

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

ARBITRATION AWARD

In the Matter Of:

Case No. 2018-A-0195

CITY OF BRIDGEPORT

DATE OF AWARD: January 6, 2023

And

Hearing Dates: April 25, 2019, July 10,
2019 and October 5, 2022

AFSCME COUNCIL 4, LOCAL 1159

Location of Hearings:
38 Wolcott Hill Road
Wethersfield, CT

Grievant: Jamie Jarrett

APPEARANCES: Robert J. Murray, Attorney at Law (For the City)
Christopher J. Sugar, Attorney at Law (For the Union)

I. ISSUE: (Agreed to by the Parties)

Whether the City of Bridgeport had just cause on February 1, 2018 to suspend Officer Jamie Jarrett for two (2) days without pay?

And if not, what shall the remedy be?

II. BACKGROUND:

The American Federation of State, County and Municipal Employees, Council 4, Local 1159 (hereinafter referred to as the "Union") filed a grievance on behalf of its member Officer Jamie Jarrett (hereinafter referred to as "Officer Jarrett" or the "Grievant"). The Union claimed that the City of Bridgeport (hereinafter referred to as the

"City") suspended Officer Jarrett for two (2) 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 April 25, 2019, July 10, 2019 and October 5, 2022, arbitration hearings were held. At the October 5, 2022 hearing both parties were provided an opportunity to present evidence and testimony.

The parties agreed to file briefs by November 10, which date was extended to November 30 at their request. The Panel received the parties' briefs. The parties reserved the right to file Reply briefs but notified the Panel that they waived their right to do so. The Panel held an Executive Session on December 7, 2022 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:

Officer Jarrett had been employed by the City for approximately seven (7) years at the time of the incident and held the rank of Patrol Officer. At some time between July 2017 (the time of the incident) and the date of the hearing, the Grievant was promoted to the rank of Sergeant in the Bridgeport Police Department. The Grievant presently has twelve (12) years of service.

On July 12-13, 2017, the Grievant was working an overtime shift. The hours of the shift were 11:00 pm on July 12 until 7:00 am on July 13.

According to the various records the City presented as part of the IA Report (Jt. Ex. 4), Officer Jarrett responded to a call at 11:51 pm on July 12 to assist medical personnel with an individual having a mental health issue. The Grievant arrived at 11:55 pm and she reported that she left the scene at 1:40 am. However, according to the surveillance tape reviewed by the Investigators, the Grievant's police vehicle entered the Bridgeport Fire Department Headquarters' parking lot at 12:09 a.m. (Jt. Ex. 4, p. 4). The Grievant's vehicle remained in the parking lot of the Bridgeport Fire Department Headquarters from 12:09 a.m. until 4:50 a.m. (Jt. Ex. 4, p.5)

There were three (3) dispatch calls in the Grievant's patrol area listed in the IA Report (Jt. Ex. 4, p.4)– two of which were listed as priority one, from 1:10 am to 1:28 am.

The Grievant responded to a call which was received at 5:44 am. The Grievant arrived at the location approximately two (2) minutes later and left the scene at 6:38 am.

III. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT and DEPARTMENT RULES AND REGULATIONS

ARTICLE 11

DISCIPLINARY ACTION

Section 11.1 – No permanent employee shall be removed, dismissed, discharged, suspended, fined, reduced in rank or otherwise disciplined except for just cause.

Section 11.7 – If an officer is disciplined under Sections 2 or 3 and the employee and Union both feel that the action was without just cause, the Union may, no later than ten (10) days after receipt by the Union of the written decision, submit said dispute to arbitration before the Connecticut Board of Mediation and Arbitration for Discipline other than (sic) terminations or the American Arbitration Association for involving termination Discipline. The arbitrator shall hear the dispute and render a decision that shall be final and binding on all parties. The arbitrator shall have the power to uphold the action of the City or to rescind or modify such action, and such power shall include, but shall not be limited to the right to reinstate a suspended or discharged employee with full back pay. The City shall pay all costs of the arbitrator and the American Arbitration Association.

1.3.4 – KNOWLEDGE OF DEPARTMENT RULES AND REGULATIONS

1) Members of the Department shall familiarize themselves with these rules and regulations and each member shall conform to and abide by the same.

2) These rules are a basis for action and are not meant to be all-inclusive. No member of the Department will be excused from action in accordance with sound judgment merely because a situation is not covered by a rule.

1.3.5 – VIOLATION OF RULES

Officers shall not commit any acts that constitute a violation of the rules, regulations, directives, or other orders of the Department whether or not stated in this manual. Rules, regulations, directives, or other orders shall be posted at Area Commands, in bureaus and divisions, as well as other departmental areas that are deemed appropriate.

Any superior officer of the Department who observes any subordinate violating any rule or regulation and fails to take proper corrective action, shall be in violation of these rules.

1.3.6 CONFORMANCE TO RULES/REGULATIONS

All members of the Department shall be subject to and shall obey all rules and regulations, orders, instructions or requirements, whether mentioned in regard to a specific assignment or rank, or in the General Regulations, or emanating from a competent authority from time to time, insofar as may be applicable.

1.3.3.7 PATROL OFFICER

Patrol officers are responsible for enforcing the law and investigating complaints in their assigned area of patrol. They are also responsible for any other proper investigation or assignment as ordered by their supervising officer, officer in charge, or commanding officer. Patrol Officers render police services as needed.

1.3.12 INCOMPETENCE

An officer shall maintain competency to perform his duty and to assume the responsibility of his position. Incompetence may be deemed by demonstrating the following, but is not limited to:

- 2) An unwillingness or inability to perform assigned tasks.
- 3) A failure to conform to work standards established for the officer's rank, grade or position.

1.1.7.1 PRIMARY RESPONSIBILITIES OF A POLICE OFFICER

A police officer acts as an official representative of government who is required and trusted to work within the law. The officer's powers and duties are conferred by statute. The fundamental duties of a police officer include serving the community; safeguarding lives and property; protecting the innocent, keeping the peace, and ensuring the rights of all to liberty, equality and justice.

V. DISCUSSION

Not unlike most other collective bargaining agreements, this collective bargaining agreement does not define "just cause". Quoting from a prior arbitration award: (City of Bridgeport and AFSCME Council 4, Local 1159, Case No. 2020-A-0208) "Just cause is typically defined as: 'A reason that is legally acceptable or sufficient' and whether the employer was guided by reasonableness and fairness. In its simplest form, there must be satisfactory proof that the employee engaged in the act upon which the discipline is based. For example, if the proof is insufficient that the employee committed a violation, discipline cannot stand. If the evidence is sufficient to demonstrate that the employee is 'guilty' of the conduct alleged, then the next question, generally speaking, relates to whether the penalty is for just cause."

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 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:

Daughtery Elements of Just Cause

1. Was the Worker Given Advance Warning of the Probable Consequences of her Conduct?
2. Was the Controlling Rule, Order or Standard Reasonably Related to Efficient and Safe Operations?
3. Was the Alleged violation of the Rule or Order fully investigated Before Discipline?
4. Was the investigation fair and objective?
5. Did the investigation uncover substantial proof of guilt?
6. Was the employer's treatment even-handed and non-discriminatory?
7. Was the disciplinary action reasonable related to the worker's record and the gravity of the offense?

Due to the passage of time, the City was unable to produce any witnesses at the hearing. Its case was based entirely on the IA Report and the Grievant's testimony. This normally would make it difficult or impossible for the City to satisfy its burden of proof in a discipline case. The Grievant had no clear recollection of many of the events of the events of July 12-13.

The Union and the City both concentrated on the fact that the Grievant parked in the Fire Department Headquarters' parking lot for several hours that evening and did not respond to three calls at 1:10 am, 1:20 am and 1:27 am. The Union pointed out in its Brief **that Officer Jarrett was never specifically requested or called** (emphasis added in the Union's brief on page 6, lines 4 and 5.) [Quoting from Joint Exhibit 3 at page 4].

While this is interesting, it does not take into account the fact that Officer Jarrett's police vehicle was recorded as entering the Bridgeport Fire Department Headquarters'


parking lot at 12:09 am (Jt. Ex. 4, p.4) when she reported that she was still at the call she responded to at 11:51 pm to assist medical personnel. The Grievant completed her own report stating she was still at that scene until 1:40 am. It is hard to understand how she could have been at two places at the same time. There was ninety-one (91) minutes between those two events.

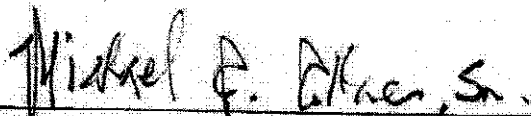
The Union makes some potential prevailing arguments regarding the failure to respond to the three calls. However, the Union cannot get over the fact that the Grievant arrived at the parking lot at 12:09 am and reported that she was still at the prior scene until 1:40 am. No explanation or evidence was provided to refute this clear documentary evidence. Even applying the *Daughtery* Elements, the majority of the Panel finds that there was just cause to suspend the Grievant for two (2) days.

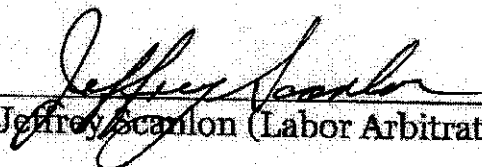
VI. AWARD

For the reasons set forth herein, a majority of the Panel finds that the City of Bridgeport did not violate the Collective Bargaining Agreement when it suspended the Grievant, Jamie Jarrett for two (2) days.

BY THE ARBITRATION PANEL:

 12/29/2022
Linda J. Yelmini (Public Arbitrator & Chairperson)


Michael C. Culhane, Sr. (Management Arbitrator)

 12-29-22
Jeffrey Scanlon (Labor Arbitrator) - DISSENTING