AMERICAN ARBITRATION ASSOCIATION
Employment Arbitration Tribunal

In the Matter of the Arbitration between

JENIFER FRENCH,

Claimant,

v. Case No. 54 160 00795 11
CITY OF HOLLAND.

Respondent.

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the personnel manual of the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARDS as follows:

INTRODUCTION

Jenifer French, Claimant, was the Appointed City Clerk for the Respondent City of Holland. She served in this capacity and several others for seventeen unblemished years. She was terminated by the Respondent for:

1. Filing a false voter registration (her own);
2. Filing a false Personal Residency Exemption (PRE);
3. Conduct detrimental to the image of the City;
4. Presenting false and misleading information during the investigation of the above.

Claimant disputes each of these charges. Claimant also argues that she cannot be discharged because she did not intentionally deceive the City, and her conduct was not detrimental to the City. She also further argues that even if true, the punishment of discharge was too harsh.

The Arbitrator issued an interim award, or Order Regarding Collateral Estoppel prior to the hearing which gave collateral estoppel effect to the decision of the Michigan Tax Tribunal that the use of the home at 925 South Shore Drive in Holland, Michigan was "only consistent
with seasonal use of this waterfront home.” Regardless, this issue was fully addressed at the two day hearing with both sides presenting evidence on the issue.

The parties agree that the Respondent bears the burden of proof in this matter.

**RESPONDENT MEETS BURDEN OF PROOF**

The Arbitrator finds by a preponderance of the evidence that Jenifer French submitted a false voter registration to the City and a False PRE to avoid paying $8,000 in taxes. This and her subsequent representations to the Respondent during the investigation was detrimental to the image of the City and are just cause for her discharge.

When asked on May 16, 2006 by Mr. Wolf, the City Manager, where she lived, she replied “Saugatuck.” According to Wolf, she continued, “I told my husband we should have moved in there, I have told my --- you know, it was our intent to move there ...” (T.p.26) Both Wolf and the Human Resources Director who were present recall this response. This was more than a year after she filed her voter registration and her PRE. Nothing in that conversation suggested that she had moved in and left subsequently because of a failure of the heating system.

Her lack of residency and intent to deceive is further confirmed by the water records relied upon by the Tax Tribunal and which the Arbitrator has independently received in evidence. These records establish, at best, a seasonal use of the property. The explanation that water was supplied by an irrigation pump in the basement is simply not credible when viewed in light of the testimony of the Director of Utilities, John Van Uffelen, who testified that the city water pressure would over power the pump and that the system needed a pressure tank that was not present. (T. 183) This was also confirmed by Mr. Hozee, the contractor, who serviced the irrigation system¹. Among other things he observed that deep ground water well was capped, and the inflow for the pump was non-potable lake water. Further Jenifer French said she “never operated the water the pump.” (T.404) She continued that “you just turned the handle and water

¹ Mr. Hozee appeared by deposition, Respondent’s Ex 27.
came out.” Her testimony is entirely consistent with a municipal supply, but not a pump without a pressure tank that would need to be switched on and off with each use. It is also consistent with Mr. French's testimony that he only used well water during the remodeling when he interrupted the municipal supply to change plumbing fixtures (T. 228-229). There is no credible explanation for how the property could have been occupied by one person, let alone, from time to time, by her family and used the miniscule amount of water billed for.

Her lack of residency at or intention to live at the claimed residency is further shown by her registering a newly leased vehicle in March 2006 and listing her address as 3301 Lakeshore Drive, Douglas. Viewed in the light most favorable to Claimant that she lived in the house at 925 South Shore, Holland, from the spring of 2005 until early winter and considered it home and picked up her mail there; why did she register her vehicle in Douglas? Similarly, if 925 South Shore was where she lived and received mail, why did she continue to have her residence listed with her employer as 3301 Lakeshore Drive, Douglas? The most credible explanation is that suggested by counsel for Respondent; “She chose to disregard them in her attempt to avoid $8,000.00 per year in taxes.”

**DISCHARGE WAS APPROPRIATE**

The City of Holland Employee Handbook provides that an employee may be disciplined among other things for:

1. Conduct detrimental to the image of the employer or other employees.
2. Willfully damaging or stealing public property or other dishonesty.

Claimant argues that the term detrimental to the image of the employer is amorphous and as such the there must be “the [a] connection between the facts which occur and the extent to which the business is affected ... [And] that connection must be real and discernible. They must be such as could logically be expected to cause some result in the employers affairs.

2. Throughout the proceedings the parties Ms. French's address has been inconsistently referred to as Douglas, Saugatuck or Ganges.
At hearing Claimant was presented with the following hypothetical question on cross examination.

Q. On direct examination you expressed your opinion that your conduct was not detrimental to the City of Holland. Let me pose you this hypothetical question. Envision the Holland Newspaper saying, "city clerk falsely files voter registration and PRE to obtain $8000 per year tax credit." That certainly would be detrimental to the image of the City of Holland; wouldn't it?
A. Yes.
Q. The City Clerk is in charge of voter registration, and if the city clerk does it wrong to obtain an $8000 tax credit, that really reflects poorly on the City, doesn't it?
A. Yes (Tr. 408)

The Arbitrator finds the operative facts of the hypothetical to have been established at the hearing and believes that Claimant's own testimony supports the connection between her actions and the extent to which the City's business could be affected.

Judge Post observed that Claimant:

"... was the City Clerk, responsible for maintaining the integrity of the City's voting process and voter rolls, not simply another city employee. Thus her filing of an improper voter registration is of greater import than and should be considered distinct from her improper filing of the principal residence exemption. ... That defendant (Claimant here) submitted a voter registration when, as a matter of law, she did not reside at the South Shore address indicates either an intent to deceive or a lack of knowledge of one of the core functions of her position. Either may be just cause to terminate her employment as City Clerk. If the Arbitrator believed otherwise, it was his duty to make findings of fact and demonstrate a rationale to reject plaintiff's (Respondent here) assertions.

The Arbitrator concludes that Claimant's filing of the false voter registration was an intentional part of a scheme to avoid paying $8,000 in taxes and as such, constitutes just cause for her discharge.

The penalty here is not disparate from the way others have been treated by the City. None of the examples proffered are of comparable position, i.e., a department head or involve violations of trust in the discharge of their duties.

Claimant's grievance is denied.
The administrative fees and expenses of the American Arbitration Association totaling $1,700.00, and the compensation of the Arbitrator, totaling $10,260.00, shall be borne as incurred.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

Date: January 11, 2012

[Signature]

Peter D. Houk, Arbitrator

I, Peter D. Houk, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

Date: January 11, 2012

[Signature]

Peter D. Houk, Arbitrator