

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The District of Columbia Metropolitan
Police Department,

Petitioner,

and

The Fraternal Order of Police,
Metropolitan Police Department Labor
Committee (on behalf of Detective
Jesus C. Gonzales),

Respondent.

PERB Case No. 85-A-02
Opinion No. 102

DECISION AND ORDER

On October 13, 1984, the Arbitrator issued an "Opinion and Award" sustaining a grievance filed by the Fraternal Order of Police (FOP) on behalf of Detective Jesus C. Gonzales. The FOP grieved Detective Gonzales's fine of three (3) days pay imposed by the Metropolitan Police Department (MPD) for "inexcusable neglect" in allegedly causing his service revolver to discharge and wound his girlfriend while off-duty. The Arbitrator ruled that the accidental discharge of his service weapon by Detective Gonzales is not a legal basis for an adverse action and the fine imposed is not based on "cause" as required by D.C. Code Section 1-617.1(d).

On November 14, 1985, MPD filed an "Arbitration Review Request" with the Board contending that the Award, on its face, is contrary to law and public policy. MPD further contends that the fine it imposed on Detective Gonzales for the adverse action was based on its finding that his conduct constituted inexcusable neglect as delineated in D.C. Code Section 1.617.1(d)(4). On November 23, 1984, FOP filed a "Motion to Dismiss Arbitration Review Request." FOP contends that the Review Request should be dismissed as untimely because it was not filed within twenty (20) days as required by Board Rule 107.2.

Section 502(f) of the Comprehensive Merit Personnel Act (CMPA) (Codified as District of Columbia Code Section 1-605.2(6)) gives the Board the exclusive power to consider appeals from arbitration awards pursuant to a grievance procedure. However, "such awards may be reviewed only if the arbitrator was without, or exceeded his or her jurisdiction; the Award on its face is contrary to law or public policy; or was procured by fraud, collusion or other similar and unlawful means."

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In reviewing the Award it does not appear that, on its face, it is contrary to law or public policy. The parties agreed to submit to arbitration the issue of whether there was cause for MPD to discipline Detective Gonzales. Adverse action may be taken against MPD employees only for cause. D.C. Code Section 1-617.1(d) outlines twenty-one (21) definitions of cause. The police report on the shooting incident concluded that it was an accidental shooting. The Arbitrator properly reasoned that the accidental shooting did not fall into one of twenty-one (21) categories delineated in D.C. Code Section 1.617.1(d). MPD's internal regulations and procedures cannot properly reach a determination which would not be permitted by the D.C. Code. Accordingly, the Award appears to be a reasonable interpretation of the statute.

O R D E R

IT IS ORDERED THAT:

The Arbitration Review Request is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
February 22, 1985.