

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
KENOSHA CITY AND COUNTY JOINT SERVICES BOARD

and

LOCAL 2430, AFSCME DISTRICT COUNCIL 40

Case 32
No. 67724
MA-14001

Appearances:

Lorette Pionke, Senior Assistant Corporation Counsel, 912 56th Street, Kenosha, WI 53140-3747, appearing on behalf of Kenosha City and County Joint Services.

Nicholas Kasmer, Staff Representative, 8450 82nd Street, Pleasant Prairie, WI 53142 and **Michael J. Wilson**, Staff Representative, 8033 Excelsior Drive, Suite B, Madison, WI 53717-1903, appearing on behalf of Local 2430, AFSCME District Council 40.

ARBITRATION AWARD

Pursuant to the terms of their collective bargaining agreement, Kenosha City and County Joint Services (hereinafter referred to as either Joint Services or the Employer) and AFSCME Local 2430 (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate Commissioner Susan J.M. Bauman to serve as the arbitrator of a dispute concerning the termination of Sara Aken. The undersigned was so designated. A hearing was held on February 14, 2008 at the Joint Services' offices, at which time the parties submitted such exhibits, testimony and other evidence as was relevant to the dispute. A stenographic record was made, and a transcript was received. The parties submitted briefs and reply briefs, the last of which were received by the undersigned on April 9, 2008, whereupon the record was closed.

ISSUE

The parties stipulated that the issue to be decided is:

Was there just cause for the suspension and/or termination of Sara Aken?
If not, what is the appropriate remedy?

FACTS

Kenosha City and County Joint Services is a municipal employer that provides various services to Kenosha County and the City of Kenosha, among which is the operation of a telecommunications or dispatch center. The Grievant herein, Sara Aken, was employed by Joint Services as a second shift dispatcher from September 18, 2000 until she was terminated, effective September 12, 2007. Ms. Aken's employment history was fraught with numerous rule infractions and disciplinary actions taken by the Employer. In December 2006, Josh Nielsen was appointed to serve as communications staff coordinator for Kenosha Joint Services. Ms. Aken and Mr. Nielsen had served together as dispatchers on the second shift and the Employer hoped that things would go better with Ms. Aken. For all times relevant to this proceeding, Barb Kexel served as Ms. Aken's direct supervisor.

Unfortunately, subsequent to Mr. Nielsen's appointment, Ms. Aken again engaged in activities that were contrary to the established rules and regulations of the Employer. Mr. Nielsen prepared a summary of Ms. Aken's employment history:

12/21/03 – Suspension not following call taking procedures

02/03/04 – Suspension not following call taking procedures

02/10/04 – Performance Contract – not following call taking procedures, personal phone calls, not reporting to work on time.

06/14/04 – Released from Performance Contract due to improving performance

10/06/04 – Performance Expectations letter given to Sara Aken regarding conduct towards other dispatchers

09/12/06 – Meeting with Marilyn Meldahl regarding the following issues:

A poor work attitude and attempting to get people involved in her issues.

Poor Call taking

Personal Phone calls interfering with call taking

Arguing with supervision and lying about exchanges

Threatening a supervisor

Lack of radio procedure

09/13/06 – Incident report for personal phone calls, this interfered with her ability to properly handle a call for services.

09/14/06 - 31849 5 minute personal phone call

10/10/06 – Written Warning for mishandling calls, being rude to callers

- 10/10/06 – Written Warning for Insubordination including disrespectful treatment of supervisors or management
- 10/16/06 – Suspension for violation of call taking procedures, ignoring customer service in call taking, argumentative with caller. Given a 5 day suspension and warned on disciplinary action form that further discipline may result in termination.
- 10/17/06 – Suspension for 25 personal phone calls from 10/01/06 through 10/05/06. Given 5 day suspension and warned on disciplinary action form that further discipline may result in termination.
- 11/21/06 – Meeting with Sara regarding improper handling of 2 calls. These occurred prior to the ongoing discipline from 10/17/06.
- 12/06/06 – Given a letter outlining practicing respect in the agency and expectations
- 12/12/06 – Suspension 5 day suspension for Unauthorized absence
- 12/18/06 – Suspension for violation of call taking procedures, not using customer service skills, argumentative with a caller, hung up on a caller. Given 10 day suspension and warned further discipline may result in termination.

New management in place and wanted to take a different approach with this employee.

- 02/20/07 – Written warning for failure to follow call taking procedures.
Random review of calls done over next six weeks
- 03/26/07 – Incident form/counseling for failing to complete daily worksheets
- 03/28/07 – Incident report/counseling – Failure to attend training
- 05/11/07 – Complaint that Sara Aken left the building w/o permission. Reported by another employee. Sara claims she went out to meet a friend who was bringing the dispatchers food. Sara also states she was driving a different vehicle than the one that was supposedly seen missing.
- 06/28/07 – Incident report/counseling – KPD complaint of unprofessional radio procedure

- 06/28/07 – Zero Tolerance filed against Sara Aken for screaming at another employee Dawn Poole
- 08/30/07 – Meeting regarding discourteous treatment of other employees, Sara goes into Dispatch and makes loud comment about being a bitch in the room right after meeting.
- 08/30/07 – Complaint received from City of Kenosha regarding delayed call at City Hall. Sara is the dispatcher in this. An investigation conducted revealed that Sara failed to follow procedure in holding a call.
- 09/05/07 – Suspension for discourteous treatment of other employees and interfering with training stemming from the 08/30/07 meeting.
- 09/06/07 – Manager Dolly Brennan making recordings for court found 25 personal calls made by Sara over 5 Days. Total time on calls:
 - 06/27 – 8 calls for 35 minutes 16 seconds
 - 07/17 – 5 calls for 9 minutes 5 seconds
 - 07/21 – 4 calls for 5 minutes 46 seconds
 - 07/22 – 5 calls for 5 minutes 52 seconds
 - 08/02 – 3 calls for 15 minutes 21 seconds
 - 08/28 – 4 calls for 11 minutes 48 seconds
 - 08/30 – 9 calls for 14 minutes 56 seconds
 - 09/05 – 7 calls for 15 minutes
- 09/06/07 – Zero Tolerance filed against Sara Aken for creating hostile work environment by another employee Nikki Beranis
- 09/12/07 – Meeting with Sara regarding the discipline for discourteous treatment from 08/30/07, for the incident regarding the delayed call and for personal phone calls. Sara terminated.

The instant grievance concerns the five (5) day suspension and the termination. Accordingly, the facts regarding each are important. The notification regarding the five (5) day suspension states:

**KENOSHA CITY/COUNTY JOINT SERVICES
DISCIPLINARY ACTION FORM**

Date of Warning: 09/05/07

TYPE OF VIOLATION: Discourteous or disrespectful treatment of others, or the use of profanity, or the use of threatening or abusive behavior. Interfering with others in the performance of their duties.

SECTION #1, 26 Violation Date: 08/10/07 Violation Time: 2nd shift
08/17/07
08/30/07

DESCRIPTION OF INFRACTION - INCLUDE DATES, TIME, LOCATION, WITNESSES, AND STATE IF THE EMPLOYEE WAS PREVIOUSLY DISCIPLINED FOR THIS SAME INFRACTION.

Dispatch trainee Carolyn Knecht complained to her CTO Nikki Beranis that she was being treated rudely by Dispatcher Sara Aken. Sara was verbally snapping at Carolyn on several different occasions in regards to getting TTY information. This occurred on at least one date of 08/10/07 as reported by both the trainee and the trainer. On this date Sara was handed a TTY and ripped it out of the trainees hand and very dramatically threw it in the garbage, Sara then proceeded to verbally snap at the trainee that she already had that paperwork. Carolyn documented in her daily observation report on 08/10/07 that "I am a little upset about some of the horrible attitudes in the room. I am trying to be as helpful as I can to these few people and they continually are rude to me with no reason." Carolyn states she was referring to Laura Chase and Sara Aken. Also Documented on a training report from 08/17/07, "Through out the night the KPD & KSD Dispatcher got a little attitude because they didn't like a call that was put in." and "Carolyn at one point had to say, I asked Jaimie (Dispatcher Jaimie Adams) she said put it in". Sara was sitting at the KPD console that day.

There was a meeting held regarding these issues on 08/30/07 at 1300 in which Sara was told that she needed to treat everyone politely. Shortly after this Sara walked into the dispatch center and said very loudly "I'm a bitch and I know it." This was said directly in front of the trainee Carolyn Knecht and the trainer Nikki Beranis. At the time Sara was relieving Dispatcher Crystal Kosz who also heard this comment. When questioned Sara stated that she was making this comment to Crystal, however, when Crystal was questioned she states that Sara was not directing this to her and said it twice.

- 10/10/06 – Written warning – Disrespectful remarks made to a supervisor.
- 10/10/06 – Written warning – Argumentative with a caller.
- 12/06/06 – Practicing respect in the agency letter given to Sara Aken.
- 12/18/06 – Written warning – Not using customer service and being argumentative with a caller
- 02/20/07 – Written warning – Argumentative with a caller.
- 06/24/07 – KPD Complaint regarding sarcasm over the radio.
- 06/28/07 – Zero tolerance form filed against Sara Aken for yelling at another employee.

HOW TO CORRECT PROBLEM:

This has-type of behavior has created an environment that is not conducive to training, it is disruptive to the other dispatchers in the room and must stop immediately. Sara needs to be more aware of the comments she makes in the room and the way in which she addresses co-workers. All co-workers, citizens and members of other departments are to be treated with courtesy and respect at all times. There is to be no interference with any Dispatcher in the performance of their duties.

ACTION TAKEN:

5 day Suspension

WHAT FURTHER DISCIPLINE MAY RESULT:

Suspension or Termination

According to the Grievant and co-dispatcher Laura Chase, they met with Josh Nielsen on August 30. This meeting was called to discuss Laura Chase's behaviors and Sara Aken was present at the meeting in her capacity as Union steward. During that meeting, Ms. Aken agreed to discuss her actions as well both as to the comments alleged to have been made to the trainee and other matters. Both Ms. Chase and Ms. Aken felt that they had had a good discussion regarding the situation with trainee Carolyn Knecht and trainer Nikki Beranis. Sara Aken and Laura Chase then returned to the dispatch area where Ms. Aken was to replace Crystal Kosz. Ms. Aken needed to move a chair next to Ms. Kosz and ran the chair into her. Sara Aken stated that she (Ms. Aken) was a bitch and she knew it to Ms. Kosz and did not intend the comment to be meant for anyone else. Mr. Nielsen was told about the comment, and he called Ms. Aken out to talk about it. Later, Ms. Marcinkus, the Director of Joint Services, came into the dispatch area and, according to Ms. Aken and Ms. Chase, "lost it."

Also, during the August 30 meeting, there was discussion of a call for assistance at City Hall that appeared to have been mishandled either by Ms. Chase serving in the capacity of call taker, Ms. Aken serving in the capacity of dispatcher, or both. Both Ms. Chase and Ms. Aken responded to Mr. Nielsen's inquiries, but were unable to provide sufficient information for him to determine whether any rules had been violated by either Ms. Chase or Ms. Aken.

The notification of the five (5) day suspension was provided to Ms. Aken on September 5, and a meeting was scheduled for her to meet with Mr. Nielsen and a Union steward on September 12, prior to her serving the suspension. Between the notification on September 5 and September 12, Mr. Nielsen completed his investigation regarding the aforementioned situation at Kenosha City Hall, and Annetta "Dolly" Brennan reviewed numerous tapes from the Dispatch Center in response to requests from the District Attorney or other attorneys.

Josh Nielsen's report regarding the City Hall Dispatch situation states the following:

Complaint

Assistant Chief Genther received this complaint from City Hall. On August 29th at 1434 Darlene Drake in personnel called in to report that there was a Jonathan Conforti there yelling at her. This was an in progress Disorderly Conduct complaint but was not dispatched until 1459. Another City employee ended up escorting the suspect out of the building. The police department wants to know why there was a 25 minute delay.

Investigation

The Call for Service shows that the dispatcher was Sara Aken and the call taker was Laura Chase. When interviewed Laura states that the caller told her the suspect was gone. Laura states this was entered into the call. Sara Aken was the dispatcher who was also interviewed and remembers the remarks saying the suspect was no longer there and that it was very busy with no squads available at that time. She couldn't remember if she called a supervisor and she did not fill out a delayed dispatch form.

In reviewing calls made from KPD there is not a call to the supervisor from Dispatcher Sara Aken to a supervisor and there is not a delayed dispatch form filled out.

The call was reviewed using the Call Taker Quality Assurance Review form. The complainant is almost inaudible on the recording, what can be made out is that the complainant's name, that she is at the City of Kenosha, the suspect's name and that he's walking out a door. The call taker does not appear to have any difficulty in hearing the caller, and tells the caller that we will have someone sent right over. The call taker did not ask for a callback phone number but it should be noted that the phone number for the municipal building is automatically entered into the CAD. The call taker did not ask for a suspect description and if one was given it was not entered into the CAD.

The call taker entered remarks that the suspect was "just there" but left out that he was walking out the door as the comp was on the phone. This led the dispatcher to believe that the suspect was no longer there and that this call could wait when in reality the suspect had just walked out of the office and was still in the building. Because the complainant is mostly inaudible on the recording, it is unknown if a time frame was given to the call taker.

Conclusion: The call taker did not follow procedure by failing to get a description of the suspect and assumed that when the caller said the suspect walked out the door that he was gone, this was not the case as the suspect was still in the building. The KPD radio dispatcher did not follow procedure by

holding a call for more than 15 minutes without notifying the police department supervisor and without documenting the delayed call. Further more the call taker tells the complainant that we will send someone right over and it ends up taking 25 minutes. During this delay another city employee escorts the suspect out of the building.

Action Taken

I met with Assistant Chief Genther and he has been made aware of the circumstances of the call and that this will be handled through our internal discipline process.

It is Sara Aken's contention that it is futile to try to contact a KPD supervisor to advise that a call is being held since they are impossible to contact. Further, she contends that dispatchers rarely complete the delayed call forms. At the meeting scheduled for September 12 to discuss the five day suspension, Ms. Aken was given another Disciplinary Action Form regarding this held call:

TYPE OF VIOLATION: Dereliction of Duty, Failure to maintain established levels of performance.

DESCRIPTION OF INFRACTION – INCLUDE DATES, TIME, LOCATION, WITNESSES, AND STATE IF THE EMPLOYEE WAS PREVIOUSLY DISCIPLINED FOR THIS SAME INFRACTION.

While dispatching KPD Sara Aken received a call for Disorderly Conduct at City hall. This call came in at 1434. Sara did not dispatch until 1458. Sara states she felt the remarks in the call were such that this call was not in progress. The facts are that the suspect was still at City Hall for a portion of this time and another employee escorted the suspect out of the building.

Sara did not follow the delayed dispatch procedure by holding this call for 25 minutes and not notifying a Kenosha Police Department Supervisor that was on duty that she was going to hold this call nor did Sara document the fact that this call was held on the Delayed Dispatch form.

Sara has been disciplined in the past for failure to maintain established levels of performance as follows:

02/20/07 – Written for Failure to follow call taking procedures

12/18/06 – Suspension for Failure to follow call taking procedures

10/16/06 – Suspension for Failure to follow call taking procedures

HOW TO CORRECT PROBLEM:

DISCIPLINARY ACTION TAKEN:

Termination

All telephone calls to and from the 911 Dispatch Center are recorded. As part of her regular duties, Manager Annetta “Dolly” Brennan is called upon to review tapes of phone calls from the 911 Dispatch Center. This is usually at the request of the District Attorney or another attorney who is seeking information in preparation for a hearing or trial. In the course of trying to find the requested or pertinent tapes to record for the requestor, Ms. Brennan must listen to conversations between callers to the Center and the call takers, as well as the dispatchers, in order to find the relevant information. In the course of doing this, Ms. Brennan has, from time to time, come across personal phone calls made or received by employees of the Center. During the course of such a tape review in September 2007, Ms. Brennan found some personal phone calls made by Sara Aken. Because Ms. Brennan was aware that there was a previous history of Ms. Aken’s making personal phone calls during her work period at the Dispatch Center, Ms. Brennan listened to tapes over a broader period of time, specifically looking to see if Ms. Aken had again violated the rules on the use of the phone and conducting personal business on work time. Ms. Brennan found that Ms. Aken had made numerous such calls and advised Mr. Nielsen of this fact. Mr. Nielsen completed a Disciplinary Action form that was provided to Ms. Aken at the meeting previously scheduled for September 12. Mr. Nielsen met with Sue Marcinkus prior to determining the disciplinary action that would be taken. The form provided to Ms. Aken reads as follows:

**KENOSHA CITY/COUNTY JOINT SERVICES
DISCIPLINARY ACTION FORM**

Date of Warning: 09/12/2007

TYPE OF VIOLATION: Conducting personal business during working hours

SECTION #2	Violation Date: 06/27/07	Time: During 2 nd shift
	07/17/07	During 2 nd shift
	07/21/07	During 2 nd shift
	07/22/07	During 2 nd shift
	08/02/07	During 2 nd shift
	08/28/07	During 2 nd shift
	08/30/07	During 2 nd shift
	09/05/07	During 2 nd shift

DESCRIPTION OF INFRACTION – INCLUDE DATES, TIME, LOCATION, WITNESSES, AND STATE IF THE EMPLOYEE WAS PREVIOUSLY DISCIPLINED FOR THIS SAME INFRACTION.

Multiple infractions found by manager Dolly Brennan while making recordings for court and departments

- On 06/27/07 between 14:45 and 21:13 Sara made 8 personal calls totaling 35 minutes and 16 seconds while sitting at the KSD Console.
- On 07/17/07 between 14:05 and 18:09 Sara made 5 personal phone calls totaling 9 minutes 5 seconds while at the Call Take console and the KFD console.

- On 07/21 between 15:11 and 1936 Sara made 4 personal phone calls totaling 5 minutes 46 seconds while at Call Take and at KPD.
- On 07/22/07 between 18:20 and 21:48 Sara made 3 personal phone calls totaling 5 minutes 52 seconds while at KSD.
- On 08/02/07 between 18:20 and 21:48 Sara made 3 personal phone calls totaling 15 minutes 21 seconds while at KSD.
- On 08/30/07 between 15:15 and 21:40 Sara made 9 personal phone calls totaling 14 minutes 56 seconds while at KSD.
- On 08/28/07 between 16:43 and 21:37 Sara made 4 personal phone calls totaling 11 minutes 48 seconds while at Call Take Backup.
- On 09/05/07 between 14:10 and 21:23 Sara made 7 personal phone calls totaling 15 minutes while at KSD. On another call Sara had a Deputy call in and she asked him to tell her a joke, the Deputy responded you had me call in on Channel 1 to tell you a joke. This is unprofessional behavior.

Sara was suspended on 10/17/06 for making 25 personal phone calls from 10/01/06 through 10/05/06 and was warned that further discipline resulting from this would be termination.

HOW TO CORRECT PROBLEM:

DISCIPLINARY ACTION TAKEN:

Termination

Ms. Aken does not deny that she has made or received these personal phone calls during working hours. She contends, however, that others, including her immediate supervisor Barb Kexel, make as many or more phone calls during working hours and that she has to do her personal business during working hours because she is not able to take her contractual breaks as another employee leaves the Dispatch Center many times during a shift for breaks and only one person can be away at one time.

Additional facts are included in the **DISCUSSION**, below.

RELEVANT CONTRACT PROVISIONS

Section 1.2 Management Rights. Except as otherwise provided in this Agreement, the Employer retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline for just cause; the right to decide the work to be done and location of work; to contract for work; services or materials; to schedule overtime work; to establish or abolish a job classification; to establish

qualifications for the various job classifications. The Employer shall have the right to adopt reasonable rules and regulations. Such authority will not be applied in a discriminatory manner. The Employer will not contract out for bargaining unit work where such contracting out will result in the layoff of employees or the reduction of regular, straight time hours worked by bargaining unit employees.

Section 5.3. 4/2, 4/2, 5/2 Public Safety Dispatchers.

...

All the above daily work shifts include a paid twenty (20) minute lunch break scheduled as near to the middle of the shift as is practical.

...

Section 6.5 Notice of Termination. Any full-time employee covered by this Agreement whose employment is terminated for any reason other than disciplinary action, shall be entitled to two (2) weeks notice.

All employees shall give two (2) weeks notice, in writing, of their intention to sever their employment with the Employer. If an employee fails to give such notice, any earned vacation pay shall be forfeited. Earned vacation time shall not be counted toward the two (2) weeks' required notice.

Section 21.4. Coffee Breaks. There shall be a fifteen (15) minute break in the first half of the regular work shift, and a fifteen (15) minute break in the second half of the regular work shift.

RELEVANT POLICY EXCERPTS

Employee Discipline Policy (Rev. 3/87, 11/87, 4/94, 10/00, 2/02)

Policy

Members shall abide by Joint Services policies and procedures, applicable rules and regulations, local state and federal laws, and the expectation set forth in the position specifications. Discipline may be imposed by verbal reprimand, written reprimand, suspension without pay, and/or discharge. Other forms of discipline may be imposed when appropriate. The concept of progressive discipline will be utilized if appropriate.

Rule

Employees shall not engage in the following conduct:

1. Discourteous or disrespectful treatment of others or the use of profanity, or the use of threatening or abusive behavior.

...

24. Neglect or dereliction of duty, or a failure in any way to maintain established levels of performance.
25. Conducting personal or union business or soliciting funds during work hours without prior supervisory approval.
26. Interfering with others in the performance of their duties.

. . .

The art of discipline is intended to be positive in nature and attempts to correct unacceptable employee actions. This attempt includes counseling sessions, suggested referrals to outside agencies, and other help with the purpose of improving the behavior of an employee that may be detrimental and disruptive to the effective operations of a department and/or work program.

In the process of trying to assist the employee resolve problems and improve his/her behavior, corrective action may be necessary. This corrective action may include discipline.

Progressive discipline is basically a series of disciplinary actions, corrective in nature, starting with a verbal or written reprimand. Each time the same or similar infractions occur, more stringent disciplinary action takes place. It is important in invoking progressive discipline, up to and including dismissal, that each time disciplinary action is contemplated, it must be definitely established that an infraction did occur which is organizationally inappropriate. To definitely establish that an infraction did occur means that a supervisor must be able to sufficiently substantiate the occurrence of any infraction.

After the infraction has been established, then an assessment of the type of corrective action required is made, taking into account the previous disciplinary actions that have been taken. It does not necessarily mean that an employee is required to violate the same rule or have the same incident occur in order to draw upon previous corrective disciplinary actions. However, totally unrelated previous disciplinary actions should not be considered in progressing the severity of discipline.

When there is a series of minor infractions and where there have been several verbal reprimands, written reprimands or suspensions occurring over a period of time, and the employee's general behavior pattern is such that the previous disciplinary actions can be included, they may be used in determining the next level of progressive discipline, if any, in determining the proper action to be taken. If past behavior relates to the present problem, past action should be taken into consideration. If the relationship is unclear, consult with the Director.

Upon taking any of these actions, the employee must be notified at the time that any continued involvement in that particular negative behavior will result in progressive disciplinary action up to and including dismissal. The various levels of discipline are: verbal reprimand, written reprimand, suspensions, demotion and dismissal.

Levels of Disciplinary Action

a. **Verbal Reprimand:**

A verbal reprimand defines an inappropriate action or omission which includes warning that the incident is not to be repeated. A verbal reprimand, when required, shall be given orally by the employee's immediate supervisor. The reprimand should be given in a private meeting. Verbal reprimands must be documented for the personnel file in order to substantiate the start of progressive discipline. The documentation should be recorded on the disciplinary action form. The employee must be told clearly, as is required at other disciplinary levels, what the infraction is, how to correct the problem and explicitly inform the employee what further disciplinary actions may result for failure to comply with recommended corrective action.

All disciplinary actions of verbal reprimands must be sent to the Director for approval - and after all signatures for recording and retention, and a copy given to the union representative who may be present at the employee's request. The Administration office will keep logs of all disciplinary actions taken and the infraction that caused the discipline. These logs then form the basis of the uniform application of discipline in the future. Verbal reprimands will remain valid for one year.

b. **Written Reprimand:**

A written reprimand may follow one of [sic] more verbal reprimands issued to an employee for a repeated offense. A verbal reprimand need not precede a written reprimand. A written reprimand should be used for repetition of an offense that originally caused a verbal reprimand. Infractions of a more serious nature may be disciplined initially for a written reprimand. The written reprimand shall be issued to the employee by the immediate supervisor in a private meeting. The immediate supervisor shall inform the manager in a private meeting. The immediate supervisor shall inform the employee of any past verbal reprimands issued to the employee for similar infractions. The supervisor

shall explain the reasons for the issuance of the written reprimand; again, suggestions for correcting the behavior are issued together with a warning of what discipline, up to and including dismissal may be taken in the future if behavior does not improve. The department will make an offer to the employee to have a union representative present.

Written reprimands must be sent to the Director for approval prior to being issued with a copy to the union, if applicable.

c. Suspensions:

A suspension is a temporary removal of the employee from the payroll. A suspension may be recommended when lesser forms of disciplinary action have not corrected the employee's behavior. Suspension may also be recommended for first offenses of a more serious nature. Suspensions may be imposed on an employee for repeated offenses when verbal reprimands and written reprimands have not brought about corrected behavior, or for first offenses of a more serious nature. Examples of some of the more serious infractions (but not limited to those listed) are:

- Major deviation from the work rules, including a violation of safety rules.
- Being under the influence of alcohol.
- Falsification or misuse of time sheets or records
- Fighting.
- Theft of another employee's property.
- Disobedience of an order.

The number or days recommended for suspension will depend on the severity of the act. Commission of the above offenses may also result in a recommendation for dismissal.

d. Discharge:

Discharge may be recommended for an employee when other disciplinary steps have failed to correct improper action by an employee, or for first offenses of a serious nature. Examples of some of the more serious infractions (but not limited to those listed) are:

- Being under the influence of alcohol or drugs on the job.
- Possession of an unauthorized weapon on the premises.
- Willful destruction of government property.
- Insubordination.
- Fighting on the job.
- Theft of government property or funds.
- Abandonment of position.

Internal Review

Before any of the following disciplinary actions may be taken, the system of internal administrative review described below will be followed to insure that the discipline system is utilized in a uniform and equitable manner.

- For: a) suspensions of two or more working days
b) discharge

The following system shall be adhered to:

- a. Employee Infraction of Rules, including continued failure to meet performance standards:

- Manager or Supervisor investigates the situation.
- Employee is provided with written notice of investigation and his/her rights

- b. Due Cause Meeting:

Due cause meeting held with the Director.

Manager and Supervisor reviews result of investigation and recommend level of discipline. A maximum level of discipline will be set in the due cause meeting, based on equitable and uniform discipline.

- c. Written Notice to Employee:

The employee is informed in writing of the charges brought, his/her rights, and the date, time and place of a pre-disciplinary meeting to discuss the charges.

- d. Pre-Disciplinary Meeting:

- Conducted by Manager.
- Supervisor involved attends.
- Employee and representative of his/her choosing attends.
- Witnesses may be called by the department or by the employee. Such witnesses will be provided the time off from work to appear at the pre-disciplinary meeting.
- Charges will be discussed, with ample time provided for a complete presentation of charges and for rebuttal and defense by the employee.

e. Results of Pre-Disciplinary Meeting:

As a result of the discussion and facts and material presented in the pre-disciplinary meeting, the Manager may, except for discharge requests:

- Take disciplinary action as determined in the due cause meeting.
- Reduce the level of disciplinary action determined in the due cause meeting; or
- Take the matter under advisement, for no longer than two (2) working days.

In no event shall the level of disciplinary action taken be greater than the maximum determined in the due cause meeting.

f. Written Notice to Employee:

Written notice of disciplinary action to be taken shall be given to the employee, stating effective date and time of action.

Kenosha City and County Joint Services Personal Business Rule (Rev. 11/93)

Policy

Members on duty shall not engage in any non-work activities or personal business which would cause them or other members to be negligent or inattentive to duty.

Rule

Personal business or non-work related activities should be conducted during a member's lunch or break periods. Long distance personal telephone calls shall not be charged to Joint Services. Personal phone calls received or made by members on duty are restricted to urgent personal matters only and must be kept to an absolute minimum in number and should not exceed more than three minutes in duration. Members are required to log all such personal phone calls on their daily work sheets or on forms provided by their departments.

Members are not to visit with other Joint Services members on duty in other departments for non-work reasons.

Family or friends visiting a member at work may do so during the member's lunch or break periods. Visitors are restricted to the cafeteria area only unless otherwise authorized by a Joint Services management member. Visitors must sign in and out at the front counter and wear a visitor's pass when entering the secured area of the safety building.

POSITIONS OF THE PARTIES

The Employer contends that it had just cause to discharge Sara Aken, an employee with several recurring issues during the course of her seven (7) year employment with Joint Services. She mishandled calls, a fact that was often brought to the attention of management by means of complaints such as that of the Kenosha Police Department. She participated in personal telephone calls that were longer in length than acceptable to the Department. She was also involved in conflicts with fellow employees, some of whom contended that her attitude towards them created a hostile work environment. According to the Employer, Ms. Aken's performance was marginal, her attitude was poor and she ignored workplace rules that were critical to the function of the Call Center. Efforts made to correct Sara Aken's behavior, including the application of progressive discipline, were fruitless, resulting in a decision to discharge Ms. Aken as a culmination of the rudeness she had exhibited towards fellow employees, her mishandling of the KPD call, and the discovery of additional personal telephone calls made during working hours. The Employer contends that there is just cause, in accordance with the *Daughtery* seven standards, to suspend and to discharge Sara Aken. Accordingly, the grievance should be denied and dismissed.

On the other hand, the Union argues that neither the suspension nor the termination can be sustained. Because the alleged victims of Ms. Aken's actions, Carolyn Knecht, Nikki Beranis, Jamie Adams¹ and Crystal Kosz, did not testify at the hearing, any report of misconduct is hearsay and the Grievant's explanation of the events stands as uncontroverted evidence of record. Because, the Union argues, the five (5) day suspension underpins the Employer's case-in-chief, that progressive discipline was followed and the Grievant's conduct was unredeemable, making termination the only alternative, the termination grievance must be sustained as well as the suspension grievance.

The Union contends that this is a classic case of disparate treatment and lax enforcement. It points out that the direct supervisor, Barb Kexel, was the biggest offender of the rule governing personal telephone calls and was not called to testify. Sara Aken's calls did not exceed that of other employees. One employee took so many breaks during the course of each shift that other employees, including the Grievant, were unable to take their breaks (and take care of personal business during that time).

As to the KPD call, Mr. Nielsen discussed it with Ms. Chase and Ms. Aken at the August 30 meeting, after which Ms. Aken felt the matter was resolved and she felt good about the meeting at which she contends she was told that in the future she should be sure to complete the Delayed Dispatch Form even if she did not call the supervisor.

In summary, the Union believes that upper management singled out the Grievant for discipline regarding personal phone calls while simultaneously overlooking the behavior of the direct supervisor. Management failed to provide adequate work relief for the Grievant and

¹ Ms. Adams did testify on behalf of the Union on an unrelated matter, but the Employer did not cross-examine her with respect to the events giving rise to the suspension, nor did the Employer call Ms. Adams as a witness itself.

other employees, making it impossible for her to take breaks and take care of her personal business. There is no support in the record for the proposition that the incident of August 29 involving the KPD was anything but routine. Accordingly, the grievance should be sustained, the Grievant's record expunged of any reference thereto, and Ms. Aken should be made whole.

DISCUSSION

Sara Aken was suspended for five (5) days for the manner in which she interacted with her fellow employees and she was subsequently terminated for failing to follow procedures in connection with a delayed dispatch of the Kenosha Police Department and for making personal telephone calls during working hours. The Employer contends that it had just cause for the disciplinary actions it imposed, given the Grievant's prior employment record. The Union argues that the Employer did not have just cause to take such actions and that the record does not support the imposition of any discipline whatsoever.

The collective bargaining agreement between the parties does not define just cause. The Employer has argued that it had just cause for the actions it took based on the seven *Daugherty* standards. The Union does not present a just cause standard. Absent an agreement to utilize the *Daugherty* standards, and absent a definition of just cause in the collective bargaining agreement, the undersigned adopts a two prong analysis which requires the Employer to establish the existence of conduct by the Grievant in which it has a disciplinary interest and it must then establish that the discipline imposed for the conduct reflects its disciplinary interest.

THE SUSPENSION

Ms. Aken was issued a five (5) day suspension for the manner in which she interacted with other employees in the Dispatch Center, specifically a trainee and trainer, and for a comment that she made, "I'm such a bitch" (or "I'm a bitch and I know it"), upon her return to the Center after a meeting with Josh Nielsen, Barb Kexel and Laura Chase. The Union contends that the Employer failed to present evidence, other than inadmissible hearsay evidence, regarding these events, in particular testimony from the affected individuals, Carolyn Knecht, Nikki Beranis, or Crystal Kosz. Ms. Aken testified that she addressed the offensive statement to Ms. Kosz, the dispatcher she was about to relieve, when she accidentally bumped her chair into Kosz' chair, and that the remark was not intended for any other persons in the room.

The Union is correct that Ms. Aken's testimony regarding the events with Knecht and Beranis which gave rise to the August 30 meeting with Josh Nielsen, Barb Kexel and Laura Chase stands un rebutted, other than by the hearsay testimony of Mr. Nielsen. Ms. Aken acknowledged making the "bitch" remark after that meeting, but contends that it was addressed to a single individual, Ms. Kosz, and not to the room in general, including Ms. Knecht and Ms. Beranis. While arguably such a remark is, in itself, cause for the imposition of discipline, Sara Aken's un rebutted testimony is that such language is regularly utilized by staff in the Dispatch Center. Further, the disciplinary notice does not indicate that it was the use of the particular word for which discipline was imposed.

There is no question that the Employer had a disciplinary interest in the behaviors it alleges the Grievant engaged. There is little question that, based upon Ms. Aken's prior disciplinary record, a five (5) day suspension would be appropriate discipline to impose in this matter. The Employer, however, failed to demonstrate by direct evidence that the Grievant had engaged in these actions. Accordingly, the five (5) day suspension must be vacated.² While the Employer failed to establish just cause for the five (5) days suspension, it did establish, through Ms. Aken's and Mr. Nielsen's testimony, that Ms. Aken's behavior was disruptive to persons working in the Dispatch Center at the time. Accordingly, the events of August 30 and before, as established on the record, can be considered in determining the appropriateness of the termination.

THE TERMINATION

On September 12, Ms. Aken was scheduled to meet with Josh Nielsen regarding the five (5) day suspension for which she had received notification on September 5. Accompanied by her union steward, Colleen Weaver, Ms. Aken went to the meeting and was confronted by Mr. Nielsen and Ms. Marcinkus. Ms. Aken was given two (2) notices of termination: one based on the recent discovery by Dolly Brennan that Ms. Aken had made numerous personal telephone calls during working hours and the other regarding her failure to handle a delayed dispatch properly, by neither notifying the Kenosha Police Department supervisor nor completing the delayed dispatch form.

Between September 5 and September 12, Mr. Nielsen completed his review of the delayed dispatch to Kenosha City Hall. Dolly Brennan had, in her usual course of business, reviewed Dispatch Center tapes and determined that Sara Aken had made or received numerous personal telephone calls during her working hours. Ms. Brennan advised Mr. Nielsen and Ms. Marcinkus of her discovery. Mr. Nielsen and Ms. Marcinkus met and discussed the situation, including a review of Ms. Aken's prior disciplinary record, warnings of future discipline that were included in prior disciplinary action forms, and recent events on second shift in the Dispatch Center. They determined that Ms. Aken should be terminated.

It is the Union's position that the termination cannot be sustained if the five (5) day suspension is not sustained. I disagree. The foundation for the termination is not found in the five (5) day suspension, but in the entirety of Ms. Aken's performance over the entire one-year period leading up to September 12, 2007.

Both Mr. Nielsen and Ms. Marcinkus testified to Ms. Aken's record during the last quarter of 2006, before Mr. Nielsen was promoted to his current position. Between September 12, 2006 and December 18, 2006, Ms. Aken had numerous counseling interactions with Marilyn Meldahl, Mr. Nielsen's predecessor. Ms. Aken had received two (2) written warnings, one for mishandling calls and one for insubordination. She had also received a five (5) day suspension for violation of call taking procedures; a five (5) day suspension for

² At the beginning of the hearing, the Employer appeared surprised that the hearing was scheduled to address both the five day suspension and the termination.

personal phone calls during the period October 1 through October 5, 2006; a five (5) day suspension for unauthorized absence; and a ten (10) day suspension for violation of call taking procedures. The concept of progressive discipline would support termination for the next incident of violation of call taking procedures or for making personal phone calls during working hours.

When Mr. Nielsen took over as Communications Staff Coordinator, he decided to give Ms. Aken an opportunity to perform under a different manager and did not immediately assess disciplinary action in a progressive manner based on the most recent ten (10) day suspension. Nonetheless, Ms. Aken received a written warning in February 2007 for her failure to follow call taking procedures. She also received counseling for various infractions in March and June of 2007. While Ms. Aken's performance appears to have improved, all of the above disciplinary actions were part of her record and available for consideration at the time of her termination in September 2007. Accordingly, if the record supports that Ms. Aken again violated call taking procedures, or made personal phone calls, and she was not treated in a manner that was inconsistent with that accorded to similarly situated persons, her termination is with just cause.

The KPD Delayed Call

On August 29, at 1434, a call came into the Dispatch Center from a City employee regarding a Disorderly Conduct in progress at the Kenosha City Hall. Laura Chase was the call taker, and Sara Aken was the KPD dispatcher. Ms. Chase told the caller that they would be sending someone right away. Ultimately another City Hall employee escorted the offending individual out of the building. The caller told Ms. Chase that the suspect had gone, a fact that was entered into the call and noted by Ms. Aken. In fact, the suspect had left the caller's office but had not left City Hall. The call was not dispatched until 1459. The proper procedure for a delayed dispatch such as this one was to call a police department supervisor to advise that the call was being held, and to complete a delayed dispatch form. Both of these actions are supposed to be performed by the dispatcher. Ms. Aken did neither.

Ms. Aken testified to the fact that it is almost impossible to contact a police supervisor by phone, and that often she and other dispatchers will hold a call in excess of 15 minutes when there are no squads available without calling a supervisor and without completing the delayed dispatch form. Ms. Chase also testified in a similar manner.

The August 29 incident was discussed during the August 30 meeting among Mr. Nielsen, Ms. Kexel, Ms. Chase and Ms. Aken. Ms. Aken testified that she believed the matter was resolved at the end of that meeting, Mr. Nielsen having directed her to make sure that the delayed dispatch form was completed in the future. Mr. Nielsen testified that, by the end of the meeting, he felt that he had not established all of the facts regarding the August 29 event and that it required him to investigate further. He did so. Although Ms. Aken felt the matter was concluded by the end of the August 30 meeting, this opinion was not shared by Mr. Nielsen and, in fact, the information that he gleaned after the August 30 meeting was sufficient that he believed that discipline was warranted. He discussed Ms. Aken's failure to

follow procedures with Ms. Marcinkus and, in fact, recommended to her that Ms. Aken be terminated, given the five (5) day suspension he had just issued and Sara Aken's prior violations of call taking procedures. Ms. Marcinkus, after reviewing Ms. Aken's prior disciplinary record, concurred in this determination.

Although neither Mr. Nielsen nor Ms. Marcinkus disagreed with Ms. Aken and others that telephoning police supervisors when a call was to be held was difficult to do as the supervisors could not be reached, and that others failed to complete delayed dispatch forms on occasion, there is no dispute that both of these steps are required by the call taking and dispatching procedures established by the Employer. Ms. Aken does not deny that she was required to perform these tasks. She contends that her failure to perform them was consistent with the standard operating procedure of other employees of the Dispatch Center, that Mr. Nielsen had essentially approved her actions by stating on August 30 that the next time she should make sure she completed the delayed dispatch form, and that she should not have been terminated for this infraction of the rules.

Taken as a single failure to abide by the Employer's procedures, Ms. Aken's failure to contact or attempt to contact the police supervisor on August 29 and her failure to complete the delayed dispatch form that night, this incident would not rise to cause for disciplinary action beyond, perhaps, counseling of the proper way to handle the situation. Against Ms. Aken's background of numerous failures to abide by call taking procedures, however, and the Employer's (and the public's) interest in ensuring that all calls to the Dispatch Center are handled properly and promptly, the situation is different. The Employer looked at this incident as compounding Ms. Aken's behaviors on August 30, and her apparent inability to work with fellow employees. That behavior had resulted in the five (5) day suspension that I have found, on this record, to be without just cause. Despite Ms. Aken's poor prior record, and discounting the five (5) day suspension issued on September 5, I do not find that the Employer had just cause to terminate Ms. Aken for her failing to follow procedures on August 29. To be sure, this was another example of Ms. Aken's failure to follow call taking procedures. However, Ms. Aken's testimony regarding the inability to contact a Kenosha Police Department supervisor and the failure of other dispatchers to complete the delayed dispatch form was corroborated by Ms. Chase and uncontested by any Employer witness. Against this background, a termination cannot be sustained. Because the termination is sustained on other grounds, it is unnecessary for the undersigned to determine the degree of discipline to be appropriate for this offense.

The Personal Phone Calls

On October 17, 2006, Ms. Aken was suspended for five (5) days for making 25 personal phone calls from 10/01/06 through 10/05/06. The Disciplinary Action Form described the means for Ms. Aken to correct the problem as follows:

No personal calls and no personal business, including reading is to be done by Sara at any time. Phone calls are to be made on her breaks only and reading on down time will be revisited once performance shows improvement.

The Disciplinary Action Form, which Ms. Aken signed on November 7, 2006, clearly stated:

WHAT FURTHER DISCIPLINE MAY RESULT: Termination

Ms. Aken acknowledges that she made personal phone calls thereafter and does not dispute that she made the calls that are listed on the disciplinary action form dated September 12, 2007 which resulted in her termination. Ms. Aken contends that she should not be terminated for this rule infraction largely because others, including her direct supervisor Barb Kexel, also make many personal telephone calls during working hours and because she was unable to take her contractual breaks during her work hours because another employee took an excessive number of breaks during each shift, such that neither Ms. Aken nor many of the other 2nd shift dispatchers were able to take breaks.

Notwithstanding Ms. Aken's arguments, I find that there is just cause to terminate Ms. Aken's employment. Her disciplinary record is replete with numerous counselings, warnings and suspensions regarding her work performance. She did not grieve any of the prior disciplinary actions, including the November 2006 suspension that clearly advised that termination would result if she again engaged in personal telephone calls during work time. Ms. Aken does not contest having been put on notice that she was not to engage in such activity as personal phone calls in the future, and she also admits that she made the calls. Ms. Aken does, however, claim other factors mitigate against termination for making these phone calls.

First, Ms. Aken points to the undisputed fact that other employees, including Supervisor Kexel, make personal phone calls. The record is clear that the Employer has disciplined other employees, although not Ms. Kexel, for making personal phone calls in number and length that exceed the rules.³ Though there may be others who violated the rule regarding personal phone calls, Ms. Aken's argument that she is the only one who has been disciplined for this rule infraction falls short of the mark. Ms. Aken was disciplined for this infraction in the past, a discipline that she did not grieve and did not contest. She was advised that another infraction of this rule would result in her termination. She did not contest this statement. She knowingly broke the rule on numerous occasions and cannot point to the fact that others break the rule as a basis of saying that her violation should go unpunished. She also cannot be heard to say that the Employer specifically looked for evidence that she broke the rule. Dolly Brennan came upon the personal phone calls during a routine review of tapes while seeking information requested by the District Attorney and private attorneys. The Employer has a vital interest in having all call takers and dispatchers engaged in calls relating to the Dispatch Center, not in being engaged in personal phone calls. Although there is nothing in the record to support the suggestion that Ms. Aken put business calls on hold to engage in personal conversations, this does not detract from the fact that Ms. Aken knowingly spent numerous minutes of several days on personal phone calls, contrary to the rules and contrary to the specific direction she had been given in November 2006.

³ It is interesting that most of the employees who testified did not know the actual rule regarding the number or length of personal phone calls. They all acknowledged, however, that there was a limitation on the amount of time an employee could be engaged in personal phone calls while on duty.

Ms. Aken admits that she made the calls, but contends that she did not receive her contractual breaks and, therefore, had to take care of personal business during working hours. There is an old adage in labor relations which, in essence, says “obey first, then grieve.” As applied to this situation, it is clear that Ms. Aken should have obeyed the rule regarding personal phone calls and filed a grievance regarding her inability to have contractual breaks because one employee, Rebecca, took an excessive number of breaks, leaving little or no chance for Ms. Aken and other 2nd shift employees to leave their consoles and take breaks. Ms. Aken says that she complained of this situation to Ms. Kexel and, possibly to Mr. Nielsen. Nothing was done about it. Ms. Aken should have filed a grievance to enforce the contract provision regarding breaks, or to receive permission to act as she did: use time at the consoles for personal business. She should not have clearly and consciously violated the rules in order to make up for the fact that she was not permitted to take her contractually guaranteed breaks.

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Ms. Aken also argues that the amount of (known) time she spent on the phone was *de minimus* and therefore should not result in her termination. The termination was for making, according to the Union’s count, forty-five calls totaling approximately one hour and fifty-three minutes over an eight day period, an average of approximately two and a half minutes per call. Looking at the average number of minutes per call fails to account for the fact that on June 27, there were 8 calls totaling more than 35 minutes or that on August 2, there were 3 calls, totaling more than 15 minutes. The fact is that these calls were not made or received in emergency situations, and that on many days they exceeded two calls and many calls exceeded 3 minutes. The rule states:

. . . Personal phone calls received or made by members on duty are restricted to urgent personal matters only and must be kept to an absolute minimum in number and should not exceed more than three minutes in duration. Members are required to log all such personal phone calls on their daily work sheets or on forms provided by their departments.

Clearly Ms. Aken violated the rule. She acknowledged that the calls were not related to urgent personal matters; they were not kept to an absolute minimum in number; some exceeded three minutes in length. There is no indication that Ms. Aken logged the personal phone calls on her daily work sheets. There is just cause for assessing discipline, including termination.

CONCLUSION

The record before me does not support a finding that there was just cause for the five (5) day suspension. It also does not support a finding there was just cause for termination arising from the August 29 incident regarding the Kenosha City Hall delayed dispatch. In both

⁴ Ms. Aken testified that there was a practice that only one person could be on break at a time, and that she would not just leave if it was someone else’s turn to go on break. Ms. Aken make a conscious choice to violate one rule (making phone calls) instead of another (number of people out of the room at a time) in lieu of confronting the situation directly by filing a grievance.

of these matters, the record is clear that Ms. Aken's actions did not comport with the rules and

regulations established by the Employer. The record does support a finding that there was just cause to terminate Ms. Aken for making personal phone calls during work hours. The Union argues that the “bitch” comment made by Ms. Aken on August 30 triggered a feeling of betrayal on Mr. Nielsen’s part which then resulted in Ms. Marcinkus’ admonishment to the entire 2nd shift, and also led to an in-depth investigation of the August 29 delayed dispatch to Kenosha City Hall. That is, according to the Union, Ms. Aken’s August 30 remark led to closer scrutiny of Ms. Aken and to her September 12 termination.

Ms. Aken’s behavior on August 30 certainly did lead to her termination. However, I credit fully Mr. Nielsen’s testimony that he did not feel that he had all the information he needed regarding the August 29 delayed dispatch situation by the end of the August 30 meeting. His continued investigation into that incident was determined by the information he had gleaned at the August 30 meeting and was not the result of the additional actions of Ms. Aken when she returned to the Dispatch Center on August 30. As indicated above, I have found that Ms. Aken’s misconduct in connection with the delayed dispatch did not warrant her termination, but in light of the fact that I have found the personal phone calls to be sufficient for termination, I have not made a finding as to the appropriate discipline for the delayed dispatch incident.

Ms. Aken was provided with the notice of the five (5) day suspension on September 5, and asked to attend a meeting on September 12 to discuss the suspension. When she appeared for the meeting on September 12, she was presented with the two additional Disciplinary Action Forms, each of which called for her termination. Although Ms. Aken was accompanied by a Union steward, and although she was given an opportunity to spend some time with her steward to discuss the issues prior to proceeding with the Employer representatives, Mr. Nielsen and Ms. Marcinkus, the manner in which the termination was handled is in violation of the Employee Discipline Policy, specifically the Internal Review section that calls for a series of events to occur prior to the imposition of the ultimate discipline of termination. These include a due cause meeting, written notice to the employee, a pre-disciplinary meeting, and written notice to employee. In the instant case, the Employer failed to notify the employee of the additional charges against her, failed to conduct a due cause or preliminary or pre-disciplinary meeting, and determined that she was to be terminated prior to even speaking with her at all. Clearly, nothing that Ms. Aken did warranted an immediate removal from the premises.

The undersigned is of the mind that both the employee and the Employer should follow the rules that have been established. I am mindful, however, of the fact that had the Employer gone through the required steps, the same conclusion, at least as to the phone calls, would have been reached, albeit perhaps at a later time. Based on the fact that the Employer provided Ms. Aken with five (5) working days notice that she was to serve a five (5) day suspension, it is appropriate to believe that had the Employer followed its own Internal Review policy, there would have been a period of at least five (5) working days between the initial notification to Ms. Aken that discipline was being considered for the events of August 29 and the phone calls. Therefore, she is entitled to pay and benefits for a five (5) day period.

Accordingly, based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

No, the Employer did not have just cause to impose a five (5) day suspension. This grievance is sustained.

No, the Employer did not have just cause to terminate Sara Aken for her mishandling of a delayed dispatch situation that occurred on August 29, 2007.

Yes, the Employer did have just cause to terminate Sara Aken for making personal telephone calls during working hours.

As a remedy, Ms. Aken is to be paid five (5) days wages and benefits and her employment record is to be purged of all references to the five (5) day suspension issued on September 5, 2007 and the termination in connection with the August 29 delayed dispatch event.

The grievance is sustained in part and denied in part.

Dated at Madison, Wisconsin, this 13th day of May, 2008.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator