IN ARBITRATION BEFORE
ELIZABETH FORD

WASHINGTON ASSOCIATION OF FISH AND WILDLIFE PROFESSIONAL, Union, and WASHINGTON STATE, DEPARTMENT OF FISH AND WILDLIFE Employer. (Hansen Discipline)	ARBITRATOR'S DECISION AND AWARD

Appearances:

For the Employer:
Thomas Knoll, Jr.
Assistant Attorney General

For the Union:
Rhonda Fenrich
Fenrich & Gallagher

INTRODUCTION

The Washington State Department of Fish and Wildlife ("Employer" or "Department") and The Washington Association of Fish and Wildlife Professionals ("Union") are parties to a collective bargaining agreement governing the terms and conditions of employment for certain employees of the Department, including the grievant in this matter. (DFW Ex. 1)

The matter is before the Arbitrator as the result of a grievance filed by the Union on September 3, 2019, challenging a letter of reprimand imposed on Sara Hansen on August 30, 2019. The grievance alleged "[t]he Agency's discipline of Ms. Hansen fails to meet the standards of just

cause as required in the party's collective bargaining agreement" and sought removal of the reprimand. (DFW Ex. 7) The matter proceeded through the contractually required stages of the grievance process until the parties moved the matter to arbitration.

The arbitration hearing in this matter was held on October 20 and November 5, 2021. The parties stipulated the grievance was timely filed and the matter is properly before the Arbitrator. Both parties had the opportunity to call, examine and cross-examine witnesses and to submit evidence. The parties timely submitted written briefs on January 5, 2022, and the matter was submitted to the undersigned for decision.

STATEMENT OF THE ISSUE

The parties stipulated to the following issue for decision:

> Whether or not there was just cause provided for the employer to issue the reprimand as of August 30, 2019. If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 26 DISCIPLINE

26.1 The Employer will not discipline any permanent employee without just cause.

* * *

26.3 Discipline includes oral and written reprimands, reduction in pay, suspension, demotion, and discharge.

26.4 Once an administrative investigation has been initiated and investigative responsibility has been assigned, the investigator shall ensure notification to the employee and the Association in writing by letter. Upon written request of the Association, if an investigation will last longer than sixty (60) days from the date the employee was notified of the investigation, the Employer will provide an explanation to the Association of the current status of the investigation (for example: interviews still being conducted, drafting of investigative report, waiting for analysis of data), next steps and approximate timeframe for completion. At the conclusion of any investigation where the Employer elects not to take disciplinary action, the employee will be provided with a notification that the investigation is completed and that no discipline will be imposed. A traditional element of just cause requires discipline to be imposed in a timely manner in light of the need for thorough investigation.

26.5 Investigatory Interviews.

A. The Employer will notify the employee in writing, no less than seventy-two (72) hours in advance of an investigatory interview and the nature of the allegations. Upon request, an employee has the right to an Association representative at an investigatory interview called by the Employer, if the employee reasonably believes discipline could result. An employee may also have an Association representative at a pre-disciplinary meeting. If the requested representative is not reasonably available, the employee will select another representative who is available. Employees seeking representation are responsible for contacting their representative. If Agency employee(s) conduct a criminal investigation on an Agency employee, the investigators will inform the employee under investigation that the investigation is criminal in nature and may also be used by the Agency in making a disciplinary determination.

B. The role of the representative is to provide assistance and counsel to the employee, rather than serve as an adversary to the investigator. The exercise of rights in this Article must not interfere with the Employer's right to conduct the investigation.

C. Employees have a duty to cooperate with an Agency investigation. Employees retain the rights afforded to them by the Constitution of the United States and the State of Washington, as well as all of the protections of the statutes of Washington and this collective bargaining agreement.

D. Employees who are the subject of an investigatory interview will be informed of the general nature of the alleged misconduct before the employee is asked to to questions concerning the allegation(s).

FACTUAL BACKGROUND

The Department is an agency of Washington State government "dedicated to preserving, protecting, and perpetuating the state's fish, wildlife, and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities." Washington Department of Fish and Wildlife Website, About, https://wdfw.wa.gov/about (last visited 2/4/22). The Wildlife Program is one of several within the Department. Within the Wildlife Program is the Game Division, which includes the Elk and Deer Section.

During all times relevant to this grievance, Eric Gardner Directed the Wildlife Program, and Anis Aoude was the Manager of the Game Division. Until January 1, 2019, Jerry Nelson held the position of Elk and Deer Section Manager. (Tr. 17) The Elk and Deer Section is comprised of a manager and two biologists, one focused on elk and other on deer. Prior to January 1, 2019, Brock Hoenes held the Elk Specialist position, and Sara Hansen held the Deer Specialist job. (Tr. 58, 256) Ms. Hansen's work location was in Spokane, while Mr. Hoenes was stationed in Olympia. (Tr. 303)

Sometime in late 2018, Mr. Nelson was promoted, leaving the Manager position vacant. Both Mr. Hoenes and Ms. Hansen applied. (Tr. 58, 258) On December 17, 2018, Anis Aoude let Ms. Hansen know by telephone that Mr. Hoenes was awarded the Manager position. (Tr. 300). After that conversation, Ms. Hansen sent Mr. Aoude an email which included the statement, "I also have zero interest in working for Brock. . ." (DFW Ex. 11) Mr. Aoude, responded by saying "[s]orry you feel that way, Sara. I know you are disappointed." (*Id*.) Mr. Aoude also forwarded the message to Mr. Hoenes, who responded by emailing Ms. Hansen. (Tr. 64)

Supervisory Tensions.

Mr. Hoenes and Ms. Hansen each recalled a January 15 telephone conversation regarding Ms. Hansen's December 17 email, though the parties had differing interpretations of its substance and tenor. Mr. Hoenes described Ms. Hansen as "disrespectful", and Ms. Hansen described Mr. Heones as "unprofessional." (Tr. 24, 323) Mr. Hoenes testified that multiple difficult conversations occurred between the two during the first few months of 2019, most of which were over telephone. (Tr. 25, Un. Ex. 11) Mr. Hoenes described Ms. Hansen during these conversations as having "general opposition to almost every directive [he] gave her." (Tr. 24) Ms. Hansen contended, first,

that there was no contact with Mr. Hoenes prior to March (Tr. 270) and then testified that "phone calls had occurred." (Tr. 323)

On March 20, the Department convened a meeting to discuss changes to Ms. Hansen's Position Description and Performance Development Plan. (Tr. 39, 271) That meeting was attended by Mr. Hoenes, Mr. Aoude, Ms. Hansen, and Ms. Hansen's union representative. Also present were two Human Resources Representatives: Marnie West and the Manager of Human Resources for the Department, Cyndie Lerch. (Tr. 44, 137, 271) The purpose of the meeting was to discuss changes to Ms. Hansen's position which had been previously proposed by Mr. Nelson. (Tr. 39-40, 137) The meeting ended without the documents being finalized. (Tr. 41)

In the next several months, Ms. Hansen and Mr. Hoenes continue to squabble over email. Mr. Hoenes contended that Ms. Hansen was "unprofessional and disrespectful," and Ms. Hansen contended in turn that Mr. Hoenes was "aggressive, hostile, and belittling." (See Un. Ex. 9, 16, and 11 at ¶¶14 – 24) Mr. Hoenes describes himself at this point as feeling "stuck and overwhelmed." (Un. Ex. 11 at 24)

Expectations and Work-Planning Assignments.

On June 26, Mr. Hoenes and Ms. West met with Ms. Hansen to finalize the position description and performance expectation documents left incomplete after the March 20 meeting. (Un Ex. 11 at # 25; See DFW Ex. 2 and 3) That meeting seems to have been more productive than the last one, and the finalized position description contained a great deal of information about Ms. Hansen's position, its objectives, assigned work, responsibilities, working conditions, qualifications, and behavioral competencies. (DFW Ex. 2) The related Performance and Development Plan ("PDP") contained within its list of performance expectations, a list of eight

"key results", defined as "the most important objectives, outcomes, and/or special assignments to accomplish in order to be successful during the performance period." (DFW Ex. 3)

Of these, two are relevant. Key expectation number 1 provided that Ms. Hansen would "complete a final report summarizing the MRDS study results by August 1, 2019." (*Id*.) Ms. Hansen testified that August 1 was merely a target, not a firm deadline, describing it as a "straw dog." (Tr. 278) Mr. Hoenes described the deadline as necessary to allow the report to be presented at the August "Deer Meeting." (Tr. 23). Key expectation number 8 provided that Ms. Hansen would "submit bi-weekly reports to Wildlife Prof administrative staff that summarizes your work activities by 8:00 am on the 10th and 25th of each month." (*Id*.)

Unfortunately, on June 27 the bickering resumed with Mr. Hoenes indicating by email that an assertion Ms. Hansen made was a "falsehood" and Ms. Hansen responding by saying "your email is pretty surprising given the positive spot I thought we had finally landed on during my performance evaluation yesterday." (Un. Ex. 7) Ultimately, Ms. West jumped in to clear up the misunderstanding. (*Id*.)

On July 18, Mr. Hoenes sent Ms. Hansen another email adding one more work planning document assignment. (DFW Ex. 6, Attachment 3) Pointing to the many demands on the Deer and Elk Section, Mr. Hoenes sa*id*, "I want to start incorporating the use of work planning exercises that are used to identify priority tasks and balance workloads for District Biologists . . . **Please complete them by COB August 15**." (*Id*.)(emphasis in original) In this same email, Mr. Hoenes indicates ambivalence about whether the bi-weekly updates contained in the PDP were necessary:

> As you know, I put these on your expectations, but all of us recognized that there didn't seem to be much energy behind the effort at the Division level. . . I checked the website and indeed they are getting uploaded regularly. As such, submit a bi-weekly report to Will on the associated deadlines.

(*Id*.) Ms. Hansen was on annual leave during the week that included July 18, so she would have received this email upon her return to the office on July 22.

On July 30, Mr. Hoenes issued Ms. Hansen a "Letter of Concern."[1] (DFW Ex. 5) Mr. Hoenes described his reason as follows:

> I am issuing this memo of concern because of recent behaviors noted in the email chain . . . dated July 18 through July 30. The communication in this email exhibits a lack of respect for chain of command and an unwillingness to accept supervision[2]. . . I am concerned these behaviors reflect insubordination.

(Id.) He concludes with a warning that further similar conduct will result in discipline.[3] (*Id*.) Mr. Hoenes sent this letter to Ms. Hansen by email at 2:48 p.m. along with this message:

> Please see attached for a Letter of Concern I have drafted in response to your continued lack of respect for chain-of-command and an unwillingness to accept supervision. I have also requested that Human Resources place a copy of this letter in your personnel file."

(Un. Ex. 5) There was no accompanying telephone call or other meeting. (Tr. 85)

Approximately one hour after sending the Letter of Concern, Mr. Hoenes sent another email to Ms. Hanson. (DFW Ex. 6, Attachment 4) This email recounted Ms. Hansen's expressed concerns about her workload: "[o]n numerous occasions, both verbally and in writing, you have expressed you are not able to manage your current workload within your normally scheduled work hours . . . " (*Id*.) Mr. Hoenes then imposed another work planning requirement on Ms. Hansen, telling her to "begin submitting a bulleted report to me by COB each Friday that summarizes the tasks you worked on during the week and the amount of time that was committed to each of those

[1] This appears to be an action short of discipline, though there is nothing in the record or the contract describing exactly what this is.
[2] While the letter indicates that the email chain is attached, no emails are connected to DFW Ex. 5.
[3] "It is important that these expectations are met fully if you are to continue to succeed in this position. Please understand that there will be zero tolerance for these behaviors and failure to adhere to my reasonable expectations constitutes insubordination and will result in further necessary action on the agency's part."

tasks." (*Id*.) That requirement was to begin on Friday, August 23, 2019. (*Id*.) Ms. Hansen responded by upping the ante:

> So I get the punishment of even more busy work to take up my time when I asked you for some help and flexibility? That's disappointing and really hurtful. I don't deserve to be treated like this.

(Un. Ex. 5)[4]

Investigation and Discipline.

Between the Personnel Develop Plan's "key results" and the newly imposed planning documents, there were several things that Ms. Hansen had due in August. First, the MRDS report was due to be submitted on August 1. Second, the work plan document should have been submitted on August 15. Third, the bi-weekly reports were due on the 10th and 25th of each month.[5] Finally, the weekly reporting was slated to begin on August 23.

Sometime prior to August 27, Shawn Flanagan, Human Resources Representative, was assigned to investigate whether to discipline Ms. Hansen for "failing to complete specific work product as outlined by the supervisor. . ." (Tr. 434) On August 27, Mr. Flanagan convened a meeting with Mr. Hoenes to discuss potential discipline against Ms. Hansen. (Tr. 468) At this meeting Mr. Hoenes provided information regarding alleged missed deadlines. Mr. Flanagan testified that, while he did interview Mr. Hoenes, he did not interview Ms. Hansen during the investigation:

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[4] After the issuance of this letter, Ms. Hansen requested mediation. Even though Ms. Hansen was at this point accusing Mr. Hoenes of "bullying"[4], Mr. Hoenes declined the request "[b]ecause I felt like we were both professional adults, and the issues that we were trying to work through did not require mediation." (Tr. 75). It is worth noting that mediation is intended precisely for professional adults who are having a difficult time negotiating their interpersonal relationships.

[5] On brief, the Employer notes that Ms. Hansen "stopped submitting these reports on July 1." (ER Brief at 9) The coincidence of this and Mr. Hoenes's email indicating "there didn't seem to be much energy behind the effort" and his efforts to double check if these were really being used suggests that there may have been a genuine reason to believe that the report were not expected before July 18.

Q. Well, you said that Brock brought forward these -- or somebody brought forward these allegations, and you met with Brock to get his understanding as the supervisor; correct?
A. Correct.
Q. But you did not meet with the employee to see whether there was anything that they could provide that they thought was mitigating to meeting those deadlines?
A. That is correct.

(Tr. 471) Mr. Flanagan explained that he felt because this wasn't "the type of assignment that was given two weeks away, something happened, and the employee wasn't able to complete the work" there was no need to interview Ms. Hansen. (Tr. 471-472)

After this investigation, Mr. Flanagan drafted the written warning for the Head of the Wildlife Division's, Mr. Gardner, signature. The bases for the warning were contained in four bulleted paragraphs:

- On March 20, 2019 you were orally directed to complete and submit a final report for the mark-resight distance sampling (MRDS) research project to your supervisor no later than August 1, 2019. That directive was then formalized in your PDP Expectations for the 2019-2020 performance period (See Attachment 1). As of the date of this letter you have failed to meet that expectation.

- On April 26, 2019 and again on July 18, 2019, you were directed, via email, to submit reports that could be included in the biweekly Game Division activity reports (See Attachments 2 and 3). This expectation was also conveyed to you in your PDP Expectations for the 2019-2020 performance period (See Attachment 1). No reports have been submitted since July 1, 2019. You have failed to meet this expectation.

- On July 18, 2019 you were directed, via email to complete and submit a Work Matrix (See Attachment 3) for the 2019-2020 and 2020-20201 performance periods by August 15, 2019. This task was not completed until August 27, 2019.

- On July 30, 2019, via email, you were directed to begin submitting reports on a weekly basis by close of business (COB) on Friday that summarized the tasks you worked on during the week and the amount of time you committed to each of those tasks (see Attachment 4). The report was to also include a list of tasks you planned to work on the following week. You were directed to submit your first weekly report on August 23, 2019. As of the date of this letter you have failed to meet that expectation.

(DFW Ex. 6) On August 30, Mr Hoenes sent Ms. Hansen the letter of reprimand, signed by Mr. Gardner, as an email attachment. This led to several back-and-forth emails arguing over the the validity of the allegations contained in the letter. (*Id*.)

Conflicting Testimony as to Missed Deadlines.

At the arbitration hearing, there was considerable back and forth as to the reasons for – and existence of – missed deadlines. There is no dispute that Ms. Hansen did not submit the MRDS report on August 1. (Tr. 52, 332) While Mr. Hoenes claimed this was further evidence of Ms. Hansen's insubordination, Ms. Hansen gave several different reasons for failing to submit the report. First, she argued that the deadline was merely a target, not a firm requirement. (Tr. 278) Second, she claimed that she needed help from the Biometrician[6], and that person had failed to provide her the needed information. (Tr. 339; Un. Ex.13)

Ms. Hansen submitted the work planning matrix on August 27, 12 days after it was due. At the hearing, Ms. Hansen accepted responsibility for the late submission but also contended that she had a "substantial docket" and, because this was a new assignment, Mr. Hoenes should have given her a reminder when he did not receive it on time. (Tr. 348) Additionally, Ms. Hansen claims that the July 18 email was sent to her while she was on annual leave, and so she would not have received it until July 22. (Tr. 346) As to the bi-weekly activity report, Ms. Hansen contended that she forgot about the first one and the due dates fell on dates that she was out of the office. (Tr. 356)

There was confusion on both sides as to the weekly reports. Mr. Gardner testified that Ms. Hansen missed this deadline five times, not being aware – even at hearing – that this new weekly report was effective on August 23. (Tr. 205) Ms. Hansen, on the other hand, seemed to conflate

[6] There was little testimony as to what a "biometrician" is and why that person would be necessary to the MRDS report.

the weekly, bi-weekly, and work planning matrices in her testimony, claiming that she was out of the office when they were due, that she had a lot of email, and that she had a full plate of other work to do. (Tr. 346-350) She also contended that she complied with the requirement through emails. (Tr. 357)

ARGUMENTS OF THE PARTIES

Employer's Argument.

The Employer acknowledges that it has the burden to prove by a preponderance of evidence that its reasons for the discipline were "just" and that penalty was appropriate.

The Employer first argues that performance discipline regarding missed deadlines did not merit an investigation. The Employer argues that a "formal investigation" described in Section 26.4 of the CBA need not be conducted in every case, and because this case involved "performance management" an investigation was not required by the CBA. Furthermore, the Employer contends that Ms. Hansen had opportunity to refute the charges but failed to take advantage of those.

Next, the Employer contends that it has proven Ms. Hansen failed to meet the deadlines imposed and therefore, discipline was appropriate. The Employer contends that there is no dispute and no reasonable excuse for Ms. Hansen missing the MRDS report deadline. That, alone, would have been sufficient basis for a written reprimand. The Employer argues that Ms. Hansen's failure to submit the bi-weekly reports further supports the issuance of discipline. The Employer argues that the late work matrix demonstrates that Ms. Hansen did not take Mr. Hoenes's directions seriously and supports discipline. Finally, the Employer argues that "[t]he failure to meet [the weekly work summary] deadline not only ignored a very clear directive, but it also significantly

affected Mr. Hoenes's ability to assist Ms. Hansen with her work-life balance that she complained about . . ." (Employer Brief at 21)[7]

Union's Arguments.

The Union first argues that the Grievant lacked effective notice of the rules that she was alleged to have violated. The Union contends that the LOC did not put Ms. Hansen on notice since it was given for reasons different from the LOR. The Union further argues that the term "insubordination" was used but not adequately defined. Finally, the Union contends there was no meeting of the minds on the deadlines for which Ms. Hansen was disciplined.

Next, the Union argues that the rule alleged to be violated was not reasonably related to the orderly and safe operation of the business and the performance that the employer might expect from an employee. Here, the Union contends that the Employer pointed to no actual rule requiring the compliance with deadlines, but also contends that the deadlines were an effort to support a conclusion that Mr. Hoenes had already reached.

The Union then argues that the Employer failed to conduct a full and fair investigation. The Union points out that the Employer's investigation consisted of the Human Resources professionals sitting down with Mr. Hoenes and gathering information, but the Employer did not interview Ms. Hansen. The Union points out that the purpose of an investigation is to allow the Employer to take a neutral role in determining the facts.

The Union next argues that the Employer failed to adduce sufficient evidence to prove its allegation of misconduct. Taking the charge as insubordination, the Union contends that the Employer failed to adequately consider mitigating circumstances and the existing and historic conflicts.

[7] The Employer, anticipating that the Union would argue that the Letter of Reprimand ("LOR") amounted to double jeopardy, countered this argument. The Union did not raise this argument on brief.

DECISION

There can be no doubt that an employer is free to impose reasonable standards of performance and penalize the failure to meet those standards through discipline. *See e.g. Caesars Palace Hotel & Casino*, 132 LA 786, 797 (Riker, 2013) ("Employer must have the authority to manage its operations in a manner they determine is necessary to compete in a very competitive market. This includes setting reasonable standards and holding employees accountable for following those standards within the confines of the CBA and company policy . . .) However, the accountability must comply with the terms of the collective bargaining agreement. In this case, Article 26 of the parties' CBA provides that "[t]he Employer will not discipline any permanent employee without just cause." Jt. Ex. 1, § 26.1. The article goes on to specify that the requirement applies to all levels, including written warnings. Jt. Ex. 1, § 26.2.

While reasonable arbitrators may differ on the employer's obligation to establish each of the Dougherty's seven tests of just cause, the employer has an obligation to demonstrate that the employer adequately notified an employee of the consequences of violation of newly imposed performance requirements and that the employer adequately investigated. In this case, I find that the Employer provided sufficient notice that failure to meet deadlines would result in discipline. However, the fact that the Employer based its investigation entirely on its interview with Mr. Hoenes and failed to interview Ms. Hansen during the investigation is a violation of the Employer's contractual obligation.

Notice.

An employer has the authority to impose performance and productivity standards and, provided consequences are clearly enunciated, may discipline an employee for the failure to meet them. *Cummins Cumberland Inc*. 106 BNA LA 993 (overturning a written warning based a newly

issued productivity standard which did not articulate disciplinary consequences). Additionally, employers need not explicitly warn of every possible action that may warrant discipline. *University Med. Ctr.*, 1999 WL 1797340 (Bogue, 1999). Indeed, an employee who has been warned of performance issues may be found to be adequately apprised of the possibility of discipline. *Providence Seaside Med. Ctr.*, 2020 BNA LA 1124 (Latsch, 2020). ("I must conclude that Ms. A__ was aware that her work performance was under scrutiny, and that the Employer could issue a final written warning, given her past disciplinary difficulties. Ms. A__'s actions directly led to the final warning, and the Employer showed discretion in attempting to rehabilitate her employment.")

The question here is a close one, but like Arbitrator Lastch, I must conclude that Ms. Hansen had notice that disciplinary consequences could flow from her failure to follow Mr. Hoenes's instructions. Each of the assignments was provided in written form. While it would have been better management practice for Mr. Hoenes to initiate in-person contact with Ms. Hansen and discuss whether four different forms of work updates were necessary, it is within his authority to make these assignments. The assignments themselves did not contain an indication of disciplinary consequences for the failure to comply. However, the LOC issued to Ms. Hansen on July 30 should have made it clear that Ms. Hansen was facing disciplinary consequences if she failed to respond to Mr. Hoenes's instructions. Additionally, because a written warning does not bring financial consequences, it is appropriately used to put an employee on notice of unacceptable behavior. Thus, as demeaning and redundant as the multiple work planning requirements may have seemed to Ms. Hansen, she was on notice that she ran the risk of discipline if she failed to comply.

Investigation.

While the notice was adequate, the investigation was not. To establish just cause, an employer must prove both that the alleged conduct actually occurred and that the employer conducted a "full and fair investigation" prior to imposing discipline. May, *Elkouri & Elkouri, How Arbitration Works, Eighth Edition*, §15.3.f.ii. (Bureau of National Affairs 2016).

> This includes, at a minimum, questioning the accused employee: A just cause proviso, standing alone, demands that certain minimal essentials of due process be observed. One at least of those minimum essentials is that the accused have an opportunity, before sentence is carried out, to be heard in his own defense. . . .It is the process, not the result, which is at issue

McCartney's Inc., 84 LA 799, 804 (Nelson 1985); *accord CR/PL P'ship* (Crane Plumbing), 107 LA 1084 (Fullmer, 1996) (Employee discharge for pulling a knife on a co-worker set aside where employer failed to interview grievant); *Lincoln Lutheran of Racine, Wis*., 113 LA 72 (Kessler, 1999) (grievant discharged for using abusive and profane language reinstated because she did not tell her side of the story before discharge); *Gemala Trailer Corp*., 108 LA 565 (Nicholas, Jr., 1997) (employees who were discharged for shaking a vending machine were denied due process because the employer did not question them during the investigation and relied only on the direction of the human resources manager).

Here, the investigation was conducted by Human Resources representative Shawn Flanagan. His task was to determine whether Ms. Hansen "failed to complete specific work product as outlined by the supervisor." (Tr. 434) Mr. Flanagan interviewed Mr. Hoenes and then drafted a written warning for Mr. Gardner's signature. He did not talk with Ms. Hansen before putting the warning together. Indeed, he did not believe such a conversation was necessary because the situation was so clear.

This situation was far from clear. Ms. Hansen believed that she was being given unreasonable assignments, that the MRDS report was not actually due on August 1, that she was being bullied by Mr. Hoenes, that she had scheduling conflicts that made compliance impossible, and that she had complied. The Employer is certainly free to conclude – as this arbitrator does – that much of this lacks credibility, but the Employer was not free to make that conclusion without talking with the Grievant. Indeed, had the Employer interviewed the Grievant, Mr. Gardner would not have been confused about exactly how many weekly reports Ms. Hansen had missed. Moreover, the fact that there was an unresolved and growing personality conflict directly between Mr. Hoenes and Ms. Hansen makes taking information from only one "side" of this conflict particularly problematic.

The Employer raises several arguments to support its contention that it did not have an obligation to interview Ms. Hansen. First, the Employer argues that because this is a low level performance discipline matter no "formal" investigation is called for. The CBA does provide certain protections for employees in investigations. For example, the contract requires 72 hours' notice of the interview and the ability to bring a union representative. It limits the role of the representative and requires the employee to be cooperative. It does not, however, limit those protections to "formal" investigations or make any distinctions between performance discipline and any other type of discipline. Indeed, the contract is quite clear that discipline includes "oral and written reprimands, reduction in pay, suspension, demotion, and discharge." Jt. Ex. 1, § 26.3. The Employer is correct that the scope of the investigation may reasonably be related to the complexity and seriousness of the alleged conduct. Here, while the proposed discipline was relatively minor, it cannot be said that the situation was so straightforward that the grievant should not be interviewed.

Next, the Employer argues that Ms. Hansen failed to take the opportunity to explain her conduct. The Employer's frustration with Ms. Hansen's approach to the assignments and ultimate discipline is understandable. A long, single-spaced document with a variety of attachments is not a constructive approach to conflict. However, it is not Ms. Hansen's obligation to conduct the investigation and gather information from all sides of this conflict. It is the Employer's.

CONCLUSION

For the above reason, the grievance is sustained. The written reprimand should be removed from Ms. Hansen's personnel file. No compensation is owed, and Ms. Hansen continues to be on notice that she must comply with directives from her supervisor and the failure to do so may result in discipline.

This decision should not be read as an endorsement of the conduct of either party to this unfortunate situation. For his part, Mr. Hoenes's approach to Ms. Hansen's discomfort with his leadership was to impose overlapping and increasingly detailed reporting requirements on her. It would have been far preferable for Mr. Hoenes to step back and consider other ways – like mediation - to mend this relationship. Likewise, Ms. Hansen's communication and behavior made this situation worse than it could have been. It would have been far preferable for Ms. Hansen to step back and consider how her own behavior was creating the very situation she found so frustrating.

DATED this 16th day of February, 2022

_____

Elizabeth Ford
Arbitrator

From: Pimentel, Eloise (ATG)
To: ATG MI LPD Arbitration
Cc: Knoll, Thomas R (ATG)
Subject: FW: WAFWP (Hansen, Sara) v. DFW
Date: Thursday, February 17, 2022 8:51:14 AM
Attachments: WDF & WAFWP Decision.pdf

LM #10907270.

Eloise Pimentel
Legal Assistant
Labor & Personnel Division
Office of the Attorney General
(360) 586-2229
Eloise.Pimentel@atg.wa.gov

From: Ford, Elizabeth <forde@seattleu.edu>
Sent: Wednesday, February 16, 2022 6:21 PM
To: Knoll, Thomas R (ATG) <thomas.knoll@atg.wa.gov>; rhonda@fglaborlaw.com
Cc: Pimentel, Eloise (ATG) <eloise.pimentel@atg.wa.gov>
Subject: Re: WAFWP (Hansen, Sara) v. DFW

[EXTERNAL]

Dear Parties:

Thank you for this clarification, and I understand completely and hope that the additional time did not cause the parties any inconvenience.

The decision in the above referenced matter is attached. I will send the invoice by separate email.

Thank you both for your excellent representation of your clients and for making my decision in this difficult matter easier.

Arbitrator Ford

From: Knoll, Thomas R (ATG) <thomas.knoll@atg.wa.gov>
Date: Wednesday, February 16, 2022 at 5:20 PM
To: Ford, Elizabeth <forde@seattleu.edu>
Cc: rhonda@fglaborlaw.com <rhonda@fglaborlaw.com>, Pimentel, Eloise (ATG) <eloise.pimentel@atg.wa.gov>
Subject: RE: WAFWP (Hansen, Sara) v. DFW

Dear Arbitrator Ford:

The parties had expected your decision by February 4, 2022, pursuant to our prior agreement. However, when you wrote to us on February 6th, you indicated that the decision would not likely be issued on Monday, but rather toward the end of the upcoming week which passed with no decision being received. The employer just wanted to make sure they had not missed it for some reason.

The employer would like to have a decision on this discipline as soon as possible as it prepares for subsequent disciplinary hearings with Ms. Hansen.

Thomas R. Knoll, Jr., Esquire
Assistant Attorney General
7141 Cleanwater Drive SW
PO Box 40145
Olympia, Washington 98504
360-664-4172

"The greatest want of the world is the want of men . . . who will not be bought or sold, men who in their inmost souls are true and honest . . . men whose conscience is as true to duty as the needle to the pole, men who will stand for the right though the heavens fall." E. White, Author

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From: Ford, Elizabeth <forde@seattleu.edu>
Sent: Wednesday, February 16, 2022 4:31 PM
To: Pimentel, Eloise (ATG) <eloise.pimentel@atg.wa.gov>
Cc: Knoll, Thomas R (ATG) <thomas.knoll@atg.wa.gov>; rhonda@fglaborlaw.com
Subject: Re: WAFWP (Hansen, Sara) v. DFW

[EXTERNAL]

Dear Ms. Pimentel,

My apologies. I understood from the parties that the former timing issues were no longer applicable.

Nonetheless, I expect to issue the decision later today or tomorrow.

Best,

Arbitrator Ford

> On Feb 16, 2022, at 4:17 PM, Pimentel, Eloise (ATG) <eloise.pimentel@atg.wa.gov> wrote:
>
> Arbitrator Ford,
>
> I believe we were expecting to receive your Decision in the Hansen matter by February 11. Has that been sent? I want to make sure I didn't miss it.

Thank you,

Eloise Pimentel
Legal Assistant
Labor & Personnel Division
Office of the Attorney General
(360) 586-2229
Eloise.Pimentel@atg.wa.gov