

**Jason #2**

**IN THE VOLUNTARY ARBITRATION MATTER OF**

EMPLOYER

-and-

UNION

Voluntary Arbitration

GR: Employee 1/ 2-Day Suspension

**FACTS**

The employer, Employer, operates its own police department as a service to its citizens. The union, Union, represents the employer's full-time certified police officers including the grievant, Employee 1. On June 28, 2007, grievant received a two-day disciplinary suspension for violating the Pittsfield Police Department's Rules and Regulations. This suspension notice reads as follows:

***Between December 15, 2006 and May 22, 2007 you violated section 4:13 Unsatisfactory Performance of the Employer Police Department Rules and Regulations and General Order No. 9 Reporting System.***

***Section 4:13 states: Unsatisfactory Performance***

- A. Personnel shall maintain sufficient competency to properly perform their duties in a manner that will maintain the highest standards of efficiency in carrying out their duties and the objectives of the Department. Unsatisfactory performance maybe demonstrated by a lack of knowledge of law; Department policy; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the employees rank, grade, or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.***
  
- B. The following will be considered prima facie evidence of unsatisfactory performance: Repeated poor evaluations or a written record of repeated infractions of Department policy.***

*On December 15, 2006 you were assigned to complete a supplemental report to case 06-12971, a home invasion. On May 15, 2007, 20 weeks (5 months) later you submitted a supplemental report in violation of the Rules and Regulations Section 4:13 and General Order No 9 that states that supplemental reports will be completed as additional information is received or when any further action is taken after the filing of the original report and will be designated with the original report number.*

*On February 22, 2007 you were assigned a UDAA report (071629) for investigation and did not turn it in until May 22, 2007 some 12 weeks (3 months) later, again, in violation of the rules and Regulations Section 4:13 and General Order No. 9.*

*On April 29, 2007, you were assigned to case 07-4843, an armed robbery, and it required you approximately 2 and ½ hours to fill in the appropriate fields in five data sheets and compose four pages of narrative for submission.*

*On June 10, 2007 a recommendation for disciplinary action was submitted by Lt. Person 6 alleging violations of section 4:13 of the Employer Police Department Rules and Regulations and a disciplinary hearing was conducted on June 29, 2007, with your Union Steward Person 1 present.*

*During that hearing you waived the reading of the recommendation for disciplinary action and stated that the document contained no inaccuracies.*

*Regarding case 06-12971, a home invasion, you acknowledged that you were assigned to conduct further investigation by the detective bureau on December 15, 2006 in an attempt to determine the relevance of a witness seeing an unknown person with a flashlight in the backyard near the residence on the night of the incident. You acknowledge that you did not begin any further investigation until February 26, 2007, 10 weeks later. When asked if there were any mitigating circumstances that would cause you to not conduct the investigation in timely manner you stated nothing had interfered and that "it just got piled in my box". On February 26, 2007 you spoke with a Person 2 who stated that it was not he in the yard, but could have possibly been another neighbor, and Person 2 provided you with the name and telephone number of Person 3. At that time you completed a supplemental report and it was returned to you by your commanding officer Sgt. Person 4 to contact Person 3. You stated that you "'probably called every other week or so and did put my business card on her door". You stated that you had not sent any correspondence to either Person 2 or Ms. Person 3 in an attempt to contact either of them. You stated that you finally spoke with Ms. Person 3 on May 15, 2007 and completed and submitted your supplemental report on that day. When asked if there was anything else regarding this incident that you felt was relevant you replied, "No, nothing comes to mind".*

*Regarding case 07-1629 (an unlawful driving away of an automobile) you stated that you took the initial report on February 9, 2007. Person 5, the complainant, dropped off an extensive list of property that he alleged was in the vehicle at the time it was stolen. You stated you believed this to be suspicious because when you took the report on*

*February 9, 2007 Person 5 had stated that there was nothing of value in the vehicle when it was stolen. When asked, you stated that you did not document that statement in the report, but clearly remember asking the question of property in the vehicle. You completed a supplemental report documenting the property alleged to have been in the vehicle from Person 5's list of February 19, 2007. On or about March 1, 2007 Sgt. Person 4 returned the report to you requesting Person 5 to provide receipts for the property he now alleged to have been in the stolen vehicle. You stated that you made several telephone calls to Person 5 but he did not return your calls. You stated that you left a final message for Person 5 on May 15, 2007. When asked if you had sent any correspondence to Person 5, specifically a case status letter, you replied "No, I never even thought about it". When asked if there were any mitigating circumstances that would prevent you from completing your assignment, other than not being able to get a hold of the victim you stated "There was no reason not to complete it". When asked if there was anything else regarding this incident that you felt was relevant you replied, "No".*

*Regarding incident 07-4843, an armed robbery that occurred on April 29, 2007 at 5:14 a.m. you stated that you cleared the scene at 7:00 a.m. and returned to Station One at approximately 7:10 a.m. At that time you completed the relevant fields in five data sheets and composed four pages of narrative. You were asked if there were any interruptions and you stated there were none. You verified that you told Lt. Person 6 when he questioned you regarding the length of time you took to complete your report that "I must be slow". You stated that you also told Lt. Person 6 that it was an important report, you wanted to be very thorough, get the proper witness statements, spell check and proof read the report. You did confirm that at approximately 8:20 a.m. you did tell Lt. Person 6 that the only thing you have left to complete the report were the last two witness statements.*

*When I asked during the hearing why you take longer than other officers to complete reports you stated you try to be thorough and that was just the way that you work. You did acknowledge your report writing training in May of 2003 and denied that anything was hindering or interfering with your work here at the police department.*

*You were given the opportunity to present any other facts that I would consider in determining a disposition of the disciplinary action. You stated you were not aware of any other officer "getting pulled back here for supps". You stated that "1273 was not knocking on my door". I asked if it was someone else's responsibility that you complete your assignments and you replied "No, it is my responsibility".*

*You informed me of another case where you believe another officer who resigned from the department six years ago failed to turn in a report supplement. You acknowledged that you had absolutely no knowledge of the case, its disposition or if any disciplinary action had been initiated. I assured you that I would look into case number 99-5052. Based on all the information received, including your statements, as a result of my investigation, I find that you did violate section 4:13 Unsatisfactory Performance of the Pittsfield Police Department's rules and Regulations and General Order No. 9*

*Reporting System. This is not the first disciplinary action in which you have been found responsible.*

*Your behavior is not acceptable and cannot be condoned. Your actions are considered very serious. You are hereby suspended for two (2) days. The suspension will be in the form of two days without pay, 7-16-07 and 7-17-07.*

*Further violations of the rules and regulations will result in more severe disciplinary action, up to and including termination.*

Grievant and his union believe that this disciplinary action was unfair and filed this grievance.

## GRIEVANCE

**Date of Grievance: 7/11/07**

**Statement of Grievance:**

- A. Employee 1**
- B. Violation of Contract**
- C. Article 7 Section 6 - Relieving of Duty/Article 31 Section 4 - Equality of Treatment**
- D. July 11, 2007**
- E. None**
- F. That grievant be made whole**
- G. Zit. Person 6**
- H. None**

**Adjustment or Settlement Requested:**

**That grievant be made whole. Discipline be removed from his record and two days pay returned.**

## RELEVANT CONTRACT LANGUAGE

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### ARTICLE 3 - MANAGEMENT RIGHTS

**Section 1. Rights and Responsibilities. It is recognized that the management of the Department, the control of its properties, and the maintenance of order and efficiency, are solely a responsibility belonging exclusively to the Employer and hereby recognized, Included by way of illustration and not by way of limitation, are: ...the right to establish, maintain and enforce Rules and Regulations governing the operation of the Department and the Employees therein, providing that such Rules and Regulations do not specifically conflict with an expressed term of this**

Agreement.

**Section 2. Selection and Direction of Work Force.** It is further recognized that the rights and responsibilities for the selection and direction of the work force, including (but not by way of limitation) the right to hire (and to establish all policies relevant thereto), suspend, discipline, assign, promote, layoff, transfer, discharge or determine the amount of overtime to be worked are vested exclusively in the Employer; provided that such rights shall not be exercised in such a manner as to specifically violate an expressed term of this Agreement.

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#### ARTICLE 7 - DISCHARGE OR SUSPENSION

**Section 6 Relieving of Duty.** In the event that an Employee is relieved of duty, he/she may be taken off the payroll and shall turn in his/her Department equipment. Relieved of duty may be used by the Department for awaiting the disciplinary procedure. In the event an Employee is exonerated of the charges caused in the relief of duty, he/she shall be reinstated to his/her prior position and compensated for all back wages and benefits lost during the period of relief from duty.

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#### ARTICLE 31 - UNION RIGHTS

**Section 4. Equality of Treatment.** It is agreed by the Employer and the Union that the Employer shall provide equality of opportunity, consideration and treatment of all members of the unit and to establish policies and regulations that will insure such equality of opportunity, consideration and treatment of all members employed by the Employer in all phases of the employment process.

#### GENERAL ORDER NO. 9 REPORTING SYSTEM

##### SCOPE:

This order shall apply to all department personnel of the Pittsfield Police Department.

##### PURPOSE:

This order shall establish an efficient, uniform system for recording and conveying information relevant to the operational and official responsibilities of the Employer Police Department.

**APPLICATION:**

**This order is for internal use only. Non-compliance with this order constitutes a violation of the Department Rules and Regulations, except in such cases where non-compliance is also a violation of State or Federal statute.**

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**II. Reports Required**

**1. Supplemental reports will be completed as additional information is received or when any further action is taken after the filing of the original report and will be designated with the original report number.**

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**K. Whenever an action or event is required to be documented by any other order, policy, rule and/or regulation of Pittsfield Police Department and specifically mentioned above.**

**NON-COMPLIANCE:**

**Failure to comply with any provision of this order shall result in disciplinary action being taken up to an including discharge.**

**DEPARTMENT RULES AND REGULATIONS**

**4:13 Unsatisfactory Performance.**

- A. Personnel shall maintain sufficient competency to properly perform their duties in a manner that will maintain the highest standards of efficiency in carrying out their duties and the objectives of the Department. Unsatisfactory performance may be demonstrated by a lack of knowledge of law; Department policy; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the employees rank, grade, or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.**
- B. The following will be considered prima facie evidence of unsatisfactory performance: Repeated poor evaluations or a written record of repeated infractions of Department policy.**

## **ISSUE**

### **DID THE EMPLOYER HAVE JUST CAUSE TO DISCIPLINE THE GRIEVANT?**

## **DECISION**

Grievant was disciplined for violating Departmental Rule 4:13 entitled 'Unsatisfactory Performance'. He received a two-day disciplinary suspension without pay. A grievance was filed and on August 4, 2007 Employer Supervisor Person 7 found that grievant had violated the Rules and Regulations but decided that a two-day suspension was not warranted. He then reduced the suspension to one-day. Grievant was not satisfied with this resolution and continued to appeal the one-day suspension to arbitration.

There is very little dispute about the important facts in this matter. Grievant was disciplined for his handling of three separate cases. On 12/15/06, grievant was assigned to contact possible witnesses to a breaking and entering which was department's case number 06-12971. Grievant admitted to the investigating officer that he did not attempt to contact any witnesses until February 2007 and did not finish his final report until May 15, 2007. Grievant claimed that he had attempted to contact witnesses but because he was working the night shift, it was difficult to do. However, he admitted that he failed to document the follow-up attempts so it appeared that he had not been diligent.

On February 19, 2007, grievant was assigned to do a supplemental report for case number 07-1629 involving a stolen car. The victim claimed over \$6,000 in personal property was lost in addition to the vehicle. Grievant was assigned to contact the victim and get receipts for the stolen property. Grievant admitted that he made no attempt for one week and did not submit a report until mid-April. This report was returned by Sgt. Person 4 for additional follow-

up and grievant did not file the supplemental report until May 22, 2007. Grievant stated that the victim would not respond to his requests for receipts for the stolen property but admitted he failed to send a case status letter asking the victim for cooperation.

On April 29, 2007, grievant was assigned an armed robbery case, number 00-0000. Grievant cleared the case and returned to the station to write a report shortly after 7 a.m. Grievant took until 9:30 a.m. to finish the report and put in for one and one half hours of overtime. The employer believed grievant took too long to write the report particularly after telling his lieutenant he was almost finished at 8:20 a.m. Grievant's alleged mishandling of these three cases was the basis for his suspension.

The union argued that there was no just cause for discipline. The union argued that the suspension was unwarranted and was motivated by the employer's desire to retaliate against grievant because he refused to accept the resolution of his grievance. The union alleged that grievant worked a hour and a half overtime with regard to case number 000000 and that the employer only paid him for one hour. Also, the Employer Supervisor reduced the two-day suspension to one-day but grievant continued appealing his grievance. Thus, the union alleged that the employer was punishing grievant for insisting on his rights rather than correcting him for violation of the Rules. The union also argued that it was impossible for grievant to do the follow-up requested by his supervisors because he worked midnight to 8 a.m. The union pointed out that there is very little time to contact witnesses during this time period which was clearly understood by the supervisors in the department. The union pointed out that at no time did grievant's supervisor send any reminders on any of these cases, nor did they follow-up with grievant to see what was causing the delay. According to the union's logic, this is evidence that indicates that supervisors were not treating grievant like others. He was disciplined for being

late in the follow-up of these cases, but his supervisors were not disciplined for failing to follow-up on grievant. Finally, the union argued that the employer's witnesses were arrogant during their testimony at the hearing which reinforces the union's allegation that this discipline is nothing more than retaliation against grievant for pursuing his full pay for overtime worked and refusing to accept the Employer Supervisor's resolution of his suspension.

After reviewing the evidence and arguments of the parties, I was not persuaded that the employer's discipline of the grievant had a retaliatory motive. The record in this case is clear that grievant did not perform and document his duties in a prompt and efficient manner. Even though grievant was working the midnight shift and encountered complications when trying to contact witnesses, he did nothing to document his efforts. Grievant's obligation was to get the information requested by supervision involving these cases or at least document his efforts to do so, so that he had a record of why he had been unsuccessful. In these situations, he did neither. Therefore, the employer's actions to discipline him were warranted under these circumstances. In addition, the evidence did not persuade me that there was any ulterior motive that affected the employer's judgment in this case. Thus, I found no support for the union's allegation that the discipline was for a retaliatory motive.

### **AWARD**

The grievance is denied.

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Peter D Jason, Arbitrator

DATED: July 18, 2008