

The City therefore errs in asserting that "This hearing is Stokes' due process." For while the hearing represents part of that process, the just cause standard also contains certain procedural requirements which must be followed before a proper termination can occur. See How Arbitration Works, supra, pp. 967-969, 990-999; The Common Law of the Workplace, supra, pp. 201-220; Hill and Sinicropi, Remedies In Arbitration, (BNA, 2nd Ed. 1991), pp. 245-246.

Left then is the City's claim that Firefighter Stokes violated Section 2200.01(1) by engaging in "Conduct unbecoming a member or employee of the Fire Department" because he supposedly perjured himself when he falsely claimed under oath that he was made to wait until the end of his shift which ended at 7:00 a.m. on the next day when, in fact, he waited about 30 seconds.

While Firefighter Stokes claimed he did not read over his declaration very carefully before signing the Charge and thus never noticed it referred to waiting until the end of his shift, the fact remains that he signed it after stating under oath that he had read it and that everything therein was true. He thus must be held to his sworn declaration.

It therefore is understandable why the City was upset over that false statement. In addition, Firefighter Stokes' harassment claim was utterly without merit since the City had the right to ask him why he had worn a City-issued uniform without asking for prior permission to do so as required under the Fire Department's Rules.

Nevertheless, his false statement was preposterous on its face because it claimed that he was required to wait in that office from about 1:30 p.m. on June 22 to 7:00 a.m. on June 23 when his "shift ended," about 17 hours later. Surely, hardly anyone would ever take such a claim seriously.

I therefore conclude that it is unlikely that Firefighter Stokes deliberately meant to make such a frivolous claim and that the City has failed to meet its burden of proving that he deliberately intended to deceive the IDHR which would have discovered the truth during its investigatory fact finding process which Firefighter Stokes was very familiar with given the prior 16 or so prior complaints he had filed against the City.¹⁰

When that is coupled with the City's failure to follow the procedural requirements of the just cause standard noted above, I conclude the City lacked just cause to terminate Firefighter Stokes for allegedly violating Section 2000.11, Section 2200.01(1), or Section 2200.01(8), even if the false statement in his Charge was not privileged under Illinois state law and that his discharge must be overturned.

There thus is no merit to the City's claim that termination is appropriate because Firefighter Stokes has a "history of substantial transgressions and a progressive discipline for those transgressions" which included filing a false report, and that a "firefighter with a history and reputation of making false statements" raises a question about his credibility in a possible Fire Department investigation when he may be called as a witness under oath.

For while that may be true if Firefighter Stokes lied in his Charge, it is not true when, as here, the City has failed to meet its burden of proving that he, in fact, did so.

To rectify the City's violation of the contractual just cause standard and in order to restore the status quo ante, the City shall expunge all references to Firefighter Stokes' termination from its records and it immediately shall offer to reinstate him to his former position

¹⁰ See Culinary Foods Inc. v. UFCW Local 100-A, 106 LA 801, 806 (Nathan, 1996) where Arbitrator Harvey Nathan ruled that an intent to deceive was needed to prove a charge of falsification.