

STATE OF NEW YORK TIME AND ATTENDANCE DISCIPLINARY PANEL

IN THE MATTER OF THE TIME AND ATTENDANCE DISCIPLINARY BETWEEN

THE CIVIL SERVICE EMPLOYEES ASSOCIATION, UNION

and

STATE OF NEW STATE OF NEW YORK OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

[REDACTED] EMPLOYER

GRIEVANT: [REDACTED]

CASE NO: [REDACTED]

DECISION

On March 30, 2017 a Time and Attendance disciplinary hearing was convened in [REDACTED] New York before the undersigned Permanent Umpire to review the instant grievance filed by [REDACTED] in connection with a Notice of Discipline dated February 23, 2017. The Notice of Discipline charges Grievant with unauthorized absence. Grievant was present and represented by CSEA Contract Administration Specialists Lisa McNeil and Carisa Guild and CSEA Local [REDACTED] representative [REDACTED]. The Employer was represented by Human Resources Specialist [REDACTED].

Background

Grievant is a Direct Support Assistant. The Notice of Discipline cites eleven unauthorized absence occurrences between January 21 and December 27, 2016. This is Grievant's second Notice of Discipline for unauthorized absence. Before the opening of the hearing, the Union representative raised an issue with the Notice of Discipline, stating that most of the cited dates had been addressed in an earlier Notice of Discipline and resolved by a Consent Award issued by Permanent Umpire James E. Martin. This Decision memorializes that discussion and the rulings of this Permanent Umpire on the preliminary issues as were raised herein.

Employer Position

For this February 23, 2017 Notice of Discipline the Employer seeks the penalty of termination based on the length of two cited absence occurrences, each of which exceeded eight consecutive workdays. The remaining ten cited absence occurrences ranged from one to five consecutive workdays.

Union Position

The Union raised a preliminary issue stating that many of the absence occurrences in the current Notice of Discipline had been previously addressed by a prior Time and Attendance Notice of Discipline. The Union provided a copy of an October 14, 2016 Consent Award issued by Permanent Umpire James E. Martin which embodied an October 13, 2016 agreement between these same parties with respect to the resolution of Grievant's August 4, 2016 Notice of Discipline. Given the October 14, 2016 Consent Award, only three of the cited twelve absence occurrences in the February 23, 2017 Notice of Discipline are properly before this Permanent Umpire. For those three occurrences, the Union argues that termination is not the appropriate remedy.

Discussion

Umpire Martin's Consent Award sets forth the parties' October 13, 2016 agreement with respect to an earlier August 4, 2016 Notice of Discipline, restated here in relevant part, as follows: (1) Grievant was fined an amount equivalent to four (4) weeks' pay, with two weeks' pay to be deducted immediately in fifty (50) dollar increments from successive biweekly paychecks and the remaining two weeks' pay to be held in abeyance for twelve (12) months referred to as a "monitoring period" commencing on October 14, 2016. (2) During the monitoring period, Grievant could have no unauthorized absences and no more than three (3) unscheduled absences in any three (3) month period. (3) All unscheduled absences during the monitoring period had to be covered by acceptable medical documentation. (4) Grievant's successful completion of the twelve month monitoring period would result in the forgiveness of the remaining two weeks' pay. Alternatively, Grievant's failure to successfully complete the monitoring period would result in the remaining two weeks' pay being deducted in the same fifty dollar increments.

Additionally, and particularly relevant to the February 23, 2017 Notice of Discipline herein, the Consent Award states as follows: *"Any and all subsequent unscheduled/unauthorized absences that occurred after the last specifications listed in the charges (6/22/16) shall be made part of this penalty."* The Union asserted that this language reflects the parties' further agreement that absence occurrences between June 22, 2016 and October 14, 2016 were also covered by the penalty agreed to by the parties on October 13, 2016. As a result of this language, the first nine cited absence occurrences in the February 23, 2017 Notice of Discipline (from January 23 - September 14, 2016) were covered by the agreed-upon fine. The remaining three absence occurrences in the February 2017 Notice of Discipline (November 30-December 11, December 19 and December 25-27, 2016), in the Union's view, do not warrant the proposed penalty of termination.

Review of Umpire Martin's October 14, 2016 Consent Award does support the Union's position that the nine absence occurrences between January 23 and September 14, 2016, as cited in the February 23, 2017 Notice of Discipline, have been already addressed by the agreement made by the parties on October 13, 2016 and set forth in said Consent Award. Thus, in this Permanent Umpire's opinion, the first nine cited absence occurrences in this current matter cannot be subject to further penalty herein.

For the reasons set forth below, it is the opinion of this Permanent Umpire that the Consent Award also removes the three remaining absence occurrences (November 30-December 11, December 19, and December 25-27, all in 2016) from penalty consideration herein.

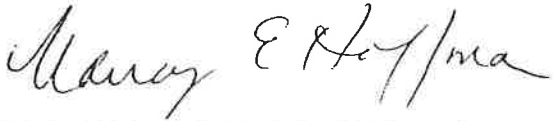
The three absence occurrences subsequent to the October Consent Award involve one eight day undocumented absence (November 30-December 11), one single day unscheduled absence (December 19), and one three-day unscheduled absence (December 25-27). The Consent Award--provision 2, subdivisions (a), (b), and (c) -- establish that during the monitoring period (October 14, 2016-October 14, 2017) Grievant may have no unauthorized absences, only three unscheduled absences in any three month period, and all unscheduled absences must be documented. None of these three post-October 2016 absences were documented as required and therefore these three absence occurrences constituted unauthorized absences in violation of the Consent Award. In this Permanent Umpire's opinion, the structure of the penalty agreed to in October 2016 addresses these three unauthorized absences. For such anticipatory violations of the Consent Award, provision 3 thereof sets forth imposition of *the remaining two (2) weeks' pay by way of fifty (50) dollar increments through successive biweekly payroll periods.*"

The Employer is not restricted from addressing other undocumented and/or unscheduled absence occurrences taking during the monitoring period, i.e., before October 14, 2017. Once the Employer imposes the fine balance pursuant to the Consent Award terms for the three unauthorized absences cited in the February 23, 2017 Notice of Discipline, any additional undocumented absences and/or unscheduled absences that exceed the Consent Award limitations are properly subject to another Time and Attendance Notice of Discipline. Grievant should take this warning seriously if she does not want to put her employment in further jeopardy.

Findings and Penalty

1. The parties' agreement of October 13, 2016 as set forth in the October 14, 2016 Consent Award of Umpire Martin provides the penalty to be imposed if Grievant had any unauthorized absences during the one year monitoring period covered by the October 2016 agreement.
2. The three cited unauthorized absence occurrences during the monitoring period of October 14, 2016-October 14, 2017, constitute violations of the Consent Award and, as such, are subject to the anticipatory penalty as already agreed to by the parties.
3. There is no basis for imposition of an additional penalty for those same three unauthorized absence occurrences.


Albany, New York



Nancy E Hoffman, Permanent Umpire