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IN THE MATTER OF ARBITRATION

BETWEEN

**STATE OF OHIO
OFFICE OF BUDGET AND MANAGEMENT
SHARED SERVICES DIVISION**

AND

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
LOCAL 11
AFSCME. AFL-CIO**

NOV 13 2012
#05-00-2012-06-01-0005-09-09
OCSEA OFFICE OF
GENERAL COUNSEL

Arbitration Dates: October 26, 2012

Grievant Judith Reid: # 05-00-2012-06-01-0005-09-09

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Tamica Gardner
Office of Budget and Management
30 East Broad Street, 34th Floor
Columbus, Ohio 43215-3457

Advocate for the Union:

John Gersper
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082

I. HEARING

The hearing was held at OCSEA office on October 26, 2012. The hearing commenced at 8:58 A.M. and was concluded at 10:55 A.M.

The joint issue before the arbitrator is “Was the Grievant, Judith Reid, removed from her position as an Ohio Shared Services Associate, effective May 24, 2012, for just cause? If not, what should the remedy be?”

Testifying for the Office of Budget and Management, Shared Services Division, “the Employer”, was Keith Lim, an Ohio Shared Services Associate, who has been employed as an associate for three (3) years.

Testifying for the Ohio Civil Service Employee’s Association, Local 11 AFSCME (“the Union”) was the Grievant, Judith Reid. The Grievant had been employed by other State agencies and her Date of Hire with the Employer was August 30, 2009.

II. STATEMENT OF THE CASE

On June 1, 2012 the Grievant Judith Reid, filed a Grievance, “that the Office of Budget and Management failed to show just cause for Judith Reid’s removal as a Shared Services Associate and also the discipline imposed on her removal was severed”.

The remedy sought was reinstatement or transfer to another State Agency with back pay of salaries and all other benefits missed to include insurance and all other benefits.

The Notice of Disciplinary Action dated May 24, 2012 said the Grievant was removed for violation of work rules 5 - 2(A). Participation in a work stoppage, strike, sit out, illegal strike, or

any other activity that would interfere with the operation of a department, facility, installation or program.

The matter is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Employers' sole witness was Keith Lim. Mr. Lim has been a Shared Services Associate for three (3) years. Mr. Lim's primary duty is to process Accounts Payable Vouchers. Mr. Lim testified that his Metrics are O.K. and that he meets or exceeds standards.

Mr. Lim testified that he had provided information to the Employer. Mr. Lim was shown Investigation Interview Exhibit Pages 39 and 40 and said it was his signature. Mr. Lim read Page 39 concerning his discussion with the Grievant the week of February 29th and testified "it was not a specific request and he was not asked to slow down".

On Cross-Examination Mr. Lim was asked "When did she approach you? Who was there?" Mr. Lim responded, "The Team Grievant was on. Mouhamadou Toure was there."

Mr. Lim was asked "How did it happen?" Mr. Lim testified "I walked past her work area and a conversation occurred, another person was near by and I was never asked to slow down." Mr. Lim testified there was a second, separate discussion with Mouhamadou Toure.

On Re-Direct Mr. Lim was asked "Did you hear Grievant say it would be good for the Metric if top performers slowed down?" Mr. Lim testified, "This was a description of a topic from a previous meeting".

IV. UNION'S CASE

The Union's only witness was, the Grievant, Judith Reid. The Grievant testified that she has been a Shared Service Associate since August 30, 2009. Prior to this she had worked at the Department of Commerce and Taxation.

The Grievant testified that she worked in the Accounts Payable Division and her job was to process vouchers to pay Vendors.

The Grievant testified that Accounts Payable had four (4) service lines and five (5) Teams within a group. The Teams were self Directed Teams. The Grievant testified that this meant the teams directed themselves and made decisions and directed themselves.

The Grievant testified that they were all demoted to Grade 27 and had an opportunity to get paid up to the top of Grade 28 by performance. She testified that she was already at Grade 28.

The Grievant testified that at first she struggled but the last few months she was improving.

The Grievant reviewed her performance summary. In January her Quality was high. In February she was trying to increase Volume so her Quality went down. In March her Quality was 95%. The Grievant testified that Coach Tim Hill helped her and Ed Bradley also. The Grievant testified she asked Keith Lim and others to help her.

The Grievant denied all the Charges.

On March 1 there was a Team meeting. The Grievant testified the Team discussed many things. The Grievant testified that the Team did not like being demoted back to Grade 27. One co-worker was assigned to be a Q A verifier.

The Grievant was asked, “Did anyone suggest a slow down?” The Grievant said, “Yes, Gwen Page.

The Grievant denied approaching Keith Lim. The Grievant testified that Keith Lim came past while the Grievant was discussing a prior meeting. She testified that Mouhamadou Toure told Keith Lim about it.

On Cross-Examination the Grievant read Investigation Interview Page 43 and said this was her second statement. The Grievant read Investigation Interview Page 41 and testified she didn’t remember all that was said in the meeting. The Grievant testified she doesn’t recall “high performer”. The Grievant thought the interview was about Gwen. The Grievant asked for a Steward and the Steward is here today.

V. OPINION AND AWARD

The Employer contends that this case is about work expectation and what happened after the meeting.

The Employer says Gwen Page did ask in the meeting for the High performers to slow down as shown on Page 35 of the Investigatory Interviews. Gwen Page got five (5) days and no one else was disciplined. Toure’s name was brought up as a person who talked to Lim.

Mouhamadou Toure and Jeanetta Hathorn denied involvement as shown on Pages 36 and 44 of the Investigation Interviews.

The Employer argues that the action was based on two (2) Questions. Was Discipline warranted? Shared Services is a partnership with the OCSEA per page 36 of the Collective

Bargaining Agreement The Grievant had a 3 day and a 5 day so Removal was called for.

The Union contends that the Employer's evidence does not support a decision to terminate the Grievant. The Union says the Employer will argue that the previous discipline of three (3) and five (5) days respectively formed the basis for progressive discipline in their decision to terminate.

The Union argues that the report of Investigation shows that Gwendolyn Page did make comments during a Team 2 meeting that undermined the stated mission of high performance work. Ms. Page was disciplined.

The Union contends there is no clear and convincing proof to support a removal.

The Union is correct that there is no clear and convincing evidence to support a removal. The Employer's only witness, Keith Lim, testified that he was not asked to Slow Down. Mr. Lim said it was an idea brought up to discuss, which is also what he said in his Investigation Interview. The Grievant also denied asking Keith Lim to slow down.

The evidence is that Gwen Page is the one who was guilty and she has been disciplined.

The Employer's evidence that the Grievant attended the Team 2 meeting and later had a discussion with Mr. Lim is not evidence that she asked him to Slow Down. In fact the evidence is that both the Grievant and Mr. Lim deny it happened.

The grievance is granted.

1. The Grievant shall be returned to work with back pay, less applicable deductions.
2. The Grievant's benefits shall be restored.
3. The Grievant's seniority shall be restored.

4. The Grievant's good days shall be restored.
5. The Grievant's leave accruals, shall be restored.
6. The Grievant's PERS and Health Insurance benefits, shall be restored.
7. The Grievant's Union Dues shall be paid.

Entered at Ironton, Ohio this 5th day of November, 2012.



Craig A. Allen
Arbitrator