



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
April 10, 2014
(Subject to Committee Approval)

Held at the Bryan Building, 901 S. Carson Street, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Avenue, Room 1400, Las Vegas, Nevada via videoconference.

Committee Members:

Management Representatives	Present
Mr. Mark Evans—Chair	
Ms. Mandy Payette—Co-Vice-Chair	
Ms. Bonnie Long	
Ms. Claudia Stieber	X
Ms. Allison Wall	X
Ms. Michelle Weyland	X
Employee Representatives	
Ms. Stephanie Canter—Co-Vice-Chair	X
Ms. Donya Deleon	
Mr. Tracy DuPree	X
Mr. David Flickinger	
Ms. Turessa Russell	
Ms. Sherri Thompson	X

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Carrie Lee, EMC Coordinator
Ms. Jocelyn Zepeda, Hearing Clerk

- 1. Co-Vice-Chair Stephanie Canter:** Called the meeting to order at approximately 9:00 a.m.
- 2. Adoption of the Agenda – Action Item**
Co-Vice-Chair Stephanie Canter requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.
BY: Committee Member Tracy DuPree
SECOND: Committee Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

3. Public Comment

There were no comments from the audience or from the Committee members.

4. Discussion and possible action related to motion to dismiss of Grievance of Patty Shinault, submitted by the Department of Transportation, supporting documentation, and related oral argument – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee (“EMC”) by the agency employer Nevada Department of Transportation (“NDOT”) which was represented by Deputy Attorney General David Keane.

Patty Shinault was not present at the hearing.

During the hearing, NDOT argued in substance that Ms. Shinault’s grievance had been resolved because NDOT had already admitted, acknowledged and explained to you that it had erroneously escalated your grievance without your permission. Also, NDOT argued that your grievance should be dismissed because the EMC had no authority to grant your proposed resolution, which was to discipline another NDOT employee, Kimberly King.

Co-Vive-Chair Stephanie Canter opened up the motion to dismiss for discussion and deliberation. The EMC reviewed the evidence, and considered the statements and arguments of counsel.

Co-Vice-Chair Stephanie Canter stated that the confusion surrounding the escalation of the grievance was included in attached emails. Committee Member Allison Wall stated that employees are not privy to the discipline of other employees and that NDOT admitted to miscommunication.

MOTION: Moved to dismiss the grievance.
BY: Committee Member Tracy DuPree
SECOND: Committee Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

5. Adjustment of Grievance of Cheri Cerini, Department of Transportation – Action Item

Cheri Cerini was present in proper person and was represented by Attorney Scott Daniel. Deputy Attorney General David Keane was present on behalf of the agency employer Nevada Department of Transportation (“NDOT” or “Employer”).

There were no objections to the exhibits submitted to the Employee-Management Committee (“EMC”). Cheri Cerini and several witnesses were

duly sworn and appeared at the hearing. After being sworn, witness were instructed to wait outside of the room until called.

During the hearing, Mr. Daniel stated that Ms. Cerini had requested review by the EMC of her Written Reprimand for alleged violations of the Nevada Administrative Code and of NDOT's Prohibitions and Penalties. The alleged violations were based on allegations by several NDOT employees that Ms. Cerini had excessively used her cell phone and failed to perform assigned duties while she and other NDOT employees were working at the scene of an accident on August 3, 2013.

NDOT responded that it had warned Ms. Cerini several times about cell phone usage and that she had failed to perform her duties.

Testimony was presented at the hearing by Ms. Cerini that on August 2, 2013, at approximately 2:32 p.m., she was notified by NDOT Maintenance Manager Brad Burg about an accident on Interstate Route 80. Ms. Cerini responded to the accident scene between approximately 3:30-4:00 p.m. Also present at the accident scene were NDOT workers Mr. Kilby, Gordon Crutcher ("Mr. Crutcher") and Kelly Smith ("Mr. Smith"). Later, Mr. LaRosa and Mr. Hunt arrived at the accident scene. Ms. Cerini testified that after she arrived at the accident scene she performed various duties, such as setting up an "arrow board" and helping set up traffic cones. Ms. Cerini further testified in substance that, with the exception of leaving the scene of the accident on two occasions, she remained at the accident scene until being released at approximately 7:30 p.m. that night.

In addition to performing various duties at the accident scene, Ms. Cerini testified that she was using her cell phone at times. However, Ms. Cerini testified in substance that it was not a violation of NDOT policy for NDOT employees to use their cell phones in certain situations, such as emergencies or when speaking with other NDOT employees for work-related matters. Ms. Cerini indicated that the calls she made while at the scene of the accident were made while she was not actively working and were for emergency purposes, such as arranging for the care of her six-year-old son, canceling a doctor's appointment and making a payment to her orthodontist, calls which were necessitated, Ms. Cerini testified, by the fact that she had to unexpectedly work overtime because of the accident. Ms. Cerini further testified that some of the calls she made or received at the accident scene were from NDOT coworkers or were work related, and that other NDOT coworkers at the accident scene were also using their cell phones to make calls to make personal arrangements.

Ms. Cerini further testified that although she attended NDOT meetings where cell phone use was discussed, she was never specifically talked to by anyone at NDOT with respect to the use of her cell phone.

Testimony was presented by Mr. Hunt that although he had signed a statement alleging that Ms. Cerini had spent too much time talking on her cell phone at the accident scene on August 2, 2013, he didn't actually know if he saw Ms. Cerini

on her cell phone that day, and that Mr. Paley had written out the statement for him to sign.

It was testified to by Mr. Paley that NDOT'S policy with regard to cell phone use was to keep it at a minimum and limit it to job related or emergency matters. Mr. Paley further testified that at least one crew meeting had been held about cell phone use and that it was a reoccurring topic/problem. Mr. Paley indicated that he saw Ms. Cerini on her cell phone on March 27, 2013, which was approximately two weeks after he had addressed his crew about cell phone use while at work. However, he testified that he never specifically addressed with Ms. Cerini her use of her cell phone.

It was testified to by Mr. Kilby that he was called to report to the accident scene at about 2:30 p.m. on August 2, 2013, and when he arrived Mr. Crutcher, Ms. Cerini and Mr. Smith were already at the accident scene. He later left the accident scene but returned between 6:00 and 7:00 p.m. that evening. Mr. Kilby testified that after he returned to the accident scene he spoke with Mr. LaRosa and that Mr. LaRosa said that Ms. Cerini had been on her cell phone a good portion of the time she was on duty at the accident scene and that Mr. Hunt had seen this. Mr. Kilby stated in substance that when he questioned Mr. Hunt he corroborated what Mr. LaRosa said. Additionally, Mr. Kilby, when testifying about Exhibit C, stated that Jeremy (the former supervisor of the Fernley NDOT crew) had spoken with Ms. Cerini about her cell phone use in 2011.

Mr. LaRosa testified that it was approximately 4:00-4:30 p.m. on August 2, 2013, when he arrived at the scene of the accident, and that he left the accident scene at between 8:00-9:00 p.m. that night. Mr. LaRosa indicated that he saw Ms. Cerini at the accident scene talking and playing games or texting with her cell phone, and testified that he guessed that Ms. Cerini talked or texted on her cell phone all together for about 45 minutes to one hour. He further testified that when Mr. Kilby showed up he told Mr. Kilby that Ms. Cerini had been on her cell phone most of the time.

Mr. Easton testified that he reviewed Ms. Cerini's grievance and tried to gather information in the processing of the grievance, including Ms. Cerini's cell phone records, and that NDOT wanted to verify the number of call Ms. Cerini made on August 2, 2013, while she was assigned to the accident. He testified that Ms. Cerini provided her cell phone records but that certain information was redacted. Mr. Easton further testified that it was determined that additional information was needed in order to clarify what calls Ms. Cerini made and received while assigned to the accident, and that Ms. Cerini was asked to provide this additional information. Mr. Easton stated that Ms. Cerini was contacted and asked to provide this additional information, and that Ms. Cerini never provided the additional information because Ms. Cerini said that she had spoken with the cell phone account holder and was directed by that person not to provide any additional information to NDOT.

Mr. Dyson testified that NDOT has a specific cell phone policy when employees are operating a vehicle but in other situations while at work NDOT left cell phone use policy up to the appropriate supervisor or appointing authority to

make determinations as to what is appropriate cell phone use policy for his or her particular group. Mr. Dyson further testified that he asked Ms. Cerini to provide him with her cell phone records concerning the appropriate time period on August 2, 2013, so that he could make an informed decision on the Step Two process of Ms. Cerini's grievance. Mr. Dyson added that at the Step Two process of a grievance he could either sustain the grievance or he could look at some kind of remedy which could end the grievance.

Mr. Dyson further testified that Ms. Cerini provided her cell phone records regarding the appropriate time frame, but he determined that some of the information had been whited out. Mr. Dyson decided that if he received additional information so that he could look at Ms. Cerini's complete cell phone records and if he received an extension of time to review the additional information he might be able to resolve Ms. Cerini's grievance, so either he or Mr. Easton or both men contacted Ms. Cerini and asked her for the additional information. However, Mr. Dyson stated that since he never received the additional information from Ms. Cerini he decided to sustain the grievance.

Co-Vice-Chair Stephanie Canter heard closing arguments and opened up the grievance to the Committee for discussion and deliberation. The EMC reviewed the evidence, and considered the statements of the witnesses and argument of counsel, representatives, and parties.

MOTION: Moved to remove the written reprimand and replace it with a documented oral warning.
BY: Committee Member Tracy DuPree
SECOND: Committee Member Sherri Thompson
VOTE: The motion passed with a 4:2 majority vote. Co-Vice-Chair Stephanie Canter, Committee Members Michelle Weyland, Sherri Thompson and Tracy DuPree voting for, and Committee Members Allison Wall and Claudia Stieber voting against.

6. Public Comment

There were no comments from the audience or Committee members.

7. Adjournment

MOTION: Moved to adjourn.
BY: Committee Member Tracy DuPree
SECOND: Committee Member Michelle Weyland
VOTE: The vote was unanimous in favor of the motion.