
In the Matter of Grievance Arbitration

Between

**THE SOCIAL SECURITY
ADMINISTRATION (“Agency”)**

and

**THE AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
LOCAL UNION NO. 1336 (“Union” or “AFGE”)**

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Case No. KC 2012 E 0005

Grievant: Tim Neuburger

Issue: Five-day Suspension

Award and Opinion of:

Lon Moeller,
Arbitrator

Preliminary Statement

An expedited grievance arbitration hearing was held on March 5, 2015, at the Agency’s offices in the Bolling Federal Building located at 601 E. 12th Street, in Kansas City, Missouri. The Agency and Union appeared by their designated representatives and offered evidence through exhibits and the testimony of witnesses, who were subject to cross-examination. The record was closed upon the parties’ submission of closing arguments.

Appearances

For the Agency:

Justin L. Martin, Assistant Regional Counsel and Spokesperson
Kenneth Bullock, Assistant Regional Counsel
Latrice Cobbins, Operations Supervisor¹
Katie Komer, Assistant District Manager

For the Union:

Donny Boyte, National Representative, AFGE Ninth District, and Spokesperson
Tim Neuburger, Grievant

¹ At all times relevant to this grievance, Ms. Cobbins worked as a Claims Representative and Site Lan Coordinator in the Agency’s Johnson County, Kansas Field Office.

I. Background and Facts

The Grievant, Tim Neuburger, works as a Claims Representative in the Agency's Johnson County, Kansas Field Office. He started working for the Agency in September 2000. During his employment with the Agency, Mr. Neuburger has received "accolade" letters from Agency customers (Union Exhibit 4). His performance appraisals show, according to Agency Assistant District Manager Katie Komer, "successful performance ratings" (See e.g., Union Exhibit 1).

At issue in this grievance is the Agency's June 27, 2012 decision to suspend Mr. Neuburger for five calendar days (Joint Exhibit 4). Ms. Komer was the deciding official. Mr. Neuburger's five-day suspension was based on the charge of inappropriate conduct in the workplace. The specification for this charge included in the decision letter read as follows:

On May 25, 2012, while assigned to the Front End Interview area (FEI)² for appointments you became angry with your co-worker, acted inappropriately, and used inappropriate language. You became overly animated and threw your arms up in apparent disagreement that you were logged off a computer at the FEI without notification. Ms. Latrice Cobbins, fellow CR and Site Lan Coordinator (SLC), attempted to explain why you were logged off. You left the FEI area and stated, "This is a clusterfuck" (Joint Exhibit 4, p. 1).

Prior to receiving his five-day suspension, Mr. Neuburger received a two-day suspension (Joint Exhibit 8). Mr. Neuburger's June 28, 2011 two-day suspension was based on the charge of discourteous behavior towards the public. The decision letter for Mr. Neuburger's two-day suspension also referenced an official reprimand Mr. Neuburger received on December 21, 2010 "for discourteous behavior towards a member of the public" (Joint Exhibit 8, p. 5).

Mr. Neuburger filed a grievance challenging his five-day suspension (Joint Exhibit 5). The grievance was processed in accordance with the steps of the contractual grievance procedure, was denied by the Agency (Joint Exhibit 6), and was appealed by the Union to arbitration (Joint Exhibit 7). The matter is now before the arbitrator for a final and binding decision on the merits.

II. Statement of Issues

Whether the Agency's decision to issue a five-day suspension to the Grievant, Tim Neuburger, was for just cause? If not, what should the remedy be?

III. Discussion and Analysis

The Agency's Standards of Conduct obligate employees to observe "the requirements of courtesy and consideration while dealing with coworkers or serving the public" and further require employees "to conduct yourself with propriety" (Agency Exhibit 2, p. 2). Annual

² Agency Exhibit 1A provides a diagram of the FEI.

personnel reminders about the Standards of Conduct are sent to Agency employees (Agency Exhibit 2, p. 1; Stipulation). Violation of the Standards of Conduct “may result in appropriate corrective or disciplinary action” (Agency Exhibit 3).

Mr. Neuburger admits he made the statement “[t]his is a clusterfuck,” on May 25, 2012. The Agency is of the view that Mr. Neuburger’s actions on May 25th constituted “inappropriate conduct in the workplace” and thus violated the Agency’s Standards of Conduct.

The Agency has the burden of proof under Article 23, Section 1 of the parties’ collective bargaining agreement (Joint Exhibit 1, p. 144) to show (1) the record evidence supports the charge of “inappropriate conduct in the workplace” included in Mr. Neuburger’s decision letter, and if so, (2) the record evidence supports a five-day suspension as the appropriate penalty. A review of the record shows that the Agency has failed to meet its required burden of proof under the contractual just cause standard. This conclusion is based on the following:

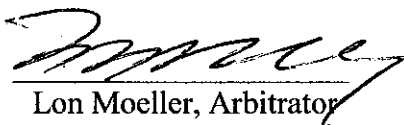
- Mr. Neuburger, according to Ms. Komer, “acknowledged wrongdoing.” He apologized for his May 25th comment and admitted using “inappropriate language” (Joint Exhibit 3, pp. 2-3).
- Operations Supervisor Michelle Howland’s June 8, 2012 proposal letter mentioned “three other CRs who were in the FEI, expressed their concerns with me regarding [Mr. Neuburger’s] outburst and inappropriate language that occurred that day” and emphasized Mr. Neuburger engaged in “discourteous behavior towards fellow team members” (Joint Exhibit 2, pp. 1-2). Ms. Komer testified the affect Mr. Neuburger’s comment had on his co-workers was “very important” to her when making the five-day suspension decision. Acting Deputy Area Director Leena Fry’s step 3 grievance decision, on the other hand, emphasized “[t]he decision to suspend was not based on Mr. Neuburger’s co-workers’ complaints” (Joint Exhibit 6, p. 3).
- Ms. Cobbins was the only Johnson County Field Office employee who testified she heard Mr. Neuburger’s May 25th comment. She admitted Mr. Neuburger’s comment did not affect her work performance. There is no evidence in this record that Mr. Neuburger’s co-workers documented any complaint or concern about what happened on May 25th.
- Mr. Neuburger’s May 25th comment was made in response to a “frustrating situation,” and was not motivated by anger towards a member of the public or anger towards a co-worker – a point Ms. Komer acknowledged in her decision letter (Joint Exhibit 4, p. 2). Mr. Neuburger described the comment as an “expression of exasperation.” Unlike his two-day suspension and prior reprimand, there is no evidence Mr. Neuburger was discourteous to a member of the public on May 25th.
- Mr. Neuburger credibly testified about what made his work the afternoon of May 25th a “stressful” and “frustrating situation.” He offered the same information to the Agency in his response to the proposal letter (Joint Exhibit 3, pp. 1-2).

- Mr. Neuburger testified he made his May 25th comment while walking away from the FEI area of the Johnson County Field Office,³ and said it in a “lowered voice” and whispered tone. Ms. Komer acknowledged the Agency has not received any complaints from customers who were in the Johnson County Field Office on May 25th about Mr. Neuburger’s actions.
- Ms. Komer testified she “lost confidence in Tim’s ability to control his emotions.” She had known Mr. Neuburger for approximately 15 days at the time when he made the May 25th comment. On April 17, 2012, as part of Mr. Neuburger’s mid-year 2012 performance discussion, Ms. Howland noted, “I am seeing continued focus on stress management. Customers as well as your peers have recognized your efforts” (Union Exhibit 3, p. 1).
- Mr. Neuburger watched a training video per a May 30, 2012 request from Ms. Howland (Union Exhibit 2). Ms. Howland also talked to Mr. Neuburger on May 30th about the “inappropriate and unacceptable” nature of his May 25th comment (Union Exhibit 5). Ms. Komer was not aware of the actions Ms. Howland took to correct Mr. Neuburger’s behavior based upon what occurred on May 25th.

Although the record does not support a five-day suspension, Mr. Neuburger’s actions on May 25th were unprofessional and fell short of the level of propriety established by the Agency’s Standards of Conduct. Based on this record, an appropriate measure of discipline for Mr. Neuburger’s May 25th actions would be a written reprimand.

IV. Award

For the reasons set forth above, the grievance is sustained. Mr. Neuburger’s five-day suspension is to be converted to a written reprimand and he is to be made whole for the five days of his suspension.


Lon Moeller, Arbitrator

Dated at Iowa City, Iowa this
6th day of March, 2015

³ Ms. Howland’s proposal letter acknowledged the same point (Joint Exhibit 2, p. 1).