

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME WISCONSIN COUNCIL 40, LOCAL 1558

and

AMERICAN NATIONAL RED CROSS – BADGER-HAWKEYE
BLOOD SERVICES REGION

Case ID: 307.0000

Case Type: A

(Ben Duhr Suspension Grievance)

AWARD NO. 7916

Appearances:

Bill Moberly, Staff Representative, AFSCME Wisconsin Council 40, 8033 Excelsior Drive, Madison, Wisconsin, appearing on behalf of Local 1558.

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

ARBITRATION AWARD

AFSCME Wisconsin Council 40, Local 1558, hereafter referred to as the Union, and American National Red Cross – Badger-Hawkeye Blood Services Region, hereinafter referred to as the Employer, were parties to a collective bargaining agreement that provided for final and binding arbitration of unresolved grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the instant grievance. A hearing on that grievance was held in Madison, Wisconsin, on June 30, 2015. The hearing was not transcribed. The parties filed briefs whereupon the record was closed on August 17, 2015. 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:

Whether the Employer had just cause to suspend the grievant for three days, and, if not, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2011 – 2013 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 3 – MANAGEMENT RIGHTS

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

* * *

ARTICLE 15 – DISCIPLINE AND DISCHARGE

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

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

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

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

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

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

* * *

ARTICLE 19 – HOURS OF WORK

Section 19.0 Normal Workday and Workweek. The normal workday for employees shall consist of seven and one-half (7½) hours except for part-time employees. The normal workweek for full-time employees shall consist of thirty-seven and one-half (37½) hours. Employees may be scheduled to work on Saturdays, Sundays and holidays.

BACKGROUND

The Employer, Badger-Hawkeye Blood Services Region, is part of the American National Red Cross. It is in the business of collecting, processing, and distributing blood and blood products to hospitals. The American National Red Cross provides 40 percent of the Nation's blood supply.

Because it is considered a pharmaceutical manufacturer, Badger-Hawkeye falls under the jurisdiction of the U.S. Food and Drug Administration (hereinafter referred to as the FDA) and is in a regulated industry. The American National Red Cross is currently operating under a consent decree with the FDA in which it can be (and has been) fined millions of dollars and potentially could be shut down by the FDA for violating its regulations. Consequently, training is a high priority for the American National Red Cross as a whole, as well as Badger-Hawkeye. It is important for staff to attend mandatory staff meetings at which training occurs. Because much of the work performed by the collections employees is on the road, it is difficult for the training to be conducted. Therefore, mandatory training sessions are usually scheduled at the fixed site locations for employees to attend. These training sessions are conducted in the morning.

* * *

Badger-Hawkeye has four different bargaining units. The employees in these units are all represented by AFSCME.

Badger-Hawkeye has had an attendance policy in place covering its bargaining unit employees since 2005. In 2010 and 2011, issues arose where employees claimed that they did not understand that if they were mandated to come in for overtime work, meetings or training sessions that all such events were considered a shift and failure to attend would be a violation of the attendance policy. Because of these and other issues, the Employer decided to modify its attendance policy. While the parties did not officially negotiate over revisions to the Employer's 2005 attendance policy, the Employer sought the Union's input and feedback on redrafts of its 2005 attendance policy. Some of the Union's feedback was incorporated into a new attendance policy.

The portion of this new attendance policy that related to no call / no show situations provided thus:

* * *

I. Terminology

The following terms have been defined for use in administering the attendance policy:

* * *

- E. Shift – A shift is a period of time for which an employee is scheduled to work, receive training, or attend a meeting. The shift may vary in length but will be recorded as paid time in the eTime payroll system. All shifts that are scheduled, signed for, or assigned are subject to the terms of this policy.
- F. No Call / No Show – An instance of absenteeism lasting one day* when the employee who is absent does not notify his/her immediate supervisor or manager or his/her designee of the absence at least one (1) hour prior to the beginning of the scheduled shift on the day the absence occurs. For Collections employees, this means that the employee is not present and has not called by the time the drive starts. (*Each day absent without timely notification constitutes a separate instance of No Call / No Show, even if the days are consecutive). Any No Call / No Show lasting two days is considered job abandonment and will be considered a voluntary resignation effective immediately.

* * *

- K. Guidelines / Application
Use these guidelines for taking the appropriate action in administering the Attendance Policy.

SITUATION	ACTION
* * *	
First no call / no show unless there are extraordinary circumstances contributing to the absence.	Suspension – Complete Disciplinary Notice form. Consult with Human Resources Manager.

* * *

In October of 2012, the Employer conducted mandatory training sessions for all bargaining unit employees regarding the Employer's revised attendance policy. During those

training sessions, all employees were specifically informed that the word “shift” – which is referenced above in paragraph E – could be a regularly scheduled shift, an overtime shift that was either volunteered for or mandated, a staff meeting or required training. Employees were specifically trained and informed that the attendance policy applied to those types of scheduled events just like it did to scheduled work shifts. It was also specifically addressed in these training sessions that if there were multiple shifts, be they meetings, training sessions, scheduled work hours, etc., on a given day that from a no call / no show standpoint each shift stood on its own and timely notification needed to be made if the employee was not going to be at any one of them. Duhr received this training twice. The first time was on October 29, 2012, when a draft attendance policy was disseminated and again on March 26, 2013, when he received the final version of the attendance policy. The no call / no show language in both the 2012 and the final March 2013 versions that he received training on were identical.

FACTS

Ben Duhr has been employed by Badger-Hawkeye for 16 years. Prior to the discipline being reviewed herein, he had received no formal discipline (meaning that he had previously never been suspended or received a written reprimand).

Duhr is employed as a MUA (Mobile Unit Assistant). His duties include driving a Red Cross vehicle to different sites such as churches, schools, etc., where mobile blood drives are scheduled. As an MUA, he is also responsible for unloading the equipment and setting it up at the mobile site in preparation for the collection of blood. Once the blood drive is completed, he loads the equipment and blood in the vehicle and transports it back to the Badger-Hawkeye facilities. Duhr works out of the La Crosse, Wisconsin, fixed site location. His work hours fluctuate depending on the schedule for mobile blood drives.

MUAs are part of the Collections Department. Schedules for MUAs and other members of the Collections Department cover a one-week period of time, Monday through Sunday. These schedules are prepared and distributed three weeks in advance of the week covered by the schedule. The schedules are frequently changed after being prepared by virtue of employees calling in, drives being added, drives being cancelled, etc. Schedulers who prepare the schedules call employees to notify them whenever there has been a change in the schedule. Typically these calls are followed up by emails.

Emily Carlin was the scheduler for the La Cross area back in 2013. Approximately three weeks prior to May 12, 2014, Carlin sent out to all collections employees the entire schedule for the week beginning May 12, 2014, as well as each employee’s personal schedule for the week of May 12, 2014. (NOTE: hereinafter, all dates refer to 2014.) That schedule said that on Monday, May 12, Duhr was to work from 7:00 p.m. to 3:00 a.m.

Two days after sending out those schedules, Carlin was informed that the two MUAs who worked in La Crosse (Duhr and Chris McDermott) were to also attend the first half of a two-hour mandatory staff meeting on May 12 at 7:30 a.m. This mandatory staff meeting on Monday, May 12, was not on the schedule that Carlin had sent to Duhr and McDermott. As a result, on April 30, Carlin called both Duhr and McDermott and advised them of the mandatory staff meeting on May 12, or left them a detailed voicemail message to that effect if they did not answer the telephone. Duhr testified that he remembered getting the telephone call - with the news about the mandatory staff meeting on Monday, May 12 - because he was on the roof of his house when Carlin called. That made it memorable to him. On Friday, May 9, Carlin called Duhr and McDermott again to remind them of the mandatory meeting on Monday, May 12, at 7:30 a.m. If one or the other did not answer their telephone, she left them a detailed message to that effect. That same day (Friday, May 9), Carlin also emailed both of them their "updated personal schedule" for the week of May 12 through 18. That email provided in pertinent part: "The only change is that I now have you scheduled for the first hour of the LAX staff meeting on Monday." The schedule attached to that email indicated that the La Crosse staff meeting was scheduled for 7:30 to 9:30 a.m.

Although Carlin sent the email just referenced to Duhr at 3:15 p.m. on Friday, May 9, Duhr didn't get or look at that email until Monday, May 12. The reason he didn't get or look at that email until Monday, May 12, is because the email was sent to his computer at the La Crosse office, and Duhr had left the office by the time it was sent to him on Friday, May 9.

On Monday, May 12, at 7:30 a.m., McDermott was in attendance at the mandatory meeting with all of the other collections employees. Duhr, though, did not call in to inform anybody that he would not be at the mandatory meeting, nor did he attend the mandatory meeting despite being informed about it. Amy Hechimovich, the Collections Manager, facilitated that training and noticed that Duhr was not present. Following the meeting, Hechimovich asked Heather Schurhammer, the Team Supervisor (and Duhr's direct supervisor), to follow up with Duhr to find out why he had not attended the meeting or called in timely to advise them of his inability to attend.

Schurhammer then called Duhr and asked him why he was not present at the mandatory meeting that morning. Duhr's response was that he knew about the meeting, but due to items taking place personally, he had simply forgotten about the Monday morning meeting. Duhr then apologized for missing the meeting. Schurhammer then made arrangements with Duhr to give him (Duhr) the training he had missed by not attending the mandatory meeting. The arrangements were that Schurhammer would stay at work later than normal on Monday, May 12, and give Duhr the training at the start of his 7:00 p.m. shift. That is what ultimately happened.

Following that training, Duhr worked from 7:00 p.m. to 5:00 a.m. (i.e. a ten-hour shift).

* * *

Schurhammer subsequently contacted Holly Thompson (who was a human resources manager) and told her that Duhr had missed a mandatory meeting. Thompson directed Schurhammer and Hechimovich to conduct an investigation into Duhr's missing the May 12 meeting.

As part of that investigation, Hechimovich wanted to make sure that Duhr had been made aware of the change on his personal schedule. She checked with Carlin who confirmed with her that Duhr did have it on his personal schedule. Additionally, on May 22, Schurhammer spoke with Duhr again regarding his missing the May 12 meeting. Duhr again admitted that he knew the training meeting had been placed on his schedule, but that he just forgot about it. Duhr also stated that he thought that missing that meeting was an attendance infraction.

Notwithstanding Duhr's view that his missing the meeting was (just) an attendance infraction, Hechimovich concluded - after consulting with human resources - that Duhr's missing the May 12 meeting and not calling in constituted a no call / no show violation under the terms of the attendance policy. A meeting was then scheduled with Duhr on June 4 to discipline him for same. Hechimovich, Schurhammer and Duhr attended that meeting in person, and Thompson participated by telephone. At the start of that meeting, Hechimovich gave Duhr a copy of the disciplinary notice and said that she would be reviewing it with him and that he would have the opportunity to ask questions. Hechimovich then read through the document and pointed out that the meeting was reflected on Duhr's personal schedule and that he was aware of the meeting. Hechimovich then said that following the May 12 meeting, Schurhammer had spoken with Duhr and asked him why he missed the meeting, to which Duhr responded that he was aware of the meeting but simply forgot about it. Hechimovich then reviewed the attendance policy with Duhr and pointed out that the policy specified that the penalty to be imposed for missing a shift without calling in was a suspension. She also provided Duhr with a copy of the attendance policy. Duhr then responded that he knew he was supposed to be at the meeting on Monday, May 12, but when he had looked at his work schedule on Sunday, May 11, he only saw the shift that started at 7:00 p.m. on Monday, May 12. When asked when his schedule had been emailed to him, Duhr stated that it had been the week before. Because it was unclear if Duhr had been notified of the meeting for the first time on May 9 versus the week before May 9, the meeting ended so that the Employer could follow up further.

Hechimovich then spoke with Carlin, the scheduler. Carlin said that she had notified Duhr and McDermott of the mandatory May 12 staff meeting by telephone on April 30 and May 9. Carlin also said that she sent them both a confirming email on May 9. This information persuaded Hechimovich that Duhr had been notified twice about the mandatory May 12 staff meeting.

Another disciplinary meeting was convened on June 5. Hechimovich, another management employee and Duhr attended that meeting in person, and Thompson participated by telephone. At that meeting, Duhr was given a disciplinary notice which said that he was being suspended for three days because of his no call / no show for the mandatory May 12 staff meeting. At this meeting, Duhr's sole excuse for missing the staff meeting was that he forgot about it.

The Union subsequently grieved the suspension. The grievance was appealed to arbitration.

* * *

The record indicates that since the Employer's attendance policy was revised in 2013, if an employee has a no call / no show violation, they receive a three-day suspension for same. Prior to the instant case, none of these suspensions were grieved.

* * *

At the hearing, Duhr proffered several reasons (to justify) why he missed the staff meeting. First, he admitted that the scheduler called him on April 30 and told him that a mandatory staff meeting had been added to his schedule for Monday, May 12, but he subsequently forgot about the meeting. Second, he testified that the reason he forgot about the May 12 staff meeting was because the paper copy of his schedule – which he consulted on Sunday, May 11 – did not have the Monday morning May 12 staff meeting on it. Third, he denied getting a phone call or a phone message from the scheduler on Friday, May 9 reminding him about the Monday morning May 12 staff meeting. Fourth, he contended that he was never told when the staff meeting was to occur. Building on that premise, he contended that he did not know that the staff meeting started at 7:30 a.m.

DISCUSSION

The parties stipulated that the issue to be decided here is whether there was just cause to suspend the grievant for three days. I answer that question in the affirmative, meaning that I find the Employer did have just cause to impose a three-day suspension on him.

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. In making that call, I'm first going to address what Duhr did.

What Duhr did can be succinctly put: he missed a mandatory staff meeting. Obviously, that shouldn't have happened. His co-workers made it to the meeting and Duhr should have too. Going to mandatory staff meetings is a basic job duty, and he failed to perform it.

When the Employer was investigating this matter, Duhr never provided any excuse for missing the meeting other than he had simply forgotten (about it). That was also his only proffered excuse during subsequent grievance meetings.

Not surprisingly then, in the Employer's opening statement at this hearing, the Employer's counsel opined that this case did not involve any credibility issues or disputes about the underlying facts.

That changed when Duhr testified at the hearing. What Duhr did was to proffer several reasons (to justify) why he missed the staff meeting. Some of his proffered reasons raise credibility issues and disputes about the facts. Those contentions are subsumed into the discussion which follows.

As just noted, at the hearing Duhr claimed that he was never told the time of the meeting (as opposed to the date of the meeting). Building on that premise, he contends that he never knew that the staff meeting started at 7:30 a.m. If that was indeed the case – and Duhr was never told when the meeting started – then he proffered an excuse at the hearing which could conceivably justify why he missed the meeting.

However in this case, I don't need to decide if Duhr's proffered excuse justified his missing the meeting because I don't find his claim credible. Here's why.

First, Duhr was spoken to about his failure to attend the May 12 meeting on many occasions. Not once did he ever suggest or tell anybody that he was not present because he did not know what time the meeting was scheduled to start. That's surprising to me, because if I missed a mandatory staff meeting and I had not been informed what time the meeting was to have occurred, I would have raised that as a defense from the get-go. Although Duhr had plenty of opportunities to raise this issue, he didn't do so. The following shows this. Duhr's supervisor spoke to him twice on May 12 about his failure to attend the meeting or call in, yet Duhr never said that he didn't attend because he did not know what time the meeting was scheduled. His supervisor again spoke to him on May 22, but Duhr again did not say anything

about not being aware of the time of the meeting. All Duhr said both times was that he did know about the meeting but that he subsequently forgot about it. Also, at the June 4 disciplinary meeting, Duhr never mentioned the excuse that he was unaware of the time of the meeting. The only issue he raised in that meeting was whether he had been given sufficient notice of the change to his personal schedule. The following day, after Hechimovich had double checked with the scheduler and confirmed that Duhr had been given notice of the meeting, Duhr was given his disciplinary notice. That document, which he signed, states in pertinent part: “on Monday 5/12/14 you did acknowledge that you knew about the meeting and due to items taking place personally had forgotten the change in schedule. You did give an apology for missing the meeting.” At no point in this meeting did Duhr ever mention that he was never told the time of the meeting. That’s also what happened in the two grievance meetings that Duhr personally attended while the grievance was being processed. In neither meeting did Duhr raise the notion that the reason he did not attend the meeting was because he had never been informed of the time of the meeting. The reason I mentioned all of the foregoing facts is to show that Duhr had numerous opportunities to raise this excuse, but instead raised it for the first time at the arbitration hearing. That’s problematic, because it makes it appear that he fabricated it at the hearing. Once again, it’s noteworthy that Duhr offered no explanation for not raising such critical and outcome determinative information prior to the hearing.

Second, Duhr’s testimony on this point is inconsistent with the scheduler’s (Carlin). The record reflects that when there are changes made to somebody’s work schedule, Carlin communicates it to them. That’s her job. Carlin testified that on Friday, May 9, she reminded Duhr that he had a mandatory staff meeting on Monday, May 12 at 7:30 a.m. She did this by either talking directly to Duhr on the phone or leaving him a detailed voice mail message. While Duhr expressly denied getting a phone call or a phone message on May 9 from Carlin telling him about the staff meeting on Monday, May 12 at 7:30 a.m., I credit Carlin’s testimony on this point over Duhr’s for these reasons. Duhr obviously has a stake in the outcome of this case, whereas Carlin does not. Additionally, Carlin is not a managerial employee and did not administer the discipline being reviewed here. Additionally, no reason was offered why Carlin’s affirmative testimony should be discounted. Still another thing that undercuts Duhr’s testimony on this point is the fact that during the hearing, Duhr’s testimony about changes to his schedule went back and forth. That distracted from his credibility.

Finally, another thing that undercuts Duhr’s contention that he was not notified of the meeting’s start time is that Duhr’s co-worker – McDermott – made it to the staff meeting at 7:30 a.m. Rhetorically speaking, how is it that McDermott knew the meeting’s start time was 7:30 a.m., but Duhr did not? While McDermott did not testify at the hearing, given Carlin’s affirmative testimony on that point, the logical inference is that McDermott must have learned that the meeting started at 7:30 a.m. from Carlin. Since Carlin testified that she told the two La Crosse employees the same thing, that lends additional support to the conclusion that Duhr was indeed told that the meeting’s start time was 7:30 a.m.

In light of the foregoing, I find that the Employer's scheduler notified Duhr that he had a mandatory staff meeting on Monday, May 12 at 7:30 a.m. Given that notification, Duhr should have attended the meeting. He didn't though, and offered no justifiable reason for missing it. It follows from this finding that Duhr committed misconduct for which he could be disciplined.

* * *

Having so found, the focus now turns to the second part of the just cause analysis being used here (namely, whether the employer established that the penalty imposed for this misconduct was appropriate under all the relevant facts and circumstances).

The Employer decided that Duhr's missing the mandatory May 12 staff meeting was more than just an attendance infraction. It characterized what Duhr did as a no call / no show violation. That characterization by the Employer had the practical impact of upping the disciplinary ante, so to speak, because the Employer's attendance policy treats a no call / no show violation more harshly than an attendance infraction. Under the Employer's attendance policy, the discipline for a first time no call / no show violation is an automatic suspension. Not surprisingly, the Union disputes the Employer's characterization of what Duhr did as a no call / no show violation. In the Union's view, missing a staff meeting was merely an attendance infraction and, as such, Duhr should have been subjected to the normal progressive disciplinary sequence.

It's apparent from the foregoing that the question to be answered here is whether Duhr's missing of the morning staff meeting qualified as a no call / no show violation. Quite frankly, I considered this the hardest part of deciding this case.

That's because what normally happens in a no call / no show situation is that the employee doesn't show up to work for an entire day. For example, an employee is scheduled to work an eight hour shift, and they don't show up for any portion of the shift or call in to notify the employer that they won't be there. Obviously, that's problematic because the employer has to somehow cover the employee's absence.

That's not what happened here. On Monday, May 12, Duhr was essentially assigned to work two different shifts. First, he was supposed to be at the staff meeting in the early morning for one hour. Then, he was supposed to have an evening shift that started at 7:00 p.m. and was scheduled to run until 3:00 a.m.

What happened, of course, is that Duhr missed the morning staff meeting, but nonetheless did show up and work his scheduled evening shift for that same day (i.e. Monday, May 12). In fact, he not only worked a regular seven and a half hour work day that evening, but he also worked two hours of overtime for a total of ten hours.

In my view, the facts just noted make this particular (alleged) no call / no show situation, in a word, unique.

At the hearing, when I learned that Duhr had missed the morning staff meeting, but had then gone on to work a ten hour workday that same day, my initial reaction was that Duhr's missing the morning staff meeting could not fairly be shoe-horned into a no call / no show violation. Again, my initial reaction was to say rhetorically: what, he got a three day suspension for missing a staff meeting? Given the employee's clean disciplinary history, a suspension of that length struck me as harsh.

As the hearing progressed though, and the Employer showed that the revised attendance policy specifically addressed the matter of missed staff meetings – and deemed them to be a no call / no show violation – my initial reaction changed. Here's why.

The record shows that the revised attendance policy was explained to employees in training sessions in October of 2012 and March of 2013. Duhr attended those training sessions. The uncontroverted testimony of one of the trainers was that no call / no shows and what constituted same were given special emphasis during that training and employees were trained on exactly what was and what was not allowed under that policy. The trainer testified that it was stressed to employees that regularly scheduled shifts, overtime shifts that were either volunteered for or mandated, and staff meetings or required training constituted shifts which the employees must attend. The trainer further testified that she specifically explained that if an employee had more than one shift in a given day that for no call / no show purposes, each shift is considered separately. This testimony conclusively established that if an employee had multiple shifts in a day, from a no call / no show standpoint, each "shift" stood on its own and timely notification needed to be made if the employee was not going to be at any one of their shifts. Additionally, this testimony established that if the employee failed to notify management of their absence in a timely fashion, their absence would be considered a no call / no show violation and they would be treated accordingly. Finally, this testimony established that if an employee missed a mandatory staff meeting and failed to notify management of their absence in a timely fashion, their absence would be treated as a no call / no show violation.

The Union emphasizes that Duhr was not absent for a full day; rather, he was absent for just one hour. While that's true, it doesn't matter. That's because the Employer interprets their attendance policy to mean that an absence does not have to be for an entire day. It can be for less than a day. In fact, if an employee misses a staff meeting – which can last just one hour – that still qualifies as missing a "shift". While the Union asks me to find that the Employer's interpretation of their own attendance policy is unreasonable and conflicts with a literal reading of same, I'm not going to do that. I'm also not going to offer my own interpretation of the attendance policy language to the parties. Instead, the interpretation of the attendance policy that I'm applying here is simply what was explained to employees at the 2012 and 2013 attendance policy training sessions. As previously noted, in those sessions it

was made crystal clear to employees that if they missed a staff meeting, that constituted a missed shift and a no call / no show violation.

Per that interpretation, Duhr violated the attendance policy when he missed the mandatory staff meeting on May 12. The Employer was therefore within its rights to characterize Duhr's missing the staff meeting as a (more serious) no call / no show violation, rather than a (less serious) attendance infraction.

The focus now turns to the punishment which the Employer imposed on Duhr.

It's noteworthy that until he missed that staff meeting, Duhr had a clean disciplinary history with the Employer. By that, I mean he had received no prior discipline. What would normally happen under these circumstances (where an employee commits their first disciplinable act) is that pursuant to the general progressive disciplinary sequence referenced in Section 15.1, the employee would be given a warning of some sort. However, that didn't happen here, and the Employer went instead to the suspension step, and a three day suspension at that. Not surprisingly, the Union objects.

While the level of discipline permitted by the just cause principle normally depends on many factors, in this case those traditional factors do not carry the day. Instead, what carries the day here, so to speak, is the discipline specified in the Employer's attendance policy. The attendance policy specifically says that employees will receive a suspension for a first offense no call / no show violation. That discipline is controlling here. Additionally, while the policy does not specify the length of the suspension for a first no call / no show violation, the record shows that the Employer has uniformly imposed a three day suspension for other first no call / no show violations. Thus, the discipline which has been consistently applied to first offense no call / no show violations is a three day suspension. Since that is what was imposed here, Duhr was treated the same as other unit employees. Given that past discipline imposed on other unit employees, it would not have been fair to give Duhr a suspension greater than three days for his first no call / no show violation. Conversely, it would not be fair to those employees that have received a three day suspension for similar misconduct (i.e. their first no call / no show violation) for Duhr to receive a lesser penalty. Accordingly, the discipline imposed by the Employer passes arbitral muster.

Obviously, given that finding, it suffices to say that I was not persuaded by the Union's remaining contractual arguments about the Employer's attendance policy and its interaction with the collective bargaining agreement. That being so, I have decided to not comment on them.

In light of the above, it is my

AWARD

That the Employer had just cause to suspend the grievant for three days. Therefore, the grievance is denied.

Signed in the City of Madison, Wisconsin, this 25th day of September 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones, Arbitrator