

IN ARBITRATION

**WASHINGTON STATE DEPARTMENT
OF FISH AND WILDLIFE,**

Employer,

and

**WASHINGTON FEDERATION OF
STATE EMPLOYEES,**

Union.

(Carol Stedman Grievance)

For the Union:

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I. INTRODUCTION

This dispute between the Washington State Department of Fish and Wildlife (the “Employer” or “DFW”) and the Washington Federation of State Employees (the “Union” or

“WFSE”), concerns a grievance filed on behalf of Carol Stedman under the parties’ 2011-2013 Collective Bargaining Agreement (the “Agreement”). The parties stipulated that the matter was properly before the Arbitrator for decision. The Union asserts that the Employer violated the Agreement’s requirement set forth in Article 27 that the Employer have just cause to discipline employees when it demoted Ms. Stedman from her Customer Service Specialist 4 (“CSS4”) position to Customer Service Specialist 2 (“CSS2”), effective November 5, 2012.

At a hearing held in Olympia, Washington on October 9, 2013, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine each other’s witnesses. The proceedings were transcribed and the court reporter provided a transcript that I reviewed along with the exhibits to fully analyze the evidence. The representatives filed post hearing briefs electronically with the American Arbitration Association and me on November 25, 2013. With receipt of the briefs, the record was closed. Having carefully considered the evidence and argument in its entirety, I am now prepared to render the following Decision and Award.

II. STATEMENT OF THE ISSUE

The parties stipulated that the issue is as follows:

Was there just cause for the Employer’s decision to demote Carol Stedman from a Customer Service Specialist Supervisor 4 position to a Customer Service Specialist 2 position? If not, what is the remedy?

The parties agreed that I would retain jurisdiction for ninety days following issuance of the Decision and Award, in the event I determine some remedy is appropriate, solely to resolve any disputes over that remedy that the parties are unable to resolve on their own.

III. FACTS

A. Background.

Carol Stedman worked in the DFW's Licensing Division of the Technology & Financial Management Program (the "Division") since on or about 1998. The Division issues and regulates fish and wildlife licenses, both commercial and recreational in Washington State. Recreational licenses can be obtained directly from the State or from over 600 retail outlets that the Division manages through a complex computer system. On the commercial side, the State issues about 6,000 licenses or permits to businesses. Those licenses or permits primarily grant the authority for commercial harvesting of seafood and trapping of animals.

Since 2007, Bill Joplin has been the Division's manager. His responsibilities were to set policies and practices, and manage Division employees. When Joplin came to the Division, Stedman worked as a CSS2 in the Commercial Unit. Joplin promoted Stedman to CSS4 and supervisor of the Commercial Unit in 2008. She had three employees under her supervision. Her duties were evenly split between supervising Commercial Unit employees and doing actual day-to-day work in the Commercial Unit.

There were two other units in the Division, covering recreational licenses ("Recreational Unit") and support for retail sellers of recreational licenses ("Retail Support Unit"). Each of those units was headed by a CSS4, with between three and seven employees assigned under them. Sometime beginning in the fall 2011, William Gleokler was the CSS4 over the Retail Support Unit and Khristopher Thorson headed the Recreational License Unit. Joplin initially had direct supervisory responsibility for Stedman and the other unit supervisors.

Since at least 2009, the Employer has provided Stedman and other Division employees annual Performance and Development Plans ("PDP"). The PDPs are separated into two primary

components – expectations and evaluations. The expectation component includes a part in which performance expectations for the coming year are laid out. The PDP describes them as “[b]ased on the position’s major responsibilities, outline the key results and competencies expected of the employee during the performance period.” Ex. E-80 The PDP directs that list of results be limited to those that are key. *Id.* The PDP’s evaluation component describes “a narrative assessment of the employee’s performance in relation to the Key Results and Competencies that were outlined” in the preceding year’s PDP expectations component. *Id.*

In a PDP’s evaluation component covering April 1, 2009 through March 31, 2010 (“March 2010 PDP”), Joplin set out that during that year Stedman had been expected to accomplish the following key results:

- Provide the Division Manager with a written approach for completing a Desk Manual for the Commercial Unit¹
- Complete a workload assessment²
- Create and implement performance measures for her Unit³

According to the March 2010 PDP’s evaluation component Stedman completed the workload assessment, but not the written approach for completing the desk manual. Nor had she created or implemented the requested performance measures. *Id.*

¹ The Desk Manual was “to describe[] the rules for each [Unit] activity and the steps to complete the activity and considerations for making decision[s]” Ex. E.80 The Employer sought adoption of Desk Manuals across all Units to understand how each Unit performs, to audit that performance and to insure compliance with statutes and regulations.

² A workload assessment details the activities and assignments performed by each Division Unit on a monthly basis, calculating the number of full time equivalent (“FTE”) positions needed to perform the Unit’s work each month.

³ Performance measures detail for each unit the tasks and activities to be measured each year, so that they can be tracked and audited.

It is undisputed that the Division had been trying to produce a Desk Manual for the Commercial Licensing Unit since 2006. The first evidence that Stedman was responsible for completion of the Desk Manual was the direction to produce a written plan for its completion in the March 2009 PDP, quoted in the March 2010 PDP.⁴

In the March 2010 PDP expectations component, Joplin included the following among the key results he expected from Stedman for the April 1, 2010 through March 31, 2011 year (*Id.*):

- By April 30, 2010, provide him with a written approach for completing the Desk Manual by March 31, 2011
- By May 31, 2010, create and implement performance measures for her unit and each employee in the unit

Stedman did not complete either of these results.

In the expectations component of Stedman's PDP, dated April 12, 2011, Joplin directed Stedman to complete the following key results in the coming year (Ex. E-19):

- By May 17, 2011, provide a working version of a project plan for the Desk Manual
- By June 14, 2011, provide a finalized version of the Desk Manual, covering aquatic farm, trapper, game farm, SCP,⁵ common business rules and group fishing permits
- By August 1, 2011 create and implement performance measures for her unit and each individual in the unit

Stedman did not complete any of these results while Joplin directly supervised her through August 2011. Nor did she complete them by year's end on March 31, 2012.

⁴ The March 2009 PDP was not made part of the record. Earlier memoranda provided to Stedman in 2005, 2006 and 2007, before she was the Commercial Unit's supervisor, directed Stedman to "help in creating" the Desk Manual. Ex. E-1h Joplin when he became Division Manager did not hold Stedman responsible for the Commercial Unit's failure to produce a Desk Manual during those years.

⁵ There was no record evidence describing what SCP was.

In or about May or June 2011, Joplin determined that he needed managerial assistance between himself and the three unit heads. He received permission for a temporary Customer Service Manager (“CSM”) for a one-year term to fill that role. Following posting of the CSM position and an application process, Jozette Del Castillo was promoted to that position on or about August 14, 2011. Del Castillo had worked in the Division as a CSS4 in the Recreational Unit.

Following Del Castillo’s appointment as CSM, Joplin told her he wanted the three unit heads to adopt similar protocols. He also explained that Stedman had not completed a Desk Manual or performance measures for her unit and that he wanted Del Castillo to work with Stedman to complete those assignments.

B. Stedman’s Performance and Conduct Under Del Castillo’s Supervision.

Del Castillo had a much more hands on supervisory style than did Joplin. From the beginning, she and Stedman did not get along.⁶ Stedman filed grievances over Del Castillo, one of which she withdrew, and the other was found to have no basis by the Employer. Other employees, primarily in the Commercial Unit, also complained about Del Castillo’s management style. At the same time, other employees did not have issues with Del Castillo’s management.

DFW Assistant Director David Giglio held a meeting with employees and Del Castillo in April 2012 to discuss Del Castillo’s management style. He and a Human Resources professional met with all non-supervisory Division employees to discuss morale issues in the Division. Those issues included Del Castillo. It appears no change came from these meetings.

Del Castillo adopted a six month training regimen for the CSS4s, covering October 24, 2011-March 26, 2012. The regimen included mandatory attendance at training sessions. The

⁶ For reasons not explained in the record, Del Castillo and Stedman were not compatible even preceding Del Castillo’s CSM appointment. During the posting period for the CSM position, Stedman told Joplin and David Giglio about their incompatibility and that she feared she would not be able to work with Del Castillo.

training was conducted in three phases – namely: (1) develop understanding of each unit’s assigned positions, (2) develop knowledge of purpose for workload assessments and process for completing those assessments, and (3) develop performance management process and process for tracking results and evaluating employee performance. E. 19.

Beginning in or about October 2011, Del Castillo held monthly meetings with the CSS4s to work on Desk Manuals for each of the units. The Recreational Unit already had a working Desk Manual. The Commercial Unit did not.

On December 21, 2011, Del Castillo and Stedman met to discuss work processes that apparently needed to be completed by January 18, 2012. At that time, the Commercial Unit had drafted processes for activities denoted as A through X. Ex. E-1d9 However, additional work needed to be done on many of the processes. Several meetings followed over the next several months. According to Del Castillo, she specifically told Stedman in November 2011 and July 2012, that if either the work processes for the Desk Manual or the performance measures weren’t completed, Stedman would face discipline. Stedman absolutely denies that Del Castillo ever told her that she could face discipline, if those matters were not completed.

In early March or April 2012, Stedman did not show up for a CSS4 meeting with Del Castillo. Del Castillo went to get her. Stedman came to the meeting room and then went on break, without participating in the meeting.

In early May 2012, Del Castillo met with Stedman to go over expectations for the following year. Those expectations were memorialize in a written PDP dated June 7, 2012. In that PDP, the key results that were set forth as to the Unit Desk Manual included (Ex. E-1d4):

- By June 15, 2012, submit, and obtain approval by Del Castillo of a written project plan

- Keep the written project plan updated and report on a regular weekly basis the project plan's status, and use the plan to keep on task and meet deadlines set forth in the PDP
- By July 15, 2012, provide a finalized working version of the Desk Manual with the processes identified in December 2011

The June 2012 PDP also provided that Stedman was expected to:

- By July 2, 2012 begin implementation of performance measures for the Commercial Unit and have them reviewed by Del Castillo and finalized by August 6, 2012
- By September 15, 2012 complete a draft workload assessment, with it reviewed and finalized by September 30, 2012
- Beginning July 30, 2012 and completing by October 30, 2012 archive all commercial licensing files⁷

Between the early May 2012 meeting and the June 7, 2012 PDP's issuance, Del Castillo sent Stedman an email on May 24, 2012, along with a memorandum of expectations, dated May 22, 2012. Pertinently, the memorandum provided that Stedman had to (1) maintain the Commercial Unit's Desk Manual on an annual basis, (2) finalize, with Del Castillo's approval, performance measures by July 25, 2012, (3) meet a deadline for workload assessments, (4) prepare for, attend and participate in all meetings called by Del Castillo or other supervisors and (5) communicate in a positive, respectful manner. Ex. E-19 (pp. 23-27)

Stedman missed meetings scheduled with Del Castillo to discuss the Desk Manual, workload assessments or performance measures on June 22 and July 2 and 30, 2012. Ex. E-1d12 and 13 By email dated August 9, 2012, Del Castillo scheduled another meeting with Stedman

⁷ On June 7, 2012, Stedman wrote a response to the June 2012 PDP. Stedman stated in that response that she felt the evaluation was scathing and that she was being unfairly criticized. She did acknowledge that she had missed deadlines, but explained she had to attend 13 full day meetings, her computer crashed for two and one half days and there were three days of inclement weather during the two busiest months for her unit. Ex. E-1d5

for August 10, 2012, to again discuss the Desk Manual, workload assessment and performance measures.

In the April 9, 2012, email, Del Castillo directed Stedman to provide before the meeting a written explanation why Stedman had failed to meet expectations. Ex. E-1d7 By email dated August 13, 2013, at 3:59 PM Stedman responded “[t]he only challenge I have is due to health issues.”⁸ *Id.*

On August 10, 2012, Stedman went to Del Castillo’s cubicle and told Del Castillo that she would not be attending the August 10 meeting; nor would she attend any other meetings with Del Castillo. Stedman also told Del Castillo that she did not care whether she was disciplined for failing to attend further meetings with Del Castillo. Ex. E-1d6

By email dated August 13, 2012, at 12:35 PM, Del Castillo directed Stedman to attend a meeting on August 14, 2012 at 10:00 AM. Ex. U-1 At 9:44 AM, on August 14, 2012, Stedman sent Del Castillo an email in which she explained she did “not feel capable of attending” the scheduled meeting, and if Del Castillo insisted on having the meeting, Stedman wished to have a Union representative with her. *Id.* By return email at 10:46 AM, Del Castillo, agreed to reschedule the meeting to later in the day so that a Union shop steward could attend.⁹ Del Castillo directed Stedman to bring to the rescheduled meeting Stedman’s most recent drafts of her work processes, Desk Manual and other documents. *Id.* The meeting was held later that day

⁸ Anita Victory, Stedman’s co-worker and a witness in this proceeding, opined in a letter to Union Representative Inti Tapia that Stedman developed Adjustment Disorder due to Del Castillo’s bullying and belittling conduct. Ex. U-4. DFW Assistant Director David Giglio testified that Stedman requested the pre-disciplinary meeting scheduled for October 16, 2012, discussed below in Part III.C, be postponed because she had been diagnosed with an anxiety and depression disorder. There was no attempt to qualify Victory as an expert. Stedman, during her own testimony made no claim that she was suffering from any health issues that impacted her job performance. Nor had she sought an accommodation from the Employer for any such condition.

⁹ The parties could not agree whether Stedman improperly missed a meeting on August 14, 2012. From Del Castillo’s email response, I conclude that she condoned Stedman’s failure to attend the 10:00 AM meeting, so long as a meeting took place later that day, which in fact it did.

at 3:00 PM with Stedman and Union shop steward Tim Young in attendance. *Id.* However, Stedman did not bring the documents that Del Castillo directed her to bring to the meeting.

Through August 15, 2012, Del Castillo's last day as CSM, Stedman had not completed the Commercial Unit's Desk Manual, developed or implemented performance measures or updated work load assessments. They were in the process of being developed but not finalized.

On August, 14, 2012, at 5:30 PM, after the meeting ended with Stedman and her shop steward (and presumably after Stedman had left for the day) Del Castillo sent an email to Stedman in which she listed eight emails she had sent to Stedman that she described as "regarding [the] expectations and activities [Stedman was] responsible for completing." Ex. E-5 Del Castillo listed the assignments that remained to be completed. She directed Stedman to bring her a copy of the work process manual before close of business August 15, 2012, Del Castillo's last day as CSM. Del Castillo also explained to Stedman that she would continue to assist Joplin with activities over the next several months, but that Stedman should discuss with Joplin any questions Stedman had over Joplin's requirement that Stedman meet and complete assigned expectations.

The next morning at about 10:00 AM, Stedman went to Joplin's office and accused him of "not being man enough to . . . personally [tell her] that . . . [Del Castillo] would still be over [her]." Ex. E-5 Stedman's accusation was based upon her misreading of Del Castillo's email from the day before. Stedman then left the workplace at about 11:30 AM without prior notice to either Del Castillo or Joplin, apparently to see a health care provider.

On August 21, 2012, Joplin issued two letters of concern to Joplin – one about the interaction in his office; the other about leaving work without prior notice. Ex. E-6 and 7 On September 7, 2012, DFW Assistant Director Giglio issued a letter of reprimand to Stedman, in

part, for her interactions with Joplin and leaving work without notice on August 15, 2012. Ex. E-11

C. Investigation and Issuance of Demotion.

On August 13, 2012, Del Castillo sent an email to Cindy Colvin, DFW HR Director, asking for assistance with Stedman's refusal to attend the August 10, 2012 meeting. That same day Colvin referred the matter to Michael Sanchez, a newly hired HR Consultant for DFW, for investigation "into Carol [Stedman]'s performance and other issues." Ex. E-1d6 Sanchez was assisted by Cindy Nakano, another newly hired HR Consultant, during the resulting investigation.

Sanchez and Nakano interviewed Del Castillo, according to their report on August 12, 2012.¹⁰ Ex. E-1d (p. 2) They interviewed Stedman on August 20, 2012. *Id.* Stedman admitted to tension and confrontation between her and Del Castillo and refusing to meet with Del Castillo on August 10, 2012. Sanchez and Nakano also interviewed the other two CSS4s and two CSS2s who worked with Stedman.

The CSS2s reported tension between Del Castillo and Stedman. The other two CSS4s reported that they were able to complete desk manuals for their units, Del Castillo was supportive in those efforts, Del Castillo tried to assist Stedman and Stedman resisted those efforts and Stedman did not positively engage during meetings to discuss the desk manuals and other tasks.

Sanchez and Nakano also reviewed documents provided by Del Castillo and in Stedman's personnel file. Stedman's personnel file contained three yearly expectation memos for 2005, 2006 and 2007 in which she was directed to help create "a desk manual for the unit"

¹⁰ Because this date was before the matter was referred to them and the report includes factual information occurring after August 12, 2012, that date must be incorrect.

and to “remain courteous and professional at all times” in “interactions with . . . fellow employees.” Ex. E-1h Stedman was a CSS2 during those years, however, and was not held responsible for completing the desk manual.

Sanchez and Nakano issued an investigative report on October 1, 2012. The report expanded on the initial complaint to include allegations that Stedman had missed the August 14, 2012 meeting scheduled for 10:00 AM and had been insubordinate by not completing her performance expectations. Ex. E-1d

In the October 1, 2012 report, Sanchez and Nakano concluded that Stedman had engaged in insubordination by not meeting or achieving work assignment expectations and PDP goals set by Del Castillo, and not fostering mutual respect and professionalism towards Del Castillo. According to the report, Stedman admitted that on August 10, 2012, she told Del Castillo that she would not participate in any additional meetings with Del Castillo and looked forward to Del Castillo not being her supervisor any longer. Per the report Stedman also admitted she did not “participate in any further meetings after August 9, 2012.” Ex. E-1d (p. 4)

The October 1, 2012 report was referred to DFW Assistant Division Director Giglio.¹¹ Giglio reviewed the report and supporting documentation, determined that Stedman had engaged in misconduct, and on October 5, 2012, issued a pre-disciplinary letter to Stedman. Ex. E-2

In the October 5, 2012 letter, Giglio told Stedman that he was considering taking disciplinary action against her, up to and including dismissal, for insubordination to performance expectations and inappropriate workplace behavior toward Del Castillo. Giglio listed the following as the basis for the insubordination and inappropriate workplace behavior (*Id.*):

- By an August 9, 2012, 1:05 PM email, Del Castillo directed Stedman to attend a mandatory meeting scheduled for 2:00 PM on August 10, 2012 to discuss the

¹¹ Giglio was the Appointing Authority for the Division, with responsibility for hiring and disciplinary decisions.

progress/completion of the Desk Manual Project for the Commercial Licensing processes, and Stedman did not attend that meeting.

- On or about August 10, 2012, at 9:15 AM, Stedman confronted Del Castillo in Del Castillo's work area and said that she would not be attending any "further meetings associated and/or scheduled by . . . Del Castillo." Del Castillo warned Stedman that any failure to attend the 2:00 PM meeting "could result in disciplinary action." Stedman did not attend the 2:00 PM meeting.
- On or about August 10, 2012, Stedman failed to participate in the 2:00 PM meeting and "failed to provide the requested status update and/or assigned Desk Manual project assignment as outlined in your [PDP] dated 06/07/2012."
- By an August 13, 2012, 12:33 PM email, Del Castillo directed Stedman to attend a "rescheduled mandatory meeting for 10:00 AM on August 14, 2012, to discuss the progress/completion of the Desk Manual project for the Commercial Licensing processes . . ." Stedman did not attend the scheduled meeting on August 14, 2012.
- On or about August 14, 2012, Stedman failed to participate in the 10:00 AM meeting and "failed to provide the requested status update and/or assigned Desk Manual project assignment as outlined in your [PDP] dated 06/07/2012."

Giglio explained that the conduct, if true, would violate Articles 5.2, 47.1 and 47.2 of the Agreement and invited Stedman to respond to the allegations and present any information she wanted him to consider. He explained she could do so through a pre-disciplinary meeting scheduled for October 16, 2012, or, if she preferred, in writing by close of business on October 16, 2012.

Stedman attended the October 16, 2012 meeting. She admitted she had lost her temper on August 10, 2012, and refused to meet with Del Castillo. She also admitted that she had not completed the performance measures, workload assessments or the Desk Manual, although she claimed the Desk Manual was 95% complete. Following the meeting, Giglio questioned Joplin about Stedman's claim that the Desk Manual was 95% complete. Joplin reported that the Desk Manual was nowhere close to 95% complete.

Giglio concluded that discipline was warranted. He found a pattern by Stedman of unwillingness to perform the supervisory tasks assigned to her. He found that Stedman had repeatedly missed deadlines on the Desk Manual, workload assessments and performance measures and that she had not accepted offers of technical assistance from Del Castillo or Joplin. He further found that Stedman's interactions with Del Castillo disrupted the workplace. Giglio ultimately decided to demote Stedman, rather than terminate her, because she was a long-term employee who was good at providing frontline service to the Division's customers, which is CSS2 work.

By letter dated October 19, 2012, Giglio notified Stedman that she would be demoted effective November 5, 2012 to a CSS2 position. Ex. E-1 Giglio stated that the demotion was "a direct result of [Stedman's] serious misconduct, including violations of the . . . CBA Article[s] 5.2 . . . and 47.1 & 47.2 . . . [by her] insubordination to performance expectations and inappropriate workplace behavior" *Id.* Giglio concluded Stedman had engaged in the following inappropriate workplace behavior:

- On August 10, 2012, Stedman told Del Castillo that she would not be participating in any future meetings with Del Castillo and was looking forward to Del Castillo no longer being her supervisor
- Admittedly refused to participate in the August 10, 2012 meeting called by Del Castillo
- Admittedly refused to participate in a 10:00 AM August 14, 2012 meeting called by Del Castillo
- Over a ten month period exhibited inappropriate work place behavior towards Del Castillo

As to the insubordination to performance expectations, Giglio concluded as follows:

- Expectations and the assignment of Desk Manual project was fairly and equally applied to all CSS4s

- Stedman failed to complete the Desk Manual project
- Stedman missed several meetings concerning the Desk Manual project although at work
- Stedman did not actively participate in certain meetings about the Desk Manual project
- Expectations were provided to Stedman in April 2011, and June 2012, in which she was expected to develop a Desk Manual for the commercial unit which she failed to do

Based upon this misconduct, and the recent letter of reprimand, dated September 7, 2012, for inappropriate work place behavior towards Joplin on August 15, 2012, Giglio demoted Stedman from CSS4 to CSS2, effective November 5, 2012. The demotion resulted in a loss of status and some reduction in pay.¹²

D. Status of Commercial Unit Desk Manual.

By the date of the hearing in this matter, a Commercial Unit Desk Manual had not been completed. Following Stedman's demotion, a couple of months passed before a new CSS4 was placed over the Commercial Unit. That person left before completing the task. Another crisis arose surrounding a database in which commercial fishing data is stored, maintained by the Commercial Unit and used in international treaty negotiations. The data had to be moved from a very old computer system that was beginning to malfunction to a new system, and, thereafter, tested. This work presumably had to be done with the assistance of Commercial Unit employees.

¹² Union counsel during his opening statement described the reduction as \$600 per month. I could find no actual record evidence either confirming that figure, or showing any other figure.

IV. PERTINENT CONTRACT PROVISIONS

ARTICLE 5 – PERFORMANCE EVALUATION

5.1 Objective

The performance evaluation process gives the supervisors an opportunity to discuss performance goals and expectations with their employees, assess and review their performance with regard to those goals and expectations, and provide support to employees in their professional development, so that skills and abilities can be aligned with agency requirements. It is the responsibility of the supervisor to accurately reflect their evaluation of the employees that they supervise

- 5.2 A. Employee work performance will be evaluated during probationary and trial service periods and at least annually thereafter. Immediate supervisors will meet with employees at the start of their review period to discuss performance goals and expectations. Employees will receive copies of their performance goals and expectations as well as notification of any modifications made during the review period.
- B. The performance evaluation process will include, but not be limited to, a written performance evaluation on forms used by the Employer, the employee's signature acknowledging receipt of the forms, and any comments by the employee. A copy of the performance evaluation will be provided to the employee at the time of the review. If the need arises, the reviewer (typically the second line supervisor) may function as a mediator upon the request of either the supervisor or the employee. The employee has the right to submit a written rebuttal to the content of the evaluation. The original performance evaluation forms, including the employee's comments will be maintained in the employee's personnel file.
- C. The evaluation process is subject to the grievance procedure. The specific content of performance evaluations are not subject to the grievance procedure in Article 27 [*sic*].

ARTICLE 27 – DISCIPLINE

- 27.1 The Employer will not discipline any permanent employee without just cause.
- 27.2 Discipline includes oral and written reprimands, reductions in pay, suspensions, demotions, and discharges

* * *

27.7 Pre-Disciplinary Meetings

Prior to imposing discipline, . . . the Employer will inform the employee and the Union staff representative in writing the reasons for the contemplated discipline, an explanation of the evidence, copies of written documents relied upon to take the action and the

opportunity to view other evidence, if any. This information will be sent to the Union on the same day it is provided to the employee. The employee will be provided an opportunity to respond either at a meeting scheduled by the Employer, or in writing if the employee prefers

27.8 The Employer will provide an employee with fifteen (15) calendar days' written notice prior to the effective date of a reduction in pay.

27.9 The Employer has the authority to impose discipline, which is then subject to the grievance procedure set forth in Article 29.

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ARTICLE 29 -- GRIEVANCE PROCEDURE

* * *

STEP 5 – Arbitration

If the grievance is not resolved at Step 4 . . . the Union may file a request for arbitration. .

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D. Authority of the Arbitrator

1. The arbitrator will:
 - a. Have no authority to rule contrary to, add to, subtract from, or modify any provision of this Agreement;
 - b. Be limited in his or her decision to the grievance issue(s) set forth in the original written grievance
 - c. Not make any award that provides an employee with compensation greater than would have resulted had there been no violation of this Agreement.

* * *

3. The decision of the arbitrator will be final and binding upon the Union, the Employer and the grievant.

E. Arbitration Costs

1. The expenses and fees of the arbitrator, and the cost (if any) of the hearing room, will be shared equally by the parties.

* * *

3. If either party desires a record of the arbitration, a court reporter may be used. If that party purchases a transcript, a copy will be provided to the arbitrator free of charge. If the other party desires a copy of the transcript, it will pay for half of the costs of the fee for the court reporter, the original transcript and a copy.
4. Each party is responsible for the costs of its staff representatives, attorneys and all other costs related to the development and presentation of their case

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ARTICLE 47 – WORKPLACE BEHAVIOR

- 47.1** The Employer and the Union agree that all employees should work in an environment that fosters mutual respect and professionalism. The parties agree that inappropriate behavior in the workplace does not further an agency's business needs, employee well being or productivity. All employees are responsible for contributing to such an environment and are expected to treat others with courtesy and respect.
- 47.2** Inappropriate workplace behavior by employees, supervisors and/or managers will not be tolerated. If an employee believes he or she has been subjected to inappropriate behavior the employee, and/or the employee's union representative is encouraged to report this behavior to the employee's supervisor or the Human Resources Office and/or file a grievance in accordance with Article 29, Grievance Procedure. Grievances related to this article may be processed through the agency director or secretary level only and are not subject to a pre-arbitration review meeting, mediation or arbitration.

V. POSITIONS OF THE PARTIES

A. The Union's Position.

The Employer did not have just cause to demote Stedman. Because the demotion was a career ending event, the Employer must show by clear and convincing evidence that it had just cause for the demotion.

The Employer relies upon general allegations about Stedman's supervisory performance and two specific incidents of misconduct. The Employer's general allegation relates to Stedman's managing her unit's workload, developing and using performance measures,

developing a desk manual, and performing workload analyses. The specific incidents involve Stedman's interactions with Del Castillo on August 9 and 10, 2012 and a missed meeting on August 14, 2012.

Stedman acknowledged that she had issues with Del Castillo, but those admitted issues do not support the Employer's decision to demote Stedman. There was little, if any, competent evidence to support the Employer's allegations that Stedman's performance was below standard.

The Employer did not set clearly defined reasonable performance standards for Stedman to achieve. Nor did it show that Stedman failed to achieve any performance standards. The Employer did not inform Stedman of an actual due date for the desk manual project, and the project remains uncompleted even after Stedman's demotion and when she has had no responsibility for its completion. The Employer did not place a priority on the desk manual until it was time to discipline Stedman, and it appears that there was a working desk manual during the March 2012-March 2013 evaluation period.¹³ The Employer did not tell Stedman that any alleged performance deficiencies would subject her to discipline. The arbitrator, therefore, should not consider those alleged deficiencies to determine whether the Employer had just cause.

Stedman did not fail or refuse to attend a meeting scheduled by the Employer on August 14, 2012, and the Employer's conclusion during its investigation that she did was an error. Similarly, during the investigation, the Employer misconstrued information it received from

¹³ The Union cites Ex. E-19, at p. 41 for this contention (Union Brief at pp. 7-8). I have closely reviewed that exhibit and do not find any support for that contention. That page sets out expectations for the coming year and pertinently provides as to the desk manual "[t]he expectation that [Stedman] complete a desk manual for her unit has been reoccurring since Mar[ch] of 2008. The failure to meet this expectation has been noted in each subsequent evaluation with increasing guidance and detail to create process for completion which [Stedman] had agreed to." The PDP then sets out a specific time frame and steps to complete the manual. The Union later cites to Ex. E-19, at pp. 11-15 (Union Brief at p.10). This part of the exhibit was a report produced by Stedman showing what she considered the status was for certain work processes that were to be included in the desk manual. The Employer witnesses with knowledge testified that Stedman's report in that regard was inaccurate. Stedman did not rebut that testimony.

Stedman's co-workers. As a result it placed all of the blame on Stedman for her troubles interacting with Del Castillo. Stedman's admitted refusal to meet with Del Castillo on August 10, 2012, and telling Del Castillo that she was happy to no longer have to meet with Del Castillo is not sufficient misconduct to support a demotion. The Union's grievance should be sustained.

B. The Employer's Position.

The Employer had just cause to demote Stedman from a CSS4 to a CSS2 position based on her failure to perform her assigned work over a four year period, and her improper work place behavior, primarily demonstrated by her improper interactions with her supervisor Del Castillo. The Employer was able to show that it had a demonstrable reason for demoting Stedman. It conducted a fair investigation and proved that Stedman engaged in misconduct and failed to perform her job duties. The Employer considered all the relevant circumstances and was able to show the level of discipline meted out was just.

Stedman's admitted misconduct on August 10, 2012 when she refused to meet with Del Castillo, even after being told she would be subject to discipline if she failed to do so, and told Del Castillo that she did not care about the possibility of discipline is, standing alone, a sufficient basis for the demotion. In addition, Stedman persistently failed to complete clearly identified work assignments that were key to her supervisory position despite repeated directions and offers of assistance. Through yearly evaluations and other memoranda, the Employer made it abundantly clear that it expected Stedman in her supervisory role to complete a desk manual for her unit, produce and implement performance measures and draft workload assessments. Stedman's failure to complete those tasks provides ample reasons for the Employer's decision to demote Stedman.

VI. DECISION

A. The Just Cause Standard and Quantum of Proof.

The essential elements of just cause in a misconduct case are whether the employee committed the offense charged, whether the penalty was appropriate under the facts and circumstances of the case, and whether the employee was afforded due process. In work performance cases the inquiry is slightly different as to the first element. The inquiry is was the employee unable to perform his work duties, even after being provided assistance and the opportunity to improve. In both types of situations, the due process determination includes did the employee violate an express or implied rule, whether the rule was reasonable and known to employees, whether the employer conducted a fair and adequate investigation and whether the discipline was equitable in light of the employer's treatment of other similarly situated employees. *See*, Koven and Smith, Just Cause The Seven Tests, (3rd Ed. BNA, 2006); Discipline and Discharge in Arbitration, N. Brand ed., (BNA, 1999); Just Cause and the Troubled Employee, 1988 Proceedings of the National Academy of Arbitrators, 24 (BNA 1989).

The Employer bears the burden of proving the just cause elements. Generally, employers must do so through a preponderance of the evidence. The higher clear and convincing evidence standard is primarily used only when the conduct involves criminal or socially stigmatizing behavior. Elkouri and Elkouri, How Arbitration Works, 905 (5th Ed. BNA, 1987). I have used the preponderance of the evidence standard in this matter.

B. The Employer Conducted a Fair and Adequate Investigation.

I will first address the Union's contention that the Employer did not conduct a proper investigation. The Union points out that the Employer's investigators did not talk to all of the

employees who worked under Stedman, and contends they mischaracterized information provided by other employees.

As set forth below, my decision is based upon the inappropriate workplace behavior misconduct that Stedman admitted she had engaged in, and written documentation and un-rebutted testimony indisputably demonstrating over a four year period Stedman did not perform certain supervisory functions. The potentially probative evidence that the Employer allegedly failed to obtain from Anita Victory – namely, that Stedman treated employees in the Commercial Unit well, that Del Castillo was an insensitive manager and that other employees had difficulty working with Del Castillo – does not justify Stedman’s admitted misconduct or demonstrated performance issues. Nor does Dan Zimmerman’s testimony about Del Castillo managerial style provide any such justification. Similarly, the changes Dan Zimmerman and Paula Galivan wanted made in the information the Employer’s investigators attributed to them did not go to the matters upon which I base my decision in this matter.

For these reasons, I conclude that the Employer’s investigation was fair and adequate, and any minor errors did not adversely impact the Employer’s decision to demote Stedman.

C. The Merits.

The Employer demoted Stedman for two primary reasons. Those were (1) inappropriate workplace behavior and (2) insubordination to performance expectations.

Stedman admitted that she had engaged in inappropriate workplace behavior in how she reacted to Del Castillo throughout the time Del Castillo was her supervisor, but most notably in August 2012 when she refused to meet on August 10, 2012 and told Del Castillo that she would no longer meet with Del Castillo and was pleased that Del Castillo would no longer be her

supervisor.¹⁴

I agree that some discipline is appropriate for Stedman's admitted inappropriate workplace behavior. Such conduct is explicitly prohibited by Article 47 in the Agreement. Stedman's conduct violates that clause, notwithstanding that Stedman and other employees seemed to have had a difficult time interacting with Del Castillo possibly, in part, because of Del Castillo's more exacting and forceful management style, particularly as compared to Joplin's previous hands-off approach.

Even as Article 47 specifically prohibits such misconduct it also specifically includes an avenue for addressing any inappropriate conduct from a supervisor or manager directed at an employee or employees – namely, file a grievance. Reacting in a negative and inappropriate manner to your supervisor is simply out of place in the workplace and a basis for discipline.

I conclude that demotion would be too severe a penalty for the admitted inappropriate workplace behavior in this matter. In fact, Giglio acknowledged, during the hearing, that he, more likely than not, would have issued lesser discipline than a demotion if Stedman had only engaged in the proven inappropriate workplace behavior. Accordingly, the crux of this matter – that is, did the Employer have just cause to demote Stedman – depends first upon whether the Employer has proven that Stedman was insubordinate by failing to perform up to her job expectations.

In the usual insubordination case, an employee refuses to follow a distinct direct order given by a supervisor or manager. In those cases, many arbitrators require that the employee be put on notice that failure to follow that order will lead to discipline, including the discipline later

¹⁴ As noted above, I concluded that Stedman's failure to attend the August 14, 2012, 10:00 AM meeting was condoned by Del Castillo's agreement to reschedule the meeting until later that day so that a Union steward could attend. It appears that the matters Del Castillo wanted to discuss at the 10:00 AM meeting were discussed at the later meeting. However, without Stedman bringing the requested materials that were the primary purpose for the meeting.

imposed, for there to be just cause for the discipline.¹⁵

This case, however, is not about a distinct direct order. Instead, it is about a course of alleged misconduct over several years. The alleged misconduct is a failure to perform assigned supervisory duties. When employees fail to perform their work duties, there is not the same need for a warning that such failure will result in discharge to support just cause for discipline. Employees are required to perform their regularly assigned work duties and fundamentally are expected to understand failure to do so can lead to discipline. Koven and Smith, Just Cause The Seven Tests, (3rd Ed. BNA 2006), p. 42, citing Ross Gear & Tool, 35 LA 293, 295-6 (Schmidt, 1960):

It is implicit in the employer-employee relationship that an employee must conform to certain well known, commonly accepted standards of reasonable discipline and proper conduct . . . Among these obligations are the duty to perform . . . work as directed.

Beginning as early as 2009, Stedman was told to perform four separate functions as part of the key results the Employer expected from her in her supervisory capacity and provided dates upon which to complete the tasks. The Union is simply wrong to contend the tasks assigned to Stedman that she failed to complete were not a priority until “it came time to discipline Stedman.” Union Brief at p. 6. Each of the work functions were laid out as key results that Stedman was supposed to complete by dates certain as described in detail above.¹⁶

Moreover, the Employer attempted to provide assistance to Stedman and repeatedly gave

¹⁵ Here, Del Castillo repeatedly and adamantly testified that she on at least two occasions warned Stedman – albeit orally and not writing – that Stedman would be disciplined if she failed to complete her job assignments; namely, complete a Commercial Unit Desk Manual, complete workload assessments for the Commercial Unit and each individual in the Unit and create and implement performance measures for the Unit. Stedman at least as adamantly denied that she was ever given such a warning.

¹⁶ Similarly, the Union’s claim that Del Castillo confirmed at the hearing that Stedman was never given any specific date when the desk manual was to be completed (Union Brief at p. 6) is simply contrary to the documentary evidence set out above. The oral testimony cited by the Union was Del Castillo stating that Del Castillo herself was not aware of any specific August 2012 deadline for Del Castillo to insure the desk manual was completed.

her additional chances to improve and complete the tasks. Nonetheless, Stedman continued to not be able to perform the four separate job duties assigned by the Employer.

The first was simply to provide a “written approach” or a “project plan” for producing the Commercial Unit’s Desk Manual. Stedman was directed to do this in the 2009, 2010, 2011 and 2012 PDPs.

The second was actual completion of the Commercial Unit Desk Manual. In the 2011 PDP, Stedman was directed to have the Desk Manual completed by June 14, 2011. In the June 2012 PDP, Stedman was directed to have the Desk Manual completed by July 15, 2012. Del Castillo also reminded her of this requirement in a May 24, 2012 email.

The third was creation and implementation of performance measures for the Commercial Unit and each Unit employee. Stedman was directed to do this in the 2010, 2011 and 2012 PDPs. Del Castillo also reminded her of this requirement in a May 24, 2012 email.

The fourth was complete a draft workload assessment. Stedman was directed to do this in her 2012 PDP.

All of these were supervisory responsibilities that were a substantial part of Stedman’s and the other two CSS4s’ job duties. The other two CSS4s were able to complete those assignments. Stedman, however, did not complete any of them even though she was repeatedly told in writing that they were key results expected from her, and was provided training and assistance from Del Castillo on how to perform these tasks.

Accordingly, whether Del Castillo, in fact, provided explicit notice to Stedman that her failure to perform her supervisory duties is not determinative in this matter. From the total context of this case, Stedman should have understood that she needed to perform her duties or discipline would have resulted. Moreover, it was un-rebutted that Stedman did not actively

participate in certain meetings to discuss the desk manual and missed others entirely without explanation.

In short, the Employer was entitled to expect Stedman to perform these supervisory work duties, and discipline is proper for her failure to do so. The next issue is whether demotion is an appropriate penalty. I conclude that under all of the circumstances of this case that it is.

Through the demotion Stedman's supervisory responsibilities are removed and her pay is reduced, but she retained her State employment. It was her supervisory responsibilities that she failed to perform after repeated directives and several chances to perform them. She refused to take advantage of assistance offered to her by Del Castillo and instead was hostile to those offers. There was no explanation for that hostility or Stedman's inability to get along with Del Castillo to justify Stedman's actions. This hostility and the admitted inappropriate workplace behavior towards Del Castillo and Joplin in 2012 outweigh Stedman's previous discipline free record.

In short, the Employer's decision to demote Stedman was appropriate under the facts and circumstances of this case. Accordingly, I conclude that the Employer had just cause to demote Stedman.

B. Conclusion.

For the reasons set forth above, I find that the Employer had just cause to demote the grievant effective November 5, 2012, from a CSS4 to a CSS2. Therefore, the grievance shall be denied.

AWARD

Having carefully considered the evidence and argument in its entirety, I hereby render the following Award:

1. The Washington State Department of Fish and Wildlife did not violate the collective bargaining agreement when it demoted Carol Stedman effective November 5, 2012;
2. The Washington Federation of State Employees' grievance is denied; and
3. The Washington State Department of Fish and Wildlife and the Washington Federation of State Employees shall be equally responsible for all costs and fees of arbitration.

DATED this 2nd day of December, 2013



Mark E. Brennan, JD
Arbitrator