

IN THE MATTER OF ARBITRATION

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

-and-

TEAMSTERS LOCAL 117

OPINION AND AWARD OF
Philip Kienast

August 1, 2012

Klamp Demotion

APPEARANCES

For the Union:

Daniel Swedlow, Staff Attorney

For the Employer:

Gil Hodgson, Assistant Attorney General

Reported by:

Dixie Cattell & Associates, Olympia, WA

OPINION

This proceeding is in accordance with the parties' collective bargaining Agreement. A hearing in this matter was held on April 30, 2012 in Tacoma, WA and the record closed upon receipt by the Arbitrator of post hearing briefs on June 29, 2012. Absent a stipulation by the parties, the Arbitrator has framed the issue for decision as:

Did the Employer violate Article 8 of the Agreement when it demoted Teresa Klamps?

Pertinent Agreement Provisions

ARTICLE 8 – DISCIPLINE

- 8.1 Just Cause
The Employer will not discipline any permanent employee without just cause.
- 8.2 Forms of Discipline
Discipline includes oral and written reprimands, reductions in pay, suspensions, demotions and discharges.

Background

The grievant, Teresa Klamp worked as a sergeant at the Mission Creek Correction Center for Women. Following an investigation regarding the transport of an offender from the secured housing unit at the center to a hospital on September 2, 2010, the superintendant of the center, Wanda McRae, demoted Ms Klamp from sergeant to officer effective March 28, 2011, noting (E1):

This disciplinary action is for the following misconduct:

- On September 2, 2010, you directed Corrections Officers to remove restraints from an offender housed in the Secured Housing Unit (SHU) who was being transported via ambulance. You also did not ensure an officer was in the ambulance during this transport as directed by the shift commander.

The incident that caused the demotion of the grievant, Teresa Klamp, involved the transport of a female inmate having cardiac issues to the hospital by ambulance on September 2, 2010. DOC policy calls for the physical restraint, with hand and leg cuffs, of a prisoner during such transport absent an order from the shift commander. The grievant was demoted based on a finding that on her own initiative she had improperly ordered the removal of metal restraints without first getting authorization from the shift commander, Sgt. Owens.

The Employer contends only the shift commander is given the discretionary power to issue orders that divert from DOC policy. The Employer argues Sgt. Klamp was not the shift commander on the day in question and therefore had no authority to order the removal of the prisoner's restraints during transport to the hospital.

The Union contends the record discloses the grievant discussed the transport logistics directly with the shift commander, Sgt. Owens and only relayed his instructions. It argues there is no evidence that she "took over" decisions as to how the transport would be undertaken. Therefore, the Union seeks a reversal of the grievant's demotion and ask that Ms Klamp be made whole for lost wages.

Analysis and Conclusion

The record discloses clear and convincing evidence that it was the grievant who gave the order to officers Smith and Rasmussen to remove the restraints from the prisoner who was transported. Officer Smith testified that Officer Rasmussen objected three times that the prisoner should not be transported without restraints and ended when "Sergeant Klamp said 'Take the restraints off. I'll take responsibility for this.'" (Tr p. 79) Her testimony is totally consistent with the statement she gave during the pre-disciplinary investigation (E5W).

Sergeant Rasmussen testified that she told Klamp the inmate was in segregation and needed to be in restraints, but still Klamp ordered them to be removed (Tr p. 199). This testimony is consistent with the incident report she wrote on September 2, 2010 (5M) and with the statement she gave during the investigation (5N).

Ms Klamp testified she discussed details of the transport with shift commander Owens, however she did not testify Owens specifically authorized her to remove the restraints. When asked if she ordered the removal of the restraints she answered an unqualified "yes" (Tr 233-35). During the investigation the grievant stated "she did not have any discussions with Sgt. Owen as to staffing and transport of the offender..." (5X).

There is simply no evidence that Sergeant Owens ever gave his authorization to Ms Klamp to remove restraints from the inmate before the ambulance departed. Absent such authorization, her directive to have them removed was a direct and serious violation of DOC policy. Therefore, the Arbitrator concludes the Employer had just cause to demote the grievant.

AWARD

1. The Employer did not violate Article 8 of the Agreement when it demoted Teresa Klamp.

Philip Kienast
August 1, 2012
Bothell, Washington