

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *
*
FRANKLIN COUNTY SHERIFF'S *
OFFICE *
*
-and- *
*
NATIONAL CORRECTIONAL EMPLOYEES *
UNION *

ARB-19-7505

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Brendan Hughes, Esq. - Representing Franklin County Sheriff's Office

John Connor, Esq. - Representing National Correctional Employees Union

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

There was just cause to discharge Mark Botelho, and the grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
May 17, 2021

INTRODUCTION

On August 1, 2019, National Correctional Employees Union (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web Ex on July 14, 2020.

The parties filed briefs on October 13, 2020.

THE ISSUE

Was there just cause to discharge Mark Botelho? If not, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article 5 – Management Rights

Managerial Rights/Productivity. Except as otherwise limited by an express provision of this Agreement, the Employer shall have the right to exercise complete control and discretion over its organization and technology, including, but not limited to, the determination of the standards of services to be provided and standards of productivity and performance of its employees; establish and/or revise personnel evaluation programs; the determination of the methods, means and personnel by which its operations are to be conducted; the determination of the content of job classifications; the appointment, promotion, assignment, direction and transfer of personnel, the suspension, demotion, discharge for just cause or any other appropriate action against its employees; the relief from duty of its employees because of lack of work or for other legitimate reasons; the establishment of reasonable work rules; and the taking of all

necessary actions “not in conflict with this contract” to carry out its mission in emergencies.

Article 35 – Discipline & Discharge (In Part)

Section 1. The Employer has the right to discipline and discharge employees for just cause. The Employer, in making determinations to impose discipline, recognizes the concept of corrective discipline, when in the Employer’s judgment; the facts and circumstances lend themselves to correction. In case(s) of corrective discipline, the Employer’s concept of the normal guidelines consists of four (4) steps; i.e., oral reprimand, written reprimand, suspension from work without pay and discharge.

Pursuant to the corrective discipline guideline, where an employee who has been disciplined subsequently completes twelve (12) full months of actual work without incident or discipline, the Employer will not use the prior disciplinary record to advance the step of discipline imposed in a subsequent incident but may otherwise consider the entire disciplinary and work record. Unless otherwise ordered by an Arbitrator or agreed to by the Sheriff, no discipline shall ever be removed from an employee’s personnel file.

The Employer and the Union agree and understand that these steps are only guidelines and that the Employer reserves the right to determine the level of discipline assessed and to accelerate or decelerate the steps taking into consideration the particular facts and circumstances in any given case.

Section 2. When an employee is disciplined or discharged by the Employer, the Union shall be promptly notified in writing. If the employee or the Union claims that such discipline or discharge has been taken without just cause, such claim must be made in writing and filed with the Employer within five (5) working days.

Section 3. If the Arbitrator finds that the discharge was not for just cause as provided in this Agreement, he/she may reinstate such employee with such compensation for time lost as the arbitrator may determine not to exceed back pay less any interim compensation from any source. ...

Section 5. ... An employee who is requested to submit a special report which may tend to incriminate him in a criminal proceeding shall have the right to consult an attorney at the employee’s own expense, and/or a Union representative, before submitting such report.

RELEVANT GENERAL ORDERS

General Order 220 (In Part)

...

.02 Policy

The primary mission of the Office of the Sheriff is Public Safety. As such, there is a natural expectation by the public that the organization and each of its employees adhere to standards of trust and responsibility inherent to all law enforcement agencies. It is therefore the policy of the Office of the Sheriff to establish and enforce standards of professional conduct which are consistent with its primary mission.

.03 Purpose

The purpose of this document is to establish rules of conduct to be observed by each employee. These rules do not attempt to cover every contingency which may arise during the performance of an employee's duties. Nothing in this Order shall be interpreted so as to relieve employees of their primary responsibility for the care and custody of inmates, the service of judicial process, the operation of the Community Corrections Center, or their obligation to render good judgment and adherence to all provisions of the law.

.04 General

...

3. Except as otherwise provided in the General Orders of the Office, an employee must report to the Superintendent/Special Sheriff any involvement with law enforcement officials pertaining to any criminal investigation or arrest concerning the employee. Such notification shall be reported immediately by telephone and then in writing prior to the employee reporting for a duty assignment.

.10 Other Offenses

...

26. Conduct unbecoming an Officer or unprofessional conduct.

27. Performing any act(s) or making any statement(s) which tends to interfere with the orderly operations of the Office or which brings the Office into disrepute or ridicule.

28. Violating any provision of a written Order, Directive, rule or regulation.

29. Violating any law of the United States of America or the Commonwealth of Massachusetts.

FACTS

The Franklin County Sheriff's Office (FCSO) and the Union are parties to a successor collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievant, Mark Botelho (grievant / Botelho) was hired as a Correction Officer on July 1, 2005, and served in that role until his termination from FCSO on July 9, 2019.

A prerequisite to becoming a Corrections Officer is taking a sworn oath to abide by the General Orders of the Sheriff's Office, which Botelho acknowledged that he took. Included in these General Orders are the requirements to not engage in conduct unbecoming a Correction Officer either on the job or off the job, as well as the requirement that the FCSO be informed of any involvement with law enforcement or pertaining to a criminal investigation or arrest.

Botelho's disciplinary history dates to July 10, 2006, and includes two verbal reprimands, two written reprimands, and four suspensions prior to the two incidents in question in this case. During the Spring of 2019, Botelho was prescribed Vivitrol by his doctor to help with his alcohol dependency issues. In late April 2019, Botelho was advised to stop taking Vivitrol prior to a scheduled surgery. Prior to May 17, 2019, Botelho began drinking alcohol in excess to the point of being "blackout drunk" and passing out.

May 17, 2019 Incident

On the day in question, Botelho began drinking, and became severely intoxicated at his apartment complex. The Easthampton Police Department was called because an intoxicated Botelho had entered a neighbor's apartment and refused her request to leave. Prior to the arrival of the police, Botelho had forced

his way into a second apartment and again refused to leave. Earlier in the day, an intoxicated Botelho attempted to start a fight in the hallway with the occupant of the second apartment. Police removed Botelho to his apartment upon their arrival. Botelho was uncooperative with the police, refusing to give his name and engaging in profanity to the officers. None of the neighbors wished to press charges, so the officers told Botelho to sleep it off and not cause any further problems. He was advised that if they needed to return to his residence, he would be arrested.

Prior to Monday May 20, 2019, Assistant Superintendent Kristin Shea (Shea) received a phone call from the Easthampton Police Department informing her of the Botelho incident. Shea informed Superintendent Lori Streeter (Streeter) of the call and was directed to obtain the police report. After receiving the report, Streeter assigned Captain Rick Glabach (Glabach) to interview Botelho. Upon questioning, Botelho told Glabach that he had no recollection of the events that occurred, but did not contest that he was severely intoxicated and suffered a blackout episode.

The next day, Streeter met with Botelho about his continued issues with alcohol. Botelho acknowledged his alcohol problems and agreed that his blackout incident on May 17, 2019 was unacceptable and needed to be addressed. While acknowledging that discipline would be necessary, Streeter's primary concern was that Botelho seek help to address his alcohol problems. FCSO assigned Case Worker Ken Chartrand (Chartrand) to find a rehabilitation program to assist Botelho with the help he needed. It was agreed that discussion

about potential discipline would be placed on hold pending Botelho's rehabilitation progress. Shortly thereafter, FCSO and Botelho arranged for him to attend a long-term rehabilitation program in Effington New Hampshire. Three days after entering the program, Botelho called Chartrand requesting to leave the program because he did not feel comfortable at the program. Chartrand consulted with Streeter and it was agreed that Botelho could leave the program and find an alternate program.

On May 29, 2019, Streeter, Shea, Union Representative Ryan Spofford (Spofford), and Botelho met to discuss next steps. Botelho requested approval to attend an outpatient program at Leeds Veterans Affairs Medical Center (Leeds). After consulting with Sheriff Christopher Donelan (Sheriff Donelan), the request was approved with conditions. The program had to be intensive and at least thirty days, and Botelho would need to formulate a new treatment plan with Chartrand. The subject of a last chance agreement was also discussed.

On May 31, 2019, Botelho finalized the details regarding the intensive treatment program at Leeds. The forty-hour per week program was a twenty-one-day program, which the FCSO agreed to. A last chance agreement was drafted but never finalized prior to Botelho entering the program.

June 28, 2019 Incident

Botelho finished the Leeds program on June 26, 2019, and was scheduled to return to work July 1, 2019. On Friday, June 28, 2019, Botelho relapsed and began consuming alcohol. According to the Easthampton Police report, during the evening, an intoxicated Botelho assaulted his girlfriend during an argument.

Botelho's girlfriend reported to the police that he pulled her hair, punched and kicked her, threw a shoe at her, and verbally harassed her. Police went to Botelho's apartment, but he refused to acknowledge their presence or open the door.

The Easthampton Police Department issued an arrest warrant for Botelho for Domestic Assault and Battery and called Shea to inform her of the situation. After being informed of the incident, Streeter ordered Botelho to report to work on July 1, 2019. At his meeting with Streeter, Shea and Spofford, Botelho denied the allegations of assault against him, claiming that his girlfriend had not been truthful with the police, but admitted that he had been drunk at the time of the alleged assault. At the end of the meeting, Botelho was arrested by the Greenfield Police Department. All charges from this incident were ultimately dismissed after Botelho's girlfriend declined to testify.

On July 9, 2019, FCSO terminated Botelho. The termination cited, amongst other things, the May 17, 2019 incident, the June 28, 2019 incident, Botelho's repeated violations of General Order 220, his significant disciplinary history, including his continued alcohol abuse after repeated rehabilitation programs, and his violation of the unsigned last chance agreement.

The Union filed a grievance over Botelho's termination. The grievance was denied at all steps of the grievance procedure and resulted in the instant arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

In this case, there is ample just cause to discharge Botelho. All the evidence supports the position that the applicable rules were well known to Botelho. As a Correctional Officer, Botelho took an oath to adhere to all General Orders. General Order 220 is the General Code of Conduct. Botelho acknowledged having taken such oath during his testimony. Botelho's disciplinary history demonstrates that he is well versed with General Order 220 given that he had been previously been suspended and/or warned on numerous occasions for various violations of General Order 220.

FCSO terminated Botelho for two separate and cumulative incidents of misconduct. In the initial May 17, 2019 incident, Botelho became blackout drunk, creating a disturbance based on trespassing into neighboring apartments, threatening to assault a neighbor, refusing to cooperate with responding police officers and needing to be subdued to the point where a police report was generated. As Superintendent Streeter testified, Correctional Officers are entrusted to perform a public safety function and to enforce rules and regulations within a correctional facility. Failure to exhibit self-control to the point of police intervention and engaging in conduct that is unlawful is contrary to such purpose and clearly unbecoming of a law enforcement professional in violation of General Order 220. Moreover, regulation of such unbecoming conduct is indisputably related to the orderly, efficient, and safe operation of a Correctional Officer. Failure to exhibit self-control outside of work calls into question a correction officer's ability and commitment to law and order.

Similar, critical to the efficient and safe operation of the correctional facility is the need for the FCSO to know when any of its officers are subject to a police investigation. Any such involvement could disrupt an employee's ability to be trusted to carry out his responsibilities. An employee being involved in a police investigation is problematic enough, failing to report it shows a total lack of understanding of the authority and responsibility a correction officer has.

The Union offered no argument against General Order 220, which mandates that an employee must report to the FCSO any involvement with law enforcement officials pertaining to any criminal investigation or arrest. The Union's ill placed arguments mitigating the lack of disclosure due to an alcohol blackout aside, no reasonable argument can be made that this rule is not reasonably related to the orderly, efficient, and safe operation of the FCSO.

The grievant was also terminated for a second incident on June 28, 2019, a continuation of similar misconduct in which he was arrested for domestic assault and battery. Botelho admits that this incident involved the abuse of alcohol and this second blackout incident, that resulted in a criminal charge, occurred less than forty-eight hours following completion of a mandated alcohol rehabilitation program required in response to the May 17, 2019 incident. Botelho again failed to report this incident to the FCSO. This incident was even more egregious given that Botelho was aware that police had been called, responded to an incident, and were looking for him. The Union again set forth no argument that this reporting rule is not related to the orderly, efficient, and safe operation of the FCSO.

Notice

Botelho's disciplinary history demonstrates that he was on notice that his off-duty conduct carried serious disciplinary consequences given that he had previously received serious suspensions for similar incidents. The record demonstrates that Botelho was informed that the blackout incident of May 17, 2019 was unacceptable, in clear violation of General Order 220, and that severe discipline would result depending on how Botelho addressed the underlying alcohol issues that contributed to the incident.

FCSO notified Botelho that he needed to successfully complete a rehabilitation program, agree to a probationary period and a Last Chance Agreement upon his return to work to demonstrate that the rehabilitation program was successful and that he could be counted upon as a correction officer. Within forty-eight hours of completing the rehabilitation program, Botelho became blackout drunk, engaged in conduct that led to his arrest for a crime of violence. Botelho clearly was on notice that becoming blackout drunk in a police-related incident prior to even returning to work from mandated alcohol rehab would carry significant disciplinary consequences.

Investigation

FCSO obtained all the information necessary to formulate their termination decision. Botelho admitted to being blackout drunk during the May 17, 2019 police incident and having no recollection as to what transpired. Botelho's self-inflicted blackout state caused him to fail to report the incident to FCSO in

violation of the General Order. Such blackout state cannot possibly be construed as an acceptable excuse for the rule violation.

Botelho also admitted to being blackout drunk during the June 28, 2019 police report incident that resulted in criminal charges and his arrest at work on July 1, 2019. This incident occurred after he agreed to go to rehabilitation for alcoholism and immediately after he completed the program. Botelho failed to report this incident despite being aware that his girlfriend reported him to the police and after he called the police department to inquire about the incident.

Botelho's position that he did not criminally assault his girlfriend and, therefore, should be absolved of any wrongdoing is misplaced. It also serves as indicia of his lack of accountability and self-reflection. Rather than acknowledge that his decision to drink alcohol after his rehabilitation program meant that he failed to meet his end of the bargain to prove he was fit to resume as a correction officer, he instead chose to blame his girlfriend.

The record is abundantly clear on the critical points. FCSO clearly communicated and mandated to Botelho that he needed to address his alcohol abuse issues and that failure to do so would result in termination. FCSO went above and beyond to assist Botelho by deferring any disciplinary consequences for his rule violations on May 17, 2019 and allowing him an opportunity to get professional treatment. Indeed, FCSO provided Botelho two different rehabilitation program opportunities, the second of which was a program at Leeds Veterans Affairs Medical Center that he specifically requested. The fact that he chose to drink to excess immediately following this opportunity in and of

itself constitutes grounds for termination. No mitigation can be presented to absolve Botelho or to demonstrate that he had meaningfully addressed the issues FCSO required him to address to continue employment. No further information was necessary to inform FCSO's rightful decision to terminate Botelho in these circumstances.

Level of Discipline

Just cause and the accompanying principles of progressive discipline do not always require discipline before discharge if the discharge is for serious misconduct and violations of known work or safety standards. Here, progressive discipline was followed, moreover, even if Botelho had an exemplary record, his actions were so egregious that termination from the public safety position of a correction officer was warranted under the just cause standard.

In the instant matter, Botelho had five different suspensions on his record for various instances of misconduct in violation of General Order 220. Such suspensions were and needed to be considered when FCSO made its decision to terminate. The Union's position that Article 35, Section 1 bars the consideration of the entire disciplinary record is completely unfounded and contrary to the express language.

Pursuant to the corrective discipline guideline, where an employee who has been disciplined subsequently completes twelve (12) full months of actual work without incident or discipline, the Employer will not use the prior disciplinary record to advance the step of discipline imposed in a subsequent incident but may otherwise consider the entire disciplinary and work record. Unless otherwise ordered by an Arbitrator or agreed to by the Sheriff, no discipline shall ever be removed from an employee's personnel file.

The only reasonable interpretation of this language is that FCSO is restricted from advancing a step of discipline if an employee has been discipline-free for twelve months. Here, Botelho received an eight-day suspension on July 19, 2018 less than one year prior to the initial incident on May 17, 2019, and also less than one year before the termination date of July 9, 2019.

Finally, even if there was no meeting of the minds as to a formal last chance agreement, FCSO rightfully set forth to Botelho that he needed to confront his alcohol problems to continue his employment given his egregious employment record and the misconduct that occurred on May 17, 2019. Even the Union does not dispute that the disciplinary consequences for the May 17, 2019 incident were still being determined when Botelho failed his rehabilitation efforts by abusing alcohol prior to returning to work. FCSO could not trust Botelho and could not safely continue to employ him under these circumstances. Review of the record as a whole, regardless of the last chance agreement dispute, compels the conclusion that FCSO had just cause to terminate Botelho due to the seriousness of the offenses coupled with his unsatisfactory disciplinary record.

Conclusion

For all the foregoing reasons, ample just cause existed for discharging Botelho and the grievance should be denied.

THE UNION

FCSO lacked just cause to terminate Botelho because:

- 1) There was no last chance agreement in effect during the incidents in question as claimed by FCSO,
- 2) Botelho was not aware of any police involvement on May 17th as he had a complete blackout episode and there was not direct police involvement on June 28th until the Sunday before his scheduled meeting with Superintendent Streeter during which he intended to inform her of the police involvement, and
- 3) FCSO failed to recognize numerous mitigating factors, the most salient being that Botelho's actions were caused by his underlying PTSD and recent medical advice to stop taking Vivitrol which had been successful in curbing his cravings for alcohol.

Last Chance Agreement

FCSO's contention that Botelho violated a Last Chance Agreement is without merit. The agreement submitted is unsigned, and Botelho contends that he never signed such an agreement, nor did he communicate his intention to do so. The meeting with Superintendent Streeter immediately after the May 17, 2019 incident was focused on getting Botelho into treatment, and there was no discussion of a Last Chance Agreement. Furthermore, and perhaps most fatal to FCSO's contention is that by its own terms, the agreement is only effective from July 1, 2019 through December 31, 2020, which is a period of time after the incidents forming the basis for Botelho's termination. Since by its own terms, the agreement is not effective during the relevant time periods, it cannot serve as a basis for termination.

What the Last Chance Agreement does establish is that, at most, Botelho should have been placed on a Last Chance Agreement after the June 28th incident. FCSO fails to recognize that Botelho's alcohol abuse during this period was essentially one crisis, made up of multiple incidents involving alcohol abuse rather than two separate incidents. Botelho was clean and sober for several months while taking Vivitrol and that these incidents occurred shortly after he stopped taking his medication on advice of his physician. These facts establish that the ensuing alcohol abuse and the resulting police involvement were a direct result of his terminating his use of Vivitrol to control his alcoholism. As such, the two incidents should be viewed as a series of incidents which took place during one medical crisis.

Failure to Notify of Police Involvement

FCSO's contention that Botelho should be terminated for failing to notify them of police involvement ignores the fact that, with respect to the May 17, 2019 incident, he had no recollection of the incident and only learned of it when he was questioned after FCSO received a report from Easthampton police. Similarly, with the June 28, 2019 incident, Botelho never actually interacted with the police and was not aware of any police investigation until Sunday night. Since he had a meeting with Superintendent Streeter the following day, he elected to tell her personally. As it turned out, Superintendent Streeter was already aware of the incident and that Botelho would be arrested at their meeting. It is clear that Botelho did not knowingly violate the Employer's policy requiring notification of police interaction while off-duty.

Conduct Unbecoming An Officer

This allegation must fail as the criminal charges against Botelho were dismissed. Furthermore, while Botelho was severely intoxicated on both occasions, he was in his own apartment complex while off-duty and he was intoxicated, in large part, because he was taken off Vivitrol by his doctor which ultimately led to his losing his sobriety. Conduct unbecoming requires an element of willfulness and knowledge that were greatly diminished here because he was taken off the one medication that was helping maintain his sobriety. This is not to say that Botelho had no ability to control his behavior, but it does mitigate against the conclusion that his actions were deliberate and therefore justified his termination.

Mitigating Factors

The imposition of the most severe penalty, termination, failed to consider the mitigating factors. As noted above, there is no enforceable Last Chance Agreement, so the proper analysis is whether the FCSO had just cause for the discipline and not merely whether he violated the Last chance Agreement. Botelho took responsibility for his actions and actively sought treatment for his addiction. He sought in-patient and out-patient treatment for his addiction immediately after the May 17, 2019 incident and that after his relapse on June 28, 2019 he admitted himself into a four-month inpatient program at the Veteran Administration to finally address his underlying PTSD.

Article 35 of the Collective Bargaining Agreement

Article 35 of the collective bargaining agreement states that the employer has the right to discipline and discharge for just cause. Article 35 also lays out a progressive disciplinary system in which any period of 12 months without discipline will prohibit the employer from using prior discipline to advance in the progressive disciplinary ladder. First, an employer bears the burden of showing that an employee committed an offense or engaged in conduct requiring corrective action. Second, the action taken by the employer must be an appropriate remedy for employee's conduct and/or protection of the employer's interests. The conduct at stake here does not warrant such a severe penalty as termination. The employer had many other options to protect its interest and to correct Botelho's conduct, such as the implementation of a Last Chance Agreement after the June 28th incident and the dismissal of the criminal charges. Lastly, the disciplinary record documents significant periods in excess of one year between incidents which would render those disciplines occurring prior to 2018 irrelevant under the express language of Article 35.

Conclusion

Wherefore, the Union requests that the arbitrator find that there was no just cause for the termination of Botelho's employment and order that he be reinstated and awarded all back pay and otherwise be made whole.

OPINION

The issue before me is: Was there just cause to discharge Mark Botelho? If not, what shall be the remedy? For all the reasons stated below, FCSO had just cause to discharge Botelho and the grievance is denied.

Last Chance Agreement

It is clear from the evidence and testimony presented that the FCSO was intent on a Last Chance Agreement being part of any return to work for Botelho. It is equally clear that the Union and Botelho engaged in negotiations around the Last Chance Agreement, but never signed the document. At this point, the parties' beliefs on what did or did not occur differ significantly. Ultimately, I am left with an unsigned Last Chance Agreement which the FCSO relied on, in part, to terminate Botelho. I find that there was no executed Last Chance Agreement between the parties, and the FCSO reliance on the violation of this Last Chance Agreement as part of Botelho's termination is improper and unsupportable on the record presented. As discussed in more detail below however, I find that the FCSO still had just cause to support the termination even without a violation of the Last Chance Agreement.

Prior Discipline

The Union objects to FCSO using Botelho's prior disciplinary history to justify his termination. The Union argues that Article Thirty-Five prohibits the FCSO from using Botelho's prior discipline to advance discipline to the level of termination. The Union does not believe that Botelho's actions on the dates in question warrant termination by themselves and thus any reliance on prior discipline unjustly moves the discipline step without just cause.

I disagree with the Union's interpretation of facts of this case and the level of appropriate discipline. First and foremost, even if the Union was correct in its interpretation of the language of Article Thirty-Five, the express provision states that:

an employee who has been disciplined subsequently completes twelve (12) full months of actual work without incident or discipline, the Employer will not use the prior disciplinary record to advance the step of discipline imposed in a subsequent incident but may otherwise consider the entire disciplinary and work record.

In the present case, Botelho received an eight-day suspension in July 2018, which indicates that he had not had twelve full months of incident or discipline free actual work before his first blackout incident on May 17, 2019.

Notwithstanding Botelho's inability to complete twelve full months of incident-free employment, is the fact that potential termination for his actions was an appropriate level of discipline and not a step forward based on his prior disciplinary record. The FCSO's consideration of his extensive prior disciplinary record when concluding that termination was the appropriate level of discipline is specifically authorized by the last sentence of the article and as such, was not a violation of the collective bargaining agreement.

The May 17th and June 28th incidents were not Botelho's first problematic incidents with inappropriate use of alcohol. As Botelho's extensive disciplinary history attests, the FCSO has repeatedly tried to use corrective discipline to change Botelho's actions. Even after the May 17th incident, the FCSO's first concern was to obtain the help that Botelho needed. Discipline was placed secondary to getting Botelho into a treatment program. Botelho's subsequent

request to leave the initial treatment program was granted and the FCSO again worked with Botelho to secure placement in the Leeds outpatient program. The FCSO continued to remain flexible when the Leeds program did not meet its initial terms for approval. The FCSO crafted a plan for Botelho to complete the program to help support his sobriety. Discipline became a secondary concern, one that needed to be addressed but could be addressed at the appropriate time.

By the June 28th incident, the FCSO had reached the breaking point. After delaying discipline, finding Botelho an inpatient program, allowing him to leave that program to attend an outpatient program, and changing the preferred length of the program necessary for approval, Botelho was unable to survive one weekend without a blackout drunk incident that involved the police department. The FCSO had gone above and beyond what was required in an attempt to help Botelho with his issues, and nothing seemed to be working.

Progressive discipline had not changed Botelho's behavior, nor had assistance with obtaining a treatment program, or the completion of the treatment program itself. Botelho's actions continued to have a detrimental effect on his ability to perform his duties as a correctional officer for the FCSO. As such, the FCSO made the decision to terminate Botelho. It did not make the decision hastily, or without a significant attempt to help rehabilitate Botelho. Under the facts presented, the FCSO had just cause to terminate Botelho for his actions on May 17th and June 28th, 2019.

AWARD

There was just cause to discharge Mark Botelho, and the grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
May 17, 2021