

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE MILWAUKEE POLICE ASSOCIATION

and

THE CITY OF MILWAUKEE

Case ID: 251.0056

Award No. 7985

(Mariolys Nelson Grievance)

Appearances:

Attorney Rebecca Meyer, for the Association.

Attorney Lisa Gilmore, for the City.

ARBITRATION AWARD

Pursuant to the joint request of the Milwaukee Police Association and the City of Milwaukee, I was assigned by the Wisconsin Employment Relations Commission to serve as the arbitrator as to a three-day suspension received by Mariolys Nelson. A Zoom hearing was held on March 7 and 11, 2022. The parties made oral argument at the conclusion of the hearing. Transcripts of the hearings were received by April 29, 2022. Having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties agreed to the following statement of the issue:

Did the City have just cause to suspend the grievant and, if not, what remedy is appropriate?

DISCUSSION

Nelson is a City Police Officer. She was the passenger in a squad car that was part of a high-speed pursuit of a stolen car. Her squad was following a second squad when the driver of her

squad lost control and crashed. No one was injured but the squad was totaled. The first squad continued the chase without incident. Both squads were travelling approximately 100 mph.

The crash prompted an investigation which determined that Nelson's body camera was not activated until the squad crashed. The City also concluded that Nelson should have but did not take any action or make any comment designed to slow the speed at which the squad was travelling. Nelson received a one-day suspension for the failure to activate the body camera and a two-day suspension for failing to attempt to have the driver slow the squad's speed. The driver of the squad received a three-day suspension related to the crash, a one-day suspension for failing to activate the squad's emergency lights and siren, and a one-day suspension for failing to activate his body camera. The body camera suspension was subsequently reduced to a written reprimand in response to a grievance.

As to the failure to activate the body camera, there is evidence in the record that Nelson could reasonably have believed that the body camera had been automatically activated due to proximity to another squad with activated lights and siren. However, given the obligation to activate a body camera and the importance of complying with this obligation, it is also reasonable to expect Nelson to have double checked the body camera status before the crash occurred. In those contexts, I conclude that there was just cause for a written reprimand but not a one-day suspension.

As to the failure to take action as to speed, there is no evidence that speed itself created an unacceptable risk or constituted driver misconduct that obligated Nelson to act. Supervisory personnel were aware of the chase speed and did not call it off. The primary squad was traveling at the same speed as the squad in which Nelson was a passenger and did not crash. However, there is evidence that the squad driver was driving with one hand on the wheel. While technically not a "speed" issue, it was nonetheless driver conduct that, if corrected, might have avoided the crash. In those contexts, I find that there was just cause for a one-day suspension.

In light of the above, it is my

AWARD

Consistent with this Award, the City shall make Nelson whole for two day's pay.

Issued at Madison, Wisconsin this 21st day of July. 2022.

By:

Peter G. Davis, Arbitrator