

VOLUNTARY LABOR ARBITRATION



IN THE MATTER OF THE ARBITRATION BETWEEN:

UNION

Gr. No. IR-14

AND

GR: JAY PLUMB/Three (3)
Day Suspension

UNIVERSITY

_____ /

ARBITRATION OPINION AND AWARD

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June 24, 2004

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ARBITRATION OPINION AND AWARD

This Arbitration took place on June 17, 2004 in the Employee Relations Offices of the University. The University (Employer) was represented by Mr. J. TOPP, Assistant Employee Relations Director. Employer witness: Ms. K PIPES, former Service Manager III. The Union was represented by Ms. B. BOAT, Staff Specialist. Union witnesses: Mr. L CANN, Chief Steward, Ms. G MANGO, Local President and Ms. JAY PLUMB, Material/Logistics Worker II/Grievant. The Hearing was concluded on the above noted date. Pursuant to the closing arguments of the parties, this Arbitration Opinion and Award is rendered.

FACTS

This grievance arises from a three (3) day disciplinary suspension issued to

Ms. JAY PLUMB on December 20, 2002 for losing the keys to the University's Materials and Logistics operations storage rooms and Buildings where all skilled trades materials, tools and equipment are kept behind locked doors. It is not in dispute that Ms. PLUMB discovered the loss of her University-issued keys on December 12, 2002 but did not report them missing to Supervisor K PIPES until December 16, 2002 (see Disciplinary Notice - Joint Exhibit #3). Ms. PLUMB, hired by the University on November 5, 1984 in a custodial capacity, has been a Materials/Logistics Worker for seven (7) years. In December 2002, she worked in the Physical Plant Stockroom on the Open Orders Desk to which skilled trades persons come to request parts. Ms. PLUMB's job was to secure the parts from downtown vendors at the lowest cost and to assist individuals who came to the Stockroom.

The instant grievance was filed on January 2, 2003 alleging that the three (3) day suspension was not for just cause in violation of Article 17, Paragraph 77 of the collective bargaining Agreement (Joint Exhibit #1). The Union requests that the suspension be rescinded; that Grievant PLUMB's record be expunged and that she be made whole (Joint Exhibit #2). The grievance was denied up through the Grievance Procedure and brought on for Arbitration on June 17, 2004.

TESTIMONY

In support of the University's position that the three (3) day suspension was for just cause with no reduction in the penalty warranted, former Service Manager III

K PIPES, testified as follows: In December 2002, she was Ms. PLUMB's immediate supervisor. On December 16, 2002, Ms. PLUMB told her that she had "misplaced" her keys and needed time to find them. She (Ms. PIPES) advised that she would allow Ms. PLUMB until Friday, December 20, 2002 to locate the keys pending supervisory action. According to Ms. PIPES, Ms. PLUMB had indicated that the last time she saw her keys was on December 12, 2002.

Ms. PIPES testified further as follows: On December 19, 2002, she spoke to Ms. PLUMB again. She was told by Ms. PLUMB that someone may have taken her keys and that her practice had been to clip the keys to her backpack which she kept behind her desk in the Stockroom; that on December 12, 2002, she had checked her backpack which was situated in her vehicle and discovered that the keys were gone. Ms. PIPES testified that pursuant to this confirmation on December 19, 2002 that the keys were indeed lost or stolen, she on December 20, issued the three (3) day disciplinary suspension which is the subject of this grievance (Joint Exhibit #3).

Ms. PIPES testified additionally as follows: As the result of the above described course of events, she was compelled to have the following areas re-keyed: the main Stockroom which houses small materials and equipment; the tool crib where all power tools, some generators, drills etc. are kept; Buildings 209 and 210 behind the power plant where major Logistics materials, tools and equipment are stored as well as gas cylinders used by trades persons in working with tar kettles and a few padlocks in the stockroom. The value of all of this property is about \$1.5 million dollars. The cost of re-

keying all of the identified areas was \$780.25, paid from the Department account.

On cross-examination, Ms. PIPES confirmed that prior to the issuance of the three (3) day suspension, she had not reviewed Ms. PLUMB's personnel file and had not checked the level of discipline previously given to other employees who had lost their University-issued keys. Ms. PIPES concluded her testimony by stating that the re-keying was completed on February 11, 2003 with no improper entries to those areas during the interim.

For the Union, Chief Steward Lou CANN testified that a Custodian by the name of LAKO had lost keys to the Campus Library and had been issued a two (2) day suspension. Local 1585 President Gloria MANGO testified that Custodian IV, S. VANN, was given a Written Reprimand on January 17, 2001 for "Failure to maintain security of work keys" (Union Exhibit #1). It is noted that in the VANN situation, there is no indication that the keys were actually lost or stolen or any information regarding the circumstances involving the keys including to what door(s) or area(s) the keys were related.

Grievant JAY PLUMB testified on her own behalf as follows: On December 12, 2002, she allowed a skilled trades person borrow her keys. The keys were returned to her and she then clipped them onto her backpack. However, when she left work that day, the keys were no longer affixed to her backpack. On December 16, 2002, she so advised Supervisor PIPES who told her to conduct a search for the next few days until

December 19, 2002. On that day, she (Ms. PLUMB) informed Ms. PIPES that she had not found the keys and on December 20, 2002, the three (3) day disciplinary suspension was issued (Joint Exhibit #3).

On cross-examination, Ms. PLUMB acknowledged that after she had clipped the keys onto her backpack on December 12, 2002, she left her backpack behind her desk and went on break. Ms. PLUMB confirmed that other people were in and around the Stockroom and that the backpack was left essentially out in the open. Ms. PLUMB was also constrained to answer that when she discovered that the keys were missing from her backpack while traveling home in her vehicle on December 12, 2002, she did not return immediately to the work premises to inform Supervisor PIPES but waited until December 16, 2002. Ms. PLUMB testified that she had employed the practice of clipping her keys to her backpack because they are heavy and she carries many other keys on her person. She acknowledged that she sometimes left her backpack with the clipped-on keys, unattended.

This concluded the presentation of the parties.

PERTINENT CONTRACT LANGUAGE

ARTICLE 17

REPRIMAND, SUSPENSION OR DISCHARGE

-75 At the time a written reprimand, suspension or discharge is received, an employee may, and is encouraged to, request the presence of the District Steward, Alternate Steward or designated Union representative.

A. Notice of Re^primand, Suspension or Discharge

-76 In the event an employee is disciplined by written reprimand or written suspension or discharged by written notification, a copy of the discipline shall be given to the employee, a copy to the District Steward or Alternate Steward and a copy mailed to the local Union office at the time it is given to the employee. Such notice shall be specific and outline the reasons for the disciplinary action.

B. A^ppeal of Reprimand, Suspension or Discharge

-77 Should the reprimanded, suspended or discharged employee or the Union consider the discipline to be excessive and without just cause, the Chief Steward or his/her designated representative shall, within seven (7) regularly scheduled working days after the Union office receives the written notification of the discipline, submit it as a grievance. A grievance over a written letter of reprimand or suspension shall be submitted by the Chief Steward at Step II of the Grievance Procedure. A grievance over a discharge shall be submitted by the Chief Steward at Step III. Failure to submit a written grievance within the time limits shall constitute a waiver of all claims concerning such disciplinary action or discharge.

ISSUE

Was the three (3) day suspension for just cause?

DISCUSSION

On December 20, 2002, Grievant JAY PLUMB was issued a three (3) day disciplinary suspension for losing her University-issued keys (Joint Exhibit #3). At the Arbitration Hearing, the Union asserted that the penalty was too severe and warranted only a written Reprimand. The facts in this case are not in dispute and the primary consideration here is whether the three (3) day suspension was for just cause as opposed to a reduction of the penalty.

In prelude to the disposition in this case, it is importantly recognized that Ms. PLUMB is a valued employee of University who prior to this incident, had compiled a clean work record devoid of discipline. There is no reason to question the quality of her performance or her work ethic during her nineteen (19) years of service with the University. For this, Ms. PLUMB is to be commended. It is also observed that the loss of her keys did not arise from intentional misconduct. It is clear that there has been no purposeful malfeasance on her part.

This having been stated, the avoidable conclusion in this matter must be that Ms. PLUMB's failure to make certain that she consistently secured her University-issued keys for the purpose of preventing a loss or theft, constituted a serious infraction of University procedure. The BASIC PERFORMANCE STANDARDS applicable to Ms. PLUMB in her capacity as a Material/Logistics Worker II, are as follows (Joint Exhibit #4).

.01 Keys

Full-time regular Physical Plant employees may check, out keys only for assigned work, upon completion of a key assignment form. Temporary key assignments may not exceed 30 days.

Employees will be fully responsible for MSU keys checked out in their name.
University keys are not to be left unattended at any time.

(Emphasis added)

Further, the University's Key Shop Policies and Procedures, state as follows

(Joint Exhibit #5):

Lost or Stolen Keys

Lost or stolen keys must be reported to the Key Shop and your supervisor immediately upon discovery of loss or theft.

The University reserves the right to determine the necessity of all rekeying and to charge any key holder for any rekeying necessary, due to loss of an assigned key(s).

(Emphasis added)

On the evidence, Grievant PLUMB breached both of the above referenced Policies.

Grievant PLUMB on December 12, 2002, discovered that her keys were missing but did not immediately report the loss to Supervisor PIPES. Instead, she waited until December 16 2002 to do so. Fortunately, in the interim, no one who had either found the keys or stolen them, attempted to gain entry into the related locked areas. But that possibility existed by virtue of Grievant PLUMB's delay in reporting her keys lost so that Ms.

PIPES could take swift and commensurate security precautions.

A major aspect in the consideration of the penalty in this case arises from Ms. PLUMB's practice of clipping her keys onto her backpack and leaving the backpack behind or near her desk unattended. It has been established that people are regularly in and out of the Storeroom. Presumably, since over a period of years, no untoward events occurred (lost or stolen keys), this habit was continued and Ms. PLUMB became lax in the recognition that she possessed extremely valuable access instruments to Logistics materials, tools and equipment. This constituted a substantial misjudgment on her part.

As the result of Ms. PLUMB losing her keys or enabling the keys to be stolen from her backpack, \$1.5 million dollars worth of equipment was placed in jeopardy. The following areas had to be re-keyed at a cost of \$780.25 to the Department: main stockroom, tool crib, Buildings 209 and 210 and padlocks.

It is recognized that employee LAKO who had previously lost keys to the Campus Library, was issued a two (2) day suspension. However, as denoted, Ms. PLUMB's situation comprehended elements reaching to a failure to meet her responsibility in assuring that \$1.5 million dollars in materials, tools and equipment remained secure with considerable re-keying costs to the University. Further, as indicated earlier, in the Written Reprimand given to Custodian VANN for "Failure to maintain security of work keys", there is no specification that keys were actually lost/stolen or any other attendant circumstances in that situation (Union Exhibit #1). In other words, each University-issued key-related incident must be evaluated on a case

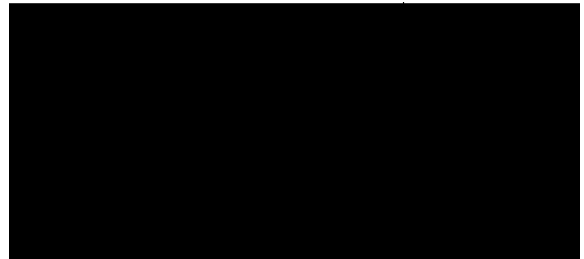
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case basis in terms of the disciplinary penalty assessed. In comparing the LAKO penalty (two (2) day suspension) with Ms. PLUMB's more serious transgression as described, the three (3) day penalty was (is) warranted.

There is no need to belabor the point that Ms. PLUMB employed defective judgment in leaving her keys unattended, thereby inviting exposure to loss or theft -- and in the process, violated the University's security procedures and policies (Joint Exhibits #4 and 5). It is determined for the reasons stated above, that a three (3) day suspension was an appropriate and corrective level of discipline and that a reduction of the penalty is not in order. The three (3) day suspension was for just cause. The grievance is denied.

AWARD

The three (3) day suspension was for just cause. The grievance is denied.



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