

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

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IN THE MATTER OF	:	
MDC	:	Case 2022-A-0011
and	:	
AFSCME Council 4 Local 3713	:	

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Hearing Date(s): November 10, 2022  
Hearing Location: Zoom videoconference  
Date of Award: April 12, 2023

**APPEARANCES:**

Attorney Maura A. Mastrony  
Attorney Christopher Henderson  
Littler Mendelson  
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New Haven, CT 06510  
*For Management*

Attorney Anthony Bento  
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*For Union*

ARBITRATION AWARD

This arbitration arises from a dispute between the Metropolitan District (“Employer” or “MDC”) and AFSCME Council 4 Local 3713 (“Union”) regarding a four-day suspension imposed on the Grievant, James Sanchez. A hearing was held on November 10, 2022 via Zoom.

On behalf of Employer, Attorney Mastrony made an opening statement, offered fourteen exhibits which were marked as full exhibits absent objection, and presented four witnesses who were questioned and cross-examined under oath: John Mirtle (“Assistant District Counsel”); Scott Jellison (“CEO”); Jamie Harlow (“HR Director”); and James Sanchez (“Grievant”).

On behalf of the Union, Attorney Bento made an opening statement, offered one exhibit which was marked as a full exhibit absent objection, and presented one witness who was questioned and cross-examined under oath: James Sanchez (“Grievant”).

The parties waived oral closing arguments in favor of written briefs which were submitted simultaneously on January 6, 2023.

**ISSUES**

Did the Employer violate the just cause standards set forth in Section 17.5 of the Collective Bargaining Agreement when it suspended Grievant for four days on May 18, 2021? If so, what shall the remedy be?

**RELEVANT FACTS**

1. The Employer and Union entered into a Collective Bargaining Agreement (“CBA”) for the period January 1, 2019 to December 31, 2022 (Exh. E-1)

2. Employer provides water and sewer services to eight member towns, including the City of Hartford. (Testimony of CEO, Assistant District Counsel)
3. Grievant was employed by Employer beginning in 2000. In 2016, Grievant was elected to the Hartford City Council. Food-to-energy technology was of interest to Grievant in his capacity as Hartford City Council member. (Testimony of Grievant)
4. Effective April 3, 2016, Grievant was temporarily reassigned from his position as Utility Systems Monitoring Tech to the position of Community Affairs Assistant reporting to Assistant District Counsel. Grievant held this temporary position until May 30, 2021. (Exh. E-2, E-3, E-4, E-6, E-9; Testimony of Grievant, Assistant District Counsel)
5. The Community Affairs Assistant “performs public relations and community affairs work for the purpose of promoting awareness of, interest in, and support for [Employer] programs and services.” In that role, Grievant received assignments primarily from the Communications Department and from his supervisor and engineers. (Exh. E-5; Testimony of Assistant District Counsel, Grievant)
6. The intent for moving Grievant to the temporary role of Community Affairs Assistant was to utilize Grievant’s familiarity with the Hartford community because of his Hartford City Council role to do outreach on various construction and other projects and to assist Employer with easements and various projects. This dual role was seen as valuable to Employer as there is some intersection of interests between Hartford and Employer. It also allowed Grievant flexibility to be responsive to his Hartford constituents during the workday if something came up. (Testimony of Assistant District Counsel)
7. Grievant was required to work 40 hours per week for Employer and to “specifically detail any work that is not [Employer] work during any day” by marking his calendar with “COH” if he performed any Hartford City Council business during the workday. Grievant “will be paid only for authorized [Employer] work” and was required to either use paid time off or make up the time in the same workweek if he performed Hartford City Council business on Employer time during the workweek. (Exh. E-2, E-3; Testimony of Assistant District Counsel, Grievant)
8. Grievant utilized Outlook Calendar on his laptop. His calendar is shared with and viewable by his supervisor, Assistant District Counsel, who reviews Grievant’s calendar weekly to make sure his timesheet matches before approving it. (Testimony of Assistant District Counsel, Grievant)
9. In 2019, Employer created a committee to develop additional revenue sources outside of existing water and sewer services. The committee investigated organic and food waste opportunities. In summer 2019, committee members and some MDC Commissioners toured the Quantum facility in Southington and subsequently decided that it was not in Employer’s interest to engage in food waste technology. (Testimony of CEO)
10. Grievant’s March 22, 2021 calendar includes the following entry: “12:30pm – 2:30pm Meeting/Tour Quantum Facility/Bio-Power/Southington.” (Exh. E-7; Testimony of Grievant, Assistant District Counsel)
11. On March 22, 2021, Grievant travelled to the Southington facility in an Employer vehicle driven by Clarence Corbin, an Employer engineering employee (“Engineering Employee”). The trip, including travel and tour, took two hours. Grievant did not mark COH in his Outlook calendar for that trip. (Exh. E-7, E-9; Testimony of Grievant, Assistant District Counsel)

12. Upon arriving at the Southington facility, Engineering Employee phoned his supervisor to inform him that he was touring the facility with Grievant. The supervisor was upset because Engineering Employee was not authorized to make the trip. (Testimony of Grievant, HR Director)
13. Assistant District Counsel approved Grievant's timesheet for that week. He is not aware of every assignment given to Grievant and had no reason to question the entry at that time. (Testimony of Assistant District Counsel)
14. Engineering Employee's supervisor notified HR Director of the unauthorized trip to the Southington facility. HR Director gathered information and scheduled a disciplinary hearing. During the investigation, HR Director learned that Grievant was not authorized to go to the Southington facility on Employer time. (Testimony of HR Director)
15. When Grievant learned that HR Director was looking into his tour of the Southington facility, he asked Assistant District Counsel if he could change his timesheet to reclass that two hours to vacation time. Assistant District Counsel said that he could not change it because it was under investigation. It is possible to make timesheet modifications after processing. (Testimony of Grievant, Assistant District Counsel, HR Director)
16. On May 10, 2021, HR Director sent Grievant notice of a disciplinary hearing scheduled for May 11, 2021 "to review unauthorized off-site activities that were reported as regular working time." (Exh. E-8; Testimony of HR Director)
17. HR Director and Chris Stone, District Counsel, met with Grievant during the disciplinary meeting. Grievant waived his right to Union representation at the disciplinary meeting. (Exh. E-10; Testimony of HR Director)
18. HR Director reviewed information gathered from the investigation and looked at other situations to determine the level of discipline. She determined that a four-day suspension was warranted based on the sensitivity of Grievant's role and the privilege that is granted to him and not to others. (Testimony of HR Director)
19. On May 14, 2021, HR Director notified Grievant that his "misuse of [Employer] time and equipment in activities that were not assigned or authorized coupled with the submission of inaccurate time records resulted in serious violations of [Employer] policy and procedures" and that he is issued a four-day suspension without pay. The suspension notice stated that his presence at the Stone Street Hartford worksite was within his work role and is not a component of this discipline. (Exh. E-11; Testimony of HR Director)
20. Engineering Employee was issued a four-day suspension without pay for unauthorized visits to the Southington facility and the Stone Street Hartford worksite in March 2019. (Testimony of HR Director)
21. On May 17, 2021, Grievant and the Union Steward filed a grievance seeking to have the suspension removed from Grievant's record and make Grievant and the Union whole. (Exh. E-12)
22. A Step III Grievance Hearing was held on June 15, 2021. On June 18, 2021, the Grievance was denied on the basis that the discipline was consistent with similar infractions and was issued with just cause. (Exh. E-13, E-14)

#### RELEVANT CONTRACT LANGUAGE

##### Article 17 Miscellaneous

17.5 Disciplinary action shall be for just cause, shall be applied in a fair manner and shall be consistent with the infraction for which the disciplinary action is being applied.

Except for exceptional circumstances (example: absence without authorization), the District should it decide to "suspend an employee pending further action" shall continue the employee's pay until the matter is determined or disposed of at a disciplinary hearing.

The service record of any employee disciplined under the provisions of this Article shall be cleared one (1) year from the date of disciplinary action for all verbal and written actions and three (3) years for suspension.

Disciplinary action shall normally be preceded by an oral warning and shall normally follow the order of: written warning or reprimand; a suspension for a time period not to exceed fifteen (15) days; and a discharge.

Verbal warnings cannot be processed beyond Step II under Section 18.4.

The Union President will be notified of disciplinary action taken with regard to written warnings, suspensions and discharge.

An unauthorized absence of five (5) consecutive days, without extraordinary confirmed circumstances which prevented the employee from reporting and/or calling to report absences, shall be grounds for immediate discharge.

#### Article 18 – Grievance Procedure and Arbitration

18.1 Definition - The purpose of this grievance procedure is to provide for the settlement of work related to problems at as low an administration level as possible. The District will encourage supervisors to attempt to resolve grievances with the employee(s) involved and the Union will encourage employees to attempt to resolve grievances with their immediate supervisors. Any unresolved dispute between an employee and/or the Union and the District involving the interpretation or application of the terms of this agreement shall be processed in accordance with the following procedure. The grievance may be discussed informally with the immediate supervisor by the grievant and/or the steward to see if the matter can be resolved.

18.2 Step I - If not resolved, the grievance shall be submitted by the employee(s) and/or job steward to the employee(s) supervisor within ten (10) days of the event giving rise to the grievance. The grievance shall be in writing on the appropriate form (Appendix B) setting forth the issue(s) involved, the section(s) of the contract in question and the Union's recommendation toward the resolve of the issue. If more than one (1) employee has signed the grievance, or more than one (1) grievance has been submitted over the same issue, one (1) employee among the aggrieved shall represent the aggrieved. The supervisor shall meet with the aggrieved and/or local steward in an effort to resolve the issue. This meeting shall take place no more than ten (10) days after receipt of the grievance. The meeting will be informal and will require a written decision.

18.3 Step II - If the grievance is not resolved at Step I it may be forwarded to the Function Head within five (5) days of the meeting in Step I. Within five (5) days of receipt of the grievance, the Function Head will meet with the aggrieved employee and/or the local steward to discuss, and if possible, resolve the issue. If the grievance is not resolved in this Step, it shall be advanced to Step III immediately.

18.4 Step III - If the grievance is not resolved in Step II and the Union or the employee wish to process the grievance to Step III, the grievance will be forwarded to the Director of Human Resources within ten (10) days of the receipt of the answer in Step II. The grievance shall be accompanied by a statement of position of the Union and/or employee. If, in the judgment of the District, a hearing is to be held, a date will be scheduled within thirty (30) days of the receipt of the grievance and announced to the Union and the employee within ten (10)

days of the receipt of the grievance at Step III. If a hearing is held, the Director of Human Resources or his designee, the aggrieved, and a representative from Council 4, AFSCME, will be scheduled to attend. The Union President and the employee will be allowed paid time off for the hearing.

The District's decision to the grievance will be rendered within fifteen (15) days of the receipt of the grievance or the hearing whichever occurs later.

18.5 Step IV - If the District's decision is not acceptable, only the Union may elect to seek mediation of the grievance before the Connecticut State Board of Mediation and Arbitration. The Union's request for mediation shall be in writing and must be filed with the State Board not later than twenty (20) days following the receipt of the District's answer in Step III. The Union will advise the Director of Human Resources, in writing, of their submission of the grievance to mediation at the time of the filing.

Only one (1) grievance shall be heard at each daily mediation session. A second session may be scheduled over the same grievance with the mutual consent of the parties. The Union President or his designee will be provided with paid time off to attend mediation sessions.

18.6 Step V - If the grievance is not resolved through mediation or the Union elects to file it directly to arbitration, the Union only may seek arbitration of the grievance before the State Board. The Union's request for arbitration shall be in writing, and must be filed within twenty (20) days of the mediation hearing or within twenty (20) days of the receipt of the District's answer in Step III if no mediation is requested.

18.7 In the event arbitration takes place the decision of the arbitrators shall be final and binding on all parties provided by law. The arbitrators shall be bound by, and must apply all the terms of the agreement, and shall have no power to add to, or subtract from, or otherwise modify the provisions of this agreement. Arbitrator shall decide only one grievance.

18.8 Each party shall bear their own expenses for arbitration. The Union President or his designee may be provided paid time off to attend arbitration sessions at the discretion of the Director of Human Resources.

18.9 Any time limits specified in this procedure, except for the initial filing of the grievance, may be extended by mutual agreement of the Union and the Director of Human Resources or his/her designee.

18.10 If a grievance is not submitted by the Union to a higher step in the above procedure, it shall be deemed settled on the basis of the District's answer in the step last considered.

18.11 Limited to discharge Grievances, within sixty (60) days of the date the State Board of Mediation and Arbitration has designated a case number, either party may transfer the Grievance issue to the American Arbitration Association (AAA) with the moving party responsible for all of the AAA costs. The Grievance shall be referred to one of the following Arbitrators on a rotational basis, including: Mr. Gerald T. Weiner, Esquire; Mr. M. Jackson Weber, Esquire; or, Mr. Joseph Celentano, Esquire. If transferred to AAA, the single Labor Arbitration Rules and Procedures of AAA will be followed.

#### Article 19 – District Rights and Responsibilities

19.1 Unless expressly limited by a specific section of this agreement the rights, authority, powers and responsibilities of the District, as conferred by any general or special of the Legislature or any District ordinance or regulation, including but not limited to all control and direction over employees of the District as well as the complete operational management of all

facilities, policies, and procedures used, shall remain vested solely and exclusively in the District.

19.2 The District shall retain the full and exclusive right to determine standards of quality, schedules of operations, classifications of jobs, the assignment of work and methods, processes and levels of productivity, to introduce new or improved production methods, facilities, services or products and to extend, limit or curtail the operations of facilities or the number of employees, unless expressly limited by specific terms of this agreement.

19.3 Notwithstanding the foregoing paragraph, it is recognized by the parties that matters pertinent to wages, hours and conditions of employment are negotiable under the terms of the Municipal Employee Relations Act and such rights are neither waived nor diminished by the foregoing language.

#### EMPLOYER POSITION

The Employer argues that, as Community Affairs Assistant, Grievant was permitted flexibility to perform non-Employer work in his Hartford City Council role if he made up the time or took PTO for that time; Grievant was required to report time for City Council work on his Outlook calendar as "COH"; Grievant took an unauthorized trip to Southington that was recorded and paid as Employer time; HR conducted an investigation that included meeting with Grievant and resulted in a finding that Grievant violated Employer policy and procedure relating to falsification of records; Grievant was suspended for four days as a result of the violation; and Grievant's suspension was in line with other employee suspensions for similar conduct.

Employer states: "Based on the falsification of a business record and the misuse of District time and equipment in traveling to the Southington plant in a District vehicle, the District suspended the grievant for four days. The District asserts it had just cause to suspend the grievant for four days because of his egregious violation of District policies and procedures and that the suspension was commensurate with the offense, further supporting the District's disciplinary action."

#### UNION POSITION

The Union argues that Grievant is a 22-year employee of Employer with an impeccable record; Grievant is a Hartford City Council member and Hartford is a member town of MDC; there is overlap in work that is Hartford and MDC-related; food-to-energy was an area of interest to Employer; Grievant reached out to see if such technology would benefit Employer and Hartford; Grievant put the Southington facility visit in his calendar that is shared with his supervisor; Grievant did not falsify his record or act with malice; Grievant was a passenger in an Employer vehicle when he went to the Southington facility; Grievant asked to change the time for the tour from work to vacation time; Employer suspended Grievant instead of allowing him to take his personal time; Grievant was forthcoming on everything; discipline should be corrective not punitive; and the Employer violated the CBA when they suspended Grievant for four days without just cause.

#### DISCUSSION

The Employer argues, and Grievant concedes, that Grievant was not authorized to visit the Southington facility on behalf of Employer. Grievant's testimony supports a finding that his interest in the Southington facility was due to his concerns for Hartford constituents. The record is clear that if Grievant visited the facility in his role as City Council member within the terms of

flexibility granted to him by Employer, he should have marked "COH" in his calendar and made up the time within the same work week or used accrued personal time to cover the two hours. Grievant neither sought authorization to make the visit as part of his work duties nor accounted for the time as COH. Credible testimony from Grievant and his supervisor indicates that Grievant was aware of the importance of accurately tracking time devoted to his Hartford City Council duties. This evidence supports a finding that the Employer had just cause to suspend Grievant for his violation.

In defending the length of suspension, HR Director testified that other employees who stole time or falsified records have received up to 15-day suspensions depending on the severity of the offense. There is no evidence in the record as to the length of service, disciplinary record, or nature or severity of the offenses of other employees in relation to the length of those suspensions.

HR Director's letter to Grievant states that he is suspended for four days for "misuse of [Employer] time and equipment in activities that were not assigned or authorized coupled with the submission of inaccurate time records." There is no evidence that Grievant misused company equipment.

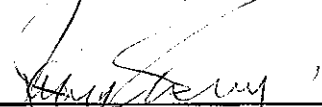
Trust and honesty are important components of the employer-employee relationship. In submitting inaccurate time records, Grievant violated the trust, privilege, and flexibility placed in him by Employer. Such violation warrants a two-day suspension for Grievant, a 22-year employee with no previous disciplinary record.

#### AWARD

The Employer violated the just cause standards set forth in Section 17.5 of the Collective Bargaining Agreement when it suspended Grievant, James Sanchez, for four days on May 18, 2021. For the reasons stated in the Discussion, the Arbitration Panel finds that the Metropolitan District did have just cause to suspend the Grievant for two days and, accordingly, the four-day suspension imposed shall be reduced to a two-day suspension. Grievant shall be made whole for any lost wages and benefits consistent with this Award.



Janis G. Jerman, Chair and Neutral



James Neary, Labor Member



Richard A. Podurgiel, Management Member