

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration of a Dispute Between  
**MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION**

and

**MILWAUKEE COUNTY**

Case 548  
No. 63554  
MA-12625

(Ronald Stauss Suspension Grievance)

---

Appearances:

**Jonathan Cermele**, Eggert & Cermele, S.C., 1840 North Farwell Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

**Timothy Schoewe**, Deputy Corporation Counsel, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

**ARBITRATION AWARD**

The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Association, and Milwaukee County, hereinafter referred to as the County or the Employer, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances arising thereunder. The Association made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide a grievance filed by the Association. The undersigned was so designated. A hearing was held in Milwaukee, Wisconsin on July 26, 2004. The hearing was not transcribed. The parties made closing oral arguments and the record was closed at the end of the hearing. Having considered the evidence, the arguments of the parties, the applicable provisions of the agreement and the record as a whole, the undersigned issues the following Award.

### **ISSUE**

The parties stipulated to the following issue:

Was there just cause for the five-day suspension? If not, what is reasonable?

### **BACKGROUND**

The grievant, Ronald Stauss, has been employed as a Deputy Sheriff for the County since 1992.

In November, 2002, while he was working as a road deputy, Stauss was involved in an incident wherein he damaged someone's car. He received a written reprimand for that incident. Afterwards, he was transferred from being a road deputy to working in the courts. While there is nothing in the record which establishes that the November, 2002 incident just referenced and Stauss' transfer to the courts were related, it is his view that they were.

### **FACTS**

The facts are undisputed.

After he was transferred to the courts, Stauss worked as a bailiff.

Bailiffs perform the following job duties: they provide courtroom security; they move inmates; they give information to attorneys in the courtroom; they listen to what the judge says in the courtroom; and after the judge imposes a sentence on a defendant, they write down certain information on a case disposition form known internally as a 10-47. Specifically, they write down on that form, in longhand, the sentence imposed by the judge. This case involves the last job duty just referenced.

On June 11, 2003, Stauss was working as a bailiff in Judge Kahn's courtroom. That day, an individual named Jerry Pearson appeared before Judge Kahn on four separate misdemeanor charges. Pearson accepted a plea agreement whereby he pled guilty to three charges and one charge was dismissed. On two of the charges, sentence was imposed and stayed. Specifically, Pearson was sentenced to serve six months in the House of Correction, but this jail time was stayed and he was placed on 18 months probation. Since his jail time was stayed, this meant he did not have to actually serve six months of jail time. On the third charge, he was sentenced to serve 20 days in the House of Correction, with credit given for eight days already served. On this charge, the jail time was not stayed. Since the six-month jail sentence was stayed, Pearson was supposed to serve a total of 12 more days in jail (i.e. 20 days minus eight already served equals 12 days yet to serve).

That is not what happened to Pearson. When Stauss wrote down the pertinent case disposition on the 10-47's in longhand, he failed to write down that Pearson's six month jail sentence was "stayed" and that the defendant had been placed on 18 months probation. As a result, when Pearson was transferred to the County's House of Correction, the accompanying 10-47 forms indicated he was to serve a six-month sentence.

In mid-October, 2003, the County's formal Judgment of Conviction documents for Pearson got to the House of Correction. Those documents indicated that Pearson's six-month jail sentence had been stayed and he had been placed on 18 months probation.

As a result of Stauss' error on the 10-47's (i.e. failing to write down that Pearson's six-month jail sentence had been stayed and that he had been placed on 18 months probation), Pearson served over four months in jail, rather than the 12 days the judge had ordered. Pearson was released from jail in mid-October, 2003 after the House of Correction got his formal Judgment of Conviction documents from the County Clerk's office and a clerk noticed the sentencing discrepancy between what Stauss had written on the 10-47's and the information contained in the Judgment of Conviction documents.

In late November, 2003, Stauss met with Captain Richard Williams of the Department's Internal Affairs Division for an investigatory interview about the above-referenced matter. At that meeting, Stauss admitted he had failed to write down two key parts of Pearson's sentence on the 10-47's: first that Pearson's six-month jail sentence was stayed and second that Pearson was placed on 18 months probation.

. . .

When discipline is imposed in the Sheriff's Department, it is imposed by the Sheriff. The Sheriff also decides how much discipline is imposed. Captains can make recommendations to the Sheriff regarding how much discipline to impose, but the Sheriff is under no obligation to follow their recommendations.

In late November, 2003, Captain Williams recommended to the Sheriff that Stauss be suspended for two days for substandard/careless job performance on June 11, 2003.

On March 19, 2004, the Sheriff issued his written decision on the matter. The Sheriff did not accept Captain Williams' recommendation that Stauss be suspended for two days. Instead, the Sheriff decided that a five-day suspension was warranted. In so finding, the Sheriff wrote that as a result of Stauss' failing to write on the 10-47's that Pearson's six month jail sentence had been "stayed", and that Pearson had been placed on "18 months probation", Pearson had ended up serving over four months in jail, rather than the 12 days the judge had ordered. The suspension notice indicated that by his conduct, Stauss violated the following departmental rule and County civil service rule:

**MILWAUKEE COUNTY SHERIFF'S OFFICE POLICY AND  
PROCEDURE AND/OR RULES AND REGULATIONS:**

1.05.14 – Efficiency and Competence

Members shall adequately perform reasonable aspects of police work. Such expected aspects include, but are not limited to: report writing, physical intervention, testimony, firearms qualification and knowledge of the criminal law. “Adequately Perform” shall mean performance consistent with the ability of equivalent trained members of the department.

**MILWAUKEE COUNTY CIVIL SERVICE RULE VII (4) (1):**

- (l) Refusing or failing to comply with departmental work rules, policies or procedures.

. . .

- (u) Substandard or careless job performance.

Stauss appealed his suspension and the grievance was ultimately appealed to arbitration.

. . .

At the hearing, Stauss admitted he failed to write on the 10-47's that Pearson's six-month jail sentence was stayed, and that Pearson was placed on 18 months probation. He testified that his failure to write down the foregoing was not intentional, but simply accidental. He further testified that he did not think his mistake was a \$1000 mistake (referring to the amount of money he lost in salary as a result of his being suspended for five days).

**DISCUSSION**

What happened here is that the grievant was suspended for five days. The parties stipulated in their wording of the issue that the issue to be decided herein is whether the County had just cause for doing so.

As is normally the case, the term “just cause” is not defined in the parties' collective bargaining agreement. While the term is undefined, a widely understood and applied analytical framework has been developed over the years through numerous arbitral decisions. That analytical framework consists of two basic elements: the first is whether the employer proved

the employee's misconduct, and the second, assuming this showing of wrongdoing is made, is whether the employer established that the discipline which it imposed was justified under all the relevant facts and circumstances.

As just noted, the first part of a just cause analysis requires a determination of whether the employer proved the employee's misconduct. Attention is now turned to making that call.

One part of a bailiff's job duties is to write on the 10-47 form what sentence is imposed by the judge on the defendant. The grievant, who is a bailiff, was disciplined for failing to accurately perform that job duty on June 11, 2003.

The facts pertaining to what he wrote on the 10-47's are undisputed. That day when the grievant filled out the case disposition portion of the 10-47 forms, he did not accurately write down the sentence imposed by the judge on defendant Pearson. Specifically, he failed to write down two key parts of the sentence: first that Pearson's six-month jail sentence was stayed and second that Pearson was placed on 18 months probation. The grievant admitted to Internal Affairs that he failed to write down this information on the 10-47's. He also admitted it when he testified at the hearing. Given those admissions, there is no question that the grievant did what he was charged with doing.

The grievant testified that his failure to write down the foregoing information on the 10-47's was accidental. The Employer does not dispute that assertion. That being so, it is presumed by the undersigned that the grievant's failure to write down that information was accidental.

Building on that premise, I have decided to begin my discussion with the old adage that accidents happen. While accidents do indeed happen, someone is often held accountable for them afterwards.

The first question to be answered here is whether fault should be assigned to the grievant for the mistaken entry on Pearson's 10-47's. I find that it should for the following reason. While in some disciplinary cases an employee's conduct can be mitigated by the conduct of others, that is not the case here. In this case, the grievant alone was responsible for what was written on Pearson's 10-47's. The mistaken entries cannot be attributed to anyone else.

The next question to be answered here is whether the grievant's conduct warranted discipline. I find that it did. Here's why. Employers obviously have a legitimate and justifiable interest in ensuring that employees perform their work competently and accurately. Employers that tolerate incompetent and sloppy work by their employees can, under certain circumstances, expose themselves to legal and financial risks for doing so. That is why the

County has adopted a civil service rule which prohibits “substandard or careless job performance” by employees and why the Sheriff’s Department has adopted a work rule requiring department members to “adequately perform” their job duties. As the County sees it, the grievant’s work performance on June 11, 2003 fits into both categories of prohibited behavior. I agree, and find that on that day, the grievant failed to “adequately perform” his job duty of accurately recording Pearson’s sentence on the 10-47’s, and that this constituted “substandard or careless job performance”. Since the grievant violated both those rules on June 11, 2003, he committed misconduct for which he could be disciplined.

In so finding, it is expressly noted that the grievant’s mistaken 10-47 entries had a huge impact on defendant Pearson. Instead of Pearson having to serve 12 more days in jail after his court date, he ended up serving over four months in jail before the mistaken 10-47 entries were caught by someone else.

The second part of a just cause analysis requires that the Employer establish that the penalty imposed was appropriate under all the relevant facts and circumstances. In reviewing the appropriateness of discipline under a just cause standard, arbitrators generally consider the notions of progressive discipline, due process protection and disparate treatment. The undersigned will do likewise in reviewing the appropriateness of the discipline imposed here (i.e. a five-day suspension). Based on the following rationale, I conclude that a five-day suspension was appropriate here.

First, the normal progressive disciplinary sequence is for an employee to receive a written warning before a suspension. That had happened here. The grievant received a written warning in November, 2002, for damaging someone’s car. That written warning was still on the books, so to speak. That being so, the Employer followed normal progressive discipline when it suspended the grievant.

The crux of this case is that the grievant believes a five-day suspension was excessive and too severe. It would be one thing if the Association had proved that via evidence that other employees had made the same type of mistake the grievant did and were not disciplined as severely. However, there is no such evidence in the record. That being the case, there simply is no objective basis in the record for reducing the length of the grievant’s suspension.

That said, I want to elaborate further on this point because of something the grievant said at the hearing. The grievant testified that he did not think his mistake was a \$1000 mistake (referring to the amount of salary he lost as a result of his five-day suspension). I disagree. It no doubt cost the County more than that just to house Pearson at the House of Correction for the four extra months. Aside from that, it is my prediction that when the final chapter on this matter is written, the grievant’s mistake involving Pearson will cost the County far more than that (i.e. what it has already expended to house Pearson in jail for four additional months).

Next, there is no evidence that the grievant was denied due process before discipline was imposed. This finding is based on the following facts. In November, 2003, after the Employer became aware of what had happened to Pearson, Captain Williams met with the grievant for an investigatory interview. At that time, the grievant was given the opportunity to tell his side of the story. He did. In doing so, he admitted his mistake to Captain Williams. In my view, there is nothing in the foregoing facts that raise any so-called red flags regarding procedural due process problems. Accordingly, I find that the County gave the grievant due process before it imposed discipline.

In so finding, I have considered the Association's contention that the Sheriff took too long to impose discipline on the grievant. What the Association is referring to is this: after Captain Williams made his recommendation to the Sheriff about what discipline the grievant should face, it took the Sheriff four months to decide on the penalty. According to the Association, that was just too long. It would be one thing if the parties' collective bargaining agreement required the Sheriff to impose discipline within a certain time frame. However, it does not. That being the case, the fact that it took the Sheriff four months to decide the grievant's level of discipline does not constitute grounds for overturning that discipline.

Finally, I find that the grievant was not subjected to disparate treatment in terms of the punishment imposed. This finding is based on the following: as previously noted, there is nothing in the record indicating that other employees had made the same type of mistake the grievant did and were not disciplined as severely as the grievant. Accordingly, no disparate treatment has been shown.

Accordingly, then, it is held that the severity of discipline imposed upon the grievant was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to the grievant's proven misconduct. The County therefore had just cause to suspend the grievant for five days.

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

**AWARD**

That there was just cause for the grievant's five-day suspension. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 7th day of October, 2004.

Raleigh Jones /s/

---

Raleigh Jones, Arbitrator

REJ/gjc  
6731