

**IN RE ARBITRATION BETWEEN:**

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**HONEYWELL**

**and**

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 1145**

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**DECISION AND AWARD OF ARBITRATOR**

**FMCS CASE # 060517-56311-7**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**February 1, 2007**

IN RE ARBITRATION BETWEEN:

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Honeywell,

Employer,

and

DECISION AND AWARD OF ARBITRATOR  
FMCS CASE # 060517-56311-7  
Hooker grievance matter

IBT #1145,

Union.

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**APPEARANCES:**

**FOR THE UNION:**

Martin Costello, Hughes & Costello  
Armentha (Nell) Hooker, Grievant  
John Veldey, Union Steward  
Mike Maruska, Chief Plant Steward

**FOR THE COMPANY:**

Chuck Bengston, Attorney for the Company  
Chester Owens, 3<sup>rd</sup> Shift Supervisor  
Terry Skrien, HR Manager  
Terry Anderson, 2<sup>nd</sup> Shift Supervisor  
Donna Bistodeau, Dept. Supervisor  
Jaime Bell, Sr. HR Generalist  
Nancy Sjodin  
Chelsea Nygaard  
Priscilla Bias  
Arlene Yarke

**PRELIMINARY STATEMENT**

The hearing in the above matter was held on December 12, 2006 in the offices of Honeywell International in Coon Rapids, Minnesota. The parties presented oral and documentary evidence at that time. The parties presented post-hearing Briefs, which were e-mailed and received by the arbitrator on January 12, 2007 at which point the record was closed.

**ISSUE PRESENTED**

Whether there was just cause to terminate the grievant under the facts and circumstances of this case. If not what shall the remedy be?

**CONTRACTUAL JURISDICTION**

The parties are signatories to a collective bargaining agreement covering the period from January 1, 2002 through January 31, 2007. Article XV as well as a Letter of Agreement between the parties regarding grievance procedure provides for submission of disputes to binding arbitration. The arbitrator was selected from a list provided by the Federal Mediation and Conciliation Service

## **EMPLOYER'S POSITION:**

The Company took the position that it had just cause under the agreement and the Company's Attendance Policy to terminate the grievant for her actions March 6, 2006 when she along with a co-worker, physical struck several co-workers in a racially motivated prank and for lying about her role in the events in question during the investigation. In support of these contentions the Company made the following arguments:

1. The employee has been employed at the Stinson facility since September of 1998. Except for this event, she has no prior discipline. She was however well aware of the Company's policy against racial harassment, work place violence and the requirement for truthfulness in dealing with the Company in all respects.

2. The Employer pointed to its Code of Conduct that provides in relevant part as follows:

The Company prohibits all forms of harassment of employees by fellow employees, employees of outside contractors or visitors. This includes any demeaning, insulting, embarrassing or intimidating behavior directed at any employee related to gender, race, ethnicity, sexual orientation, physical or mental disability, age, pregnancy, religion, veteran status, national origin or any other legally protected status.

At Honeywell, we believe that our employees should be treated with respect and dignity. Therefore we will not tolerate inappropriate workplace conduct, including discriminatory harassment on race, color, gender, age, citizenship or impending citizenship, religion, national origin, affectional or sexual orientation, disability, marital status, veteran status or any other characteristic protected by law.

3. In addition, the Employer pointed to its Policies and Procedures on Offenses and Penalties for Offenses, Employer Exhibit 7, which provides for a 4<sup>th</sup> degree demerit for "giving false testimony." Pursuant to that policy, a 4<sup>th</sup> degree demerit results in discharge and even where an employee is returned to work after a 4<sup>th</sup> degree demerit, the record stays in the employee's personnel file for 12 months.

4. Here, the grievant along with a co-worker, Denise Glass, engaged in a racially motivated prank that involved slapping white co-workers on the cheek and face. Ms. Glass was also terminated for her role in these events and that matter was heard by another arbitrator. The Employer asserted that the grievant received a text message on her cell phone on March 6, 2006 which indicated that in honor of Black History Month, which is in February, all black employees should slap the faces the first 5 white co-workers they saw.

5. The grievant showed this to Ms. Glass and then both of them proceeded to walk around the work area striking the cheeks of several co-workers. At the time the victim of this did not even know what was going on and found out only later that this was actually a racially motivated action.

6. The Employer received multiple complaints from co-workers about what Ms. Glass and the grievant had done. Some of the co-workers were greatly offended by what had happened. Moreover, the work atmosphere suffered tremendously after this and greatly increased racial tensions between workers.

7. The Employer acknowledged that the “slaps” meted out by the grievant and Ms. Glass were minor and did not inflict any physical harm of any kind. The Employer however argued that the force of the blow is not relevant. What is relevant is that the grievant engaged in an act of workplace harassment or even violence that was clearly racially motivated and highly inappropriate.

8. The Employer also argued that when confronted by management for her role in this event, the grievant lied about it and indicted that she did not get a text message. She alleged that her phone was out of order and that she did not engage in the activity at all. Later on she recanted her lie and admitted that she had in fact received the message and had in fact engaged in prohibited activity. This was not until she was confronted with evidence to prove her guilt.

9. The Employer countered the Union's assertion that the grievant was highly embarrassed by this whole event and argued that she and Ms. Glass were overheard saying words to the effect that they could never be fired since they were Black. The Employer asserted that such language and conduct indicates that the grievant is neither in fact remorseful nor contrite about this and evidences an attitude of defiance contrary to the notion that she will learn from this event and cease any sort of similar behavior in the future.

10. There is no question that the grievant engaged in offensive activity that is clearly prohibited under the terms of the Employer's policies set forth above. Worse still, she then lied to investigators. Despite her otherwise clean record, this type of conduct cannot be tolerated in the modern American workplace. More importantly, the Employer has a clear policy against it, which clearly provides for termination for the violation of those policies.

The Company seeks an award denying the grievance in its entirety and sustaining the discharge of the grievant for violation of the Company's Attendance Policy.

#### **UNION'S POSITION:**

The Union's position is that the Company did not have just cause to terminate the grievant. In support of this position the Union made the following contentions:

1. The Union asserted that the grievant is a long time employee with the Employer, having been with them since September of 1998 and that her record is devoid of any discipline. She was well liked by co-workers and was elected Union steward by these very same people only a few years ago.

2. The Union and the grievant did acknowledge that she did receive a text message to the effect that in honor of Black History Month, which had just ended, she should walk around her workplace and slap the first 5 white co-workers she saw. She showed this to Denise Glass and initially asked her if she had sent it. To this day no one knows the origin of the text message or how and why it was sent to the grievant.

3. She then walked around in the workplace and very slightly touched the cheeks of at least one co-worker. Ms. Glass touched more than one and may have touched far more than the grievant did.

4. The Union claimed that she did not think much of this when it happened thinking it was simply a harmless prank and done as a joke only. She simply did not think this would be seen as offensive by co-workers, many of whom were her friends. Nothing was said during the touching incidents to lead co-workers to believe that this was racially motivated. It was not until well afterward that anyone saw this as racially motivated.

5. The Union argued that this is a cordial work place in general and that people are friendly with each other. There are many instances of good-natured ribbing and joking that occurs. The grievant saw this as nothing more than that and simply had no idea this would be regarded as such a big deal. She does now and should therefore be given a chance to redeem herself in eyes of the Employer and her co-workers.

6. When confronted with this by management she simply panicked and lied about her role in this at first. This too was wrong and she acknowledged that several times. The Union pointed out that she did “come clean” well prior to the hearing and acknowledged that she did in fact touch the cheeks of a co-worker in response to the text message.

7. The grievant was quite contrite during the hearing and is very remorseful. The Union contended that she would have spoken to her co-workers to apologize much earlier but was told by both her Union and the management representatives she met with to stay away from the workplace and specifically not to talk to other employees about this incident. She complied with this request and should not now be penalized because she did what she was told by both Union and management.

8. The Union asserted that the grievant never made the comments alleged by the Employer to the effect that she could never be fired because of her race. The grievant categorically denied that throughout the proceeding.

9. The Union also asserted that the Employer is being duplicitous with regard to the grievant. A short time before, this grievant was the victim of racially motivated comments by one of the very people who is now complaining. The co-worker made racially motivated comments in the break room in front of a great many co-workers regarding a story on New Orleans in the aftermath of Hurricane Katrina. For this the co-worker was given far less discipline than was this grievant. She also was found to be less than truthful as well during the investigation and yet she was not fired. The grievant should be given the same chance to retain her employment for what the Union asserted was a very similar event not only in conduct but also on the workplace atmosphere.

10. The essence of the Union's case is that an otherwise good career should not be ruined by one event over a few minutes of time. The Union acknowledged that the actions of the grievant were rash and even ill advised both in terms of the acts on March 6, 2006 and for not being truthful when asked about it. While these actions were wrong they should not result in the end of an otherwise exemplary career especially in the face of the remorse by this grievant and the extraordinary unlikelihood that the grievant will ever engage in anything like this again.

Accordingly, the Union seeks an award of the arbitrator reinstating the grievant to her former position with all accrued back pay and contractual benefits.

### **DISCUSSION**

Surprisingly, there were very few factual disputes in the matter. The grievant was hired in September 1998 and by all accounts was well liked and respected by co-workers and management alike. Her evaluations have all been good. In addition, she was elected to a position of Union steward several years before by the same shift on which she was working, narrowly defeating one of the co-workers who is making the complaints now. Except for this incident, there was no evidence of any other discipline on her work record.

The evidence showed that on March 6, 2006 the grievant was at work when she received a text message on her cell phone from an unknown caller. The essence of the message was that she should go around her workplace and slap the faces of the first 5 white co-workers she saw in honor of Black History Month. Black History Month is in February.

She showed the message to co-worker Denise Glass and one other black co-worker and asked if either of them had sent the message. Neither of them apparently had. At that point the grievant and Ms. Glass then proceeded to walk around the shop floor area and touch the faces of several white co-workers. Ms. Glass apparently assigned each a number, calling out number 1 or 2 and so forth as she walked by and touched their faces. The grievant denied giving anyone a number but admitted she did touch the faces of at least one or perhaps two co-workers. The evidence in this matter showed that Ms. Glass touched several more co-workers than the grievant did and that she did call out a number as she touched the faces of the co-workers.

Many of the co-workers whose faces were touched testified. They all expressed that they were somewhat surprised by this action and did not know why the grievant and Ms. Glass were walking by touching their faces and calling a number. Some of the co-workers were quite indignant about it at the hearing although the evidence showed that there was no true “slap” of anyone’s faces. At most this was a light touch on the cheek that may well have surprised some of the co-workers but in no case caused any physical harm of any kind.

Ms. Sjodin testified that she was hit by Ms. Glass and apparently not the grievant. When this happened she asked what was going on. She was told that they, the grievant and Ms. Glass, would tell them later. She initially thought this was just some sort of game. It was not until later that she discovered that this was in response to the text message. She never saw the text message itself however.

Ms. Miller testified that she was touched by the grievant and was not bothered by it at first. She too thought it was just a joke of some sort and was not aware of the text message either.

Ms. Nygaard testified that Ms. Glass, and not the grievant, hit her and called out a number when that happened. She testified that she also did not know at the time why this had happened or the racial nature of this. She asked another co-worker, who coincidentally is African American, who simply told her she would explain it later. She further testified that she felt intimidated when she was at the time clock the next day for reasons that were not entirely clear from her testimony.

Ms. Bias also testified that Ms. Glass was the one who touched her face and called out a number. It was clear from her testimony that she regarded it as a joke when this happened and that later Ms. Glass apologized to her for her actions.

Ms. Yarke testified that Ms. Glass touched her face but that she did not hear her call out a number. She believed at the time that it was related to another inside sort of joke. She testified that she believed that it was related to her sneaking a cigarette. She testified that it was not until some time later when another co-worker told her the true significance of this. The evidence showed that she and the grievant were quite close friends and that the grievant attended her wedding. They socialized outside of work and it was apparent that this incident placed considerable stress on that otherwise friendly relationship. This was largely due to Ms. Yarke's concern about the fact that the grievant never came to her later to apologize for what she terms a stupid joke.

The evidence showed that the grievant was told both by her Union representative and by management representatives investigating the incident not to talk to anyone related to it. The grievant gave very credible testimony that she would have sought these individuals out, especially Ms. Yarke given the nature of their relationship, to do so but complied with the directives of her Union and the Company not to.

Once it became more generally known in the work place just exactly what had happened and why this incident had occurred several of those whose faces had been touched complained both to the Union and to management about it. It was clear that this incident adversely affected the atmosphere in the shop and that tensions were elevated for some time following it.

The evidence showed too that when the grievant was first confronted about the incident she did not tell the truth to investigators. She lied about the text message at first alleging that her phone was broken and that it was not receiving messages. She acknowledged at the hearing that she did not tell the truth about this and that she indeed did get a text message that was as noted above – i.e. that she should slap the first 5 white people she saw. She also denied that she touched or slapped anyone. This was also not a truthful statement. The evidence showed that she in fact touched at least one co-worker but that she did not call out a number when she did this.

The essential facts are thus that the grievant did received a text message indicating that she should slap the first white people she saw in honor of Black History Month. She showed this message to Ms. Glass and one other African American co-worker. The evidence showed that the grievant touched one co-worker and that Ms. Glass touched five co-workers. See, Employer Exhibit 4. The grievant did not tell the truth to investigators when she was first asked about this incident, see Employer Exhibit 3, but later admitted that she did in fact get the text message and that she touched the face of one co-worker. It was also clear that while the grievant was clearly involved in this incident, she did not touch the faces of as many co-workers and that when she did she did not call out a number. These facts are determined to be significant, as it appears that she was something of a reluctant traveler in all of this although she clearly should; have acted as Ms. Lawry did and stay out of it.

It was also clear that at the time, none of the victims of the face “slapping” incidents regarded this as racially motivated. They in fact felt that it was some sort of joke. It was not until a few days later that they knew of the nature of the text message and it was not until then that they felt offended by what had happened.

One other factor needs to be considered here and that relates to the incident between the grievant and Ms. Sandy Dignan. Ms. Dignan did not testify in this proceeding and was not a person who was slapped. See, Employer Exhibit 3 at page 3. The evidence showed that a few months before this incident Ms. Dignan and the grievant were sitting in the break room watching a story about the victims of Hurricane Katrina and that Ms. Dignan made a racially charged remark. The grievant complained about this and an investigation ensued. See Union Exhibit 7.

Company investigators found that Ms. Dignan had used a racially insensitive remark that offended the grievant. The Union argued that Ms. Dignan was found to have lied during the investigation. The last sentence of the investigator's findings says that "Sandy's [Ms. Dignan] version of the incident is different from Jean and Nell. I think it was in her best interest to arrive a story that would justify her remark." The Union argued that this statement when coupled with the other statements regarding the credibility of other witnesses implies and even concludes that Ms. Dignan was not truthful in the investigation. The Union points out that Ms. Dignan was given a Second Degree Demerit pursuant to the discipline policy and did not suffer a discharge for her racially charged remark. The Union claims that this shows a disparate treatment of one worker over another and that both should be treated the same.

The Company denies that there was a finding that Ms. Dignan lied during the investigation. Certainly there was no overt admission of such untruthfulness as here. All that was found was a difference in versions of the facts and that the investigator determined that some people's version of what occurred was different than Ms. Dignan's. The Company asserts that these incidents are different and that there was no disparate treatment involved.

Turning to this incident, the Union does not claim that the grievant is completely innocent and in fact admits that she lied about the text message and about touching the faces of her co-worker. The essence of the claim is that this was merely a very bad joke gone terribly awry and that while it was a very ill advised act it should not result in her discharge. In fact the Discipline policy seems only to give this a Second Degree demerit. The Union also acknowledged that the grievant lied about this and that this is treated very severely under the terms of the Policy. They argued however that the grievant is quite remorseful and has learned a great deal from this incident. The chance that anything like this will recur is highly unlikely.

In analyzing this matter it is important to note that while the Company argues that the Policy should simply be applied according to its terms, the matter is never that simple. Otherwise there would be little meaning to a just cause provision in the labor agreement if a unilaterally implemented discipline and discharge policy is simply applied woodenly to determine appropriate levels of discipline. Just cause means more than that and requires an analysis of the facts of each individual case to determine whether the discipline meted out is appropriate and justifiable in each individual case.

Arbitrators have for years used a series of “tests” to determine whether just cause exists for the imposition of discipline. Not all use them but most do and even if they don’t they always provide a good roadmap to see if the Employer has provided adequate proof of the existence of just and proper cause for employee discipline.

These tests were first articulated by Arbitrator Carroll Daugherty in *Grief Bros. Cooperage*, 42 LA 555, 558 (1964). See also, *Enterprise Wire Co.*, 46 LA 359 (Daugherty 1966). In these cases Professor Daugherty notes that a negative answer to any of these questions may well mean that there is insufficient cause for the discipline imposed. These tests are as follows:

1. Did the Company give to the employee forewarning or foreknowledge of the possible consequences of the employee’s conduct?
2. Was the Company’s rule or managerial order reasonably related to the orderly, efficient and safe operation of the Company’s business?

3. Did the Company, before administering the discipline to the employee make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the Company's investigation fair and objective?
5. At the investigation, did the "judge" obtain substantial evidence of proof that the employee was guilty as charged?
6. Has the Company applied its rules, orders and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the Company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the Company?

Here there is little question that there was adequate notice to the employee of the seriousness of racially charged comments and actions. There was however a very real issue as to whether the persons affected by this even knew it was racially charged when it happened. Clearly they did not but learned of that later. They all testified that they were offended once they did learn of this and that is understandable. The evidence further showed that the atmosphere within the work place suffered after this incident and that too is understandable. The evidence establishes thus that this incident did "create discord or lack of harmony among fellow workers" to use the terms of the applicable policy.

The Union did not raise any issue with regard to the reasonableness of the Rule; certainly rules designed to prevent racial discord and harassment are not only reasonable but also required in the modern American workplace. Neither did the Union raise any issue with regard to the fairness or objectivity of the investigation. The Company conducted the investigation in a very thorough and professional manner.

The most important issues raised by the Union were about the disparate treatment of this grievant and whether the punishment fit the crime, i.e. where the level of discipline was appropriate for the proven offense.

Here there was some cogent evidence that the grievant is being treated significantly differently for a similar sort of offense. The evidence showed that Ms. Dignan made a racially charged and highly insensitive remark only months before this incident and that she may well have been less than completely truthful about it when confronted with it in order to save her job. She was given a Second Degree demerit.

Moreover, even Company exhibits show that the grievant touched only one co-worker as opposed to perhaps 5 or more touched by Ms. Glass. Make no mistake about it, had there been any evidence whatsoever that the touching by the grievant on the faces of her co-workers had been in reality a slap of some sort or was intended to inflict bodily harm or to overtly offend the victim of such an attack, one such slap would be more than enough to sustain a discharge. Here however, as noted herein, the co-workers all felt this as a game of some sort and were not immediately offended nor affected by it, even though they were later.

There was little doubt that the grievant's conduct caused discord and lack of harmony among her co-workers. By her own admission, this was a senseless and thoughtless act done rashly and without regard to the consequences both professional and personal of doing it. Clearly there are grounds for concluding that the grievant's actions, even though less egregious than were those of Ms. Glass, constitute grounds for some discipline.

She also was untruthful in her responses to investigators at first. She told them she had not received a text message when she did. She told them she had not touched anyone when she in fact had touched at least one co-worker. Giving false testimony is regarded as a Fourth Degree Demerit, which under the terms of the Employer's Policy, results in termination. This is a serious problem for the grievant but does not result in an automatic termination even by the Policy's own terms. The Policy contemplates a return to work even after conduct giving rise to a Fourth Degree Demerit and provides, "If an employee is reinstated from a discharge on a new fourth degree demerit, that demerit has a life of twelve months from the date of return to work."

The Employer relied heavily on prior arbitrations on different facts where the employees involved were discharged through arbitration. In one prior case the employee was discharged for lightly touching a co-worker's face during some sort of altercation in which both employees were involved in an altercation. Apparently threatening gestures were made and the employee pushed the victim's hand away and touched his face.

These facts are distinguishable in that there was clear a deliberate altercation in which both employees knew what was going on each was taking an active role in instigating a verbal and even physical altercation done in anger toward each other. No such facts are presented here.

In another the same arbitrator sustained a discharge where the grievant was found to have thrown a rock at a co-worker's car. The rock was small and not thrown hard enough to damage the victim's car. The arbitrator found on facts that were not fully explained here, that the rock throwing incident was serious enough to warrant discharge. No other facts were presented as to why this finding was made. Again, it was apparent from the sparse facts that the employee was engaged in a deliberate intentional act to threaten or intimidate a co-employee. This was not the case here.

The same arbitrator upheld two further discharges where offensive language was used toward a supervisor and where the employee was found to have lied in the investigation. The latter case is significant in that it is the only case cited that is analogous to the instant matter. No facts were provided regarding the grievant's past record in this case and it is not possible to determine whether that played a part in the determination of the discharge. As noted herein, lying is a serious offense and one which should carry with it serious discipline. It was not shown however that it must always carry with it the automatic penalty of discharge. Each case must be decided on its own unique facts.

Moreover, there was some merit to the Union's claim that the grievant was treated differently from the way the Company dealt with Ms. Dignan for similar conduct only a few months prior to this incident. Neither incident is acceptable or appropriate in the modern American workplace and both are contrary to the rules and policies in effect with this Employer.

The Employer has a right to promulgate and enforce rules against racially motivated comments and conduct and rules against giving untruthful testimony to the Company. That is not the question. The issue raised by the Union shows that there was a difference in the way the Company dealt with these two instances and that gave the arbitrator pause here.

Finally, inherent in the notion of discipline along with the prevention of unacceptable activity, is the notion that industrial discipline should be to some extent rehabilitative. If the grievant is truly remorseful and has gained insight from the discipline and can show that the likelihood of a recurrence is slight, arbitrators consider these factors. See, Elkouri and Elkouri, *How Arbitration Works*, 6<sup>th</sup> Ed. at page 409. “ ... post discharge rehabilitation should be considered because the ‘prime purpose of individual discipline is not to inflict punishment for wrongdoing, but to correct individual faults and behavior and to prevent further infraction.’” Citing, *Ashland Oil Co.*, 90 LA 681 (Volz 1988).

The Employer attempted to show that the grievant and Ms. Glass were indignant and recalcitrant about the incident and made statements that indicated that they were somehow immune from discipline. This was not proven on this record. There were many inconsistencies in the witness statements making these allegations and there was simply inadequate proof on this record that the grievant made any such statements or that there was any reason for anyone to fear retaliation from her as the result of these complaints.

In addition, the Employer attempted to show that the grievant was not remorseful since she made no effort to apologize or otherwise atone for her actions to her friends and co-workers. As noted above, the Union proved amply why this happened. The grievant was told specifically by both management and Union representatives alike not to talk to anyone involved in the incident. She complied with this directive and should not now have that held against her. It was obvious at the hearing that the grievant was remorseful about this and regarded it as a stupid prank.

She acknowledged she should not have done it and appeared quite contrite about her actions in this matter. She also testified credibly that she would have gone to everyone involved and apologized for her role in this incident if she had been allowed to and would have done so well in advance of the hearing.

Here there was ample showing of just cause for discipline. The grievant did indeed engage in highly inappropriate actions. There were however several factors that militated in favor of a lesser penalty than discharge. First, the acts, while stupid indeed, were not seen as overtly racial at the time they were committed. The employees whose faces were slapped had no idea of the racial overtones of this and in fact thought this was just a game or joke when it happened. It was commonplace for employees to joke and kid with each other at this workplace.

It is axiomatic that arbitrators have broad jurisdiction to review the penalties imposed by management in the context of employee discipline. See Elkouri, at page 954. See also, *Paperworkers v Misco*, 484 U.S. 29, 41 126 LRRM 3113 (1987). Where it is shown that the employee is unlikely to re-offend arbitrators can and do consider such factors. Also, the employee's length of service and prior disciplinary history and work record are factors to be considered. Here the employee's prior work record has been quite good. There was no evidence to suggest that she will repeat anything like this in the future.

The parties also gave broad authority to fashion a remedy based on the facts and circumstances in this matter. Here the grievant's acts were highly inappropriate and compounded by her lack of truthfulness in the investigation. Some discipline is warranted in order to make certain the grievant understands the seriousness of her actions and of the consequences of giving false testimony to investigators. Mitigating against that are the factors noted above all of which lead to the conclusion that she is not likely to do this ever again and that she does now truly understand how serious an incident this was.

Upon a review of the entire record it is determined that reinstatement is appropriate but without back pay or other accrued benefits of any kind. Moreover, per the policy, this incident shall remain on her record for 12 months following her reinstatement under this Award.

## **AWARD**

The grievance is SUSTAINED IN PART and DENIED IN PART. The grievant shall be reinstated to her former position within 5 business days of this award but without back pay or accrued contractual benefits as set forth above. In addition, this incident shall remain on her record for 12 months following her reinstatement under this Award.

Dated: February 1, 2007

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Jeffrey W. Jacobs, arbitrator