

BEFORE THE ARBITRATOR

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

Case 764  
No. 70815  
MA-15053

(David Krueger Suspension Appeal)

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Appearances:

**Graham Wiemer**, MacGillis Wiemer, Attorneys at Law, 2360 North 124<sup>th</sup> Street, Suite 200, Wauwatosa, Wisconsin 53226, appearing on behalf of Milwaukee Deputy Sheriffs' Association.

**Roy Williams**, Principal Assistant Corporation Counsel, Milwaukee County, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

**ARBITRATION AWARD**

The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Association, and Milwaukee County, hereinafter referred to as the County or the Employer, were parties to a collective bargaining agreement which provided for final and binding arbitration of all disputes arising thereunder. The Association made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide the appeal of Deputy David Krueger's suspension. The undersigned was so designated. A hearing was held in Milwaukee, Wisconsin on September 14, 2011. The hearing was not transcribed and the parties did not file briefs. Having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following Award.

**ISSUE**

The parties stipulated to the following issue:

Was there just cause to suspend Deputy David Krueger for one day? If not, what is the appropriate remedy?

## **BACKGROUND**

The County operates a Sheriff's Department and a jail. As it relates to this case, three types of employees work at the jail: jail record clerks, corrections officers and deputy sheriffs. The Association is the exclusive collective bargaining representative for the deputy sheriff's.

Aside from the employees who work there, there are also obviously inmates at the jail. They come into the jail at all hours of the day. Inmates who have completed their sentences are supposed to be released on their proper release date; they are not supposed to be released either prior to, or later than, their proper release date. When either of those events occurs, the situation is referred to as an improper release.

This case involves an improper release. As just noted, the Employer tries to ensure that inmates are not improperly released. To that end, the Employer has an interest in keeping accurate paper records and electronically recorded information. Employees use and rely on that information to carry out their work duties and release inmates on the proper release date.

When an inmate is jailed, a packet is created which contains the paperwork related to that inmate's incarceration. This packet is known internally as the ADR packet. ADR stands for arrest detention reports. The ADR packet includes such things as arrest warrants, judgments of conviction, commitment sheets, bail information, etc. The information from those paper documents is also entered into a computer for electronic records purposes. The ADR packet passes through the hands of seven employees at the jail. The next to the last person in that process is the jail records clerk. The last person who handles the ADR packet the jail records deputy. That deputy is responsible for "breaking down" the inmate's ADR packet. The term "break down" refers to comparing what is in the packet with what is in the computer and ensuring that all the necessary paperwork is in the ADR packet.

## **FACTS**

On October 15, 2010, Leroy Goodman was sentenced to serve three days of conditional jail time in the county jail. As Goodman was transported from the courthouse to the county jail, his Department of Corrections' parole officer faxed an order known as a VOP hold to the Sheriff's Department. A VOP hold means that an inmate is to remain in custody for violation of parole. When a VOP hold is placed on someone, they can be detained for up to 21 days. During that time period, the person under the VOP hold is not supposed to be released from jail. About 5:30 p.m. that day, corrections officer Darius Holmes entered the VOP hold for Goodman into the Department's computer system, known as the CJIS system. Then, according to the

Department's standard operating procedure, Holmes put a paper copy of the VOP hold into a "to be filed" basket in the jail records office. There are three "to be filed" baskets in the jail records office; two of them are by the jail records deputy's desk, and one is by the jail records clerk's desk. Holmes put Goodman's VOP hold paperwork into the "to be filed" basket by the jail record clerk's desk.

About 9:40 p.m. that night, Jail Records Clerk Donita Cummings reviewed inmate Goodman's ADR packet. In doing so, she noticed that the CJIS computer listed a VOP hold for Goodman, but there was no corresponding VOP hold paperwork in Goodman's ADR packet. While Cummings saw that the VOP hold paperwork was missing from Goodman's ADR packet, she did not follow up on it and search the "to be filed" basket by her desk for it. As a result, she did not find Goodman's missing VOP hold paperwork. She nonetheless signed off on Goodman's ADR packet.

Per the Department's standard operating procedure, Goodman's ADR packet was then passed to the jail records deputy for processing. The jail records deputy on the third shift typically processes about 100 ADR packets per shift. The jail records deputy is the last person who reviews an inmate's ADR packet. It's their job to ensure that an inmate is not improperly released.

On the day in question, Deputy David Krueger was the third shift jail records deputy. He has been with the Department for 16 years and worked in the jail for 14 years. For the past 13 years, he has worked in the jail records area, so he is very familiar with the jail's policies and procedures. Specifically, he knew that all holds – including VOP holds – are to be thoroughly checked. About 1 a.m., Krueger "broke down" Goodman's ADR packet to verify that the paperwork in the inmate's ADR packet confirmed what was listed in the CJIS computer. In the course of doing so, he noticed – just as Cummings did – that the computer listed a VOP hold for Goodman, but there was no corresponding VOP hold paperwork in Goodman's ADR packet. Thus, like Cummings, Krueger noticed that Goodman's VOP hold paperwork was missing from his ADR packet. Krueger then tried to find Goodman's missing VOP hold paperwork in the "to be filed" baskets. While he checked the two "to be filed" baskets by his desk, he did not check the third "to be filed" basket (which is the one by the jail records clerk's desk). When he did not find Goodman's VOP hold paperwork, he then checked to see if there was an outstanding warrant for Goodman's arrest. There was not. He also checked the CCAP (Consolidated Court Automation Programs) website to see if that website listed an outstanding hold for Goodman. It did not. After doing those things, Krueger concluded that the listing in the computer of a VOP hold for Goodman was a mistake and that Goodman did not have a VOP hold pending. Krueger's conclusion was incorrect because, as noted above, there was paperwork for Goodman's VOP hold in the "to be filed" basket by the clerk's desk, but Krueger didn't look there, so he didn't find it. Krueger also concluded that the entry in the CJIS computer for Goodman's VOP hold had been made by clerk Gilbert Francis. This

conclusion was also incorrect because, as noted above, the CJIS computer entry for Goodman's VOP hold was made by corrections officer Darius Holmes. Based on these two incorrect assumptions, Krueger then changed Goodman's hold status in the CJIS computer system. He did this by typing in the following entry next to Goodman's VOP hold: "clerk entered in error". This entry deactivated the VOP hold that had been placed on Goodman. Said another way, it voided Goodman's VOP hold.

Goodman was released from the county jail on October 18, 2010. While at that time Goodman had served his original three days of jail time, he was supposed to remain in jail because of his VOP hold. However, that hold had been voided by Krueger's entry in the CJIS computer system which lifted Goodman's VOP hold.

Later that day after Goodman was released, a clerical employee found Goodman's VOP hold paperwork. The paperwork was found where it had been all along, namely the "to be filed" basket by the jail clerk's desk. After that paperwork was found, jail personnel discovered that Krueger's entry in the computer system was wrong and that Goodman had been improperly released. A warrant was then issued for Goodman's arrest and a VOP hold placed on him in the CJIS computer system.

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The next day, Goodman was arrested by the West Milwaukee Police Department for a traffic violation. When that arrest was made, Goodman's VOP hold was back in the CJIS computer system, so Goodman was turned over to the Milwaukee County Sheriff's Department.

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Cummings and Krueger were subsequently interviewed about the above-referenced matter by Lt. Douglas Holton of the Internal Affairs Division.

In her interview with Internal Affairs, Cummings admitted that she failed to follow up on Goodman's missing VOP hold paperwork and search the "to be filed" basket by her desk for it. Since Cummings admitted that she made a mistake, the Employer decided to not impose any formal discipline on Cummings for her actions. Instead, it gave her an EAD for her actions. An EAD, which stands for an employee activity documentation, is a type of written counseling used by the Employer.

With regards to Krueger, Holton wrote a report known as an "Investigative Summary". In that report, Holton concluded that Krueger "improperly updated the CJIS Mainframe without properly following up on a VOP hold entry, which led to an improper release of an inmate." Based on that conclusion, Holton found that Krueger committed two departmental rule violations and three county civil service rule violations. The departmental rules Krueger was accused of violating were 202.20 (Efficiency and Competence) and 202.15 (Knowledge of Duties, Rules and Regulations). The former provides thus:

202.20 Efficiency and Competence

Members shall adequately perform the duties of their assigned position. In addition, sworn members shall adequately perform reasonable aspects of police work. “Adequately perform” shall mean performance consistent with the ability of equivalent trained members.

The latter provides thus:

202.15 Knowledge of Duties, Rules and Regulations

Members shall be accountable for their knowledge of, performance of, and familiarization with all duties, policies, procedures, rules and regulations of the Milwaukee County Sheriff’s Office and the Milwaukee County Civil Service system. Members shall immediately inform their supervisor if unfamiliar with any duty to which they have been assigned.

The County civil service rules Krueger was accused of violating were subparagraphs (1), (u) and (t) of Rule VII, Section 4(1). Subparagraph (1) prohibits “Refusing or failing to comply with departmental work rules, policies, procedures”; subparagraph (u) prohibits “Substandard or careless job performance”; and Subparagraph (t) prohibits “Failure or inability to perform the duties of assigned position.”

Lt. Holton’s findings were subsequently reviewed by the Sheriff. On May 24, 2011, Sheriff David Clarke issued Order No. 2199 which indicated that Deputy Krueger was suspended for one day for violating the five rules just referenced. Attached to Order No. 2199 was a “Notice of Suspension”. The wording in the “Notice of Suspension” was verbatim to that contained in Lt. Holton’s “Investigative Summary”. As a result, it is apparent that the Sheriff adopted Lt. Holton’s findings as his own and disciplined Krueger for the reasons set forth in Holton’s “Investigative Summary”.

Based on the parties’ collective bargaining agreement, Krueger’s suspension was appealed to arbitration.

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At the hearing, Krueger testified that the actions of clerk Francis, clerk Cummings and corrections officer Holmes led him to make the computer entry he made.

At the hearing, Holton testified that what Krueger should have done, when confronted with his question about Goodman's VOP hold status, was to call the Department of Corrections (DOC) probation and parole office. While Krueger processed Goodman's ADR paperwork at 1:00 a.m., Holton testified that he knows from personal experience that the DOC's probation and parole office has people working at that time of day who could have addressed Goodman's VOP hold status.

## **POSITION OF THE PARTIES**

### **Association**

The Association's position is that just cause did not exist for Deputy Krueger's one-day suspension. The Association asks that the discipline be rescinded or reduced. It elaborates as follows.

The Association first addresses these basic facts. The Association acknowledges that Krueger made the entry in the Employer's CJIS computer system he is charged with making, namely that he entered the phrase "clerk entered in error" next to Goodman's VOP hold. The Association further acknowledges that Krueger's entry voided Goodman's hold which, in turn, resulted in inmate Goodman being improperly released.

Having made those admissions, the Association believes it is important to consider them in the following context. First, it notes that when Krueger reviewed Goodman's ADR packet that night, he noticed that there was no VOP hold paperwork in Goodman's ADR packet. Second, since there was no VOP hold paperwork in the packet, the Association acknowledges that Krueger needed to investigate the matter. According to the Association, he did. Specifically, he did the following: he looked in the two "to be filed" baskets by his desk; he checked to see if there was an outstanding warrant for Goodman's arrest; and he checked the CCAP website to see if that website listed an outstanding hold for Goodman. After doing those three things, Krueger concluded that the listing in the CJIS computer of a VOP hold for Goodman was a mistake and that Goodman did not have a VOP hold pending. The Association contends that Krueger's investigation into the matter was adequate under the circumstances. As for Lt. Holton's assertion at the hearing that Krueger should have called the DOC parole office that night, the Association emphasizes that Holton did not put that assertion into the "Investigative Summary" which he wrote. The Association sees that as significant, and argues that if Holton thought that Krueger should have called the DOC parole office that night, he should have put it into his report. The Association also maintains that even if Krueger had called the parole office that night, it's mere speculation that he would have learned that there was a VOP hold on Goodman. Third, the Association maintains that even though Krueger's conclusion

that Goodman was not subject to a VOP hold turned out to be wrong, the Association emphasizes that Krueger thought he had reached the right decision and did the right thing when he typed the phrase “clerk entered in error” into the computer. The Association notes in this regard that the reason Krueger made reference in his entry to a “clerk” was because he (Krueger) thought that clerk Francis made the original computer entry and, according to Krueger, Francis is known for inaccurate work. Putting all the foregoing together, it’s the Association’s view that Krueger did not commit workplace misconduct when he voided the VOP hold on inmate Goodman.

Finally, the Association argues in the alternative that even if Krueger did commit workplace misconduct when he voided the VOP hold on inmate Goodman, there still was not just cause for the level of discipline imposed on him. Here’s why. First, the Association notes that prior to this case, Krueger had a clean disciplinary history and had not previously been suspended. The Association contends that under these circumstances, a one-day suspension was excessive. Second, addressing the matter of comparable discipline, the Association points out that clerk Cummings was not suspended, but rather was given an EAD (i.e. a counseling). The Association implies that since the two employees received different levels of discipline, Krueger was subject to disparate (disciplinary) treatment. Accordingly, the Association asks the arbitrator to either rescind the suspension or reduce Krueger’s punishment to a level more fitting his past disciplinary history.

### County

The County’s position is that just cause existed for Krueger’s one-day suspension. In its view, Krueger should not have voided the VOP hold for inmate Goodman on the Employer’s CJIS computer because that action resulted in inmate Goodman’s improper release. As the County sees it, Krueger’s action constituted workplace misconduct which warranted the discipline imposed. It elaborates as follows.

At the outset, the County reviews the following facts to give context to what happened. First, it notes that when Krueger works as a jail records deputy, it’s his job to ensure that inmates are not improperly released. Second, to effectuate that, it’s also part of his job to review ADR packets of inmates to ensure that their ADR paperwork conforms with the entries in the CJIS computer system. Third, when that happened here (i.e. when Krueger reviewed Goodman’s ADR packet), Krueger saw that it was missing Goodman’s VOP hold paperwork. Since the VOP hold paperwork was missing from Goodman’s ADR packet, the Employer acknowledges that Krueger was faced with a conundrum. The conundrum was this: was Goodman subject to a VOP hold or not? The computer said he was, but there was no paperwork to confirm that. After taking certain steps to investigate the matter, Krueger concluded – incorrectly as it turns out – that Goodman was not subject to a VOP hold. Krueger then made an entry in the Employer’s CJIS computer system which voided Goodman’s VOP hold. That action resulted in Goodman’s improper release from jail.

It's the Employer's position that the steps which Krueger took to investigate the matter were insufficient under the circumstances. First, the Employer acknowledges that Krueger searched the two "to be filed" baskets by his desk for the missing paperwork. However, Krueger did not search the third "to be filed" basket (i.e. the one by the clerk's desk). According to the Employer, he should have. The Employer submits that had he done so, Krueger would have found Goodman's missing VOP hold paperwork in that basket. To support that premise, the Employer notes that that's where the missing paperwork was later found by another jail employee. Second, the Employer also submits that another thing Krueger should have done to investigate the matter was to call the DOC probation and parole office. The Employer notes that Krueger did not do that. Had he done so, Krueger could have had his question answered. The Employer contends that since Krueger failed to check the third "to be filed" basket or call the probation and parole office, he alone bears responsibility for making the wrong conclusion about Goodman's status. Building on that premise, the Employer avers that Krueger committed workplace misconduct when he voided the VOP hold for Goodman in the CJIS system.

Next, the Employer points out that at the hearing, Krueger did not accept responsibility for his actions in this matter. Instead, he pointed the finger of blame so to speak at others, namely clerks Cummings and Francis and corrections officer Holmes. As the Employer sees it, that contention misses the mark because this case involves whether Krueger committed workplace misconduct – not whether other employees did too.

Turning now to the level of discipline which was imposed, the Employer argues that a one-day suspension was reasonable under the circumstances. Here's why. First, the Employer acknowledges that prior to this case, Krueger had a clean disciplinary history with no prior suspensions or written warnings. According to the Employer, it took that into account when it decided on the appropriate level of discipline here, and that's why it selected the shortest suspension used by the Employer (namely, a one-day suspension). Second, the County asserts that while the Association made a disparate treatment argument, it failed to prove that disparate (disciplinary) treatment occurred here. To support that premise, the Employer acknowledges that clerk Cummings did not get the same discipline as Krueger did (i.e. a one-day suspension); instead she got an EAD. However, as the Employer sees it, there was a logical non-discriminatory reason for that, namely that Cummings didn't make a computer entry which voided a valid VOP hold. Only Krueger did that. The Employer emphasizes that it was Krueger's actions – not Cummings' action – that caused Goodman to be improperly released. The County therefore requests that the arbitrator give deference to the discipline imposed by the Sheriff, and uphold Krueger's one-day suspension.



## DISCUSSION

The parties stipulated that the issue to be decided here is whether there was just cause to suspend Deputy Krueger for one day. I answer that question in the affirmative, meaning that I find the Employer did have just cause to impose a one-day suspension on Krueger. My rationale follows.

The threshold question is what standard or criteria is going to be used to determine just cause. The phrase “just cause” is not defined in the collective bargaining agreement, nor is there contract language therein which identifies what the Employer must show to justify the discipline imposed. Given that contractual silence, those decisions have been left to the arbitrator. Arbitrators differ on their manner of analyzing just cause. While there are many formulations of “just cause”, one commonly accepted approach consists of addressing these two elements: first, did the employer prove the employee’s misconduct, and second, assuming the showing of wrongdoing is made, did the employer establish that the discipline which it imposed was justified under all the relevant facts and circumstances. That’s the approach I’m going to apply here.

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

Before I address what Krueger did, I’m first going to comment on the proverbial big picture. What happened here is that an inmate who was to remain in custody for a VOP hold was improperly released. Obviously, that’s not supposed to happen.

The Employer assigned fault for the improper release to Krueger. He objects to that, and contends that fault should be assigned elsewhere. That being so, the first question to be answered here is whether fault can fairly be assigned to Krueger for Goodman’s improper release.

Before answering that question, I’m first going to review the following facts to give context to what happened. On the night in question, Krueger was working as the jail records deputy. Part of his job was to review the ADR packets of inmates. When Krueger reviewed Goodman’s ADR packet that night, Krueger noticed that there was no VOP hold paperwork in Goodman’s ADR packet. The reason that was significant is because Krueger also saw in the Employer’s CJIS computer that there was a VOP hold on Goodman. Thus, the computer said something different than the paper packet did. Given this disparity, it was incumbent on Krueger to check it out. Here’s what he did to investigate the matter. First, he looked in the two “to be filed” baskets by his desk. After doing so, he didn’t find Goodman’s VOP hold paperwork in them. Second, he checked to see if there was an outstanding warrant for Goodman’s arrest. There was

not. Third, he checked the CCAP website to see if that website listed an outstanding hold for Goodman. It did not. After doing those three things, Krueger concluded that the listing in the CJIS computer of a VOP hold for Goodman was a mistake and that Goodman did not have a VOP hold pending. He then made the entry in the CJIS computer system that effectively voided Goodman's VOP hold. That, in turn, resulted in inmate Goodman being improperly released.

The Employer contends that Krueger's investigation into the missing VOP hold paperwork was inadequate for two reasons. First, it points out that Krueger did not search the "to be filed" basket by the clerk's desk. I find that a fair criticism. Here's why. While Krueger searched the two "to be filed" baskets by his desk, he didn't search the third one (i.e. the one by the clerk's desk). Simply put, he should have. I'm convinced that had he done so, he would have found Goodman's missing VOP hold paperwork there (i.e. in that basket) because that's where corrections officer Holmes put it. The reason I'm persuaded Krueger would have found the paperwork in that basket (had he looked there) is because another employee found the paperwork there the following work day. Krueger offered no reason whatsoever for not checking the third "to be filed" basket. It would be one thing if the Association had shown that the third basket (i.e. the clerk's basket) did not have to be searched by the jail records deputy, or that Holmes put the VOP hold paperwork in the wrong basket. However, neither was shown, so Krueger should have checked the third basket. Second, the Employer also submits that another thing Krueger should have done to investigate the matter (and check on Goodman's status) was to call the DOC probation and parole office. The Employer notes that Krueger did not do that. The Association's response to this contention is to note that the Employer's Investigative Summary in this case did not contain that assertion. That's true; it didn't. However, I'm not going to ignore this contention because I think it's subsumed into the Employer's overall contention that Krueger was remiss in failing to check out Goodman's missing VOP hold paperwork. Had Krueger called the DOC probation and parole office, I'm persuaded – based on Holton's testimony – that someone would have been there to answer his question about Goodman's status (even though it was 1 am). I'm further persuaded that a DOC official would have confirmed that there was indeed a VOP hold on Goodman because it was a DOC parole officer who put that hold on Goodman. I therefore conclude, as the Employer did, that since Krueger failed to check the third "to be filed" basket or call the DOC probation and parole office, his investigation into Goodman's missing VOP hold paperwork was insufficient under the circumstances. Building on that premise, Krueger alone bears responsibility for making the wrong conclusion about Goodman's hold status.

Next, at the hearing, Krueger tried to deflect responsibility for his actions onto others. Specifically, he contended that it was the actions of clerks Francis and Cummings and corrections officer Holmes that led him to make the computer entry he made. I'm going to begin by noting that when Krueger made the computer entry "clerk

entered in error” (relative to Goodman’s VOP hold), the “clerk” he was referencing was clerk Francis. According to Krueger, Francis is known for inaccurate work. The problem with Krueger’s assumption that Francis made the computer entry is that it was incorrect. In point of fact, Francis did not make the computer entry about Goodman’s VOP hold; rather, corrections officer Holmes did. Thus, Krueger’s assumption about who made the computer entry about Goodman was just plain wrong. Building on that point, it follows that Krueger’s subsequent entry in the computer (i.e. the phrase “clerk entered in error”) was inaccurate. Having so found, the focus turns to the conduct of Holmes who, as already noted, made the computer entry in question. His computer entry about Goodman’s status was accurate. Also, per department procedure, he put a paper copy of the hold in a “to be filed” basket. Once again, it would be one thing if the Association had alleged and then shown that Holmes put the paper copy in the wrong basket. However, that contention was neither raised nor shown. That being so, Krueger’s attempt to deflect fault onto Holmes misses the mark. The focus now turns to clerk Cummings’ conduct in this matter. Cummings’ conduct matches Krueger’s conduct in the following respect: both failed to find Goodman’s missing VOP hold paperwork. Having noted that similarity, each did something different next. Cummings essentially did nothing and passed the ADR packet to the next person in the paperwork process which was Krueger. Krueger then did something that Cummings did not do; namely, he made the computer entry which voided Goodman’s VOP hold. It was Krueger’s computer entry – not Cummings’ inaction – that resulted in Goodman’s subsequent improper release.

Having addressed those contentions, I conclude that Krueger’s mistaken assumption about the status of Goodman’s VOP hold cannot be mitigated or excused by the conduct of Francis, Holmes or Cummings. It was Krueger alone who wrongly concluded that Goodman was not subject to a VOP hold (when in fact, he was). Krueger then acted on his mistaken conclusion and made the computer entry which resulted in Goodman’s improper release from jail. That was solely his mistake.

The next question to be answered is whether Krueger’s mistake warranted discipline. I find that it did for the following reasons. Employers have a legitimate and justifiable interest in ensuring that employees perform their work completely and accurately. Employers that tolerate incompetent and sloppy work by their employees can, under certain circumstances, expose themselves to legal and financial risks for doing so. That is why the County has adopted a civil service rule which prohibits “substandard or careless job performance” by employees and why the Sheriff’s Department has adopted a work rule requiring department members to “adequately perform” their job duties. As the County sees it, Krueger’s work performance relating to Goodman’s improper release fits into both categories of prohibited behavior. I concur, and find that on that day, Krueger failed to “adequately perform” his job duty pertaining to checking ADR packets and that his subsequent computer entry releasing the VOP hold on Goodman constituted “substandard or careless job performance.”

Since Krueger violated those two rules, he committed misconduct for which he could be disciplined. Given that finding, it's my view that I need not address the other three alleged rule violations.

The second part of the just cause analysis being used here requires a determination of whether the penalty which the Employer imposed for this misconduct (i.e. a one-day suspension) was appropriate under the circumstances. I find that it was for the following reasons.

First, the arbitrator is well aware that up until this matter arose, Krueger had a clean disciplinary history (meaning that he had received no formal discipline prior to this incident). The Association contends that under these circumstances, the Employer should have given Krueger less discipline than a one-day suspension. Some labor agreements specify a particular sequence which has to be followed by the employer when it imposes discipline. For example, some labor agreements provide that a verbal warning must be imposed first, then a written warning, then a suspension, etc. However, the collective bargaining agreement involved here does not contain such language. That being so, there is nothing in this labor agreement which required that a lesser form of discipline – other than a one-day suspension – had to be imposed in this particular case.

Next, in many disciplinary cases, the Union makes a disparate treatment argument that attempts to show that other employees engaged in the same type of misconduct, but received lesser discipline (than was imposed here). In this case, the Association simply noted that clerk Cummings was not suspended, but rather was given an EAD (i.e. a counseling). The Association implies that since Krueger and Cummings received different levels of discipline, Krueger was subjected to disparate (disciplinary) treatment. I find otherwise for the following reasons. First, while both Krueger and Cummings failed to find Goodman's VOP hold paperwork, Cummings didn't make a computer entry which voided a valid VOP hold. Only Krueger did that. Thus, it was Krueger's action – not Cummings' action – that caused Goodman to be improperly released. In and of itself, this distinction gave the Employer a logical non-discriminatory reason for treating the employees differently and disciplining Krueger more severely than Cummings. Second, it appears from the record that deputies have more responsibility in the workplace than clerks do. With additional responsibility comes greater disciplinary accountability. Third, no other specifics were provided about clerk Cummings such as her length of service or her disciplinary history. Those matters are all crucial to proving disparate treatment and are lacking here. Thus, more evidence about Cummings' employment history was needed to prove disparate treatment.

Accordingly, then, I find that Krueger's one-day suspension was not excessive, disproportionate to his misconduct, or an abuse of management discretion, but rather was reasonably related to his proven misconduct. The County therefore had just cause to suspend Krueger for one day.

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

**AWARD**

That there was just cause to suspend Deputy David Krueger for one day. Therefore, the appeal is denied.

Dated at Madison, Wisconsin, this 3rd day of November, 2011.

Raleigh Jones /s/

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Raleigh Jones, Arbitrator