

IN THE MATTER OF THE ARBITRATION BETWEEN

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MINNESOTA TEAMSTERS)	
PUBLIC & LAW)	
ENFORCEMENT EMPLOYEES)	
UNION, LOCAL NO. 320)	
)	
Union,)	ARBITRATION AWARD
)	
and)	MARTIN
)	DISCHARGE GRIEVANCE
)	
CITY OF MINNEAPOLIS,)	
CONVENTION CENTER)	
)	
Employer.)	
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Arbitrator:	Stephen F. Befort
Hearing date:	December 20, 2006
Date post-hearing briefs received:	January 19, 2007
Date of decision:	February 19, 2007
	APPEARANCES
For the Union:	Paula R. Johnston
For the Employer:	Caroline Bachun

INTRODUCTION

Minnesota Teamsters Public & Law Enforcement Employees Union, Local No. 320 (Union), as exclusive representative, brings this grievance challenging the discharge of Betty Martin, an Operation Maintenance Specialist. The City of Minneapolis (Employer) claims that the discharge is supported by just cause due to a series of work rule violations. The grievance

proceeded to an arbitration hearing at which both parties had a full opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

Did the Employer have just cause to discharge the grievant? If not, what is the proper remedy?

RELEVANT CONTRACT AND RULE PROVISIONS

The Collective Bargaining Agreement

ARTICLE 5: EMPLOYEE DISCIPLINE AND DISCHARGE

Section 5.01 - Just Cause

Disciplinary action may be imposed upon an employee who has satisfactorily completed the initial probationary period only for just cause.

Section 5.02 - Progressive Discipline

Disciplinary action shall normally include only the following measures and, depending upon the seriousness of the offense and other relevant factors, shall normally be administered progressively in the following order:

- Subd. 1. Reprimands, either oral or written;
- Subd. 2. Suspension from duty without pay;
- Subd. 3. Demotion in position and/or pay or discharge from employment.

If the Employer has reason to reprimand an employee, it shall normally not be done in the presence of other employees or the public.

Section 5.05 – Disciplinary Action Records

A written record of all disciplinary actions within the meaning of this article, excluding oral reprimands, shall be provided to the involved employee(s) and may be entered into the employee's personnel record. . . . Written reprimands shall not be relied upon to form the basis for further disciplinary action after two (2) years following the date of the written reprimand.

11.03 Cause for Disciplinary Action

The two primary causes for disciplinary action and removal are substandard performance and misconduct.

A. Substandard Performance

1. Employees who are unable or unwilling to perform their job tasks at minimum acceptable standards are subject to disciplinary procedures.
4. Failure to meet or continue to meet an established requirement of the position, e.g. residency, license or registration.

B. Misconduct

The following activities are examples of misconduct, which may be cause for disciplinary action.

4. Insubordination (disobedience, abusive language or behavior).
18. Violation of department rules, policies, procedures or City ordinance.

FACTUAL BACKGROUND

Betty Martin began employment with the Employer in 1990. She worked as an Operation Maintenance Specialist assigned to the Minneapolis Convention Center. As an employee in the Production Services Division, she assisted in the preparation and “tear-down” of rooms for convention shows.

Ms. Martin has experienced a number of coaching and disciplinary incidents related to her work performance. Pursuant to Section 5.05 of the parties’ collective bargaining agreement, written reprimands imposed prior to the preceding two years may not be considered in evaluating the appropriateness of further discipline.

Within that time frame, however, the Employer provided coaching and oral warnings to Ms. Martin on numerous occasions. Although these are not disciplinary events, they do represent attempts by the Employer to aid Ms. Martin in correcting behavioral problems. The

specific coaching and warning instances are as follows:

- March 1, 2004: Ms. Martin was coached that she needed to inform her supervisor before taking an early or late break.
- October 18, 2004: Ms. Martin was coached for substandard work performance.
- December 30, 2004: Ms. Martin was coached that she needed to obtain supervisory approval before leaving her assigned work area. She also was coached that she should inform her supervisor upon finishing an assignment.
- March 3, 2005: Ms. Martin was coached that she needed to obtain supervisory approval before leaving her assigned work area.
- May 20, 2005: Ms. Martin was coached that she had placed an unnecessary burden on a fellow employee in failing to assist in refreshing a room and in disregarding a legitimate order from her supervisor.
- May 23, 2005: Ms. Martin was coached that she should refrain from taking unscheduled breaks without supervisory permission.
- June 8, 2005: Ms. Martin was coached that she should let her supervisor know before taking an early or late break. She also was advised to observe break times as scheduled.
- June 20, 2005: Ms. Martin was coached that she should obtain supervisory approval before leaving her assigned work area.
- June 20, 2005: Ms. Martin was given a verbal warning for failing to report for a work assignment in a timely manner.
- July 11, 2005: Ms. Martin was coached that she needed to obtain supervisory approval before leaving her assigned work area.
- July 25, 2005: Ms. Martin was coached that she needed to obtain supervisory approval before leaving her assigned work area and to report for reassignment after finishing an assigned project.
- July 25, 2005: Martin was given a verbal warning for having five coaching sessions on the subject of being absent from her assigned work area without supervisory permission.
- October 20, 2005: Ms. Martin was coached that she needed to answer her radio when called.

Beginning in the fall of 2005, the City turned from coaching to the imposition of discipline. As described below, the City issued discipline on five occasions to Ms. Martin over a six month period.

On September 20, 2005, the Employer issued a written reprimand to Ms. Martin. The reprimand grew out of events that took place on August 22, 2005. On that day, Ms. Martin was assigned to vacuum the edges of Ballrooms A and B. Instead of using a hand vacuum for this purpose, as is customary, Ms. Martin instead used a tenant sweeper. A tenant sweeper generally is used to clean the large, open portion of a room, but not for edge vacuuming. While Ms. Martin was driving the tenant sweeper, she ran into a door and broke the door handle. The reprimand also admonished Ms. Martin for leaving her assigned work area without obtaining supervisory approval.

On November 21, 2005, the Employer issued Ms. Martin a two day suspension based on events that occurred on November 7, 2005. On that day, Ms. Martin was assigned to clean up after a show in Hall B. When her supervisor entered Hall B, he saw her sitting at the counter reading a magazine. The supervisor believed that Ms. Martin was taking an unauthorized break and issued a two day suspension. Associate Production Manager G. Jack Barr subsequently rescinded the suspension upon interviewing two co-workers who stated that Ms. Martin was not reading a magazine, but instead was attempting to fix a pair of broken eye glasses.

The Employer next issued a five-day suspension to Ms. Martin on December 15, 2005 for not responding to radio calls from her supervisor. Ms. Martin had arrived at work that day at 6:15 a.m. Beginning at 7:30 a.m., Supervisor Don Perry called Ms. Martin on five occasions to dispatch her to scrub Hall D. Ms. Martin never acknowledged the calls, and Don Perry eventually assigned another co-worker to perform this task. At 10:35 a.m., Mr. Perry found Ms. Martin in Hall E talking to some electricians. When Mr. Perry asked Ms. Martin what she was

doing in Hall E, as she had been assigned to scrub Hall D, she stated that she was helping the electricians with a problem.

Ms. Martin testified that she had spent most of the morning looking for an open water spigot to fill the scrubber machine so that she could perform her assigned duties in Hall D. She testified that she had searched for water in Halls A through D, but found each source shut off, ostensibly because of the winter weather. She was searching for an open spigot in Hall E when she noticed a smoking electrical box and called Security. Ms. Martin's alarm likely averted further electrical damage.

Lane Carlson, the Facilities Operation Manager for the Convention Center, testified that the water is never turned off in Hall D and only rarely in the other halls. Mr. Carlson also testified that employees also could get water for scrubbers from the nearby janitor closets and that it would take only a few minutes to complete the filling process.

The Employer concluded that, while Ms. Martin's actions in contacting security may have been laudable, she had been absent from her work area for at least three hours and was not returning calls to her supervisor. As a result, the Employer imposed a five day suspension. In the determination letter relating to this incident, the Employer referenced the previous two day suspension which had not yet been rescinded, stating, "we are very concerned as you just received a two day suspension on November 21, 2005 for this type of behavior." The Union grieved this suspension, and it is pending arbitration independent of this proceeding.

The Employer next issued Ms. Martin an additional five day suspension on January 18, 2006 for leaving work without supervisory permission on December 27, 2005. In the determination letter for the previous five day suspension, the Employer wrote that the grievant would serve this suspension on the work days running from December 23 to December 30. The Employer sent the letter via certified mail, but Ms. Martin apparently did not pick up the letter at

the post office. Ms. Martin reported to work on December 27, and Shift Supervisor John Zasada pulled her aside and asked why she was at work in spite of the suspension. When Ms. Martin professed not to know about the suspension letter, Mr. Zasada gave her a work assignment and consulted with Production Services Set-Up Supervisor Kurt Hicock. Hicock and Zasada decided to issue a revised determination letter with the suspension period beginning to run on December 28. According to Mr. Zasada's testimony, he handed the revised letter to Ms. Martin, advised her that the suspension would begin on December 28, and told her that she should continue her work assignment for the remainder of the day. Ms. Martin left work shortly thereafter without notifying her supervisor. She testified that she was confused and upset and that she had not read the letter.

The Employer gave Ms. Martin a five day suspension with a final warning for the December 27 incident. The Employer cited Ms. Martin under pertinent Civil Service rules for being absent without leave and for insubordination. The Union also grieved this suspension, and it is pending arbitration independent of this proceeding.

As a last step in this series, the Employer terminated Ms. Martin due to events that transpired on March 13, 2006. On that day, Ms. Martin asked her new shift supervisor, Kee Yang, for permission to get a new battery for her radio from Security. Instead of going to Security to obtain the battery, however, Ms. Martin went outside to smoke a cigarette where she was observed by Mr. Hicock. Supervisor Yang testified that he had not authorized Ms. Martin to take an unscheduled smoke break or to leave the building. He prepared a report and discussed the incident with two senior managers. The Employer ultimately decided to discharge Ms. Martin for a continued pattern of misconduct. The Union grieved that decision which is now at issue in this arbitration proceeding.

POSITIONS OF THE PARTIES

Employer:

The Employer contends that it had just cause to discharge the grievant. The Employer maintains that it gave Ms. Martin ample warning of the need to correct behavioral problems through numerous coaching events. Only after those efforts proved fruitless did it resort to disciplinary measures. The Employer then utilized a pattern of escalating discipline in a further attempt to correct Ms. Martin's workplace conduct. According to the Employer, the unexcused smoking absence of March 13 was the "last straw," illustrating that any additional disciplinary measures short of discharge would be of no avail.

Union:

The Union acknowledges that Ms. Martin violated valid work rules by taking an unauthorized smoke break on March 13, 2006. Nonetheless, the Union claims that discharge is inappropriate in this matter for two reasons. First, the Union argues that the Employer did not follow the principles of progressive discipline in its treatment of Ms. Martin. Second, the Union asserts that the March 13 smoking break was not sufficiently egregious so as to constitute a "last straw" incident warranting termination. Based upon these reasons, the Union contends that the Employer's discharge decision was not supported by just cause and should be reduced to a lesser sanction.

DISCUSSION AND OPINION

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its termination decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof to establish that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established by a

preponderance of the evidence, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See* ELKOURI & ELKOURI, HOW ARBITRATION WORKS 948 (6th ed. 2003).

A. The Alleged Misconduct

In this case, the first step is not at issue. The Union acknowledges that Ms. Martin engaged in an unauthorized smoking break on March 13, 2006 contrary to valid Employer work rules. In addition, while the Union separately grieved the two earlier suspensions, that discipline is not contested for the purposes of this arbitration proceeding. As a result, the only question at issue in this matter is the appropriateness of the Employer's discharge penalty.

B. The Appropriate Remedy

The Employer claims that discharge is warranted in this case because Ms. Martin repeatedly has disregarded valid work rules in spite of the Employer's ameliorative efforts. For a long period of time, the Employer refrained from imposing discipline for these violations and instead engaged in coaching and counseling actions. As noted above, the Employer coached Ms. Martin on eleven separate occasions during 2004-05. Only when those efforts proved fruitless did the Employer turn to formal discipline. But, the Employer argues, a series of progressive disciplinary measures also failed to correct Ms. Martin's disregard of legitimate supervisory expectations. After seventeen incidents resulting in coaching and discipline over a two year period, Ms. Martin's unauthorized smoking break was a "last straw," demonstrating the futility of any further corrective action.

The Union counters that discharge is inappropriate in this instance for two reasons. For the reasons set out below, both of these contentions fall short of the mark.

First, the Union claims that the Employer did not properly utilize progressive discipline principles in the series of events leading up to Ms. Martin's termination. The Union points out

that the Employer expressly relied on the November 2005 two day suspension in determining to impose a five day suspension on December 15 of that year. In its determination letter relating to the latter incident, the Employer referenced the earlier suspension stating, “we are very concerned as you just received a two day suspension on November 21, 2005 for this type of behavior.” The Employer subsequently rescinded the two day suspension. In light of this rescission, the Union argues that the December 15 penalty was erroneously inflated in severity. The Union claims that this improper inflation tainted the severity of subsequent discipline as well, and that if the rescinded discipline was properly disregarded, the smoking incident would have resulted in a five day suspension rather than discharge.

The Union’s progressive discipline concern is over-stated. While it is true that the December 15 suspension likely would have been of shorter duration if the prior two day suspension had never been issued, the taint of the rescinded suspension ended at that point. When the Employer issued its January 18, 2006 discipline, it did not build upon the December suspension with a greater sanction. The Employer instead incorporated the impact of the withdrawn sanction by repeating discipline at the five day suspension level. Notions of progressive discipline then would dictate that a subsequent disciplinary incident – in this case the unauthorized smoking break - would result in some form of discipline in excess of a five day suspension.

The Union additionally argues that termination is too severe a response to the relatively minor misdeed of an unauthorized smoking break. It is true that this infraction would not provide cause for termination if viewed in isolation. This is not an isolated instance of misconduct, however. It is, instead, part of a recurrent pattern of similar infractions. When the accumulated history of infractions warrant the conclusion that neither counseling nor discipline will correct behavior, even a relatively minor additional misdeed can constitute a sufficient “last

straw” justifying discharge. DISCIPLINE AND DISCHARGE IN ARBITRATION 70 (Norman Brand, ed. 1998). Such is the case here. The Employer made seventeen coaching and disciplinary efforts over a two year span in attempting to correct Ms. Martin’s behavior. But those efforts were not successful. Under the circumstances, an eighteenth infraction is a sufficient last straw to provide just cause for discharge.

AWARD

The grievance is denied.

Dated: February 19, 2007

Stephen F. Befort
Arbitrator