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In the Matter of the Arbitration

Between:

Federal Bureau of Prisons X

and

Council of Prison Locals AFGE  
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Re: FMCS Case No. 12-52598  
Issue: 21 Day Suspension of  
Richard Campbell

Before Jerrold Mehlman, Arbitrator

Appearances:

For the Union:

Philip W. Glover, Northeast Regional VP  
Marical Murdo, Local President 2005  
Richard Campbell, Grievant

For the Employer:

Gail C. Elkins, Assistant General Counsel  
USDOJ/FBOP, Employment Law and Ethics Branch

Preliminary Statement:

Pursuant to Article 32 Arbitration of the Master Agreement, this arbitrator was notified by the FMCS of his selection by the parties to hear a grievance over the disciplinary suspension of Richard Campbell, a Correctional Officer at the MDC in Brooklyn. A hearing was held on May 23, 2012. At that time the parties presented their evidence on the issue of the discipline. A transcript was taken of the proceedings and a briefing schedule agreed to. Briefs having been timely filed, an opinion and award is provided below:

ISSUE:

The Union stated the issue to be: Was the 21 day disciplinary suspension of Grievant taken for just and sufficient cause and for efficiency of the service. Was it corrective in nature and progressive as per the collective bargaining agreement? The Employer posed the issue as to whether a 21 day suspension was appropriate for the admitted violation of Bureau Policy

against introduction of contraband into the facility. I accept the Union's formulation of the issue as governing the resolution of the grievance.

Relevant Contract provisions:

ARTICLE 30 - DISCIPLINARY AND ADVERSE ACTIONS

Section a. The provisions of this article apply to disciplinary and adverse actions which will be taken only for just and sufficient cause and to promote the efficiency of the service, and nexus will apply.

Section b. Disciplinary actions are defined as written reprimands or suspensions of fourteen (14) days or less. Adverse actions are defined as removals, suspensions of more than fourteen (14) days, reduction in grade or pay, or furloughs of thirty (30) days or less.

Section c. The parties endorse the concept of progressive discipline designed primarily to correct and improve employee behavior, except that the parties recognize that there are offenses so egregious as to warrant severe sanctions for the first offense up to and including removal.

FACTS:

Grievant is a Correctional Officer employed at the MDC facility of the Federal Bureau of Prisons (the Employer). Grievant is represented for collective bargaining by the Council of Prison Locals AFGE (the Union).

On April 4, 2011 Grievant reported for work on his shift. He entered the security area at the entrance to the prison building. He placed his duffle bag on the screening belt. As it went through the employee reviewing the monitor above the belt saw a firearm and ammunition clips in the duffle bag. When the screener pointed this out to the Grievant, he registered surprise; removed the bag and left the building. After removing the firearm from his bag and leaving it in his car parked outside on the street, Grievant returned with the bag which was screened without the firearm showing up and went to work. After this incident was reported to the Grievant's superiors by the screener, the Bureau's IG was called to investigate. He determined

that Grievant had inadvertently left his personal weapon in his bag and was unaware that it was there when he brought in the bag. Nonetheless, Grievant had violated Bureau policy against bringing in contraband, ie, in this case his personal weapon. On September 9, 2011 Grievant's Captain notified Grievant as follows:

This is notice that I propose you be removed from your position of Correctional Officer, GL-0007-07, with the Bureau of Prisons, no sooner than thirty (30) calendar days from the date you receive this letter for your Introduction of Contraband (Firearm), a violation of the Standards of Employee Conduct, which you acknowledged receiving on April 19, 2010 and received training annually.

Once the disciplinary process was initiated by the Captain, the decision to discipline rested with the Warden, the CEO of the prison.

In this case the Warden considered relevant factors (Douglas Factors) to determine the disciplinary penalty to be imposed. His decision, based upon these factors, was to impose a 21 day disciplinary suspension as follows:

In determining the most appropriate penalty, I considered the severity of your misconduct in light of our policy against introducing contraband, your awareness of that policy and your position as a law enforcement officer. However, I also considered among other factors, the following: (1) your performance is at an acceptable level; (2) you accepted full responsibility for your actions and were contrite during the oral response meeting; (3) you have no prior discipline; and (4) your supervisors have not lost confidence in your ability to effectively perform your job. Therefore, I find the charge sustained and fully supported by the evidence in the adverse action file. While I believe the sustained charge would normally warrant removal, it is my decision that an alternative sanction in this case and under the specific circumstances of your case is appropriate. Accordingly, I have determined that you be suspended for

twenty-one (21) calendar days. This suspension is in the efficiency of the service and should have the desired corrective effect. You will be suspended effective November 7, 2011, through November 27, 2011, inclusive. You will report for duty at your regularly scheduled hour on November 28, 2011.

The Union filed a grievance that the 21 days suspension was excessive and not for just cause. It requested that the 21 day suspension be removed and in its place a letter of reprimand or a lesser penalty be imposed and that Grievant be made whole with full back pay for regular wages, overtime wages and benefits lost.

On January 5, 2012 the BOP's regional Director responded that the 21 day suspension was for just cause.

For first offenses for conduct similar to the charge against Mr. Campbell, the range of penalties is an official reprimand to removal, depending on the severity of the infraction. In determining the appropriate penalty, the deciding official considered the relevant Douglas Factors: no prior discipline record, acceptable performance, his admission he made a mistake and the fact he accepted responsibility for his actions. Therefore, the proposal for removal was reduced to a twenty-one day suspension, which is well within the recommended range of penalties.

#### DISCUSSION:

Grievant's taking his personal weapon into the prison facility was a violation of contraband rules. These rules are necessary for security and safety of employees and inmates. In this case discipline was necessary even though Grievant's action was inadvertent. Although he was unaware that the weapon was in his bag, Grievant bore the responsibility of securing his weapon and not bringing it into the prison facility.

The Warden concluded that Grievant's action was unintended and inadvertent. The Warden was convinced of the need for a lesser penalty than termination. He testified as follows:

Potential for rehab, I considered to be very high in Mr. Campbell's case. I felt like he was very candid with me in the oral response. I feel like he honestly understood the problem that we were there, I believed him when he explained what happened to me, I believed that he was sincerely contrite about it and I had no doubt that a situation like this was not going to happen again. It was not something that he had any problem or bad habit or anything like that, so I consider potential for rehab to be very good. Under mitigating circumstances I didn't certainly see any job tensions or personality problems or mental impairment or anything like that. I did make a note of the fact that he conveyed to me in the meeting, and I think it was also in his statement with the OIG, that this was a mistake. It was an accident. He didn't mean to. He wasn't trying to introduce a weapon inside of the institution. He had simply forgotten that it was in the bag and allowed the bag to be carried back inside of the institution. So I considered that, the fact it was an accident to be an appropriate mitigating issue. Taking all total when I looked at alternative sanctions I felt like there were enough Douglas Factors working in the direction of mitigation of a proposed penalty that removal in his case was not necessary and was not appropriate. However, I didn't feel that I could mitigate it enough to simply throw the entire case out, because of the seriousness, the nature of the offense, originally that is that it is a criminal act, it was a criminal referral, fortunately for Mr. Campbell the criminal authority chose not to prosecute the case, but I decided that a 21-day suspension would be the minimum necessary sanction to remedy this problem.

The Warden's conclusion as to a penalty of 21 days suspension was made after consulting with an "expert" in the Regional office who so advised. My question to the Warden brought this out clearly:

THE ARBITRATOR: So you had something more than just your gut on this one. You actually concluded, number one, that there was mitigation and that termination was not appropriate. Number two, as to the actual penalty you consulted that with your regional people and they recommended to you that it should be no less than 21 days suspension and then you proceeded to take the position that 21 days was the appropriate penalty; is that right

THE WITNESS: Yes, yes.

I credit the Warden with making a good faith effort to determine appropriate discipline. However, he was required under Article 30, Section C to apply the concept of progressive discipline appropriately. The Warden's analysis should have established that a reprimand was appropriate for a first offense of an inadvertent breach of contraband rules. This was not an egregious action by Grievant nor a flagrant disregard of policy. While the introduction of contraband is a serious matter, in this case, a reprimand to Grievant, as noted by the Warden, would resolve any perceived chance of a future repetition by Grievant of such a violation. For these reasons, under the clear mandate of Article 30, Section C for progressive discipline, a reprimand of Grievant for just and sufficient cause was appropriate.

The 21 day suspension is not for just and sufficient cause. The remedy is to remove the suspension and return Grievant to his regular shift effective as of November 7, 2011.

AWARD:

A reprimand of Grievant for violation of contraband rules is upheld. Grievant's 21 day suspension was not for just cause under Article 30 of the agreement. Grievant is to be restored to his shift as of November 7, 2011 with interest under the back pay Act for the 21 days pay he lost.


Jerrold Mehlman, Arbitrator

Affirmation:

State of New York )  
County of Nassau )



On this 14<sup>th</sup> day of August 2012, Jerrold Mehlman personally appeared before me and made known to me that he is the person herein who executed this Award.

  
Notary

Srimati Indira Das  
Notary Public, State of New York  
No. 01DA6179019  
Qualified in Nassau County  
Commission Expires Dec. 17, 2015