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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Metropolitan Police Department)	
)	
Petitioner,)	PERB Case No. 17-A-09
)	
v.)	Opinion No. 1644
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Taunya Johnson),)	
)	
Respondent.)	

DECISION AND ORDER

I. Introduction

On July 26, 2017, the Metropolitan Police Department (“MPD”) filed this Arbitration Review Request (“Request”) pursuant to the Comprehensive Merit Personnel Act (“CMPA”), D.C. Official Code § 1-605.02(6), seeking review of an Arbitrator’s Opinion and Award (“Award”). The Award sustained the grievance brought by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) on behalf of Officer Taunya Johnson (“Grievant”), directed that the Grievant be reinstated with back pay and benefits, and ordered a lesser penalty of 60 work days without pay. MPD asserts that the Award is, on its face, contrary to law and public policy.¹

In accordance with the CMPA, the Board is permitted to modify or set aside an arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.²

¹ Request at 2.

² D.C. Official Code § 1-605.02(6).

Having reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law, the Board concludes that the Award on its face is not contrary to law and public policy. Therefore, the Board denies MPD's Request.

II. Arbitrator's Award

The Grievant was an officer with MPD.³ In December 2009, MPD's Internal Affairs Division ("IAD") began an investigation based on allegations that the Grievant provided false statements and failed to appear at trial relating to an arrest in which the Grievant participated.⁴ The IAD investigation sustained the charge that the Grievant provided false statements to MPD's Court Liaison regarding an October 15, 2009 witness conference and an October 27, 2009 trial date.⁵ On March 12, 2010, the Grievant was served with a Notice of Proposed Adverse Action.⁶ The Grievant was charged with falsely informing the Court Liaison that she had been excused from the October 15, 2009 witness conference and October 27, 2009 trial date.⁷ On December 7, 2010, an Adverse Action Panel ("Panel") heard the evidence relating to the charged misconduct.⁸ In a Final Notice of Adverse Action issued on January 24, 2011, the Panel found that the Grievant failed to obey orders to appear for trial on October 27, 2009, and untruthfully claimed to be excused from trial on that date.⁹ Upon weighing each of the relevant the *Douglas*¹⁰ factors, the Panel proposed termination.¹¹ The Grievant unsuccessfully appealed to Chief of Police Lanier, and the parties proceeded to arbitration.¹²

In an Arbitration Award issued on July 26, 2017, the Arbitrator sustained the Union's grievance, finding that, although MPD had sufficient evidence to support the charges against Grievant, the Panel did not meet its burden in establishing that the penalty in its recommendation was consistent with penalties in comparable cases.¹³ For this reason, the Arbitrator directed that the Grievant's termination be reversed.¹⁴ However, "given sustained evidence of [the Grievant's] repeated disregard of her responsibility to cooperate with the Office of the U.S. Attorney and her apparent cavalier attitude toward that responsibility," the Arbitrator determined that the Grievant still deserved a penalty of a 60-day suspension without pay.¹⁵ The Arbitrator ordered that the Grievant be reinstated with back pay and benefits, less any earnings the Grievant may have made

³ Award at 2.

⁴ Award at 5.

⁵ Award at 5.

⁶ Award at 5.

⁷ Award at 6.

⁸ Award at 6.

⁹ Award at 6.

¹⁰ *Douglas v. Veterans Admin.*, 5 MSPB 313 (M.S.P.B. 1981) sets forth a list of factors to be considered when assessing the appropriateness of a penalty.

¹¹ Award at 6.

¹² Award at 6.

¹³ Award at 8-10.

¹⁴ Award at 11.

¹⁵ Award at 11.

from the date of termination to reinstatement and back pay that would have been due for 60 days.¹⁶

On July 26, 2017, MPD filed the present Request, seeking review of the Arbitrator's Award. On August 15, 2017, FOP submitted its Opposition to Arbitration Review Request ("Opposition").

III. Discussion

The CMPA regulates public employee labor-management relations in the District of Columbia. As previously noted, under the CMPA, the Board is permitted to modify or set aside an arbitration award if the award on its face is contrary to law and public policy.¹⁷ The Court of Appeals has stated, "the statutory reference to an award that 'on its face is contrary to law and public policy' may include an award that was premised on 'a misinterpretation of law by the arbitrator that was apparent 'on its face.'"¹⁸ Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for that of the arbitrator.¹⁹ Moreover, to overturn an arbitration award on the grounds that the award is contrary to law and public policy, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."²⁰

The entirety of MPD's argument is that the Arbitrator misanalysed the *Douglas* factors. MPD argues that the Arbitrator "relied solely on the analysis of *Douglas* factors 6 and 12²¹ in determining that termination was not the appropriate remedy" and failed to consider the reasonableness of the Panel's determination as it related to the *Douglas* factors.²² MPD contends that even though the Arbitrator found that the Panel "arguably articulat[ed] reasonably its consideration of most of those factors," the Arbitrator focused solely on the Panel's inadequate consideration of factors 6 and 12 without analyzing or balancing the remaining factors.²³ MPD argues that the Arbitrator cannot substitute his judgment for the employer, and instead can only determine whether the Panel properly weighed the relevant factors to see if the decision was within reasonable limits.²⁴ MPD argues that the Panel's analysis of the *Douglas* Factors was thorough and "did not exceed the limits of reasonableness" particularly in light of the

¹⁶ Award at 11.

¹⁷ D.C. Official Code § 1-605.02(6).

¹⁸ *F.O.P./Dep't of Corr. Labor Comm. v. Pub. Emp. Relations Bd.*, 973 A.2d 174, 178 (D.C. 2009)(quoting *D.C. Metro. Police Dep't v. D.C. Pub. Emp. Relations Bd.*, 901 A.2d 784, 787-88 (D.C. 2006)).

¹⁹ *D.C. Metro. Police. Dep't*, Slip Op. 1561 at 6.

²⁰ *MPD and FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). Also see, *D.C. Pub. Sch. v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case 86-A-05 (1987).

²¹ *Douglas* factors 6 and 12 are as follows: 6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses; 12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

²² Request at 9.

²³ Request at 19.

²⁴ Request at 19.

consequences of the Grievant's untruthful statements on her ability to provide testimony in criminal and civil matters.²⁵ MPD asserts that the Panel's analysis was significant because the Chief of Police referenced the Panel's reasoning in denying the Grievant's appeal.²⁶ Therefore, MPD argues, the Arbitrator's Award was not in accordance with the law.²⁷ In support of this contention, MPD cites to *Metropolitan Police Department v. D.C. Office of Employee Appeals*,²⁸ wherein the District of Columbia Court of Appeals determined that the Office of Employee Appeals erred by overturning an appellee's termination without assessing the appellant's *Douglas* analysis or considering any of the *Douglas* factors. MPD explains that similarly, in the present case, the arbitrator did not assess MPD's analysis of each of the *Douglas* factors, choosing to focus on factors 6 and 12, when the weight of the Panel's analysis unequivocally supported termination.²⁹

FOP counters that MPD's arguments that the Arbitrator violated law and public policy in his *Douglas* analysis are nothing more than disagreements with the Arbitrator's findings and conclusions, which are not a sufficient basis for Board review.³⁰ FOP argues that the Arbitrator clearly articulated his basis for his *Douglas* analysis.³¹ FOP notes that MPD has failed to cite to any authority to support its argument that the Arbitrator's findings and conclusions were contrary to law and public policy, and instead, bases its assertions on a disagreement with the Arbitrator's findings.³²

As stated previously, to overturn an arbitration award on the grounds that the award is contrary to law and public policy, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."³³ In the present case, MPD asserts the Award is on its face contrary to law and public policy. However, the Board finds that MPD does not specify any "applicable law" and "definite public policy" that mandates the Arbitrator arrive at a different result.

Additionally, the Board finds that the Arbitrator's conclusions are based on a thorough analysis of the record, and cannot be said to be clearly erroneous or contrary to law and public policy. As stated previously, the Arbitrator determined that the Panel did not meet its burden in establishing that the penalty in its recommendation was consistent with penalties in comparable cases. The Arbitrator analyzed each of the *Douglas* factors and found that the Panel's review of *Douglas* factors 6 and 12 was "non-existent."³⁴ The Arbitrator stated: "The Panel does not

²⁵ Request at 10-11.

²⁶ Request at 17-18.

²⁷ Request at 9.

²⁸ 88 A.3d 724, 729-30 (D.C. 2014).

²⁹ Request at 17.

³⁰ Opposition at 9.

³¹ Opposition at 9.

³² Opposition at 9.

³³ *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). See also *D.C. Pub. Sch. v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case 86-A-05 (1987).

³⁴ Award at 10.

identify a single comparable case in responding to either of these factors. Its conclusions that the removal penalty 'is commensurate with past recorded sustained allegations for the stated charges' and that 'alternative remedies . . . are not available' are simply unsupported assertions."³⁵ Due to the Panel's inadequate consideration of Douglas factors 6 and 12, the Arbitrator sustained the Grievant's appeal and reversed her termination.³⁶

Therefore, the Board finds that MPD's Request is merely a dispute with the Arbitrator's evidentiary findings and conclusions in assessing the *Douglas* Factors. MPD's argument that the Arbitrator failed to assess the Panel's analysis of each of the *Douglas* factors, does not meet the requirement for the Board to overrule the Award. The Board has found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based."³⁷ Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator."³⁸ In the present case, the parties submitted their dispute to the Arbitrator, and MPD's claim that the Arbitrator's award is contrary to law and public policy only involves a disagreement with the Arbitrator's analysis of the *Douglas* factors. This does not present a statutory basis for reversing the Arbitrator's Award.

Finally, the Board finds that MPD's reliance on the District of Columbia Court of Appeals case, *Metropolitan Police Department v. D.C. Office of Employee Appeals*, is misplaced as the salient facts in the cited case are distinguishable from the facts in the present case. As stated previously, the Court determined that the Office of Employee Appeals erred by overturning an officer's termination without assessing the police department's *Douglas* analysis or considering any of the *Douglas* factors.³⁹ In the present matter, the Arbitrator reviewed the Panel's *Douglas* analysis, and found that the Panel's consideration of *Douglas* factors 6 and 12 were inadequate. Therefore, the Board finds no error in the Arbitrator's conclusions.

IV. Conclusion

In view of the above, the Board finds that there is no merit to MPD's arguments. Moreover, the Board finds that the Arbitrator's conclusions are based on a thorough analysis of the record and cannot be said to be clearly erroneous or contrary to law or public policy. Therefore, no statutory basis exists for setting aside the Award. Accordingly, MPD's Request is denied, and the matter is dismissed in its entirety with prejudice.

³⁵ Award at 10.

³⁶ Award at 11.

³⁷ *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at p. 3, PERB Case No. 00-A-04 (2000).

³⁸ *D.C. Dep't of Corr. and Int'l Bhd. of Teamsters, Local Union No. 246*, 34 D.C. Reg. 3616, Slip Op. 157 at p. 3, PERB Case No. 87-A-02 (1987).

³⁹ *D.C. Metro Police Dep't v. D.C. Office of Emp. Appeals*, 88 A.3d 730 (D.C. 2014).

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Mary Anne Gibbons, Barbara Somson, and Douglas Warshof.

October 19, 2017

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-A-09, Op. No. 1644 was sent by File and ServeXpress to the following parties on this the 30th day of October, 2017.

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