

IN THE MATTER OF ARBITRATION BETWEEN:]
]
] DECISION AND AWARD OF ARBITRATOR
 OFFICE AND PROFESSIONAL EMPLOYEES]
]
 INTERNATIONAL UNION, LOCAL 12]
] FEDERAL MEDIATION AND CONCILIATION SERVICE
 (OPEIU OR EMPLOYER)]
] CASE: 140924-59354-8
 and]
]
 UNITED STEEL WORKERS, DISTRICT 11]
]
 (UNION)]

ARBITRATOR: Eugene C. Jensen

DATE AND LOCATION OF HEARING: December 4, 2014
Federal Mediation and Conciliation Service
1300 Godward Street, Suite 3950
Minneapolis, Minnesota 55413

FINAL SUBMISSIONS: January 9, 2015

DATE OF AWARD: January 19, 2015

ADVOCATES: For the Union

Keith Grover
Staff Representative
United Steel Workers, District 11
2929 University Avenue Southeast, Suite 150
Minneapolis, Minnesota 55414

For the Employer

Joseph J. LeBlanc
Attorney at Law
LeBlanc Law and Mediation, LLC
222 South Ninth Street, Suite 1600
Minneapolis, Minnesota 55402

GRIEVANT: Jennifer Burke

WITNESSES

FOR THE EMPLOYER

Ryan Mortenson, Business Manager

Lance Lindeman, Previous Business Manager

Susan Ebeling, President of OPEIU

FOR THE UNION

Jennifer Burke, Grievant

JURISDICTION

In accordance with Federal Mediation and Conciliation Service and the Parties' October 19, 2010, through October 18, 2014, Collective Bargaining Agreement, this matter is properly before the Arbitrator.

PERTINENT CONTRACT LANGUAGE

ARTICLE V. GRIEVANCE AND ARBITRATION PROCEDURE.

5.01 A grievance is defined as any difference of opinion or dispute between the parties to this Agreement involving the interpretation or application of any provisions of this Agreement or working conditions which this Agreement covers. . . .

5.03 The Steps in resolving a grievance shall be as follows:

STEP 1. The Employee, or his/her selected representative, shall take up the complaint with the business manager. If there is no settlement within fifteen (15) working days, the grievance shall be reduced to writing and forwarded to the next step.

STEP 2. The Employee along with the Local Union Representative and the International Union will present the grievance to the OPEIU Local 12 Executive Board.

If a satisfactory settlement is not reached at the Step 2 meeting, the grievance may be submitted to the FMCS Grievance Mediation Process, if the Union so requests in writing, within fifteen (15) calendar days of the receipt of the response from the Second Step meeting (and the Employer agrees to such submission).

If a satisfactory settlement cannot be reached through the FMCS Grievance Mediation Process, or if the grievance is not submitted to the FMCS Grievance Mediation Process, the grievance may be submitted to arbitration, if requested by either party in writing to the other party within fifteen (15) calendar days of the Grievance Mediation Process, as provided.

In the event the Grievance Mediation Process is not successful, the parties may then proceed to arbitration. The Grievance Mediation process does not preclude either party from utilizing the Mediation Process or from going directly to arbitration after receiving the Employer's Step 2 response.

STEP 3. The parties shall attempt to agree upon a neutral arbitrator to hear the grievance and render a decision. In the event the parties cannot agree upon an arbitrator, the parties shall

apply to the Federal Mediation and Conciliation Services to select or appoint, within ten (10) working days, a neutral arbitrator to hear the grievance, which selection or appointment shall be deemed acceptable to the parties. The parties shall meet in arbitration as soon as possible and in no event more than ten (10) days after the neutral arbitrator has been selected or appointed, at which time both parties may present evidence and witnesses to support their cases and may cross examine witnesses. Hearsay shall not be considered as logical or permissible evidence. In the event either party fails to appear or to present its case before the neutral arbitrator, then the arbitrator shall proceed to hear the evidence of such party appearing and offering proof, and thereupon render his/her decision. The decision of the neutral arbitrator shall be binding upon the parties. The costs of the arbitration shall be borne equally by the parties. In the event a suspension or discharge case is appealed to arbitration, and should the neutral arbitrator rule in favor of the employee;

- He/she shall be reinstated to his/her position without loss of wages or benefits

- He/she shall be paid retroactive to the date of suspension or discharge

- He/she shall have his/her personal records purged of any and all reference to the actions or events leading up to his/her suspension or discharge

The neutral arbitrator may not alter, change or modify this Agreement in any way.

ARTICLE VI. CORRECTIVE ACTION AND DISCHARGE

6.01 No Employee shall be disciplined or discharged except for just cause. In the event an Employee is disciplined or discharged, OPEIU, Local 12 shall give such Employee and the Union a written notice setting forth the cause for the corrective action or discharge. Progressive discipline shall normally be administered in the following manner.

- a. Verbal Warning
- b. Written Warning
- c. Suspension
- d. Discharge

6.02 Employees shall be entitled to a written statement containing the specific evidence of any administered discharge or discipline case, prior to such discharge or discipline being administered.

6.03 Employees shall not be held responsible for any loss or shortage of funds or property of the Employer unless there is clear proof of negligence or dishonesty.

ARTICLE VIII. NON-DISCRIMINATION

8.01 The Employer and the Union agree that the provisions of this Agreement shall be applied equally to all Employees in the bargaining unit without discrimination as to age, sex, sexual orientation, marital status, race, creed, disability, national origin, or political affiliation.

ARTICLE IX. SENIORITY

9.06 An Employee shall lose all seniority rights for any one or more of the following reasons: (a) Voluntary resignation; (b) Discharge for just cause; (c) Failure to return to work within fourteen (14) working days after being recalled by registered mail, sent to the employee's last known address, return receipt requested, unless due to actual illness or accident. (The Employer may require substantiating proof of illness or accident.)

9.07

- 1) It is the Employee's responsibility to keep his/her address current with the Employer.

ARTICLE XV. LEAVES OF ABSENCE

15.01 Necessary sick leave without pay, not exceeding one (1) year, except as herein provided, shall be granted by the Employer to an Employee requesting it in writing with a copy to the Employer and to the Union. Employees receiving such leave shall receive same in writing and a copy shall be filed with the Union by the Employer. Employees receiving such leave shall continue to accrue seniority. The Union and the Employer may, upon written agreement, extend the sick leave beyond one (1) year. The Employer, on request, may require medical proof of illness.

15.02 If an Employee has exhausted all their sick leave, the Employee may use vacation time the Employee has available to ensure the maximum time off with pay. If the disability or illness extends beyond all paid time the Employee has available, the Employer and the Employee will discuss when the Employee will be returning to work and what other options may be available, if any, that can be agreed upon.

15.03 Any Employee requesting in writing to the Employer and to the Union, and receiving a leave of absence for pregnancy or any other disability, shall only receive sick leave benefits for that time off deemed due to disability by a physician's written statement (see below for pregnancy or any other disability leave).

15.04 Disability, Pregnancy and Adoption Leaves of Absence – An Employee on active employment status with the Employer, upon written request to the Employer and Union, may be granted a disability/pregnancy leave of absence, without salary and without loss of seniority, to and until a date not exceeding six (6) months subject to the following:

a. The employee shall give the Employer and the Union two (2) weeks notice in writing of the application for leave of absence and shall present therewith the written medical certification be a Certified health provider of the Employee's condition and the expected date of return to work.

b. The Employee shall be required to leave and discontinue employment at any time if so advised by the Employee's own certified health provider, or the Employer's certified health provider, or if not capable of regularly and efficiently performing his/her duties, or if there is any danger to personal medical safety.

c. The Employee will be entitled to return to work in accordance with his/her seniority at any time within the six (6) months leave of absence, provided he/she has given two (2) weeks written notice of his/her intention to do so to the Employer and the Union, accompanied by the written medical certification of the certified health provider approving his/her return to work.

d. If the Employee qualifies and returns to work in accordance with the above, either to his/her original job or to a position of like status and pay, he/she will be given credit for the seniority accrued up to the time of leaving, as well as the seniority he/she would have accrued had he/she been available for work during the period of absence.

e. The provisions of this Article are subject to such amendment or modification as may be required to comply with any future applicable state or federal laws or regulations which may become binding upon the parties hereto.

f. Any replacement Employees assigned or hired to perform the duties of the Employee on leave shall be regarded as temporary during the period within which the Employee on leave may legally return to work without loss of seniority as herein provided, and in the event such employee shall return to his/her job following such leave, such replacement Employee shall be terminated or returned to his/her former position at the rate of pay established for that classification, including the domino effect upon other temporary Employees necessarily reassigned to accommodate the one on leave. . . .

15.05 An Employee requesting in writing to the Employer and the Union a leave of not to exceed one (1) year, may be granted such leave with the written permission of the Employer and the Union. Failure to comply with the provision shall result in the complete loss of seniority rights of the Employee involved. . . .

15.09 Family Leave. The Employer agrees to provide Employees who have completed one (1) year of employment, up to twelve (12) weeks of FMLA leave per FMLA guidelines including significant others.

Any additional FMLA leave shall be at the discretion of the Employer.

The Employer shall provide and pay for health and dental care, as described in Article XVII, during such FMLA Leave.

ARTICLE XVII. HEALTH AND WELFARE

17.01 The Employer agrees to maintain the existing level of health/welfare and dental coverage. Any changes shall be subject to mutual agreement between the Employer and the Union. The Employer further agrees to pay the full premium for these coverages.

17.02 The Employer further agrees to maintain the existing life insurance policy and the existing long-term disability plan and further agrees to pay the full premium on these policies.

ARTICLE XXII. MANAGEMENT RIGHTS CLAUSE

22.01 The Employees shall take direction from the Business Manager and the Business Manager shall determine what tasks and work assignments will be assigned to the various Employees.

EXHIBITSJOINT EXHIBITS

1. The October 19, 2010, through October 18, 2014, Collective Bargaining Agreement between OPEIU, Local 12 and United Steelworkers on behalf of Local Union 2002-14.
2. Grievance, Complaint and Question Report, filed on behalf of the Grievant on July 24, 2014, alleging an unjust termination.

EMPLOYER'S EXHIBITS

1. *ARBITRATOR'S NOTE: Number one (1) was not used.*
2. Unpaid Time Off Request Form. Signed by the Grievant requesting time off from November 9, 2013, through "Until able to return to work."
3. November 13, 2013, memo from Ryan Mortensen to the Grievant in which Mortensen states: "You have been out of work since October 15, 2013. You do not have any paid time off left. As of November 11, 2013, you are on unpaid leave."
4. An email string beginning with the Grievant asking (late November, 2013) if the Employer had received a doctor's report; the Employer responding on December 2, 2013, that they had and requesting

information as to the grievant's intentions regarding FMLA leave; and concluding with the Grievant's December 12, 2013, response in the affirmative: "Yes. The Unpaid Leave is FMLA . . ."

5. December 18, 2013, certified letter to the Grievant from the Employer requesting information necessary for FMLA leave processing.
6. December 31, 2013, Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act) completed by the Grievant's Medical Doctor.
7. February 10, 2014, Certified letter from the Employer to the Grievant. The Employer directs the Grievant to return to work on March 3, 2014, following a ten day suspension.
8. November 25, 2013, Fax from the Grievant to Ryan Mortenson. Besides the cover sheet, the documents include two chiropractic evaluations (dated: November 11 and 13, 2013) and a psychological evaluation dated November 15, 2013. All three of the documents conclude that the Grievant was not available for work.
9. December 18, 2013, certified letter notifying the Grievant that she would be suspended from work for ten days following her return to work. The suspension was for the alleged improper use of the Employer's credit card for personal expenses, including the rental of a vehicle, purchasing gas for personal reasons and failure to report mileage. The letter also outlines additional outstanding concerns: the return of working files and the Employer's property.
10. OPEIU's Credit Card/Reimbursement Policies. Signed by the Grievant on November 13, 2012.

11. Two communications are included in this exhibit: 1) an email from the Grievant that is in response to Exhibit 9 above; and 2) a letter from Ryan Mortenson to the Grievant in which he asks for: a) several specific account files she was working on prior to her leave; b) receipts for gas; and c) FMLA paperwork; and d) notifies her that the Employer is “not disputing you are on an unpaid medical leave under your collective bargaining agreement.”; and e) asking her for a rental car mileage form; and f) information regarding her continued use of the rental car after the insurance had expired.¹
12. January 9, 2014, certified letter from Ryan Mortenson to the Grievant demanding the return of both hard files and computer files relating to ongoing grievances and negotiations.
13. February 6, 2014, letter from Ryan Mortenson to the Grievant. This letter includes an enclosure (ER Exhibit 12) and was sent in hopes of getting a certified letter signature from the Grievant.
14. February 4, 2014, certified letter from Ryan Mortenson to the Grievant. This letter demands the return of OPEIU property: files, computer, credit card, cell phone and office keys. It also notifies the Grievant that the Employer will seek other legal remedies if she does not comply.
15. February 6, 2014, certified letter from Ryan Mortenson to the Grievant. This letter outlines improper purchases by the Grievant while using the Employer’s credit card (\$3,250.55), and asks for reimbursement.

¹ Both of these documents were written near the end of December, 2013.

16. A March 17, 2014, certified letter from Lance Lindeman, to the Grievant. This letter notifies the Grievant that the Employer is “discontinuing payment of the premium for your group health and dental plan effective 03/26/2014.” In addition, the Employer requests that she return the computer, and provide “medical proof of illness to continue [her] medical leave of absence.”
17. March 21, 2014, certified letter from Lance Lindeman to the Grievant. This letter requests, once again, that she provide medical proof of illness. It also indicates that she will be considered to have abandoned her position should she not respond to the request.
18. Two medical statements: 1) a prescription pad from Hudson Physicians, dated March 27, 2014, on which a family practice physician writes: “Jennifer Burke is currently a patient of mine who is being treated for multiple medical issues. She is currently unable to work until further notice;” and 2) a March 26, 2014, letter written by a mental health provider at Canvas Health, in which the provider states: “Continued medical leave of absence from work is recommended to assist with stabilizing her health. Her ability to return to work on a part-time or full-time basis will continue to be evaluated by her ongoing medical and mental health providers.”
19. A May 12, 2014, letter from Joseph LeBlanc, the Employer’s attorney, to the Grievant demanding the return of the computer, the reimbursement for unauthorized purchases on the credit card, and a written certification from her health care provider.
20. A July 18, 2014, certified letter from Joseph LeBlanc and Lance Lindeman to the Grievant. This letter outlines the Employer’s unsuccessful efforts to secure important information and equipment from the Grievant and notifies her that her job will be considered abandoned, effective July 18, 2014.

21. A June 2, 2014, grievance filed by the Union on behalf of the Grievant. The Grievance alleges that the Employer improperly discontinued premiums for life and dental insurances.
22. Copy of a check written to the Grievant in the amount of \$319.80 for long-term disability insurance.
23. Copy of the same check mentioned in ER Exhibit 23 above. This shows that the check was cleared on June 2, 2014.
24. An email string beginning June 9, 2014, relating to the forms for insurance reimbursement.

UNION'S EXHIBITS

1. Two emails dated April 23, 2014: one from the Grievant to Lance Lindeman, and the other from Lance Lindeman to the Grievant.
2. A memo dated December 2, 2014, from a Canvas Health Case Manager. He outlines the mental and physical issues the Grievant has faced since April of 2014.
3. Emails between Lance Lindeman and Ryan Mortenson in which they discuss the Grievant's phone number.

ISSUE STATEMENTSEmployer's Issue Statements²

- I. Did OPEIU Local 12 violate the collective bargaining agreement between OPEIU Local 12 and United Steelworkers by terminating Ms. Burke without just cause?

- II. Did OPEIU Local 12 violate the collective bargaining agreement between OPEIU Local 12 and the United Steelworkers by failing to follow progressive discipline when terminating Ms. Burke?

- III. Did OPEIU Local 12 have an obligation to continue Ms. Burke's leave of absence beyond the nine-month period she was out of work?

- IV. If OPEIU Local 12 violated the collective bargaining agreement, did Ms. Burke incur any damages as a result of her termination?

Union's Issue Statement³

Did the Company violate the Collective Bargaining Agreement when it terminated or in their words considered Jennifer Burke to have abandoned her job? If so, what shall the remedy be?

²The Employer's Issue Statements were taken directly from the Employer's post-hearing brief.

³The Union's Issue Statement was taken directly from the Union's post-hearing brief.

Arbitrator's Issue Statement

The Arbitrator favors the Union's issue statement and, only for the purpose of clarification, amends it as follows:

Did the Employer violate the just cause provisions of the Agreement between the parties, when it terminated the Grievant's employment? And, if so, what shall the remedy be?

BACKGROUND

The Grievant worked for the Employer as a Business Representative from August of 2007, through July 18, 2014, the date of her termination. Her terms and conditions of employment were governed by labor agreements between her Employer and the United Steel Workers.

On October 15, 2013, the Grievant was "rear-ended" in her Employer-provided vehicle during non-working time. The Grievant suffered physical injuries and emotional stress as a result of the accident and she was forced to exhaust her vacation and sick leave accruals. She was then (November 9, 2013) placed on an unpaid medical leave of absence, as per Article 15 of the Agreement between the parties. Article 15 also allows the Employer to ask for "medical proof of illness,"⁴ and the Employer did request that information. In addition, the Agreement permits the Employer to ask for information related to an

⁴ Section 15.01 of Article XV

employee's expected date of return to work.⁵ The Grievant did provide medical information, however, several communications were sent to the Grievant requesting a return date without success.

In addition to the issue of the return to work date, the Employer also requested that the Grievant return the rental car she charged on her Employer's credit card, her Employer-issued cell phone, her Employer-provided computer and documentation (hard copy and digital) regarding individual grievances and pending contract negotiations. Some of these items were returned much later than expected and some not at all.

The Employer finally sent ultimatums to the Grievant, asking her to provide documentation regarding her expected date of return. Some of these Certified/Return Receipt letters were returned unsigned and others were signed and returned.

On July 18, 2014, the Employer sent a letter of termination to the Grievant. On July 24, 2014, the Union filed a grievance on behalf of the Grievant. It is that grievance which is at bar in this arbitration.

EMPLOYER'S ARGUMENTS

The Employer argues that the Grievant, a Business Agent for the Union, was fully aware of the contractual requirements surrounding an extended leave of absence; using Employer equipment and financial resources for her personal benefit; and returning work-related equipment and files when the Employer requests: "she should have known that discipline and discharge were possible consequences."⁶

⁵ Section 15.02 "If the disability or illness extends beyond all paid time the Employee has available, the Employer and Employee will discuss when the Employee will be returning to work . . ."

⁶ Employer's Brief (EB), p. 7

The Employer goes on to argue, “the insubordination [the Grievant] showed in refusing the business managers’ requests to return hard copy files for three months, to ever return digital files and OPEIU Local 12 property, or to reimburse OPEIU Local 12 for unauthorized expenses was so serious that any employee should have known there would be serious disciplinary consequences.”⁷

The Employer also argues that there was clear evidence that the Grievant had abandoned her position: “The Executive Board was the final decision making body . . . [it] consulted with legal counsel, and only made the decision to consider [the Grievant’s] position abandoned after [she] had been out of work for more than nine months, and had failed to supply an expected return to work date or address the many other concerns regarding property and repayment.”⁸

In response to allegations from the Union that the Grievant “did not receive all of the letters sent by OPEIU Local 12”, the Employer argues that, “if this is true, [the Grievant’s] failure to provide OPEIU Local 12 with current contact information is simply further evidence that she had abandoned her position, by failing to maintain the most basic level of communication with her employer.”⁹

UNION’S ARGUMENTS

The Union argues that the Grievant, a long-term employee with no previous discipline, was treated unfairly by the Employer in this matter. It argues that the Grievant was seriously injured, both physically

⁷ EB, p. 8

⁸ EB, p. 10 – Referencing Susan Eberling’s testimony

⁹ Ibid.

and emotionally, by the vehicular accident that occurred on October 15, 2013. And, despite her “fragile mental state, she attempted to comply with the Employer’s requests.¹⁰

[The Grievant] testified as to the horrible state she was in both mentally and physically following her car accident. She very painfully explained that she has been diagnosed with PTSD and for a time was considered to be at risk for suicide.¹¹

In addition, the Union argues that the Employer’s attempts to contact the Grievant regarding her medical leave and other issues were consistently unsuccessful due to the Employer’s use of unreliable communication methods, and that they should have resorted to her email or cell phone number. To further emphasize this point, the Union argues that the Employer knew (as early as May¹²) that the Grievant was evicted from her townhouse on April 30, 2014, and yet it continued to send critically important letters to that location.

No attempt was made to call her or to email her at her known cell number or her known email address or to notify the Union that further medical information was being asked for. It seems [to the Union] that there was a deliberate attempt to keep all parties in the dark about this. If this was not deliberate it surely was gross negligence. How can [the Employer] be so callous with the job of such a dedicated employee?¹³

¹⁰ Union Brief (UB) p. 7

¹¹ UB, p. 7

¹² UB, p. 11

¹³ UB, p. 9

DISCUSSION

In most instances a discharge or termination case relates to behaviors by an employee or employees that are allegedly in violation of the “just cause” provisions of the collective bargaining agreement. In the case at hand, the advocates for both parties examined the facts and compared them to the so called “tests”¹⁴ of just cause, and not surprisingly they came up with opposite conclusions: the Employer found justification in those tests for their termination of the Grievant; and, the Union advanced arguments suggesting that the Employer was not in compliance with those same tests.

The Employer, in its termination letter, cited three reasons for its action:

1. Failure to return the Employer’s property.
2. Failure to reimburse the Employer for unauthorized purchases.
3. Failure to provide medical documentation, including a possible return to work date.

Failure to Return the Employer’s Property

Some of the property, including work files, were returned to the Employer in February of 2014. As of the date of the hearing, however, the Employer’s computer (with digital files) and cell phone had still not been returned. This allegation was not contested at the hearing.

¹⁴ These tests were established in an arbitration decision by Arbitrator Carroll R. Dougherty in 1966 (Enterprise Wire Case).

Failure to Reimburse the Employer for Unauthorized Purchases

The Employer alleges that the Grievant charged over three thousand dollars on their credit card for non-approved purchases, and although several certified letters were sent to the Grievant requesting repayment and offering lenient plans for reimbursement, the Grievant chose to not respond.

The Union argued that she did not receive the letters requesting reimbursement, however, the allegation itself was not challenged.

Failure to Provide Medical Documentation, Including a Possible Return to Work Date

There is little question that the car accident caused serious injuries and required the Grievant to take time from work to recover. The Employer became aware of the accident and the injuries and continued to pay the Grievant until her sick and vacation leave had expired. The Grievant then requested an unpaid medical leave of absence, and the Employer granted that request.

Later, the Employer asked the Grievant if she wanted to apply for FMLA leave and suggested that she provide the appropriate documentation. When the Employer hadn't heard from the Grievant for a time, the Employer sent two letters on December 18, 2013: 1) a letter posing an ultimatum to the Grievant regarding FMLA: "If [the Employer doesn't] receive such paperwork by December 31, 2013, [the Employer] will have to deny your request to be covered under the contractual provision for FMLA and you will remain on an unpaid Medical Leave of Absence;"¹⁵ and 2) a letter of suspension for inappropriate use of her

¹⁵ Employer Exhibit 5

Employer-provided credit card.¹⁶ Both letters were sent certified and both were signed for by the Grievant.

The Grievant complied with the request for the FMLA application forms on the final day, December 31, 2013. Later, the Employer noticed that the doctor's section of the FMLA application indicated that the Grievant was available for part-time work, and on February 10, 2013, the Employer requested that she report to work on March 3, 2014, following her ten day suspension. The Grievant did not return to work.

Six or more Certified/Return Receipt letters (Dated between January 9, and July 18, 2014) were sent to the Grievant without her acknowledging receipt. The Grievant testified that she was evicted from her townhome on April 30, 2014, becoming homeless, however, only two of these letters were sent after that date.

The Agreement is very clear regarding the responsibility of the employees in keeping the Employer up to date on their most recent addresses: Article IX, Seniority, subsection 9.07, "It is the Employee's responsibility to keep his/her address current with the Employer." And, although the Union argued that the Employer should have used the phone or email to contact the Grievant, certified mail is a standard method to not only ensure delivery, but to also receive verification that the addressee actually received the correspondence. Even when addressees are not available to sign for letters, notes are left by the mail carrier indicating where the letter can be picked up. Business agents, especially, should know the importance of certified mail in ensuring delivery.

¹⁶ Employer Exhibit 9

Although the Arbitrator cannot state with certainty the reasons the Grievant chose to ignore the Employer's mail, one could speculate that she may not have wanted to formally acknowledge receipt of the Employer's questions and directives.

The Employer in this matter, as in any employment relationship, expected the Grievant to be present for the Employer's work. This expectation was appropriately negated by the Grievant's injuries and her need for time to recover. Her contractual right to be on a medical leave, however, came with a responsibility to keep the Employer up to date on the progress of her recovery, the date she would be available to return to work and the injury's impact on her projected hours of work. The Employer asked the Grievant for this information on several occasions, and the Grievant was reluctant to comply. This reluctance was verified thoroughly through testimony and exhibits.

It is clear that the Employer was harmed by the Grievant's evasiveness. How could they plan for coverage of her position, if they were not sure if they should hire a temporary or permanent replacement? How could they follow-up on the Grievant's casework without the files (both hard copy and digital) that would be essential to that process? The Employer's enterprise as a union is member service, and that service depends on business agents who are familiar with the current status of grievances and contract negotiations. The Grievant deprived the Employer of the information necessary to effectively serve their members.

AWARD

Following a careful analysis of the witnesses' testimonies, the exhibits presented, and the advocates' arguments, the Arbitrator finds for the Employer in this matter.

The Union's grievance is denied.

Signed and dated this _____ day of January, 2015.

Eugene C. Jensen
Neutral Arbitrator