STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

In the Matter Of:	:	Case No. 2024-A-0087
STONYBROOK GARDENS COOPERATIVE, INC.	:	DATE OF AWARD: March 19, 2024
And	:	Hearing Date: February 2, 2024
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 191	:	
Grievant: Richard Larson	:	

APPEARANCES: George F. Martelon, Jr., Attorney at Law (For the Employer)
David R. Cheverie, Robert M. Cheverie and Matthew J. Murphy, Attorneys at Law (For the Grievant)

I. ISSUE: (Agreed to by the Parties)

Did Stonybrook Gardens Cooperative, Inc. terminate Richard Larson for his conduct on October 12, 2023, for just cause?

If not, what shall the remedy be?

II. BACKGROUND:

The International Brotherhood of Teamsters, Local 191 (hereinafter referred to as the "Union") filed a grievance on behalf of its member Richard Larson (hereinafter referred to as "Mr. Larson" or the "Grievant"). The Union claimed that the Stonybrook Gardens Cooperative, Inc. (hereinafter referred to as the "Employer") terminated Mr.

Larson in violation of Sections 2 and 4 of Article 18 (Discharge and Discipline) and all other applicable Articles of the Collective Bargaining Agreement (hereinafter referred to as the "CBA"). Additionally, the Union claimed that the Employer violated an agreement between the parties regarding the Grievant dated May 19, 2022 although the Agreement appears to have been entered into on August 11, 2023.

The grievance was filed for arbitration and a hearing held on February 2, 2024. At that hearing both parties were provided an opportunity to present evidence, provide testimony and cross examine witnesses.

The parties agreed to file Briefs by February 26, which date was extended by mutual agreement to March 4. The Panel received the parties' Briefs by the extended due date. The Panel held an Executive Session on March 13 via ZOOM.

The parties have complied with the grievance and arbitration provisions of the CBA. This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

III. STATEMENT OF FACTS:

At the time of his termination of employment, Mr. Larson had been employed by the Employer as a maintenance employee for approximately thirty (30) years. Stonybrook Gardens Cooperative, Inc is a residential condominium complex with approximately 400 units. The employees are responsible for all of the maintenance of the complex. At the time of the incident, the Employer had three maintenance employees who were members of the Union. At the time of the arbitration, there was only one employee.

On August 11, 2023, the Employer and the Union entered into a Settlement Agreement of a prior arbitration regarding the Grievant. Under the terms of the Agreement, a prior indefinite suspension of the Grievant was replaced with a "written warning for failure to properly respond to an on-call request." (Jt. Ex. 2) The Agreement further provided that Mr. Larson would submit to an independent medical examination by a physician selected by the Employer. If Mr. Larson was determined to be unfit for work, a second examination would be performed. In the event a disagreement occurred between the two doctors, a third examination would be conducted by a doctor agreed to by those two doctors.

On October 12, 2023, Mr. Larson was scheduled for the independent medical examination at Yale Occupational Medicine and Wellness Services. He was to be accompanied to the examination by a coworker, but was instead taken to the appointment by the office manager. Prior to the appointment, Mr. Larson was told by the lead maintenance employee, Richard McDaniel that he would not have to pay anything for the

appointment. Additionally, Mr. McDaniel told Mr. Larson that he would not have to answer any medical questions at the examination.

At the exam facility, it was reported that Mr. Larson started yelling at the receptionist and that he was aggravated. Mr. Larson refused to fill out the requested paperwork. Mr. Larson was led to the examination area and refused to answer any medical questions. The examination was cancelled and security escorted Mr. Larson out of the office.

Mr. Larson was called into a meeting with the Board of Directors of the Employer on October 16, 2023. According to the Employer's Brief, the Board of Directors "consulted with each other and determined that Mr. Larson should be terminated for insubordination and for failure to follow a direct order of his employer." Mr. Larson was terminated on October 16, 2023.

On November 20, 2023, Mr. Larson went to a Union selected physician and was determined to be fit for duty. (Jt. Ex. 6) Joint Exhibit 6 was provided to the Employer on November 21, 2023.

III. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Jt. Ex. 1)

ARTICLE 3

MANAGEMENT RIGHTS

Section 1:

Except where such rights, powers and authority are specifically relinquished, abridged or limited by the provisions of this agreement, the employer has and will continue to retain, whether exercised or not, all of the rights, powers and authority heretofore held by it. The employer shall also have the sole and absolute right, responsibility and prerogative to manage the affairs of the Cooperative and direct the workforce, including, but not limited to the following:

. . .

> (d) To employ, transfer, promote, or demote employees, or to layoff, terminate or otherwise relieve employees from duty for lack of work or other legitimate reasons when it shall be in the best interest of the employer. The manner of exercise of these rights by the employer may be grievable under the grievance procedure.

ARTICLE 18

DISCHARGE AND DISCIPLINE

Section 1:

The employer shall exercise full disciplinary authority consistent with its responsibility to direct employees to perform the required work duties in order to achieve the goals and satisfactory service to the homeowners of the Cooperative.

Section 2:

All progressive disciplinary action for just cause shall be applied in a fair manner and shall not be inconsistent to the infraction for which the disciplinary action is being applied.

Section 3:

Progressive disciplinary action shall include:

(a) A verbal warning

(b) A written warning

(c) Suspension without pay

(d) Discharge

Section 4:

The employer and the union recognize the concept of a progressive discipline policy. However, both parties agree that there are certain grave offenses wherein the discipline imposed by the employer does not require compliance with the aforementioned provisions of Section 3. Therefore, the employer may immediately discharge employees for just cause, including, but not limited to, the following offenses:

1. Drunkenness or drinking during working hours or while on call (Including lunch time and break periods).

2. Possession or use of illegal drugs during working hours or while on call.

3. Possession of firearms while on duty or while on call.

4. Other willful or wanton damage or defacing of company equipment.

5. Physical assault of fellow employees, supervisors or homeowners of the cooperative.

Section 5:

All disciplinary action may be appealed through the established grievance procedure.

V. DISCUSSION

The Employer claimed that Mr. Larson was insubordinate when he did not have the scheduled independent medical examination on October 12, 2023. Insubordination is defined as:

> A willful disregard of an employer's instructions, especially behavior that gives the employer cause to terminate a worker's employment.
>
> An act of disobedience to proper authority; especially a refusal to obey an order that a superior officer is authorized to give. *Black's Law Dictionary*

Generally, there are three elements which must be proven in order for a claim of insubordination to be satisfied:

1. There is a clear reasonable and lawful order;
2. The order is given by a person in authority; and
3. The order is intentionally disobeyed by the employee.

The order in this case was unquestionably reasonable and lawful. It is especially true in this case since the Union agreed that Mr. Larson "will submit to an independent medical examination by a doctor selected by Stonybrook and will be paid to attend the examination." (Jt. Ex. 2, Paragraph IV.)

The condition outlined in Paragraph IV of Joint Exhibit 2 was implemented by a letter to Mr. Larson dated October 9, 2023 signed by George F. Martelon, Jr., attorney for the Employer. In the letter, Mr. Martelon notified Mr. Larson that the fitness for duty evaluation was scheduled for October 12, 2023. Certainly, Mr. Martelon was a person in authority who could give the order for Mr. Larson to attend the independent medical examination.

The third element provides that the order be intentionally disobeyed by the employee in order for insubordination to occur. This element was not met. It was undisputed that Mr. Larson was instructed by his supervisor, Mr. McDaniel, that he did not have to answer any medical questions at the physical examination. The Board of Directors was aware of Mr. McDaniel's instruction prior to Mr. Larson's termination. There is no indication that the members believed that the instruction was improper.

From the testimony of Amanda O'Connor, the LPN at Yale Occupational Medicine and Wellness Services, it was clear that Mr. Larson believed he was there for a stress test. Ms. O'Connor and the physician attempted to explain to Mr. Larson that was not the case and that he was there for a fitness for duty examination. As he refused to answer any medical questions, the examination was then terminated.

There was some emphasis placed on the fact that Mr. Larson was escorted from the Yale facility by a security guard. Based upon his testimony at the hearing, it is easy to understand why that may have occurred. Mr. Larson speaks very loudly as demonstrated at the hearing. On October 12, Ms. O'Connor indicated that Mr. Larson was both aggravated and angry. It is not hard to imagine that on that day Mr. Larson spoke even more loudly than normal which explains the staff's concern.

There was no intentional refusal by Mr. Larson to participate in the fitness for duty examination. He was confused. Mr. Larson was following the instructions of his supervisor that he did not have to answer any medical questions. Therefore, his refusal to answer medical questions was not insubordination.

Not unlike most other collective bargaining agreements, this collective bargaining agreement does not define "just cause". Just cause is typically defined as: A reason that is legally acceptable or sufficient and whether the employer was guided by reasonableness and fairness. In its simplest form, there must be satisfactory proof that the employee engaged in the act upon which the discipline is based. "Just cause" is one which is not for any arbitrary, capricious, or illegal reasons and which is one based on facts. For example, if the proof is insufficient that the employee committed a violation, discipline

cannot stand. If the evidence is sufficient to demonstrate that the employee is "guilty" of the conduct alleged, then the next question, generally speaking, relates to whether the penalty is for just cause." The employer must have a reasonable ground for discipline which is also fair. The Connecticut Supreme Court has articulated and adopted this standard.

As there was insufficient proof that Mr. Larson was insubordinate, the discipline cannot stand.

VI. AWARD

For the reasons set forth herein, the Panel unanimously finds that the Stonybrook Gardens Cooperative, Inc. did not have just cause when it terminated Richard Larson. Mr. Larson shall be reinstated with full back pay from the date of his termination less appropriate reduction for outside earnings.

BY THE ARBITRATION PANEL:

/s/ Linda J. Yelmini 3/17/2024
Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ Michael C. Culhane, Sr. 3/17/2024
Michael C. Culhane, Sr. (Management Arbitrator)

/s/ Peter S. Carozza, Jr. 3/17/2024
Peter S. Carozza, Jr. (Labor Arbitrator)