

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

ARBITRATION AWARD

In the Matter Of:

Case No. 2020-S-0016

STATE OF CONNECTICUT
Department of Correction

OLR No. 08-14168

And

DATE OF AWARD: March 20, 2023

LOCAL 387, COUNCIL 4
AMERICAN FEDERATION OF STATE,
COUNTY and MUNICIPAL EMPLOYEES,
AFL-CIO (NP-4)

Location: 38 Wolcott Hill Road
Wethersfield, CT

Grievant: Dario Nelson

APPEARANCES: Thomas C. Austin, Labor Relations Specialist (For the State)
Stephen Carbone, Service Representative (For the Union)

I. ISSUE: (Agreed to by the Parties)

Did the Department of Correction have just cause to issue a five-day suspension to the Grievant?

If not, what shall be the remedy consistent with the NP-4 contract?

II. BACKGROUND:

The American Federation of State, County and Municipal Employees, Council 4, Local 387 (hereinafter referred to as the "Union") filed a grievance on behalf of its member Dario Nelson (hereinafter referred to as "Mr. Nelson" or the "Grievant"). The Union claimed that the Department of Correction (hereinafter referred to as the "DOC")

suspended Mr. Nelson for five (5) days without just cause in violation of the Collective Bargaining Agreement (hereinafter referred to as the "CBA").

The grievance was denied during the prior steps of the grievance procedure. On November 3, 2022 an arbitration hearing was held at which both parties were provided an opportunity to present evidence, provide testimony and cross examine witnesses.

The parties agreed to filed briefs by December 16. The Panel held an Executive Session on December 22 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:

Mr. Nelson is a Correction Officer with the DOC and had been employed for approximately nine and one-half (9-1/2) years at the time of the incident.

The State called Mr. Nelson as its only witness as to what occurred. The State also introduced its Investigation Summary, Interview Reports and Written Statements of various individuals. No individual testified or was cross examined regarding this information, other than Mr. Nelson, including the Investigator who was the author of the report. It is on this basis that the following information is outlined.

On November 26, 2018, Mr. Nelson was working at Garner CI. He was performing administrative paperwork in the officer's station in Charlie Unit. Mr. Nelson did not have on his body alarm. The body alarm was on the desk in front of Mr. Nelson. Captain Bert

Hughes (hereinafter referred to as "Captain Hughes") toured the Unit and instructed Mr. Nelson to put on his body alarm. Captain Nelson then left the area.

Captain Hughes returned shortly thereafter, and Mr. Nelson had not put on his body alarm. At this point, the versions of the facts diverge. There was another interchange between Captain Hughes and Mr. Nelson in which Mr. Nelson testified and consistently asserted at the time that Captain Hughes' tone was aggressive toward him. Mr. Nelson stated that he was in the process of putting on his body alarm as instructed, but never got a chance to do so. At that point, Mr. Nelson was relieved of his assignment and directed to go to the Captain's office with Captain Hughes.

Mr. Nelson stated that immediately upon entering the office, Captain Hughes told Captain Bona when referring to Mr. Nelson to "get this guy the fuck away from me before I do something to him." This was not corroborated by either of the Captains. Mr. Nelson stated that he felt that Captain Hughes was aggressive toward him in the office and did not respect him.

Captain Hughes and Captain Robert Bona (hereinafter referred to as "Captain Bona") wrote statements outlining what occurred in the Captain's office. The statements were very similar. Both statements indicate that Mr. Nelson was agitated, and his behavior escalated while in the office. Both Captains reported that Mr. Nelson made an offensive remark to Captain Hughes and that his manner was aggressive toward him. At one point Captain Bona stepped between Captain Hughes and Mr. Nelson to defuse the situation.

Captain Bona met with Mr. Nelson in another office immediately following and Mr. Nelson explained that he felt disrespected by Captain Hughes as well as other work incidents that occurred during which he had also felt disrespected by other supervisors and the DOC. Mr. Nelson also disclosed some personal issues that he was dealing with that had increased his emotional state. Mr. Nelson wrote a report as instructed, was released for medical reasons and referred to EAP.

Procedurally, the Panel would note the following. The Grievant received a copy of a memo to Warden Kenneth Butricks that at the predisciplinary conference the Grievant had been found to have violated Administrative Directive 2.17, Sections 4, 7, 15 and 18. (Jt. Ex. 4) The Grievant provided a Mitigation statement to each of these claimed violations which is also part of Joint Exhibit 4. The predisciplinary conference was held by Administrative Captain Carlos Nunez. In addition to those charges, the Investigation found that the Grievant violated Administrative Directive 2.17, Section 21 and Sections B. 1, 25 and 28. Those additional charges were referred to in the Step Three Response.

Based upon the evidence of both Joint Exhibit 4 and the suspension letter, which is part of Joint Exhibit 2, the DOC only charged the Grievant with having violated Administrative Directives 2.17, Sections 4, 7, 15 and 18. The Panel did not consider the other charges that were contained in the Investigation (S Ex.1)

III. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT, REGULATIONS and ADMINISTRATIVE DIRECTIVES

ARTICLE 13

DISMISSAL, SUSPENSION, DEMOTION OR OTHER DISCIPLINE

Section 3. Discipline. No employee who has completed the working test period shall be disciplined or discharged except for just cause. In determining just cause, the regulations of the Blue Book governing disciplinary action as defined above are hereby incorporated by reference.

C.S.A. §§ 5-240-1 "Just cause" means any conduct for which an employee may be suspended, demoted or dismissed and includes, but is not limited to, the following:

1. Conviction of a felony.
2. Conviction of a misdemeanor committed while on duty.
3. Conviction of a misdemeanor committed off duty which could impact upon the performance of job responsibilities.
4. Offensive or abusive conduct toward the public, co-workers, or inmates, patients or clients of State institutions or facilities.
5. Two successive unsatisfactory service ratings, if filed within two years of each other.
6. Fraud or collusion in connection with any examination or appointment in the classified service.
7. Theft, willful neglect or misuse of any state funds, property, equipment, material or supplies.
8. Deliberate violation of any law, state regulation or agency rule.
9. Absence without leave for five or more working days or failure to return to duty within five working days following authorized leave.
10. Use of and/or intoxication from alcohol or illegal drugs while on duty.
11. Neglect of duty, or other employment related misconduct.

12. Insubordination, including but not limited to failure to work overtime if directed to do so.
13. Engaging in any activity which is detrimental to the best interests of the agency or of the state.
14. Conflict of interest within the meaning of C.G.S. Section 5-266 (a)-1 of the Regulations of Connecticut State Agencies.
15. Violation of the prohibitions of C.G.S. Section 5-226 (a).

Administrative Directive 2.17 Employee Conduct

4. – Employee Responsibility. Each employee of the Department shall act in a professional, ethical and responsible manner. Each employee shall become familiar with the tables of organization depicting the Department and Unit chains of command. Each employee shall show respect to any ranking member of the Department and shall obey any lawful order of a supervisor.

5. – Standards of Conduct.

A. Each employee shall:

7. Comply with official notices and roll call and other instructions.
15. Act in a professional manner showing respect to other employees and the public.
18. Maintain appropriate demeanor at all times.

V. DISCUSSION

The Grievant in this case was suspended for five (5) days for basically two things for which he was charged.

(1) He failed to wear his body alarm while on duty and

(2) He failed to act in a professional manner to his supervisor and was disrespectful.

The DOC found those to be violations of Administrative Directive 2.17, Section 4 and subsections 7, 15 and 18 of Section 5.

As noted earlier, the CBA incorporates the Regulations under the Blue Book to define just cause. Although neither the State nor the Union argued the Regulations set forth in Section IV of this Award, just cause for discipline could have been argued to have been found principally under the following sections of C.S.A. §§ 5-240-1:

4. Offensive or abusive conduct toward the public, co-workers, or inmates, patients or clients of State institutions or facilities.

8. Deliberate violation of any law, state regulation or agency rule.

In Mr. Nelson's Mitigation Statement (Jt. Ex. 4), the Grievant admits that he was not wearing his body alarm on November 26, 2018. No real excuse is given other than he was sitting down doing paperwork, it was on the desk in front of him and perhaps it was uncomfortable. None of these are valid reasons as to why he did not comply with a valid DOC Rule designed for his safety and the safety of other employees and inmates. Mr. Nelson's only excuse was that once Captain Hughes told him to put it on, the Grievant was beginning to do so, but did not have a chance to do so by the time Captain Hughes

returned to the office. There was just cause to impose discipline the Grievant for not wearing his body alarm on November 26, 2018.

The Grievant admitted to not maintaining a proper demeanor toward Captain Hughes. The Grievant felt disrespected by Captain Hughes beginning in the officer's station in Charlie Unit. His attitude only got worse once he was relieved of duty and went to the Captain's Office. From the testimony of the Grievant apparently there was some, or perhaps several issues with certain supervisors and the Grievant at Garner Correctional over the years. The Grievant had only recently transferred back into Garner.

John Bishop (hereinafter referred to as "Mr. Bishop") a DOC management official testified at the hearing. According to Mr. Bishop, as a result of a stipulated agreement, not involving the case, the Grievant was transferred from Garner to another correctional facility and has not had any disciplinary issues since he was transferred.

The Grievant disclosed his issues with supervisors at Garner to Captain Bona immediately after the incident with Captain Hughes. His statements were consistent throughout, including his testimony at the hearing; this included the personal family issues that he was dealing with at the time.

Typically, in just cause discipline cases the Panel must first determine if the Grievant engaged in the conduct with which he/she has been charged. As we have admissions in this case, the question then becomes whether the penalty is for "just cause" or more succinctly, is the discipline appropriate based upon all the facts and circumstances.

In determining whether just cause exists, many arbitrators utilize the Seven Elements of Just Cause first outlined by Arbitrator Carol Daugherty in *Enterprise Wire Co.*, 46 LA 359 (1966). Under a traditional view, if any of the questions proffered under the *Daugherty* test is answered in the negative, then just cause does not exist. Today, this formulaic analysis of the Test has been rejected by many arbitrators. The Union argues for the adoption of the traditional application of the *Daugherty* test in its brief.

The Panel is not constrained by the *Daugherty* test and rejects its formulaic application. However, that does not negate the *Daugherty* test as it can be helpful in determining whether just cause exists. The Union addressed the *Daugherty* test in its brief. The *Daugherty* elements are listed below with the Panel's brief response to the questions presented.

Daugherty Elements of Just Cause

1. Was the Worker Given Advance Warning of the Probable Consequences of his Conduct?

Mr. Nelson had nearly ten (10) years of service with the DOC at the time of the incident. He admitted that he should have worn his body alarm and that he should treat fellow employees in a professional manner. Mr. Nelson knew there would be consequences for his failures.

2. Was the Controlling Rule, Order or Standard Reasonably Related to Efficient and Safe Operations?

Body alarms are required to be worn for the safety of all personnel and inmates. The Administrative Directives which Mr. Nelson is charged with having violated are reasonably related to the efficient and safe operation of the DOC.

3. Was the Alleged violation of the Rule or Order fully investigated Before Discipline?

The Panel finds that the incident which occurred on November 26, 2018 was investigate prior to the imposition of disciplinary action.

4. Was the investigation fair and objective?

This is hard to evaluate without any witness presented who were involved in the investigation other than the Grievant.

5. Did the investigation uncover substantial proof of guilt?

Yes.

6. Was the employer's treatment even-handed and non-discriminatory?

No. Based upon the documents presented by the Union, employees that engaged in what appears to have been similar behavior received less discipline.

7. Was the disciplinary action reasonable related to the worker's record and the gravity of the offense?

The Grievant had satisfactory or fully successful service ratings for his entire career. The offenses were serious.

The State was in the unenviable position of having to put on a case that was over four (4) years old. Both Captains Hughes and Bona had retired. It is unknown if the State attempted contact them testify at the arbitration, which can be difficult. It is also unknown whether the investigating Captain is still employed by the State. The State, therefore, made the unusual choice to call the only person at the hearing who was present on November 26, 2018, the Grievant. The State notes in its brief that the Grievant demonstrated a high level of agitation at the hearing which was certainly true. After a break, the Grievant returned and testified without incident.

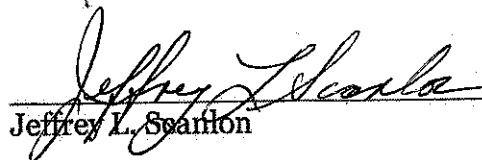
In determining the appropriate amount of discipline, Mr. Bishop testified that he took into consideration a prior Stipulated Agreement, which by its terms, prohibited its use in any way. This, together with disciplinary actions in other similar situations was significant in the opinion of a majority of the Panel.

VI. AWARD

For the reasons set forth herein, the Panel finds that the DOC had just cause to suspend the Grievant Dario Nelson. However, a majority of the Panel finds that the penalty of a five (5) day suspension is too severe. Therefore, the decision of a majority of the Panel is the five (5) day suspension shall be reduced to a one (1) day suspension. Mr. Nelson shall be made whole for four (4) days at the rate in effect at the time of his suspension.

BY THE ARBITRATION PANEL:


Linda J. Yelmini (Public Arbitrator & Chairperson) 1/20/2023


Jeffrey L. Sparlon (Labor Arbitrator)


Michael C. Culhane, Sr (Management Arbitrator)