

IN THE MATTER OF THE ARBITRATION

WASHINGTON FEDERATION OF STATE
EMPLOYEES

and

AAA 75 390 00376- 12
Discharge

STATE OF WASHINGTON, DEPARTMENT
OF LICENSING

Appearances:	For the Union:	Christopher J, Coker Esq. Younglove & Coker
	For the Employer:	Kara A. Larsen, Esq. Asst. Attorney General

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the American Arbitration Association. A hearing was held in the above matter on April 19, 2013 in Tacoma, Washington. The parties were given the full opportunity to present testimony and evidence. At the close of the hearing, the parties elected to file briefs. The arbitrator has considered the testimony, exhibits and arguments in reaching his decision.

ISSUE

The parties agreed on the following issue:

Did the Employer have just cause to discharge the Grievant? If not, what is the appropriate remedy?

BACKGROUND

The State of Washington and the Washington Federation of State Employees, hereinafter referred to as the Union, entered into a Collective Bargaining Agreement covering several State Agencies, including the Department of Licensing. One of the functions of the Department is to maintain driver records. Any citations issued to a driver who has a Washington State License are placed on the record of that driver. This is done by the Citations Unit within the Department. These driver records can be shown to the Court or can be sold to an outside entity such a prospective employer or insurance company. Consequently, maintaining accurate records is extremely important.

The Citations Unit receives copies of citations issued by a law enforcement agency within the State of Washington and also receives citations issued to licensed Washington drivers outside of the State. A citation will come into the unit from in-state or out-of state. The citation is immediately scanned into the computer. The scanned citation then goes into a queue to be reviewed by a Customer Service Specialist. There are two separate queues. There is one for in-state and one for out-of-state citations. Assuming all of the necessary information is contained on the citation the specialist pulls up the record of the driver on a separate screen and enters the citation on the driver's record. This is true for both units. Some citations have incomplete information and the Customer Service Specialist is not sure whether it should be entered on a record. When this occurs, it is placed into an exceptions queue. Only questionable citations go into the queue. The specialist putting the citation into the queue includes a note indicating what the problem may be. There is an

exceptions queue for in-state and a separate queue for out-of-state. There is a separate specialist assigned to each of those queues. That specialist determines whether the citation should be put on a driver record or deleted. A citation is deleted because there is some problem with the citation such as it being incomplete or the specialist cannot correlate the offense charged to a Washington offense.¹

There is a Supervisor in charge of each of the two units. The Grievant supervised the in-state unit. He had been employed since 2004, although he was only a Supervisor for the last five years. Megan Jackson supervised the out-of-state unit. If the person handling the exceptions queue was uncertain what to do with a citation that individual would go the respective supervisor for assistance. Mike Martin was the Manager of the Citations Unit. Both Grievant and Ms. Jackson reported to Mr. Martin. Mr. Martin took over his position in September of 2010. Cindy Taber-Lawry was his predecessor.

Sandy Houx was the specialist who handled the exceptions queue for out-of-state citations. She had performed this task for several years. Ms. Houx worked a 4x10 schedule and was off on Fridays. Grievant went into the out-of-state (OOS) queue on several occasions over several months when Ms. Houx was not there.

In March of 2011, Ms. Houx asked Ms. Jackson about citations that were no longer in her queue. She indicated they were there before she left, but were not there when she returned. Apparently, there had been some problems with the computer system in the past so Ms. Jackson was not sure if it was the

¹ The citation is supposed to include a code known as an ACD code, but not all out-of state citations include it.

computer that caused the problem. She sent an e-mail to Grievant and asked him if he had any problems with the computer or: “By any chance, have you worked on any of the OOS citations sitting in review.” Grievant responded there were no computer issues, but did not indicate he had been in the queue. Ms. Jackson testified she later talked to Grievant about the missing citations and he did not tell her he had been in the exceptions queue. Grievant maintains he did tell her.

Ms. Houx went to Ms. Jackson again in August to state there were again citations disappearing. Ms. Jackson then went to Mr. Martin. Both Ms. Jackson and Mr. Martin had thought once citations were deleted they could not be retrieved. Mr. Martin went to the Information Specialists who told him there is back-up and the citation could be retrieved from the computer. At first four citations were retrieved. Mr. Martin was able to determine from the information Grievant was the one who deleted them. He met with Grievant to question him about the four. Grievant indicated he could not recall anything about those citations. Martin brought this information to his Supervisor, Hector Rodriguez. Rodriguez told Martin to expand his search. Mr. Martin then requested copies of citations for July and August. He saw that a significant number of OOS citations had been deleted by Grievant. He then requested records for February and March and learned there were additional OOS citations deleted by Grievant. In total, 382 citations were deleted.

Mr. Martin then met with Ms. Jackson and Ms. Houx to examine those citations. Though they were able to retrieve copies of the citations the computer does not store the note from the Customer Service Specialist who placed the

citation in the exceptions queue. Looking at the citations, Ms. Houx and Ms. Jackson concluded 48 of those citations should not have been deleted. The record also showed at what time the deletion was made and discovered in many instances, Grievant only reviewed a citation for as little as three seconds before deleting it. They felt he could not have sufficiently reviewed the citations in such a short time.

Mr. Martin following the review again went to Mr. Rodriguez with the information. Rodriguez began a formal fact-finding investigation. He interviewed Ms. Houx and Jesse Hernandez, who handled the exceptions queue for in-state. He then met with Grievant. Grievant read a prepared statement at the meeting. He questioned the ability of Mr. Rodriguez to conduct a fair hearing. The meeting ended after he read his statement. They did subsequently meet again. He was shown redacted copies of the citations in question.² Grievant again maintained he had no recollection of them.

A pre-disciplinary meeting was convened. Julie Knittle, an Assistant Director, presided over the meeting. She issued a report and concluded Grievant had admitted not putting forth his best efforts and being inattentiveness to what he was doing. She also found he was not forthcoming during the investigation. Grievant was then discharged for “intentionally deleting 48 citations” that should not have been deleted. He was cited with violating DR-CIT 15.15 which states:

² The personal information on each citation was blacked such as birth date and Social Security Number.

When reviewing the adjudicated criminal and non-criminal citation for all necessary information, if there is an ACD code and/or verbiage listed every attempt will be made to ensure that the citation is added to the Washington state drive record. If the ACD code listed does not correspond with a Department of Licensing violation code the individual processing that citation will try to match the ACD code given to a Department of Licensing violation code. If there is no ACD code provided we will then refer to the verbiage listed on the citation. The individual processing the citation will try to match the listed verbiage on the citation to a Department of Licensing violation code. If neither the ACD code nor verbiage is given nor a corresponding Department of Licensing violation code is not found the citation will be destroyed.

They also felt they lost trust in Grievant's ability to fulfill the duties he was required to perform and that he had been less than candid during the investigation. The Union then grieved the discharge.

POSITION OF EMPLOYER

Grievant was put on notice on the way to review citations. Rather than deleting citations that may not have had an ACD code, research is required before making that determination. Grievant thus knew what he was required to do. The Union witness who testified as to how things were handled years earlier had no knowledge of the procedures in effect in 2011. The procedures changed and Grievant knew or should have known that was so. The Employer then conducted a full and fair investigation. It interviewed individuals with knowledge of the process and then gave Grievant an opportunity to respond. He was also given an opportunity for Union representation which he obtained. The investigation that was conducted was thorough and unbiased.

Grievant when questioned about the citations did not answer the questions asked of him and simply said he could not recall the citations. He did not

admit being in the OOS queue until the pre-disciplinary hearing. There he admitted being inattentive. Grievant thus does not now dispute he was in the OOS queue. He could not have simply deleted the citations by mistake as the computer screen requires him to indicate twice he wants the citation deleted. He failed to demonstrate appropriate judgment in deleting these citations. His explanation for deleting them changed during the course of the investigation and that is a factor to consider in deciding whether to uphold the discharge.

Grievant was never asked by Ms. Jackson to help with the citations in the OOS queue. He was never authorized by his supervisor to go into that queue. If he believed he was correct in going into the queue he would not have been so evasive about doing it. As was noted in the discharge letter, he could not explain why he was in the queue given the absence of any request for him to do so. He then improperly deleted 48 citations. By deleting them, he made the records of those drivers inaccurate. This resulted in a loss of trust by others toward the Agency and in Grievant.

Grievant could not have fully investigated whether the citations should be deleted or placed on a driver record. He deleted them in a matter of seconds. Unlike Ms. Houx, he did not deal with out-of-state citations on a regular basis. He admitted during the investigation it could take between 30 seconds and 3 hours to investigate a citation. He deleted many of them in three seconds.

The Union claims Grievant needed to see unredacted copies of the citations. This argument is without merit. The first four he was shown were not redacted. He still could not explain his actions. There was sufficient information on the redacted citations for Grievant to explain why he deleted them. He could not.

He continually failed to take responsibility for his actions and has tried to explain away what he did instead of admitting he made errors. Given his status as a supervisor, termination was the appropriate penalty for his actions. Many rely on the accuracy of driver records. The Unit is often required to testify in court regarding a record. If records are missing, this could have serious implications. Grievant's evasiveness during the investigation and his failure to take responsibility for his actions lends further support for the discharge decision.

POSITION OF UNION

It is claimed Grievant improperly deleted some of the citations he reviewed, but it was never explained why they should not have been deleted. Any time a citation goes into the exceptions queue it is because there was some problem with the citation. It is problem queue. When it goes into that queue the reviewer includes a note saying why it is in the exceptions queue. Grievant was never shown the notes that accompanied the citations. Ms. West the former supervisor of the OOS Unit testified she would not be able to determine why a citation was deleted without seeing the note. It was admitted by Mr. Martin that without the note, he could not determine why a citation went into the queue in the first place. The claim then that the deletions were improperly made has not been proven.

It is untrue Grievant was never authorized to go into the OOS exceptions queue. The evidence showed he was. Grievant's performance evaluation set a goal for him to learn to review OOS citations and this was confirmed by testimony of Ms. West. It was also shown that citations can be deleted in a

matter of seconds. Ms. Houx also did that. Ms. Jackson indicated Grievant could not have reviewed citations in that short of time, but admitted she had processed only about five citations as a supervisor. She could not know how long it would take. Mr. Martin stated it had been 17 years since he worked with citations. He also could not know how long it takes to review one or whether it should or should not be deleted. He also said he reviewed citations deleted by Ms. Houx and that her error rate was substantially lower than Grievant's. This conclusion is unreasonable.

The Employer must promulgate rules regarding behavior and inform employees as to the rules. It must then enforce them consistently. It must prove these elements were met before disciplining an employee. The evidence failed to show Grievant maliciously deleted the citations from the OOS queue. Maintaining accurate records is important. This includes not only putting citations on a record that should be placed on the record, but also not putting on a record a citation that does not belong there. Ms. West deleted thousands of citations and was not disciplined for deleting them.

The Employer also alleges in support of its decision Grievant failed to reasonably explain why he deleted the citations in issue. In making this allegation, the Employer has failed to understand Grievant could not provide the explanation without seeing the note that came with the citations. Grievant contends the deletions were proper, but he could not explain why without seeing exactly what he had in front of him when he made the decision. By failing to provide this information to him, it deprived him of due process. There is no claim he deleted them to help a friend or for his own financial benefit.

The Employer contends Grievant was not forthcoming during the investigation. It contends in the initial e-mail from Ms. Jackson Grievant denied going into the OOS exceptions queue. He did not. He then later told Ms. Jackson he had been in the queue. He also never admitted he was being inattentive as claimed by the Employer. Grievant had doubts about the investigation and was being careful in his responses because of that.

The Employer can point to no specific rule Grievant violated. There were no guidelines as to what information is needed to determine a citation should be included on a driver's record. Grievant cannot be disciplined for deleting a citation when there are no procedures as to when to delete or not delete a citation. The DOL policy cited by the Employer says a citation should be included when it contains all of the necessary information. The Policy does not indicate what information is necessary and says when that information is not present, the citation should be deleted. That is what Grievant did.

DISCUSSION

The Employer contends Grievant should not have gone into the out-of-State exceptions queue and then once he decided to enter it his actions in the queue were inappropriate and violated Department Regulations. All of these acts it argues taken together form the basis for his discharge. In addition, they contend Grievant was less than forthright when queried about the missing citations and on whether he had entered the queue. This failure too they believe justified the decision to discharge Grievant. The Arbitrator will first discuss all of the issues surrounding the decision by Grievant to go into the exceptions queue and what he did once in that queue. He will then address the

matter of Grievant's candor during the investigation and in his interaction with Ms. Jackson.

The evidence supports the Employer's contention that neither Ms. Jackson nor Ms. Houx ever asked Grievant to work on the OOS exceptions queue. His previous Supervisor gave a statement via e-mail indicating she too never directly asked him to go into that queue. Conversely, Ms. West who held Ms. Jackson's position before Ms. Jackson indicated it was common practice for them to go into the queue of the other to learn how it worked and when the other was not present. The evaluation given to Grievant covering 2009-10 told Grievant to "learn all aspects of the Citation Unit which includes...the out-of-state section." The Union is also correct that Grievant was never told not to go into the OOS queue. He did have access to it as a supervisor. There was no rule or policy that prohibited Grievant from accessing and working that queue. The Arbitrator, therefore, finds that despite the fact that no one requested Grievant's assistance, he did not violate any rule or directive by doing so.

In reaching this decision, the Arbitrator believes Grievant's intent in entering the queue is an important factor. It was to assist a co-worker and to provide customer service, a goal he held that was often noted in his evaluations. It was not done for any nefarious purpose. The Employer in its discharge letter states: "While there is little conclusive evidence that you were deleting citations to secure a special privilege or financial reward for yourself..." In reality, there was no evidence introduced at the hearing or adduced during the investigation to indicate he was seeking to benefit himself, friends or family by deleting citations. This same sentence does then go on to

say “his actions gave the appearance of impropriety.” If Grievant had gone into the queue and selectively deleted some citations while leaving others, there might be credence to that claim. Grievant, however, deleted hundreds of citations. Whether he should or should not have deleted them all will be discussed shortly. However, the fact the deletions were made does not standing alone create a negative impression given the volume that were deleted. He deleted 382 citations. That is far too many for anyone to believe or think he was doing so to show favoritism towards any individual or groups. It is these factors which led the Arbitrator to conclude the entry was not improper.

The evidence was clear Grievant deleted 382 citations. The Employer argues 48 of those were incorrectly deleted and should have been placed on the driver’s record. Mr. Martin, Ms. Jackson and Ms. Houx reviewed copies of the citations obtained from the Information Services division. Neither Ms. Jackson nor Mr. Martin was conversant with the process. Ms. Jackson only reviewed a handful of citations during her tenure. Mr. Martin reviewed even less. They undoubtedly relied on Ms. Houx to draw their conclusions. They did introduce the redacted copies of the citations. What was not introduced because they could not be recaptured were the notes the Specialist included with the citations when they went into the exceptions queue. The Union correctly points out a citation to go into the queue must have something wrong with it. If it did not, it would not be in the exceptions queue. Grievant was shown each citation and asked why he deleted it. To fully answer that question, he would need to know why it was put into the queue as the note is what is looked at first when

a citation is in the exceptions queue. The missing note would have told him why it was there and may have helped him remember why he did what he did.

Grievant like all of the other people in the Citations Unit reviews hundreds and then thousands of citations. Once one is finished, they move to the next. None of them could look at any single citation and recall specifically why they took any particular action. They surely could not do that by simply looking at a redacted citation minus the note. It was unfair to Grievant, as it would have been for any of the customer service people, to expect him to recall why he deleted a specific citation given the limited information available after a citation is deleted. The fact that the three individuals felt after the fact that 48 were improperly deleted does not convince the Arbitrator that based on what Grievant had he erred when he deleted them. He may have been wrong, but the record is simply too sparse to reach that conclusion. It is not the Employer's fault the full record could not be replicated. That is simply a function of the computer system. However, absent that full record it is impossible to know that Grievant was wrong when he made the decision with the full record before him.

The evidence does show Grievant deleted most of the citations in a few seconds. He argues Ms. Houx also deleted some citations after only six seconds or slightly longer. He argues it can be done this quickly. He also said he was only trying to do the easy one's so as to leave fewer ones for Ms. Houx to look at when she returned. The problem with Grievant's argument is that almost all of the citations he deleted were done in a matter of seconds. While Ms. Houx did delete some in less than ten seconds, there were others that took much longer. Grievant admitted during the investigation it was possible he was being

inattentive or multitasking when reviewing the citations. While he did not admit that was what occurred, it seems likely given the timing of so many of the deletions he was not putting forth his best effort. DR-CIT-103A does say to only add a citation to the record “when all information required to properly process the citation is present.” It also says the person reviewing the citation should try to find a matching code through the verbiage if no code is present. This requires some investigation on the part of the individual reviewing the citation. Grievant was familiar with the requirements for in-state but not nearly as familiar with out-of-state citations. Codes in the State tend to be more uniform than codes often included on OOS citations. There is supposed to be some uniformity, but not all comply. Ms. Houx doing the work daily has a better grasp of the issues that arise on OOS citations than Grievant. In three seconds or so he could not have done the required review that may have given him the “necessary information” to put the citation on a driver’s record, at least on some of them. It may be he could not fill in the blanks on many which was confirmed by the conclusion that 334 of the 382 citations were deleted properly. Some of the 48, however, he might have found what he needed.

The Arbitrator finds though Grievant did not violate any rules by going into the queue, his efforts were not up to his usual standards once he made the decision to go into it. He is a good employee with a clean record. He tried to help another and tried to promote good customer service. Those are laudable goals, but that does not relieve him of responsibility for doing the job correctly, regardless of motives. The Arbitrator cannot say with any assurance Grievant improperly deleted 48 citations, because of the paucity of information as

discussed above. What the Arbitrator can say given the minimal time spent on each citation and given his unfamiliarity with current standards used to determine whether an OOS Citation should be included on a record, Grievant was deficient in his handling of these citations.³ He was negligent in his handling of the OOS queue. Part of the basis for the discharge was a contention Grievant intentionally deleted the citations. It is true he did intend for them to be deleted, but he did not do it for the wrong reasons.⁴ Intent as the State is using it is intent to do something one knows should not be done. That is not the case here. There is a distinction between a negligent act and an intentional act. Grievant was negligent, but his actions were not malicious or knowingly wrong.

This brings the Arbitrator to the issue of Grievant's candor during the investigation and with Ms. Jackson. It is here the Arbitrator finds Grievant's actions most problematic. On March 4 when Ms. Houx asked Ms. Jackson about missing citations Ms. Jackson sent an e-mail to Grievant. She asked him: "By any chance have you worked on any of the OOS citations sitting in review." She also asked if he had any computer problems as there had been such problems in the past. Grievant indicated he did not have problems with the computer, but never answered the other question. A second e-mail was sent in which Ms. Jackson said she wanted "to confirm they are being worked on by someone." He again responded no one reported any problem with the computer. He did not say he had been in the queue. Grievant maintains he did

³ Ms. West noted when she was supervisor of OOS a citation was deleted if it did not have the proper code included. That is no longer true. More research is now done. Ms. West conceded she did not know anything about current policy as she had been out of the unit for some time.

⁴ To delete a citation Grievant clicks a box to delete the citation. It then asks if he is sure he wants to delete it. He must click delete or yes again for it to be deleted.

tell Ms. Jackson later that day he was in the queue. Ms. Jackson denies being told that. The Arbitrator can find no support for Grievant's contention. There is no indication he ever mentioned telling her that during the investigation.

While it is understandable as noted earlier Grievant could not recall the specific citations, the rest of his response during the investigation is not. He was asked why he was in that queue. He responded "If I were, it would be part of the Citations Unit workload." He had been in the queue in July and August. This question was asked him in early September. He knew he had been in the queue. He did not say I went into it because it was part of my job. He could have defended himself on that basis. Instead, he did not take "ownership"⁵ of his action and responded in a "circuitous" manner to questioning.⁶

Grievant may have believed there would not be a full and fair investigation. He stated that is why he was so hesitant to take ownership of its actions. Even if that is the case, this does not excuse him from being forthright during the questioning. It certainly does not excuse him from answering Ms. Jackson's questions in March. This was well before any investigation ever began.

The Arbitrator has not found Grievant improperly deleted the citations he is charged with deleting. He also has not found Grievant deleted citations for any personal gain or for the gain of anyone else he knew. If he had so found, that would in itself be a dischargeable offense. The Arbitrator has found Grievant wanting in his handling of the citations and further found he was not forthcoming regarding his entering the OOS exceptions queue. Grievant had

⁵ Ex S1 at p.11

⁶ It is hard to reconcile his present recollection during the hearing in April of 2013 that he told Ms. Jackson back in March of 2012 he had been in the exceptions queue, when he was unable to remember being in it in August of 2012 when questioned about it the following month.

been employed over seven years and a supervisor for five years at the time he was discharged. His evaluations were always good and he had no prior disciplinary action taken against him. These factors weigh in his favor. The question then is whether these positive factors are enough to set aside the discharge given the findings here. The Arbitrator finds that they do. In so finding, he does not minimize the actions of Grievant, especially his lack of candor, but progressive discipline should be followed where appropriate and it is warranted here. The Arbitrator will order Grievant reinstated and substitute a suspension for the discharge. Unfortunately, Grievant's discharge occurred 16 months ago. That is always a problem when deciding whether the reinstatement should or should not include backpay. Sixteen months is too long a time for no backpay. The suspension shall be for 10 months ending at the end of December of 2012. He shall be made whole from January 1, 2013 until offered reinstatement.

AWARD

1. The grievance is sustained in part and denied in part.
2. Grievant's discharge shall be replaced with a suspension of ten months. He shall be reinstated and made whole less the period covered by the 10 month suspension.
3. The Arbitrator shall retain jurisdiction for no less than 90 days to resolve any issues regarding the implementation of this Award.

Dated: July 2, 2013



Fredric R. Dichter,
Arbitrator