

CONNECTICUT STATE LABOR DEPARTMENT
BOARD OF MEDIATION and ARBITRATION

In the matter of:

VEOLIA WATER CONTRACT
OPERATIONS USA, INC.

Case No. 2023-A-0206

DATE OF AWARD: July 30, 2024

DATE OF HEARING: May 3, 2024

AND

LOCATION OF HEARING: via zoom

LOCAL 2405, COUNCIL 4, AFSCME, AFL-CIO

Thomas J. McDonough, Esq.

representing the employer

Robert Montuori, Staff Representative

representing the union

The genesis of this case originates from a grievance filed on behalf of Union member Paul Dirsra (Grievant) following a warning letter by management of Veolia (Employer) where the Union charged a violation of Article 13, Section 2 for disciplining the Grievant without just cause.

FACTS OF THE CASE

The Grievant is a 24-year employee with the Norwalk Wastewater facility working under several different management groups with no prior discipline and evidently a solid work record. As a long-time employee, the Grievant was intimately familiar with the policies and procedures surround in the safe and efficient operation of his portion of the wastewater facility.

Norwalk Wastewater has been undergoing a renovation, including the substations for which the Grievant is responsible. A maintenance report by the new organization managing the facility identified issues indicating there was a problem with the quality of the Grievant's work, including the conditions of the substations for which he received a written warning, the subject of this hearing.

PERTINENT CONTRACT (CBA) LANGUAGE

Article 13 of the Union's contract reads in part:

"Normally discipline shall include: (a) verbal warning; (b) written warning; (c) unpaid suspension up to ten (10) days (based on severity of infraction); (d) discharge and shall ordinarily follow in this order. It is not the intent of the parties that all discipline will necessarily follow in this order."

DISCUSSION and DECISION

It is a foundation of labor management relations that discipline is dispensed with the goal of encouraging change on the part of the employee not as a penalty for failure to meet clearly communicated standards of performance. In this CBA Article 13 is quite clear in the steps governing discipline which can be exercised by the Employer beginning with a verbal

warning, progressing to a written warning, followed by time off and culminating with discharge.

The Article also clearly states that; "*It is not the intent of the parties that all discipline will necessarily follow in this order.*" The flexibility offered to the employer by this language clearly provides the authorization to exercise what they see as an appropriate level of discipline for a specific action or inaction of an employee.

The progressive nature of the discipline identified in Article 13 clearly implies that as the gravity of the offence increased, so must the form of discipline. A verbal warning is not appropriate for a serious lapse of judgment nor mandated to be the first step for every problem requiring disciplinary action for Just Cause to be fulfilled.

Just Cause

1. Was the Grievant made aware of the possible consequences of his actions?

As an employee with more than 20 years' experience and an unblemished work record the Grievant clearly understood the parameters of what was expected and acceptable within the workplace. The Union did not argue that the Grievant was unaware of the requirement of how the workplace should be maintained.

2. Was the rule or order reasonably related to the orderly, efficient, and safe operation of the employer's business and the performance that the employer might reasonably expect from the employees?

No argument was made by the Union that suggested the expectations of the new management team were not related to the orderly, efficient and safe operation of the Norwalk Wastewater facility.

3. Before administering the discipline, did the Employer make an effort to discover whether the Grievant did in fact violate or disobey a rule or order of management?

In the investigation the Grievant admitted that the condition of his work area was not acceptable but endeavored to transfer the responsibility to the outside contractor who was upgrading the facility.

4. Was the employer's investigation conducted fairly and objectively?

All parties agreed that the investigation was conducted in a fair and objective manner.

5. Was substantial evidence or proof obtained that the grievant was guilty as charged?

The Union did not argue that the evidence was dubious nor that he was innocent of the charge.

6. Have the rules, orders and penalties been applied even-handedly without discrimination to all employees?

The Union did make the argument that others in supervision should have been disciplined, supporting the Grievant's argument that it was someone else's obligation, but it was the Grievant who left area in disarray creating an unsafe environment.

The Grievant never took accountability and continued to make excuses for who was ultimately responsible choosing not to acknowledge that he made a mistake.

7. Was the degree of discipline related to the seriousness of the Grievant's actions?

A written warning should have little to no impact on his career with Norwalk Wastewater if the clear, unambiguous message is heard and acknowledged by the Grievant.

The Union argued that Just Cause was not followed because the Grievant received a written instead of a verbal warning. Because the Grievant was a long-time employee who should have known better accompanied by the flexibility offered to the Employer in Article 13, the Union's argument has no foundation and is rejected.

A majority of the panel finds the grievance is not sustained and the written warning remains.

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/s/ Mark E. Sullivan

Mark E. Sullivan (Public Arbitrator & Chairperson)

/s/ Jeffrey L. Scanlon (Dissenting)

Jeffrey L. Scanlon (Labor Arbitrator)

/s/ Michael C. Culhane

Michael C. Culhane (Management Arbitrator)