State of Connecticut
State Board of Mediation and Arbitration

In the Matter of	:	Case No. 2024-A-0080
Town of Southington	:	Date of Award: March 12, 2024
-and-	:	Date of Hearing: January 11, 2024
Local 1303-026, Council 4 AFSCME, AFL-CIO	:	

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Frank Krzywicki, Labor Member
Michael Culhane, Management Member

Tim Madden, representing the Union
Jared M. Lucan and Sarah N. Niemiroski representing the Employer

Procedural History and Issue

This is a dispute between the Town of Southington (Town), and Local 1303-026, Council 4 AFSCME, AFL-CIO (Union), concerning termination of Paul Malinowski, (Grievant).

After due notice a hearing was held on January 11, 2024, wherein the parties had opportunity to present evidence and witnesses and to cross examine same. The parties filed post hearing briefs and reply briefs.

The parties jointly presented the following issue for determination:

"Did the Town of Southington have just cause to terminate the Grievant, Paul Malinowski? If not, what shall the remedy be, consistent with the collective bargaining agreement?" (Joint Ex. A).

Relevant Collective Bargaining Provisions

ARTICLE XI

Disciplinary Procedure

Section 11.0

A. Employees shall not be disciplined, suspended or discharged without just cause, except as provided in article V, Section 5.2. All disciplinary actions shall be applied in a fair manner and shall not be inconsistent with the infraction for which disciplined action is being applied. Employees shall not be subject to any disciplinary inquiries without being offered the opportunity for union representation before the meeting commences. Union representation shall be limited to one representative.

Findings of Fact

1. The Grievant held the position of Mechanic II with the Town prior to his termination. His duties included performing diagnosis, maintenance and repairs on Town vehicles and equipment. Prior to his termination, he worked for the Town for 18 years and 10 months with no prior disciplinary record.

2. Richard Carruba, (Carruba), works for the Town in the position of Highway Parks Operator II. Carruba learned that certain equipment needed repair and reported this to the crew leader and the supervisor. The supervisor advised the Grievant that repair of the equipment was a priority, and that he assumed it was in order. The Grievant grew upset that Carruba had *gone over his head* by going to the supervisor and not directly to him.

3. The following day, October 20, 2023, the Grievant was overheard saying "fucking rats, people throw people under the bus". (Joint Ex. 6). The Grievant noticed Carruba moving tools from one truck to another to perform the hydraulic repairs on equipment at issue. The Grievant approached Carruba and said "I do not want you touching the tools and fucking them up." (Joint Ex. 6). And "I can't have you adjusting hydraulics anymore." (Test. of Grievant). Carruba responded: "I am doing your job" and approached the Grievant within 10 to 12 inches of his face and in an angry "berserk" manner began shouting at the Grievant. (Id.). Spit from Carruba landed on the Grievant's face, lips and chin. The Grievant placed his hand on Carruba's shoulder and pushed him back to gain personal space. The push was not hard enough to cause Carruba to fall. His body had been pushed backward "a little bit", (Town Exhibit 3; Statement of Christopher Cayer an employee who witnessed the exchange). Another witness, Todd Duguay, indicated that the Grievant pushed Carruba "not forcefully". (Joint Ex. 6).

Carruba admitted "his temper was flaring and he stepped close to Paul's (the Grievant's) face and said, "I will knock you out."" (Carruba Statement, Joint Ex. 14). Annette Turnquist, the Director of Public Works and Engineering, testified "Did Rich (Carruba) get heated? Sure."

The Grievant testified that he has contracted Covid three times and that fact in part motivated him to push Carruba out of his face.

The Grievant and Carruba had worked together for the 17 years and they never had any prior animosities toward each other.

4. After investigation, the Town issued Carruba a verbal reprimand. The Grievant was terminated.

5. Heated arguments are common in the Public Works work environment. (Test. of Stephen Pompei, Local Union Pres. and employee of 24 years.)

6. Carruba filed a Complaint with the Southington Police Department. The charges against the Grievant were dismissed. (Test. of Grievant).

7. The Town maintains a "Zero Tolerance for Work Place Violence" policy which states in part: "Conduct that threatens, intimidates or coerces another employee, resident or vendor will not be tolerated. ... Anyone found to be responsible for threats of or actual violence or other conduct that is in violation of these guidelines will be subject to prompt to disciplinary action up to and including termination of employment." (Joint Ex. 8).

8. After the Grievant's termination, he spoke to Carruba on the phone they both regretted the situation. (Test. of Grievant).

Arguments of the Union

The Union argues that the Town failed to appreciate that the fact that the Grievant pushed Carruba because his spit was hitting his face. The Union argues that the Town failed to recognize this and in doing so undermines its burden to demonstrate that the termination was for just cause.

Further, the Union argues that the Town failed to give proper treatment to the fact that Carruba threatened the Grievant with violence in his admitted threat to "knock him out". Yet Carruba only received a verbal reprimand.

The Union further argues that the Grievant's long length of service with no discipline should be a mitigating factor in determining what the appropriate discipline should be in this matter.

Arguments of the Town

The Town argues that it had just caused to support the termination of the Grievant. It cites the Doherty standards and argues that they have been met. It argues that the rule against workplace violent is a reasonable one, a rule that all employees understand a violation of which will result in discipline. The Town further argues that it conducted a fair investigation and that the penalty is commensurate with the actions of the Grievant.

The Town further argues that this Panel should defer to the Town's disciplinary decision. It argues that this Panel should not questioned the Town's judgment unless it is "arbitrary, unreasonable or capricious." (Town Brief at 10). It also cites an arbitration matter which held that "a penalty imposed by management can be rightfully set aside by an arbitrator ... where discrimination, unfairness, or capricious and arbitrary actions are proved - in other words, where there has been abuse of discretion." (Id., citing *City of Weslaco*, 123 LA 1397, 1405 (2007 Jennings).

Discussion

The Town has the burden to demonstrate by a preponderance of the evidence that it had just cause to terminate the grievance employment. It has failed to fulfill this burden.

Arbitrators are creatures of contract. The just cause provision in the collective bargaining agreement before us states in part that all discipline shall be for just cause and that "All disciplinary actions shall be applied in a fair manner and shall not be inconsistent with the infraction for which disciplinary action is being applied."

We find that the termination of the grievant in this matter was excessive for a number of reasons. First, the very nature of the Grievant's actions were not egregious. The push to Carruba was described by all the witnesses as not being forceful at all. The uncontroverted testimony indicates that Carruba stepped up to the Grievant, close to his face, and in an angry threatening manner spoke words which caused spit to land on the Grievant's face. The Grievant quite understandably placed his open hand on Carruba to create some personal

space. The Town's decision to terminate the Grievant is "inconsistent with the infraction", something the language of the agreement forbids.

Second, the policy against violence in the workplace forbids any "threats of or actual violence." Carruba, by his own admission, threatened to knock the Grievant out. For that threat of violence Carruba receives a verbal warning. The Grievant created personal space after Carruba rushed into his face, and for that he is terminated. The glaring disparity between a verbal warning and termination for largely similar conduct, except for the slight push, is simply unfair.

Arbitrators may consider discipline to be excessive "if it is disproportionate to the degree of the offense, if it is out of step with the principles of progressive discipline, if it is punitive rather than corrective, or if mitigating circumstances were ignored". (Elkouri &Elkouri, How Arbitration Works, 6th Ed. at 966 and cases cited therein.)

Third, uncontroverted testimony held that heated arguments are common in the Public Works department. And although management certainly may not condone it, and has a firmly legitimate right to set a tone and a standard which forbids heated arguments, it is appropriate for this Panel to consider the environment of the workplace, *the law of the shop floor*, when determining what disciplinary penalty is just. If behavior occurs on a regular basis, it is reasonably inferred it is acceptable. One arbitrator set aside a termination for insubordination because the employee had been insubordinate in the past without being subject to any discipline, (*Tenneco Packaging Corp*,. 106 La 606 (Franckieewicz, 1996), as cited in Elkouri & Elkouri at 967).

Fourth, the Grievant has close to 19 years as an employee with no disciplinary record. The prior work history of the Grievant is highly relevant in the determination as to what level of discipline is to be considered "just". This factor supports our determination that termination of employment here to be excessive.

Finally, it is worthy of note that the Grievant phoned Carruba and expressed his regret. The lack of even a hint of incorrigibility on the Grievant's part promises a reentry into the workforce will be without issues.

Certainly, the Grievant was angered by the actions of Carruba the day before. The Grievant did demonstrate anger that morning by throwing a chair and uttering profanity about being "ratted out". And, it is reasonable to conclude that the Grievant initiated the argument by directing Carruba to stop moving tools from one truck to another. The Town has a legitimate interest in setting a tone and standard which holds that all violence, however

demonstrated or expressed, is forbidden and will be dealt with seriously. All of the facts of this matter lead us to conclude that termination was excessive and not a reasonable or just result. As a result, we find that the termination shall be rescinded and replaced with a 45 working day suspension without pay.

AWARD

The Town did not have just cause to terminate the Grievant, Paul Malinowski. The termination shall be rescinded and replaced with a 45 working day suspension without pay. He will receive back pay for all other time out of work, minus any unemployment benefits he may have collected.

Case No. 2024-A-0080

By the Panel

/s/ Dennis C. Murphy, Esq.
Dennis C. Murphy, Esq.
Chair and Public Member

/s/ Frank Krzywicki
Frank Krzywicki
Labor Member

/s/ Michael C. Culhane Sr.
Michael C, Culhane Sr.
Management Member