BONNIE RICHARDS

v. Docket No. 95-CORR-018

DIVISION OF CORRECTIONS

DECISION

Grievant, Bonnie Richards, employed by the Division of Corrections as a Correctional Officer V (CO-V) at Pruntytown Correctional Center (PCC), filed a level one grievance on December 2, 1994, complaining that she had been demoted to Correctional Officer II (CO-II) without just cause. Grievant's immediate supervisor lacked the authority to resolve the matter initially and the claim was denied at levels two and three. Appeal was made to level four on January 13, 1995. An evidentiary hearing was conducted on June 21 and the matter became mature for decision with the submission of proposed findings of fact and conclusions of law on or before July 28, 1995.

Warden J. N. Liller notified Grievant of the demotion by letter dated November 23, 1994. That document comprehensively states the Respondent's position in this matter, in pertinent part, as follows:

This letter is to advise you that you are being demoted from Lieutenant to Correctional Officer II effective December 2, 1994. This demotion is in lieu of dismissing you and isaccordance with West Virginia Division of Personnel Rule 11.04.

The specific reason for this disciplinary action is that you jeopardized the safety and security of the public, two officers and the Pruntytown Correctional Center by your conduct on Friday October 28, 1994. Upon arriving at work you learned that a female civilian had allegedly given two male inmates alcohol while the inmates were working at the National Cemetery. You then issued weapons to Correctional Officers Michael Lane and Kimberly Nestor and sent them out into the community to search for the female civilian. You had no authority to send armed correctional officers to search for a person who was not an escapee from the Division of Corrections. Further, you were advised by Captain James Reed that Officer Lane was not to be issued a weapon because he had not yet

attended the Training Academy and was not qualified to carry a weapon on the job. Captain Reed also told you that Major Gary Shaw had directed that Officer Lane not be issued a weapon until he completed his training. Nevertheless, you issued a pistol to Officer Lane. Your rationale at the time was your belief that Officer Lane had been issued a weapon in the past. This faulty logic does not negate the fact that a ranking officer advised you of a specific directive not to issue a weapon to Officer Lane. Nor does it relieve you of the responsibility of following Division of Corrections policy which prohibits issuing weapons to employees who are not certified by the Academy to use them. Your conduct violates Division of Corrections Policy Directive 400 C18 "Refusal to obey security related instructions" and B2, "Failure or delay in following a supervisor's instructions, performing assigned work or otherwise complying with applicable established written policy or procedures".

You also issued a .12 gauge shotgun to Correctional Officer I Nestor even after she told you that she was so nervous about the entire situation that she had thrown up. This shows a lack of judgement on your part and added further to the dangerousness of the situation. Moreover, you instructed Officer Lane and by him, Officer Nestor, to search the local hotels and the local bar parking lots for the citizen. As part of this search you had the officers leave photo-copies of the citizen, a description of her car and the license plate number of the car. You told the officers that the woman in question was on parole and showed them documents from Pruntytown Correctional Center's file indicating she had been released to her mother. You knew or should have known at the time that you had no authority to send correctional officers out to search for a private citizen. By your conduct you may have violated this woman's right to privacy, libeled and or slandered her. In addition, this specific conduct is a violation of Policy Directive 400, Section B17,"Unauthorized dissemination of official information" which could breach the security of the institution or disrupt its orderly operation. Additionally, your conduct was substantially similar to and is a violation os Section C9 "Giving an inmate [sic] an order which could be hazardous to health and safety". In this instance you gave an order to subordinate staff which could have been hazardous to the officers and the public.

As you are well aware, a correctional officer is responsible for ensuring the safety and welfare of themselves, their co-workers and the inmates. I find that your actions warrant your dismissal. The State and its agencies have reason to expect their employees to observe a standard of conduct which will not reflect discredit upon the abilities and integrity of their employees, or create suspicion

with reference to their employees' capacity in discharging their duties and responsibilities. I find the nature of your misconduct is sufficient to conclude that you did not meet a reasonable standard of conduct as an employee of the Division of Corrections.

I have chosen not to fire you for the multiple violations of Policy Directive 400 set forth above. In making this decision, I have considered your long years of dedicated service to the Division of Corrections as a mitigating factor. However, your extremely poor judgement, failure to follow proper policy and procedure and unprofessional conduct can not go unpunished. Therefore, in accordance with Section 4.02 of Policy Directive 400, the sanction imposed will be demotion to Correction Officer II from your current position of Correctional Officer V rather than termination. By your multiple improper decisions on October 28, 1994, you have demonstrated your inability to adequately supervise others. I hope you will view this demotion as an opportunity to salvage your career with the Division of Corrections and that you will strive to improve your job performance.

On Friday, October 28, 1994, a former female inmate was discovered with two male inmates who were working in the National Cemetery at Pruntytown. The female left the area driving what was believed to be a blue Cavalier. The male inmates admitted meeting with the female, and both tested positive for alcohol use.___At the level four hearing, Correctional Officer Michael Lane testified that following the incident, Grievant issued him a .357 magnumrevolver with ammunition and directed that he and Correctional Officer Kimberly Nestor search for the female "towards Clarksburg and/or Bridgeport." Officer Lane stated that Grievant authorized him to drive his personal vehicle, a 1991 Mustang, which had no security screen or radio, but did have a telephone. Pursuant to Grievant's direction, he and Officer Nestor visited three hotels in the Clarksburg area. Upon their arrival at a designated hotel, both officers loaded their weapons and entered the facility, inquired regarding the female, and left photocopies relating to her for the employees' future reference. Officer Lane stated that he did not know for certain whether Grievant knew that he had not yet been certified to carry a gun, but that he did overhear Grievant in a discussion with Captain Reed who advised her that Lane was not to be issued a weapon.

Officer Nestor testified that she was also ordered by Grievant to search for the female. When Grievant issued her a shotgun, Officer Nestor stated that she felt uncomfortable and nervous because she had never been issued a gun or "gone out before." After she "threw up" from anxiety,

Officer Nestor accompanied Officer Lane to Clarksburg/Bridgeport. She had some difficulty in loading her gun; however, with some assistance from Officer Lane, Officer Nestor checked the hotels as directed.

Captain James Reed, daytime shift commander, testified that he was not present when the weapons were issued, but that he had engaged in a conversation with Grievant earlier that day in which he advised her that Major Shaw had directed that Officer Lane notbe issued a weapon until he graduated from the State Police Academy. Captain Reed recollected that Lane had previously been issued a weapon based upon a false assumption that he was qualified, due to prior employment with the Maryland State Police.

Correctional Officer Johnson Edmonds testified that he was in the control room during the shift change and overheard a conversation between Grievant and Captain Reed. Officer Edmonds recollected Captain Reed advised Grievant that Officer Lane was available to assist in the transportation of the inmates, if she could send an additional officer who was qualified to use weapons. He then heard Grievant respond that she had a qualified officer in mind.

Chief Correctional Officer Gary Shaw testified that he had directed the day shift commander, Captain Reed, not to issue Officer Lane a weapon after learning that he had not completed the Academy qualifications. Apparently, only Captain Reed was directly notified because Officer Lane usually worked the day shift.

PCC Deputy Warden Frank Phares stated that he first learned of the situation on October 31, 1994, when the manager of the Knight's Inn in Bridgeport called to complain of the officers entering the facility with the shotgun. The manager indicated that she understood that law officers often check motels, but that it seemed irregular for an officer to be carrying a shotgun into the lobby. The manager advised that the gun caused some concern for the clerks as well as several customers who were in the lobby at the time. Mr. Phares subsequently conducted the official investigationin which he found no entry in the Shift Commander's log reflecting the Lane/Nestor road trip. However, the weapon issue log confirmed that Grievant issued weapons to the correctional officers at 5:00 p.m. His investigation confirmed that Officer Lane was not to be issued a weapon pending his completion of the Academy.

While Officer Nestor was qualified to use a shotgun, Mr. Phares opined that her actions indicated to him that she was not capable of handling a weapon in a safe or correct legal manner. This opinion

was based upon Officer Lane's report that she had experienced problems loading the weapon and a conversation with Officer Nestor in which she had referred to a "little thingy on the side" of the weapon, instead of referring to the part by name. During that conversation she also indicated that if she saw an escapee in an alley she would shoot him.

After completing numerous interviews, including two with Grievant, and reviewing relevant documents, Mr. Phares made several conclusions regarding the instant matter:

1. Grievant directed an unauthorized armed search within the local and surrounding communities for a female not under the legal jurisdiction of the Division of Corrections.

2. Grievant authorized or had knowledge of the fact that the armed search was conducted in Officer Lane's personal vehicle.

3. Grievant issued Officer Lane a .357 calibre revolver after having been advised of a directive from Major Shaw that Officer Lane not be issued a weapon until such time as he had completed training at the Academy.

4. Grievant failed to complete an Incident or Information Report or to make an entry in the Shift Commander's Log pertaining to the armed search.

5. Grievant failed to issue clear and specific instructions to Officers Nestor and Lane who indicated no clear understanding as to what they should do if the female was found.

6. Grievant issued a shotgun to Officer Nestor when it was, or should have been, apparent that she was in an abnormally nervous state.

In consideration of the foregoing, Mr. Phares concluded that Grievant had grossly failed to exercise proper judgment or to act with a minimal degree of professionalism. He recommended that she be removed from positions of rank which carry implied or legal authority and responsibility to give orders and make supervisory decisions.

Grievant declined to testify at hearings held at levels three and four, but did participate in two interviews with Mr. Phares during the investigation. On November 3, 1994, Grievant stated that she directed Officers Lane and Nestor to check the Sheriff's Department, the Police Department, and just drive past the motels to look for the female's blue Cavalier. She insisted that the officers were never directed to leave the county and was surprised to learn that they had gone to Bridgeport. Grievant also denies having been advised by Captain Reed that Officer Lane could not be issued a weapon, or that Officer Nestor ever reported "throwing up" from anxiety related to the assignment.

Grievant claims that she assigned the weapons to the officers prematurely, for the purpose of transporting inmates to Huttonsville Correctional Center, and that they were never issued for the purpose of locating the female. Grievant stated that Officer Lane "said something about" taking his private car, but she asserts that she was not aware that he had in fact used his private vehicle. Rather, she assumed that the officers had taken the brown van used to transport inmates.

Grievant admits that she failed to enter the search in the Shift Commander's Log, offering no explanation other than "[i]t was something that just didn't get done." She also was unable to offer any explanation as to why she had not completed an incident report, conducted an investigation, or imposed any disciplinary action upon Officers Nestor and Lane if they had left the area in a personal vehicle with weapons and ammunition, without her authorization.

By her own admission, Grievant issued the weapons prematurely for purposes of transporting inmates. Her claim that Captain Reed did not tell her that Officer Lane was not to be issued a weapon is soundly rebutted by contrary testimony of not only Captain Reed but also Officers Edmonds and Lane who overheard the conversation. Although Officer Nestor was technically qualified to carry a shotgun, her emotional state causing physical upheaval rendered her incompetent for the assignment. Officer Nestor stated that she had advised Grievant that she was so nervous she had "thrown up." Grievant simply denies that she had any knowledge of this incident, and offers no explanation as to why Officer Nestor would fabricatethe story.

Grievant's statement that she had directed the officers to search for the female only in the immediate vicinity is clearly contradicted by the actions of the officers. When viewed in a light most favorable to Grievant, this situation would constitute poor communication of orders. Certainly the testimony of the officers establishes that they received incomplete or vague instructions as to what to do if the female was located. Grievant established by her own statement that she had not clearly communicated to Officer Lane that he was not to drive his personal car, or, that she had implicitly permitted the act.

Grievant admits that she failed to fulfill her administrative duty to make log entries documenting the search. It is undisputed that she did not file an incident report, conduct an investigation, or discipline the officers for any actions inconsistent with, or contrary to, her orders. In consideration of the foregoing, Respondent has unquestionably established that Grievant's failure to appropriately respond to a situation, to provide clear and concise orders, to follow directives from higher authority,

and to complete vital paperwork, renders Grievant incompetent to successfully function as a shift commander.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is employed by the West Virginia Division ofCorrections at the Pruntytown Correctional Center.

2. On October 28, 1994, Grievant was classified as a Correctional Officer V and was assigned as shift commander from 3:00 p.m. until 11:00 p.m.

3. Sometime prior to 3:00 p.m. on October 28, 1994, a former female inmate was observed with two male inmates who were assigned to work at the adjacent National Cemetery. The male inmates tested positive for alcohol after being retrieved from the cemetery and were to be transferred to Huttonsville Correctional Center later that evening. The former female inmate was no longer under the jurisdiction of the Division of Corrections.

4. At approximately 5:00 p.m. Grievant issued a .12 gauge shotgun and ammunition to Correctional Officer Kimberly Nestor. Officer Nestor was "qualified" to carry the weapon; however, she had never participated in an armed search prior to this time and became physically upset when issued the shotgun. Officer Nestor advised Grievant that she had "thrown up" when she learned she was to carry a shotgun.

5. At the same time, Grievant issued Correctional Officer Michael Lane a .357 revolver and ammunition. Earlier that day the day shift commander, Captain James Reed, had advised Grievant that Major Gary Shaw had directed that Officer Lane was not to be issued a weapon until such time as he had completed the Academy. Correctional Officers Johnson Edmonds and Michael Lane overheard this conversation.

6. Prior to transporting the inmates to HCC, acting underGrievant's direction and supervision, Officers Lane and Nestor travelled to Bridgeport in Officer Lane's personal vehicle. With loaded weapons, the officers entered three hotels to inquire and leave fliers regarding the female.

7. The search in Bridgeport was not documented in the Shift Commander's log.

8. Grievant filed no incident report and did not discipline the officers for any offenses.

9. Effective December 2, 1994, Grievant was demoted to Correctional Officer II.

CONCLUSIONS OF LAW

1. Pursuant to W.Va. Code §29-6A-6, the burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence.

2. Respondent has proven the charges against Grievant by a preponderance of the evidence.

Accordingly, the grievance is **DENIED**.

10-31-95