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IN THE MATTER OF ARBITRATION CONCERNING  
REMOVAL BETWEEN  
U. S. ARMY GARRISON, REDSTONE ARSENAL,  
ALABAMA  
AND  
AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES,  
LOCAL 1858  
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ARBITRATOR: Donald P. Crane RE: FMCS 09 – 0512 – 56632 - 3

HEARING: 11 August 2009  
Local Union Headquarter  
Redstone Arsenal, Alabama

Grievance filed: 30 October 2008

Post hearing briefs received by Arbitrator: 26 September 2009

APPEARANCES:

FOR THE AGENCY  
Walter A. Baker, Atty.  
Curtis Lee Clark, Dep. Dir.  
Redstone Garrison  
Chris Pegues, Director of Logistics  
Vanessa C. Alford, (Former) Supply &  
Soc. Div. Chief  
Ruby Turner, Alcohol & Drug Control Ofcr.  
Anthony Jones, Installation Food Advisor  
Ashley S. Tyson, Civilian Personnel Advisor

FOR THE UNION  
Vicki Fuller, Atty., L. R. Ofcr.  
Greg Noble, Property Books  
Lori Martin, ERC Contract Support  
Terry Mann, Central Rcvg.  
Vickie Weatherman, Wife of Grievant  
Harold Lenz, Director of Logistics (Retired)  
Hal Weatherman, Grievant

BACKGROUND.

Hal Weatherman had been employed at the U. S. Army Garrison-Redstone for approximately twenty-five years when he was removed for “excessive absences” on 27 October 2008. At the time of his removal he was classified as a GS-11, Food Service Advisor. He received the following disciplinary actions:

<u>Date Issued</u>	<u>Discipline</u>
7/21/05	Performance Counseling Memorandum
11/08/06	Return to Duty Letter
4/10/07	Letter of Leave Instruction
11/1/07	“ “ “ “
6/30/08	Request for Disciplinary Action
8/8/08	Notice of Proposed Removal
10/27/08	Removal from Federal Service

Mr. Weatherman filed a grievance at the third step on 30 October 2008 to contest his removal. It was appealed to arbitration and a hearing was held on 11 August 2009 at the Local Union Headquarters, Redstone Arsenal, Alabama. Both parties were represented by Counsel who had full and equal opportunity to examine sworn and sequestered witnesses. A verbatim transcript of the proceedings was taken by a court reporter. The parties filed timely post hearing briefs which were received by the Arbitrator on 26 September 2009.

The parties stipulated to the following issue:

Was the grievant removed for just cause and if not, what shall the remedy be?

Applicable language from the current Agreement is excerpted below.

ARTICLE 5  
PROVISIONS OF LAWS AND REGULATIONS

In the administration of all matters covered by this agreement, except for those matters specifically excluded by statute, the Union and the Employer are governed by existing or future laws of appropriate authorities, involving conditions of employment or the interpretation and application of agency policies, regulations, and practices not specifically covered by this agreement.

ARTICLE 26  
LEAVE

Section 7: Family and Medical Leave

Family and medical leave will be administered in accordance with the Family and Medical Leave Act (FMLA) of 1993 with amendments and/or current law.

ARTICLE 53  
DISCIPLINE – ADVERSE ACTIONS

- ...
- A. Disciplinary actions shall be initiated only after a thorough preliminary investigation has been completed and the facts revealed by this investigation clearly indicated that disciplinary action is necessary . . .

ARTICLE 56  
EMPLOYEE ASSISTANCE PROGRAM

h. Employees who agree to counseling, medical treatment, rehabilitation treatment, or any other treatment shall not be subject to disciplinary and/or adverse action for 90 days so long as they remain in the program and are sincerely trying to be cured. The employee may be evaluated to determine if any disciplinary and/or adverse action should be taken (after 90 days). This provision does not apply to those employees who did not voluntarily self-identify themselves as users of illegal drugs or those employees found to be using illegal drugs for a second time.

## POSITION OF THE AGENCY.

Agency Counsel asserted that the facts supported the grievant's termination as being appropriate and warranted. He stated that the appropriate burden of proof in this case should be a preponderance of the evidence, the same standard that is applied by the Merit System Protection Board (MSPB). Counsel contended that Management's judgment had been properly exercised within tolerable limits of reasonableness. He elaborated that unauthorized absence from duty was a proper ground for removal because it disrupts efficiency of the service. He cited several cases (MSPB) that supported placing Mr. Weatherman on AWOL because his absences placed a burden on the Agency and there was no foreseeable end to his absences. According to Counsel, Mr. Weatherman accrued 472 hours of unauthorized absences from 15 April 2007 to 7 June 2007. He cited the fact that he never challenged his being charged with AWOL despite his receiving Leave and Earning Statements depicting AWOL over seventeen pay periods. Furthermore, Counsel asserted, there was no indication that he was incapacitated during any of the times he was charged with AWOL. It was obvious, he insisted, that the Letters of Leave Instruction (LOLI) that were issued to Mr. Weatherman made clear his reporting and leave requesting responsibilities. Unquestionably, he failed to comply with these Instructions, Counsel concluded. He elaborated that Mr. Weatherman would call when no one was available (4:30 A.M.) or at the last minute to request leave and he failed to provide sufficient medical documentation for his absences. According to Counsel, Mr. Weatherman's position as Food Service Advisor was essential to proper functioning of the Supply and Services Division. His absence, Counsel claimed, caused workplace disruptions and his Supervisor had no confidence that his attendance would improve. He dismissed Mr. Weatherman's claim of discrimination based on age and race and stated that he failed to establish a prima facie case. He pointed out that selections were a product of a panel which reviewed resumes and ranked them according to established criteria. Counsel maintained that Ms. Alford's proposal to remove Mr.

Weatherman was analyzed by experts on discipline from the Civilian Personnel Advisory Center; was reviewed for legality by the AMCOM Legal Office; and was approved by the Deputy Garrison Commander who concluded that termination was appropriate and warranted. He pointed out that the Douglas factors delineated by the MSPB were considered by Management officials who reviewed this case.

### POSITION OF THE UNION.

Counsel for the Union argued that the Agency failed to prove by a preponderance of the evidence that it had just cause to remove Hal Weatherman from Federal service. She cited an arbitration case as precedent for this one. Arbitrator Jerilou Cossack ruled in favor of the grievant noting that progressive discipline had not been properly applied to the grievant. Counsel contended that the progressive discipline policy instead of punitive discipline should have been administered. She also emphasized that Mr. Weatherman was denied due process by virtue of the fact that the Director of the Department of Logistics (DOL) had briefed the Deputy Commander prior to the DOL issuing the Proposed Letter of Removal. Thus, she claimed, the Deputy did not receive the proposed removal package "with clean hands". Mitigating circumstances (twenty-five years of service, "excellent" performance ratings, awards, etc.) did not weigh in on the Deputy's decision for removal, Counsel maintained. She pointed out that Mr. Weatherman was offered the option of early retirement, but he would have had to accept a greatly reduced pension due to his age. Since Mr. Weatherman was enrolled in the Employee Assistance Program, she claimed he should not have been terminated for at least 90 days, according to the Agreement. Counsel indicated that only Ms. Alford gave Mr. Weatherman Letters of Instruction and she was harsh with him and would not give him a break. Counsel also contended that Ms. Alford reversed others' decisions to grant him leave and she discriminated against him because of his race (Caucasian) and his age. She cited the "Table of Penalties . . ." that explicitly states that "penalty depends on length of absences". She noted that the grievant was not absent for long periods, that he was

improving and his absences were for legitimate reasons. According to Counsel, he had made a conscientious effort to abide by the terms of the Letter of Instruction. In addition to his "excellent" performance reviews, she noted, he had received (on several occasions) the prestigious Philip Connolly award for his superior dining facility.

#### ARBITRATOR'S OPINION.

At first blush, one might conclude that the Agency was justified in removing Hal Weatherman. Clearly, his absences were excessive and he was not complying with the details of the 1 November 2007, Letter of Leave Instruction (LOLI). However, when I consider both parties' testimony and the post hearing briefs, the "scales of justice" tilt in favor of Mr. Weatherman. My reasoning follows.

I understand why Management made its decision to remove Mr. Weatherman. But it was based on flawed information. Vanessa Alford, Mr. Weatherman's Supervisor, concocted a record that anyone reviewing it would draw the same conclusions that reviewing authority (Messrs. Pegues and Clark) did. Mr. Weatherman's attendance was recorded as 472 hours AWOL following his 1 November 2009 LOLI. Ms. Alford reported that there was no medical certification that he needed the time off, no reporting as instructed and no indication he requested leave in a timely manner. Yet, when I consider all the facts in this case, I am persuaded that she was determined to get rid of Mr. Weatherman and her methods were inappropriate. In particular, her assignment of AWOL for all his absences was not proper given the circumstances surrounding his absences.

Several witnesses testified that her interpersonal skills were lacking which created a stressful work environment. Her own testimony speaks to her attitude when she first arrived at the Garrison. She perceived a situation that needed to change promptly. She stated: "I ... had employees watching the television during work hours,

people not reporting to work, people belonging to cliques with the directors ... and people were simply not being held accountable.”

Union witnesses emphatically denied that her perception was accurate. All of them felt she was an autocrat who caused problems in the Division (DOL). Greg Noble in Property Books testified that she was, “very destructive”. He felt that she was “verbally abusive” to her subordinates. He even filed three grievances against her for this behavior. Lori Martin, ER Contract Support, testified that she would belittle employees. She said that Ms. Alford, “thrived on chaos in the office”. Ms Martin retired in September 2006, but she considered her time under Ms. Alford as the “worst six months of my life”. Terry Mann in Central Receiving claimed that Ms. Alford was the worst supervisor he ever worked with.

Dennis Hardin, a black assistant Manager of the contractor’s food services, wrote a memo that was entered into the record. He stated that Ms. Alford was “rude and disrespectful” of him. She is also black.

All of this testimony suggests to me that Ms. Alford’s attitude toward the employees combined with her hostile demeanor makes it most likely that she was determined to rid the Agency of Mr. Weatherman.

But beyond the testimony, on the witness stand, Ms. Alford exhibited the exact behavior she was accused of displaying at work.. At the hearing, I perceived her as authoritarian, controlling and having a volatile personality. At several points in her testimony, I had to interrupt the cross-examination so that she would stop arguing with Union Counsel. And at several junctures, she attempted to control the proceedings rather than answer the question being asked.

I gave great weight to the testimony of Retired Director of Logistics Harold Lenz. Here was a high level Manager testifying on behalf of Hal Weatherman. Mr. Lenz had directed the organization where Mr. Weatherman served. Furthermore, Mr. Lenz held

Management positions at the Garrison for over fifteen of his forty years of service. He had absolutely nothing to gain by testifying on behalf of Mr. Weatherman. By appearing, I can infer that he felt strongly enough that Mr. Weatherman's treatment was unfair that he spent his personal time to appear at the hearing. He testified that Ms. Alford was trying to get rid of Mr. Weatherman. Mr. Lenz had the highest regard for Mr. Weatherman and he felt that Ms. Alford should have shown more compassion toward him.

Article 9, Section 3 of the Agreement, states that, "All employees shall be treated with fairness and dignity ...". It is clear to me that Ms. Alford ignored that provision in dealing with her employees.

Furthermore, there were extenuating circumstances surrounding Mr. Weatherman's absences. I feel that they should have been a significant factor in the handling of his case. Mr. Lenz testified that he, as well as the other Managers, were aware of his family problems. These family and medical problems spanned five years and they account for the vast majority of his absences. Any objective observer would conclude that they were calamitous and they obviously took an emotional and physical toll on his family. Following is a listing of the events:

Hal Weatherman's Family and Medical Problems

<u>Date(s)</u>	<u>Event</u>	<u>Comments</u>
2004-'05	Hal suffered memory loss/high blood pressure	Under care of two neurologists
11/11/04 – 4/05	Son broke neck	Off a few weeks at a time to care for son
2005	Mother - cancer surgery in Virginia	She was diagnosed in '01 – He was primary caregiver
	Mother wandered from home – lost	'07
	Mother died	'08
05/06	Brother died in Virginia	

01/06	Wife deeply depressed	Hal often had to stay with her for fear of what she might do.
10/08 '08	Second Brother died in Virginia Hal stressed out/ high blood pressure from "grief" and "job stress".	

It appears to me that Ms. Alford's treatment of Mr. Weatherman was punitive instead of progressive/corrective discipline.

Redstone Arsenal Regulation 690 – 25 Disciplinary Actions states in pertinent part:

In selecting an appropriate penalty, the deciding official should distinguish between misconduct for which progressive discipline aimed at correcting behavior is warranted and misconduct warranting punitive discipline. In general, for progressive discipline the deciding official should select the least stringent penalty thought necessary to get the employee's attention and motivate him/her to improve behavior.

AR 690 – 700 contains a Table of Penalties. The Table lists Behavioral Offenses separate from Offenses warranting Punitive Discipline. "Attendance Related Offenses" are explicitly listed under Behavioral Offenses. Thus, it is clear to me that the Agency's policy is to treat Mr. Weatherman's absenteeism as a Behavioral Offense that should be remedied through progressive/corrective discipline.

Contrary to these Regulations, Ms. Alford chose a punitive approach. She edicted in her 1 November 2007 LOLI that "All unapproved absences will be documented as Absences Without Leave (AWOL)". She had the option of assigning Leave Without Pay (LWOP), but regardless of the reason for the absence, she chose to assign AWOL. Furthermore, the Letter required Mr. Weatherman to speak directly

to her or the Director of Logistics. This was a requirement that was too rigid for anyone to achieve.

The 1 November 2007 LOLI states that "All unapproved absences will be documented as Absence Without Leave (AWOL)". Ms. Alford testified that he would be charged with AWOL even for a death in the family because he did not have any leave and because it was his second LOLI. Thus, she felt obliged to record AWOL regardless of the circumstances of the absence or whether or not he had applied for leave. This appears to me to be unjust on its face. Harold Lenz testified credibly that Ms. Alford could have designated his absence LWOP instead of AWOL. In addition, I feel that the Agency bore a major responsibility to help Mr. Weatherman obtain Family and Medical Leave (FMLA) for his family and Medical problems. There is little evidence that he was offered FMLA leave more than one time.

The record reflects that many of Mr. Weatherman's 2007 and 2008 absences were medically certified. For example: 17 – 22 April 2007, his wife was hospitalized. Allen Tauro, MD wrote: "... His presence is required during and after her discharge from the hospital". Also, his absence from 9 – 16 July 2008 was covered by an MD's excuse, yet Ms. Alford charged him with AWOL. Furthermore, Mr. Weatherman testified that he would apply for leave and Ms. Alford would deny it. Regardless of his applying for leave and his time off being certified, he was designated AWOL. When one considers the reason for his absence, i.e., care of relative, death of family member, serious medical condition, any rational observer would consider it tantamountly unfair to charge Mr. Weatherman with AWOL.

Ms. Alford testified that Mr. Weatherman either did not call in or he would leave a voice message which was contrary to the LOLI. Mr. Weatherman countered that he always called (or his wife called for him) when he had to be absent. Harold Lenz insisted that there was never a time that Hal (Weatherman) was out that he did not know about it.