

Arbitration Award

City of Duquesne, Pennsylvania and Teamsters Local Union No. 205

126 LA (BNA) 1723
November 4, 2009

John M. Felice, Arbitrator

Issue

Was the suspension and demotion of the Grievant for just cause? If not, what shall be the remedy?

Pertinent Contract Provisions

Article No. V
Managerial Rights

Except as expressly limited by applicable law, or provisions of this Agreement, the Employer shall have and retain, solely and exclusively, all managerial responsibilities which shall include, but not limited to, the right to determine the policies of the Employer to establish, amend or modify an overall budget; to establish, change, combine, or abolish job classifications or the job content of any classification; to reprimand, suspend, discharge for cause or otherwise relieve employees from duty; to hire, promote, demote, lay off, and recall employees to work; to control and regulate the use of machinery, equipment, and other property of the Employer to introduce new or improved techniques; to determine the number and types of employees required, and to direct the work force, except as restricted or limited by this Agreement.

Background

The incident giving rise to the instant dispute Occurred on July 14, 2009 in the central area of the Police Department when Sergeant D__ (the Grievant) physically assaulted H__, a subordinate officer.

Based on the incident, the Grievant participated in a Loudermill Hearing on July 23, 2009 wherein he was charged with engaging in conduct unbecoming an officer and violating Paragraph VI, Section 3.1, 3.2 and 5.1 of the Police Department's Rules and Regulations. Subsequent to the Loudermill Hearing, the Grievant was notified in writing of his five (5) day suspension without pay and his demotion from the rank of Sergeant to Patrolman, both effective August 13, 2009.

On August 13, 2009, the Union filed a grievance on behalf of the Grievant alleging, inter alia, that the disciplinary actions taken against the Grievant were unjust and requested that the Grievant be made whole. Thereupon, the City denied the grievance.

When the parties were unable to resolve the instant dispute by means of the grievance procedure they submitted the matter to the undersigned Arbitrator for final and binding disposition.

Contentions of the Parties

The Union contends that the City did not have just cause to impose a five (5) day suspension without pay and to demote the Grievant in rank from Sergeant to Patrolman. The Union asserts that the City's action constituted a violation of the CBA and requested that the grievance be sustained.

The City contends that the conduct engaged in by the Grievant, particularly physically assaulting Officer H__ and shouting expletives at him during the incident, was conduct unbecoming of an officer. They also assert that the Grievant by his actions also violated Paragraph VI, Section 3.1, 3.2 and 5.1 of the Police Department's Rules and Regulations. Accordingly, the City under the CBA had just cause for the suspension and demotion of the Grievant and requests that the instant Grievance be denied.

Findings and Conclusions

Officer H__ testified that he was in the front area of the Police Station completing an arrest report. Sergeant Ebbitt, Officer Gogo and Officer Kratzenberg were also present in that area at the time.

H__ further testified that he completed the report and stood up when the Grievant entered the station area during the shift change. H__ did not speak to the Grievant and within a few minutes of his entry into the area, Sergeant Ebbitt made a comment to the Grievant to the effect that, "Hey D__, you know what H__ said about you". At that moment, the Grievant rushed towards H__. H__ testified that the Grievant hit him, pushed him against the wall and pulled him toward the garage area. He also testified that the Grievant kept screaming at him using vulgar language. H__ testified un rebutted that he did not provoke the incident. It was only after other officers in the room began yelling that the Grievant let go of H__. H__ further testified that he immediately left the Station to call Chief Adams at his home to report the incident. The Chief then instructed him to come to his home and personally speak to him about the incident.

At the hearing, the City introduced a videotape of the incident which confirmed the physical confrontation between the Grievant and Officer H__. The Grievant testified that he did not intend to hurt Officer H__. He did apologize to H__ for his actions prior to the Hearing nor did he do so in the Hearing.

The Grievant testified that Ebbitt's utterance was based upon a discussion which ensued earlier regarding a song by Olivia Newton-John, "Let's Get Physical". The Grievant testified that he believed Officer H__'s previous reference to the song was an insult.

The Grievant also testified unrebutted that after his suspension and demotion he was assigned Sergeant duty as a Shift Supervisor and was compensated an additional fifty-five cents (\$.55) per hour for such duty.

Officer Kratzenberg's testimony was inconsistent with the videotape of the incident and basically confirmed her version of the incident which she reported to the Chief.

The Chief of Police testified that after reviewing the evidence and discussing the matter with Officer H__, he recommended that the Grievant be suspended for five (5) days without pay and that he be demoted from the rank of Sergeant to Patrolman. He testified that the conduct engaged in by the Grievant, a superior officer, was inappropriate and over his years of service he never encountered an incident where a supervisor physically confronted or assaulted a subordinate officer. He testified that the Grievant did not display any respect toward his subordinate and his conduct was unbecoming an officer. It is clear from the evidence that Officer H__ did not provoke the incident and the Chief testified that the incident was serious and required serious action.

What is troubling to the Arbitrator in the instant case is once the five (5) day disciplinary suspension was imposed, the City then imposed another punishment by demoting the Grievant in rank. Accordingly, the employee was unfairly disciplined since the City imposed double punishment for a single act of misconduct. Further, some Arbitrators have held that management may not use demotion as a form of discipline unless the agreement specifically so provides because such action would violate the seniority rights of the employee. See Gaylord Container Corp., 107 LA (BNA) 1140-41 (Allen 1997).

In the instant case, the CBA does not specify demotion as a disciplinary right. If the Arbitrator were to uphold the demotion in rank, it would vitiate the seniority right of the Grievant since the primary indicia for awarding rank under the CBA is seniority. Additionally, a demotion would constitute a permanent form of discipline which this Arbitrator cannot uphold.

Clearly the behavior exhibited by the Grievant constituted, conduct unbecoming an Officer and notwithstanding that he did not injure Officer H__, his angry outburst and confrontation could have resulted in injury to Officer H__. Such an angry outburst from a supervisor to a subordinate officer cannot be condoned in the operation of a Police Department. The role of a supervisor is to set an example for subordinate officers. If the Grievant continues the pattern of conduct he exhibited in the instant case, he could subject himself to future disciplinary action up to and including termination of employment.

Award

After reviewing the facts and evidence presented in the instant case, the Grievance is sustained in part and denied in part. The City had just cause to impose the five (5) day suspension without pay. However, the demotion in rank was not appropriate. The Grievant shall be immediately restored to the rank of Sergeant and compensated an additional fifty-five cents (\$.55) per hour for all hours he worked from the date of his demotion to the date of this Award less all hours he was assigned Sergeant duty and paid the additional fifty-five cents (\$.55) per hour during the period of his demotion.

The Arbitrator retains jurisdiction to decide any dispute between the parties regarding the calculation of the hours the Grievant worked as a Sergeant during the period of his demotion to the date of this Award.