DENNIS M. HEILMANN,

Grievant,

v. **DOCKET NO. 96-RJA-005**

WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY,

Respondent.

D E C I S I O N

Grievant, Dennis M. Heilmann, filed this grievance on November 21, 1995, protesting a two-day suspension without pay "for the release of inmate Gary Schwab." Grievant seeks rescission of the suspension, full back pay, and removal of any mention of the incident from any and all files kept pertaining to Grievant by Respondent or its agents. Following adverse decisions at the lower levels, Grievant appealed to Level IV on January 4, 1996. Hearing was held on March 13, 1996, at which time this case became mature for decision.

The material facts were stipulated by the parties and are set forth below.

Findings of Fact

1. Grievant is employed by Respondent as a Correctional Officer IV or Sergeant. 2. On November 9, 1995, Grievant was assigned to the post of Shift Supervisor, with responsibility to review all releases of inmates for legality and propriety, and had final authority for releasing inmates.

3. Grievant was informed that inmate Gary Schwab was scheduled for release. He reviewed Mr. Schwab's file, which was laying open in the booking area. Grievant reviewed all of the paperwork in Mr. Schwab's file to be sure there were no detainers, bailpieces, or any other documentation of reasons why Mr. Schwab should not be

released. Grievant did not find any documentation supporting Mr. Schwab's detention and approved his release.

4. The front cover of Mr. Schwab's file contained a red "Detainer" stamp, approximately three inches by two and one-half inches, complete with information that a detainer had been filed on the inmate on November 6, 1995. Also written in large letters across the front of the file was the note: "If Schwab, Gary is released please contact the victim at the phone #'s inside front flap!" Grievant did not contact the victim prior to inmate Schwab's release.

5. Grievant admits he did not look at the front cover of Mr. Schwab's file. It was only after the victim called the jail, approximately 1-2 hours later, and Grievant was shown a detainer which had been faxed to the facility prior to the release, did Grievant recognize that an erroneous release had been made.

7. The red "Detainer" stamp is always placed on the front cover of an inmate's file. 8. The facsimile of the detainer had been received at 1:09 p.m., November 9, 1995, during the shift preceding Grievant's. It had not been placed in Mr. Schwab's file.

9. Grievant immediately filled out an incident report upon learning of the erroneous release and notified Lt. John McKay, Chief Corrections Officer.

10. Grievant discussed the incident with Lt. McKay on November 13, 1995, his next working day. Grievant asked Lt. McKay what was going to happen to him, and was told he would probably be suspended.

11. Grievant discussed the incident with Larry Parsons, Administrator of the South Central Regional Jail, on November 14, 1995. Mr. Parsons indicated he was reviewing the reports, and wanted to take Grievant's positive, recent work record into consideration when deciding the consequences of the second inappropriate release. (Grievant had earlier committed a similar infraction and had received a two-day suspension for that occurrence).

12. Administrator Parsons decided to impose a two-day suspension without pay.

Discussion

Grievant alleges he did not violate any policy of Respondent with respect to the "Detainer" stamp. Grievant asserts he properly looked through the inmate's file for any legal documentation or paperwork which would indicate a detainer had been filed, and, finding none, authorized the inmate's release. Further, Grievant allegesRespondent failed to advise him of his due process rights and to offer him the opportunity to sign RJCFA-60, pursuant to WVRJ&CFA Policy and Procedure 5006, H.

Policy and Procedure Document Number 19001 Procedure B 3 states in pertinent part:

> "Shift Supervisor: The Shift Supervisor shall verify the authority by which an inmate is to be released to include:
>
> . . .
>
> c. Checking to ensure that there are no current detainers on the inmate from other jurisdictions.

While Grievant properly looked through inmate Schwab's file to determine if there was any documentation which would prohibit his release, Grievant's claim that he did not violate release procedures by failing to look at the front of the file to ascertain whether there was a "Detainer" stamp cannot succeed. Undisputed testimony established that the red "Detainer" stamp was always placed on the front of an inmate's file; thus, the fact that inmate Schwab's file was laying open, or that the hard copy of the Detainer had not yet been placed in the file, does not excuse Grievant's failure to check the front of the file.

Policy and Procedure Document Number 5006, Procedure H, provides:

> During the course of an investigation involving cases of employee misconduct or improper performance of official duties, and no criminal proceedings will be initiated against the employee for the offense, the employee shall be advised of his/her due process rights and obligations (attachment H). The employee will be required to sign theacknowledgement section of the form. The official giving the warning, and a witness to the procedure, shall sign the form.

RJA Ex. 12. Attachment H is what is commonly referred to as a "Garrity" warning, a constitutional guarantee to public service employees that any statement acquired during an internal investigation will not be used against them in any subsequent criminal proceeding.

There is no dispute that Grievant was not offered a "Garrity" warning. However, Respondent contends that the above-mentioned policy only applies to investigations of "serious" offenses, which are set forth in the policy as

> Escape, Break-in-Custody, Walkaway, Hostage situations, Deaths, Riots and Disturbances, Unauthorized Key Tampering, Found Explosive Devices, Use of Deadly Force, Fraud, Larceny, Arson, Sexual Misconduct, Burglary, Assaults resulting in bodily harm, and Work Stoppages.

RJA Ex. 12.

Respondent avers that Grievant's error did not constitute a "serious" offense as contemplated by this Policy and was treated as a minor administrative error, which was investigated under Policy and Procedure Document Number 3036, dealing with Internal Investigations. RJA Ex. 9. (See footnote 1)

The Level III hearing examiner found Respondent had technically violated Policy and Procedure Document Number 5006, by failing to give Grievant the"Garrity" warning. However, the hearing examiner found this was harmless error, as Grievant was fully aware of the nature of the incident, the inquiry underway, and the potential result. The undersigned finds that Respondent did not violate Policy and Procedure Document Number 5006, as that policy did not apply to the minor administrative inquiry which took place as the result of the November 9, 1995, incident.

Conclusions of Law

1. Respondent has proven by a preponderance of the evidence that Grievant failed to adequately execute his responsibilities as defined in Policy Document Number 19001, to wit, "checking to ensure that there are no current detainers on the inmate from other jurisdictions."

2. Respondent complied with its internal policy regarding investigation of minor offenses, as set forth in Policy and Procedure Document Number 3036.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A- 7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: April 15, 1996

Footnote: 1

Respondent has since rescinded Policy and Procedure Document Number 5006 because of concerns about an administrative agency's authority to grant what amounts to immunity in a criminal proceeding under the "Garrity" warning.