

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

ARBITRATION AWARD

In the Matter of:	:	Case No. 2021-A-0292
City of Stamford	:	Date of Award: March 25, 2022
And	:	Hearing Date: December 13, 2021
The Stamford Professional Fire Fighters Association, Local #786 of the International Association of Fire Fighters	:	Hearing Location:
Grievant: Steven Klee	:	38 Wolcott Hill Road Wethersfield, CT

APPEARANCES: Gabriel J. Jiran, Attorney at Law (For the City)
Michael E. Passero, Attorney at Law (For the Union)

I. ISSUE (Agreed to by the Parties)

Did the City of Stamford have just cause to revoke five days of vacation from the Grievant, Steven Klee?

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

II. PROCEDURAL BACKGROUND

The Stamford Professional Fire Fighters Association, Local #786 of the International Association of Fire Fighters (the "Union") filed a grievance asserting that the City of Stamford (the "City") did not have just cause when it revoked five (5) days of vacation from the Steven Klee ("Mr. Klee" or the "Grievant").

The grievance was not resolved and was appealed to arbitration. An arbitration hearing was held on December 13, 2021. Exhibits were provided to the Panel, which were admitted into evidence. Both parties were provided an opportunity to offer testimony and cross-examine witnesses at the hearing.

The City and the Union both filed post hearing briefs on January 31, 2022. The parties each filed a reply brief on February 14, 2022. The Panel held an Executive Session via ZOOM on February 24, 2022.

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

III. FACTS

There are few, if any, disputed facts in this case. Mr. Klee has been employed by the City since 2004. At the time of the incident, he was a Lieutenant with the Fire Department, having been promoted in 2017. All of Mr. Klee's employment has been in the Fire Department.

On September 23, 2020, Mr. Klee was the lead officer on Engine 9. Dispatch received a communication that a power line was down near a residence and in contact with a tree. The location of the "wire down" call was in the Long Ridge district of the City. At the same time, two (2) engines were dispatched from the Long Ridge Volunteer Fire Department. Almost immediately, Mr. Klee reported Engine 9 was remaining "in quarters" - not responding to the call.

When a volunteer unit is dispatched, a career Fire Department unit is almost always dispatched with it. The reason for this is that as a volunteer unit is staffed by volunteers, the Department does not know if there is staff available to respond to the call at the time the call comes in. Long Ridge is a Volunteer Unit and Engine 9 is a Career Unit.

The time of the call was approximately 5:45 pm and the shift was over at 6:00 pm. Mr. Klee was scheduled to work at another location for the Department.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Joint Ex. 1) -

PLEASE NOTE - JOINT EXHIBIT 1 ONLY CONTAINED EVEN NUMBERED PAGES. THEREFORE, THE PANEL RELIED ON THE UNION'S BRIEF FOR THE LANGUAGE OF THE CONTRACT THAT WAS MISSING FROM JOINT EXHIBIT 1

ARTICLE IV
DISCIPLINARY ACTION

1. No permanent employee shall be removed, dismissed, discharged, suspended, fined, reduced in rank or disciplined in any other manner except for just cause.

ARTICLE XIII
VACATIONS

1. Employees covered by this Agreement shall be entitled to vacations as follows:

- (a) Employees with less than one (1) year of service shall be entitled to one (1) shift per month, up to a maximum of ten (10) shifts, for each month they are employed if they are employed prior to December 31 of the year.

Any employee who shall have completed one (1) year of service but less than four (4) years of service shall be entitled to ten (10) duty shifts of vacation leave.

Any employee who has completed four (4) years of service but less than ten (10) years of service shall be entitled to fifteen (15) duty shifts of vacation leave.

Any employee who has completed ten (10) years of service but less than twenty (20) years of service shall be entitled to twenty (20) duty shifts of vacation leave.

Any employee who shall have completed twenty (20) years of service shall be entitled to twenty-five (25) duty shifts of vacation leave.

- (b) Employees may select vacations in multiples of two (2) consecutive shifts and maximum of ten (10) consecutive shifts [five (5) tours]

which shall be called vacation. Employees may select vacation leave as single shifts which shall be called special leaves, however, it is understood by the parties that single special leave shifts will have no seniority preference.

- (c) Each employee who does not regularly perform fire fighting or dispatching duties shall receive one (1) shift of vacation in each calendar year following his/her (9th) anniversary. Two (2) in each calendar year following the thirteenth (13th) anniversary, three (3) in each year following the seventeenth (17th) anniversary, and a total of twenty-five (25) shifts of vacation leave in each calendar year following his/her twentieth (20th) anniversary as set forth in subdivision (a) above.

2. Present vacation policies and procedures and shall remain in effect except as provided for below:

- (a) Officers-in-Charge of all Companies shall prepare and submit vacation schedules to the Chief by January 31 of that year.

- (b) The vacation period shall be from the first day in January to the last day in December of each year.

- (c) The following shall be used as a guide to officers in preparing vacation schedules:

- i. Rank (Captain to Lieutenant), then seniority in the group at each fire station shall be the basis for determining preference of vacation weeks, provided that no employee may select more than ten (10) consecutive working shifts of vacation have selected ten (10) consecutive duty shifts of vacation or have waived their right to do so, or if any employees who are entitled to only ten(10) shifts of vacation elect to divide their vacation, then until such employees who have made such election have selected their first vacation period or have waived their right to do so. Notwithstanding the foregoing, assignment of vacations for employees who do not regularly perform fire fighting or dispatching duties shall be in accordance with past practice.

- ii. Exclusive of the Deputy Chiefs and Dispatchers, one (1) member in each group may be allowed vacations simultaneously in fire stations with two (2) or less front line manned apparatus, two (2) members in fire stations with three (3) front line manned apparatus and three (3) members in fire stations with more than ~~six~~ three (3) front line manned apparatus.
 - iii. If a Company has an open vacation period and an employee of such Company desires a change from his scheduled vacation period, same may be accomplished by an appropriate request to a Deputy Chief, giving both the original and the new inclusive dates. Such requests shall not be unreasonably refused.
 - iv. Vacation schedules shall be reviewed by the Chief, and no schedule shall be effective until a copy, approved by the Chief, is returned to the Company or Division concerned.
 - v. Any employee asked to take a vacation in any year prior to the anniversary date of his employment, for the convenience of the Department, shall be deemed to have passed his anniversary date in that year for the purposes of computing the amount of his vacation.
 - vi. Vacation leave which is selected as individual vacation shifts shall be considered to be special leave shifts, provided that the employee gives reasonable advanced notice of his intention to so utilize said shifts. Such shifts shall be controlled and administered in the same manner as provided for in Section 2 and 3(a) of Article IX of this agreement, but Section 3(d) of Article IX shall not be applicable thereto.
3. (a) Telephone requests for changes in vacation periods will not be approved. All requests for a change shall be submitted and shall be forwarded so as to reach a Deputy Chief no less than one (1) week prior to the first day of requested change.
- (b) The respective officer shall state on the form that such change, if approved, will not interfere with the operation of his Company.

4. Vacation carryover shall be limited as follows:

(a) Effective January 1, 1998, and continuing each year thereafter, employees currently having an accumulation at or over seventy-five (75) shifts will not be eligible to carry over any additional vacation.

(b) Effective January 1, 2000, and continuing each year thereafter, employees below seventy-five (75) shifts are eligible to bank vacation shifts up to the maximum of seventy-five (75).

5. An employee on Workers' Compensation leave for six (6) or more months in any fiscal year may carryover vacation in excess of the maximum. However, the employee cannot carryover more than the maximum in the following fiscal year. An employee experiencing an unforeseen hardship beyond his/her control, may be permitted to carryover vacation leave in excess of the maximum, with the permission of the Chief. However, the employee cannot carryover more than the maximum the following calendar year.

6. No employee shall be allowed to schedule vacation or special leave that exceeds the amount of his/her yearly allotment on the company commander's desk calendar.

V. DISCUSSION

While the Union strongly argued that there was no just cause to discipline the Grievant, the Panel unanimously disagrees. There can be no more fundamental responsibility of a firefighter than to protect lives and property. The Union argues that there was a standard practice of taking engines out of service. Engines are taken out of service for repairs, maintenance, injury or similar reasons. They are not taken out of service without authority and based upon the desire of a Lieutenant to "save" the Department the cost of overtime.

On September 23, 2020, Mr. Klee, without authority and without notifying anyone in authority, just decided not to respond to a call for help. He offered a few excuses: (1) he wanted to save the Department the cost of overtime and (2) the volunteer fire department could handle the call. None of those excuses can forgive his lack of response to a potentially dangerous and life-threatening event. The fact that, thankfully, nothing terrible resulted from Mr. Klee's failure, does not change the fact that what he did was wrong. In the end, even Mr. Klee admitted that he should have responded to the call and he would not make this kind of "mistake" again.

It should be noted that most, if not all, of the Panel members would agree that the City could have imposed a much more severe disciplinary penalty on the Grievant than it did. However, that is not the question before this Panel. The question in this case is whether the penalty of revoking five (5) days of vacation from the Grievant was for just cause.

On at least one occasion, the City revoked fifteen (15) days of vacation from a firefighter under this contract. The discipline was upheld by an arbitrator as constituting

just cause. The discipline of revoking vacation days was not contested by the Union in that case. The Union objected to the admission of the prior arbitration award. (City Ex. 1) In its brief, the City argues that it has revoked vacation days on numerous occasions as a form of discipline, while the Union argues that the City has only introduced this one incident.

As stated in *Elkouri & Elkouri*, "Any well-reasoned and well-written prior arbitration opinion has persuasive qualities where it is 'on point' with the subject matter of a current grievance; however, to be given preclusive effect it must be between the same parties, must invoke the same fact situation, must pertain to the same contractual provisions, must be supported by the same evidence, and must concern an interpretation of the specific agreement before the arbitrator." [Ch. 11.2.A.] Here, Arbitrator Celeniano's opinion is certainly well-reasoned and well-written and involves the same parties, however, it does not deal directly with the question before this Panel as it was not posed to him directly.

Vacation and vacation pay are both benefits provided for rest and relaxation and also a part of an employee's total economic benefit package. Accumulated vacation pay is a form of deferred earnings to which an employee is entitled. There is nothing in this contract which limits the ability of the City to substitute the taking of accrued vacation in lieu of imposing a suspension as discipline. Section 1 of Article IV of the collective bargaining agreement permits the City to discipline employees for just cause. It specifically states that no permanent employee shall be removed, dismissed, discharged, suspended, fined, reduced in rank or **disciplined in any other** manner except for just cause [Emphasis added]

A majority of the Panel finds that "disciplined in any other manner" includes the "revoking of vacation days". As such, the taking of vacation days is equivalent of taking of pay or suspension and represents just cause.

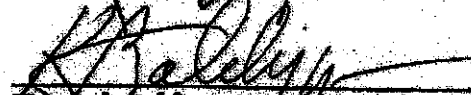
The offense the Grievant committed was serious. The Union argues that Mr. Klee should be given a much lower form of discipline. Additionally, the Union argues the City does not have the authority to revoke five (5) days of vacation for the serious lack of judgment exhibited by the Grievant. The majority of the Panel respectfully disagrees.


VI. AWARD

For the reasons set forth herein, the majority of the Panel finds that the City had just cause to revoke five (5) days of vacation from the Grievant.

BY THE ARBITRATION PANEL:


Linda J. Yelmini (Public Arbitrator & Chairperson)


Kenneth Baldyga (Management Arbitrator)


Kevin Murphy (Labor Arbitrator)