

#1142

IN THE MATTER OF ARBITRATION

BETWEEN

**SUMMIT BEHAVIORAL HEALTHCARE-
CINCINNATI, OH**

AND

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

Arbitration Date: May 28, 2015

Grievant Redonica Banks: # 23-13-20140603-0009-01-04

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Marlo Cain
Mental Health & Addiction Services
Labor Relations Officer 3
Office of Human Resources
30 East Broad Street, 11th Floor
Columbus, Ohio 43215-3430

Advocate for the Union:

Jennie Lewis
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082

RECEIVED / REVIEWED

JUN 17 2015

**OCSEA - OFFICE OF
GENERAL COUNSEL**

I. HEARING

The hearing was held May 28, 2015 at Summit Behavioral Healthcare. The hearing commenced at 9:05 A.M.

The stipulated issue before the arbitrator is “Was the Grievant removed for just cause? If not, what shall the remedy be?”

II. STATEMENT OF THE CASE

The Grievant was removed May 22, 2014 for violations of the Code of Conduct and General Work Rules: Work Rule 5.1, Failure to follow policies and procedures, specifically SBH Policy N-17, Daily Census Report; CLIN-136C Escape/AWOL Precautions Reporting; Work Rule 5.10 Violation of safety rules and Work Rule 5.14 Actions that could potentially harm a patient, employee or member of the public.

The Grievant has a one (1) day working suspension in her record.

On June 2, 2014 the Union filed a Grievance and the matter is properly before the Arbitrator.

III. THE EMPLOYER’S CASE

Summit Behavioral Healthcare (“the Employer”) called John Sumner as its’ first witness. Mr. Sumner has been the Labor Relations Officer since August 18, 2014. Mr. Sumner oversees discipline, Contract Administration. He also meets on employee issues. Prior to this he was a Labor Relations Officer 2 at the Department of Rehabilitation and Correction. He has also been a Parole Officer where he supervised Offenders.

Mr. Sumner testified that the Campus Police did an investigation. He was referred to Joint Exhibit (JX) Page 7 which is the Administrative Investigation Report by Summit Police. The report says that on February 20, 2014 at approximately 2:30 P.M. Community EMS Transport Services arrived at the SBH Campus and stopped at the A/B Employee Entrance Doors. TPW R. Banks was entering the building and allowed the two EMS personnel and a patient on a gurney access into this entrance by- passing Campus Police and the Medical Clinic.

Mr. Sumner testified that this area is not accessible to the Public. He said the Grievant entered with two (2) EMS personnel and a patient. The Grievant used her ID card to access the door and let them in. At this time TPW Brantley was down the hall.

Mr. Sumner then read JX Tab 7 Page 3 which is Pamela Brantley's statement. Ms. Brantley said she saw the EMS personnel coming down the hallway. She stopped them and called Campus Police. The Campus Police escorted the EMS personnel and the patient out of the area.

Mr. Sumner testified that the Grievant let the EMS personnel and the patient in and that she had admitted to it. He said the Door Access Record showed the Grievant had let them in. Mr. Sumner looked at JX Tab 7 Page 4 and said it is the record of Door Access. Mr. Sumner testified that the Northwest Mall door shows it was accessed by Grievant's badge.

Mr. Sumner then read JX Tab 7 Page 5 and said it is a diagram showing the entrance. He said the doors can be accessed by badge or key. Mr. Sumner testified that the inside doors can't open until the outside doors are closed. Mr. Sumner read JX Tab 7 Page 6 and said it is the New Patient Admission Sheet.

Mr. Sumner then read JX Tab 7 Page 8 and identified it as Grievant's statement. The Grievant entered the building at 2:25 P.M. She said the EMS personnel and the patient came in behind her. The Grievant said she told the EMS personnel to use another entrance and they should enter through the Medical Clinic. The Grievant did not want to be late.

Mr. Sumner then read JX Tab 7 Page 9 which is the statement of Kyle Marcum. Mr. Marcum was one of the EMS personnel. Mr. Marcum said he was dispatched here and had never been here before. Mr. Marcum said he asked an employee, "which door do we use?" The employee replied "This one" and let them in. The employee told them to see Ms. Brantley. Ms. Brantley called the Campus Police. The Police took the EMS personnel and the patient out of the area; and gave them directions.

Mr. Sumner then read JX Tab 7 Page 10 which is the statement of Roy L. Coy the other EMS personnel. Mr. Coy said there were no signs directing them. The patient was on the cot. Mr. Coy said he asked an employee "Is this the entrance?" The employee said "Sure". He was then escorted out of the area.

Mr. Sumner testified that his conclusion is that the Grievant allowed unauthorized access to a restricted area by EMS personnel and the patient.

Mr. Sumner next read JX Tab 8 Pages 1-7 and said this is the Summit Police Administrative Investigation report concerning an escape on April 5, 2014.

Mr. Sumner then read JX Tab 8 Pages 9 & 10 and said it was the statement of David Palmisano. Mr. Palmisano is an Officer with the Summit Police Department. Mr. Palmisano said the Grievant contacted him at 1:45 A.M. and said "Patient missing Unit B." Mr. Palmisano met

with the Grievant who said "the patient was walking around at about 1:15" at 1:55 A.M. he contacted his superior. Lt. Hanks then contacted the Ohio State Patrol and the Cincinnati Police Department. Mr. Palmisano then filled out the Missing Patient Form.

Mr. Sumner testified that the Grievant's statement that the patient was seen at 1:15 is not accurate. He said the Door Records and the statements of other staff are in conflict.

Mr. Sumner's conclusion is that the patient escape could have been avoided. He said a staff member was to monitor the patient. Mr. Sumner testified that there was an improper census at 12:20.

Mr. Sumner identified JX Tab 8 Page 15 as a diagram of the area of Unit B. The top of the page shows the patient's escape route. The patient went down the restricted hallway, into the break room and out the door. Mr. Sumner read JX Tab 8 Pages 19-20 and said these are photographs of the area, Page 18 shows the door and outside area, Page 17 shows the break room and the door used. Page 18 is the door and outside area. Pages 19 and 20 show the outside area.

Mr. Sumner then read JX Tab 8 Pages 21 & 22 which is the statement of Osogie Ekhaton. Mr. Ekhaton was on Special Precaution with the patient. The patient was walking in and out of his room. Mr. Ekhaton moved his chair into the TV room and couldn't see the patient. He thought the patient was in the bathroom. The patient was gone. Mr. Ekhaton told other staff.

Mr. Sumner said Page 22 was Mr. Ekhaton's second statement. Mr. Ekhaton said he signed in at 10:40 and did the Census, filing and other things. Mr. Sumner testified that Special Precaution means that the patient has to be within arms' reach.

Mr. Sumner then read JX Tab 8 Page 23 and said this was the statement of Nicole

Dudley, the Nurse in Charge. Ms. Dudley said she was off the Unit at lunch when the patient escaped. She heard the Code Brown (patient escaped) and came back to the Unit.

Mr. Sumner read JX Tab 8 Page 24 which is the statement of Seth Meucci. Mr. Meucci said it was 12:25 A.M. when the Grievant searched for the patient.

Mr. Sumner was then referred to JX Tab 8 Page 25 which is the Grievant's statement of April 15, 2014. The Grievant said she was doing daily duties in the Conference Room. Ekhaton calls her and tells her he can't find a patient. The Grievant says it was 12:45 A.M. and she helped look for the patient. The Grievant contacts the Police.

Mr. Sumner read JX Tab 8 Page 28 which is Nursing Policy N-17. The Policy says to manage Census Report and check sheet. Standard 3 says to make rounds in pairs and verify patients presence. Mr. Sumner said there were three (3) Therapeutic Program Workers (TPWs) at the time of the escape. So there were two (2) staff available to conduct the Census. Ekhaton was assigned to monitor the patient.

Mr. Sumner read JX Tab 8 Page 31 and said it is the patient assignment sheet for TPW's duties. The Grievant was assigned to do the Census from 10:45 P.M. to 1 A.M. The Grievant did not complete rounds. Meucci did the Census at 1:30.

Mr. Sumner then read JX Tab 8 Page 33 which is the Escape Policy. This governs the protocol for missing patients.

Mr. Sumner then read JX Tab 8 Page 38 J1 which is the Absent Without Leave (AWOL) Reporting. The CEO or designee is to be notified within fifteen (15) minutes. The patient was missing at 12:45 A.M. and the Grievant notified the CEO at 1:45 A.M. Mr. Sumner said the

Grievant failed to assist with the Census and a Code Brown was not called within fifteen (15) minutes. He said it took the Grievant about an hour.

On Cross-Examination Mr. Sumner was asked if the Grievant was late in the February event. He said he didn't know. Mr. Sumner was referred to JX Tab 8 Page 7, The Investigative Report and asked: "Does it say the Grievant was to make the call?" He said "No".

Mr. Sumner reviewed JX Tab 8 Page 28 III 3 which says make Rounds in Pairs. He then read JX Tab 8 Page 31 and said no one was assigned to do Census with the Grievant. No one was assigned to do Census with the other TPWs. Mr. Sumner was asked: "Why did the Campus Police spend a lot of time with Ekhatov?" He replied: "Don't Know."

Mr. Sumner reviewed JX Tab 8 Page 7 and said RN Dudley failed to ensure that the Census was done in pairs. He then read JX Tab 8 Page 24 which is Mr. Meucci's statement. Mr. Meucci said between 10:45 P.M. and 1 A.M. he was doing Census. Mr. Meucci said that while he had no visible contact with the patient he thought he was in the bathroom.

On Re-Direct Examination Mr. Sumner testified that the Census is to be done in pairs. The Designated Sheet shows the primary person. Mr. Sumner said there still needs to be two (2) personnel. Mr. Sumner was asked: "When a patient is missing is everyone on the Unit to respond?" He said "Yes."

The Employer's next witness was Kyle Marcum. Mr. Marcum is an EMT and a firefighter. An EMT renders basic life support. Prior to this job he was an EMT in Centerville.

Mr. Marcum testified that on February 20, 2014 he was on duty from 7 A.M. to 5 P.M. He had a psychiatric transport to Summit Behavioral. He said he had never been there before.

Mr. Marcum reviewed JX Tab 7 Page 9 and said the date was the 20th .

Mr. Marcum testified that he had an EMS run from the Fort Hamilton hospital to Summit. He said they unloaded the patient and went toward the door.

Mr. Marcum testified that they saw an employee who directed them toward the door. The employee had a key card for one (1) door and a key for the other door. He looked at JX Tab 7 Page 5 and said it is a diagram of the premises.

Mr. Marcum testified that he got in and turned to the right. He was told to see the lady in the yellow shirt. The lady in the yellow shirt stopped them and told them they were not to be there. The Campus Security took them out and sent them to the Medical Clinic Entrance. Mr. Marcum said the patient information is taken with them in a sealed envelope.

The Employer's next witness was Erinn Gordon. Ms. Gordon is an HDM Analysts. She works with Human Capital. She also works with FMLA, Workers Compensation, and benefits. Prior to this she was an LRO 2 from February 2011 until March 2014. Ms. Gordon testified that her duties were administration of the Contract, grievances and Policy determination. She is also involved in Pre-Disciplinary hearings. She has fifteen (15) years experience in Labor and Employee Relations. Ms. Gordon testified that she was the LRO when the Grievant was removed.

Ms. Gordon read JX Tab 8 Page 78 and said it is the Grievant's Educational Report. Ms. Gordon testified that JX Tab 8 Page 80 shows the Course on Code of Conduct and Work Rules. The Grievant passed on March 1, 2014 with 100%. Ms. Gordon then reviewed JX Tab 8 Page 88 which is the Code of Conduct and work rules. She testified that the Grievant had shown she

could be in compliance with the Work Rules. She said JX Tab 8 Page 87 is Grievant's receipt of Work Rules.

Ms. Gordon testified that the former LRO would have reviewed the policy. The policy has been in effect since 1998.

Ms. Gordon then testified that JX Tab 8 Page 102 is the Notice of Pre-Discipline Conference and Page 104 is the Pre-Disciplinary Report. The Report shows policy violations by the Grievant. Failure to Follow Policy and Procedures by actions that could harm patients or the Public. She said this is a Level 5 which is reprimand to removal.

Ms. Gordon read JX Tab 3 Page 7 and testified that it is a settlement agreement dated March 17, 2014 of a prior discipline. The settlement agreement reduced the charge to Level 3 and there was a one (1) day working suspension. She testified that the discipline is active for two (2) years. Ms. Gordon further testified that the Grievant was disciplined for a prior patient escape December 27, 2013. The Grievant did not have possession of her keys. She said the patient got the keys and got out because the Grievant left her keys unattended.

Ms. Gordon then testified about the incident on April 5, 2014. She said law enforcement was notified, including the Ohio State Patrol and the Cincinnati Police Department. Ms. Gordon testified that there was a delay in notifying the Campus Police and the time frame was not met. The Grievant failed to notify promptly.

Ms. Gordon testified that the Grievant knew about escapes as the one (1) day was only five (5) months before. She said management had wanted to let the Grievant correct her behavior so they had agreed to a one (1) day.

Ms. Gordon then read JX Tab 8 Page 81 which shows the Grievant's training on the AWOL and Escape Policy. The Grievant passed both with 100%. She said after the December incident it was mandated that all staff were to be re-trained on AWOL and Escape.

Ms. Gordon read JX Tab 8 Page 101 and said it is the Discipline Grid. Level 5 is discretionary and the discipline is reprimand to removal. Ms. Gordon testified that this removal is based on the severity of the incident and the Grievant's failure to modify her behavior after her one (1) day.

On Cross-Examination Ms. Gordon read JX Tab 3 Page 7 which is the incident report for December 2013. An investigation was done on this incident. She said the Pre-Disciplinary Conference was January 21, 2014 and the settlement signed March 17, 2014. Ms. Gordon said this does not address the case at hand.

The Employer's next witness was Steven Hanks. Mr. Hanks is a Lt. for the Campus Police. Lt. Hanks supervises the 2nd and 3rd shift. He also rotates with the Chief of Police after hours. Lt. Hanks has been a law enforcement Officer for eighteen (18) years. Lt. Hanks has been here four (4) years. Prior to coming here he was a road officer for ten (10) years with Hamilton Township. He also spent time overseas. Lt. Hanks has also worked for the Department of Youth Services.

Lt. Hanks testified that on February 20, 2014 he was on the 2nd shift. He received a radio broadcast from Pamela Brantley that there were unauthorized persons in the area. Lt. Hanks testified that the Northwest Mall Door access was provided by the Grievant. Lt. Hanks also testified that he had reviewed the video. He said the incident jeopardized hospital security.

Officer Bolen responded. The EMS personnel were sent back out and given directions to the Medical Clinic.

On April 5, 2014 Lt. Hanks was called at home by Palmisano about the Escape. Lt. Hanks read JX Tab 8 Page 17 and said it is a time line of the patients AWOL. He said it was 12:35 per Ekhtator. Lt. Hanks testified that an hour and ten (10) minutes elapsed before Notice by the Grievant. Lt. Hanks notified the Chief of Police, CEO, Ohio State Patrol and the Cincinnati Police Department. He said Code Brown was called at 1:25 by Ekhtator. Lt. Hanks testified that Code Brown goes out over the radio and there was a phone call to the Campus Police. Lt. Hanks further testified that staff are required to report within fifteen (15) minutes. He said the Police need to do a prompt response as AWOL is very time sensitive.

On Cross-Examination Lt. Hanks reviewed JX Tab 8 Page 11 and said the key inventory was completed about 4:30 A.M. Lt. Hanks said he has to be sure people have their keys and there are no keys missing. He checked with all staff.

The Employer's last witness was Jeff Amend. Mr. Amend is Acting CEO today and Assistant CEO otherwise. He deals with Medical Records, Treatment Planning and is on call at all times. Mr. Amend has been in the field twenty-five (25) years, twenty (20) years of which have been at Summit Regional Mental Health Hospital. The Hospital does Recovery and Psychiatric Care. Mr. Amend testified that eighty-five (85) per cent of the patients are sent by Probate Courts. The Mission is comprehensive diagnostic and psychiatric services, including insanity evaluations.

Mr. Amend testified that the hospital provides care twenty-four (24) hours a day, seven (7) days a week with Drs., TPWs, LPNs, and RNs. Also Psychologists and Social Workers are here forty (40) hours per week. Mr. Amend testified that TPWs monitor and provide care as well as Special Precaution and individual patient care.

Mr. Amend reviews incident reports and he reviewed the incident report for February 20, 2014. He testified there are defined areas for ingress and egress and you can't have untrained people in the hospital. People need to go in through the correct area.

Mr. Amend says Security is needed at the Admission Office and Safety is paramount. This is expected by the Joint Commission. He said some patients are dangerous to the general public. Patients can be dangerous to people in the area when they escape. He said the Courts look to the hospital to have Security. Mr. Amend also said staff has to be protected. Mr. Amend testified that most patients are a danger to themselves or others.

Mr. Amend testified that on April 5, 2014 the patient who escaped was on the Forensic Unit and was sent by the Courts. The patient was seventeen (17) years old. The Nursing Staff and all staff are responsible for Security. Census is to be done in pairs.

Mr. Amend testified that on April 5, 2014 the Grievant did not insure patient safety. The Grievant was in another room doing paper work. He testified that the escape caused the Department of Homeland Security to review all systems. Mr. Amend said escapes cause concerns from the Courts. An escape also causes media attention and upsets the community. He said there is constant training on safety.

Mr. Amend testified that on April 5, 2014 the Media and law enforcement were involved. There was a dangerous felon in the community. This reflects poorly on SBH. He said there is annual training and the Grievant was also counseled. December 2013 was an escape for which the Grievant got a one (1) day. April 5, 2014 was also an escape. Mr. Amend testified there is no tolerance for an escape. He said the Grievant has lost her keys several times and the risk is too great. The Grievant failed to follow procedures. There was no Notice to the Campus Police within fifteen (15) minutes.

On Cross-Examination Mr. Amend testified that the April 5th escape was aided by another employee. He was asked: "Did staff aid the patient to escape?" Mr. Amend replied: "Yes, they didn't follow procedures on April 5th ." He then said there were no badge or key issues concerning Grievant.

On Re-Direct Examination Mr. Amend testified that the April 5th issue was Policy: Census and Notification.

IV. UNION'S CASE

The Union's witness was Redonica Banks, the Grievant. The Grievant said she has been a TPW for 5 and one half (5 ½) years. The Grievant testified that on April 5, 2014 she was on 3rd shift on Unit B. Also present were Nicole Dudley, Mr. Ekhaton, and Mr Meucci.

The Grievant testified that she was in the Conference Room working on the Census. She said she comes in at 10:45 and the Census goes to 12. The new census begins at 12:30.

The Grievant testified that she had to use the computers in the Conference Room as the other computers didn't work. She said the Nurse was going to lunch and the Census was assigned

to her.

The Grievant testified that the Census on 3rd shift is never done in pairs because there isn't enough Staff. The Grievant testified that the Census is done by whoever is available.

The Grievant then testified that she was notified by Ekhaton at 12:45 that a patient had escaped. The Grievant said Ekhaton was told to call the Code Brown. In her opinion Ekhaton was responsible for the one on one so he should call the Code Brown. The Grievant then testified that a 2nd shift employee gave the patient the key.

With regard to the February incident she said the EMS was there. The Grievant testified that the EMS said they were to use this door. She said she let them in and told them to see a staff member. The Grievant testified she now knows this was not a good choice. She said she did not want to be late.

The Grievant then testified that she was never questioned by the Investigator. She was just given a statement sheet to fill out. The Grievant testified that no one talked to her about anything after her statement.

On Cross-Examination the Grievant read JX Tab 7 Page 8 which is her statement concerning the February 20, 2014 incident. The Grievant testified that the EMS personnel and patient entered the double set of doors. The Grievant said she was given the Code Brown Policy.

The Grievant then testified that her first discipline was caused by no control of her keys and a patient escaping.

The Grievant read JX Tab 8 Page 25 which is her statement concerning the April 5, 2014 incident. The Grievant testified she was notified of the missing patient at 12:45 A.M. and at 1:45

she called to report the missing patient.

The Grievant was referred to JX Tab 8 Page 38 J(1) which is the AWOL Reporting Rule. She said Notice is to be given within fifteen (15) minutes. She said she gave Notice when she became aware that the patient was really missing.

The parties agreed to have oral arguments instead of written closings.

The Employer argues that the testimony confirms that on February 14, 2014 the Grievant allowed EMS personnel and their patient Unauthorized access.

Mr. Sumner and Lt. Hanks testified about AWOL Notice on April 5, 2014. The Grievant called the Police at 1:45 A.M. which is outside the time frame.

The Employer argues that despite Grievant's training March 11, 2014; less than thirty (30) days later the Grievant encountered a similar situation and did not follow policy and procedure. The Grievant admits that Meucci did the Census rounds and she did not assist as per policy.

The Employer also argues that the Grievant was given an opportunity to modify her behavior and failed to do so. This impacted on the hospital and the community.

The Employer says that considering the severity of the incident and all the evidence the Grievance should be denied.

The Union argues that the settlement for the prior discipline was a one (1) day. Settlement agreements are not to be used except for "weight". The Union argues that the details of the settlement are not relevant. The Employer is only using the one (1) day to show progression.

The Union says, regarding the February 20, 2014 incident, the Grievant says she

shouldn't have let them in. The Grievant did direct them to other staff. The incident is blown up.

The Union argues that if the February, 2014 incident was so egregious the Grievant could have been disciplined then. The February incident is only used to build up the April event. The Union says the Investigator only really investigated Ekhaton. It is unusual that all personnel on the floor are not investigated. There are no questions about the Grievant. The Union argues that the Investigators report doesn't place any blame on the Grievant. The report talks about the Nurse and another TPW.

The Union further argues that the Policy and the practice in the Unit are different. The Grievant says one person goes on Census all the time. The Nurse sets the work. The Grievant was doing input work on Census Reports and the Nurse was aware of what she was doing. The Union argues that the Nurse never told her to leave the work she was doing and go on Census. The Union contends that nothing says the Grievant was to call in Code Brown. Ekhaton was the one who was one on one with the patient. The Net was cast very wide on the incident.

The Union argues that staff on a different day led to the escape.

The Union argues that there is lots of talk about security but it is still possible to escape. The Union says another employee gave the patient the key. The Union asked that the Grievance be sustained and the employee be reinstated with full back pay and benefits.

The parties have done an excellent job presenting their respective cases.

V. OPINION AND AWARD

The Arbitrator has reviewed the testimony of the witnesses and the Exhibits.

The evidence is clear that on February 20, 2014 the Grievant permitted Unauthorized

Access by EMS personnel and their patient to Unit B. The Grievant says the EMS personnel told her they were to enter. The testimony of the EMS personnel is otherwise. Both say they inquired if this were the proper door and the Grievant said that it was. The Grievant admitted permitting entry although she referred them to another staff member. The fact that the Grievant referred the EMS personnel to another staff member does not mitigate the Grievant's permitting Unauthorized Entry.

The evidence concerning the patient escape on April 5, 2014 is more detailed. The evidence is that the Grievant was working in the Nurses Conference Room and did not participate in the Census. The Union argues that Policy and the practice are different and 3rd shift does not take Census in pairs. There is no evidence that this was a bonafide past practice. The Policy is very clear. The Census is to be done in pairs.


On the issue of Notification, the Grievant felt this was Ekhaton's obligation. However, since he didn't do it the Grievant should have. The Employer was very reasonable in agreeing to a settlement on her previous escape case. There wasn't any behavior modification as a result of the settlement.

The evidence is that the Grievant passed the Course on Conduct and Work Rules with a 100% score. She also took training on AWOL and Escape Policy and passed it with a 100% score. In addition her settlement on her first case was only five (5) months prior to this incident.

It seems clear that the Grievant is unable or unwilling to follow the Rules. It is perplexing that the Grievant should be given a break on her first Escape case, pass her exams with flying colors and yet not follow a clear cut policy.

The Grievance is denied.

Issued at Ironton, Ohio this 15TH day of June, 2015.



Craig A. Allen
Arbitrator