BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY
(SHERIFF'S DEPARTMENT)

Case 748
No. 70253
MA-14923

(Arredondo)

Appearances:

Attorney Graham Wiemer, MacGillis Wiemer, LLC, 2360 N. 134th Street, Suite 200, Wauwatosa, Wisconsin, 53226, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

Attorney Roy Williams, Office of Milwaukee County Corporation Counsel, 901 North 9th Street, Milwaukee, Wisconsin, 53233, appearing on behalf of Milwaukee County.

ARBITRATION AWARD

The Milwaukee Deputy Sheriffs' Association ("Association") and Milwaukee County ("County") are parties to a collective bargaining agreement ("Agreement") that provides for final and binding arbitration of disputes arising thereunder. On October 18, 2010, the Association filed a request with the Wisconsin Employment Relations Commission to initiate grievance arbitration concerning disciplinary action taken against the Grievant, Sarah Arredondo. The filing requested that the Commission appoint a commissioner or staff member to serve as sole arbitrator in this matter, and the undersigned was so appointed. A hearing was held on April 6, 2011, in Milwaukee, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, and arguments as were relevant. At the parties' discretion, no transcript of the proceeding was made. Each party submitted an oral argument at the close of the proceeding, whereupon the record was closed.

ISSUE

The parties stipulated to the following as a statement of the issue to be heard:

Was there just cause to suspend Deputy Arredondo for three days? If not, what is the appropriate remedy?

BACKGROUND

The facts of this case are undisputed. The Grievant, Sarah Arredondo, is a deputy employed by the Milwaukee County Sheriff's Department. At all relevant times, she was assigned to the Jail Transportation Unit. This assignment requires Milwaukee County deputies to transport detainees to and from institutions and courts.

On December 10, 2009, Arredondo was assigned, along with Deputy Steven Gunn, to handle the day's shorter-distance, "metro" transports. During the course of their shift, Deputy Gunn was assigned to act as driver of the transport vehicle, and Deputy Arredondo was assigned to coordinate the transport activities and to complete the associated paperwork.

Gunn and Arredondo's second assignment on December 10 was to transport "M", a patient at the Milwaukee County Behavior Health Center (MCBHC). On December 8, 2010, the County Sheriff's Department had received a court order to produce M to Branch 41 of the Milwaukee County courthouse for a civil hearing that was scheduled for December 10, 2009. While en route to the MCBHC on December 10, Arredondo made a call ahead to request that M be made ready for transport. Arredondo spoke to an MCBHC nurse who delivered the message that M had stated that her attorney had cancelled the court hearing scheduled for that day. Based on this conversation, Arredondo cancelled M's transport, and Arredondo and Gunn went about their other duties. Arredondo did not attempt to verify the information she had received over the telephone regarding the cancellation of M's hearing. As it turned out, the hearing had not been cancelled at all. Because M had not been transported to the courthouse as ordered, the attorneys involved in M's case, as well as the circuit court judge presiding over the matter and other necessary court personnel, had to go to the MCBHC to conduct the hearing.

During the Internal Affairs investigation into the incident that was subsequently initiated, Arredondo was forthright regarding her mistake. She acknowledged that she was familiar with the Milwaukee County Sheriff's Department policies and procedures and with the policies and procedures of the Jail Transportation Unit. When asked about her failure to verify the report that the hearing had been cancelled, Arredondo stated that since M had indicated her attorney had cancelled the hearing, Arredondo simply "took her word for it". Arredondo also indicated that, after her telephone conversation with the MCBHC nurse, she and Gunn became busy with other transports and it "slipped her mind" to contact anyone regarding the status of M's hearing. She acknowledged that she should have taken steps to verify the cancellation.

The court order requiring M's transportation had indicated the following:

> As this is a civil proceeding, use of force is not authorized and if the subject refuses to be transported, please contact the Court immediately at (414) 278-4463.

During her investigation interview, Arredondo indicated that there had been instances in the past when inmates had refused transport, and she had contacted her supervisor and the court regarding such refusal. She stated she did not consider contacting the court in this instance, because she thought the hearing had been cancelled and therefore did not understand M to be refusing transport.

Ultimately, Arredondo was found to be in violation of the following:

MILWAUKEE COUNTY SHERIFF'S OFFICE RULES AND REGULATIONS

202.20 Efficiency and Competence

MILWAUKEE COUNTY CIVIL SERVICE RULE VII, SECTION 4(1)

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

For these violations, Deputy Arredondo was suspended without pay for three days.

When the December of 2009 incident occurred, Arredondo had been employed as a deputy by the Milwaukee County Sheriff's Department for seventeen years and assigned to the Jail Transportation Unit for approximately nine months. Arredondo's disciplinary record prior to the incident was limited to one written reprimand received in 2007 and related to the use of sick leave. She had not received any disciplinary suspensions.

Arredondo's partner on the day of the incident, Gunn, stated during the Internal Affairs investigation that, if he had to do it over again, he would have reminded Arredondo to make the necessary calls. Nevertheless, the investigation resulted in a conclusion that any charges against Gunn were unfounded. The written investigative summary indicates that this conclusion was based primarily on the finding that Gunn was the driver on the shift and, therefore, not responsible for coordinating the transports. The coordination responsibility was Arredondo's.

DISCUSSION

The concept of just cause requires not only that an employer must have "cause" for disciplining an employee, but also that the discipline must be "just" in relation to the asserted cause. *The Common Law of the Workplace*, Theodore J. St. Antoine, Editor, § 6.7 at p. 172 (2nd Ed. 1999), *see also*, Elkouri & Elkouri, *How Arbitration Works*, at 948 (6th Ed. 2003). Here, there is little doubt that the County had cause to discipline Arredondo. A Transportation Unit supervisor testified at hearing that Arredondo should have taken steps to verify that M's hearing had been cancelled, and Arredondo acknowledged both in the Internal Affairs investigation and at the arbitration hearing that she made a mistake by failing to seek such verification.

The real issue here is the level of discipline. It is axiomatic that, unless the parties agree otherwise, the progressive discipline principle is assumed to apply and discipline, therefore, for all but the most serious offenses must be imposed in gradually increasing levels. *The Common Law of the Workplace*, Id. Here, the multiple-day suspension imposed on Arredondo does not appear to represent a gradual increase from her previous discipline, which was a written warning. The County argues that the length of Arredondo's suspension was based on two factors: (1) the disruption to the court system when the judge and others had to go to the MCBHC at what the County describes as "great delay and expense", and (2) Arredondo's employment history.

With regard to the first factor, the magnitude of the harm resulting from an offense is a factor that can be considered in the issuance of discipline. Here, because of Arredondo's mistake, the judge and others required for the hearing had to travel approximately eight miles from the County courthouse to the MCBHC to hold the hearing. Certainly this was an inconvenience. Every mistake, though, will have repercussions. The question is whether the harm caused was sufficiently extreme as to warrant a departure from progressive discipline. Based on the record before me, I find that it was not. If the time delay or the monetary expense of travelling to the MCBHC was extreme, it is fair to assume the County would have produced evidence to support such a claim.

As to Arredondo's employment history, it suggests to me just the opposite of what the County has argued. Arredondo is a long-term County employee with one discipline on her record. The record lacks any detail related to the prior discipline other than to indicate that it was a written warning for a sick leave violation. This information is at least sufficient to conclude that the December 2009 offense was not a repeat of a prior infraction. Thus, nothing in Arredondo's employment history supports the conclusion that a heightened level of discipline was appropriate.

I also do not find that Arredondo's error was so egregious that accelerated discipline was warranted. Arredondo acknowledged that she should have sought verification. She also acknowledged that she should have thought to doubt the credibility of an MCBHC patient.

However, the information Arredondo received did have some indicia of reliability in that M purported to be merely conveying something her attorney had said, and this information was being conveyed to Arredondo by an MCBHC nurse. Arredondo should not have accepted this information so readily, but these factors do make her actions less careless than they might otherwise seem.

Based on these considerations, I find that the County has not met its burden to show that the level of discipline imposed on the Grievant was justified. I have reduced Arredondo's discipline to a one-day suspension, which I believe is appropriate given the nature of the error, the degree of foreknowledge Arredondo had regarding the procedure she should have followed, the inconvenience that resulted from her failure to verify that the hearing had been cancelled, and Arredondo's disciplinary history. In so doing, I obviously have rejected the Association's assertion that Arredondo's one-hour meeting with the Milwaukee County Sheriff regarding this incident should be considered discipline enough.

Now, having considered the record as a whole, the undersigned makes and issues the following award.

AWARD

1. The County had just cause to discipline the Grievant.

2. The County did not have just cause to suspend the Grievant for three days without pay.

3. The appropriate remedy is to suspend the Grievant for one day, without pay, and to make the Grievant whole for any loss attributable to the three-day period of suspension, less one day.

JURISDICTION

The undersigned will retain jurisdiction over this matter for a period of sixty days following the date of this award for the sole purpose of resolving disputes over the remedy.

Dated at Madison, Wisconsin, this 1st day of July, 2011.

Danielle L. Carne /s/
Danielle L. Carne, Arbitrator

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