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Civil Service Commission vs. SHARON TOOMBS-CASON

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BEFORE THE COMMISSIONER OF THE

IN THE MATTER OF:

SHARON TOOMBS-CASON

DOCKET NO: 26.05-111053J

INITIAL ORDER

This matter was convened as a contested case hearing at the Mark Luttrell Correctional Center in Memphis, Tennessee on July 7, 2011 before Margaret R. Robertson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division and sitting for the Tennessee Civil Service Commission. Mr. Bryce Coatney, Assistant General Counsel for the Tennessee Department of Correction (“Department”), represented the State. The Grievant was by his legal counsel, Mr. Jonathan Stephens, Esq., of the Tennessee State Employees Association.

This contested administrative proceeding was a fifth-step disciplinary hearing convened at the Grievant’s request to consider the her demotion by the Commissioner of the Department of Correction for engaging in certain prohibited conduct, including (8) *Gross misconduct or conduct unbecoming an employee in the state service*; (12) *Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service, or that would interfere with the ability of management to manage.*

Upon consideration of the evidence and arguments, and the entire record, it is concluded that the Grievant engaged in the prohibited conduct, as charged, and that the appropriate disciplinary sanction for those offenses is demotion to the rank of Sergeant. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In the course of her employment, the Grievant became acquainted with and developed a friendship with Mr. Lolie Jones. Mr. Jones was later appointed warden of Mark Luttrell Correctional Center (MLCC), becoming the superior of Grievant and her husband, Ulysses Cason. It was Warden Jones who appointed the Grievant to the position of Unit Manager.

2. The friendship between Grievant and Jones was acknowledged with Ulysses Cason, and Mr. Cason represented that he had no concern about it. In reality, Mr. Cason was uncomfortable with the friendship and became jealous and insecure. The relationship between Grievant and Jones, meanwhile, had become the subject of rumor and speculation at the prison.

3. Ulysses Cason became more overt with his feelings after a workplace party on Friday, December 11, 2009. He confronted his wife about her interest in Jones after observing them together at the party. The couple argued about it the next day and did not resolve the argument before going to work the next day.

4. The Grievant worked the first shift as Officer in Charge of the Institution on Saturday, December 12, and her husband worked the second shift. At shift change, Captain Cason questioned his wife about where she was going after work, and repeatedly demanded assurance that she was going straight home from there. The Grievant suspected that her husband was going to follow her, and she therefore decided to teach him a lesson of sorts. She knew of the apartment complex where Warden Jones lived, and she was somewhat acquainted with another person, a Ms. Sain, who also lived in the complex. The Grievant drove to the complex, found where the warden's vehicle was parked, parked her own vehicle in that vicinity, and went to the apartment of Ms. Sain.

5. Ms. Sain was not at home. The Grievant elected to sit in the breezeway outside the apartment and wait. Her expectation was that her husband would be appearing at Warden Jones' door ready to make a scene, only to find that she wasn't there. One of the neighbors of Ms. Sain observed the Grievant sitting in the breezeway and invited her in, out of the weather.

6. The Grievant's husband, Captain Cason, did leave his post that same afternoon, under the pretext of going to check on an incident on state property along the perimeter of the prison compound. He went to Warden Jones' apartment complex, found the Grievant's car and

took it, leaving his own behind, stranding the Grievant there because she had no key. Mr. Cason called his immediate superior to report he had caught the Grievant cheating, and he took leave for the rest of the day. When he spoke to the Grievant later by telephone, he told the Grievant she was “busted.”

7. Captain Cason’s decision to abandon his post brought the controversy about the relationship into the open. He was ultimately suspended for five days for discipline of that conduct.

8. Lolie Jones always maintained that he and the Grievant were strictly friends and no more than that. They never saw one another in private or went anywhere together alone but did talk frequently over the phone about matters both business and personal. Because of his role in sparking the controversy, Jones was removed as Warden of MLCC and now serves as a Captain at the Special Needs prison in Nashville.

9. The Grievant likewise maintained that her relationship with Jones was strictly a matter of friendship. She simply regarded Jones as someone she could talk to.

10. The above facts were stipulated to by the parties. As a consequence of these events, a due process hearing for Grievant was conducted by Mr. James Dickman, Regional Correctional Administrator for the Department. Based upon his review, Mr. Dickman recommended that the Grievant be removed from service as Unit Manager and returned to service as Correctional Sergeant. Grievant had held the office of Unit Manager, after being promoted by Warden Jones, for only a number of months before being returned to the rank of sergeant, the title she held immediately prior to her promotion to unit manager. There is a pay difference between the two positions. Grievant received the correct pay for the time she held the unit Manager position and received the commensurate reduction in pay when returned to the sergeant’s position.

11. Mr. Dickman’s recommendation reflected his observation that the Unit Manager is a senior leadership position in the prison. The unit Manager at times has charge of the operations of the prison. Prison employees, particularly management leadership, are expected to conduct themselves in a manner that will not discredit themselves or the institutions where they work. Mr. Dickman considered that an employee’s conduct outside duty hours and away from the facility may adversely affect the operations of the prison itself. Although one cannot prevent

or control the spread of gossip or rumors, Mr. Dickman considered that a person's course of conduct can avoid inviting gossip or rumor.

12. The Grievant has a good service record. Mr. Dickman agreed that the Grievant has the potential to be a good leader. Mr. Dickman was of the opinion that the Grievant was not yet ready for the responsibilities of leadership that the Unit Manager position required.

13. Grievant noted that her husband has a long history of jealousy and insecurity, which arose well before Warden Jones became a focal point. Grievant does not think it is within her power to resolve her husband's jealousy and insecurity or to control his behavior. Grievant knew that the MLCC staff were gossiping about her friendship with Warden Jones but did not consider the gossip to have an adverse effect in her ability to serve as Unit Manager or to perform her duties effectively.

14. Grievant conceded that she could have handled matters differently on December 12, 2009. However, she considers the events of that day a private matter between her and her husband, outside of her work responsibilities. Thus she does not believe she has done anything to deserve discipline in the workplace.

CONCLUSIONS OF LAW

1. A career service employee may be suspended, demoted or dismissed from employment whenever just or legal cause exists. Rule 1120-10-.02 TENN. COMP. R. & REGS. The Department contends that Grievant violated subsections (8) and (12) of that rule, which read as follows:

- (8) *Gross misconduct or conduct unbecoming an employee in the state service;*
- (12) *Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service, or that would interfere with the ability of management to manage.*

2. The degree and kind of disciplinary action to be taken with a career employee is at the discretion of the appointing authority. Rule 1120-10-.02 TENN. COMP. R. & REGS. When corrective action is indicated, however, the disciplinary action must be of the lowest degree appropriate to the area of misconduct. See T.C.A 8-30-330(c).

3. The behavior of the Grievant which subjects her to scrutiny and potential discipline in this matter arises out of the situation in which she, her husband and Warden Jones found themselves when Grievant's friendship with Warden Jones was both a subject of speculation and gossip at MLCC and a subject of contention and emotional friction between Grievant and her husband, also an employee of MLCC. It is agreed that Grievant could not prevent other employees from talking about or speculating about the nature and effect of Grievant's relationship with Warden Jones. It is not the case that Grievant is free of responsibility in causing or allowing the talk to flourish or for the actions of her husband to act on his suspicions concerning that relationship. It is also not the case that an employee's conduct outside of the work place and on her own time can never be considered as having an impact on the workplace or her performance of her duties such that some disciplinary action may become necessary.

4. While the facts of the case of Reece v. Tennessee Civil Service Commission, 699 S.W.2d 808 (Tenn. Ct. App. 1985) are generally inapposite to this case, Reese is instructive in part for the proposition that a career employee's off duty conduct can in fact have an impact on the workplace. Grievant was at fault when she intentionally contrived a plan she expected would cause her husband to leave his post to follow her in the expectation of finding her in a private meeting with Warden Jones. Despite her claims that she cannot affect her husband's behavior, she admitted to planning to teach him a lesson by misleading him into thinking that she would go to be with Warden Jones so that he would follow her and be embarrassed by finding his expectations were not true. She could predict and manipulate his behavior well enough to plan and confidently implement this method of teaching him a lesson about his jealousy. It was her actions at shift change that raised his suspicions that she was going to meet Warden Jones and led him to leave his post to confirm those suspicions. When Grievant intentionally placed her car near the Warden's vehicle and then hid from view, she set up a situation that might have led to a confrontation between Grievant's husband and the Warden. At the very least, she very deliberately acted in a manner that she anticipated would aggravate her husband's suspicions and motivate him to abandon his post to investigate. He did leave his post in order to confirm her whereabouts, did locate her car near the warden's, and did believe, as she intended, that she was with the warden privately. He reported this to his superior. There is no reason to believe any of this would have happened without her intentional instigation.

5. Grievant's actions to teach her husband were disruptive of the institution's operations in multiple ways, not least of which is that it constituted fuel for the gossip and speculation already identified as an undesirable and potentially disruptive effect of this public relationship. It led to her husband abandoning his post during his shift, which placed a burden on the management of the institution, and made necessary disciplinary proceedings against three fairly high ranking employees. Sergeant Cason received a five day suspension and Warden Jones' title changed when he was transferred to another institution with different duties. The record does not confirm whether this constitutes a demotion, although it appears so.

6. Grievant could not have been in doubt that her conduct in promoting this lesson for her husband would have some impact on the management of the institution. Grievant contends she should not be held responsible for her husband's actions in this incident. She is not solely responsible. Sgt. Cason has been disciplined independently for leaving his post, as would appear appropriate from what information is available in this record. But Grievant has essentially admitted she knew or suspected that she could make him want to leave his post to follow her to see if she went to see the Warden. That was the point of her plan to "teach him a lesson." And, in fact, he did just as she intended and expected. Because she was going off duty at the same time he came on duty and she had the conversation with him that she expected would make him want to confirm her whereabouts during his shift, her timing made it likely that he would leave his post. So she does, in fact, bear some responsibility regarding the disruption caused by her husband's actions in leaving his post because she intentionally set up the situation.

7. In addition to her husband's predictable departure from his post, by her actions she unnecessarily placed the Warden in an undesirable and difficult position through no immediate fault of his own for this incident. Her actions could possibly have placed the Warden in physical danger. The Warden has also suffered an employment consequence from her actions although he knew nothing about these events when they transpired.

8. Grievant maintains that she is blameless in this incident, that she could not be held responsible for her husband's actions and that what happens off duty on her own time should not be held against her professionally, but it is in this regard that she mistakes the greater responsibility of a supervisor to act in a manner that will avoid creating unnecessary problems for the institution and the supervisor's authority.

9. The preponderance of the evidence is that Grievant did engage in conduct unbecoming an employee in state service and did engage in conduct that was foreseeably likely to, and did, cause disruption in the operation of the institution where she worked and did effectively interfere with management's ability to manage that institution for a time. As a result, some disciplinary action is appropriate.

10. The parties are agreed that Grievant has leadership potential and has had a good record of employment. On the other hand, while Grievant concedes that the matter could have been handled differently, Grievant denied that she had done anything wrong and maintained that, as the matter was private, personal and occurred when she was off duty, it should not bear upon her employment. Grievant's behavior is not so egregious that she should be terminated from employment. Nor is it argued that she has so damaged her authority and reputation that she cannot effectively continue to work at all in the institution. What she has demonstrated by her behavior is that she did not have the welfare of the institution in mind and has not acted in a manner that is responsible and that protects the operation of the institution. Furthermore, she has indicated that she does not understand or appreciate in what way she has not acted fittingly. The fact that she either does not understand or does not accept responsibility for her actions and their consequences is evidence that she lacks the leadership qualities necessary for someone at the Unit Manager level of responsibility in the Correction system. She also has not shown any remorse for the disruption she has caused. The necessity to conduct disciplinary investigations for three highly placed employees in itself is a disruption of the operation of the institution directly attributable to Grievant's action instigating this incident. This is not a matter of discipline for inadvertent consequences of "blameless misfortune" as discussed in the Reese decision. Grievant willfully behaved in a reckless and irresponsible manner that predictably brought disruption to the institution and set in motion predictable events that compromised the ability of two other employees, her husband and Warden Jones, to perform their responsibilities. Thus she does not appear to be sufficiently responsible and mature to carry out the duties of the Unit Manager supervisory position. Returning her to the responsibilities she effectively carried out before her elevation to Unit Manager is an appropriate disciplinary response to her unprofessional and damaging behavior in this incident.

Accordingly, IT IS HEREBY DETERMINED AND ORDERED that the Tennessee Department of Correction has met its burden of proof, and has established by a preponderance of

the evidence that the Grievant, Sharon Toombs-Cason, has engaged in unbecoming an employee in state service and conduct that would disrupt the normal operation of the institution .

IT IS FURTHER DETERMINED AND ORDERED that the Grievant's demotion to her previous rank and duties, imposed as a disciplinary sanction, was appropriate, and warranted by her conduct in this matter, and is therefore Upheld. This decision in no way prevents the institution from promoting Grievant at some future time if promotion is then deemed appropriate.

AND, IT IS FINALLY ORDERED that the Grievant's appeal of the Commissioner's decision to demote her is hereby DISMISSED.

This Order entered and effective this 24 day of October, 2011

Margaret R. Robertson
Administrative Judge