Chiesa #5

VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYER

-and-

UNION

OPINION AND AWARD

Mario Chiesa

THE CASE

Two separate grievances arose out of an incident which took place on November 6, 1997. While clearly the grievances are separate and will be discussed separately, it makes sense to combine them when analyzing the event.

The first grievance is dated 12/4/97 and in part reads as follows:

> "Statement of Facts: The Safety Article was not followed per the contract.
>
> "Articles Violated: XXXVIII, Sec. 7.
>
> "Suggested Adjustment: Follow the contract and any and all things to make grievant whole."

The second grievance was filed in response to an eight 10-hour working day suspension imposed upon the grievance via a communication dated January 6, 1998, which was authored by Manager 1, the Employer Manager. In part the notice of discipline reads as follows:

> "Person 1, Labor Relations Specialist, has recommended that you be suspended without pay for a period of eight (8) ten-hour working days effective 7:00 AM on Monday, January 12, 1998.
>
> "The reasons for Person 1 recommendations are as follows:
>
> "1. On Thursday, November 6, 1997, you were assigned by your supervisor, Person 2, to perform an inspection of a residence at 000 Street A. You understood that your entry into the residence was required in order to

determine whether code violations existed due to the owner having numerous cats in the dwelling. Your inspection was coordinated through the Employer Police Department and also involved assistance from the County A Health Department and County A Animal Control officers. The owner initially denied permission to enter the residence. After speaking with the Employer officers, she changed her mind and invited those present to come in. Instead of carrying out the assigned inspection, you left and returned to the Street B offices. Subsequent to your return, the Employer Police Department contacted the Street B offices, and you were directed by Supervisor 3 to go back to 000 Street A. You refused to do so.

"2. During an investigatory interview held on November 12, 1997, you denied having been directed to return to the address by Supervisor 3. You also stated that you never spoke to the owner prior to leaving and did not know she had changed her mind about allowing your entrance.

Further investigation by Person 1 confirmed that Supervisor 3 had directed you to return, and that the owner had in fact spoken to you prior to your leaving and invited you in. It was also revealed that you responded by telling her something to the effect that you don't operate on search warrants. When confronted with that additional information on December 17, 1997, you explained in part that you were in a hurry to leave on November 6 and that the owner did in fact speak to you, saying something about a search warrant. You confirmed that you had responded to her by saying you 'don't know anything about search warrants."

"Person 1 has determined that you have violated Employer Rules and Regulations, Section 1, Rule 10 (perform assigned duties in a diligent fashion at all times during working hours); and Section 2, Rule 15 (misrepresenting any information requested by Management) and Rule 19 (disregarding a verbal order from a supervisor).

"Based upon the above, I concur with Person 1' recommendation. You are hereby officially notified that you are to serve the suspension without pay beginning on the date and time referenced above. You are directed to return to work following the suspension at the beginning of your next regularly scheduled shift on Tuesday, January 27, 1998, at 7:00 AM.

"Disregarding a directive from a supervisor and misrepresentation of facts during an investigation are by themselves serious infractions of Employer Rules and Regulations. Those coupled with the fact that the Employer's image and reputation have been adversely impacted call for this level of discipline. If future incidents of this nature should take place, I would expect and approve a recommendation for your discharge from employment with the Employer. I strongly recommend that you correct your behavior to avoid that consequence."

The grievance is dated January 14, 1998 and in part reads as follows:

> "Statement of Facts: Employee was given a suspension of eight (8) ten hour days. Such action was without proper cause. The suspension was based on alleged violations of Employer Rules and Regulations Sec. 1, Rule 10; Sec. 2, Rule 15 and Rule 19.
>
> "Articles Violated: IV, Sec. 1; XI, Sec. 5.
>
> "Suggested Adjustment: Reinstate employee, remove discipline from employee's file, repay all lost wages, benefits and any and all things to make grievant whole."

At the time of the incident the grievant was working as a Housing Inspector I in the Housing Inspection Department. She had been employed by the Employer for 23 years, with the last 12 as a Housing Inspector I. It appears that she has not received any prior discipline.

Portions of the Housing Inspector I job description appear as follows:

> **"NATURE OF WORK**
>
> "This is responsible technical work involving the inspection of residential properties for compliance with established city housing and nuisance codes and standards. Work is performed independently under the general supervision of an inspection supervisor.
>
> **"EXAMPLES OF WORK** (May not include all of the duties performed.)
>
> "Conducts inspections of assigned single-family and rental residential properties and moderately deteriorated and fire damaged properties; ensures compliance with structural, health, safety, and nuisance code standards; identifies violations; issues verbal and written repair orders to property owners; makes referrals to other departments when appropriate; issues and posts notices to abate.
>
> "Determines if dwellings should be condemned; calculates relocation fees; issues notices to landlord; verifies dwelling security and posts condemnation notices. "Prepares notice of complaint for property owner, verifies property ownership, reviews open housing case files; determines housing code violations.
>
> "Conducts re-inspections of code violations; makes determinations regarding case closings, extensions, continuation of enforcement, and relocation fees. Handles disposition of funds."
>
> "Prepares cases for court; collects evidence; photographs violations; prepares legal documents and case history information, confers with city attorney; obtains criminal warrants; testifies in court."

"Communicates with court officials, probation department, city attorney's office, community agencies, neighborhood associations, tenants, property owners and general public.

"Performs other related duties as assigned.

"REQUIREMENTS OF WORK

"Considerable knowledge of housing and nuisance code requirements."

"Knowledge of the legal procedures involved in filing criminal and civil housing complaints."

"Ability to walk on rough terrain and climb stairs."

The events which led to these grievances took place on November 6, 1997 at a home located at 000 Street A. The occupant of the home, Person 4, kept literally scores of cats in an extremely dirty, odorous and unkept environment. The location was often referred to as the "Cat House" and had been the site of numerous complaints. The cats roamed free in the house which was littered with cat urine and feces-soaked newspapers.

The grievant was assigned the complaint regarding the Street A address and on November 6, 1997, went to the residence to perform an inspection. She had complained that the work involved fell under the Housing Inspector II job description and she was contemplating filing a grievance. When she arrived at the Street A address, there were a number of other agencies represented, including the Employer Police Department, County Health Department, Department of Social Services, the County Animal Control Department, etc. When the grievant exited her vehicle, she saw Officer Person 5 and said something like, "Now you're involved with my grievance."

A number of individuals went to the rear of the home and were trying to persuade Person 4 to allow them to inspect the premises. The grievant was present. Person 4 refused to allow anyone to enter. There was some discussion regarding search warrants and the grievant, either at that point or subsequently, made the comment that she didn't work with search warrants. She then walked to the front of the house towards her vehicle and engaged in conversation with another officer. At approximately that time another officer came out of the front of the house and stated that Person 4 had said that the authorities could enter. He estimated that the grievant was perhaps 40 feet away when the statement was made. He also heard her say something about the fact that she didn't operate with a search warrant. The grievant denied hearing Person 4's statement. She walked to a police vehicle and called the office, speaking with Supervisor Person 2. The grievant related that she told Supervisor 2 that Person 4 wouldn't allow entry and Supervisor 2 told her to return to the office. Supervisor 2 related that he didn't tell the grievant to return to the office, or at least didn't recall doing so. The authorities on site requested a supervisor, so he left the office and drove to the scene. When he got there, the grievant wasn't there. Supervisor 2 had no inspection authority, so he contacted police dispatch and asked them to contact the grievant, instructing her to return to the scene. Supervisor 2 related that he never told the grievant or anyone that she didn't have to go back out to the residence.

The call came into the office and Person 6, a clerical employee, informed the grievant that the police called and the grievant was required at the scene. The grievant related something like, "She was just out there, and Supervisor 2 knew everything about it." Nonetheless, Person 6 went in and talked with Person 3, a supervisor, filled her in on the circumstances, and then accompanied Person 3 when she went back to the grievant and, according to her testimony, stated that the grievant "had to go back." The grievant related that she wasn't going back and

mentioned that the circumstances at the residence were bad for her health. The grievant explained that she was suffering from chronic fatigue syndrome. Nevertheless, the grievant didn't return to the residence.

The grievant then contacted a Union official and a meeting was held with him and the grievance committee safety representative, Person 7. The grievant filled out a Safety Observation Report. Ultimately the report issued by a safety technician indicated there was no known increase of any health risk regarding the circumstances existing at the Street A residence. Suggestions were made about dust masks, latex gloves, etc., and there was a suggestion that if the grievant could supply additional documentation, it would be considered. No additional documentation is contained in the record.

The Employer instituted an investigation and conducted two interviews, one on November 12 and one on December 17, 1997. According to Person 1, at the first meeting the grievant related that she did not know that the resident at the Street A address had indicated the authorities could enter the home. She also stated that she was not told by Supervisor 3 to return to the Street A address. Person 1 related that at the second meeting the grievant still insisted that she hadn't been ordered to return to the scene, but related that she heard the resident at the scene say something before the grievant left.

The Union filed Grievance #X1as related above. It alleged that the safety article was not followed. Subsequently the grievant received an eight 10-hour-a-day suspension, as outlined in the January 6, 1998 correspondence, and responded with Grievance #X2.

Additional aspects of the record will be displayed and analyzed as necessary.

DISCUSSION AND FINDINGS

There was a full and complete hearing over the course of two days during which the parties arbitrated both of the above grievances. In addition, both filed helpful post-hearing briefs. It should be understood that I have carefully and painstakingly analyzed the entire record even though it would be impossible and probably inappropriate to mention everything contained therein.

Portions of the Collective Bargaining Agreement referenced in both grievances appear as follows:

> ARTICLE IV. MANAGEMENT RIGHTS
>
> "Section 1. Except as otherwise specifically provided in this Agreement, the Management of the Employer and the direction of the work force, including but not limited to the right to hire, the right to discipline or discharge for proper cause, the right to decide job qualifications for hiring, the right to lay off for lack of work or funds, the right to abolish positions, the right to make rules and regulations governing conduct and safety, the right to determine schedules of work, together with the right to determine the methods, processes, and manner of performing work, are vested exclusively in Management. Management, in exercising these functions, will not discriminate against any employee because of his or her membership in the Union."
>
> ARTICLE IX.GRIEVANCE PROCEDURE
>
> "Step 3.B. Arbitration
>
> "b. The purpose of the pre-arbitration conference shall be for exchanging evidence, identification of witnesses and stipulation of fact. Only that evidence so exchanged may be submitted to arbitration. The parties may also attempt to resolve the dispute. If the matter cannot be resolved, the parties shall attempt to mutually select an arbitrator. If the parties are unable to mutually select an arbitrator, the Union may submit a Demand for Arbitration under the rules of the American Arbitration Association, provided the submission is made within sixty (60) calendar days of receipt of the answer at Step 2."
>
> ARTICLE XI. DISCHARGE
>
> "Section 5. If Management has the reason to warn or reprimand any employee, it shall be done in a manner that is consistent with good employee relationship principles. Upon request, a copy of disciplinary action will be given to the Grievance Committee Chairperson."
>
> ARTICLE XXXVIII. SAFETY
>
> "Section 1. The present safety program will be continued during the life of this Agreement. Department or Divisional Safety Meetings for all personnel will be

held each month at times scheduled by Management. Minutes of such meetings shall be filed with the Safety Program Supervisor and Union appointed representatives. Union representatives on the Central Safety Committee may authorize exceptions to the monthly meetings.

"Section 4. Safety Complaints Procedure

A. An employee who believes that he/she has a complaint or problem concerning safety or health shall first discuss it with *his/her* Foreperson. If the matter is not resolved as a result of such discussion, the foreperson, employee, and departmental Safety Representative will promptly meet to discuss the matter in an attempt to resolve the problem. In the event that the matter is not resolved, the employee shall fill out a Safety Observation Report, Form 2001 (8/82), and send it to the Employer's Risk Manager a copy to the Union Safety Chairperson. The Employer Risk Manager shall investigate and respond in writing to the employee as expeditiously as possible and send a copy of the response to the Department Head and the Union Safety Chairperson. If the matter is not resolved, the Union Safety Chairperson may present the problem or complaint to the Central Safety Committee or subcommittee for review and recommendation to the Employer Manger or his/her designated representative. If the matter remains unresolved, the employee or the Union may file a grievance or complaint with MIOSHA.

B. After notification to and approval from his/her Foreperson as to where the Union designated Safety Representative is going, he/she may leave his/her work area to visit other areas in this area of responsibility on problems of safety only. The Safety Representative shall notify the supervisor of the area where he/she is entering and shall report back to his/her Foreperson upon returning to his/her work area.

"Section 7. Disputes

"It is the intent of the Parties that no employee shall be required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question, and that the Union or an employee who believes that he/she is being so required shall have the right to:

(1) File a grievance at the first step of the grievance procedure or a MIOSHA complaint, with such a grievance being given preferred attention; or

(2) Relief from the job without loss of his/her right to return to such job, and at the Employer's discretion, assignment to any other job at the same rate-of-pay as may be available, provided, however, that no employee other than communicating the facts relating to the safety of the job, shall take any steps to prevent another employee from working on the job.

"Once an employee has exercised his/her right to relief from the job, he/she shall remain with the Foreperson in the vicinity of the job while the safety of the job is in question. It shall be the responsibility of the Foreperson to notify the Employer's Risk Manager and the Union Safety Chairperson immediately.

"Once relief has been requested and proper notification has been given to the

Employer and the Union, an employee will not be docked pay for more than one hour. If the Employer's Risk Manager, or his/her designated representative, is not present within the hour, the employee shall be reassigned to another job as provided above, until such time as both the Union and the Employer safety representative have arrived. If the safety representatives agree that the job is not unsafe or unhealthy beyond the normal hazard inherent in the operation in question, the employee will return to the job.

(3) If the Employer's Risk Manager and the Union Safety Chairperson are unable to agree, then the matter shall be subjected to the grievance procedure or MIOSHA complaint procedure. If the condition is determined to be unsafe, the employee shall be paid for any lost wages."

The rules referenced in Grievance X2 appear as follows:

"Section 1

"10. Perform assigned duties in a diligent fashion at all times during working hours.

"Section 2

"15. Falsifying records, reports, and documents or knowingly misrepresenting any information requested by Management.

"19. Disregarding or refusing to obey an order, either written or verbal, from a foreman, supervisor, or other appropriately identified Management personnel."

GRIEVANCE #X1- ALLEGED VIOLATION OF SAFETY PROVISION

The Union argues that the Employer breached the contract when it failed to comply with the safety provisions which were properly invoked by the grievant. It maintains the Employer failed to comply with Article XXXVIII, Section 7. It argues that once an employee invokes the section, he/she is relieved of any obligation to perform the work assignment and is limited to the loss of one hour of pay in the event that the risk management and safety representatives investigate the site and determine that no hazard exists. Further, it argues that the grievant raised her safety concern at the office because she had been directed to return to the office by her supervisor. It argues that the contract does not require that the grievant remain in the vicinity of a hazardous

condition, but only that the employee remain "in the vicinity of the job." It argues that in this case the vicinity of the job was the Housing Inspector's office. Further, it argues that the Employer breached the contract because it did not properly investigate the grievant's complaint. It argues that the Employer failed to properly respond and, thus, failed to comply with the contract provisions. It maintains that risk management was not immediately requested to investigate and it appears that supervisors did nothing and were never dispatched to the Street A address. Further, it argues that the Employer breached the contract when it suspended the grievant for eight 10-hour days when, by contract, the Employer is only permitted to dock an employee's pay for one hour if risk management and the Union safety representatives determine that the job is not unsafe or unhealthy beyond the norm.

The Employer argues that it did not violate the safety provision. It argues that the grievant did not meet the requirement of being in the vicinity of the job assignment when raising the safety issue. It maintains that in contrast to other provisions of the safety articles, Section 7 specifically requires the safety issue to be raised while at a job site. It argues that there is good reason for an employee to be required to remain at the job site because the employee can directly identify the specific hazards to the designated individuals evaluating the safety risks of the job. Further, it argues that another reason for requiring an employee to remain at the job location is that alternative ways to perform the job can be discussed by all present during the evaluation. The Employer also argues that while the grievant was at the job site, she did not convey her safety concern to her supervisor, Person 2. In fact, she did not raise the safety issue until after she had left the Street A address. Further, it argues that once a safety observation report was filed, a different procedure is mandated under the Collective Bargaining Agreement.

In disputes of this nature it is the arbitrator's responsibility to attempt to arrive at the

mutual intent of the parties. The language in the Collective Bargaining Agreement must be interpreted and enforced. Parties bargain agreements with every expectation that they will receive the benefit of their bargains.

The language in question is contained in Article XXXVIII - Safety. A simple reading shows the article establishes a fairly comprehensive procedure for dealing with safety issues. I will confine my analysis to the specific items raised by the parties and will not attempt to interpret and apply those provisions which have not been cited by the parties. Of course, if there is language which directly relates to the resolution of the dispute, it must be analyzed. A gratuitous analysis of language not at issue often leads to incorrect interpretation, for it is most productive to interpret language when it is the focus of a dispute.

As indicated above, both parties have suggested that the other has failed to live up to the requirements of the language. Frankly, a careful analysis of the record convinces me that the parties are in essence *pari delicto,* with neither of them completely following the provisions of the contract. Generally, in such circumstances the parties are left in the positions in which they currently occupy.

After carefully analyzing the record, I am convinced that the grievant acted inappropriately under the contract language. First of all, I agree with the fact that the language in the second main paragraph of Section 7 requires that the individual invoking the safety provision remain with his/her foreperson in the vicinity of the job while the safety of the job is in question. The language leads me to conclude that the words "vicinity" of the job refers to the specific location where the work is to be performed. Otherwise, the term "safety of the job" becomes questionable. The "job" referred to in that single sentence is the job that the employee is to perform.

I recognize that the Union argues that the job site was the office, but that's a position, under the facts of this case, I cannot adopt. The "vicinity of the job" referenced in the language, under the circumstances of this case, was the Street A address. Of course, on other occasions, it could be the office, but in this case it was not.

Furthermore, the Safety Observation Report filed by the grievant seems to be an attempt to utilize a procedure under Section 4. The procedures, as outlined in paragraph A of Section 4, were not followed by the grievant.

Of course, it could be argued, as suggested by the Union, that the grievant didn't remain at the job site because she was ordered back to the office by her supervisor, Person 2. If we adopt such a position just for the sake of argument, it must also be recognized that the grievant never raised the issue of safety while at the job site, so by her actions she prevented the Employer from making the assessment required in Section 7. Furthermore, the fact that she would not return to the job site after being requested or ordered, and I will get into that in the next case, prevented her from being at the job site when the procedure was instituted.

The record also establishes that the Employer seemed to stumble when dealing with the safety procedure. Its responses were questionable in light of the circumstances. However, I find that the issue regarding whether the grievant could be suspended in light of the safety language restricting an employee's loss to one hour shall be left to the resolution of the next grievance. The grievant did not properly invoke the safety language under Article XXXVIII and, hence, this grievance is denied.

AWARD

Grievance is denied.

_____

MARIO CHIESA

Dated: August 13, 1999

GRIEVANCE #X2

To recall, the grievant received a ten-day suspension for violating the rules referenced above. In essence, the grievant's alleged misconduct is divided into two general categories, the first dealing with her failure to perform the work and to return to the job site, and the second for misrepresenting information requested by management during the investigation.

The language in the Collective Bargaining Agreement clearly establishes that discipline, and in this case the unpaid suspension at issue, can only be instituted for proper cause. The cause, proper cause, just cause standard -- I consider them synonymous -- is a criterion adopted by parties in Collective Bargaining Agreements which establishes a standard which must be met before discipline -- in this case an eight 10-hour-a-day unpaid suspension -- can be sustained. Absent a specific definition in the contract, and I have found none, nor have I been directed to any, I interpret the term "proper cause" to mean that in light of all the circumstances, the Employer's actions must be reasonable. This means there must be a careful analysis of all the relevant circumstances, including length of service, disciplinary record, proven misconduct, knowledge of rules and regulations, possibility of disparate treatment, etc. Nonetheless, this does not mean that arbitrators should lightly interfere with management's actions. To do so would be

to manage by arbitration which would help neither party. However, if the Employer's actions are arbitrary, capricious, unreasonable or just plain excessive and wrong, then an arbitrator must intervene.

Management has the right, absent a prohibition in the Collective Bargaining Agreement, to establish and enforce reasonable rules and regulations. The rules involved in this case have previously been displayed and there is no claim that they are unreasonable.

A preliminary issue raised in this grievance deals with the question of whether Union Exhibit 2 should be allowed into evidence. The Employer's objection is based upon the language contained in paragraph b of Step 3.B. - Arbitration of Article IX. The language relates, inter alia, that only evidence which is exchanged at the pre-arbitration conference may be submitted in arbitration.

As I explained in the prior grievance, parties bargain provisions in the Collective Bargaining Agreement with every expectation that they will receive the benefit of their bargain and the language will be enforced. In that regard I note that the language in question is very clear and requires that all evidence submitted at the arbitration be exchanged at the pre-arbitration conference. In this case there is no dispute that Union Exhibit 2 was not so exchanged.

As I indicated, it is my responsibility to interpret and apply the language in the Collective Bargaining Agreement and the sentence in question applies directly to this dispute. I can imagine situations where perhaps the provision would not apply because of some extenuating circumstance, but this case isn't one of those situations. As a result, I really have no alternative but to conclude that Union Exhibit 2 cannot be considered.

One of the issues in this case is whether the grievant knew when she left the Street A

address that Person 4 had changed her mind and would allow authorities to enter. Certainly there is evidence suggesting that the grievant heard Person 4 indicate that the authorities could enter the house. However, the grievant denies hearing the statement and it is pretty difficult to prove that she did in the face of the denial and the factual scenario as it exists.

The grievant also alleges that her supervisor, Person 2 told her to return to the office. Person 2 denies making such a statement, or least cannot remember that he made it. There is evidence supporting Person 2'stestimony, especially the fact that he subsequently went to the Street A address. It seems to me that he wouldn't tell the grievant to return to the office and then drive to the location himself, especially when he did not have enforcement powers.

One of the most important issues in this case is whether the grievant refused when directed by a supervisor to return to the Street A address. In analyzing this aspect of the dispute, it is pretty clear that the grievant never wanted to be at the Street A address to begin with. When she initially arrived, she mentioned to an officer that now he was going to be involved with her grievance. She thought that a Housing Inspector II should have performed the inspection. So certainly there is a displayed reluctance on the grievant's part to not only appear at the scene, but to enter the building. She desired to leave the area as soon as possible. Given those facts, one could easily conclude that after managing to return to the office, she wasn't going to proceed to the Street A address even though the police dispatcher called and requested her presence. Nonetheless, it is clear that the grievant was informed by Person 3, a supervisor, that she was required at the Street A address and should return. Indeed, the grievant testified that she knew the Employer wanted her to return to the Street A address. Clearly she did not abide by the direction given by her supervisor. In this setting I don't find that it is necessary for a supervisor to tell an employee, including the grievant, that if he/she doesn't obey a directive, he/she will

face disciplinary action. The grievant knew she was to go back to Street A. Her statement to Person 3 was designed to relieve her of that responsibility.

At that point the grievant filled out a safety observation report. It is noteworthy, as I previously indicated that the grievant made no claim of a health risk when she was initially at the job site. She easily could have done so during her conversation with Person 2. She didn't. Nonetheless, filling out a Safety Observation Report did not prevent her from returning to the job site. Indeed, the language in the contract contemplates that the initial complaint will be made while the employee is at the job site and the employee shall remain "in the vicinity of the job" until the appropriate individuals arrive. The grievant didn't do this.

The evidence convinces me that the grievant indeed did not obey a directive given by her supervisor. This is a very serious offense. The Employer had every right to expect the grievant to follow the directive.

I am not convinced, however, that the grievant is guilty of misrepresenting information. To recall, the grievant is charged with misrepresenting information at the investigatory meetings. Generally this type of misconduct is extremely difficult to prove because it is usually required that any misrepresentations be intentional and knowing. In fact, the rule states that an employee, inter alia, who "knowingly misrepresents information shall be subject to discipline." However, while there are some discrepancies between the statements given by the grievant at the investigatory meetings, I am not convinced that I can confidently conclude that she violated the rule of falsifying reports, records, documents, or knowingly misrepresented any evidence requested by management. I certainly have suspicion, but suspicion is not proof.

In summary, the Employer has carried its burden of proof to show that the grievant violated Rules 10 and 19. It did not establish a violation of Rule 15. As a result, and considering

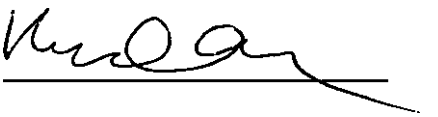
the grievant's seniority, her length of service, her absence of prior discipline and the fact that the Employer did not carry the burden of proof on all of its allegations, I find that the penalty imposed by the Employer, i.e., eight 10-hour days, is excessive. In light of all the circumstances, there is no just cause for such a penalty.

Nonetheless, it is clear that the grievant did engage in very serious misconduct. So certainly she should be subjected to some discipline. After carefully considering the matter, I have come to the conclusion that the eight 10-hour-a-day unpaid suspension shall be reduced to a four 10-hour-a-day suspension.

It is true that the grievant engaged in serious misconduct, but I cannot conclude that she engaged in the breadth of misconduct alleged by the Employer. Thus, logically since all of the items relied upon to sustain the discipline no longer exist, the discipline must be modified. The eight 10-hour-a-day suspension shall be reduced to a four 10-hour-a-day suspension. The grievant shall forthwith be made whole for the difference.

AWARD

The grievance is granted to the degree that the eight 10-hour-a-day suspension shall be reduced to a four 10-hour-a-day suspension. The grievant shall forthwith be made whole for the difference between the two.



MARIO CHIESA

Dated: August 13, 1999