

IN THE MATTER OF ARBITRATION

BETWEEN

**STATE OF OHIO
DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
NORTHCOAST BEHAVIORAL HEALTHCARE**

AND

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

Arbitration Dates: June 12, 2019

Grievant Janet Herron # DMH-2018-03815-04

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Laurie E. Spolarich
Labor Relations Officer
Ohio Department of Mental Health &
Addiction Services
30 East Broad Street, Floor #11
Columbus, Ohio 43215
Laurie.Spolarich@mha.ohio.gov

Advocate for the Union:

Bruce Thompson
Staff Representative
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082
bthompson@ocsea.org

I. HEARING

The hearing was held at Northcoast Behavioral Healthcare on June 12, 2019.. The hearing commenced at 9:07 A.M.

The Joint Issue before the Arbitrator is: "Was the Grievant terminated for Just Cause?"

Testifying for Northcoast Behavioral Healthcare were Xavier Moore, Residential Supervisor; Bernadette Mosley, Labor Relations; Emily Shoenberger, Nurse Educator and Elizabeth Sardary, Residential Manager.

Testifying for the Ohio Civil Service Employees Association, Local 11, AFSCME (The Union) were Elaine Knox, TPW and Janet Herron, the Grievant.

II. STATEMENT OF THE CASE

The Grievant was removed on October 26, 2018 for violation of Ohio MHAs Policy HR-22, Code of Conduct and General Work Rules, specifically : Rule 3-12-Falsification of documentation.

The Union timely filed a grievance and the case is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Employer's first witness was Xavier Moore. Mr. Moore is a Residential Supervisor. His duties include Medicaid monitoring , supervision of Client's diets and other matters relating to Client's care. Clients are here for eighteen (18) to twenty-four (24) months. The Clients have a dual diagnosis. The TPW monitors Client's medications.

Mr. Moore testified that the Client comes to the Medical room, the medicine is taken from the Client's box and taken before the Staff. Both the Client and the Staff sign.

Mr. Moore testified that Exhibit JX-8 is the Grievant's Investigation form. Mr. Moore then testified that Exhibit J-10 is an E-Mail to him from Bryant Roberts. The E-Mail says about 2:58 and 3 P.M. the Client asked Grievant for his 2 P.M. medicine. The Grievant told the Client she was leaving and second shift would give them to him. Mr. Roberts went to the medicine room with the Client but the Client's medicine box was empty. The Client said he did not get his medicine.

Mr. Moore identified Exhibit J 11 as an E-Mail to him from Augustina Sears-Foy. Ms. Sears-Foy said that after shift report Mr. Roberts went to the medicine room but the Client's medicine was missing. Ms. Sears-Foy said she got a call from the Grievant. The Grievant said she had signed for the 2 P.M. medicine but did not give it to the Client as he was not there. The Grievant told Ms. Sears-Foy that she threw the medicine in the trash.

Mr. Moore then testified that Exhibit J 6 is the monitoring record telling the time the Client takes the medicine. Both the Client and the Staff sign the record. He said the medicine is Neurontin, which is taken three (3) times a day. Mr. Moore testified the Client said he did not sign the monitoring record.

On Cross-Examination Mr. Moore said "JH" on the monitoring log is the Grievant. Mr. Moore testified that medicines are disposed of in front of the Client. All medicines are kept in the Client's box.

Mr. Moore reviewed Exhibit Union 5 and said it shows pills found in a Cabinet. Mr. Moore said an Incident Report was written concerning this. He testified the pills had to be disposed of as the Client could not be identified.

On Re-Direct Examination Mr. Moore testified that the initials "JH" on Exhibit J6 were

for Janet Herron, the Grievant. He said Exhibit Union 5 was a photo of pills found in the White Cabinet.

The Employer's next witness was Bernadette Mosley. Ms. Mosley has been with Labor Relations for five (5) years. Ms. Mosley testified that Supervisors contact her and she decides on the Charge. She also sets the Pre-Disciplinary hearings and processes Cases. Ms. Mosley identified Exhibit JX5 as Notice of the Pre-Disciplinary Hearing. She said Exhibit JX17 is the Policy which is reviewed with the employee. There is also an annual review.

Ms. Mosley testified that the Grievant has prior active discipline. Ms. Mosley then said Exhibit JX3 is the Termination Notice. The Grievant was terminated for Falsification by signing a Client's initials to a report. This is a major offense. Ms. Mosley read Exhibit JX 18 Page 14 which is the Chart of Penalties. Ms. Mosley testified that the penalty for this offense is removal and the penalty is consistently applied.

On Cross-Examination Ms. Mosley was referred to Exhibit JX 18 Pages 9 and 10 which recite rule 3.12. Ms. Mosley testified that the first paragraph refers to Falsification of Documents. The second paragraph refers to altering of an employee's time card or the time card of another employee.

Ms. Mosley then read the Policy in Exhibit JX 17, which was effective March 6, 2017 and said she was not aware of any changes.

Ms. Mosley next reviewed Exhibit Union 10 which is a three (3) day suspension for Elaine Knox. Ms. Mosley testified that Exhibit Union 10 is for a Level 2, while this case is a Level 3. Ms. Mosley then read Exhibit JX9, which is the Grievant's statement and said the Police Department does not use statements.

On Re-Direct Ms. Mosley testified that Clients are not used as witnesses. Ms. Mosley said Exhibit Union 10 concerned medication which was not available and is a different situation.

The Employer's next witness was Emily Shoenberger. Ms. Shoenberger is a Nurse Educator, and does training for staff.

Ms. Shoenberger testified that Exhibit JX 16 is the annual training record. She puts her initials on the record. Ms. Shoenberger testified that Exhibit JX 14 is the Policy on Medication. Clients and staff initial when medications are taken.

On Cross-Examination Ms. Shoenberger testified that Exhibit JX 14 shows different codes. She said this is hands on training. Disposal is a different Policy.

On Re-Direct Examination Ms. Shoenberger said Exhibit JX 15 is Community Support Mandates. She said she trains on disposal.

The Employer's last witness was Liz Sadary. Ms. Sadary is a Residential Manager.

Ms. Sadary testified that Exhibit JX 16 is a training record and she provided training on 3/28/18. Ms. Sadary then testified that the Grievant appeared disinterested. She seemed confident and did not need to go over it.

Ms. Sadary said Exhibit JX 14 is the Medical Monitoring Policy and Page 5 covers Expired, Returned, or Unused Medications. She trains on this Policy.

Ms. Sadary testified that Exhibit JX 6 is the Medical Monitoring Record. If the Client is not there for medicine AWOL is to be entered on the Record. She then testified that the Record is used by the Courts to show Compliance.

On Cross-Examination, Ms. Sadary said the Union Representative spoke to the women there. She said she doesn't recall the Grievant asking for help.

III. THE UNION'S CASE

The Union's first witness was Elaine Knox. Ms. Knox is a TPW and a long term employee. She works in CATO. Her duties are to care for the Clients. She helps them clean up and she sees they get three (3) meals a day.

Ms. Knox testified after reviewing Exhibit Union 8 that she trained the Grievant to do medicine and this was done on a regular basis.

Upon Cross- Examination she said the Grievant is a TPW. Ms. Knox testified that she has read the Medical Monitoring Policy and it is part of a bigger policy that was mandated.

Upon Re-Direct Examination Ms. Knox was asked: "Did they come back to see if you understood it"? She replied, "No".

The Union's last witness was Janet Herron, the Grievant. Ms. Herron has been employed here for fourteen (14) years. She has worked thirteen (13) years in the hospital and eleven (11) months at the Group Home. Ms. Herron went to mandated training in October.

Ms. Herron testified that her first day at the Group Home she was shown around the house. Ms. Herron said she had a Client on the first day.

Ms. Herron said Brittany, a TPW said she didn't like her. Ms. Herron testified that she wanted to shadow Brittany to do meds but Brittany refused. She said she watched anyway.

Ms. Herron said the Client's medicine was put in the day room and the Clients would come to get it. She testified that Brittany would put the Client's initials on the Record and hers also. There were only three (3) TPWs on the day shift.

Ms. Herron testified that on the day in question, she was doing medicine. LK came into the room and said he would be at the house at 2 P.M. to get his medicine. She said two (2)

Clients took 2 o'clock medicine but LK was not there. She fixed his medicine.

Ms. Herron testified that it was end of shift and she was giving report to 2nd shift. LK showed up and said: "Didn't get my medicine". Ms. Herron then testified she kept the medicine with her in the bath room. She had to give the medicine within one hour and it was around 3 P.M. She flushed LK's medicine down the toilet and initialed the form. She thought the 2nd shift would take care of it.

Ms. Herron read Exhibit JX 14 the Medical Monitoring Form. She said she had read the Policy but had no formal training on it. She read it after she got charged.

Ms. Herron reviewed Exhibit JX 16 which is the medicine sign off list. She can't recall who trained her.

Ms. Herron started training November 17, 2017. She asked about check off list. Ms. Herron testified she told Lorna Wilson no one has sat down with me and told me what to do. Ms. Herron and Ms. Wilson then went through the check off list side by side.

Ms. Herron read Exhibit JX 16 which is the Orientation Checklist March 28, 2018. She said the Training Officer did **not** know a whole lot and rarely came to the Group Home.

Ms. Herron looked at Exhibit Union 6 which is a picture of the kitchen table showing pills. She testified that the Client came into the kitchen. She opened the cabinet and the pills were behind the cereal. Ms. Herron said she put the medicine in a cup and gave it to the Client at breakfast. Ms. Herron said Exhibit Union 5 is a picture of the pills for Xavier. The pills were in the cabinet from 2nd shift.

Ms. Herron testified that Xavier did not give instruction on pill disposal until after the charge. She further testified that Xavier said: "Just get rid of the pills". She said Xavier also told

her to do an Incident Report. Ms. Herron said she was not trained on pill disposal until after charge.

Upon Cross Examination she read Exhibit JX 16 and testified she got trained on Medication Monitoring by Emily side by side and she initialed form.

Ms. Herron was written up June 12, 2018. Ms. Herron testified she did training without having the policy in front of her. She signed off to keep her job. She said it was common practice to sign for Clients and she thought she was right.

On Re-Direct Examination Ms. Herron testified that Xaavier trained her how to dispose of medicine October 8, 2018.

The Parties agreed to submit written Closing Arguments by 5 P.M. July 12, 2019.

The hearing adjourned at 3 P.M.

The parties have done a good job presenting their case.

V. OPINION AND AWARD

The Advocates for the parties have done an outstanding job presenting their case.

The Grievant was hired February 18, 2018. The Grievant had a one day working suspension effective March, 2018. The Grievant was terminated October 26, 2018 for violating Rule 3.12, Falsification of the Departments' HR-22; Code of Conduct and General Work Rules.

The Employer cites the testimony of Xavier Moore. Mr. Moore said TPWs are to monitor the Clients taking their medications. The TPWs are not able to administer or dispense medications. The Clients have their own keys to their medications and are responsible for telling Staff when they want their medications. The TPW's role in the medication process is to

document, along with the Client when the medication was taken.

On the day in question, the Client asked for his 2 P.M. medication around 2:58 P.M. The Grievant told him she was leaving work so the next shift would have to monitor him. When the Client and another Staff went to retrieve the medication, it was missing. In an e-mail to Mr. Moore, another second shift Staff reported that the Grievant had called and told her that the Grievant had signed for the Client's medications but did not give them to him because he was gone during the distribution time.

The Grievant stated she had thrown the medicine in the trash and another time that she had thrown it in the toilet. The Grievant says she signed the "MAR" with the Client's initials and her own June 12, 2018.

The Employer then refers to the testimony of Emily Shoenberger that she provided training on medication monitoring to the Grievant. Ms. Shoenberger went over policy when she trained on medication monitoring. Both the Client and the Staff are to initial the MMR/MAR in the correct space with date and time.

The Employer next cites the testimony of Elizabeth Sardary that she also trained the Grievant on medication monitoring on March 28, 2018 and that the Grievant had a poor attitude.

Bernadette Mosley testified that the Grievant reviewed HR-23 on March 23, 2018. Ms. Mosley also testified that a one day working suspension with a Level 3 violation is removal.

The Employer then argues that the testimony of Elaine Knox is immaterial as there is no evidence that Ms. Knox falsified the initials of a Client or any other evidence of disparity.

The Employer contends also that the Grievant did not deny that she signed the Client's initials.

The Union argues that there is no Just Cause for removal. The Grievant was not trying to hide or mislead the agency and advised her co-worker by telephone.

The Union says the Employer used this information as a joint exhibit but contends there was additional evidence from a witness who failed to respond to a subpoena. The Arbitrator cannot speculate about an absent witness testimony.

The Union also argues that Mr. Bryant Roberts was not made available to be served with a subpoena. This problem is between the Employer and the Union.

The Union argues that the Grievant was only doing as others have done. The Union then argues that the Grievant did not receive hands on training and co-workers failed to help her.

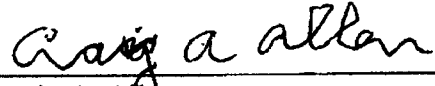
The Grievant's claim that "she was only doing what others have done" is not supported by the evidence.

The evidence is clear that the Grievant was trained on Medication Monitoring. The evidence is also clear that the Grievant signed the Client's initials to the MMR.

The Employer had Just Cause for discipline.

The grievance is denied.

Issued at Ironton, Ohio this 29th day of July, 2019.



Craig A. Allen
Arbitrator