may discharge an employee for just cause. Article 10 calls for a pre-discharge warning except for "such reason(s) as" those articulated. I agree with the Company's assertion that the list is not all inclusive. The language treats the list as descriptive, not exclusive. The Employer offered testimony that an employee was terminated for striking a supervisor, a non-listed offense. The

list does provide a framework of conduct against which to measure the behavior of the grievants. Striking a supervisor falls within the very serious transgressions listed in Section 10.1.

The Employer has unilaterally promulgated a handbook, the relevant portions of which are set forth above. One chapter of the Handbook sets forth a disciplinary philosophy and schedule of discipline applicable to the facility. It is noteworthy that the Handbook makes the rules of operation applicable to all employees, and that they are designed to maintain a safe and pleasant environment for resident(s)/patient(s), visitors, and staff. The Handbook espouses a progressive regime of discipline whose purpose is to “correct improper employee behavior by the use of the least severe penalty possible, consistent with the employee’s offense.” The Handbook goes on to create three classes of rules and accompanying disciplinary schedules. All of this is subject to the negotiated collective bargaining agreement. Notwithstanding the provisions of the employee handbook, Article 10 has a notice requirement that is applicable unless the behavior for which the grievants were terminated is such as that listed in the exclusions found in the collective bargaining agreement.

What the Employer finds so severe as to require immediate discharge is Mr. Galvin’s action in waving his finger in his supervisor’s face, and his accompanying behavior at the nurse’s station at the end of the shift. Spencer felt threatened by Galvin’s behavior. As to Ms. Dement, the Employer regards her “sitting on your ass” comment as crossing the line.

It is the Employer’s perspective that Galvin and Dement exhibited unacceptable conduct, none of which was provoked. It is the Employer’s view that nurse Spencer engaged in no disrespect of employees in calling them lazy and telling them to fulfill the duties of their position. The Employer contends that a supervisor can, and should, tell employees to go to work. It is the Employer’s view that there is nothing disrespectful about a reference to being lazy, especially if that reference is well deserved. The Employer believes that certain CNA’s were neglecting their duties in favor of conversation and cookies. Spencer denies using profanity. The Employer believes that all Spencer did was, on three separate occasions, direct employees to get to work. The Union takes issue with all of the foregoing.

On this matter, I agree with the Union. At a minimum, Spencer entered the dining room angry, spoke in a loud voice, and called the CNA’s lazy. His remarks were directed at Erica Thompson and Gary Galvin, who had no responsibility for the resident in question. These remarks were made in public, in front of a number of residents. Galvin had done nothing to prompt the disparaging remarks. The comments are publicly derogatory and calculated to be so. This was not simply a request that the CNA’s do their jobs. This public berating of the CNA’s set the tone for the evening.

Spencer's remarks caused the CNA's to leave the dining room. The testimony as to what was said as the employees vacated the dining room was that of Galvin, Dement and Krueger. Galvin's testimony is that he called Spencer on his treatment of the CNA's and was told that it was a privilege of supervision. Franke's statement reports a similar exchange between she and Spencer. Dement's testimony was that the particularly derogatory remarks directed toward Spencer came from Franke. Franke was given a "final notice" discipline, which noted:

"Sara also was disrespectful to her supervisor (Danny Spencer) throughout the shift. Specifically, by challenging his authority, and voicing negative feelings/opinion about his directives and performance."

Krueger's testimony attributes the derogatory remarks to Dement, and indicated that Galvin said, "You have no right to call me lazy" and "I'll be glad when you go back to days." There was no testimony to support the investigatory conclusion that Galvin responded with a number of disrespectful comments.

All the evidence suggests that Spencer's behavior during the balance of the evening did nothing to calm the waters. Franke's statement was that Spencer was quick to jump on the CNA's. Krueger's statement notes that Erica Thompson reacted defensively to Spencer's directive to her. Both Spencer and Dement testified that Spencer never asked Dement where she and Thompson were going when he ordered them to work. His directive was gratuitous.

Spencer testified that after directing Dement to work, he peeked around a corner to observe how Dement and Thompson reacted. He believed she was making hissing and cat-like gestures which were intended to mock him. He could not hear what was said. This appears to be some of the disrespect toward her supervisor for which she was terminated. To the extent this incident played a part of Dement's Class III offense termination, it is inappropriate. Assuming she behaved as Spencer describes, her mockery of her supervisor occurred in what she understood to be a private moment with a co-worker. Spencer's covert observations of her actions does not elevate it to a Class III offense.

The incidents which occurred at the nurse's station at the end of the shift were critical in the Employer's decision to terminate. Spencer's written statement is that ten minutes passed between the exchange in the Badger Room and the nurse's station exchange. He reported that Galvin approached him at the nurse's station to declare "you're just trying to egg me on" and went on to ask to leave before he did something. This sequence is inconsistent with Spencer's testimony at hearing, and also inconsistent with all other witnesses to the event. His written statement ties the "egg me on" statement to the alleged "threat". Tying the two sentences together does serve to magnify the threatening character of whatever words were uttered. All

the CNA's who testified and who submitted reports indicated that Galvin directed his request to Krueger. I find Galvin's testimony that he believed he was in trouble with Spencer and sought to avoid him if possible, to be credible. Spencer had been on him all day.

There is a dispute over whether Galvin said I may "say" or "do" something I regret. Testimony breaks down on party lines. The Employer relies on Spencer's testimony and written statement. I find the written statement inaccurate, in a way that mischaracterizes and exaggerates Galvin's behavior.

Krueger's testimony corroborated that provided by Spencer. She also prepared a written statement contemporaneous with the event. That statement contains no reference to any exchange at the nurse's station. If the purpose of her statement was to investigate the incident to determine culpability, and impose discipline if appropriate, I find it extraordinary that Galvin could have approached Spencer, pointed his finger in a threatening manner, berated and threatened Spencer in Krueger's presence, and that that fact would have escaped her recollection as a meaningful detail of the day. Krueger's testimony was that Spencer indicated to her that he felt threatened. She did not report the conversation as threatening. The CNA's statements and testimony all point to a very different exchange.

I do not believe that whatever words Galvin used contained a threat. Galvin experienced frustration over being Spencer's whipping boy all night long. If anything, he attempted to defuse the situation.

Dement made a remark about Spencer earning twice as much as the CNA's did and sitting on his ass. The remark is neither flattering nor appropriate to the facility. The Employer claims the remark came out of the blue directed at a supervisor who had done no more than tell employees to do their jobs. That characterization is at odds with all testimony in this record. The Union says the reference merely threw the term back at Spencer. I find that more likely.

For Galvin, the relevant portion of the evening began in the dining room. He was seated with a resident when an angry Spencer came in and in a loud voice, directed the lazy remark at him. It was done in front of his co-workers and the residents. The remark was uncalled for. It was Galvin's testimony that as he walked out of the dining room, he told Spencer that he shouldn't talk to the CNA's that way, and was told that Spencer was a supervisor and could do what he wanted. None of the catcalls and name-calling were attributed to Galvin.

In the Badger Room, all testimony was to the effect that Galvin had just finished his charting. Galvin's testimony, Dement's testimony, and Franke's statement all indicated that

Spencer's tone was abrupt and belittling. Galvin replied with his "egg me on" statement, and promptly arose and answered the lights. At the nurse's station, I believe Galvin addressed his request to leave to Krueger. Spencer answered with his remark about writing him up. The investigative summary is wrong on this point.

The relevant portion of the evening for Andrea Dement began when she encountered nurse Spencer on her way to the dining room. Spencer asked her to go get the CNA responsible for the resident who had fallen. She did so promptly. She was thereafter a part of the group that was publicly berated. She testified that as the group filed out of the dining room, they were told to shut up and do their jobs. At or about 7:00 p.m., as she was walking down the hall (she says, headed to a resident's room), she was told to get to work. All accounts of Spencer's demeanor as he addressed the CNA's in the Badger Room describe him as critical.

The Employer contends that the mission of the facility and the fragile nature of its residents are appropriate considerations in this dispute. I agree. The most public aspect of this drama occurred in the dining room, in full view and hearing of residents who were eating. An angry Spencer berated the CNA staff, calling them lazy in front of the people for whom they provide care. There was no public response. The most objectionable employee behavior occurred at the nurse's station, in the presence of employees but not residents. I do not believe that the Employer's administration of discipline meaningfully considered the impact on residents.

The Employer argues that both grievants are short-term employees, neither of whom have work histories that should serve to mitigate the discipline. I agree with that contention, however, this discipline is a gross overreaction to the events of the day.

In conclusion, I do not believe that the behavior of either Dement or Galvin rise to the level of misconduct listed in Article 10 of the collective bargaining agreement. I believe that nurse Spencer contributed significantly to the discord of the evening. Spencer did not merely direct employees to do their jobs. He embarrassed and belittled them, in front of the residents. He continued to nag at them throughout the evening. He was not disciplined for his behavior during the course of the evening, though he appears to be covered under the employee Handbook.

AWARD

The grievances are sustained.

RELIEF

The Employer is directed to reinstate Gary Galvin and Andrea Dement with backpay and to make them whole for any losses they have suffered as a consequence of their termination. Their seniority dates are to be restored. The Employer is entitled to offset its backpay obligation by interim earnings and unemployment compensation, if any.

JURISDICTION

I will retain jurisdiction for no less than sixty (60) days to resolve any dispute that may arise with respect to this Award.

Dated at Madison, Wisconsin, this 8th day of January, 2004.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

