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OCT - 4 2000
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GRIEVANCE COORDINATOR

IN THE MATTER OF ARBITRATION

BETWEEN THE

OHIO DEPARTMENT OF TRANSPORTATION

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION

Grievant: Jeffrey Grissom
Case No. ~~23-07-(94-09-13) 0109-01-04~~
31-08(00-03-31) 0006-01-04
Robert G. Stein, Arbitrator

Principal Advocate(s) for the Employer:

Edward Flynn, ODOT
2nd Chair: Renee B. Macy, Esq.
Ohio Department of Administrative Services
Human Resources Division
106 North High St., 7th Floor
Columbus OH 43215-3013

Principal Advocate for the Union:

Michael Muenchen, Staff Representative
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
390 Worthington Rd.
Westerville OH 43082

INTRODUCTION

A hearing on the above referenced matter was held on July 31, 2000, in Lebanon, 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 in lieu of filing briefs. The hearing was closed on July 31, 2000. The Arbitrator's decision is to be issued by September 15, 2000.

ISSUE

The parties agreed upon the following definition of the issue:

Did the Employer violate the Collective Bargaining Agreement when it terminated the Grievant, Jeffrey Grissom; if so what shall the remedy?

RELEVANT CONTRACT LANGUAGE/

ARTICLE 24	**Sections 24.01, .02,.04, .05**
ARTICLE 25	**Sections 25.01, .02, .03**
ARTICLE 44	**Section 44.03**

See Agreement for specific language (Joint Exhibit 1)

BACKGROUND

The Grievant in this matter is Jeffrey Grissom, a Highway Maintenance Worker I, who has been employed with the Ohio Department of Transportation for approximately ten (10) years. He was assigned to the Hamilton County garage. Mr. Grissom was terminated from his employment on March 24, 2000 for violation of the following work rules:

> ***Work Rule # 6 Fighting/striking with a fellow employee or non-employee on State time or State property. Threatening a superior, fellow employee, or non-employee.***
>
> ***Work Rule #7 Unauthorized absence for three or more consecutive days.***

On December 16, 1999 the Grievant reportedly made threatening remarks about his County Manager, Thomas Klug, following a written warning issued to him by Mr. Klug. The Grievant was said to have made threatening remarks against Mr. Klug via telephone to management employee, Jim Fife, Business and Human Resource Administrator. Mr. Grissom made threats in the presence of a clerical employee, Diana Sand. On March 20, 2000 the Grievant was said to have physically assaulted fellow employee, Walter Issacs Jr., pushing him and hitting him during a verbal argument.

The second charge for which the Grievant was discharged involves a claim by the Employer that the Grievant was absent from work in excess

of three (3) days. His absence was from December 17, 1999 through March 14, 2000, a period of time that the Employer claims was not authorized time off. The Employer did not consider this period of absence to be authorized due to the fact that it was not approved by Workers Compensation, could not be considered any other type of disability leave, or was not able to be charged to any paid leave balance. The Grievant had a written warning on his record at the time of this discharge.

EMPLOYER'S POSITION

The Employer argues that the Grievant threatened a supervisor with bodily harm, threatened a fellow employee, and assaulted the same employee. In addition, the Grievant was absent without authorization. These are major rule violations that carry a suspension to discharge penalty for a first offense, contends the Employer. The Employer points out that Mr. Grissom did not respond to prior discipline and committed multiple offenses that were so egregious that it nothing short of discharge could be considered.

The evidence and the testimony in this case make it clear that the Grievant acted without provocation, contends the Employer. The Employer states that it was the aggregate of all the offenses committed by the Grievant that led to its decision. The Employer asserts that its

decision to terminate the Grievant was a reasonable one given its responsibility to provide a safe working environment for all employees of ODOT.

Based upon on the above, the Employer urges the Arbitrator to deny the grievance.

UNION'S POSITION

The Union contends that on December 16, 1999 the Grievant was under stress after being issued a written warning by County Manager, Thomas Klug. The Grievant felt the written warning was unjust, resulting in his significant frustration. He was so stressed by this event that it made him physically ill and led to his prolonged absence from work, argues the Union. The Union asserts that the Employer had the option of issuing the Grievant a lesser discipline for his actions on December 16, 1999 and March 20, 2000. In addition, the Union argues that Walter Issacs, who was not disciplined, had some culpability in the argument that took place in the lunchroom on March 20th. In addition, the Union points out that the Grievant and Mr. Issacs mended their differences and resumed a more amicable relationship.

The Union also contends that the Grievant's leave of absence was covered by the Family and Medical Leave Act of 1993. Article 31.05 of

the Agreement incorporates the FMLA and the Employer failed to comply with the act when it failed to warn the Grievant that his absence would lead to a termination of employment, argues the Employer. The Union contends that the record shows the Grievant was not sent correspondence concerning his absence until mid-February and the letter failed to disclose necessary, relevant information concerning the requirements of FMLA (See Sections 825.303(b) and 825.302(d).

Based upon the above, the Union urges the Arbitrator to deny the grievance.

DISCUSSION

Mr. Grissom worked ten (10) years with the Employer and was presumably vested in the Public Employees State Retirement System. Ten years is a significant tenure of employment that would normally act as a mitigating factor for most disciplinary action. However, when an employee makes a serious threat of bodily harm against a supervisor and then threatens and physically assaults a fellow employee and Union representative, he has gone beyond what can be reasonably tolerated by an employer.

Mr. Grissom's threats against County Manager, Thomas Klug, have to be judged as serious. It is a well established principle in labor relations that supervisors must be protected from abusive and threatening acts by

employees (Alumax Aluminum Corp., 92 LA 28, 31 (Allen, 1988). On two occasions two management witnesses stated that he said he was *"...going to take Tom [Klug] into bathroom and kick his MF ass...he would take him out first"* (MX 4). Witness Fife stated that Grissom said to him that he would *"solve the problem by taking Klug in the bathroom and kicking the shit out of him"* (MX 5).

Three (3) months later the Grievant made similar threats to Mr. Issacs. He told him he was *"going to bring body harm"* to him. However, the Grievant then went one step further. He acted on his threats by pushing and hitting Mr. Issacs, a Union Steward, with such force that it caused him to *"fly across the room"* and on to a desk *(MX 14)*. No employee deserves to be treated in this manner, and it is a well established fact that employers are responsible to keep employees safe from this type of conduct (Shuler Axle Co., 51 LA 10, 214 (Dworkin, 1968), ACF Indus. 79 LA 650, 652 (Cohen, 1982). It is also noted that after the physical confrontation, the Grievant stated to Mr. Issacs, *"Bo, if you keep it up, I'll put you to sleep"* (MX 10, Kilburn). It is also important to note that Mr. Issacs testified in the hearing that Mr. Grissom has threatened him and his daughter on a previous occasion.

I found testimony of Walter Issacs to be credible. If he contributed in some way to the argument on March 20th, as the Union contends, it still did not justify the Grievant's actions in escalating the argument into a

serious physical confrontation. The bantering characterized by Mr. Issacs appeared to be within the parameters of "shop talk" between employees and did not rise to an act of provocation. I do not find the letter written by Mr. Issacs, which attempts to explain his role in the March 20th confrontation, to have any weight in this case, given Issac's testimony that it was contrived to stop the Grievant from bothering him. The Grievant clearly "crossed the line" and was the aggressor in this matter. He is responsible for what happened to Mr. Issacs and what could have happened to him.

After reviewing Mr. Grissom's words and deeds as described above, it must be concluded that Mr. Grissom posed a serious threat to his superiors and to his fellow employees on December 16, 1999 and on March 20, 2000. These actions were so severe that they left the Employer with little choice in this matter. There was little evidence or testimony presented at the hearing to convince this Arbitrator that a lesser discipline was justified in this case.

The arbitration case submitted by the Union (decided by Arbitrator Rivera) is not on point and is therefore not relevant. The instant matter differs in one significant way: in this case there was clear and convincing evidence of multiple threats against a supervisor, as well as threats of violence and an act of unprovoked violence committed against an employee/Union Steward. I find that the Employer met its burden of proof

to discharge the Grievant for just cause. The second charge related to a violation of Work Rule #17 and does not require analysis given the above conclusions.

AWARD

The grievance is denied.

Respectfully submitted to the parties this 14th day of September 2000.

Robert G. Stein, Arbitrator