IN THE MATTER OF THE
VOLUNTARY ARBITRATION **Case: Glazer # 1**
BETWEEN

COURT,
Employer,

Union.

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ARBITRATION OPINION AND AWARD
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ISSUE

WAS THE DISCHARGE OF
FOR JUST CAUSE, AND IF NOT,
WHAT SHOULD BE THE REMEDY?

Grievant, a cashier in the clerk's office, was terminated on January 8, 2001 as follows:

Despite repeated verbal and written warnings, plus two suspensions without pay, the Grievant's work performance as a clerk in the Court has deteriorated to the point it has become necessary to terminate her employment, effective with the end of the work day on Monday, January 8, 2001.

A grievance was filed on January 9, 2001 seeking Grievant's reinstatement and a make whole remedy. The grievance was denied, with the Employer stating:

1. Grievance denied. The Court has two basic requirements for all of its employees - do a good job and be available when needed. As her extensive file indicates, despite repeated verbal and written warnings, and despite two suspensions, she has failed dramatically to meet these job necessities. She repeatedly is late for work, even though her job as a cashier requires her to be on duty when the doors are open to the public for court business. Further, she has been the center of a year-long series of bungled warrant removals.
2. Request denied (see above.)

A transcribed arbitration hearing was held on August 20, 2001. Testifying for the Employer

were: N, Clerk of the Court and J, Court Administrator. Testifying for the Association was The Grievant. Comprehensive post-hearing briefs were submitted by the parties.

BACKGROUND

The Grievant was hired by the Court on February 12, 1999 as a deputy court clerk. In May of 1999 she was assigned to the position of court cashier, where she was responsible for handling files after citizens exited Court. At noon, the Grievant relieved the public side cashier. Grievant's hours were from 8:00 a.m. to 5:00 p.m., and the Court regarded promptness as being important, since the doors were opened to the public at 8:00 a.m.

As a new employee, The Grievant was placed on probation for six months. On July 30, 1999, her probation was extended for an additional 180 days. On the same day, she received a verbal warning as follows:

July 30, 1999

Issued verbal warning to The Grievant for the following reasons-

Substandard work:

1. Failed to have warrant recalled on ticket #B051780z/Paid 723-99/discovered by warrant clerk when checking state list.

2. Failed to send file over to probation.
On September 30, 1999 The Grievant received a second warning for failure to recall a warrant.
The Employer wrote:
Failed to have warrants recalled on file D225682 and B018902A. Defendant came in to post bond and set up court date. The Grievant was warned 7-20-99 for same offense.
Thereafter, on November 18, 1999 The Grievant received a warning regarding her tardiness.

The Employer wrote:

The Grievant's Name

November 18, 1999

February 1999 - August 1999

Late to work- 8 times

August 1999 - September 1999

Late to work- 15 times

Verbal warning 11-18-99

On January 12, 2000, The Grievant received a warning in regard to work performance and tardiness. The Court wrote:

1. Verbal warning given November 18, 1999 for tardiness. The Employee was late November 29th, 30th, December 7th, 8th, 16th, January 4th and 10th.
2. Complaint from defendant in regards to ticket number B0204622. Ticket was issued December 7, 1999, defendant came in and paid $75.00 on December 16, 1999. Defendant called after receiving a default notice and was told she owed an additional $35.00 for ticket because an accident was involved and a late fee of $25.00. Defendant was upset she complained she was not told ticket was a higher fine amount; possibly due to the fact the cashier was busy on a personal phone call.
3. January 3, 2000 I informed clerks to place all closed misdemeanor files in the workroom to be scanned. January 11, 2000 I discovered files in closed room without scanning process. When I questioned The Grievant, I was told the reason was because the bucket was full in the workroom.
4. Cash bond was taken on case number D226144 December 10, 1999; file was not given to warrant clerk to recall warrant and schedule court date.
5. Restitution payment was taken on File D223370 January 20, 2000. Probation officer informed clerk to recall warrant since payment was made. File was not given to warrant clerk to recall until account clerk pulled it from open to send restitution payment to city January 11, 2000.
6. Police department called and complained about The Grievant taking wrong fine amounts for defendants in jail. On example D228062 and D228072, total fine and costs $600.00; the Grievant

collected $400.00. The payee had to return to the court to pay balance and return to police station.

7. The Grievant took payment December 17, 1999 on files B035430 and B0205878A; defendant was housed at County. The Grievant did not give files to clerk to notify County of payment. On February 7, 2000, The Grievant received an evaluation, which included a "does not meet expectations" in regard to tardiness and in regard to productivity and quality. Previously, on June 15, 1999, had received a "meets expectations" evaluation.

The Grievant received a one day suspension on April 18, 2000 for failing to clear a license suspension and for failing to have a warrant recalled. The Employer wrote:

On February 23, 2000 The Grievant failed to clear suspension on file number B0200224 after payment was taken. A new ticket was written for DDS to Mr. S as a result.

On March 8, 2000 The Grievant failed to have warrant recalled after restitution payment was taken in full. Error was discovered by Ms. A when trying to close File. D223634

Written warning given January 12, 2000.

One day suspension effective April 18, 2000.

Thereafter, on May 11, 2000, The Grievant was given a written warning for failure to provide proper clearances for the appropriate tickets. The discipline said:

Ticket number S321416 was paid on 1-20-00; The Grievant printed and gave Mr. K clearances for the wrong tickets (S321413 A &B). Mr. K; was stopped by police on 502000. The officer believed Mr. K's story after wrong clearances were produced and shown.

Due to the fact no serious inconvenience resulted from this error, this notice will serve as a written warning with the understanding the next occurance (sic) will result in a three day suspension and continued mistakes of this type in the future could result in dismissal.

On October 3, 2000, the Court waived a suspension, after it was discovered that had failed to recall a warrant. It wrote:

The Grievant failed to have warrant recalled on case number B0220618 when payment was taken. Error was discovered by warrant clerk when verifying monthly warrant list.

Per warning of May 11, 2000, The Grievant could be suspended for three days without pay. However, because of earnest effort by the Grievant to improve her work over past four months, the court waives that option at this time.

The Grievant was eventually suspended on December 4, 2000 for failing to recall warrants.

The Court wrote:

1. The Grievant failed to have warrant recalled on case number B0236564 when payment was taken November 21, 2000. Ms. M discovered error November 30, 2000 when the defendant called to question why she still had an active warrant.
2. The Grievant took payment on file number B0234809 without file. A note was left on counter by register one with receipt. File was pulled by Ms. B when note was discovered.
3. The Grievant took bond money for case number MC014664B during lunch hour; file was given tow arrant clerk at 3:15 p.m. to lift warrant.

The court has given numerous warnings to The Grievant including a one-day suspension. The court is suspending the Grievant for three-days effective December 5, 2000.

I have read this notice and understand it. /s/ The Grievant

The clerk of the Court, Ms. N, testified that promptness is extremely important for Court employees. She indicated that the Grievant could have been terminated during her initial probation because of her problems, but instead, it was decided to give her extra time to improve.

Ms. N indicated that as of the Grievant's November 18, 1999 warning, she had been tardy twenty-three times. The clerk at the Court testified that she decided not to immediately terminate the Grievant, because she understood that she had personal problems and that she wanted her to succeed. Ms. N testified that she eventually concurred in Mr. J's decision to terminate. She said:

Q. Did you concur in Mr. J's decision to terminate the grievant's employment?
A. Yes.
Q. Why?
A. Her record is just unspeakable. I mean, I'm dealing with the public. I need someone to process documents in a timely manner. I've never, I've never had the problems with another employee that I've had with The Grievant. It was hard to do but it needed to be done.

The supervisor further indicated that the Grievant was late for work a total of 65 times, and that she was late six times between her three day suspension and her termination. Ms. N said that in addition to the discipline, she verbally spoke with about her tardiness.

There weren't any quality issues between the Grievant's three days suspension and her termination. The issue that precipitated The Grievant's termination was the six instances of tardiness

following her three day suspension. Mr. J testified that prior to her termination, he had spoken with The Grievant about her tardiness problem, and that when he discovered she had been tardy an additional six times, he determined that termination was appropriate. Mr. J said:

Q. Why did you terminate the Grievant?
A. Well, we had just gone through a three-day suspension with a grievance pending. Ms. N brought to my attention that she had been late six times since the three-day suspension. I asked N how many times total is that. She came back, I didn't remember the exact number but I knew it was over sixty. I thought that was exorbitant, and I said no, that there was no cure for the problems.

The Grievant testified that she received a verbal and a written warning in regard to tardiness, and that after January 12, 2000, she was spoken to one time about her tardiness. The Grievant said that she felt that she was a good employee, "disregarding the tardiness". She indicated that it was "fair to say" that her attendance problem put her job in jeopardy.

PERTINENT CONTRACT PROVISIONS

ARTICLE VII
DISCHARGE OR SUSPENSION

...

7.5: No employee shall be disciplined or discharged except for just cause. The Employer agrees that in carrying out this function, it will impose discipline in a progressive manner intended to be corrective rather than punitive.

ARTICLE XIII
MANAGEMENT RIGHTS

...

13.2: Except for those rights that have been granted to the bargaining unit, all other rights which ordinarily vest in and are exercised by employers, except as provided herein, are reserved to and remain vested in the Court, including but without limiting the generality of the foregoing the right:
...

C) To establish reasonable work rules, and determine reasonable schedules of work which shall include the starting time and the quitting time.

ARTICLE XIV
GENERAL PROVISIONS

...

14.7: Employees are expected to report to work on time and to observe working hours that have been established.

POSITION OF THE EMPLOYER

It is asserted that in less than two years of employment, was late 65 times and made numerous errors concerning license suspensions and warrant recalls. The final six tardiness events are said to provide just cause for discharge. It is emphasized that punctuality is central to the proper performance of the Court system, and that the contract specifically references the need for punctual attendance.

The Grievant's poor attendance and her overall work record is said to support discharge. It is emphasized that the Grievant was aware that she could be discharged for attendance-related problems. The discipline is argued to have been reasonable and appropriate.

POSITION OF THE ASSOCIATION

It is argued that termination is too severe of a penalty insofar as the Grievant is a single mother with three small children. The Association argues that the Grievant admits her tardiness; however, it asserts that she was denied notice that her tardiness could lead to termination. It is further maintained that there was a lack of progressive discipline in regard to attendance as opposed to work performance. The Association notes that the Grievant had only reached the written warning stage in regard to tardiness. Therefore, it is argued that the termination was contrary to just cause.

DISCUSSION

The Association correctly notes that The Grievant could not be terminated on January 8, 2001 for her warrant removal problems. There weren't any issues concerning warrants subsequent to her three day suspension on December 4, 2000. It would be a double jeopardy violation to terminate the Grievant for warrant issues, since she had already received a three day suspension for them.

However, it was established that the Grievant was tardy six times subsequent to December 4, 2000 and prior to January 8, 2001. The Association doesn't dispute that she was tardy, but contends that the discharge was contrary to just cause.

It is maintained that the Grievant lacked notice that she could be terminated for being tardy six times. However, the Grievant was previously disciplined for being tardy, and therefore she was placed on notice that the Employer would regard her tardiness as a disciplinary event. Most importantly, The Grievant admitted that she understood that her tardiness placed her job as risk. The following exchange occurred at the arbitration hearing:

Q. And you had also been disciplined in the past and counseled in the past about attendance, correct?
A. Correct.
Q. You had an attendance problem, isn't that fair to say?
A. Correct.
Q. Isn't it also fair to say that you knew that your attendance problem could put your job in jeopardy?
A. I was aware that it was a displeasure to my employer which is why we spoke about it.

Q. Okay. Were you aware that it would put your job in jeopardy, your attendance problem?
A. I guess that's fair to say.
Q. That's fair to say? Yes?
A. Correct.

Consequently, because the Grievant understood that her tardiness placed her job in jeopardy, there wasn't a notice problem under the just cause standard.
The Association also contends that it was unfair to terminate the Grievant for tardiness, since she had only received a written warning for that offense in January of 2000.
The Grievant was hired in February of 1999. By the time of her first verbal warning in November of 1999, she had been tardy 23 times. Thereafter, on January 12, 2000, she was warned for being absent an additional seven times, for a total of 30 absences in less than a year of employment. Subsequently, The Grievant accumulated an additional 35 tardies in roughly a year, with six occurring subsequent to her three day suspension.

The Association suggests that a separate disciplinary track was required for tardiness, and that therefore the Grievant should have been at a stage prior to discharge. However, the Grievant wasn't disciplined on a separate track for tardiness in January of 2000, and this was accepted by the parties. More importantly, the contract does not require a separate disciplinary track for attendance.
The Employer could consider tardiness as a disciplinary event as part of the progressive discipline that was previously issued.

Remaining is the question of whether the discharge penalty was reasonable and appropriate under the just cause standard. The Grievant made a good impression at the hearing: she is articulate and intelligent. However, the Employer has made a considerable effort to save The Grievant's job, when it could have seemingly discharged her much earlier for her work performance problems.

Ultimately, the standards that are traditionally used in just cause cases must be employed. The Grievant is a short-term employee of less than two years, who has been tardy 65 times. The Employer has established that it is important for the Court to have its clerks present at 8:00 a.m. when the Court opens to the public. Therefore, the Grievant's tardiness has a significant impact on the Court. Moreover, it was not shown that the Grievant has a reasonable expectation of improving her tardiness were she to be returned to work.

The Grievant has received significant progressive discipline prior to her discharge. She has committed numerous and serious work-related violations. The Court appears to have made a meaningful effort to work with her in an effort to preserve her job. An arbitrator is not permitted to substitute his or her judgment for that of the employer if the employer has been reasonable. Accordingly, I have no choice but to deny the grievance.

AWARD

For the foregoing reasons, the grievance is denied.

Mark J. Glazer
Arbitrator

January 6, 2002