

**AMERICAN ARBITRATION ASSOCIATION**

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**IN THE MATTER OF AN ARBITRATION BETWEEN**  
**WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES**  
**AND**  
**WASHINGTON FEDERATION OF STATE EMPLOYEES**

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**AAA Case No. 01-24-0008-5047**  
**Subject: 5-day Suspension of Rion Tisino**

**ARBITRATOR**

**ELIZABETH C. WESMAN, Ph.D.**

**APPEARANCES**

**For the Employer:** Carmen Hargis-Villanueva  
Assistant Attorney General  
State of Washington

**For the Union:** Gregory M. Rhodes  
Attorney for Washington Federation of State Employees  
Younglove Coker & Rhodes, P.L.L.C.

**ALSO PRESENT**

**For the Employer:** Melinda Silva, Deputy Chief Executive Officer for the Gage Center  
Western State Hospital

**For the Union:** Rion Tisino, Grievant  
Michael Yestramski, President, WFSE

## **PROCEEDINGS**

The Washington State Department of Social and Health Services (“DSHS” or “Employer”) and the Washington Federation of State Employees (“WFSE” or “Union”) selected me to act as hearing officer in this matter under the Voluntary Arbitration Rules of the American Arbitration Association. The hearing was held on June 9, 2025, via video conference, at which time both Parties were afforded full opportunity to present testimonial and documentary evidence. The Parties elected to file post-hearing briefs. Those briefs were received on August 1, 2025. Following receipt of the briefs, the arbitrator declared the record closed, with the decision due in thirty (30) days.

## **ISSUE**

At the hearing, and in their post-hearing briefs, the Parties were generally agreed that the issue to be decided was as follows:

- 1. Did the Employer meet the just cause standard under the Collective Bargaining Agreement when it suspended Mr. Rion Tisino for five days?**
- 2. If not, what should be the remedy?**

## **PERTINENT CONTRACT PROVISIONS AND RELEVANT**

### **ADMINISTRATIVE POLICY**

#### **Article 2**

##### **Non-Discrimination**

**2.1** Under this Agreement, neither party will discriminate against employees on the basis of religion, age, sex, status as a breastfeeding mother, marital status, race, color, creed, national origin, political affiliation, military status, status as an honorably discharged veteran, disabled veteran or Vietnam era veteran, sexual orientation, gender expression, gender identity, any real or perceived sensory, mental or physical disability, genetic information, status as a victim of domestic violence, sexual assault or stalking, citizenship, immigration status or because of the participation or lack of participation in union activities. Bona fide occupational qualifications based on the above traits do not violate this Section.

**2.2** Both parties agree that unlawful harassment will not be tolerated

#### **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. Oral reprimands will be identified as such.

##### **27.7 Pre-Disciplinary Meetings**

Prior to imposing discipline, except oral or written reprimands, the Employer will inform the employee and the Union staff representative in writing of 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. A pre-disciplinary meeting with the Employer will be considered time worked. Excluding oral and written reprimands, the Union will be provided copies of disciplinary actions.

**27.9** The Employer has the authority to impose discipline, which is then subject to the grievance procedure set forth in Article 29, Grievance Procedure. Oral reprimands, however, may be processed only through the agency head step of the grievance procedure.

## **Administrative Policy No. 18.64**

\* \* \*

### **A. Required standards of behavior and conduct**

5. Create a work environment free from all forms of discrimination and Sexual/workplace harassment. This includes but is not limited to:
  - a. Following and abiding by department policies regarding nondiscrimination, sexual harassment, workplace harassment, and client rights
  - b. Not using the employee's position for purposes of establishing or promoting personal or financial relationships with clients.
  - c. Creating an environment free from intimidation, retaliation, hostility, or unreasonable interference with an individual's work performance. ...

### **E. Required standards of behavior and conduct**

1. The ethics board is empowered to investigate and punish current and past employees for violations of the ethics laws.
  - a. The ethics board may impose sanctions, including monetary penalties whether or not the department takes action against the employee.
  - b. Monetary penalties may be up to \$5,000.00 per ethics violation, or three times the economic value of anything sought or received in violation of ethics law or rules, whichever is greater. ...
3. If an employee violates ethics laws, decisions of the ethics board, or this policy, the department will take appropriate disciplinary action, up to and including dismissal

### **F. DSHS ethics advisor**

The department's Human Resources Senior Director, or designee is the agency's central point of contact for advice about ethical issues and for reporting complaints about alleged violations of chapter 42.52 RCW – ethics in public service.

### **G. Ethics Training**

1. All department employees will receive ethics training every three (3) years.
2. The department's Human Resources is the department's central point of contact for:
  - a. Providing the required training for all employees; and
  - b. Tracking employee participation in the required training under the department's Human Resources development plan.

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## Administrative Policy No. 18.66

**Effective Date:** July 1, 2005

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### **Purpose**

This policy identifies and prohibits behaviors that are inconsistent with a safe and harassment free work environment and identifies behaviors that Department of Social and Health Services (DSHS) will not tolerate.

The safe and harassment free work environment includes those situations where a third party interacts with DSHS personnel to include clients, customers, and those within the community. DSHS is committed to providing equal employment opportunities and a workplace that is free from all forms of discrimination and harassment, including sexual harassment, retaliation, and other inappropriate behaviors.

This DSHS policy is part of the agency's overall efforts to provide a workplace free from discrimination and retaliation, pursuant to local, state, and federal laws prohibiting discrimination. This policy is also a part of DSHS's commitment to equity, diversity, access, and inclusion, and a workplace that is free from harassment, disrespect, and divisiveness. DSHS does not tolerate discrimination, harassment, or inappropriate behaviors of any kind. Through this policy, the supplemental trainings, and documents DSHS will educate its employees and works to prevent these behaviors from occurring. When behaviors, actions or lack of actions that might violate are substantiated, appropriate actions will be taken.

### **A. Prohibited actions:**

\* \* \*

- d. **Inappropriate behaviors:** Inappropriate behavior means behaviors that create a disrespectful, intimidating, or offensive environment or that interfere with an employee's work performance. It is the policy of DSHS that all employees have the right to conduct their work activities in an environment that is free from any form of inappropriate behavior. Inappropriate behavior does not include behaviors based on a person's protected group status that are covered in section A.2 of this policy.

\* \* \*

### **F. Penalty for violations of this policy**

- 1. Managers, supervisors, and employees who fail to take prompt and immediate steps to prevent and/or report alleged violations of this policy, may be subject to corrective or disciplinary action, up to and including dismissal.
- 2. Non-employees may be subject to other appropriate departmental action, including but not limited to termination of volunteer activities, or cancellation of contracts.

## **BACKGROUND**

At the time of the incidents precipitating this Grievance, Ms. Michelle Peyton, who identifies as female and white was Grievant's supervisor. The grievant, Mr. Rion Tisino is a Department of Social and Health Services (DSHS) worker. He identifies as male and black. On August 5, 2022, Ms. Peyton sent Mr. Tisino an email regarding concerns about his productivity. Essentially, the email asked Mr. Tisino to inform Ms. Peyton upon his arrival at work, the duration of his lunch break, and his departure at the end of his workday. (Er. Ex. 2, pp. 18-19) Mr. Tisino answered her inquiry promptly, including the following statements:

Here we go targeting Rion. Another form of institutional racism on the vulnerable Blackman. Yes mastah, I will check in with you for (*sic*) now on when I arrive and leave the slave compound. Lastly, YOU should keep track of EVERYONE and not just me. Lets (*sic*) just make it clear I am being assertive NOT aggressive. (Id., at 18)

Subsequently, on November 11, 2022, Ms. Peyton asked Mr. Tisino to email her "with [his] current documentation workload." A few hours later, Mr. Tisino responded that Ms. Peyton "could put him anywhere she want[ed]" "because I am used to this trauma." He also stated, "I am not being insubordinate; I am just being realistic," and, "All you do is tell us when we are wrong, and I never know when I am right...It's like putting a knee on a Blackman's neck and laughing when he takes his last breath and getting away with it because you can." He concluded with, "this Post Traumatic Slave Disorder DSHS is putting on will soon be coming to an end and this devil will continue to remain in this hospital." (Id., at 21) Two days later, on November 11, 2025, Mr. Tisino again emailed . Ms. Peyton. In that next email, in addition to other comments, Mr. Tisino stated the following:

I have been under the authority of white women for the last 16 years that has no interest in my future. You trigger me. But I don't have time to submit grievances or anything, if I don't like it, I can leave this job, I know. You and this job cannot break me anymore. (Id., at 24)

On or about December 15, 2022, Ms. Peyton notified the Human Resources (HR) department of her concerns, and that department in turn asked her to fill out a complaint form. The HR department forwarded Ms. Peyton's complaint regarding Mr. Tisino's emails to DSHS's Office of Justice and Civil Rights (OJCR). (Id., at 9-12). Following the OJCR's investigation into Ms. Peyton's complaint, Mr. Tisino was assessed a five-day suspension without pay.

Mr. Tisino grieved the suspension, and the matter was progressed in accordance with the Parties' Collective Bargaining Agreement, after which it remained unresolved. Accordingly, it is properly before me for arbitration.

### **POSITIONS OF THE PARTIES**

The following positions of the Parties are condensed and extrapolated from their respective closing statements.

#### **Employer.**

At the outset, the Employer maintains that it clearly had just cause for disciplining Mr. Tisino following his email outbursts directed at his then supervisor, Ms. Peyton. Specifically, it points to DSHS Policies 18.64 and 18.66 (*quoted above*) both of which address non-discrimination and the necessity for employees to comport themselves in a responsible manner and maintain standards of behavior that promote public trust and employee professionalism. (Id.) In addition, the Employer notes that not only are its Policies reasonable, but they are also supportive of the Agency's legal obligation under Title VII of the Civil Rights Act of 1964 to prevent and deal with unlawful discrimination and/or harassment in its workplace.

In support of this latter point, the Employer notes the testimony of Ms. Silva, the Deputy Chief Executive Officer for Gage Center at Western State Hospital. Early in her testimony, Ms. Silva noted that the Gage Center can be a very intense environment, thus, it is critical that

everyone works collaboratively because of the volatile, and occasionally violent clientele. (Tr., at 13-14) Accordingly, the Employer insists, the policies at issue in this case are reasonable, because they aim to minimize any occurrence of destructive behavior in the workplace and to support the Agency's mandates under Title VII.

The Employer also notes that the DSHS conducted a full and fair investigation and ultimately determined that Mr. Tisino had violated the policies referenced. In response to a Union argument regarding the length of the investigatory process, the Employee points again to Ms. Silva's testimony in which she explained that the delay was caused by the fact that the OJCR had just recently been established and its caseload was considerable. (Tr., at 34) Moreover, it points out that during the investigation, Mr. Tisino continued to be employed at DSHS, although at a different location than the one in which he was supervised by Ms. Peyton. (Tr. at 97, 107-108).

Finally, the Employer urges that there is no evidence on this record to indicate that Ms. Peyton unfairly targeted Mr. Tisino. Rather, it insists, emails asking for employees' work updates are a normal part of any manager's duties, and not evidence of discriminatory motivation on Ms. Peyton's part. Thus, it urges that the discipline assessed not be disturbed, and the grievance be denied in its entirety.

### **Union.**

The Union contends that the Employer did not follow a reasonable course of progressive discipline in the case at issue here. It points out that Mr. Tisino, prior to the incident at issue here, was a seventeen-year employee with no prior discipline on his record. It also points out that at the hearing Mr. Tisino was forthcoming and acknowledged that his emails were the product of his extreme frustration with Ms. Peyton's demeaning management style and admitted that his emails to her could have been worded more professionally. Moreover, the Union protests that there is no evidence that Mr. Tisino was discriminating against Ms. Peyton based on her race and gender.



With respect to the emails from Ms. Peyton, the Union insists that there is no evidence on this record to suggest that Mr. Tisino's work productivity was less than satisfactory. It notes that there is no reason Ms. Peyton could not have called Mr. Tisino into her office to discuss any issues with his "work productivity" prior to sending out her first email requiring him to report his comings and goings (including lunch breaks) on a daily basis. (See, Er. Ex. 2, at 18-19). The Union contends that Mr. Tisino's reassignment was clearly vindictive and amounted to a punitive isolation, with no clear explanation from Ms. Peyton. It is not surprising, therefore, that Mr. Tisino reacted negatively to a transfer that no longer took best advantage of his counseling skills and training.

Further, the Union reiterates that there is no evidence Ms. Peyton made any attempt to speak with Mr. Tisino regarding his accusation that she "triggered him." Rather, instead of engaging in some kind of corrective counseling with him, she promptly reached out to the Human Resources (HR) Department, which then solicited a discrimination complaint from her. Once she had completed the complaint form, HR forwarded it to its newly formed Office of Justice and Civil Rights (OJCR) to begin an investigatory process. (Tr., at 28) The Union notes as well that Ms. Peyton was never called to testify because she had left the employ of DSHS.

In addition, the Union insists that the Employer's approach to discipline in this matter can in no way be considered progressive. It is clear that Mr. Tisino had no warning that his emails might subject him to discipline. No counseling was offered, and no warnings were contained in Ms. Peyton's emails to Mr. Tisino. At no time did he have any indication that discipline could be forthcoming, given the tenor of his emails to Ms. Peyton. As noted above, he had no past discipline, and had a reasonable expectation that the Employer would take that clean record into consideration, and offer truly progressive discipline, thus providing Mr. Tisino with notice that further communication similar to the emails at issue here would likely lead to significant discipline, including suspension or termination.

The Union concludes that the length of time taken by the investigation as well as the failure of the Employer to engage in anything resembling progressive discipline strongly weighs in favor of sustaining this grievance in total, or at the very least reducing the discipline assessed to a written warning or counseling more in keeping with the clear arbitral tradition of progressive (i.e., corrective) discipline.

## **OPINION OF ARBITRATOR**

The Union makes a persuasive point that the burden of persuasion regarding the justification of Mr. Tisino's discipline falls decidedly upon the Employer. Progressive discipline implies that an employee clearly understands the rules and policies under which he is to conduct himself, and that he understands that certain behaviors are contrary to those rules and policies and may subject the employee to discipline. It is also correct that the penalty generally must be commensurate with the nature of the infraction, and most arbitrators also consider an employee's past discipline record, if any, in determining the appropriateness of discipline assessed. Also, progressive discipline is intended to be corrective, as well as punitive, and should be geared to encouraging an employee to improve his performance, or cease the offending behavior, in his future with the employer.

The Union proposes that the Employer has erroneously categorized Mr. Tisino's emails as discriminatory and threatening, when they were simply expressions of frustration at what he perceived as unfounded and discriminatory accusations regarding his "work productivity." It insists that the Employer made no attempt to use true progressive discipline for an employee with a previously stellar work record – by summoning him to Ms. Peyton's office for a discussion of what, exactly, is prompting her concerns regarding Mr. Tisino's alleged inadequate work performance, for example – and therefore cannot justify assessing him a five-day suspension without pay.

In considering the general principle of progressive discipline, most arbitrators take into account the severity of the action for which the employee was disciplined. Typically, some employee actions such as sabotage, theft, and violence or threat of violence against fellow employees or supervisors are viewed as constituting valid grounds for an employer to assess severe discipline for a first offense, up to and including discharge of the offending employee.

Similarly, acts of discrimination in violation of Title VII of the Civil Right Act of 1964, and/or sexual harassment also often come under this exception to the rubric of progressive discipline.

While the Union has asserted that Mr. Tisino was expressing only frustration at what he perceived as racial discrimination on the part of Ms. Peyton, there is nothing on this record to suggest that she was acting other than in her professional role as his supervisor. One may validly argue that she could have brought Mr. Tisino into her office to discuss his alleged productive deficiencies; however, the evidence on this record suggests that Ms. Peyton may well have been taken aback by the strident language of Mr. Tisino's initial response to her August 5, 2022, email requesting he keep her informed of his comings and goings during the workday. In particular his reference to "mastah" and "the slave compound" is laden with inference as to his view of how she was treating him. (Er. Ex. 2 at 18) His last sentence in that email, that he was "being assertive NOT (*sic*) aggressive" does not lessen the impact of his previous language.

In his second email to Ms. Peyton, he compares her actions to those of the white policeman who suffocated George Floyd in Minneapolis, Minnesota in 2020. Specifically, Mr. Tisino wrote, "It[']s like putting a knee on a Blackman's neck and laughing when he takes his last breath and getting away with it because you can". (Ibid., at 21) In his third email to Ms. Peyton, he noted that he had been "under the supervision of white women" for some 16 years, and that they had no interest in his future. He also again stated that he was "not promoting" a hostile work environment, and that he was not "threatening [her]" or "being aggressive" but "merely assertive." (Ibid., at 24)

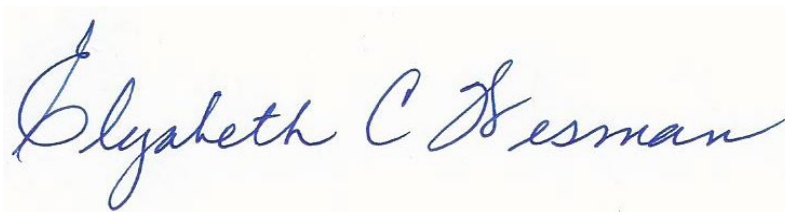
Despite Mr. Tisino's protestations to the contrary, his remarks cannot be viewed as simply "assertive". Rather, the underlying message is that Ms. Peyton is a racist and has been treating him in a manner which harkens back not only to slavery, but also to the more recent horror of George Floyd's murder. There is nothing on this record to suggest that she was viewed as racist, either by other employees in her charge, or by her Employer. It is understandable,

therefore, that she may well have been intimidated by the temerity of Mr. Tisino's accusations and did not take what might have been a "progressive" discipline path of counseling Mr. Tisino on his behavior prior to filing a complaint with HR that ultimately ended up with the newly formed OJCR. The Employer has suggested that the delay in the OJCR's completion of its investigation into Mr. Tisino's inflammatory emails was caused by the influx of discrimination allegation complaints flooding that office shortly after its formation. While such a delay was unfortunate, this is not a discharge case, and Mr. Tisino was not gravely injured by the Employer's delay in assessing his ultimate five-day suspension.

At bottom line, I do not find that the Employer failed to carry its burden of persuasion in this case. Despite Mr. Tisino's professed contrition at the arbitration regarding the tone of the emails he sent to Ms. Peyton, the fact remains that they are objectively racist and threatening, and in direct violation of the Employer's Policies 18.64 and 18.66. Accordingly, I do not find that the Employer's assessment of a five-day suspension without pay was either excessive, or unfounded. The instant grievance is denied in its entirety.

## **AWARD**

1. The Employer met the just cause standard under the Collective Bargaining Agreement when it suspended Mr. Rion Tisino for five days.
2. The instant grievance is denied in its entirety.



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**Elizabeth C. Wesman, Ph.D.**

**Signed: 30 August 2025**