

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

**AWARD**

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In the Matter of : CASE NO. 2023-A-0176  
:  
TOWN OF BLOOMFIELD : Hearing Date: 9/22/23  
:  
AND : Date of Award: February 2, 2024  
:  
UPSEU, LOCAL 424, UNIT 8 : LOCATION OF HEARING:  
: State Board  
: of Mediation and Arbitration  
: 38 Wolcott Hill Road  
: Wethersfield, CT 06109  
:

**APPEARANCES:**

William A. Ryan, Esquire  
Ryan & Ryan, LLC  
900 Chapel Street  
New Haven, CT 06510

Scott Nabel, Esquire  
UPSEU  
130 Research Parkway  
Meriden, CT 06450

For the Town

For the Union

**ISSUE**

Did the Town of Bloomfield have just cause to issue a verbal warning to the Grievant for her sick time usage in January 2023?

If not, what shall be the remedy?

## **FACTS**

The Town of Bloomfield (“Town”) and UPSEU, Local 424-Unit 8 (“Union”) are parties to a Collective Bargaining Agreement (“CBA”) that contains the conditions of employment for the Town’s clerical employees (Jt. Ex. 4). Virginia Monteiro (“Grievant”) has been employed by the Town as a full time Administrative Clerk in the Town’s Assessor’s Office since July 5, 2018.

On November 16, 2020 the Town Manager issued to Grievant a Memorandum addressing concern with Grievant’s attendance record for the period August 27, 2019 – August 26, 2020 (Town Ex. 4). During this time frame Grievant was out of work on twelve occasions for intermittent FMLA. On eleven out of the twelve occasions Grievant’s use of intermittent FMLA was combined with vacation leave, personal leave, non-FMLA sick leave, or occurred continuous to a weekend.

In January 2023, Grievant was out of work on seven different occasions, none being for intermittent FMLA.

The month of January 2023 contained twenty working days and accordingly Grievant was absent thirty-five (35) percent of the work days for that month. On four out of the seven days Grievant did not receive full pay as she had already used all of her accrued sick time, vacation time, and personal time even though it was only halfway through the fiscal year.

Grievant was given an assignment during January of 2023 by the Town Assessor which needed to be finished by February 1, 2023 in order to comply

with State Statutes. Since Grievant was absent during January 2023 for a period of time the Assessor and another employee had to complete the assignment.

On February 9, 2023 Grievant was issued a verbal warning for excessive absenteeism (Jt. Ex. 2). The verbal warning advised that Grievant's unplanned absences created disruption in the work of the Assessor's Office. The verbal warning issued to Grievant can be used in a personnel matter involving Grievant for a period of eighteen (18) months. Verbal warnings are the lowest form of discipline pursuant to Article VI, Section 3 of the CBA.

The arbitration was filed by the Union to the SBMA on April 12, 2023. The hearing before the Panel occurred on September 22, 2023 in person at the SBMA Offices, Wethersfield, Connecticut. The parties appeared, were represented by counsel, presented documentary and testimonial evidence, were afforded the opportunity to examine and cross-examine witnesses, make argument in behalf of their respective positions, and filed post-hearing briefs on or about November 2, 2023.

## **TOWN POSITION**

The Town argues that Grievant received a verbal warning for just cause. According to the Town, it has the managerial right to expect its employees to attend work on a regular and consistent basis. The Town points to the fact that Grievant, during the month of January 2023 was absent from work on seven (7) days out of the twenty (20) working days, all of which were contiguous to a weekend, which equals thirty-five (35) percent of the working days that month. Moreover, on January 24, 25, 30 and 31, Grievant exhausted all of her accrued

sick time, as well as other accrued time off and was not paid for each entire day of absence.

The Town points to the “Employee Handbook for Unionized Employees” which specifically requires employees to be reliable and be punctual in reporting for scheduled work and absenteeism places a burden on other employees (Town Ex. 2, pg. 34). The Town’s witness, Vincente Midodzi (Assessor) testified the verbal warning was issued to provide notice to the Grievant that her excessive absenteeism from work needed to be corrected. The Town further argues that Grievant was issued the lowest possible form of discipline contained in the CBA, i.e. a verbal warning.

The Town argues that the fact that Grievant provided doctors’ notes for her January absences does not insulate her from being issued a verbal warning. Grievant’s first note was from an Obstetrics and Gynecology Physician for her absences on January 6 and 9, 2023; the second and third notes were from an eye physician for her absences on January 23, 23 and 25; and the last note was from a General Internist for absences on January 30 and 31, 2023 (Union Ex. 6).

The Town argues that the verbal warning cannot be used in a personnel matter involving Grievant on or after August 9, 2023,

## **UNION POSITION**

The Union argues the Town has the burden of proof in discipline cases and the burden must be met by the “preponderance of the evidence”. Grievant, according to the Union, has submitted incontrovertible evidence that every single one of her absences in January 2023 was legitimate. The Union urges that for

every one of Grievant's absences she actually sought medical attention, and she provided proof in the form of doctors' notes. The Union also argues that Grievant complied with the Employee Handbook as she provided notice to her supervisor that she would be out of work. This is not a case, according to the Union, where an employee is enjoying paid sick time when it is not needed, as Grievant had three discrete medical maladies in a single month with the consequences of not getting paid on some days where she was medically advised not to work.

The Union asserts the Town had no interest in investigating the circumstances surrounding Grievant's sick time usage. This, according to the Union, is a case of legitimate sick leave use where she sought medical treatment and expressed her willingness to provide the Town with substantiating documentation.

The Union also argues that any burden placed on the Assessor's office workers while Grievant was out on leave was caused by the office being down a full-time position. The Union argues that there were only two instances where workers were disciplined for similar infractions (Union Ex. 2). One employee did not provide medical documentation and did not file a grievance (Union Ex. 3) and the other discipline was for an employee inappropriately using sick leave in conjunction with weekends.

The Union concludes its argument by charging that Grievant was singled out as discipline for this type of offense is extremely rare.

## **RELEVANT CONTRACT LANGUAGE**

### **ARTICLE V-DISCIPLINARY ACTION/PERSONNEL FILES**

#### **Section 1**

No permanent employee shall be subject to disciplinary action, discharge or suspension except for just cause. Disciplinary action may consist of the following: verbal counseling; verbal or written reprimands; withholding of step (increment) from employees not at top (maximum) step only; disciplinary suspension, and termination of employment.

### **ARTICLE XIV-SICK LEAVE, ATTENDANCE, ADDITIONAL LEAVE**

#### **Section 1**

Each full-time employee will be granted fifteen (15) working days per year for sickness. Part-time employees receive pro-rated sick leave based upon the number of regularly scheduled hours of work. If an employee is sick, he/she must call the supervisor, to report the absence. This leave shall accumulate to a maximum of one-hundred-fifty (150) days.

Employees reporting sick time must call within one (1) hours after starting time unless sufficiently limiting circumstances exist, in which case he/she shall report as soon as practicable.

#### **Section 2**

The department head or the Town Manager may require a doctor's certificate stating that the employee has sufficiently recovered from an illness to return to work after five (5) days of absence from work. No employee out for less than five (5) days shall be required to provide a doctor's certificate. A department head or the Town Manager may request a doctor's certificate when the employee's record indicates an abuse of sick time with notice to employee in advance of said request.

### **ARTICLE VI- DISCIPLINARY ACTION/PERSONNEL FILES**

#### **Section 1**

No bargaining unit employee shall be subject to disciplinary action, discharge or suspension except for just cause...

#### **Section 3**

...Progressive discipline shall be applied when appropriate. No employee shall be discharged or suspended without just cause. Disciplinary action normally shall follow in this order:

1. Verbal warning
2. Written warning

3. Suspension without pay
4. Discharge

## **DISCUSSION**

This proceeding involves a bargaining unit members absences from work due to sickness on seven (7) out of twenty (20) working days. The Panel notes that the absences were all contiguous to a weekend. The Panel is also mindful that Grievant exhausted all of her accrued sick time as well as all other accrued time off. Accordingly, while it appears that Grievant had her physicians provide notes explaining her medical condition requiring use of sick time, the fact that the least serious imposition of discipline by the Town (verbal warning) was used, and in view of all the circumstances, the verbal warning was for just cause.

The Town is persuaded that Grievant's many absences during January 2023 caused important disruptions to the efficiency of the Assessor's Office. Other employees needed to complete an important assignment required by State Statute that was assigned to Grievant.

The written warning was appropriate even though Grievant provided medical documentation explaining the reasons for her absences. The verbal warning only advised Grievant that her number of unplanned absences created a significant impact on the work of the Assessor's Office. This minimal discipline (which cannot be used against Grievant after eighteen months) was with just cause. Grievant was put on notice that her absences caused work disruption and was consistent with Management Rights to assure regular work attendance. The Town made an effort to advise Grievant of her work attendance obligations and nothing more.

After a review of the documentary and testimonial evidence in this matter, and by a preponderance of the evidence, the Town had just cause to issue a verbal warning to Grievant for her sick time usage in January 2023.

## **DECISION**

The grievance is denied

/s/ Gerald T. Weiner

Gerald T. Weiner

Public Arbitrator and Chairperson

/s/ Richard A. Podurriel

Richard A. Podurriel

Management Arbitrator

/s/ John B. Toomey, Jr.

John B. Toomey, Jr.

Labor Arbitrator