Before
PETER R. MEYERS
Arbitrator

In the Matter of the Arbitration between: **METROPOLITAN ALLIANCE OF POLICE, CHAPTER NO. 747,** Union, And **VILLAGE OF OLYMPIA FIELDS,** Employer.	Grievant: **Monique Smith** FMCS Case No.: **230523-06355**

DECISION AND AWARD

Appearances on behalf of the Union

Raymond G. Garza—Attorney
Monique Smith—Grievant

Appearances on behalf of the Employer

John B. Murphey—Attorney
Terry Lusby, Jr.—Public Works Director
David Vavrek—Engineer Technician
Betty Zigras—Finance Director
Drella Savage—Village Administrator/Village Chief of Staff

This matter came to be heard before Arbitrator Peter R. Meyers on the 27th day of November 2023 at the Village of Olympia Fields' Village Hall located at 20040 Governor's Highway, Olympia Fields, Illinois. Raymond G. Garza presented on behalf of the Union, and John B. Murphey presented on behalf of the Employer.

Introduction

Grievant Monique Smith was employed by the Village of Olympia Fields, Illinois (hereinafter "the Village") as an administrative assistant, working within its Public Works Department (hereinafter "the Department"). The Village discharged the Grievant from her employment on charges that she had been insubordinate, dishonest, and had left work without permission. The Metropolitan Alliance of Police, Chapter #747 (hereinafter "the Union"), subsequently filed a grievance on the Grievant's behalf, challenging the Village's decision to discharge her. The Village denied the grievance.

This matter was processed, without resolution, through the contractual grievance procedure, and then came to be heard before Neutral Arbitrator Peter R. Meyers on November 27, 2023, in Olympia Fields, Illinois. The parties submitted written, post-hearing briefs, with the Union's brief being received by e-mail on February 12, 2024, and the Village's brief being received by e-mail on February 20, 2024.

Statement of the Issue

Whether the Village had just cause to discharge the Grievant from her employment? If not, what is the appropriate remedy?

Relevant Contract Provisions

ARTICLE III – MANAGEMENT RIGHTS

Except as specifically limited by the express provisions of this Agreement, the Village retains all rights to manage and direct the affairs of the Village in all of its various aspects and to manage and direct its employees, including but not limited to the following:

to plan, direct, control and determine all the operations and services of the Village;

to supervise and direct the working forces;
to establish the qualifications for employment and to employ employees;
to schedule and assign work;
to establish work and productivity standards and, from time to time, to change those standards;
to assign overtime;
to determine the methods, means, organization and number of personnel by which such operations and services shall be made or purchased;
to make, alter and enforce reasonable rules, regulations, orders and policies; to evaluate employees;
to discipline, suspend and discharge employees for just cause (probationary employees without cause);
to change and eliminate existing methods, equipment or facilities;
and to take any and all actions as may be necessary to carry out the mission of the Village in situations of local disaster emergencies as may be formally declared by the Mayor or his/her designee or the Village Board. In the event of such emergency action, the provisions of this Agreement may be suspended, if necessary, provided that all provisions of this Agreement shall be immediately reinstated once a local disaster emergency condition ceases to exist.

ARTICLE V – DISCIPLINE

Section 5.1 Disciplinary Procedure.

(a) Post-probationary Employees shall be disciplined for just cause.

(b) Oral and written reprimands are not subject to the Grievance Process.

(c) In the event the Employer suspends an Employee for five (5) days or less, the Employee may appeal that suspension to such appeal body as the corporate authorities of the Village determine from time to time. A grievance-arbitration process shall not be available to the Employee.

(d) In the event the Employer seeks to suspend the Employee for more than five (5) days, or seeks to terminate the employment of an Employee, the Employer shall serve charges upon the Employee setting forth the bases for such proposed discipline. The Employee and the Union shall have the right to determine whether to have the discipline determined by such Board as may be designated by the Village from time to time; or reviewed by an arbitrator in accordance with the grievance/arbitration provisions of this Agreement. Any such election shall be made in writing within seven (7) days of the Notice of Proposed Discipline. Oral and written reprimands will not be admissible in any disciplinary matter if four years have passed from the date of the offense without the Employee receiving

discipline for an offense of a similar nature, or unless the Employee is the subject of ongoing progressive discipline.

(e) In the event the Union and Employee determine to have the matter reviewed by an arbitrator, it shall make such election in writing. Upon such election, the Employer will impose the discipline set forth in the Notice of Proposed Disciplinary Action. Upon the imposition of such discipline, the Union may refer the discipline to arbitration within seven (7) calendar days in accordance with Section 7.3 of this Agreement.

(f) In the event the Employee opts to have the matter heard by the Village's designated appeal board, the procedures of said Board shall control. Any decision shall be subject to judicial review in the Circuit Court of Cook County,

(g) By electing one option, the Employee irrevocably waives resort to the other option.

ARTICLE VI – GRIEVANCE PROCEDURE

Section 6.1. Definition. A "grievance" is defined as a dispute or difference between the parties to this Agreement concerning interpretation and/or application of this Agreement or its provisions. Oral and written reprimands are not grievable.

. . .

Section 6.3. Arbitration. If the grievance is not settled in Step 2, the Chapter may refer the grievance to arbitration within fourteen (14) calendar days of receipt of the Administrator's or his/her designee's written answer.

. . .

(d) The arbitrator shall submit his/her decision in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later.

. . .

(f) The fees and expenses of the arbitrator and the cost of a written transcript, if any, shall be divided equally between the Village and the Union, provided, however, that each party shall be responsible for compensating its own representatives and witnesses.

Section 6.4. Limitations on Authority of Arbitrator. The Arbitrator shall have no

right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. Any decision or award of the Arbitrator rendered within the limitations of this Section 6.4 shall be final and binding upon the Village, the Union and the employees covered by this Agreement.

Fact Summary

The record in this matter reveals that the Village is a municipality located in south Cook County, Illinois, with a population of about 4,800. Terry Lusby is the director of the Village's Public Works Department, which is headquartered at a separation location from Village Hall. The Village has a progressive-discipline policy in place, and this is reflected in the parties' Agreement.

The Grievant was hired as an administrative assistant within the Department on November 15, 2021. The record shows that during 2022, the Grievant had 132 hours of unexcused absences, in addition to her allocated paid time off. No discipline was issued in connection with these unexcused absences. During the summer of 2022, the Grievant received a positive employment evaluation from an interim Public Works director, while Village Administrator Drella Savage wrote a "memo to file" indicating that she had found the Grievant's job performance to be unacceptable. No action was taken in connection with this "memo to file."

The evidence shows that in late March and early April 2023, the Grievant asked Lusby for permission to work remotely. Under Village policy, permission to work remotely is subject to Savage's discretionary approval. Lusby instructed the Grievant to submit a written request to work remotely, and the Grievant submitted such a written request shortly thereafter. Lusby then consulted with Savage about the Grievant's

request, and Savage determined that the request should be denied, but also allowed the Grievant two weeks to make child-care arrangements. The Village did not compensate the Grievant for the time lost during this temporary absence.

The record indicates that on April 4, 2023, the Grievant sent a text message that addressed some work-related matters and then stated that she had to leave the workplace due to a child-care emergency; the text further stated that the Grievant would be available by phone while at home. Lusby's response to this text did not address the Grievant's statement that she was taking the rest of the day off, but it did ask that the Grievant call or stop by his office. Lusby testified that he did not see the portion of the Grievant's text that dealt with her taking time off that afternoon.

Also on April 4, Lusby met with Savage and Human Resources Director Jessica Washington to prepare a written response to the Grievant's remote work request. During this meeting Washington asked if Lusby was aware that the Grievant had taken the rest of the day off. Lusby stated that this was his first knowledge of the Grievant's absence on April 4.

On the morning of April 5, Lusby sent to the Grievant the written response to her remote work request. Shortly thereafter, the Grievant appeared in the doorway of Lusby's office, upset about the denial of her request. Lusby testified that the Grievant's tone of voice was disrespectful and insubordinate as she complained about the denial of her request, threatened to quit, and then said that she was not going to do any work and the Village would have to fire her.

David Vavrek, an employee of a third-party contractor for the Village, testified that

he overheard this conversation between the Grievant and Lusby. Vavrek stated that the Grievant's voice was slightly elevated, and he heard the Grievant say that the Village would have to fire her. Vavrek testified that he did not hear the Grievant disobey a direct order.

The Grievant testified that this April 5 meeting with Lusby was emotional, and that she was overwhelmed and stressed. The Grievant stated that both she and Lusby raised their voices during this exchange. The Grievant also stated that Lusby did not accurately document her comments during this meeting, asserting that she did not make any "y'all" comment.

Lusby subsequently sent an e-mail to Savage that documented this exchange. Some hours later, the Grievant also sent an e-mail to Savage that complained about having to use her personal time while being off for two weeks to arrange for child care. This e-mail then accused Savage of ignoring the Grievant's workplace concerns, including claims of sexual harassment and retaliation against the prior Department director. The Grievant's e-mail further accused Savage of discriminating against her and contributing to a hostile work environment.

Savage stated that the Grievant's allegations against her were false. Savage then scheduled a pre-disciplinary *Loudermill* hearing, which took place on April 12, 2023. The Village served the Grievant with a Notice of Charges dated May 15, 2023, which alleged that the Grievant had abandoned her job without permission on April 4, had made insubordinate verbal communications to her supervisor on April 5, had engaged in a pattern of insubordinate communications during the course of her employment, had not

been honest during her April 5 meeting with Lusby, and had not been honest during the April 12 informal pre-termination hearing.

During her testimony in this proceeding, Savage acknowledged that alleging that the Grievant was "not honest" during her April 5 meeting with Lusby "may not have been the best terminology."

Pursuant to Section 5.1 of the parties' Agreement, the Union and the Grievant opted to have this matter reviewed in arbitration, and the Village formally discharged the Grievant.

The Village's Position

The Village initially contends that it has proven the charges against the Grievant by a preponderance of the evidence, and the discipline assessed was appropriate under the circumstances. The Village asserts that as the Grievant conceded, in a small organization such as the Village itself, a department head and the Village Administrator must have absolute trust and confidence in the honesty and integrity of an administrative assistant.

Addressing the April 5 incident, the Village argues that Lusby's testimony, if true, demonstrates that the Grievant's outburst and her demeanor toward Lusby were serious acts of insubordination. The Village maintains that because the Grievant has denied making the statements alleged, it is necessary to assess the credibility of both Lusby and the Grievant.

The Village points out that the Grievant admitted that during this encounter, she was emotional and stressed because her request to work from home had been denied. The Village submits that rather than acknowledge her statements, the Grievant doubled

down. The Village insists that Lusby's version of events should be credited over the Grievant's denials. The Village asserts that there is no evidence of vindictiveness on Lusby's part, and Lusby reported this exchange to his supervisors only to give them notice in case the Grievant contacted them about her having left work without permission. The Village notes that Lusby's testimony about this exchange is supported by his contemporaneous documentation, which was written the same morning as the incident and therefore is highly credible. The Village further emphasizes that Vavrek's testimony corroborates Lusby's version of events. Vavrek is a disinterested witness, had no motive to lie, and his testimony therefore is very credible.

The Village submits that a clear preponderance of the evidence supports the version of the April 5 encounter offered by Lusby and Vavrek over the Grievant's denials. The Village accordingly contends that it has proven the charge that the Grievant made insubordinate verbal communications to Lusby on April 5, 2023.

The Village notes that during the *Loudermill* hearing on April 12, 2023, the Grievant falsely claimed that Lusby had lied about her statements during their April 5 exchange. Based on the same evidence discussed above, the Village argues that it has proven the charge that the Grievant was dishonest during the April 12 *Loudermill* hearing. The Village emphasizes that additional elements relating to the charge of dishonesty during the *Loudermill* hearing stem from the Grievant's April 5 memo and the hearing itself. The Village points to the Grievant's assertions, both in her memo and during the *Loudermill* hearing, that Savage had failed to address the Grievant's concerns about a hostile work environment.

The Village acknowledges that failure to meet with an employee about sincerely felt concerns about harassment would be a serious management lapse. The Village argues, however, that the Grievant's charges were proven to be false. The Grievant admitted that Savage offered to meet her on several occasions during September 2022, but the Grievant declined and said there was no need for a meeting. The evidence therefore demonstrates that during the *Loudermill* hearing, the Grievant also falsely stated that the Administrator refused to meet with her, as set forth in the exhibit supporting the charges at issue. The Village suggests that there is no support for the Grievant's explanation that she failed to meet with Savage because she concluded that Savage was "gaslighting" her. The Village notes that it is difficult for one person to "gaslight" another when there is very little contact between the two.

The Village goes on to address the Grievant's claim that the Village President met with two employees about improprieties. The Village emphasizes that the Grievant admitted that she had no factual basis for this claim, which again proves that she made false statements during the *Loudermill* hearing, as set forth in the charges at issue.

Moving to address the charge that the Grievant left work on April 4 without permission, the Village contends that the Grievant admitted to the essential facts giving rise to this charge. The Grievant admittedly did not call Lusby to ask permission to leave, and she never texted anything other than her declaration. Moreover, the Grievant admitted that she knew she needed permission to take off work. The Village argues that this charge has been proven.

As for any suggestion that this incident involved only a minor misunderstanding,

the Village asserts that the context surrounding the communication between the Grievant and Lusby defeats any suggestion that the Grievant could have concluded that Lusby gave tacit permission for the Grievant to leave work. The Village urges that only four days earlier, Lusby informed the Grievant that she needed permission from the Village Administrator to work from home, so there is no good-faith basis for any suggestion that Lusby tacitly had given her such permission.

The Village then acknowledges that the fourth charge at issue, that the Grievant was dishonest during the April 5 meeting with Lusby, has not been adequately supported.

The Village reiterates that it has proven Charges1, 2, 3, and 5. The Village urges that discharge was the appropriate disciplinary penalty in light of these proven charges. The Village submits that there is no dispute that the Grievant verbal outburst on April 5, if true, constituted a serious act of insubordination toward her immediate supervisor. Because the clear weight of the evidence demonstrates that this outburst took place as alleged, and that the Grievant's denials are unworthy of belief, this charge alone justifies discharge. The Village emphasizes that baseless charges against the Village Administrator in the Grievant's memo amount to a type of misconduct that makes it impossible for the Village to allow the Grievant to continue to function in the workplace.

The Village points out that the Grievant's outbursts and accusations occurred because she did not get her way about remote work, even though the Village Administrator otherwise had been extremely accommodating to an employee who had started with the village only eighteen months earlier. The Village suggests that the Grievant was given an opportunity to reflect, correct, and even apologize at the

Loudermill hearing. The Grievant did not take advantage of this opportunity, but instead persisted in her denials and refused to recant her false allegations. The Village insists that Savage tried to work with the Grievant, but when the Grievant doubled down with additional falsehoods, Savage reasonably concluded that discharge was the only course of action. The Village suggests that given the Grievant's dishonesty throughout the *Loudermill* hearing, discharge was the appropriate consequence.

The Village goes on to argue that the principles of progressive discipline have no applicability here. The Village insists that honesty is an absolute value, and that if an employee in a position of trust breaches the duty of honesty, this raises serious questions about the employee's integrity, character, dependability, and ability to function in the workplace. The Village submits that the Grievant must accept the consequences of her decisions, and the public interest requires no less.

The Village ultimately contends just cause exists to support its decision to discharge the Grievant, and the instant grievance should be denied in its entirety.

The Union's Position

The Union initially contends that the Village has failed to meet its burden of establishing that it had just cause to discharge the Grievant. Addressing the charge of untruthfulness, the Union asserts that the Village has utterly failed to prove that the Grievant acted with intentional dishonesty as to a material fact. The Union argues that an analysis of each alleged dishonest statement demonstrates that the Village lacks just cause to discipline the Grievant for untruthfulness.

The Union maintains that during her testimony, Savage was unable to identify a

single untruthful statement that the Grievant made to Lundy. Moreover, Savage then admitted that use of the phrase "dishonest" to describe the April 15 meeting "may not have been the best terminology." The Union submits that the Village has failed to meet its burden of showing that the Grievant was dishonest during her meeting with Lusby.

Addressing the allegation that the Grievant falsely stated that the Village president met with two employees about improprieties, the Union emphasizes that the Grievant's statement was based on what she had been told by former Public Works Director Terrence Acquah. Acquah told the Grievant that there had been a meeting between the Village president and two employees, and the Grievant believed Acquah's statement to be true when she repeated it during the April 12, 2023, pre-disciplinary hearing. Because the Grievant never claimed that the basis for this statement was any personal conversation she had with the Village president, the Grievant lacked the knowing intent necessary to show that she intentionally lied.

As for the allegation that the Grievant falsely stated that Director Lusby approved her time off on April 4, the Grievant believed that Lusby's actions and inactions that day were tantamount to approval of her leaving work early. The Union points out that the Grievant texted her intent to leave early and to work remotely, and Lusby did not follow up on this notice. After receiving this text, Lusby continued to e-mail and text the Grievant about Village business, and the Grievant answered all of these communications. The Union urges that the Grievant reasonably believed that Lusby knew and approved of her leaving early on April 4 when she said as much at the April 12 pre-disciplinary hearing. The Village again has failed to provide the requisite intent for lying.

Turning to the allegation that the Grievant falsely stated that Lusby lied about what the Grievant said during the April 5 meeting, the Union notes that the Grievant disagreed with three points in Lusby's account of this meeting as set forth in his April 5 e-mail to Savage, and none of these denials have proven to be false. As Lusby confirmed in his testimony, the Grievant did do her work and continued to take calls from customers, as she stated in disputing Lusby's account of the April 5 meeting.

As for the allegation that the Grievant falsely stated Savage refused to meet with her, the Union points out that Savage's testimony provides very little evidence of what exactly the Grievant said that was false. The Union emphasizes that Smith's uncontroverted testimony demonstrates that she made several unsuccessful attempts to meet with Savage. By the time Savage finally responded to the Grievant and offered dates for a meeting, the Union suggests that was "too little, too late," and a meeting no longer was warranted because the Grievant no longer trusted Savage. The Grievant's testimony made clear that in saying Savage refused to meet with her, the Grievant was referring to her unsuccessful attempts to meet with Savage, all prior to Savage's offer to meet.

The Union further contends that the Village's decision to discharge the Grievant was not an example of progressive discipline. The Union points out that an employer lacks just cause to discharge an employee when it fails to follow its own progressive discipline policy. As is true under the Village's policy of progressive discipline, employees are to be given a meaningful opportunity to improve their conduct and performance.

The Union submits that the Village ignored its own progressive discipline policy when it decided to discharge the Grievant. The Grievant never was afforded the opportunity to improve any alleged deficiencies. The Union also notes that the Village originally concluded that the Grievant's leaving work early on April 5 warranted only a written reprimand.

The Union additionally emphasizes that the Village failed to notify the Grievant of possible disciplinary consequences of her alleged conduct. The Union points out that the Village has an open-door policy under which employees are encouraged to come forward to their directors and department heads with any problems. The Union suggests that despite this open-door policy, the Village now seeks to penalize the Grievant for her candid and frank discussion with her direct supervisor about a job-related issue involving a discussion between the Grievant and Lusby during which they both raised their voices slightly. The Union insists that there was no profanity during this discussion, and the Grievant was worn out as she voiced disappointment about being denied her request to work from home. The Union contends that the Village previously had not imposed any restrictions on how such discussions were to proceed, and it cannot now argue a deficiency when it has encouraged such discussions and never made clear any taboos.

The Union further argues that the Village condoned the Grievant's conduct. The Union points to Savage's testimony about a "memo to file" that she wrote describing what she called serious issues with the Grievant's job performance. Savage, however, kept these serious allegations to herself and never directly raised them with the Grievant. The Grievant therefore never was given the opportunity to cure the performance issues

that Savage secretly identified. The Union submits that the Village therefore condoned the Grievant's conduct and did not allow her the opportunity to improve.

The Union then maintains that the Village failed to conduct a fair and objective investigation. The Union suggests that Savage's investigation was replete with inaccuracies and undocumented meetings and events that were critical to her determination to discharge the Grievant. The Union notes that Savage claims to have viewed a call log that was a critical factor in her determination that the Grievant refused to do any work on April 5. When pressed, however, Savage changed her testimony by stating that the call log did not really factor into her decision to discharge the Grievant.

The Union argues that Savage also failed to document a critical meeting that she had with the Village president about his alleged meeting with two employees. The Union insists that this meeting is critical because it forms the basis of the Village's allegation that the Grievant lied in the April 12 pre-disciplinary hearing. The Union suggests that almost nothing is known about this meeting between Savage and the Village president.

Turning to the allegation that the Grievant was dishonest during her April 5 meeting with Lusby, the Union submits that Savage's investigation failed to discover a single statement from the Grievant that was false. The Union reiterates that Savage conceded that describing the April 5 meeting as "not honest" was not the best terminology. The Union asserts that the Village has failed this test of reasonableness as to its investigation in this matter.

Pointing to the principles that discipline should be corrective in nature and reasonable under the circumstances, the Union argues that the discipline imposed here

was not reasonably related to the Grievant's record. The Union submits that in the only evaluation of her job performance, the Village gave the Grievant the highest rating for "customer relation," and the second highest rating for "exceeds expectations," "acceptance of responsibility," and "teamwork." The Union suggests that this positive evaluation mitigates against the assessment of discharge. The Union additionally emphasizes that the Grievant never received any discipline prior to the events at issue, and this also is a mitigating factor.

The Union ultimately contends that the instant grievance should be sustained in its entirety, and the Grievant should be reinstated to her employment with full backpay, seniority, and benefits. The Union further requests that this Arbitrator award any further remedy deemed just and proper, and that he retain jurisdiction over implementation of the remedy.

Decision

This Arbitrator has carefully reviewed all of the testimony and evidence in the record, as well as the parties' arguments in support of their opposing positions. In this dispute over whether just cause exists to support the Village's decision to discharge the Grievant from her employment, the Village bears the burden of proof. The Village must demonstrate not only that the Grievant violated its established rules, regulations, policies and/or procedures, but also that it conducted a full and fair investigation into the events at issue, that it afforded the Grievant her contractual and due-process rights, that any proven violations properly subjected the Grievant to the disciplinary process, and that the discipline imposed was not arbitrary, capricious, discriminatory, or too harsh under all of

the relevant circumstances, both aggravating and mitigating.

It is necessary to emphasize that the Village has acknowledged that Charge Number 4 in this matter – alleging that the Grievant was dishonest during an April 5, 2023, meeting with Lusby – was "inadequately supported." The Village essentially has withdrawn this charge, so its decision to discharge the Grievant will stand or fall based upon the four remaining charges. These four charges allege that (1) the Grievant abandoned her job on April 4, 2023, by leaving the Village workplace without her supervisor's permission; (2) the Grievant made insubordinate verbal communications to Lusby on April 5, 2023; (3) the Grievant's insubordinate communications were part of a continuing pattern during the course of her employment; and (4) the Grievant was not honest during the April 12, 2023, informal pre-termination hearing.

While the first of the incidents giving rise to the instant charges occurred on April 4, the record indicates that this matter had its start in late March or earlier in April when the Grievant asked Lusby, her immediate supervisor, for permission to work from home. Because Savage, the Village Administrator has sole authority to grant such a request, Lusby directed the Grievant to submit her request in writing for Savage's review. As of April 4, Savage had not yet formally responded to the Grievant's request.

There is no dispute that just before noon on April 4, the Grievant sent a text message to Lusby that addressed some work-related issues. Near the end of this text message, the Grievant stated that she was leaving the office for the rest of the day, citing a child-care emergency. Lusby testified that he did not see this part of the Grievant's text message until after he learned from another Village employee that the Grievant had left

for the day. The record does not contain any evidence that Lusby, or anyone else in a position of authority, granted the Grievant permission to leave early on April 4. These events gave rise to Charge Number 1.

On the morning of the following day, April 5, the Grievant received a written response to her request to work remotely from home, stating that Savage had denied this request. The record confirms that after receiving this response, the Grievant went to Lusby's office, were she stood in the doorway to complain to him about the denial of remote-work request. Lusby described the Grievant's language, demeanor, and tone of voice as disrespectful and insubordinate, testifying that the Grievant yelled at him, disparaged Savage, threatened to quit, and then stated that she would do no more work and the Village would have to fire her. Shortly thereafter, Lusby documented his version of this exchange in an e-mail to Savage. While the Grievant has denied raising her voice or yelling, and has denied making certain of the comments that Lusby attributed to her, Lusby's description of the Grievant's tone of voice and the volume of her speech also was corroborated by Vavrek, who is not a Village employee and who overheard the exchange between the Grievant and Lusby from a conference room adjacent to Lusby's office.

A couple of hours later, apparently after spending significant time drafting it, the Grievant also sent an e-mail to Savage that complained about the Village's response to her remote-work request and further accused Savage of various forms of misconduct and poor performance of her job responsibilities.

The exchange between the Grievant and Lusby and the e-mail from the Grievant to Savage gave rise to Charge Numbers 2, 3, and 4, which alleged that the Grievant had

been insubordinate and dishonest in these communications. Charge Number 4, as noted, has been dropped by the Village.

After receiving these e-mails, Savage scheduled a pre-disciplinary *Loudermill* hearing, which took place on April 12, 2023. During the course of this informal hearing, the Grievant was given a full opportunity to present her version of the events at issue. The Grievant repeated many of the assertions and accusations that she previously had made in the exchange with Lusby and in the e-mail to Savage. The Grievant's communications during this hearing gave rise to Charge Number 5, alleging that she was dishonest during the pre-termination hearing.

In the wake of the *Loudermill* hearing, the Village issued its formal charges, supporting allegations of fact, and proposal of discharge to the Grievant on May 15, 2023. The Village discharged the Grievant from her employment in accordance with Section 5.1 of the parties' Agreement after she and the Union opted to have this matter reviewed in arbitration.

The evidentiary record leaves no serious question that the Grievant did, in fact, leave work early on April 4 without first obtaining permission from her supervisor or anyone else in authority. While the Grievant admittedly knew that she needed supervisory permission to leave work early, the evidence conclusively demonstrates that the Grievant's only mention to her supervisor about leaving work early on April 4 was in her text message to Lusby. This reference to leaving early was phrased as a declaration, not as a request for permission to do so. The Grievant's text simply cannot be understood as a request for permission to leave early. The evidence conclusively establishes that the

Grievant did not, in fact, ask for – much less obtain – permission to leave work early on April 4, yet she did leave early.

Moreover, the fact that the Grievant essentially buried the sentence conveying that she would be leaving work soon within a text that addressed a number of work-related matters suggests that the Grievant was trying to slip this information past Lusby, hoping that he would not notice it. Whether or not this was the Grievant's actual intent as she drafted the text, the evidence demonstrates that Lusby did not notice it. In fact, Lusby never responded to that portion of the Grievant's text in which she announced she was leaving early. Lusby was not aware that the Grievant had left early until someone from the Village's HR Department mentioned it to him. On this record, I find that there can be no reasonable dispute that the Grievant failed to ask for and failed to obtain permission to leave work early on April 4, 2023.

Consequently, the Grievant's conduct on April 4 does fit within the meaning of the phrase "job abandonment." There also is an element of insubordination because the Grievant knew that she needed permission to leave work early, yet she did so without making any sincere effort to obtain such permission.

I find that the Village successfully has shown, by a preponderance of the competent and credible evidence in the record, that the Grievant abandoned her job by leaving work early without supervisory permission, as alleged in Charge Number 1.

As for Charge Number 2, the overwhelming weight of the evidence demonstrates that the Grievant did make insubordinate comments during her verbal exchange with Lusby on April 5, 2023. While it generally is appropriate for an employee to voice

complaints about legitimate work-related matters to a supervisor, the Grievant went far beyond simply voicing work-related complaints to Lusby on April 5. Lusby's testimony, as confirmed by Vavrek, shows that the Grievant raised her voice and yelled at Lusby. During this exchange with Lusby, the Grievant was not apprising him of any workplace matter that needed his attention. Instead, the Grievant was venting her frustration at the denial of her remote-work request. While giving voice to frustration also may not be enough, by itself, to constitute misconduct that could be the subject of discipline, the Grievant crossed the line into insubordination by personally disparaging managers, threatening to quit as a form of pay-back for the denial of her request, and then suggesting that she would force the Village to fire her by no longer performing any work.

This Arbitrator points out that the Grievant's denials relating to much of the conduct attributed to her during this exchange and the other events giving rise to this matter simply are not credible. Not only does the Grievant have a direct personal interest in the outcome of this proceeding, but her testimony was inconsistent and unreasonable on many points.

Based on the competent and credible evidence in the record, I find that the Village successfully has shown, by a preponderance of the evidence, that the Grievant made insubordinate verbal statements during her exchange with Lusby on April 5, 2023.

Charge Number 3 also addresses insubordination, alleging that the Grievant has engaged in a pattern of insubordinate communications during the course of her employment with the Village. As indicated above, the Grievant's April 4 text message to Lusby bordered on insubordinate in that she effectively declared she was leaving early

that day, without seeking and obtaining the permission that she knew was required. The Grievant's April 5 e-mail to Savage, filled with false and/or unsupported attacks on Savage, including allegations that Savage had engaged in various forms of misconduct and had failed to fulfill her job responsibilities, also was insubordinate. While these instances of insubordinate statements all occurred within a short span of time, they nevertheless demonstrate a continuing pattern of insubordinate communications from the Grievant, as Charge Number 3 alleges.

The record therefore demonstrates that the Village successfully has established, by a preponderance of the competent and credible evidence, that the Grievant engaged in a continuing pattern of insubordinate communications during her employment.

Because the Village has dropped Charge Number 4, this analysis proceeds to Charge Number 5, which alleges that the Grievant was not honest during the April 12, 2023, *Loudermill* pre-termination hearing. In connection with this Charge, the Village has emphasized the Grievant's assertion during the *Loudermill* hearing that the Village President had met with two employees about improprieties, a statement as to which she admitted there was no factual basis. The Grievant's own admission therefore demonstrates the validity of Charge Number 5.

On this record, it is plain that the Village has established, by a preponderance of the competent and credible evidence, that the Grievant was dishonest during the April 12 pre-termination hearing.

The evidentiary record shows that in addressing the allegations against the Grievant, the Village conducted a full and fair investigation, and it afforded the Grievant

all of her contractual and due-process rights. The Village gathered and presented sufficient credible evidence to establish that the Grievant did engage in the misconduct alleged in four of the five charges ultimately made against her. These proven charges involve misconduct that is serious enough to justify subjecting the Grievant to the disciplinary process.

The remaining question to be resolved is whether discharge is the appropriate disciplinary response under all of the relevant circumstances, both aggravating and mitigating. Any measure of discipline should be commensurate with the seriousness of the offense. This is a particularly important consideration where, as here, a serious degree of discipline is issued to an employee who has an otherwise unblemished disciplinary record. The Village does follow a system of progressive discipline, but such a system does allow an employer to issue even the most severe form of discipline on a first offense if the nature of the misconduct is serious enough to warrant such a penalty.

In the instant case, I find that the proven charges of job abandonment, insubordination, and dishonesty are serious enough to warrant the issuance of discharge, even if these instances of misconduct all are first offenses. Not only are each of the proven violations serious enough to justify the ultimate disciplinary penalty of discharge, but taken together, the proven violations leave no reasonable doubt that discharge was warranted in the Grievant's case. Even with one of the five charges in this matter being dropped, the remaining four proven charges establish that the Grievant engaged in serious enough misconduct to justify the assessment of discharge from her position as an administrative assistant.

The fact is that the Grievant's conduct on April 4, April 5, and during the *Loudermill* hearing was the antithesis of the type of conduct that reasonably is to be expected of an administrative assistant, especially one working in such a relatively small office. The Village must be able to rely on anyone filling the important employment position of administrative assistant held by the Grievant to work cooperatively and efficiently with his or her colleagues, with the employees of Village contractors, and with members of the public. For an administrative assistant employee in such a small office to behave in as disruptive and destructive a way as the Grievant did during the events at issue represents such grave misconduct that discharge is an appropriate disciplinary response, even for a first offense. In short, the Village cannot trust that the Grievant will behave in a way that is consistent with her employment duties, so I find that discharge was the appropriate response to her proven and serious misconduct and clearly met the just cause standard.

The evidentiary record does not suggest the existence of any factors that would mitigate against the assessment of discharge in this case. The Grievant was a relatively short-term employee, having worked for the Village only about eighteen months prior to the events at issue. There is no evidence that would explain or excuse the Grievant's conduct, either in part or as a whole.

In light of all of these considerations, and in accordance with the competent and credible evidence in the record, as well as the plain language of the parties' collective bargaining agreement, this Arbitrator finds that the Village has established that it had just cause to discharge the Grievant from her employment. The instant grievance therefore

must be, and hereby is, denied in its entirety.

Award

The grievance is denied. The Village had just cause to discharge Grievant Monique Smith from her employment.

PETER R. MEYERS
Impartial Arbitrator

Dated this 1st day of March
2024 at Chicago, Illinois.