

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

DIANNA DURHAM

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0096

Case Type: IHO

DECISION NO. 40861

Appearances:

Will Kramer, Pines Bach, 122 W. Washington Avenue, Ste. 900, Madison, Wisconsin, appearing on behalf of Dianna Durham.

Marshall Traster, 5225 W. Vliet Street, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Board of School Directors and Milwaukee Public Schools.

DECISION OF THE IMPARTIAL HEARING OFFICER

On September 30, 2024, the Milwaukee Public Schools requested that the Wisconsin Employment Relations Commission appoint Katherine Scott Lisiecki, a member of the Commission's staff, to serve as the Impartial Hearing Officer (IHO) in a proceeding concerning Dianna Durham's discharge. A hearing was held on December 12, 2024, by video conference. The hearing was transcribed, and the parties made oral closing arguments at the end of the hearing. Having considered the evidence, the arguments of the parties, and the record as a whole, I issue the following decision.

ISSUE

Did the Milwaukee Public Schools have just cause to discharge Durham?

FACTS

Dianna Durham (herein, Durham) was hired as a Building Service Helper at Academia De Lenguaje y Bellas Artes (ALBA), part of the Milwaukee Public Schools (herein, MPS), in April 2016.

On May 29, 2024, Durham was cleaning out the school while students were on summer break. She was tasked with removing furniture from classrooms and cleaning the floors. *See* Exhibit R-8, pg. 1. ALBA Lead Teacher Brenda Martinez saw Durham enter ALBA teacher Nathaly Salazar's locker and reported her to Building Operations Supervisor Rickey Gray. A review of security camera footage showed Durham opening Salazar's locker, which was located in the hallway and contained school supplies. The footage showed Durham removing several boxes of Ziploc baggies and putting them in a plastic garbage bag. Durham testified that she was cleaning out the lockers and cabinets, which can become overcrowded. She testified that she would gather extra supplies for a coworker, Kathy Green, who would give the extra supplies to other people in the building who needed them or box them up for storage.

Security camera footage also shows Durham leaving the school holding a plastic garbage bag that appears similar to the garbage bag she used to remove the Ziploc baggies. Durham testified that it was not the same garbage bag. Gray testified that the exit Durham left through was not the exit where the trash was taken out.

MPS held a disciplinary hearing on June 5, 2024. *See* Joint Exhibit 1, pg. 1. Building Operations Supervisor Rena Strzelecki found that Durham violated Administrative Policy 6.07 by her theft or unauthorized possession of school equipment or supplies. *Id.* Accordingly, Durham received a letter of termination on June 7, 2024. *See* Exhibit R-6.

Durham filed a grievance regarding her termination. On August 20, 2024, Employment Relations Specialist Sandra Cohen issued a written decision denying Durham's grievance because the weight of the credible evidence supported a conclusion that the MPS had just cause to terminate Durham. *See* Exhibit R-7, pg. 3.

Durham has no previous discipline.

DISCUSSION

The Standard of Review

I begin my discussion by first addressing the standard of review. Part II (B) of the MPS's Employee Handbook states that "non-probationary employees shall only be disciplined or discharged for just cause." Thus, employee discipline will be reviewed under a just cause standard. Although the Handbook does not define just cause, a finding of just cause generally requires the employer to prove that (1) the employee committed conduct for which discipline is warranted and (2) the discipline issued is consistent with the seriousness of the misconduct.

Part II (B) of the Employee Handbook further states that the MPS has a policy of progressive discipline, which depends “on the specific behavior and the frequency of occurrences.” In other words, serious behaviors may justify departure from progressive discipline, though the provision does not specify which behaviors may warrant departure from progression.

Theft or Unauthorized Possession

Administrative Policy 6.08, Employee Rules of Conduct, forbids school personnel from damaging, using without authorization, possession, or removal of Board property or another person’s private property. *See* Exhibit R-14. The rules of conduct are included in the ALBA School Staff Manual. *See* Exhibit R-2, pg. 15. The MPS Department of Facility and Maintenance Services Building Operations Work Rules, Building Systems, and Operations Code Manual also prohibits “Unauthorized Use of M.P.S. Equipment”: “Building Operations employees shall not use school equipment (computers, television sets, radios, cameras, projectors, stereos, hi-fi equipment, shop machinery, telephones, office equipment, etc.) for personal use during their regularly assigned work shifts.... Using any school equipment for personal use is forbidden.... Theft of school equipment/supplies or unauthorized possession of such material may be cause for discharge.” *See* Exhibit R-15, pg. 12.

The evidence clearly establishes that Durham removed Ziploc baggies from Salazar’s locker. Martinez testified that no one was authorized to enter teachers’ lockers or redistribute school supplies. Further, Durham’s cleaning responsibilities on May 29 only directed her to remove furniture and clean rooms and floors, not to clean out lockers. However, Durham credibly testified that she did so at the direction of a coworker, in order to gather supplies for others in the building and to prevent overcrowding of lockers. Although Durham did not enter the locker with intent to steal or use supplies for personal use, she did not have authorization to enter the locker.

However, MPS did not prove either that that Durham left the premises with those supplies or that she moved them for personal use. The evidence MPS cites to prove theft is circumstantial. The security footage shows Durham leaving holding a plastic garbage bag, but the garbage bag is opaque. It could very well hold trash or Durham’s personal possessions. Gray testified that the exit Durham left through was not the exit where the trash was taken out, but this does not prove that Durham was stealing supplies. All that can be proved is that Durham moved some Ziploc baggies inside the school without proper authorization.

This unauthorized possession constitutes misconduct, but it does not warrant discharge. As previously mentioned, Durham has received no previous discipline in her eight years working at ALBA. Discharging her for moving Ziploc baggies without proper authorization is disproportionate to the misconduct committed and is in opposition to MPS’s policy of progressive discipline.

The Merits

At her disciplinary meeting, Durham was told she was terminated for theft or unauthorized possession of school equipment. The preponderance of the evidence did not establish that Durham stole school equipment, only that she moved Ziploc baggies within the school without proper authorization. The discipline issued is inconsistent with the seriousness of the proven misconduct. MPS has a policy of progressive discipline, which depends “on the specific behavior and the frequency of occurrences.” It is not appropriate to discharge an employee of eight years, with no previous discipline, for moving Ziploc baggies without proper authorization.

For the reasons set forth above, I find that MPS did not have just cause to discharge Durham. Accordingly, I issue the following:

DECISION

MPS did not have just cause to discharge Dianna Durham. Therefore, her grievance stands. I am modifying the discharge by reinstating Durham with back pay.

Issued at Madison, Wisconsin, this 27th day of March 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Impartial Hearing Officer