Labor Arbitration Decision, Sacramento Cnty. Super Ct., 2020 BL 542744, 2020 BNA LA 1468

Pagination

* BNA LA
1468 p

Paul D. Roose
Arbitrator / Mediator
Golden Gate Dispute Resolution
510-466-6323
paul.roose@ggdr.net
www.ggdr.net
September 18, 2020

OPINION AND AWARD

IN ARBITRATION PROCEEDINGS

PURSUANT TO A

COLLECTIVE BARGAINING AGREEMENT

In the Matter of a Controversy Between

Sacramento County Superior Court, Employer

and

United Public Employees, Union

LUKE DENSMORE SUSPENSION

September 18, 2020

Hide Summary

Case Summary

LABOR ARBITRATION

SUMMARY

[1] Discipline - Neglect of duty ►100.552535 ►100.5515 [Show Topic Path]

The Sacramento County Superior Court had good cause to suspend a court clerk for three days for "inexcusable neglect of duty" that resulted in an inmate remaining in the county main jail for seven months beyond the date a judge had ordered the inmate transferred to a state hospital for treatment. The clerk failed to process a "commitment packet" containing the judge's order and other materials within 24 hours, and he failed to personally carry out his responsibility to follow up nearly three months later when the inmate's attorney again appeared before the judge to inquire why his client had not been transferred. Before all this occurred, the clerk had received notice that commitment packets need to be processed within 24 hours of a judge's commitment order, and the severe consequences of the mishandled file support skipping to a relatively short suspension of three days for a first offense.

APPEARANCES:

For the Employer:	Steven P. Shaw, Attorney
	Sloan Sakai Yeung & Wong
	555 Capitol Mall, Suite 600
	Sacramento, CA 95814
For the Union:	John Bonilla, Business Agent
	United Public Employees
	9333 Tech Center Dr., Suite 100
	Sacramento, CA 95826

PROCEDURAL BACKGROUND

The above-referenced matter was processed through the grievance procedure contained in the collective bargaining agreement (CBA) between the parties. Remaining unresolved, it was submitted to final and binding arbitration. The undersigned was mutually selected as the arbitrator. The matter was heard on July 21, 2020 on the Zoom platform.

The parties stipulated that the matter was properly before the arbitrator. The parties also stipulated that the arbitrator retains jurisdiction over the implementation of the remedy if the arbitrator grants a remedy.

Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. Both parties were ably represented by their respective representatives. The parties chose to conclude their presentations by written brief. The briefs were received by the arbitrator on September 8, 2020.

ISSUE

The parties agreed on a statement of the issue in this matter, as follows:

> Was the three-day suspension of Luke Densmore for just cause? If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS AND POLICIES

Agreement Between Superior Court of California, County of Sacramento and United Public Employees, Local 1 Covering All Employees in the Court Office-Technical Unit — October 1, 2018 — September 30, 2021

Article 18 — Discipline and Discharge 18.05 — Causes for Disciplinary Action

> a. No disciplinary action shall be taken against a permanent employee without good cause. "Good cause" is defined as any facts which, based on relevant circumstances, may be reasonably relied upon by the Court in the exercise of reasonable discretion as a basis for disciplinary action. "Good cause" includes, but is not limited to:
> .....
> (4) Inexcusable neglect of duty.

Court Clerk Procedures Section 229.05 — Defendant Found Incompetent[1]

FACTS

The Grievant is a Courtroom Clerk with Fifteen Years of Experience: At the time of the events leading to his discipline, he was one of two clerks in the courtroom of Judge Lawrence Brown[2] at the Gordon D. Schaber (GDS) Courthouse. Judge Brown's courtroom 8 is in the volume criminal division. His courtroom handles between 80 and 100 matters each day court is in session.

For the eleven years prior to being promoted to courtroom clerk, the Grievant worked as a deputy court clerk in the Jail Inmate Management System (JIMS) in the same courthouse. JIMS clerks are responsible for data entry processing of court case information.

Michelle Jeremiah is operations manager of the criminal division. She testified that the Grievant is:

> ...responsible for all of the administrative functions in [his] assigned courtroom, which includes processing paperwork; preparing calendars; being**[*2]** the judge's right-hand**[*2]** man to answer any questions; provide any information from our case management system; communicate requests from attorneys and parties to the judge.

The Grievant described his duties as "being on the record in the courtroom with [Judge Brown], to finalizing orders and paperwork, emails, calendaring requests, phone calls — kind of as a liaison between him and the attorneys or other organizations that he has to interact with."

Judge Brown's courtroom has two courtroom clerks — morning, and afternoon. The Grievant was the morning clerk, on the record with the judge for morning sessions. In the afternoons, he worked in the back office doing follow-up from the morning sessions and preparation for the next day(s)' sessions. The afternoon clerk in Judge Brown's courtroom was Debbie Melgard.[3]

Each court case has a physical paper file. That file is handled by the courtroom clerk when the matter is being addressed on the record by the Judge and the parties. When the matter is finished for the day, the file is placed in an outbox and picked up by a court employee who delivers it to the JIMS unit in the same courthouse. A deputy clerk at JIMS inputs data into the system reflecting the activity on the case that day.

Some files are flagged by the courtroom clerk to be returned the same day after the data input is completed. According to the Grievant, about 20% of the files are supposed to be returned to the courtroom. The rest are filed by the JIMS clerk for later access.

One category of legal issues that comes before Judge Brown is defense motions to have the defendant committed to a state hospital rather than stand trial. These are known

as State Hospital Commitments (SHCs). Based on the findings of medical / psychological examinations, the Judge may determine that a defendant is incompetent to stand trial and order the inmate transferred from the county jail to a state hospital facility for treatment and "competency training."

When the judge issues such an order, a "commitment packet" is assembled by the courtroom clerk. It must contain a specified list of items, including the arrest report(s) that led to the defendant's detention. That packet is supposed to be sent to the county sheriff's transportation unit. That unit is then required to contact the appropriate state hospital to determine if a bed is available for the inmate. If it is, the inmate is transferred to the state hospital with the necessary commitment packet. If a bed is not immediately available, the inmate remains in the jail until a hospital bed becomes available.

According to the Grievant, SHC orders are issued by Judge Brown approximately three times a week.

On September 6, 2018, the Grievant Was Tasked with the Responsibility of Following up on the Judge's Order to Commit Defendant EF to the State Hospital: EF was an inmate at the county jail awaiting trial. He was taken into custody on March 28, 2018. The criminal charges he was facing are not part of the record in**[*3]** this hearing. EF was "certified" to the court on April**[*3]** 10, 2018 for a determination on his mental competence to stand trial.

On August 2, 2018, EF appeared with his attorney in Judge Brown's court and accepted the findings of court-appointed doctors that he was legally mentally incompetent. The record was insufficient to determine if the Grievant was the courtroom clerk on that date.

On the morning of September 6, 2018, the defendant's case was again heard in Judge Brown's court, with the Grievant as courtroom clerk. Judge Brown ordered EF committed to the state hospital. No witness at the arbitration testified about what happened next that morning. The court case history on EF indicates that the matter was on at 8:30 AM and the outcome was "COMMITSH", meaning "commit to state hospital."

The Grievant states that he typically would have placed the EF file in his outbox for delivery to the JIMS unit. He believes that he would have placed on the file a flag (either a plastic tab or a sticky note) that the file was to be returned to courtroom 8 after data inputting.

A document introduced into evidence is the "court case tracking" of EF's case. The document included no entries relevant to EF's case for dates between August 2, 2018 and March 22, 2019.

Serena Gouvea was the deputy JIMS clerk responsible for data entry on September 6, 2018.[4] Manager Jeremiah testified that she interviewed Ms. Gouvea as part of her disciplinary investigation. According to Ms. Jeremiah's testimony, Ms. Gouvea did not remember the EF file.

The Grievant worked the remainder of his shift on September 6 and worked the morning of September 7. He took vacation on the afternoon of September 7.

The sheriff's transportation unit did not receive a SHC packet for EF in September 2018. EF remained in custody at the county jail.

On November 30, 2018, the Grievant Was Responsible for Determining Why EF Remained in the County Jail and Had Not Yet Been Transported to the Hospital: EF's attorney contacted the court to find out why his client had not yet been transferred to a state hospital. The matter was placed back on Judge Brown's calendar for November 30. Again, the Grievant was the courtroom clerk that day.

Kelly Sullivan was, at the time of these events, the director of operations for the civil and criminal divisions. She was the supervisor of manager Jeremiah. She testified that, in March 2019, she spoke with Judge Brown about the events of November 30. "Judge

Brown requested from the court clerk why [EF] was still in custody. The information that he received from Luke [Densmore] was that the defendant was still in custody because they were waiting for a bed at the Department of State Hospitals," she stated.

The Grievant testified that he was training a clerk, Jan Pearce, on November 30.[5] He recalls the EF matter coming up on the court's calendar that morning. He states:

> I do remember telling my trainee, "Please run this errand for me. We're on the record. You just heard the question. Could you please**[*4]** either go make the phone call yourself, or have the clerk in the back, but we**[*4]** need to get an answer from them for the judge right now."
>
> So I sent her back there, and I don't know if she made the phone call or Debbie would have made the phone call. But I did receive an answer back, which I then told the judge that our understanding, from the sheriff's department, whether they called in the main court desk or transportation or was transferred or no one answered, whatever the outcome of what happened in the back office on the phone, my information — the information to me was that a bed was still waiting for the defendant.
>
> At that time, that does not raise any flags to me, other than that — they're backed up on beds for an inmate, and I would have told that to the judge on the record.
>
> At that time, the judge then did make an order, reiterating his original order, just for the sake of it; he did not need to do that, but to give the attorney peace of mind on the record, and to make a record in front of the defendant, he said, "Once a bed is available, the defendant is hereby transported to the Department of State Hospitals."
>
> I included that and wrote that in my minute order, and would have flagged the file, you know, as a rush or urgent and sent it downstairs.

When asked on cross-examination why he delegated the task of determining the reason for the delay to his trainee the Grievant responded as follows:

> ...the trainee had been trained at the jail prior to me for months and had the very similar training. I was given the trainee as a...refresher scene for her, because I guess things weren't working as well at the jail...This person has extensive knowledge prior to becoming a clerk with procedures, and I would have monitored their work and trusted them at this point in her training...She was not a — as we like to refer to the term, "baby clerk." She...didn't need as much handholding, so I would have backed off from hovering over her work as much.

After a Third Hearing on March 21, 2019, Defendant EF Was Finally Transported to the State Hospital as Per the Judge's Order: On March 14, 2019, EF's attorney requested the matter be placed back on calendar on March 21. His client, he had learned, was still in custody at the county jail. "He was never sent to state hospital. Need to allow him to plea or be sent to state court [sic]."

EF and his counsel appeared in Judge Brown's courtroom on the morning of March 21. The Grievant was the courtroom clerk that morning. The Grievant testified as follows:

> At this point, the judge was familiar with the case. He had remembered [EF's attorney] and [EF] and asked me to further investigate the case as to why they weren't transported still. So I got up on a break in the middle of the courtroom and went to the back office and asked Debbie to call the sheriff's department and/or as I handed her the files, look into why this wasn't done. Why he wasn't transported.

> Debbie then proceeded to call the sheriff's department, found out that he was not on a waiting list at all, which is a flag to**[*5]** us, meaning that they never received the information for him to be on a waiting list.
>
> We then both looked in our computers**[*5]** on the H-drive — it's a community drive...anybody can access it at the courthouse, and noticed that there was no commitment ever made...
>
> At that point, we had realized that the... commitment packet had never even been processed, much less sent to the sheriff's department. I then informed Judge Brown that we did not complete the packet, we'll complete one right away, and that the file probably never came back to us from JIMS is why it was never done.

The Grievant then completed the SHC packet and called his supervisor Frank Temmerman.[6] He did so because it was "a more serious situation than we had realized at the moment." Director Sullivan got involved at this point. She contacted state officials and was able to get EF moved higher up the priority list for transfers to the state hospital. EF was finally transferred to the state hospital, seven months after the judge's initial commitment order.

The Grievant Received an Email from Management on March 14, 2016 Notifying Him of the Need to Streamline State Hospital Commitments: Director Sullivan sent an email to all courtroom clerks and other court personnel on March 14, 2016 (two years prior to the incidents for which the Grievant was disciplined). The Grievant was among those who received the email. Ms. Sullivan testified about the email as follows:

> This is an email I sent to all of the courtroom clerks letting them know that we need to have our commitment packets to sheriff's transportation within 24 hours of commitment. It was based on all of the litigation that had been happening across the state. Prior to me sending this email out, I had one of our analysts review how long it took for our courtroom clerks to get the commitment and the commitment packets over to the sheriff for transportation, and it was taking us too long.
>
> We now have a five-day window to get all of the information to the Department of State Hospitals, so it's important that we, at the court, do our piece, which is the commitment order and the packet, and get that to the sheriff's transportation timely so they can assemble their document, send it to the Department of State Hospitals for review.

The email subject was "State Hospital Commitments — Please Read" and marked of "high" importance. It reads, in relevant part as follows:

> Based on an appellate decision, we need to streamline the way we handle State Hospital Commitments. We currently have a five-to-eight day turnaround time that is not workable going forward. We need to get the commitment packets to Transportation within 24 hours of the commitment. In the Volume Court's, this means that the files no longer come to Room 609 for processing of the Order. If you are the a.m. clerk, the Order and packet need to be prepared and sent to Transportation that afternoon...
>
> This new process will begin on Monday, March 21, 2016. Feel free to contact me or your supervisor if you have any questions.

The Grievant, in his**[*6]** testimony, acknowledged that he recalled the email and was aware of the information contained therein.

After an[*6] Investigation, the Grievant Received a Proposed Notice of a Three-Day Suspension on May 1, 2019 and an Order of Disciplinary Action on June 28, 2019: Ms. Sullivan does not recall how she first became aware of the EF commitment issue. She does recall "Judge Brown calling me, very upset" about the failure to complete the commitment packet.

Once Ms. Sullivan was made aware, she delegated manager Jeremiah to investigate the incident. Ms. Jeremiah interviewed the Grievant, JIMS clerk Gouvea, and courtroom clerk Melgard.

Ms. Jeremiah turned over the investigation results to Ms. Sullivan, who reviewed the case file and made some follow-up inquiries. Ms. Sullivan also consulted with the court HR department. It was Ms. Sullivan's responsibility to determine the level of discipline, if any, that would be proposed to the Grievant in the form of a "Skelly" notice. She testified as follows:

> ...to me the conduct and the consequences on the inmate and the potential consequence and liability for the court, to me was egregious.[7] My initial reaction was this rose to the level of termination...
>
> ...I ultimately decided on a three-day suspension based on Luke's long history with the court. He had not had any of this kind of discipline in the past. He, in my mind, had always been a good, solid employee.

On May 1, 2019, Ms. Sullivan issued the Grievant a "Notice of Proposed Disciplinary Action — Suspension." The Notice detailed the court's findings on the EF incidents and informed the Grievant of his "Skelly" rights. The Notice informs the Grievant that he did not "follow proper Courtroom Clerk practices during your preparation for the court calendars on multiple occasions as detailed above." The Notice characterizes the Grievant's performance as "unacceptable." The Notice further states as follows:

> Your failure to complete the State Hospital Commitment Order and Commitment Packet resulted in the defendant remaining in-custody at the Sacramento County Main Jail for an additional period of approximately seven months instead of being housed and receiving medication and treatment at a state hospital as ordered.

The Notice specifies that the Grievant violated MOU Section 18.05 Causes for Disciplinary Action a. 4, Inexcusable Neglect of Duty.

The Grievant availed himself of the Skelly process. After a Skelly hearing, the Skelly officer upheld the proposed action. On June 28, 2019 the Hon. Lloyd Connelly, Court Executive Officer, issued the Grievant an Order of Disciplinary Action — Suspension. The Grievant served a three-day suspension without pay July 9 - 11, 2019.

Neither Ms. Gouvea, Ms. Melgard, nor any other court employee (other than the Grievant) was disciplined for their parts (if any) in the EF incidents.

The Union filed a grievance against the disciplinary action. It is that grievance matter that is before the arbitrator.

EMPLOYER'S POSITION

The Employer argues**[*7]** that the Grievant exercised "extremely poor judgment and neglected his responsibilities"**[*7]** resulting in "severe consequences for the inmate and the Court itself."

The Employer contends that the appropriate standard to apply to this case is "preponderance of the evidence." The "record in this case clearly shows that Densmore committed misconduct."

The Employer posits that the Court easily met the standard tests of just cause by a) giving notice through the MOU that inexcusable neglect of duty constitutes grounds for discipline, b) gave notice via training, policy and email about the importance of handling commitment orders properly, c) showing that the 24-hour rule is reasonable, d) conducting a proper investigation including interviewing the Grievant, and e) providing the Grievant with Skelly rights.

The Employer asserts that the Union has not made the argument that the discipline was not applied even-handedly. The only argument left for the Union is that the penalty is not appropriate for the conduct. The Employer cites arbitration decisions in which arbitrators upheld suspensions, even for first infractions.

The Employer rejects the Union's attempts to exonerate the Grievant by blaming other employees for the breach. "Densmore misses the point that he was ultimately the one responsible for ensuring that the commitment order and packet was completed within 24 hours," the Employer writes in its brief.

The Employer concludes that the "three-day suspension for Densmore's negligence is patently justified and should be upheld."

UNION'S POSITION

The Union argues that the Grievant has been "employed for nearly 15 years," and has "not been disciplined in any fashion until now." Moreover, "more than one court employee is involved in the process," and "this is not the only order that Mr. Densmore is dealing with daily." "Luke is being blamed for the negligence of other workers not taking care of their responsibilities." "It was the system that failed," the Union writes in its brief.

The Union contends that the Grievant should be credited with having been honest about the problem and notifying his supervisor. No policy exists that the Grievant must review each file before it comes on the court calendar. No policy exists that the courtroom clerk must track each item he sends to the JIMS unit.

The Union asserts that management has a "bias" toward the Grievant and that "there had to be one head that needed to roll, and they chose Luke's."

The Union does not believe that the 2016 email rises to the level of policy: "'do your best' is neither a protocol or a procedure, it's a pep talk," the Union argues.

The Grievant, the Union asserts, is indeed a "solid employee." "Luke has been asked to train multiple clerks at various stages of their training," the Union notes.

The Union concludes that "the employer came into this hearing with no proof of any policy that Mr. Densmore had violated, and the lack of any proof of negligence on Luke's part**[*8]** shows that they failed to demonstrate their burden of proof. We ask that this discipline be overturned, and that Mr. Densmore**[*8]** be made whole for all lost wages and benefits plus 10%. Mr. Densmore should also be assured that he does not receive any retaliation or discrimination for taking part in this appeal."

DISCUSSION

While the Grievant's Performance Lapse Was Not Purposeful Misconduct, It Did Rise to the Level of Inexcusable Neglect of Duty: The burden of proof, as in all disciplinary matters, rests initially on the employer. The employer must establish, through a presentation of documents and testimony, that just cause exists for the discipline of the employee. Once the employer has done this, the burden shifts to the union to offer a positive refutation of the evidentiary record presented by management.

The Employer, in the instant matter, has made a prima facie case that the Grievant's work performance in the EF matter was neglectful. The core undisputed facts in this matter are that the Grievant was the courtroom clerk responsible for EF's case and that he was on duty and in the courtroom on both dates in question (September 6 and November 30, 2018). It is also undisputed that inmate EF remained in the county jail for an additional seven months, in contravention of the judge's orders, due to the incomplete SHC packet. Seeing to it that the commitment packet was completed was the responsibility of the assigned courtroom clerk, the Grievant.

The second incident, of November 2018, is especially problematic for the Union's case. The fact that EF's attorney was back in the courtroom over two months after the judge's order should have put the Grievant on heightened alert. The Grievant exercised questionable judgement by delegating to his trainee the task of determining why the two-month transfer delay had taken place.

A neutral observer might give some credence to the Grievant's explanation for delegating this task by his characterization of his trainee as not a "baby" clerk. Still, it is puzzling why the explanation the trainee brought back — the lack of availability of a hospital bed — did not spur further research by the Grievant. After all, it had been more than two months since the judge's order. The burden of evidence was on the Union to show that two months was a normal amount of delay for getting a requested state hospital bed. On the face of it, it was a situation that called out for more due diligence on the part of the Grievant.

Since the Grievant did not make further inquiries and uncover the truth — that the SHC packet had never been completed — the inmate remained in custody an additional four months.

The burden shifts to the Union to rebut this initial case by presenting exonerating or mitigating factors. As detailed in a section below, the mitigation presented by the Union does not excuse the Grievant. The preponderance of the evidence is that the Grievant violated the rules**[*9]** incorporated into the CBA at section 18.05 a (4). Just cause exists for disciplining the Grievant for his part in the court's handling of the EF matter.

The Employer, in closing brief, argues that the**[*9]** Grievant was guilty of misconduct. "Misconduct" implies willful dereliction of duty. The Grievant's performance was neglectful and inexcusable, but it was not willful. No evidence emerged that the Grievant purposefully delayed the SHC or deliberately shirked the task. The Order of Disciplinary Action, in contrast to the Employer's brief, appropriately steers clear of charging the Grievant with misconduct. The disciplinary notice accurately specifies the charge.

The Grievant Had Been Adequately Put on Notice that State Hospital Commitments Were to Receive Special Expedited Handling: The Grievant received, and acknowledged awareness of, the March 2016 email from management regarding SHCs. Two aspects of this email stand out. One — it references an appellate court decision faulting the way trial courts were handling SHCs. Two — the email clearly and succinctly states: "We need to get the commitment packets to Transportation within 24 hours of the commitment."

The Union has endeavored to downplay the significance of this email, characterizing it as "do your best" and a "pep talk." The undersigned does not agree with this depiction of Ms. Sullivan's email. Just because an email from management does not use the word "order" or "policy" does not mean that individual employees can disregard it or treat it lightly. It stands as an instruction, resulting from litigation, that employees were required to follow.

The email does not explicitly warn employees of potential discipline for violating the procedure. It nonetheless serves the purpose of underscoring the importance of timely turnaround of SHCs. It implies that failure to meet this timeline could place the court in legal jeopardy.

Even without this management email, the undersigned neutral might have concluded that common sense dictates the importance of timely document handling in the case of an inmate who is to be moved from the jail to a state hospital. The existence of the email bolsters management's case that the Grievant's neglect was inexcusable.

The undersigned arbitrator understands the argument put forward by the Union that the Grievant deals with dozens of court docket matters, motions by counsel, and judge's orders every day. Courtroom 8 is, after all, designated as a high "volume" courtroom.

However, SHCs are a relatively small slice of the average 80 - 100 matters per day in Judge Brown's courtroom. The Grievant testified that he handles an average of three SHCs a week. It is not unreasonable to assume that the Grievant could remember each one of those and handle it in accordance with the March 2016 email.

The Union Did Not Meet its Burden on its Contention of Joint Culpability or Disparate Treatment: Much of the Union's presentation in this matter focused on what can be termed**[*10]** "joint culpability." The Union elicited testimony from management witnesses about their interviews with other employees who may have played**[*10]** a part in the delay of EF's commitment paperwork. The Grievant himself testified about other employees who may have been responsible for delaying EF's transfer to a state facility.

The problem with this line of argument is the absence of direct evidence. None of the employees mentioned in the managers' or Grievant's testimony were called by either side to testify. No documentary evidence was introduced that suggests neglect on the part of those other employees. Speculation that those other employees' actions might have been partly responsible for the breach of procedure does not establish joint culpability.

The record did establish that no other employees were disciplined for playing a role in the delay of EF's transfer. However, to make a case for disparate treatment, the Union must show that the actions of the disciplined Grievant were equivalent to those of non-disciplined co-workers. The Union failed to make that case.

Despite Being a First Infraction by the Grievant, the Penalty of a Three-Day Suspension is Commensurate with the Seriousness of the Incident: A standard component of an arbitrator's just cause analysis is whether the employer honored the principle of progressive discipline. Typically, work performance deficiencies fall into the category of infractions requiring a gradual escalation of penalties. First infractions might result in counseling. Repeat infractions might justify written warnings followed by suspensions and ultimately termination for continued poor performance.

One commonly held exception to the rules of step-by-step discipline is for a first-time infraction that, even without a finding of deliberate misconduct, has significant detrimental consequences to the employer and its operation. It is appropriate, and in line with arbitral precedent, to look at both the actions of the Grievant and the consequences of those actions in evaluating the assessed penalty.

On the one hand, what happened with EF's commitment packet could be viewed as a minor infraction insofar as the Grievant mishandled only one file out of a daily total of one hundred.

On the other hand, the weighty consequences of that one mishandled file is also relevant. The Employer is correct to view this employee error from the vantage point of the inmate. EF was mistakenly held in custody seven months at the county jail when he should have been receiving medications and treatment at the state hospital. On the face of it, this is a serious violation of the inmate's human and legal rights and exposes the court to potential liability.

The severe consequences of the mishandled file in the instant case supports the decision of the Employer to skip to a relatively short three-day suspension for this first infraction. The penalty is appropriate, given the totality of circumstances.

The Grievant,**[*11]** in his testimony, convincingly stated "this will never happen to me again." Court management knows that the Grievant is a "solid" employee.**[*11]** Hopefully, both parties will have learned from this experience and will move forward in a positive direction.

AWARD

The three-day suspension of the Grievant, Luke Densmore, was for just cause.

Paul D. Roose, Arbitrator

Date: September 18, 2020

---

fn 1 This section of a procedure manual was cited by the employer as relevant to this dispute. However, no evidence was in the record that the Grievant was provided this policy or aware of it prior to the incidents in question. Therefore, it will not be detailed in this opinion and award.

fn 2 Judge Brown did not testify at the arbitration hearing.

fn 3 Ms. Melgard did not testify at the arbitration hearing.

fn 4 Ms. Gouvea did not testify at the arbitration hearing.

fn 5 Ms. Pearce did not testify at the arbitration hearing.

fn 6 Mr. Temmerman did not testify at the hearing.

fn 7 No evidence was presented at the arbitration hearing that litigation resulted from the commitment delay. Nor was evidence presented about how the delay impacted EF's future status as a defendant and inmate.