BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME LOCAL 1558 GREEN BAY UNIT

and

AMERICAN NATIONAL RED CROSS, BADGER-HAWKEYE REGION

Case 64
No. 65008
A-6180

(B.A.Grievance)

Appearances:

Mr. Bill Moberly, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin, appearing on behalf of Local 1558.

Mr. Michael Westcott, Attorney, Axley Brynelson, LLP, Manchester Place, Suite 200, 2 East Mifflin Street, Madison, Wisconsin, appearing on behalf of American National Red Cross.

ARBITRATION AWARD

AFSCME Local 1558 (Green Bay Unit), hereinafter "Union," and American National Red Cross, Badger-Hawkeye Region, hereinafter "Employer," requested that the Wisconsin Employment Relations Commission provide a panel of arbitrators to the parties in order to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on November 8, 2005, in Green Bay, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs, the last of which was received on January 3, 2006, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

> Whether the Grievant was discharged for just cause? And if not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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ARTICLE 3
Management Rights

Section 3.0 Except as may be expressly limited by this Agreement, the Employer has the sole right to plan, direct and control the working force, to schedule and assign work to employees, to determine the means, methods and schedules of operation for the continuance of its operations, to establish reasonable standards, to determine qualifications, and to maintain the efficiency of its employees. The Employer also has the sole right to require employees to observe its reasonable rules and reasonable regulations, to hire, lay off or relieve employees from duties and to maintain order and to suspend, demote, discipline and discharge employees for just cause. The Employer has the right to assign temporarily personnel to any other duties at such times as natural and man-made disasters threaten to endanger or actually endanger the public health, safety and welfare or the continuation beyond the duration of such disasters. The Employer shall determine what constitutes a natural and man-made disaster as expressed in this Article.

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ARTICLE 8
Grievance and Arbitration

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The arbitrator shall have the authority to determine issues concerning the interpretation and application of all Articles or Sections in this Agreement. While he shall have no authority to change any part of

the Agreement, he may make recommendations for such changes which, in his opinion, would add clarity or brevity or which might avoid future controversy. Determinations of the arbitrator shall be binding upon the parties, but his recommendations shall not be.

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ARTICLE 15
Discipline and Discharge

Section 15.0 Intent. A discipline procedure is intended to inform employees of proper work habits consistent with the Employer's public function, and thereby to correct any deficiencies which may from time-to-time occur.

Section 15.1 Sequence of Discipline. An employee may be warned, suspended or discharged for just cause. The sequence of disciplinary action shall normally be oral reprimand, written reprimand, suspension and discharge. Employee counseling shall not be considered as a step in the disciplinary process.

Section 15.2 Immediate Discipline. The normal sequence of disciplinary action shall not apply in cases which is cause for more severe and immediate discipline.

Section 15.3 Grievances. Any employee receiving discipline or the Union may at its option appeal such action through the grievance procedure.

Section 15.4 Notice of Discipline. Notice of any disciplinary action shall be reduced to writing and a copy shall be provided to the employee and the Union. A copy will be provided to the Union unless the Employee affirmatively requests that no copy be sent, in which case the Union Staff Representative will be provided a copy of the disciplinary notice.

Section 15.5 History of Discipline. Any written warnings more than twelve (12) months old will not be relied upon in the progression of discipline. Any written disciplinary action involving suspensions more than twenty-four (24) months old will not be relied upon in the progression of discipline.

Section 15.6 Personnel Files. An employee may inspect his personnel file for non-confidential matters at any reasonable time provided he has permission from his supervisor which shall not be unreasonably denied. This right is limited to two (2) times per year.

Section 15.7 Right to Union Representation. When a supervisor is going to discuss a matter of discipline with an employee, the employee shall have the right to request the presence of a steward or officer of the Union.

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ARTICLE 22
Sick Leave

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Section 22.2 Uses of Sick Leave. Sick leave may be used by an employee for absences necessitated by non-work connected injury, illness or other disability to himself upon the approval of the Employer. In order to be granted sick leave with pay, an employee must:

(a) Report to the Employer promptly the reason for his absence and shall continue to report same for each day of his absence, and
(b) Submit a medical certificate for any absence if requested by Employer, and
(c) Employees scheduled for bloodmobiles and milk runs who are scheduled to start work prior to 8:00 a.m. shall notify the Employer of his/her return to work on the day prior to said return by 3:00 p.m.

Failure to comply with these requirements may result in the loss of sick leave pay for day(s) requested and subject the employee to disciplinary action up to and including discharge.

Section 22.3 Sick Leave Abuse. Sick leave must be regarded as valuable health and welfare protection which should not be used unless really needed. Sick leave shall not be abused or the employee will be subject to disciplinary action.

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ARTICLE 23
Holidays

Section 23.0 Holidays

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Employees shall also receive "personal day holidays" as determined by their length of continuous service as of January 1 of each year as follows:

. . .

Personal day holidays are to be prearranged between the employee and the Employer, but may not be taken while the employee is on-call. Requests for personal day holidays will not be unreasonably denied and will not be denied because the request involves overtime or because it will create an overtime situation for the requesting employee during the pay period. Personal day holidays which are not used during the year shall be paid in the same manner as unused vacations, subject to the limitations in Section 21.4.

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BACKGROUND AND FACTS

The Grievant, B.A.,[1] was hired by the Employer on January 26, 1994, following her work as a volunteer for the Employer. The Grievant held the position of full-time Donor Resources Development Assistant for two and one-half years until her termination on May 9, 2005. The Grievant was a Union Steward and Secretary for the local since 2000. The Grievant's supervisor was Kathy Haupt Blank (hereinafter referred to as "Blank").

The Grievant applied for Family and Medical Leave for the time period beginning on August 22, 2003 through December 31, 2003. The Grievant did not seek intermittent leave or a reduced work schedule, but indicated in the space on the form for that question that "[m]y doctor has prescribed an air purifier for my work space which I share with one co-worker." The Physician's Certification, completed by her physician on September 4, 2003, read as follows:

[1] The Grievant's name has been withheld from the text of this decision for privacy purposes due to the medical issues contained herein.

What date did the condition begin? approx 1 month ago

What is the probable duration of the condition? hopefully will improve in weeks but will always have the condition

Specify medical facts regarding the serious health condition (Diagnosis not required) SOB, wheezy, cough

Please indicate the extent to which the employee is unable to perform his or her employment duties: if increasing cough, SOB – will interfere with employment duties (any)

In approving the leave, the Employer provided the Grievant a two page memorandum dated August 27, 2003 which reviewed numerous aspects to Family and Medical Leave including benefits, health insurance while on leave and return to work obligations. The memorandum first indicated that her "FMLA will have begun on August 22, 2003 and is provisionally approved, pending physician certification and verification of work hours from the last 12 months," (underline in original) and informed the Grievant that she was required to report every 30 days regarding her status and intent to return to work, but indicated that she did not have to furnish re-certification documentation relating to her serious medical condition.

Between August 2003 and August 2004, the Grievant was absent a "number of days" and the Employer did not consider it an attendance problem because she had a valid FMLA form on file.

At some point during December 2004, Blank met with the Grievant and discussed her absences. This was a non-disciplinary meeting. Blank informed the Grievant that she had concerns with her attendance and that she expected the Grievant's situation would change.

Starting in January 2005, the Employer began disciplining the Grievant for unacceptable attendance due to her absences and the fact that she had used up her sick leave balance. The first pre-disciplinary action occurred on January 21, 2005 when Blank met with the Grievant and issued an oral warning. Blank summarized the violation as " [a]fter verbal counseling for previous use of sick time, B.A. most recently missed 2 more days, including the day of a team meeting. She has no sick time." In response to the discipline, the Grievant commented that "It has been a little over three years since I was diagnosed with asthma, and it has been a difficult period of time for me. I do appreciate Kathy's console and understanding as I have had to go through. This disease has complicated my other health condition, but I will deal with it each day." The Grievant did not grieve this discipline.

A second discipline was issued to the Grievant on February 22, 2005. This was a written warning and was summarized as "since our previous oral warning for B.A. on 1/21/05, she has missed an additional 2.5 work days. Also, the week of 2/14 because of incorrect punching out, Barb missed a total of 1 hour over three days resulting in a work week which was 36.5 hours. I have spoken to B.A. about FMLA and she is following up." The Grievant commented to the discipline "[p]lease see attached e-mail to Kathy. In my discussion with Kathy, I talked to the points stated. As far as the punching out the week of 2-14-05, it was over my lunch break period + I had scheduled appts, and one day lunch with a friend." The Grievant did not grieve this discipline.

The email referred to by the Grievant was dated February 23, 2005 and read as follows:

Kathy,

> It is disheartening that Human Resources is pursuing me. You know that I care about my job responsibilities, and what I contribute to the American Red Cross mission every day. As a Red Cross volunteer I care as well.
>
> As far as yesterday, it was for personal business which I needed to do, and was something I couldn't have planned. As I wouldn't expect Andrea Holschback or you as my supervisor, to tell me why you needed to take the personal day, why does that expectation exist for employees? Personal is personal. And in the real world and that is where we live, things come up at the last minute.
>
> And, for 11 years I have been clocking in and out. Eight of those years was as a part-time employee. Now, it seems I am unable to do it the right way?
>
> During the past three years, I have had to deal with changes in my life, and a lot of that has been health related. And, I have been accountable.
>
> As a Red Cross employee, I feel I am being unfairly treated.
>
> B

A one-day suspension was issued to the Grievant on March 8, because "B has her second day of absenteeism. This (sic) week after a written warning on 2/22/05 for previous absenteeism. At that time, I did not speak with her about FMLA." The Grievant commented that "being disciplined for using earned time, is wrong." The Grievant did not grieve this discipline.

The Grievant was terminated on May 19, 2005. The Employer summarizes the discipline as "[s]ince her suspension on 3/8/05 for excessive absenteeism, B.A. has missed an additional 5 work days as follows - 3/24/05, 4/8/05, 4/29/05 (for which I got a voice mail that day telling me she was taking a personal day), 5/10 and 5/17."

The Grievant's termination was pursuant to an Attendance Policy implemented for all employees effective March 14, 2005. The Policy reads as follows:

> It is Red Cross' policy to require regular and prompt attendance of each employee in order to maintain efficient and productive operations. Regular attendance is defined as working on each scheduled workday. Prompt attendance is defined as being in the scheduled work area at the scheduled time. This policy is intended to establish guidelines for defining acceptable and unacceptable attendance patterns.
>
> Red Cross does understand that employees may become sick or have unexpected emergencies that prevent them from being at work when scheduled. However, multiple absences or tardiness over time may indicate unacceptable employee behavior. When absences reach unacceptable levels and/or indicate abuse, the supervisor will evaluate this individual's attendance. Unless there are extraordinary circumstances contributing to this staff's absence pattern, disciplinary action may be implemented. Supervisory personnel are expected to monitor the time and attendance records of staff.
>
> I. Terminology
> The following terms have been defined for use in administering the attendance policy:
>
> A. Instance of Absenteeism – Failure to report to work for one full scheduled work day or longer when all work days missed are consecutive.
>
> B. Instance of Tardiness – Arrival at assigned work area any time after the scheduled time (includes the beginning of a shift, after breaks, after lunch, etc.)
>
> If a Badger-Hawkeye Region employee anticipates that he or she will not be at their work area at the beginning of their shift (including being tardy or an unscheduled absence), he or she is expected to notify the supervisor or manager at least one (1) hour prior to his or her scheduled start time.

C. Instance of Leaving Early – Leaving work any time prior to the scheduled quitting time (this does not apply when management requests or directs employees to leave early due to operational needs).

D. Attendance Infraction – One (1) separate instance of absenteeism, or two (2) instances of tardiness, or (2) two instances of Leaving Early. Note: One instance of absenteeism equates to two instances of tardiness or two instances of Leaving Early. Note the 1:2 ratio.

E. No Call/No Show – An instance of absenteeism lasting one day when the employee who is absent does not notify his/her immediate supervisor on the shift the absence occurs. (Each day absent without notification constitutes a separate instance, even if the days are consecutive.)

F. Notifying Management – Speaking to an employee's manager or his/her designee; not to a coworker.

G. Physician's Release – For absences of three or more consecutive operating work days for illness, employees must obtain a physician's release form before they will be permitted to return to work. However, supervisors may request a doctor's slip at any time, regardless if it is due to concern with their fitness for duty or concern for their absenteeism patterns. For absences of three days or more, employees may be eligible for Family Medical Leave (FMLA). Please contact Human Resources for further information on FMLA.

H. Progression of Disciplinary Steps – Discipline for non-attendance violations (such as job performance) and attendance violations may be progressive. For example, an individual who is on a Written Warning for job performance and has three attendance infractions within three months of counseling (for attendance infractions), will receive a suspension.

I. Attendance Tracking – Document attendance infractions and related information.

II. Guidelines/Application

Use these guidelines for taking appropriate action in administering the Attendance Policy.

SITUATION	ACTION
1. Three attendance infraction within a three period	Complete Counseling form – NOTE: Counseling is not a disciplinary step.
2.Two attendance infractions within three months of counseling.	Oral warning - complete Disciplinary Notice form
3.Two attendance infractions within three months of oral warning.	Written warning-complete Disciplinary Notice
4.One attendance infraction within three months of a written warning for attendance.	Suspension - complete Disciplinary Notice form. Consult with Human Resources Director.
5.Further attendance infractions.	May result in employee's termination. Consult with Human Resources Director. Complete Disciplinary Notice form.
I. First no call/no show unless there are extraordinary circumstances contributing to the absence.	Suspension. Complete Disciplinary Notice form. Consult with Human Resources Director. Local 1558 GB/MSN – Termination per the contract.
2. Second no call/no show (even if it occurs on the next consecutive work day) unless there are extraordinary circumstances contributing to the absence.	Termination – Complete Disciplinary Notice form. Consult with Human Resources Director.
1. Period of six consecutive months during which an employee experiences no attendance-related disciplinary actions.	May nullify previous attendance infractions.

NOTE: Attendance infraction: 1:2 ratio
One (1) separate instance of absenteeism equates to two (2) instances of tardiness or two (2) instances of Leaving Early.

All actions should be performed and documented in accordance with the Red Cross disciplinary process policy and/or union contract.

A grievance was filed by Local 1558 on May 25, 2005 alleging that the Employer had violated "Article 6 Discrimination, Article 3 Management's Right to Manage and any and all other articles which may apply. The denial of an employee's right to use earned hours for vacation, personal days and sick leave is wrongful," when the Employer terminated the Grievant on May 19. 2005.

The Employer denied the grievance on June 1, 2005 and suggested proceeding directly to arbitration for purposes of expediency.

Additional facts, as relevant, will be included in the **DISCUSSION,** section below.

POSITIONS OF THE PARTIES

The Employer

The Grievant repeatedly violated a legitimate work rule of the Employer which negatively impacted the Employer thus justifying the imposition of discipline. The Employer imposed discipline on four occasions prior to May, 2005. These included a verbal counseling in December 2004, an oral warning on January 25, 2005, a written warning on February 22, 2005 and a one-day suspension on March 8, 2005. These disciplinary actions by the Employer were not grieved and therefore stand.

The Grievant was aware of the Employer's rules prohibiting excessive or habitual absenteeism or tardiness. She acknowledged that she had received a copy of the work rules and admitted that she missed work on the five days that resulted in her termination from employment. Although the Grievant initially testified that all five of her absences were due to asthma and further, that in each instance she told her supervisor that the absence was due to her asthma, her story changed on cross-examination. She not only backed off her assertion that she told Blank that her absence was due to asthma, but she also admitted that some of the time off was due to "family issues." The Grievant's supervisor testified that the Grievant never indicated that the absences were caused by her asthma and moreover, that the Grievant was informed that if her absences were related to health conditions covered by the Family and Medical Leave Acts, then her absences would not be held against her. Blank's testimony is more credible than the Grievant's.

The Grievant's conduct further discredits her testimony. She testified that she knew that FMLA qualifying absences cannot serve as a basis for discipline, but she let stand the prior disciplinary actions which she now claims were caused by her asthmatic condition. The Grievant was a union steward and was familiar with the grievance process. The Employer accepts that it is the Grievant's right to not grieve the prior disciplines, but in not doing so, her conduct is at odds with her testimony.

The level of discipline imposed on the Grievant was justified and appropriate given the facts and circumstances. The sequence of normal discipline is spelled out in the labor agreement. The Employer followed this procedure and, in fact, went above and beyond its obligations. After three absences following the one-day suspension, Blank met with the Grievant, informed her that the absences were unacceptable and informed her that further absences would result in termination. (Again, no mention was made that the absences were for FMLA qualifying reasons.) Even with her job in jeopardy, the Grievant missed two additional days.

Any assertions that the Grievant's absences were FMLA protected and therefore her termination should be overturned, are misplaced. Case law provides that employers have the right to terminate employees for excessive absences, even if they are due to illness. In this situation, the Union appears to be claiming that the termination should be negated due to the FMLA implications. Just as Arbitrator Goodman stated in GAF BUILDING MATERIALS CORPS., 114 LA 1528, 1533 (GOODMAN, 2000), this is not a FMLA case, but rather is a "case of excessive absenteeism. The grievant did bring up the Family and Medical Leave Act but that was after he was terminated". ID.

Finally, the Union implied that discipline imposed prior to the new attendance policy should be ignored. The new policy was a formalization of the policy that had previously been in effect and there is no evidence that supports the assertion that employees' disciplinary slates would be wiped clean.

The Employer respectfully requests that the termination of the Grievant's employment be sustained and the grievance dismissed in its entirety.

The Union

The Union argues that the Grievant's discharge was without just cause and further, that the Employer violated the State and Federal Family and Medical Leave Acts in violation of the collective bargaining agreement.

There is no dispute that the Employer was aware of the Grievant's asthmatic condition. The Grievant had submitted FMLA paperwork in 2003 which was approved by the Employer and her absence between August 2003 and late 2004 were not challenged.

The employer failed to take the affirmative action it was required to once it was presented with information that the Greivant's absence was the result of her asthmatic condition. As stated by Robert M. Schwartz in The FMLA Handbook,

> When giving notice of an unexpected medical or family absence, you (the employee) do not have to mention the FMLA or say that you want FMLA leave. When an employee gives notice that he or she needs medical or family care leave, the employer has a duty to investigate to

> determine if the leave qualifies for FMLA protection. An employer that does not ask about the seriousness of a reported health condition is in a weak position to argue that the employee's notice is inadequate.

The Employer had an affirmative obligation to determine whether the reason for the Grievant's absences was FMLA protected and failed to fulfill its obligation. The Employer used the Grievant's FMLA qualified leave days as the basis for its contention that she was excessively absent in violation of state and federal law.

The Union believes the Employer violated the Grievant's FMLA rights and discharged her without just cause. The Union asks the Arbitrator to sustain the grievance and order the Employer to reinstate the Grievant with full back pay and make her whole.

DISCUSSION

The Union asserts the Grievant's termination is premised upon a violation of the Family and Medical Leave Act (FMLA) footnote by the Employer. This argument requires reliance on external law and asks this Arbitrator to consider the FMLA in my analysis of this case. There is no specific language in the parties' agreement that allows for arbitral review of FMLA matters or makes it a violation of the labor agreement should the evidence establish that the FMLA has been violated. Having said this, there is an increasing number of arbitrators that, even in the absence of specific language, have considered FMLA issues in the context of alleged labor agreement violations. See Brand, Discipline and Arbitration (1998) Ch. 13. I will follow this trend should it become relevant to a determination of whether the Employer had just cause to discharge the Grievant, but I will not make findings as to whether possible statutory violations exist.

The Employer has suggested that I follow the methodology of just cause analysis which first looks to whether the employee engaged in the behavior for which she was disciplined and second, whether the discipline imposed reasonably reflects the employer's proven disciplinary interest. Given that this methodology will provide sufficient opportunity to address the Union's arguments, I will do so.

The Grievant has an extensive and progressive disciplinary history. She was disciplined on three occasions prior to her termination in May, 2005. The Employer provided the Grievant a verbal warning in December 2004, an oral warning on January 25, 2005, written warning in February 22, 2005, and a one day suspension on March 9, 2005. All of the disciplinary actions were due to excessive absenteeism. The Grievant did not grieve any of these disciplinary actions. The Grievant was afforded sufficient notice of the Employer's attendance expectations and she acknowledged that she was aware of the Employer's policies as they relate to excessive absenteeism and abuse of sick leave.

An employer has the right to expect employees to report for work. This is a reasonable expectation and the Employer had a legitimate disciplinary interest in the Grievant's attendance or lack thereof.

Moving to the discipline giving rise to the grievance, the Grievant's employment was severed due to excessive absenteeism. Her termination was issued on May 10, 2005 due to her absences from work on March 24, 2005, April 8, 2005, April 29, 2005, May 10, 2005 and May 17, 2005. The Grievant had exhausted her sick leave and therefore utilized her accrued vacation and personal leave to cover these days.

With regard to the one personal leave day taken on April 29, 2005, the Grievant admitted that she knew that the Employer expected employees to schedule personal day leave in advance and that she did not do so. She further admitted that her absence was not due to any medical condition, but was for personal reasons related to her parents and her brother-in-law. The Grievant called her supervisor the morning of April 29 and informed her that she would not report for work. The Grievant was absent, without advance approval or notice to her employer. Her absence was detrimental to her Employer and in direct conflict with the caution that further instances of absenteeism would be cause for discipline.

As to the four remaining days, the Grievant's testimony is contradictory. She indicated during direct examination that all of her absences were FMLA related, but as noted above, divulged in cross-examination that April 29 was not for her FMLA condition. The Grievant and her supervisor disagree as to what was communicated during their multiple disciplinary conversations and as to what messages the Grievant left for her supervisor when reporting her absences. The Grievant testified that she informed her supervisor when calling in sick that the reason for her absence was asthma, (which was previously approved for FMLA), but that she did not indicate asthma every time because she "didn't feel that [she] had to say [it] every time". She also indicated that between August 2003 and December 2004, when she called in to inform Blank of her absences, she would "tell her I'm taking an FMLA day" and that when she returned, she would complete the FMLA form. The Grievant's supervisor testified that the Grievant provided numerous reasons for her absences including asthma, menopause, family reasons, "not having a restful night" and that she never asserted asthma as a reason. I do not find either the Grievant or Blank's testimony to be completely reliable. Given the Grievant's asthmatic medical condition, it is not plausible that she never indicated to Blank that her absence was related to asthma, but I am persuaded that Blank's testimony is more credible than the Grievant's.

The Grievant further acknowledged that she did not request FMLA leave between January 2005 and May 2005, knew that the absences were not being tallied as FMLA (and therefore not subject to disciplinary sanctions), knew that additional nonattendance would subject her to further discipline and did not take steps to protect her continued employment.

This is a difficult case to understand. The Grievant knew how to comply with FMLA reporting and paperwork obligations and had followed the Employer's FMLA application procedure in 2003. She knew that FMLA absences were not subject to disciplinary sanctions. She testified that she believed that her absences would be covered by FMLA, but did not tell her supervisor that her absences were due to an FMLA condition. The Grievant acknowledged that the absences were not being recorded as FMLA, but did nothing to substantiate her absences or inquire as to how her absences could be covered by the FMLA. Finally, when facing termination after being warned four, if not five, times for attendance deficiencies, she was absent four more times without explanation to the Employer and took a personal day without completing with the personal day request procedure. Although I am sympathetic to the Grievant and her medical conditions, the Employer's concerns are justified. The Grievant deviated from the Employer's attendance expectations and failed to heed the warnings of her supervisor.

The Union argues that the Grievant's absences were FMLA qualifying absences. Not only does the evidence negate the factual assertions of the Union's argument, the Greivant's behavior does not support a conclusion that she believed her absences were FMLA covered.

The evidence establishes that the Grievant knew that the Employer was concerned with her attendance and her absences. It further establishes that there were instances when the Grievant was absent from work for reasons unrelated to any medical condition or FMLA qualifying condition that she may have had, between the time period March 23, 2005 and May 10, 2005. Moreover, the Grievant accepted the disciplinary sanctions imposed on her for attendance infractions prior to the May 2005 termination and did not challenge those disciplinary actions. As such, those sanctions exist as evidence that the Grievant was on notice that her attendance was unsatisfactory and verify that the Employer has progressively responded to the Grievant's behaviors. The Employer followed a disciplinary progression and consistent with such a progression, it was reasonable for the Employer to impose the most severe form of discipline, termination, in this instance.

AWARD

The Grievant was discharged for just cause. The grievance is dismissed.

Dated in Rhinelander, Wisconsin, this 25th day of April, 2006.

Lauri A. Millot, Arbitrator

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