

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
LABOR ASSOCIATION OF WISCONSIN : Case 203
: No. 45669
and : MA-6697
: :
WINNEBAGO COUNTY (SHERIFF'S DEPARTMENT) :
: :

Appearances:

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 S.
Mr. John A. Bodnar, Corporation Counsel, Winnebago County, 415 Jackson
Street, P.O. Box 2808, Oshkosh, Wisconsin 54903-2808, for the
County.

ARBITRATION AWARD

Labor Association of Wisconsin and Winnebago County Sheriff's Department are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Oshkosh, Wisconsin on March 11, 1992. No transcript was taken. The parties filed briefs, the last of which was received May 26, 1992.

ISSUES

The parties stipulated to the following statement of the issues:

Did the Employer violate the terms and conditions of the labor agreement now in effect when it suspended the grievant without pay on February 28, 1991? If so, what is the appropriate remedy?

BACKGROUND

Among its other governmental functions, the County operates a Communications Center at which dispatchers receive telephone calls received on the 911 emergency line and other telephone lines and receive radioed calls from Sheriff's Department officers. At the time of the events involved in this grievance, Grievant Laurie Marquardt had worked as a dispatcher for approximately six years and had been employed at the Winnebago County Communications Center for approximately a year. She had not received any discipline other than the one at issue in this case.

On Sunday, February 24, 1991 at 1:44 a.m., Grievant received a call on the 911 line from a caller, D.M., who reported that her husband had been drinking and was out of control. The caller, being upset, did not state the address so that Grievant could understand her, and hung up before Grievant could ask her to state the address more clearly. Grievant immediately used the call-back function to reach the caller. Again, in this second call, Grievant could not understand the address and the phone went dead. The call-back function on the phone did not work a second time, and the Grievant realized she had lost the caller. Grievant made other attempts to ascertain the caller's address, some of which are detailed below in the "Discussion and Additional Facts" section. All her efforts were unsuccessful and she ultimately ceased trying. Later that night, the caller's neighbor called the Communications Center and an officer was dispatched to the home of D.M. In response to D.M.'s question regarding the length of time it took to receive help, an investigation

of the events of the night took place which disclosed the call Grievant received. After an interview with Grievant, Captain James Goggins issued Grievant a written warning and a one-day suspension. The warning stated in pertinent part:

On 02/24/91 at 1:44 A.M., while you were working in the E911 Center, you received a telephone call to send the police to [address deleted] Neenah, for a domestic abuse problem.

You stated that you did not understand the entire numerical address nor the full street name. You called the complainant back and you were rude and raised your voice to her and failed to identify yourself.

You did not dispatch police to the call, nor did you play the tapes back to try and identify the address or street of the complainant; nor did you notify the DIC or the patrol shift commander of this incident or ask for help until there was a second call for help on 02/24/91 at 3:06 A.M., one hour and twenty-two minutes later.

Your failure to follow Standard Operational Procedure as spelled out in your job description under Major Duties could have resulted in injury or great harm to the caller and/or others, and as such constitutes gross misconduct.

. . .

The Union grieved the warning and the one-day suspension. That grievance remained unresolved and is the subject of this arbitration award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE 26

DISCIPLINE AND DISCHARGE

The Employer may discipline or discharge an employe for just cause. All disciplinary actions shall be presented in person to the employee within a reasonable time of the date of the infraction. The employee shall be allowed Association representation at all meetings regarding disciplinary action, including oral reprimands. All disciplinary actions other than oral reprimands shall be in writing.

POSITIONS OF THE PARTIES

A. The County

The County points to the dispatcher's job description to indicate that Grievant failed her duties in dealing with this emergency call. It asserts the tape of the telephone shows that D.M.'s message was understandable and it disputes Grievant's assertion that she played it back six or seven times in a effort to understand the address. It asserts she failed to exhaust all possible avenues in trying to locate the address, such as asking other dispatchers to listen to the call, asking assistance from officers on patrol and checking the city directories. It discounts Grievant's assertion that she needed further training, insisting instead that her responsibilities are essentially the same as those she had when she was a dispatcher for the City of Menasha. Emphasizing the potential for harm to the caller and legal liability that might have resulted from the incident, it concludes that her actions constituted gross misconduct.

B. The Association

The Association paints a picture of a busy and hectic night at the Communications Center. In this atmosphere, hearing the address was much more difficult than hearing the tape during the arbitration hearing when only the channel of the telephone call was recorded. The Association also points out that the other dispatchers were busy taking their own calls and could understandably not notice Grievant as she played back her tape in a effort to discern the address. Regarding the alleged rudeness when addressing D.M. during the call-back, the Association asserts the level of Grievant's voice was not unusual for a situation in which the dispatcher was trying to take control of a difficult situation and get the caller to more clearly repeat the address.

It refers to the County witness' testimony that the equipment and the training for the Communications Center has improved since the incident as an indication that they were inadequate at the time. Finally, the Association argues that if the Arbitrator should find misconduct did exist, the sanction should be modified as it is an unreasonable penalty for an incident involving this employee with an exemplary work record.

ADDITIONAL FACTS AND DISCUSSION

The County's warning notice cites three reasons for the imposition of discipline: One, Grievant's rude conduct in calling back D.M., two, Grievant's failure to play back the tapes in order to identify the address; and, three, Grievant's failure to ask either the Dispatcher in Charge or the Shift Commander for assistance. The County's argument at hearing and in the briefs

also suggest that Grievant was negligent for not understanding the address in the first instance and for failing to be resourceful enough to discover the address. Since the County's discipline must stand or fall on the notice of disciplinary action it issued after its opportunity for investigation, the undersigned will consider the validity of the discipline based on the three elements of misconduct listed in the disciplinary notice.

The alleged rudeness took place after Grievant lost the first connection with the caller, when she used the call-back function to return the call to D.M. Grievant acknowledged that she did not identify herself and that she raised her voice in speaking to the caller. Grievant's explanation is that she believed she could not take the time to identify herself, and that she had been trained to speak assertively in order to "take charge of the situation." Although it is easy to understand Grievant's reasoning that she wanted to save time and get the address immediately because the caller had hung up so quickly the first time, the County is within reason to expect its dispatchers to identify themselves. Likewise, although one can understand the theory that speaking forcefully inspires confidence and evokes intelligible responses from distressed callers, shouting at a caller is clearly inappropriate. Even while making allowances for the stress of the situation, the undersigned still concludes that Grievant's conduct during this telephone call indicates a need for improvement in handling emergency calls. The County had just cause to reprimand the Grievant for this deficiency.

The second basis for discipline was the County's assertion that Grievant did not replay the tapes of the call in the effort to ascertain the address. The testimony of Captain James Goggins, who conducted an investigatory interview, suggested that Grievant was disciplined for failing to play back the master tape, the single tape that records all the channels coming into the Center. According to Goggins, Grievant told him during that interview just what she later said at the hearing, that she did not play back the master tape, but she did use call-check, the individual tape recorder located at her console, six or seven times. This assertion is the subject of conflicting testimony.

Testimony was received from three other dispatchers who were in the Communications Center at the time. All said they were not aware that she used the call-check. One, moreover, testified that she believed she would have been aware of it if had Grievant used call-check because she would have heard the beeps that separate the calls. In an effort to reach a factual conclusion, the undersigned has considered the physical environment. This incident took place close to bar-time, very early on a Sunday morning, and the testimony reflects that the Center was as busy and noisy as would be expected at such a time. I conclude that the other dispatchers' attention to their own duties and the noise level of the room could prevent them from being aware of her use of the call-check which was fed through a four-and-a-half inch speaker at Grievant's console. Additionally significant is the consistency in Grievant's report to Captain Goggins and her testimony at hearing. I credit Grievant's testimony that she listened to the playback several times.

Having found that Grievant did listen to the call-check several times and in the absence of documentary or other evidence that dispatchers were told to use the master tape instead of their individual tape call-checks, and in the absence of evidence that the master tape would have been more effective at making the caller's words more intelligible, 1/ I conclude that the County had

1/ The evidence showed that the master tape recorded 24 hours whereas the individual tape recorded approximately two hours. This difference is not relevant to this dispute since Grievant was using the call-check feature

no reason to discipline Grievant for not using the master tape playback in her effort to ascertain the address.

The most serious charge is that Grievant gave up on this call without seeking help from or notifying any superior, either the Dispatcher in Charge or any of the Shift Commanders. This was a very grave situation. An out-of-control, drunken spouse poses great danger to family members. The danger that existed is not minimized by the fact that no serious injuries actually occurred. Moreover, routing emergency calls goes to the very heart of the duties of a dispatcher at a County Communication Center. The Dispatcher position description lists the following as the first of the major duties:

Answers and routes telephone calls and messages to the proper public service agency in accordance with established dispatching procedures.

It was in this core responsibility of her position that Grievant's action was inadequate. By not reporting the incident, Grievant allowed D.M.'s only connection with emergency services to disappear. Turning to the help of a co-worker, and then letting the matter drop when the co-worker's help also proved fruitless, was not enough. It should have been self-evident that a call which she could not service should be passed on to someone who had both more authority and more resources to resolve the problem.

Having found that failing to notify a superior of this problem ignores the dictates of common sense and constitutes unsatisfactory performance of duties, I find, at the same time, that is not gross misconduct. Gross misconduct in this fact situation would have to involve the violation of clear directives.

The record shows an absence of any such clear directives covering such a situation. The parties entered into the record both the Dispatcher's Position Description and the Rules of Conduct. In neither is there any reference to steps that should be taken in the event that a call is received that should, but cannot, result in a dispatch. Nor was there any testimony of oral instructions in either formal training sessions or informal supervision. Neither management witnesses nor any other dispatcher witnesses testified to any standard procedure or protocol for dealing with calls with unintelligible addresses. Given this absence of a clear directive, either written or oral, the undersigned cannot hold that Grievant's failure to notify a superior was willful, insubordinate or slothful. In short, it amounted to extremely poor judgment, but not gross misconduct.

In so far as Grievant's manner in handling the callback to D.M. was inept and her failure to notify a superior of the incident showed extremely poor judgment, the County had reason to issue grievant a warning for unsatisfactory job performance. The County did not, however, have just cause to characterize her actions as gross misconduct and impose a one-day suspension.

In light of the record and the above discussion, the Arbitrator issues the following

AWARD

within an hour after the call was made.

1. The Employer violated the terms and conditions of the labor agreement now in effect when it suspended the grievant without pay on February 28, 1991.

2. The Employer shall make Grievant, Laurie Marquardt, whole for all wages and benefits lost as a result of the one-day suspension on February 28, 1991.

3. The Employer has just cause for issuing Grievant a written reprimand for unsatisfactory performance on February 24, 1991 which included discourteous communication with a caller and failure to report to a superior an emergency call with no useable address.

Dated at Madison, Wisconsin this 25th day of August, 1992.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator