

#722

REVIEWED BY
Casper 6/27/00
JUN 27 2000

GRIEVANCE COORDINATOR

IN THE MATTER OF ARBITRATION

BETWEEN

THE OHIO VETERANS HOME

AND

THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION/

LOCAL 11, AFSCME-AFL-CIO

Before: Robert G. Stein

PANEL APPOINTMENT

CASE # 33-00-19991220-1012-01-04

Anita Kennedy, Grievant

Advocate(s) for the UNION:

**Robert Robinson, Staff Representative
OCSEA Local 11, AFSCME, AFL-CIO
1680 Watermark Dr.
Columbus OH 43215**

Advocate(s) for the EMPLOYER:

**Robert D. Day, Human Resources Mgr.
OHIO VETERANS HOME
3416 Columbus Avenue
Sandusky OH 44870**

INTRODUCTION

A hearing on the above referenced matter was held on May 16, 2000, in Sandusky, Ohio. The parties stipulated to the fact that the issue was properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions. The parties made closing arguments and the hearing was closed on May 16, 2000. The Arbitrator's decision, by mutual agreement of the parties, is to be issued no later than June 30, 2000.

ISSUE

The parties stipulated to the following definition of the issue:

Was the Grievant removed for just cause? If not, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE

(Listed for reference, see Agreement for language)

ARTICLES 2.02, 24.01, 24.02, 24.04, 24.05

BACKGROUND

The issue in dispute in this matter involves the termination of Anita Kennedy, a

Hospital Aide, employed at the Ohio Veterans Home (hereinafter referred to as "Employer" or "OVH"). Ms. Kennedy was terminated from her position for violation of Rule D-02, "*willfully falsifying, altering, destroying or disposing of any official or public document* " and Rule D-09 "*violation of ORC 124.34.*" Ms. Kennedy began working for the Ohio Veteran's Home in 1995.

On August 30, 1999, the Grievant appeared in the Ohio Court of Claims in Columbus, Ohio. She had filed suit against the Employer and one of its police officers, Norbert Bliss. In her suit, Ms. Kennedy claimed malicious prosecution, false arrest, negligent infliction of emotional distress, and intentional infliction of emotional distress. During the course of her testimony the Grievant was questioned regarding her prior criminal background. Records were introduced in the proceeding that showed Ms. Kennedy had prior 1991 felony convictions for Trafficking in Drugs (ORC 2925.03), Drug Abuse (ORC 2925.11), Possession of Criminal Tools (ORC 2923.24), and 1990 felony convictions for Aggravated Burglary (ORC 2911.11), Robbery (ORC 2921.02), and Kidnapping (ORC 2905.01). The Grievant was remanded to the Ohio Reformatory for Women in Marysville, Ohio for a period of 5 to 25 years. She served 6 months of that term.

When the Grievant's 1995 employment application for the OVH and her Civil Service Application were reviewed (JX 1), it was discovered that she had answered no to the question of whether she had ever been convicted of a felony. The Grievant was terminated on December 16, 1999. She filed a grievance on 12/20/99, claiming the Employer had committed procedural violations of the Agreement and that she was not terminated for just cause.

EMPLOYER'S POSITION

The Employer's position is uncomplicated. Ms. Kennedy misrepresented herself and falsified her employment applications for when she was hired in 1995, argues the Employer. She failed to reveal the fact that she had 6 felony convictions at the time she applied for employment with OVH. The Employer contends this concealment "*spoke volumes*" about her character. The Employer also points out that subsequent to her termination, it was discovered that the Grievant had earlier criminal convictions that were also not reported. The Employer unequivocally states that had it been aware of the Grievant's convictions for drug offenses, burglary, robbery, and kidnapping, she would not have been hired.

The Employer insists that it has had a long-standing practice of not hiring people with felony convictions. In addition, the Employer points to Senate Bill 160, passed in 1997, to protect the rights of older citizens served by the state of Ohio. It specifically names the OVH as one of the agencies that must conduct criminal record checks for new hires. If applicants for employment have been convicted of one or more offenses specifically listed in the Bill, OVH is not required to continue their employment. The Employer concedes that under SB 160 it may retain an employee who has a prior felony conviction, based upon a determination that an individual possess "*personal character standards*" that overcome his/her criminal record.

Based upon the above, the Employer requests that the grievance be denied.

UNION'S POSITION

The Union first readily admits that the Grievant has a record of felony convictions that she failed to disclose on her employment applications. However, the Union argues that at the time the Grievant applied for her position in 1995, she submitted to a drug test and provided the Employer with her police record from the Sandusky Police Department (Erie County). The Union argues that the evidence and testimony provided in the arbitration hearing readily demonstrate that Ms. Kennedy has been an exemplary employee. She has learned a hard lesson from her past and deserves a break from the Employer, contends the Union.

The Union also points to several procedural violations committed by the Employer in its termination of the Grievant. The Union claims that the Employer had knowledge of the Grievant's prior felony convictions for several months before she was terminated on December 16, 1999. The Employer revealed that it had knowledge of her convictions on August 30, 1999 and possibly as early as June of that year. The Union points to the provisions of Articles 24.04 and 24.05 that require the Employer to act in a timely manner regarding matters of discipline. The Union argues that the Employer violated these provisions by waiting some five months before terminating the Grievant. Delays can only occur pending "*criminal charges*," contends the Union.

The Union also argues that Ms. Rena Norman violated the Agreement when she failed to provide the Grievant with a requested extension of 48 hours to hold a Pre-Disciplinary hearing and also inappropriately talked about the Grievant's case with another bargaining unit employee, Alice Orshoski, prior to her Pre-Disciplinary hearing. In this conversation the Union claims that Ms. Norman revealed her inclinations

regarding the Grievant's fate, asserts the Union.

The Union further contends that the Employer has had a vendetta against Ms. Kennedy for winning her job back in a prior arbitration and for filing a civil suit against OVH. In addition, the Union claims that the Grievant's active role as a Union officer may have contributed to the Employer's actions in this matter.

Based upon the above, the Union requests that the grievance be sustained.

DISCUSSION

This case is about trust. An employer has the right to expect an employee to be honest and forthright, and in return an employee should be treated in kind. The evidence and testimony in this case point to one irrefutable fact, i. e. the Grievant, Anita Kennedy, intentionally falsified her employment application and mislead the Employer with the submission of a criminal record that did not accurately depict her past.

Mrs. Kennedy stated under oath that when she filled out her employment application, she lied about having a felony conviction on her record because she knew she would not get hired. By lying, she deprived the Employer from having information on her background upon which it could accurately judge her as a candidate for employment.

However, this is more than a case of an employee who is seeking a break from an unfortunate past and out of desperation lies about it in order to gain employment. That scenario is bad enough. However, Mrs. Kennedy went one step further. She was told she need to produce a police record report to supplement her employment application in order to get hired. Ms. Kennedy was aware that she lied on her application by stating she has

never been convicted of a felony. She then secured, from a local police agency, a record that she knew would show no criminal convictions in the county where the Employer is located. She misled the Employer into thinking she did not have a criminal record. The purposeful nature of these actions further undermines her credibility in this matter.

There is no question that individuals with a criminal background have a difficult time securing meaningful employment in our society. People who have reformed from a jaded past deserve an opportunity to undo what they have done. However, the need to make an honest living, regardless of how difficult, cannot be based upon deceit.

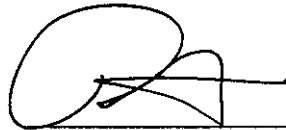
I find that the Employer took an excessive amount of time (some five months) to discharge the Grievant. However, its delayed action appeared to be substantially explained by litigation that was initiated by the Grievant. I do not find that the Grievant or the Union were disadvantaged by this delay, nor do I find that it violated the Collective Bargaining Agreement in this particular case. If the Employer did not have the excuse of being engaged in litigation, this delay may have been viewed more critically.

I find the allegation that Ms. Norman discussed her feelings about Mrs. Kennedy with another employee, Ms. Orskoski, prior to the Pre-D hearing, to be most disturbing. However, the Union did not provide definitive proof that Ms. Norman committed such an act. In addition, the actions of the Grievant are so clear cut, it is unlikely that proof of such a thoughtless and foolish act on the part of Ms. Norman would be sufficient to overcome the Grievant's own admission of lying on her application, an admission she repeated during her testimony in the arbitration hearing.

AWARD

The grievance is denied.

Respectfully submitted to the parties this 23rd day of June, 2000.

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a vertical stroke.

Robert G. Stein, Arbitrator