

IN THE MATTER OF ARBITRATION BETWEEN

SMITH'S FOOD AND DRUG CENTERS, INC.	GRIEVANCE NO. 21-00056 (ANGELA CHAVEZ)
AND	
UNITED FOOD AND COMMERCIAL WORKERS, LOCAL #1564	RONALD HOH, PANEL ARBITRATOR

APPEARANCES

FOR SMITH'S FOOD AND DRUG CENTERS, INC.:

Glenn Beard, Attorney

FOR UFCW LOCAL #1564:

James Montalbano, Attorney

JURISDICTION

Pursuant to the provisions of their collective bargaining agreement, the above-named parties have submitted this case to the undersigned arbitrator for resolution. The arbitrator was selected from a permanent arbitration panel maintained by the parties. The hearing was held via video conference on April 19, 2022, and was completed on that same date. All parties appeared at the hearing and had full opportunity to present evidence and argument in support of their respective positions. There were no procedural issues, and the parties agreed that this matter was properly before the arbitrator. Upon conclusion of the evidence sub

mitted at the hearing, the parties agreed to file simultaneous written post-hearing briefs with the arbitrator. This matter was thereafter deemed fully submitted upon the arbitrator's receipt of the last of the parties' briefs on May 28, 2022.

THE ISSUE

The parties agreed at the hearing to the following description of the issue before the arbitrator in this case:

1. Was there just cause for the termination of the grievant?
2. If not, what shall the remedy be?

RELEVANT COMPANY POLICY PROVISIONS

SHOPLIFTING - AUTHORIZATION TO APPROACH, CONFRONT AND DETAIN 4/27/20

Purpose

The purpose of this policy is to clarify Company guidelines regarding authorization to approach, confront or detain shoplifters. This shoplifting policy addresses efforts we make to protect Company assets while recognizing the more important need to secure the safety of our customers and employees.

Policy

Shoplifting is the taking or damaging merchandise and/or property from a retailer, without payment (or full payment), with the intention to deprive the retailer of its use or benefit. The Company strongly encourages prevention and deterrence as a method to combat shoplifting.

- Responsibilities of employees: All employees play a part in combating shoplifting by being observant, providing exceptional customer service, and reporting suspicious behavior.
- However, no employee is permitted to approach, confront or detain a suspected shoplifter, with the exception of loss prevention employees, Store directors and those trained and designated in writing by the Store director to do so.

- If you are not a loss prevention employee, Store director or other employee authorized in writing by a Store director, under no circumstances are you to approach, confront, or detain a suspected shoplifter whether inside or outside the Store.
- No employee, including Store director, loss prevention employee or other authorized employee may chase suspected shoplifters.
- No employees under the age of 18 may be trained to approach, confront, or detain shoplifters.

NOTE: For purposes of this policy, verifications by cashiers and self-checkout attendants (or anyone else assigned those job duties on a temporary or permanent basis) that all products have been properly scanned prior to the completion of a customer's transaction, such as Bottom of the Bag ("BOB") checks, Scan, Bag and Go order verifications, or responding to mobile device alerts in self-checkout, ARE NOT considered approaching, confronting or detaining a shoplifter/suspected shoplifter regardless of what the employee may suspect the customer's ultimate intentions are. Therefore, such verifications do not violate this Policy.

Whether or not an employee's performance, conduct or behavior warrants disciplinary action is within the judgment and discretion of Smith's, as is the appropriate type of discipline in a particular instance. Smith's does not intend by this policy to create any expectation that any employee will be assured of any particular form of disciplinary action, such as warnings or notice, or progressive discipline, prior to discharge. This policy does not alter the "at will" relationship between the Company and each employee.

FACTUAL BACKGROUND

Smith's Food and Drug Centers, Inc. (hereinafter "Company") is New Mexico's largest chain of food and drug stores, and includes Food Store #491 located in Santa Fe, New Mexico. The Company's non-supervisory food and drug employee clerks and related positions are represented for collective bargaining and contract administration purposes by United Food and Commercial Workers, Local #1546 (hereinafter "Union"). At the time of the circumstances giving rise to this case, the parties were operating under and governed by an approximately forty-three month collective bargaining agreement covering Company Stores in seven New Mexico counties, hereinafter ("contract"), which was scheduled to expire by its terms on January 29, 2022.

At the time of the circumstances involved here, the grievant, Angela Chavez (hereinafter "grievant"), had been the Closing Manager of Customer Service at the Company's Store #491 (hereinafter "Store") located in Santa Fe, New Mexico, for about two and one half years. Generally, her job duties involved closing the Store at night and getting the Store ready for the next work day. She worked a shift of 4:00 p.m. to Midnight, five days per week. Prior to the circumstances set forth below, she had not been subject to any previous disciplinary action.

The Company maintains certain Company policies covering, among others, its bargaining unit employees, including a policy entitled "Shoplifting - Authorization to Approach, Confront Or Detain" (hereinafter "Policy"). In pertinent part, that Policy provides as follows:

- Responsibilities of employees: all employees play a part in combating shoplifting by being observant, providing exceptional customer service, and reporting suspicious behavior.
- However, no employee is permitted to approach, confront or detain a suspected shoplifter, with the exception of loss prevention employees, Store directors and those trained and designated in writing by the Store director to do so.
- If you are not a loss prevention employee, Store director or other employee authorized in writing by a Store director, under no circumstances are you to approach, confront, or detain a suspected shoplifter whether inside or outside the Store.
- No employee, including Store director, loss prevention employee or other authorized employee, may chase suspected shoplifters.

The grievant on May 11, 2020 acknowledged in writing both that she had read and understood this policy, and that "violations of this policy will subject the employee to discipline up to and including termination."

On July 28, 2021 during the 4:00 p.m. to Midnight shift at about 7:15 p.m., grievant was working the night shift as the highest ranking Company employee on that shift.

Company Store #491 did not utilize any security personnel during that shift. While walking through the Store, grievant came upon a woman pushing a shopping cart and carrying a large cloth bag over her shoulder, which appeared to be full of what grievant believed was grocery and related items. According to grievant, she quickly decided that the woman was shoplifting the items contained in the cloth bag. She told the woman, "I see what you are doing. You need to leave the Store or I will be calling the police." The woman in response got upset, reacted very negatively to the grievant's statement, and began throwing some of the grocery items in the cloth bag at grievant, and calling her various nasty names, while initially moving toward the East doors at the front of the Store, which apparently unknown to the shoplifter had previously been closed for the night prior to these circumstances.

Subsequent to finding the East doors closed, the woman then turned toward the Store's West doors, and began moving in that direction intending to leave the premises while continuing to yell at the grievant. While at the check-out area, grievant told Store cash register personnel to call the police. At that time, Cashier Ted Montoya suddenly began running ahead of the shoplifter and attempted to lock the West doors so that the woman could not get out of the Store, and Montoya subsequently grappled with the woman trying to get the cloth bag away from her. Grievant had not told Montoya to engage in any of Montoya's behavioral elements set forth below or above. Grievant was frightened by Montoya's actions, and concerned for his safety and decided to follow Montoya and the woman to the area near the Store's West doors, while continuously telling the woman to leave the premises.

According to Company witness Gabriela Chavez, who followed the above personnel toward the West doors, she then saw Montoya "... holding the woman from behind, trying to grab the (woman's) bag and stop her." Chavez further testified that she saw grievant and Montoya "touching the bag on the woman's shoulder, trying to get the bag back." Chavez also testified at the hearing that her "memory was foggy," and that while she heard lots of yelling, she "... couldn't see."

At about this time, while the West doors remained open, a red automobile pulled up to the outside of the Store parking lot near the open doors. Another female got out of the vehicle and began pointing a gun in the direction of all involved, ending the actions of anyone who had tried to prevent the shoplifter from leaving the premises. The shoplifter got into the vehicle with the other woman and the vehicle drove away. Montoya came out as they were leaving and tried to get the license number for the fleeing vehicle.

The Company has video cameras in certain areas of the Store, which to some degree recorded what occurred between grievant and the shoplifter prior to the shoplifter's going out of the Store through the West doors. Asset Protection Specialist Maria Perea -- who reviewed the film of grievant, Montoya and the shoplifter prior to the shoplifter's departure through the West doors -- testified that she "really can't make out what's on the right" where grievant was in the video, and that, while the grievant "...appeared to be pulling on (the shoplifter's) bag," she (Perea) could only "... identify (grievant's) red hair, not what she (grievant) was doing on the right (of the video), but that grievant in the video was shortly thereafter "arguing with the shoplifter."

Company witness Matthew Benevidez – a courtesy clerk/bagger that evening – testified that grievant “followed (the shoplifter) to the West side door, telling (the shoplifter) to leave and never come back.” He further testified that after reviewing the video, he “didn’t see (grievant) on the video at all; only Montoya “wrestling with the shoplifter.”

Grievant testified that when she saw Montoya running toward the West Store doors, this Montoya action “scared” her, and that she went after Montoya to “see what happened.”

Union witness Luis Mendez Jr. testified: 1) that grievant asked the shoplifter to “please leave the Store”; 2) that grievant “never touched” the shoplifter; 3) that when grievant began talking to the shoplifter, the shoplifter became angry and threw things out of the bag toward the grievant; 4) that grievant did not tell Montoya at any time that the woman was a shoplifter; 5) that grievant never told Montoya to lock the exit doors or to otherwise interact with the shoplifter; 6) that he saw Montoya but not grievant holding onto the shoplifter; and 7) that grievant in his view “...never did anything improper concerning the shoplifter.” He further testified that he “...saw the incident from nearly the time that it started, but did not see the end of the incident.” Mendez was never interviewed by the Company during its investigation of this matter.

Asset Protection Specialist Maria Perea testified that after viewing the video retrieved from the Store camera, she believed that grievant had her arms on the shoplifter, trying to get to the cloth bag, but that she “...really can’t make out what was on the right, where grievant was located on the video.”

Subsequent to these circumstances, the Company suspended pending investigation both grievant and Montoya, and opened an investigation into the circumstances involved concerning the shoplifter. In that investigation, Company witness Chavez stated that while both grievant and Montoya touched the cloth bag over the shoplifter's shoulder, Montoya was holding down the shoplifter and "trying to grab the bag and stop (the shoplifter)." She also testified that she (Chavez) "could not see whether grievant was trying to grab the bag, but heard a lot of yelling."

Both grievant and Montoya were interviewed during the course of the subsequent investigation. In that interview, grievant stated inter alia that she: 1) should not have pursued the shoplifter or pulled on the shoplifter's bag; and 2) "knew it was wrong."

Subsequent to the completion of the investigative report concerning this matter by Asset Protection Specialist Maria Perea on July 28, 2021, both grievant and Montoya were notified of their employment termination on or about August 18, 2021. The instant grievance concerning that termination of the grievant was filed on August 20, 2021.

Perea testified at the hearing that she told her supervisors prior to the termination decision that she did not have any security camera footage concerning this matter from the Store's Bakery area, and that this would make it difficult to find out with certainty what happened in this situation.

Grievant testified that, in a shoplifting circumstance two weeks prior to the situation in this case, where grievant asked the shoplifter to leave and that person did so without argument, and where grievant's grocery scan at the request of the Company of the potential shoplifting loss in that case determined that such loss would have

totaled about \$1400, she was told by Company supervisor Maria Perea that she (grievant) had a right to defend herself in such situations if anyone touched her, and that her stoppage of the shoplifter in that circumstance constituted a "great job." According to the grievant, Perea also told the grievant at that time that she (grievant) had the ability to tell the shoplifter to "leave the Store." Grievant also received at that time from her supervisor Vanessa Muller \$20.00 in Store coupons as a reward for her actions in that situation. In addition, in a verbal warning notice circumstance issued to employee Jimmy Aragon for an incident at Company Store #443 on October 2, 2021, Aragon "approached the (shoplifter) from behind and took bottles away from (the shoplifter)." Aragon was told in that verbal warning that he should have "reached out to salaried management for clarification" if similar circumstances occurred in the future.

In another circumstance at Store #571 in January 2022 that according to Company witness Cordova "...may have turned out to be a shoplifting situation," a group of employees confronted, tackled and detained a person in that Store. Cordova further testified that Store employees in that situation "...put their hands on the (person/shoplifter), took him to the ground, and got him out of the building in order to defuse the situation and protect customers." There was no disciplinary action taken against any of the employees involved in that situation.

POSITIONS OF THE PARTIES

THE COMPANY

The Company makes the following arguments in support of its contention that just cause existed in these circumstances for the termination of the grievant.

1. Grievant was on notice of the Company's Policy concerning shoplifters and potential shoplifters. She signed a copy of that written Policy indicating that she had read and understood the Policy, and admitted that she knew that her actions in this situation were against Company Policy. She further was aware that it was potentially a termination offense for employees to approach, confront, chase or detain a potential shoplifter. In addition, it is undisputed here that the involved Company Policy is reasonable and serves an important purpose of preventing physical harm to employees, customers, and the shoplifters themselves.

2. Company video evidence and eyewitness testimony showed that grievant violated the above Company Policy by: 1) initially confronting the perpetrator; 2) following the perpetrator because she suspected that the woman was shoplifting; 3) demonstrating via the Company's video that she ran after and chased the shoplifter into the Store's vestibule; 4) joining with Montoya in physically wrestling with the shoplifter over the shoplifter's bag for a significant period of time; and 5) putting "hands on" the shoplifter in clear violation of the Company policy.

3. The decision maker in this case testified that he had terminated the involved employee in every other case where a violation of the shoplifter policy was found. The Union did not establish that the termination penalty was overly harsh for grievant's misconduct, and there was no Union showing that the Company acted in an arbitrary,

capricious or discriminatory manner in deciding that the proper disciplinary penalty for grievant was termination.

4. The Union's claim of disparate treatment in imposing the disciplinary penalty of termination was not supported by the evidence. Employee Aragon was not terminated because he did not touch the shoplifter in a prior circumstance, and the employees involved in the incident in Company Store #571 were not terminated because the shoplifter in that circumstance was becoming violent, and they needed to subdue and remove him from the Store to protect customers and other employees.

5. Video footage and eyewitness testimony in this case established that the grievant confronted and chased a suspected shoplifter, directed a co-worker to block the Store West exit that was being used by the shoplifter; and physically wrestled with the shoplifter over a bag containing stolen Store merchandise. In addition, as a result of grievant's escalatory actions, the shoplifter's accomplice pointed a gun at the crowd of employees in the Store's parking lot at the end of the circumstances involved in this case.

THE UNION

The Union makes the following arguments in support of its contention that just cause did not exist for the termination of the grievant in the circumstances of this case.

1. The Company's main evidence allegedly supporting grievant's termination is a partial video of the incident which fails to clearly show any evidence of a violation of Company Policy by the grievant. Instead, it is an indictment of grievant's fellow employee Montoya, who is seen on the video clearly running past the shoplifter to lock a Store exit door, temporarily preventing the shoplifter's exit from the Store; and also

physically wrestling with the shoplifter for an extended time period. It is obvious from the video that it was Montoya and not grievant who physically interacted with the shoplifter; and chased, confronted and detained the shoplifter. There is no video evidence that grievant approached, confronted or attempted to detain the shoplifter at the Store, while that same video shows Montoya grabbing the shoplifter and wrestling with her over the bag which she was carrying.

2. Company incident investigator Perea, after viewing the video, indicated at the hearing that it was Montoya and not grievant who "wrestled with the female subject for her bag" and "tried to get the female subject's bag." That Perea report never indicated that grievant did either of these things in the Company's video.

3. Arbitrators normally hold that an employer's decision to terminate an employee must stand or fall upon the reason given at the time of discharge. In this case at the time of termination, the Company had no evidence – either on video or in Perea's report – that grievant was trying to detain or otherwise confront the shoplifter who had suggested that she had a gun and was repeatedly asked to leave by grievant.

4. When grievant stood at the Store cashier's station watching the shoplifter proceed toward the exit, two co-workers present in that area testified they had heard her repeatedly ask the shoplifter to leave; that she never engaged physically with the shoplifter; and that she never told Montoya to attempt to stop the shoplifter. She also tried to open the West exit doors after Montoya had closed and locked them. It was only after Montoya ran by and ultimately tried on his own to lock the Store doors preventing the shoplifter from leaving, that grievant also ran toward the Store's West exit following Montoya with concern for Montoya's safety.

5. It was Montoya and not grievant who went well beyond both the Company's written policy concerning shoplifters. Montoya not only confronted the shoplifter; he also chased her and recklessly detained her by initially locking the Store's West doors to prevent her from leaving. He grabbed her bag and wrestled with her over it. Such Montoya actions stand in marked contrast to the actions taken by the grievant. She was simply trying to herd an abusive shoplifter out the door, and was on the brink of successfully doing so when Montoya stepped in to wildly escalate the situation into a dangerous one.

6. Grievant's actions in these circumstances were consistent with carrying out Store Policy as articulated by her supervisor Vanessa Muller. If not for Montoya's improper cowboy actions, this matter would have been a textbook example of grievant carrying out the Company's shoplifter policy as articulated by supervisor Vanessa Muller: politely approach the suspected shoplifter; ask her to leave; advise her that police would be called; and do not touch or confront the shoplifter, but assist her in exiting the Store peacefully.

7. Several other cases involving efforts by Company employees to stop shoplifters have not resulted in termination. For example, in a situation involving Store #571 in Albuquerque in January, 2022, several employees confronted, tackled and detained a shoplifting suspect. Company witness Cordova acknowledged that employees in that Store confronted, tackled, put hands on the shoplifter, took the shoplifter to the ground, and got him out of the building in order to defuse the situation and protect customers and employees. No one was disciplined in that circumstance. Similarly, in October 2021, an employee who approached a shoplifter and grabbed items from him was given only a

documented verbal warning and still works for the Company. In addition, in a case similar to the circumstances here, arbitrator Roumell sustained a grievance, and returned the Company's employee to work, mainly because a co-worker of the grievant in that case acted egregiously in chasing and grabbing one of the suspects in that same situation, but was not terminated. In addition, in another shoplifting case two weeks earlier than these circumstances, grievant approached a shoplifter, asked her to leave, and told her she would call the police. Grievant ended up retrieving \$1,400 in Store items from the shoplifter, and was praised by Muller and rewarded with about \$20 in Store coupons for her actions in that circumstance.

DISCUSSION

It is generally undisputed in arbitration that the Company, as the party taking disciplinary action against the grievant, has the burden of establishing that just cause exists for the disciplinary action taken against the grievant, under all of the facts and circumstances contained in the record before the arbitrator. The concept of just cause is generally recognized as encompassing three basic elements. First, the offense(s) charged against the grievant must be that or those for which disciplinary action may be assessed under the parties' practices of the contract. Second, the record, taken as a whole, must support a finding that the employee is guilty of the conduct of which he/she stands accused. If the evidence in the record supports a finding that the employee has committed an offense for which discipline may be assessed, a determination must then be made concerning whether any mitigating or extenuating circumstances exist which warrant a finding that some disciplinary penalty level short of the action taken is more appropriate.

With regard to the first of these just cause elements, the Company maintains a shoplifting policy impacting all bargaining unit employees. That Policy in pertinent part provides: 1) safety in the area of shoplifting and deterrence thereof are important elements of that Policy; 2) "...employees are to encourage prevention and deterrence in combating shoplifting by being observant...and reporting suspicious behavior"; 3) no employee other than "...loss prevention employees, store directors and those trained and designated in writing "...is permitted to approach, confront or detain a suspected shoplifter"; 4) such employees set forth above "...under no circumstances (shall) approach, confront, or detain a suspected shoplifter whether inside or outside the store"; 5) "no employee...may chase suspected shoplifters"; and 6) the Company has the right to discipline employees who violate the policy.

Employees are required to review this policy. The grievant on May 11, 2020, acknowledged in writing both that she had read and understood this policy, and that "violations of the policy will subject the employee to discipline up to and including termination." In view of the above, the Company has met the first of the above "just cause" requirements.

Turning to the next just cause element of whether grievant is guilty of the conduct of which she stands accused, the evidence in that area is at best somewhat mixed. First, there was no showing that grievant touched the shoplifter in any way in her initial interaction with the shoplifter. Rather, the evidence shows that, when grievant first interacted with the shoplifter and told her (the shoplifter) that she (grievant) knew what the shoplifter was doing and that (the shoplifter) should leave the Store or she (grievant) would call the police. The shoplifter then began throwing items at grievant from her cloth

bag, as she (the shoplifter) moved out of the grocery aisles and toward the exits. Grievant did nothing wrong under the Policy in her initial interaction with the shoplifter during that time.

Likewise, as the shoplifter began heading for the West exit doors, grievant was properly at the grocery check-out area instructing one of the employees there to call the police. At that point, Montoya ran quickly by the check-out area and toward the West doors ahead of the shoplifter -- again, without any improper action or direction of Montoya by grievant to do so. Grievant then tried to follow after Montoya, and the arbitrator credits her testimony that she did so out of concern for Montoya's welfare. She likewise did not tell Montoya to engage in any of the actions Montoya took thereafter.

The record before the arbitrator is unclear concerning the critical element of whether grievant touched the shoplifter in the interaction between the shoplifter, Montoya and grievant. Company witness Chavez testified that upon following the shoplifter, grievant and Montoya toward the West doors, she saw grievant and Montoya "touching the bag on the woman's shoulder trying to get the bag back." Chavez in her testimony admitted, however, that her "memory was foggy" and that although she heard "lots of yelling," she "couldn't see."

Company witness Perea testified that after viewing the Store video, while she believed that grievant "had her arms on the shoplifter trying to get the cloth bag," she (Perea) "really can't make out the area on the right of the video where the grievant was located." Similarly, Company witness Benevidez testified that after reviewing the video, he "didn't see grievant on the video at all," and instead saw only Montoya wrestling with the shoplifter. Finally in this evidence area, Union witness Luis Mendez Jr. testified that:

1) grievant "never touched" the shoplifter; 2) he saw Montoya but not grievant holding onto the shoplifter; and 3) grievant..."never did anything improper concerning the shoplifter."

The arbitrator cannot credit the testimony of several Company witnesses concerning certain interactions of the grievant and the shoplifter, where that testimony differs from that of Union witnesses. Each of the Company witnesses to these events testified that they either: 1) couldn't make out what grievant was doing; 2) "couldn't see"; 3) had a "foggy memory" in areas subject to their testimony; 4) couldn't make out from the video where grievant was located; and 5) couldn't see whether grievant was trying to grab the shoplifter's bag; or 6) didn't have enough security camera footage, making it "difficult to find out with certainty what happened in this situation." In such circumstances, and in particular given the Company's burden of proof in this disciplinary case, I cannot find that the Company has met its proof burden in those areas.

Based upon this testimony, including the above testimony of Company witnesses, it is the arbitrator's considered judgment that the Company has not met its burden of showing that the incident occurred as the Company claims it occurred, and therefore that the record, taken as a whole, does not support that the grievant is guilty of the conduct of which she stands accused. The Company therefore has not met its burden of showing that grievant violated the requirements of the Company's Shoplifting Policy.

Alternatively, even assuming, arguendo, that the Company has met its requirement of showing that the record supports a finding that the grievant committed the offense(s) of which she stands accused, the arbitrator also finds that there are mitigating

and extenuating circumstances discussed below that require a finding that grievant should not have been disciplined at all.

In that mitigation area, the arbitrator has significant concerns with the Company's past treatment of pertinent shoplifter circumstances at Company Store #571, and the disciplinary actions that did or did not follow, when compared with the circumstances here. The Company appears to contend that the circumstances which occurred at Company Store #571 were somehow entirely acceptable under its Shoplifting Policy, even though, clearly contrary to the express terms of the Policy, the employees in that circumstance "...approached, confronted and tackled a suspected shoplifter, took the shoplifter to the ground, and got him out of the building." According to the Company witness Cordova, those actions were acceptable because the involved employees "got the shoplifter out of the building in order to defuse the situation."

There was no indication here that Company Policy creates an exception to the clear requirements of the Policy that employees are not to "...approach, confront, or detain a suspected shoplifter whether inside or outside of the store." Notwithstanding these clear Policy provisions, the employees in Store #571 clearly violated the express terms of that Policy, and indeed did so to a substantially greater degree than grievant did here, in that they "...confronted and tackled to the ground" the suspected shoplifter, and "got him out of the building." For that significant violation of the clear terms of the Policy, those employees received no discipline.

Put simply, and particularly so where as here the Company supports its action here via termination, there were absolutely no disciplinary consequences for the Store #571 employees who in my judgment undertook clearer and more dangerous action

contrary to the Policy than did grievant – and none of them received any discipline. It is hard to imagine a more clear disparate treatment situation involving the comparison of the circumstances here to those occurring at Store #571.

In addition, while grievant admitted in her testimony that she “...should not have pursued the shoplifter” and “...knew that it was wrong,” those elements are overcome here by the evidence concerning substantial past similar circumstances set forth herein and the limited probative value of much of the contrary testimony of numerous Company supervisors.

Based upon the entire above, the arbitrator finds that the Company did not have just cause for the termination of the grievant.

AWARD

1. The grievance is sustained. The Company did not have just cause for the termination of the grievant.
2. As the remedy for the Company's improper action, grievant shall be immediately reinstated to her former or substantially equivalent position, and shall be made whole via receipt of back pay, benefits and back seniority for the time period between her termination and her reinstatement, but minus any interim earnings.

June 10, 2022



RONALD HOH
Panel Arbitrator