
IN THE MATTER OF ARBITRATION

OPINION AND AWARD

between

RAMSEY COUNTY, MINNESOTA

**(Termination of Brett Berry)
BMS Case No. 16-PA-0957**

and

**LAW ENFORCEMENT LABOR
SERVICES, INC.**

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Grievant: Isaac Kaufman, General Counsel –
LELS

On Behalf of the MNSCU: Rebecca Wodziak, Labor Relations
Manager – Ramsey County

I. ISSUE

The issue before the Arbitrator is:

“Did the Employer have just cause to discharge the Grievant and, if so, what shall be the remedy?”

II. BACKGROUND AND FACTS

Of course, an evaluation of the Grievant’s termination cannot be made without a full understanding of the related facts. After the facts are examined

below a discussion will follow as to whether the facts and circumstances surrounding Grievant's termination constitute "just cause". Prior to his termination on April 8th, 2016, Brett Berry ("Grievant") had been employed as a Deputy for the Ramsey County Sheriff's Department for almost 20 years. At the time of his termination, his assignment was as a canine officer that involved 24-hour custody and care as well as the tactical use of a dog named "Boone". Prior to the incident involved here, Grievant had an unblemished record and his most recent performance review ranged from satisfactory to exceptional on all criteria. A supervisor described him as "very competent". He was also described as a "good deputy".

In June of 2015 Grievant and Boone travelled out of town to attend the U. S. Police Canine Association's regional certification trials in Carlton, Minnesota. Annual certification is required of police canines. The night before the canine certification trial was to begin hotel security observed Grievant drinking to (what turned out to be) excess. He behaved inappropriately with female patrons and when asked to leave the bar he reluctantly complied. He then went to his room to get Boone for a relief walk. While outside, Boone was not particularly compliant off-leash and Grievant, in the course of trying to put Boone back on leash, lifted Boone forcefully by the collar, pushed him to the ground and struck him several times with the leash.

By next morning, Security had reported the incident to the operators of the certification trials and Grievant learned upon his arrival at the event that he had been disqualified as a result of his treatment of Boone. Grievant immediately reported to his Sergeant and made himself available for questioning. The record indicates Grievant was completely candid and cooperative. The investigative officer described Grievant as “humble, contrite and forthright” and that he took responsibility for his actions admitting his actions were both embarrassing and “inappropriate”.

Grievant was placed on administrative leave shortly after the investigation began. On his own initiative Grievant enrolled in an outpatient treatment program which by November he completed and was determined to be at low risk for potential relapse.

In July 2015, while the internal investigation was continuing and local authorities were considering what to do, Grievant was returned to service in a modified duty assignment providing security at Regions Hospital. He then had shoulder surgery and after he returned he went back to work in another modified duty assignment, handling extraditions and out-of-state warrants with other jurisdictions. He remained in that assignment for about four and a half months. Throughout these assignments he maintained his Peace Officer Standards and Training (POST) license and carried his service weapon.

By January 2016 local authorities had moved their proceedings concerning the incident with Boone at the casino to a conclusion. Grievant pled guilty to a single count of Misdemeanor Animal Cruelty (Minnesota Statutes, Section 343.21, Subdivision 7). A pre-sentence investigation indicated the following:

“After completing the Pre-Sentence Investigation, this Agent believes this is an isolated incident with alcohol being the main contributor . . . [T]he defendant has already taken the necessary steps through treatment and counseling to address that risk factor. Due to the defendant no longer having contact with the K9 or any other pets, his successful completion of treatment and counseling, his lack of prior criminal history, and his current employment, the defendant would be [p]resumed low risk and it is recommended that he be placed on a low level of supervision.”

Subsequently, he was sentenced to one year of unsupervised probation, which will be completed in February 2017 and paid a \$500 fine to Carlton County, as well as restitution to Ramsey County for Boone’s veterinary costs. It is significant that the veterinarian who examined Boone found no injuries. Boone was reassigned to another officer and is still effective.

In April 2016 some ten months after the incident the County completed its investigation. Based on that investigation, Grievant was terminated.

III. DISCUSSION AND OPINION

To be upheld the Grievant’s termination must be for “just cause”. Much has been written about what constitutes “just cause” for termination but described in the simplest way it is a fairness standard that requires an employer to put forth

sufficient evidence that the employee is guilty of misconduct and that the assessed penalty (whether it be a warning, a temporary suspension or termination) is reasonably and fairly commensurate with the proven misdeed. More information can be found at <http://law.missouri.edu/arbitrationinfo/deciding-discipline-cases/> and <http://law.missouri.edu/arbitrationinfo/2015/12/31/misconceptions-about-arbitration-and-arbitrators/>.

In this case, the Arbitrator finds the Employer erred in not giving enough weight to the mitigating factors in Grievant's favor. Their assessment of the "risk" of returning Grievant to employment was not reasonable. The record shows he has nearly 20 years of incident-free service with good evaluations. He spontaneously, contritely, sincerely and without equivocation accepted his responsibility. Next he without prompting moved immediately to address his underlying personal issues. He served without incident for several months during the investigation. Importantly, several supervisors acknowledged Grievant, if reinstated, would be (as one put it) a "viable" officer. Another said he wouldn't have any reservations if Grievant returned to active duty.

As the discharge was not for just cause, a remedy must be fashioned. The appropriate remedy includes an immediate but provisional reinstatement to active duty but without back pay and a restriction that he cannot work with canines. The permanency of his reinstatement is dependent on the successful completion of the

terms of his misdemeanor probation. The Arbitrator will retain jurisdiction to monitor this compliance. Based on Grievant's record and reaction to this incident, the Arbitrator is convinced that it was an aberration and that he deserves another (but last) chance to resume his career.

AWARD

The Employer did not have just cause to terminate the Grievant. He is entitled to reinstatement per the conditions set forth above but without back pay.

(Signature on Original)

Gil Vernon
Arbitrator

Dated this 29th day of October, 2016.