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IN THE MATTER OF ARBITRATION
BETWEEN
STATE OF OHIO - OHIO VETERANS HOME
AND
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME. LOCAL 11

Arbitration Date: August 14, 2008

Rod Hasal: 33-0020080114-0008-01-04

BEFORE: Craig A. Allen

Advocate for the Employer:

Joe Trejo, Labor Relations Specialist, Office of Collective Bargaining
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Advocate for the Union:

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#1007

I. HEARING

The hearing was held at the Ohio Veterans Home on August 14, 2008. The hearing commenced at 9:00 A.M. The joint issue before the arbitrator is "Was the Grievant, Rod Hasal's termination from his position as a Nurses Aide for just cause? If not, what shall the remedy be?"

Testifying for the Ohio Civil Service Employees Association, Local 11 AFSCME (the "Union") were Rod Hasal, The Grievant, Carolyn Smith, OA, Tamia Caffey, STNA, Lisa Hammon, NA, Michelle Haney, NA, Linda Morris, STNA and Rosetta Lockett, STNA

Testifying for the Employer were Norma Rang, Residents Wife, Cheryl Garrison, RN Manager, Barbara Elam, RN Manager Team Leader, Robert Bloom, Resident Worker, Michelle Haney, NA, Bill Kessler, LPN and Kali Smith, LPN. The parties had three Joint Exhibits as well as both Employer and Union Exhibits.

The Oral Hearing was concluded at 4:30 P.M. and written Closing Arguments were timely filed on September 5, 2008.

II. STATEMENT OF THE CASE

The Grievant was terminated on January 14, 2008. The incident causing the termination occurred on December 24, 2007. The Union timely filed a grievance claiming the termination was without just cause and seeks reinstatement with full back pay and benefits.

III. THE PROCEDURAL OBJECTION

The Union objected to the use of a CD as the Union was not advised of its existence until less than a week prior to the hearing. The Employer responded by saying it was sent to the Union as soon as it was received by the Employer. The Employer also said that all employees and the Union are aware of the fact that video cameras are placed throughout the Veterans Home. The Arbitrator ruled that the CD could be used and the Union could make specific objections as to parts of it being admissible, also the Arbitrator reserved the right to rule on its admissibility in relation to the evidence in the Employer's possession prior to the Discipline.

IV. THE EMPLOYER'S CASE

The Employer's first witness was Cheryl Garrison, RN Manager. Ms. Garrison testified that Tamia Caffey, who was on night shift told her that Mr. Bloom, Resident Worker had told her that Grievant had words with Mrs. Rang. The witness was referred to Mr. Bloom's statement at Exhibit J3. Pg.17. Ms. Garrison then started an investigation. Mr. Rang's health is such that it was not possible to interview him. Ms. Garrison said she had issues with the Grievant. Mrs. Rang had surgery and was unable to lift her husband to put him in bed.

Mrs. Rang had asked Grievant to put her husband to bed and then left the floor. She saw Grievant leave the building and went back to find her husband still out of bed.

Mrs. Rang then left again and encountered Grievant on an entrance ramp to the building. The Grievant was returning with pizza. Mrs. Rang and the Grievant had a heated verbal exchange and Grievant said "he does what he does on his own time, not her time or the management's time, not any other way".

Ms. Garrison then testified as to Management, Exhibit 1, "Assignment of Shift" which sets lunch and break times. Ms. Garrison then testified as to Exhibit J3, Pg. 22, which shows Grievant was not to leave until 7:00 P.M. The Grievant was to punch out when he left the grounds which Grievant admitted he did not. Mrs. Garrison testified Mr. Rang has Alzheimer's, Parkinson's and had suffered a stroke and was a total care patient.

On cross-examination Ms. Garrison said Mrs. Rang did not want the Grievant fired. She testified as to Management 1, which says employees are to document leave. She was referred to Exhibit J3, Pg. 20, which indicted Grievant left at 7:00 P.M. The CD shows Grievant leaving at 6:32 P.M. Michelle Haney and Tamia Caffey come in. Mrs. Rang back at 6:45 P.M. Grievant back at 7:01 P.M. At that time there were 50 residents on the floor. Ms. Garrison said other STNA's might have passed Grievant as they came in one minute later. Ms. Michelle Haney told Ms. Garrison that Mrs. Rang was very upset. The CD showed Grievant out 24-25 minutes. Grievant was to have a thirty minute lunch break. Ms. Garrison said apparently Ms. Kali Smith knew Grievant was going on break.

On re-direct , Ms. Garrison said Michelle Haney had clocked out at 6:26 P.M. and could not have talked to Grievant about his break as she was gone. The next witness was Barbara Elam, RN Manager, Team Leader. Ms. Elam did a follow up investigation and spoke with Grievant. Ms. Elam testified as to Grievant's Statement in Exhibit J3, Pg. 21 and 22. The statement indicates at Pg..22, [Q-2] that Grievant said from 3 P.M. until 10 P.M. he had no contact with Mr. Rang.. The statement at [Q-4], says Grievant went on break at 6:45 to get pizza, but did not clock out. Ms. Elam wrote a summary of all employee statements in Exhibit J3, Pg. 15. She said Mr. Rang requires constant care and Grievant admits he did nothing for Mr. Rang until 10 P.M.

On cross-examination she testified the Grievant was to stay in touch with Mr. Rang. Ms. Elam also confirms that Grievant had an altercation with Mrs. Rang and not a conversation. The Grievant did go to Mr. Rang's room prior to his break and Mrs. Rang and Bill Kessler, LPN were there. On re-direct Mrs. Elam testified as to Management 4, Pg. 3, which show Mr. Rang's medical problems. Management 4, Pg. 4 shows things to be done for Mr. Rang and Grievant was to do them. Grievant was to check on Mr. Rang at 4, 6, 8 and 10 o'clock. Management 4, last page shows Grievant turned Mr. Rang at 4:00 P.M. and repositioned him at 6:00 P.M., but Grievant says he didn't do anything until 10 P.M. If family is there Grievant still has to offer to do what is on the schedule. Ms. Elam was referred to Exhibit J3, Pg. 19, Bill Kessler, LPN's statement. The statement says Grievant came in and threw attends on the bed and left. Bill Kessler reported this to Kali Smith, LPN.

Robert Bloom, Resident Worker testified next. Mr. Bloom works the 3-11 shift on the front desk at Secrest. Mr. Bloom reviewed his statement at Exhibit J3, Pg. 12 and said he made this statement the night after the incident. Mr Bloom said Mrs. Rang approached Grievant on the ramp and that the doors to the ramp were open.

Mr. Bloom said Grievant spoke so loud he could hear him and he was disrespectful to Mrs. Rang. He said he took his statement to the Nurse Supervisor. Norma Rang, Roger Rang's wife testified next. She comes to see her husband every other day. Her husband can't care for himself. She asked Grievant to put Mr. Rang to bed about 6:30 P.M. and left. Before she left the building Grievant went by with his coat on. She asked him if he put Mr. Rang down and he said he would do it when he got ready. She went back upstairs and had Michelle Haney put Mr. Rang to bed. She leaves again and runs into Grievant on the ramp. The Grievant tells her he could take a break anytime and he would put Mr. Rang down when he got ready. Mrs. Rang also said she didn't want Grievant fired. She testified as to Management 5, the Visitors sign in sheet which showed she was there at the time in question.

On cross-examination she said she told Ms. Garrison she did not want him fired. On re-direct Mrs. Rang said she wants quality care for Mr. Rang and Grievant shouldn't go if not on break.

Michelle Haney, Nurse Aide reviewed Kali Smith's statement Exhibit J3, Pg. 20, which says Mrs. Rang upset in room. Ms. Haney also read her statement Exhibit J3, Pg. 18, that said she did not know where Grievant was. Ms. Haney clocked out to get the pizza, but Missy's car wouldn't start.

On cross-examination Ms. Haney said it was a spur of the moment thing to go get pizza. Grievant did not ask her to put Mr. Rang to bed. On re-direct she said she had a baby by Grievant which he won't acknowledge. He does not pay child support. She then reads Grievant's Discipline Trail. On re-cross Ms. Haney says that being "unalert" does not mean Grievant is no good and having to have a Doctor's verification doesn't mean Grievant is not a good care giver.

Kali Smith, LPN, Charge Nurse then testified. She reviewed her statement at Exhibit J3, Pg. 20. She said Bill Kessler approached her and wanted her to speak to the Grievant. Bill Kessler told her Mrs. Rang had complained about the Grievant. Michelle Haney tells her Mrs. Rang is very upset. Ms. Smith tells Grievant that he should do what he tells family he would do. She was referred to Management 1 and said she was to be informed of a change in break time.

William Kessler, LPN testified that he was working overtime. He read Exhibit J3, Pg. 19 and said he had written his statement the next day. He said Grievant did not provide care. Mr. Kessler said he didn't recall seeing Grievant go into Mr. Rang's room after the first time. He said residents have to be checked every two hours. Mr. Kessler said Grievant lacked respect for people he worked for. He said family requests are to be met as soon as possible. Mr. Kessler reviews Management 6. He sees Grievant leaving at 6.31 P.M. and says he could have put Mr. Rang to bed before he left. On cross-examination Mr. Kessler said breaks are not always taken on time. He also said he is a Charge Nurse and is responsible.

V. UNION'S CASE

The Union's first witness was Carolyn Smith, OA. Ms. Smith is President of the Union and was Steward of Record during the investigation. Ms. Smith said Grievant tried to explain what he meant by "in his own time". What he meant was to do things as trained.. She was referred to Exhibit J3, Pg. 15-16, which shows no reference to "explanation" written by Ms. Elam. She testified that resident and co-workers like Grievant. Ms. Smith also said that if you go get food you still get to eat.

On cross-examination she said she wasn't working on December 24th. She further said things should be done when the family asks to have them done. Rosetta Lockett, STNA testified that she was not there December 24, 2007. She says Grievant is a good aide. And the Residents like him. On cross-examination she said care comes first. Tamia Caffey, STNA then testified that she was to go get pizza for Christmas Party, but her car wouldn't start. She asked the Grievant to go get pizza. Ms. Caffey said they were to work as a team and that she thought Michelle Haney had put Mr. Rang to bed.

On cross-examination she said she gave a statement to Grievant on April 21, 2008. She was referred to Management- Exhibit 9, which shows she didn't clock out. She also said you should take care of family requests. Lisa Hammon, NA testified out of order as she had a small child with her. She said she had worked 2nd shift for 15 months. Ms. Hammon's said the Grievant is a good worker and that the residents liked him.

On cross-examination she said she wasn't working on December 24, 2007, but she had come in for the pot luck dinner.

Linda Morris, STNA also testified out of order. She reviewed her statement Union 1. Ms. Morris said Grievant performance and mouth don't match. She said there are picky residents and that Grievant gets along with them.

On cross-examination she said he saw nothing December 24, 2007. She viewed Management 7, video of the dinning room and saw Grievant there for about twenty minutes.

The last witness was Rod Hasal, the Grievant. Mr. Hasal reviewed his prior discipline. Mr. Hasal said he did not remember his written reprimand.

He said as to sleeping on duty he was working mandated overtime. His work was finished and he fell asleep. As to being off without a physician's verification he said he called off for his daughter.

Mr. Hasal said these were not major offenses. Mr. Hasal said he loved his job and gets along with staff. On December 24, 2007, Mrs. Rang came to him at 4:00 P.M. and wanted her husband up. Mr. Hasal told her he had to get someone to the main dinning room and when he came back Mr. Rang was up. Mrs. Rang and Bill Kessler were in the room and all the work was done. He said he did check on Mr. Rang, but did nothing physical. He also said if he didn't get the resident to the dinning hall he would get in trouble. Mr. Hasal told Mrs. Rang he would take care of her husband. Mr Hasal then got a call to go get pizza. He says he saw Michelle Haney and told her to put Mr. Rang to bed.

Mr. Hasal was referred to his statement JE3, Pg. 21. Mr. Hasal said breaks were changed based on resident needs. He said breaks flexible when there were pot luck dinners.

When Mr. Hasal came back with the pizza he met Mrs. Rang on the ramp. Mrs. Rang complained about not putting her husband to bed. He told her he had asked Michelle Haney to put him to bed.

Mr. Hasal said he was 40' - 50' feet away from Mr. Bloom and the TV was playing. He said he thinks Mr. Bloom got his information from Mrs. Rang. He denies saying he "would put Mr. Rang to bed in a minute". He usually puts Mr. Rang to bed when asked. Mr. Hasal said he tried to explain to Ms. Elam what "his own time" meant. Mr. Hasal said he loves his job and that he brings in movies and plays cards with the residents. He says this is all a big misunderstanding.

On cross-examination Mr. Hasal said on his first visit he could see all was done. He said he did rounds when he first went on and Mr. Rang was in bed. He went back at 4:15 P.M. and Mr. Rand was up. He said he saw Mr. Rang again when he was passing trays at 4:30 P.M. and he saw Mr. and Mrs. Rang in the dinning room at 6:30 P.M. Mr. Hasal saw Mr. Rang again at 10:00 P.M. and said 5 ½ hours went by without him checking on Mr. Rang. He then reviewed JE3, Pg. 22. He viewed the video which does not show Mrs. Rang come back in to talk to Mr. Bloom. He was referred to JE3, Pg. 21 and says his statement doesn't say he asked someone else to put him to bed.

On re-direct Mr. Hasal said he had to fix the cart before he put Mr. Rang to bed. He also said there was no policy against talking to people while working on th cart.

On re-cross examination he said he asked Michelle Haney to put Mr. Rang to bed when he got the pizza money.

VI. DECISION AND AWARD

The Grievance is Denied. The Arbitrator has reviewed all the Exhibits and the testimony of the witnesses. The Arbitrator has also reviewed the Arbitration Decision of Mr. Jonathan Dworkin which was supplied by the Union in its Closing Argument in an ODOT Case. In the ODOT Case the Grievant was an Auto Body Repair Worker I whose only discipline was a verbal reprimand for failing to meet his schedule. The Arbitrator did not find this Case persuasive. In this case the Grievant was employed in a Veterans Home attending to residents, some of which like Mr. Rang, were unable to take care of themselves.

The Grievant also had a discipline history more severe than the discipline history of the Grievant in the ODOT Case. Mrs. Rang is to be commended for her charitable spirit. Unfortunately, for the Grievant Mrs. Rang's complaints brought to light severe problems with which Management had to deal.

The Union's objection to the video is sustained as to all events in the break room. The Arbitrator found little independent evidence of these events and did not consider any of this evidence in reaching his Opinion and Award.

The testimony of Mr. Bloom was credible that he had heard the altercation with Mrs. Rang on the ramp. He wrote his statement immediately after the incident while the events were fresh in his mind.

Mr. Kessler's testimony was also very convincing as to Grievant's inattention to Mr. Rang. Further, the testimony of all witnesses for the Union and Management was that Grievant was supposed to take care of the residents.

Even without the video there is ample evidence that Grievant failed to take care of Mr. Rang. The witnesses also said family requests should be done as soon as possible.

For 5 ½ hours he left Mr. Rang unattended. The testimony is unanimous that Mr. Rang is unable to take care of himself.

The Grievant's problems started with the pizza run. Grievant says he asked Michelle Haney to put Mr. Rang to bed, but she denies this. The Grievant then had an altercation with Mrs. Rang and still left Mr. Rang unattended for 5 ½ hours.

In light of Grievants prior discipline the Arbitrator finds the discipline to be progressive.
Issued at Ironton, Ohio this 25th day of September, 2008.

Craig A. Allen, Arbitrator