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City of Chattanooga, Petitioner, vs. Lillian Smith, Grievant

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**BEFORE THE ADMINISTRATIVE PROCEDURES DIVISION
ON BEHALF OF THE CITY COUNCIL OF CHATTANOOGA**

IN THE MATTER OF:

**City of Chattanooga,
Petitioner,**

v.

**Lillian Smith,
Grievant**

DOCKET NO: 56.00-112934J

ORDER

This matter came to be heard on September 30, 2011, and October 4, 2011, in Chattanooga, Tennessee, before Marion P. Wall, Administrative Judge assigned by the Secretary of State, and sitting on behalf of the Chattanooga City Council, for consideration of Grievant's appeal of her termination. The City of Chattanooga was ably represented by Assistant City Attorney Patrick Bobo. Grievant Harris Lillian Smith was represented by Jack Benson, Jr., Esq. This matter became ready for consideration on November 3, 2011.

Upon consideration of the entire record in this case, it is determined that Ms. Smith's termination was not done on a reasonable basis, and should be modified to a thirty day suspension. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This case involves two women who do not like each other, and who have never liked each other over many years of employment in the same office. Ms. Lillian Smith has been a

Court Technician 2 for many years, beginning her employment as a Deputy Court Clerk in the City Court Clerk's office in the early 1990s. The Interim Court Clerk, Ms. Jan Turner, is the other actor in this matter. The two have never gotten along. Ms. Turner characterized their relationship as never good and always troubled. She testified that she did not know why this was. Ms. Smith testified to the same effect. Ms. Turner also began as a Deputy Court Clerk, and, with Grievant and Ms. Cabrera, were the three people overseeing the office under the direction of the City Court Clerk. When the City Court Clerk left in 2008, Ms. Turner became the Interim Court Clerk in July of 2008, a position she occupies to this day. At some point about this time, the Grievant complained to her supervisor, Ms. Daisy Madison, about her relationship with Ms. Turner and her fear of being under her supervision.

2. Initially, upon taking charge of the office, Ms. Turner was occupied with solving a serious problem involving faulty driver's license records. This critical item took her time and attention until about June of 2009. At that point, she decided to audit the leave and compensatory leave time records of the employees.

3. Leave time was kept by all three supervisors, Ms. Turner, Ms. Cabrera, and Ms. Smith. Leave was kept by NETR forms, together with leave slips filled out by employees. Compensatory time accounting was done by compensatory leave slips, and the sheet kept by the Grievant, Ms. Smith. Only Ms. Smith kept the compensatory leave sheet, a responsibility she guarded as her own.

4. Ms. Turner's "audit" was not done by asking for an audit by the audit division; rather, she chose to do it herself. She stated that she thought she was required to do so, since federal law required that such records go through payroll. In fact, such a review was not required, only the switching to the new system. Ms. Turner assembled the sheets, the slips, and performed the

audit herself. Her results, found in Exhibit 5, purported to show that the Grievant had made errors in keeping her compensatory time to the tune of 49.5 hours, all in her favor, over a seven month time from January through July. She initiated termination proceedings on Friday, August 21, 2009. A due process hearing was held the following Monday. Ms. Smith, who had had no time to prepare or any access to any records since being informed of the disciplinary action the previous Friday, presented little in the way of evidence.

4. Ms. Turner recommended termination because she stated that the amount of the errors, over that period of time, seemed to constitute theft. Ms. Daisy Madison, the Chief Financial Officer, agreed, and terminated the Grievant. Ms. Madison had no supporting documents in front of her other than Exhibit 5, Ms. Turner's compilation of the alleged errors. Ms. Smith, not surprisingly, given the complete lack of any preparation time or access to records, really presented nothing other than her assertion that any mistakes were not intentional.

5. A careful review of Ms. Turner's compilation of Ms. Smith's errors reveals a great many errors on Ms. Turner's part, all against Ms. Smith. Rather than 49.5 hours of improper accounting of Ms. Smith's time, as found by Ms. Turner, the actual amount was 39.6 hours off, or 40.6 hours off, depending on whether one counts an error where Ms. Turner was given a compensatory leave slip for the hour of time which was not recorded in the compensatory time record. At any rate, Ms. Turner's figures were off by almost a fifth, all of the errors going against the Grievant.

6. Ms. Madison testified that had she known of the variance, and the other factors elucidated at the hearing, she might not have come to the same decision as she did.

7. Ms. Smith testified that she thought that she had been singled out, and that others were allowed to correct records prior to the "audit" results. There is evidence, which is credited, that

in fact this happened. Ms. Cabrera merely assured Ms. Turner that her slips were in order, and no check was done. Ms. Patricia Moore submitted an affidavit, without objection, to the effect that during 2009 there was an occasion where she had to go back and enter her time for several weeks. It is noted that the Grievant was given no such opportunity.

8. The long and short of the proof establishes that the Grievant made errors in keeping her compensatory time, in her favor, for about a week's worth of work. The proof also establishes that her supervisor did not have the proper people perform the audit, preferring to do it herself. She allowed other employees to correct their records, and consistently overstated the magnitude of the Grievant's errors. Just as the Grievant's errors seemed to all be in her favor, all of Ms. Turner's errors were against the Grievant. Ms. Madison, who did not have the information submitted at the hearing available to her when she was called upon to make the decision, determined that termination was the appropriate sanction; she could not say she would have reached the same decision had she been aware of all the evidence adduced at the hearing. This is notable because Ms. Madison's testimony was given before the proof about other employees being allowed to correct or catch up their records prior to the "audit." Thus, it seems that some discipline is appropriate, but it also seems that the decision to terminate, as opposed to some other, lesser discipline, does not have a reasonable basis. It is difficult to tell what errors were present in other employees' records, and it is quite clear that the figures were not compiled in an accurate or disinterested manner. It seems entirely possible that Ms. Turner was out to get Ms. Smith, and used the compensatory time records to do it.

APPLICABLE LAW

1. Appeals of employment decisions of the City of Chattanooga are governed by the Administrative Regulations for Conduct of Employee Disciplinary Hearings for the City of Chattanooga and Chattanooga City Code Section 2-174(t), in conjunction with the Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-101 *et seq.*, and the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, Rule 1360-4-1.

2. The burden of proof is on the City to show by a preponderance of the evidence that there was a reasonable basis for the employment decision and that it was not based upon any impermissible political or religious reason.

3. Pursuant to Chattanooga City Code Section 2-174(b)(5), disciplinary action up to and including dismissal may be taken for any just cause including, but not limited to the following:

- (5) Violation of Department or City ordinance(s), rule(s), Regulations(s) or law(s) or violation of any applicable State law, rule or regulation...

4. Pursuant to Chattanooga City Code Section 2-174(b)(6), disciplinary action up to and including dismissal may be taken for any just cause including, but not limited to the following:

- (1) Incompetence or inability to perform duties of position
- (3) Inefficiency or negligence in the performance of one's duties
- (6) Conduct unbecoming a public employee.

ANALYSIS and CONCLUSIONS

Ms. Smith was clearly inefficient or negligent in the performance of her duties. She made errors in keeping her compensatory time. Her errors would seem to be more of the sloppy sort, as opposed to theft. It is noted that Ms. Turner likewise made serious errors in "auditing" her time records, and these errors would likewise seem to be inadvertent.

Given that there are no previous disciplinary actions against Ms. Smith, and that she is a long term employee of some 18 years, and given the smell of a rodent in this matter, it is concluded that there is not a reasonable basis for abandoning progressive discipline in this case.

Based on the foregoing, it is hereby **CONCLUDED** that Ms. Smith was disciplined for a just and reasonable cause based upon her negligence in keeping compensatory time records pursuant to Section 2-174(b)(3) of the Chattanooga City Code. Chattanooga City Charter Section 13.44 provides that no employee shall be discharged for any political or religious reason or for any other unjust or arbitrary cause. Ms. Smith was not terminated for any apparent political or religious reason, but it does seem she was terminated unjustly, given the totality of the situation, and the likelihood that this action was based on personal, and not professional, reasons.

The City of Chattanooga has met its burden of proof that there was a reasonable basis for its decision to discipline the Grievant, but has not shown a reasonable basis for her termination. A thirty day suspension would appropriately address the situation of a long term employee with no previous disciplinary actions. Accordingly, the City of Chattanooga's decision to terminate Grievant's employment is hereby **SET ASIDE**, and a thirty day suspension is put in its place.

This Order entered and effective this 28th day of November, 2011.

Marion P. Wall
Administrative Judge