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6-14-2012

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES, v. PETER BREWER, Grievant

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BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

TENNESEE DEPARTMENT OF CHILDREN'S SERVICES,	)	
	)	**Docket No. 26.43-111185J**
v.	)	
	)	
PETER BREWER,	)	
Grievant.	)	
	)	

INITIAL ORDER

This matter came to be heard on June 14, 2012, before Marion P. Wall, Administrative Judge, Administrative Procedures Division, Office of the Secretary of State, sitting for the Civil Service Commission. The Grievant, Peter Brewer, was represented by Mr. Christopher Capps. The Department of Children's Services (Department) was represented by Ms. Marjorie Bristol. The subject of this hearing was the Grievant's appeal of his five day suspension imposed for allegedly being inefficient and incompetent, or negligent, in the performance of his duties, and for allegedly failing to maintain harmonious relationships with the public and fellow employees.

After consideration of the entire record and the argument of counsel, it is determined that the Grievant was, in fact, negligent in the performance of his duties, and that a five day suspension is the appropriate sanction for this negligence. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant is employed as a recreation specialist at Mountain View Youth Development Center (MVYDC). He has been so employed for 13 years, since his

retirement from the United States Marine Corps. While in the Marine Corps, he received training regarding civil rights and discrimination, and instructed others in these areas.

2. MVYDC is a facility that deals with youthful offenders whose offences are serious enough that if they were not juveniles, their offences would merit jail or prison time. In short, the students in this facility can be dangerous and violent.

3. This disciplinary proceeding stems from an incident in May of 2010 in the gym of MVYDC. The facts regarding this incident are not in serious dispute. There was a dodge ball game between the Alpha 4 and Delta 2 units. The Alpha 4 unit, which had won the game, was out of control, running around, yelling, screaming, hanging from the rims, and throwing cones. The Grievant told the students of Alpha 4 that if they did not behave, he would disqualify them and void their win. A student, A.H., jumped into Grievant's personal space, and called him a "nigger." Grievant is Caucasian. He asked A.H., "Do I look like a nigger?" and pointed to his arm. At this point, another student, K.V., who is African-American, also jumped in Grievant's personal space, and accused Grievant of calling him (K.V.) a nigger. He said,"Call me a nigger again, call me a nigger again. If you do, I'll deck you." Grievant disqualified Alpha 4, and was almost immediately struck on the head and knocked to the floor. A small riot then ensued, with students assaulting staff and throwing things around the gym. In this melee, staff members were injured, one of whom was taken to the hospital and who missed work for ninety days as a result of injuries received in the melee.

4. Grievant urges that there was a degree of organization or orchestrated disruption on the part of the students, and that the use of the term was not intended as a racial slur. It is specifically found that the Grievant did not intend the term as a racial slur. There is no evidence of any organized or orchestrated disruption; rather the proof seems to show that the Grievant's use of the word "nigger" precipitated, or was used as an excuse for, further out of control behavior that amounted to major disturbance or a

small riot. In other words, without the use of the word, the disturbance would not have occurred as it did.

5. While the Grievant did not intend to use the term as a racial slur, he pointed to his skin when asking if he looked like a nigger. The obvious implication of this is that skin color makes one a nigger, or not. To an African-American, the statement would imply, as was understood by K.V., that only African-Americans were properly referred to as "niggers." While Grievant is believed when he says he intended no slur, he should have known that his response would trigger a negative reaction. Mere use of that word is famously controversial and inflammatory, something else the Grievant had to have known, or at least certainly should have known. Likewise, it is believed that the Grievant has no idea that what ensued would happen; he should have known, however, that use of the word could result in disturbance. Grievant urges that the students were already out of control, such that a walk through had already been called in. In this situation, use of the word was even more ill-advised. In short, Grievant either knew, or should have known, that use of the word could lead to just the sort of thing that happened. The degree of the disturbance may, or may not have been foreseeable, but the possibility of there being a disturbance should have been crystal clear, especially to one who has taught discrimination training and civil rights. In short, it was clearly seriously negligent to use that term in any situation, and most particularly negligent to use it when students are already out of control.

6. Grievant has previously received a one day suspension for negligence and inappropriate language in 1999, and has received a three day suspension for a confrontation with another employee. None of these involved a student, but both related to the Grievant's language during a confrontation.

CONCLUSIONS OF LAW

1. The Department bears the burden of proof in this matter, by a preponderance of the evidence.

2. TDHR Rule provides that employees may be discipline for negligence in the performance of duties.

3. The Grievant was clearly negligent in the choice of language, and his negligence resulted in a major disturbance with injuries to a staff member. A five day suspension is the appropriate sanction. Grievant's mouth has been involved in his other two disciplinary proceedings, and it was involved in this one. Grievant is a valuable employee who works in a difficult environment, but he seems unable at times to control his language, especially when angry. His failure to appreciate the likely effects of his use of the word constitutes negligence, and his repeated failure to moderate his mouth justifies the five day suspension.

This Initial Order entered and effective this 26 day of December, 2012

WALL

ADMINISTRATIVE JUDGE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 26 day of December, 2012

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Thomas G. Stovall, Director
Administrative Procedures Division