

FILED UNDER THE ELECTRONIC BRIEFING RULES
APPELLATE COURT

OF THE
STATE OF CONNECTICUT

A.C. 49365

MEGALIE SEMEXANT-COFFY

Plaintiff-Appellant

V.

STATE OF CONNECTICUT, JUDICIAL BRANCH OF
THE STATE OF CONNECTICUT

Defendant-Appellee

BRIEF OF PLAINTIFF-APPELLANT

JOHN T. BOCHANIS
DALY, WEIHING &
BOCHANIS, LLC
1776 NORTH AVE
BRIDGEPORT, CT 06604
203-333-8500
JURIS NO. 101227
Email: lawdwb@sbcglobal.net

To Be Argued By:
John T. Bochanis, Esq.

TABLE OF CONTENTS

BRIEF OF PLAINTIFF-APPELLANT	1
TABLE OF CONTENTS.....	2
1. STATEMENT OF ISSUES	3
I) WHETHER THE TRIAL COURT ERRED IN NOT FINDING THAT THE DEFENDANT VIOLATED C.G.S. SECTION 31- 51q IN DISCHARGING THE PLAINTIFF	3
II) WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THE PLAINTIFF DID NOT PROVE A CAUSAL CONNECTION BETWEEN HER PROTECTED SPEECH AND DEFENDANT'S RETALIATORY DISCHARGE OF HER EMPLOYMENT	3
2. TABLE OF AUTHORITIES.....	4
3. NATURE OF PROCEEDINGS/FACTS.....	6
4. ARGUMENT	11
5. CONCLUSION.....	30
6. CERTIFICATION OF BRIEF AND APPENDIX.....	32
APPENDIX OF PLAINTIFFS-APPELLANTS.....	34
TABLE OF CONTENTS – APPENDIX.....	35

1. STATEMENT OF ISSUES

	Pages
I) WHETHER THE TRIAL COURT ERRED IN NOT FINDING THAT THE DEFENDANT VIOLATED C.G.S. SECTION 31-51q IN DISCHARGING THE PLAINTIFF.	11-23
II) WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THE PLAINTIFF DID NOT PROVE A CAUSAL CONNECTION BETWEEN HER PROTECTED SPEECH AND DEFENDANT'S RETALIATORY DISCHARGE OF HER EMPLOYMENT.	23-30

2. TABLE OF AUTHORITIES

Cases

<i>Armstrong-Grice v. Cmty. Health Servs.</i> 2011 Conn. Super. LEXIS 796, Superior Court of Connecticut, Judicial District of Hartford at Hartford, Docket No. CV106012800S (March 30, 2011).....	14,15
<i>Blue v. City of New Haven</i> , No. 3:16-CV-1411 (MPS), 2019 U.S. Dist. LEXIS 15104, 2019 WL 399904, at (D. Conn. Jan. 31, 2019).....	13
<i>Bracey v. Bd. of Educ. of City of Bridgeport</i> , 368 F.3d 108 (2d Cir. 2004).....	12
<i>Buscetto v. St. Bernard High School</i> , Superior Court, Judicial District of New London, Docket No.CV-11-6011089-S (July 25, 2014, Devine J.) (58 Conn. L. Rptr. 764, 765-66, 2014 Conn. Super. LEXIS 1898).....	22
<i>Colonna v. Baran Institute of Technology, Inc.</i> , Superior Court, judicial district of Hartford, Docket No. CV 09 4042637, 2011 Conn. Super. LEXIS 149 (January 26, 2011, Peck, J.).....	14
<i>Connick v. Myers</i> , 461 U.S. 138, 146, 103 S. Ct. 1684, 75 L. Ed. 2d 708, (1983).....	12
<i>Cornelio v. Connecticut</i> , 32 F.4 th 160, 170 (2 nd Cir. 2022).....	15
<i>Cotto v. United Techs. Corp., Sikorsky Aircraft Div.</i> , 48 Conn. App. 618, 631, 711 A.2d 1180, aff'd 251 Conn. 1, 738 A.2d 623 (1998).....	14
<i>Cubilla v. Montville</i> , Superior Court, judicial district of New London, Docket No. CV-11-6010874-S (March 18,2014, Cole-Chu, J.) (57 Conn. L. Rptr. 860,865, 2014 Conn. Super. LEXIS 669).....	24
<i>Daley v. Aetna Life & Cas. Co.</i> , 249 Conn. 766, 776, 734 A.2d 112 (1999).....	12
<i>Espinal v. Goord</i> , 558 F.3d 119, 129 (2d Cir. 2009).....	28
<i>Garcia v. State Univ. of New York Health Sci. Ctr. of Brooklyn</i> , 280 F.3d 98, 106 (2d Cir. 2001);.....	12
<i>Garcetti v. Ceballos</i> , 547 U.S. 410, 126 S. Ct. 1951 (2006).....	13,23
<i>Gorman-Bakos v. Cornell Cooperative Extension Assn. at Schenectady County</i> , 252 F.3d 545, 554 (2d Cir. 2001).....	28

<i>Grant v. Bethlehem Steel Corp.</i> , 622 F.2d 43, 45-46 (2d Cir. 1980).....	29
<i>Hammond v. Bridgeport</i> , 139 Conn. App. 687, 695-96, 58 A.3d 259 (2012), cert. denied, 308 Conn. 916, 62 A.3d 527 (2013).....	24
<i>Kordick v. Greenwich</i> , Superior Court, judicial district of Stamford/Norwalk, Docket No. CV-20-6047359-S, 2022 Conn. Super. LEXIS 2630 (November 29, 2022, Krumeich, J.).....	22
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).....	23,24
<i>Nyenhuis</i> , 2011 U.S. Dist. LEXIS 71030, 2011 WL 2618965, at *4....	12
<i>Perez-Dickson v. Bridgeport Board of Educ.</i> , Superior Court, judicial district of Fairfield, Docket No. CV-13-6033116-S, 2016 Conn. Super. LEXIS 3233 (December 5, 2016, Kamp, J.).....	24
<i>Quinn v. Green Tree Credit Corp.</i> , 159F.3d 759, 769 (2d Cir. 1998)...	29
<i>Raible v. Essex Yacht Club, Inc.</i> , Superior Court, judicial district of New London, Docket No. CV 03 0564783 (August 19, 2003, Hurley, J.T.R.).....	13
<i>Reed v. A.W. Lawrence & Co.</i> , 95 F. 3d 1170, 1178 (2d Cir. 1996)....	28,29
<i>Richardson v. New York State Department of Correctional Services</i> , 180 F.3d 426, 446-47 (2d Cir. 1999).....	29
<i>Separ v. Nassau Cnty. Dept. of Soc. Servs.</i> , No. 11-CV-2668, 2014 U.S. Dist. LEXIS 126054, 2014 WL 4437676, at *7 (E.D.N.Y. Sept. 9, 2014).....	28
<i>Sobczak v. Meriden Board of Education</i> , Superior Court, judicial district of New Haven, Docket No. CV 419547, 2000 Conn. Super. LEXIS 2574 (October 6, 2000, Levin, J.).....	14
<i>Stern v. Trustees of Columbia University</i> , 131 F.3d. 313 (2 nd Cir. 1997).....	27
<i>Summa v. Hofstra Univ.</i> , 708 F.3d 115, 127 (2d Cir. 2013).....	28,29
<i>Trusz v. UBS Realty Investors, LLC</i> 319 Conn. 175, 211 123 A.3d 1212 (2015).....	12,13,15,23

3. NATURE OF PROCEEDINGS/FACTS

The instant appeal arises from the trial court's entry of a judgment in favor of the Defendant after a court trial. The instant matter was tried before the court (Povodator, JTR) on October 22, 2024, October 23, 2024, November 18, 2024 and January 22, 2025. Judgment in favor of the Defendant was entered by a memorandum of decision dated November 10, 2025. (Clerk's Appdx. Pgs. 17-50) The Plaintiff has appealed from the court's decision. (Clerk's Appdx. Pg. 51) The Plaintiff's action against the Defendant arises from her wrongful employment discharge. The Plaintiff has alleged in her single count complaint that the Defendant violated Connecticut General Statute Section 31-51q when it discharged the Plaintiff. (Clerk's Appdx pgs. 10-13)

The Plaintiff, Megalie Semexant-Coffy, graduated from law school in 1998. (Pl. Trans. 10/22/24, pg. 50) The Plaintiff began her employment for the Defendant, State of Connecticut Judicial Branch when she was appointed to the position of Temporary Assistant Clerk-Assigned to Housing Court on October 27, 1998. (Pl. Trans. 10/22/24, pg. 50-51) She was transferred to the position of Housing Mediator (also referred to as mediation specialist) on December 3, 2000 working at the Norwalk and Bridgeport Housing Courts the Plaintiff would mediate cases involving landlords and tenants. (Pl. Trans. 10/22/24; pg. 55) When the Plaintiff started as a Housing Mediator, there were approximately 8-10 Housing Mediators in the state and formal training for the position did not exist. (Pl. Trans. 10/22/24; pg. 61) The Plaintiff served as a Mediation Specialist I in the Norwalk and Bridgeport Housing Courts. (Pl. Trans. 10/22/24, pg. 57) The Plaintiff continued in that position until March 1, 2017 when she was discharged from employment for alleged unexcused absences and attendance issues. (Plaintiff's Exhibit 2) Cynthia Teixeira previously was the Plaintiff's

direct supervisor. (Pl. Trans. 10/22/24, pg. 64) Eventually, Ms. Teixeira reported to Roberta Palmer, Deputy Director for Civil Housing and Small Claims Matters when the Plaintiff was a housing mediator. (Pl. Trans. 10/22/24; pg. 64) Ms. Teixeira was located in New Haven. (Trans. 10/22/24; pg. 64) Ms. Teixeira supervised all housing mediators. (Trans. 10/22/24; pg. 67) The Plaintiff would be reviewed by Ms. Teixeira annually. (Trans. 10/22/24; pg. 67) When Ms. Teixeira went on medical leave in late October or early November 2015, Ms. Palmer became the direct supervisor of the mediation specialists until Ms. Teixeira returned. (Trans. 10/22/24; pg. 95-96) On July 1, 2016, Ms. Teixeira formally retired and Ms. Palmer became the permanent supervisor of the mediation specialists. (Defendant's Exhibit O) The Plaintiff was not disciplined until she was under the direct supervision of Ms. Palmer. (Trans. 10/22/24; pg. 140-141) Starting under the supervision of Ms. Palmer, the Plaintiff received notices of investigatory and predisciplinary meetings. (Trans. 10/22/24; pg. 141-142)

Prior to the Plaintiff's discharge she was requested to attend investigative and pre-disciplinary meetings at the Defendant, Judicial Branch offices in Hartford. The meetings were scheduled concerning alleged attendance issues and unexcused absences of the Plaintiff. (Plaintiff's Exhibit 3; Defendant's Exhibits E,F,G) The meetings were held on October 26, 2015; December 10, 2015; November 15, 2016 and January 19, 2017. (Pl. Exhibit 3; Defendant's Exhibits E,F,G) The Plaintiff attended the meetings with her Union attorney, Marshall Segar who was copied on the investigatory and pre-disciplinary hearing notices. Roberta Palmer and Tais Ericson who was the Director of Court Operations were copied on all meeting notices except the first meeting notice. (Exhibits D, E, F, G) Roberta Palmer and Tais Ericson previously approached, Joseph D'Alesio the Executive Director of Superior Court Operations, and arranged for themselves to work a flex-schedule

(sharing a job) to accommodate their child care responsibilities and continuing education options. (Pl. trans., 10/22/24, pg. 124-127) Mr. D'Alesio was Executive Director of Court Operations at the time of the request by Ms. Palmer and Ms. Ericson, for a flex-time schedule (which had not been previously done at the Judicial Branch). Mr. D'Alesio signed the Plaintiff's termination letter. (Pl. Exhibit 2)

Prior to Ms. Palmer becoming Plaintiff's supervisor, a flex time policy existed in which employees would be allowed to make-up time missed from work if they came to work late or needed time off by working through lunchtime or staying at work late or by coming in early on a subsequent day. (Trans. 10/22/24; pg. 98) All mediators used the flex time policy including Ms. Palmer. (Trans. 10/22/24; pg. 99) When Roberta Palmer became Plaintiff's direct supervisor in 2016 she changed a previous flex-time procedure whereby employees would be able to make up time by staying late or coming to work early to make up for missed time at work. (Pl. Trans. 10/22/24, pg. 102) Roberta Palmer claimed that prior approval was needed to use flex-time which procedure was not previously implemented. (Def. Exhibit N) Ms. Palmer was the individual who investigated and monitored the Plaintiff's attendance reporting it to the Defendant, Judicial Branch, claiming that the Plaintiff was taking unauthorized time off from work and not properly reporting her work time. (Palmer Trans. 1/22/25, pgs. 50-51)

During the investigative and pre-disciplinary meetings held by the Defendant, Judicial Branch, concerning the Plaintiff's attendance Roberta Palmer was also in attendance for some of the meetings, together with Jon Lucas who was a Program Manager tasked with investigating personnel matters for the Court Operations Administration. (Lucas Trans. 10/23/24, Excerpt 2:01 to 3:01, pg. 20-21) During the investigative and pre-disciplinary meetings held in November 15, 2016 and January 19, 2017 the Plaintiff reported to the

Defendant that Roberta Palmer a supervisor of Housing Court mediators and Deputy Director of Civil Housing and Small Claims Matters had inappropriately and unethically committed theft of time during her employment with the Defendant State of Connecticut Judicial Branch, and had been paid through public funds, including taxpayer funds, for time that she had not worked. (Pl. Trans. 10/22/24, pgs. 180-181) Mr. Lucas in his meeting note with the Plaintiff on January 19, 2017 indicates that Plaintiff stated that "Ms. Palmer should be investigated for her theft of time". (Exhibit DD) Within approximately ninety (90) days of reporting the theft of time by her supervisor, the Plaintiff was discharged from employment, by the Defendant on or about March 1, 2017. (Pl. Ex. 2). The Plaintiff was discharged from employment by the Defendant, State of Connecticut Judicial Branch for alleged unexcused absences and attendance issues. (Pl. Ex. 2)

The Plaintiff as a union employee filed a grievance of her termination. (Pl. Trans. 10/22/24, pg. 192) Arbitration hearings were held in response to the Plaintiff's grievance on February 26, 2018, December 5, 2018 and February 8, 2019. (Pl. Ex. 1) Plaintiff presented testimony at the arbitration proceedings. (Pl. Trans. 10/22/24, pg. 193) During the arbitration proceedings, evidence was presented concerning the misuse and theft of time by the Plaintiff's supervisor, Roberta Palmer. (Pl. Ex. 1, pg. 22-23) Roberta Palmer presented testimony in support of Plaintiff's termination. (Pl. Trans., 10/22/24, pg. 196) The arbitrator rendered a decision dated July 8, 2019 finding that the Defendant did not properly follow a progressive disciplinary process when it discharged the Plaintiff. (Pl. Exhibit 1, pg. 40) The arbitrator ordered that the Plaintiff be reinstated to her position as Mediation Specialist II/Housing within 30 days of the arbitrator's decision. (Pl. Ex. 1, pg. 41) No award was made for back pay or benefits from the

termination date to the date the Plaintiff was reinstated. (Pl. Ex. 1, pg. 42) The Plaintiff was reinstated to her employment with the Defendant and continues to be employed by the Defendant as a Mediation Specialist for Housing Court in the Bridgeport and Stamford Judicial Districts.

The arbitrator in his decision in reinstating the Plaintiff to employment examined whether other similarly situated employees were treated the same as the Plaintiff. (Pl. Ex.1, pg. 39) The arbitrator noted the variation in discipline to similarly situated employees as reflected by evidence presented at the arbitration proceedings concerning Roberta Palmer's attendance record. (Pl. Ex. 1, pg. 39) The arbitrator found that a review of Ms. Palmer's record of tardiness was appropriate "particularly since she was the Plaintiff's supervisor at the time the termination was issued to the Plaintiff." (Pl. Ex. 1, pg. 39) The arbitrator found it was clear from the evidence that Ms. Palmer was the supervisor who announced and implemented the stricter enforcement of the rules, and she was the one to raise the issue with the Plaintiff directly and through her annual review.(Pl. Ex.1, pg. 39) The arbitrator found that Ms. Palmer had numerous occasions on which she agreed she was tardy. (Pl. Ex.1, pg. 39) On other occasions Ms. Palmer was not clear on the reason that records indicated that she was tardy. (Pl. Ex. 1, pg. 39) In addition, although Ms. Palmer raised concern with the Plaintiff for not making appropriate entry in the travel log, Ms. Palmer agreed that while attending the first day of the arbitration hearing she did not make an entry in the travel log. (Pl. Ex.1, pg. 39)The arbitrator further found that although Ms. Palmer agreed that she self-reported her tardiness to her supervisor, and considered her own tardiness to be a problem, she never received discipline for her tardiness. (Pl. Ex. 1, pg. 39)

The Plaintiff was not paid for the time she was out of work which lost pay occurred from March 1, 2017 through her reinstatement in August 2019. (Trans. 10/22/24; pg. 214-216) The Plaintiff has claimed in the instant case that the Defendant's retaliation and discharge of the Plaintiff was in violation of the Plaintiff's Freedom of Speech, in violation of Connecticut General Statutes Section 31-51q section 3, 4 and/or 14 of Article First of the Constitution of the State of Connecticut. As a direct and proximate result of the conduct of the Defendant's actions as aforesaid, the Plaintiff has alleged she has lost earnings and benefits, her earning capacity has been substantially impaired, she has lost and will continue to suffer from humiliation and severe physical and emotional injuries and distress, she has and will continue to incur litigation expenses and attorney's fees and the quality of her life has been substantially diminished, all to her loss and detriment.

4. ARGUMENT

I. THE TRIAL COURT ERRED IN NOT FINDING THAT THE DEFENDANT VIOLATED C.G.S. SECTION 31-51q IN DISCHARGING THE PLAINTIFF.

The Plaintiff maintains that her retaliatory termination violated Connecticut General Statutes § 31-51q, which provides in relevant part:

“Any employer, including the state . . . who subjects any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution or section 3, 4 or 14 of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer,

shall be liable to such employee for damages caused by such discipline or discharge, including punitive damages, and for reasonable attorney's fees as part of the costs of any such action for damages".

In brief, the statute prohibits the retaliatory discharge of employees who invoke "constitutionally guaranteed free speech rights that, in turn, protect statements that address a matter of public concern." *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 776, 734 A.2d 112 (1999). Federal First Amendment retaliation law is often employed when evaluating whether retaliation occurred in § 31-51q claims. See, e.g., *Bracey v. Bd. of Educ. of City of Bridgeport*, 368 F.3d 108 (2d Cir. 2004), but state constitutional free speech claims are examined under the more broad Connecticut First Amendment Free Speech standard.

Section 31-51q is not limited to freedom of speech in the public arena. The statute applies to expressions regarding public concerns that are motivated by an employee's desire to speak out as a citizen. Speech on a matter of public concern relates "to any matter of political, social, or other concern to the community." *Connick v. Myers*, 461 U.S. 138, 146, 103 S. Ct. 1684, 75 L. Ed. 2d 708, (1983); *Garcia v. State Univ. of New York Health Sci. Ctr. of Brooklyn*, 280 F.3d 98, 106 (2d Cir. 2001); *Nyenhuis*, 2011 U.S. Dist. LEXIS 71030, 2011 WL 2618965, at *4.

Plaintiff's Section 31-51q claim that she engaged in speech protected by the Connecticut Constitution is governed by a less stringent standard than a Federal free speech standard. The Connecticut Supreme Court held in *Trusz v. UBS Realty Investors, LLC* 319 Conn. 175 (2015) that the Connecticut Constitution provides broader protection for employee speech than does the federal Constitution, *and protects even speech made pursuant to an employee's official job duties as long as the speech is a "comment on official dishonesty, deliberately unconstitutional action, other serious*

wrongdoing, or threats to health and safety . . ." 319 Conn. 175, 211, 123 A.3d 1212 (2015) (emphasis added) (quoting *Garcetti*, 547 U.S. at 435 (Souter, J., dissenting)); see also *id.* at 179 (holding that section 31-51q "extends the same protection to employee speech pursuant to official job duties in the private workplace" as is provided by the Connecticut Constitution). The court in *Trusz* found that a threshold analysis of whether the speech was pursuant to official job duties is not required and such speech may still be protected by the state constitution. *Id.* at pg. 179. The *Trusz* standard applies even when an employee is speaking pursuant to official job duties. *Id.* at pg. 216-17. Speech is protected even when an employee speaks pursuant to her official duties, if it involves a matter of public concern and is comment on "official dishonesty, deliberately unconstitutional action, other serious wrongdoing, or threats to health and safety." *Id.* at 216-17; see also *Blue v. City of New Haven*, No. 3:16-CV-1411 (MPS), 2019 U.S. Dist. LEXIS 15104, 2019 WL 399904, at (D. Conn. Jan. 31, 2019) The Plaintiff's speech about theft of time by a Judicial Department Supervisor is protected speech pursuant to the standard in *Trusz*. The Plaintiff was speaking as a citizen on a matter of public concern when she complained about her supervisor's theft of time. The court in *Trusz* clarified that speech is protected even when an employee's speech is pursuant to her official job duties. *Trusz* at pg. 216-17.

The Plaintiff in the instant case spoke about official dishonesty, theft of public funds in that her supervisor was paid for time she did not work. (Trans. 10/22/24; pgs. 180-181) "When employees speak out about potentially illegal activities of their employers that affect third parties or the community at large, courts have held that public concerns are implicated." *Trusz v. UBS Realty Investors*, No. 3:09cv268 (JBA), 2010 U.S. Dist. LEXIS 30374, 2010 WL 1287148, at *9 (D. Conn. Mar. 30, 2010) (citing cases).

The Connecticut Supreme Court has held that "[a]n example of an issue of public concern is one involving the expenditure of public funds . . ." *Cotto v. United Techs. Corp., Sikorsky Aircraft Div.*, 48 Conn. App. 618, 631, 711 A.2d 1180, aff'd 251 Conn. 1, 738 A.2d 623 (1998). In addition, the judges of the Superior Court have held that an issue involving government funds is a matter of public concern, particularly where fraud is involved. See *Colonna v. Baran Institute of Technology, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV 09 4042637, 2011 Conn. Super. LEXIS 149 (January 26, 2011, Peck, J.) (statements related to efforts to defraud the state and local government involve a matter of public concern); *Raible v. Essex Yacht Club, Inc.*, Superior Court, judicial district of New London, Docket No. CV 03 0564783 (August 19, 2003, Hurley, J.T.R.) (35 Conn. L. Rptr. 295, 298, 2003 Conn. Super. LEXIS 2474) ("speech made by employee concerning an employer's potential tax evasion implicates public policy"); *Sobczak v. Meriden Board of Education*, Superior Court, judicial district of New Haven, Docket No. CV 419547, 2000 Conn. Super. LEXIS 2574 (October 6, 2000, Levin, J.) (the inflation of a public employee's overtime hours is a matter of public concern). In addressing a motion to strike the court in *Armstrong-Grice v. Cmty. Health Servs.* 2011 Conn. Super. LEXIS 796, Superior Court of Connecticut, Judicial District of Hartford at Hartford, Docket No. CV106012800S (March 30, 2011), found that the plaintiff has alleged that each year the Defendant employer received money from the state and federal governments. The court also found that the Plaintiff also alleged that she was terminated for speaking out about the improper use of government funds. "Therefore, as pleaded and as can be reasonably inferred, the subject matter of the plaintiff's statements was a matter of public concern because it relates, *inter alia*, to the defendants' attempts to defraud the state and federal governments by

misusing funds.” *Armstrong-Grice v. Cmty. Health Servs.* The court in *Armstrong-Grice* also found that the plaintiff had sufficiently plead that she was terminated for speaking out about the improper use of government funds.

The trial court improperly decided that the Plaintiff did not speak out about an issue of public concern. (Clerk Appdx., pg. 40) The trial court improperly conflates whether the Plaintiff’s supervisor actually committed a theft of time. (i.e., “Again, a major distinguishing feature is the unchallenged assertion of Ms. Palmer that she obtained approval from her supervisor(s) for variations from her presumed regular hours.”) (Clerk’s Appdx. Pg. 36) As action pursuant to 31-51q in which free speech is at issue, is not dependent on whether the issue of public concern is ultimately determined to have occurred, but in the chilling effect of actions in response to the protected speech. *Cornelio v. Connecticut*, 32 F.4th 160, 170 (2nd Cir. 2022) The Plaintiff in the instant case provided evidence that she spoke out on an issue of public concern and the response by her employer-the Defendant, was to retaliate against the Plaintiff for the protected speech. The First Amendment protection for speech is determined by its intent, nature and context at the time it is uttered, not by whether the speaker’s goals are ultimately achieved or if the outcome is successful.

The trial court in the instant case wrongfully analyzed the evidence pertaining to Plaintiff’s statements of her supervisor’s misuse of state funds (theft of time) as not motivated by her desire to speak out as a citizen but as “resisting disciplinary charges directed at her conduct.” (Clerk’s Appdx. Pg. 40) But the trial court’s analysis of the Plaintiff’s speech is contrary to the court’s ruling in *Trusz*, which protects speech made pursuant to job duties as long as the speech is a “comment on official dishonesty.” *Trusz v. UBS Realty Investors, LLC*, 319 Conn. 175, 211, 123 A.3d 1212 (2015).

The Plaintiff in the instant case had sufficiently proven that she spoke out on a matter of public concern, the misappropriation of public funds (taxpayer funds) by a supervisory employee of the State of Connecticut Judicial Branch. Contrary to the trial court's decision, the Plaintiff has sufficiently proven the content, form and context of her speech when she spoke out and reported the misuse of public funds. The Plaintiff presented testimony and evidence that she reported to the Defendant in meetings held on November 15, 2016 and January 19, 2017 at the Judicial Branch offices in Hartford that a supervisor of the Defendant, Roberta Palmer, who was the Deputy Director of Housing and Small Claims civil matters, had inappropriately and unethically committed theft of time during employment with the Defendant, Judicial Branch, in that the Deputy Director for Civil Housing and Small Claims matters (Roberta Palmer) was being paid for time that she did not work, thus defrauding the state government of public funds. (Trans. 10/22/24; pgs. 180-181) The meeting note of January 19, 2017 prepared by the Defendant's investigator Jon Lucas, confirms that the Plaintiff spoke out about Ms. Palmer's time issues. (Trans. 10/23/24, pgs. 17-19) (Def. Exhibit DD, pg. 4) The allegation that a Deputy Director for Civil Housing and Small Claims matters was committing theft of time is clearly a claim of official dishonesty by an individual being paid through taxpayer funds. The Plaintiff had sufficiently proven that after the Plaintiff made her complaint about the dishonesty and theft of public funds by the Deputy Director for Civil Housing and Small Claims matters, the Plaintiff was treated negatively, adversely and in a disparate manner in that she was improperly discharged on March 1, 2017 without the application of a progressive disciplinary policy which discharge was subsequently determined by an arbitrator to be improper and that the Defendant's progressive disciplinary policy was not properly used and the Plaintiff

was reinstated to her job in August 2019, after over two years from when she was wrongfully discharged. (Pl. Ex.1) The Plaintiff in the instant case had meetings with the Defendant, Judicial Branch, at the human resources office on November 13, 2016 and January 19, 2017 prior to the Plaintiff's discharge in March 1, 2017. (Pl. Ex. 2,5,6) (Trans. 10/22/24 pg. 180-181) During the meetings with the Defendant, the Plaintiff raised the fact that the Plaintiff's supervisor, Roberta Palmer, was committing theft of time by not reporting for work when she was claiming she was at work. (Trans. 10/22/24; pg. 180-181) (Trans. 10/23/24, Vol I, pg. 19-20) Ms. Palmer as indicated above, was a Deputy Director for Civil Housing and Small Claims matters which included the Housing Mediators at court and was a supervisor of the Plaintiff who provided the information to discharge the Plaintiff. (Palmer Trans. 1/22/25, pgs. 48, 51-53)

In 2016 the Defendant raised accusations against the Plaintiff concerning excessive absences and unexcused absences. (Pl. Trans. 10/22/24; pg. 170) (Def. Ex. Q) Roberta Palmer was monitoring the Plaintiff's time. (Pl. Trans. 10/22/24 pgs. 169) The Defendant, while accusing the Plaintiff of excessive absences, which the Plaintiff denied, had in place a flex time policy which permitted employees such as the Plaintiff to make up for missed time (such as coming in late), by working later or working additional time on a subsequent day. (Pl. Trans. 10/22/24; pg. 57) When the Plaintiff was accused of unauthorized absences in 2016, she had meetings with the Defendant at the Judicial Branch human resources office and reported the theft of time of her supervisor, Roberta Palmer, which meetings as indicated above, were held in October through December 2016 and January, 2017. (Trans. 10/22/24; pgs. 180-181) (Trans. 10/23/24, Vol I, pg. 19-20) Within approximately 90 days of the meetings in which the Plaintiff accused her supervisor of theft of time, the Plaintiff was discharged on

March 1, 2017, (Pl. Ex. 2) which discharge was later reversed by the arbitrator, which arbitrator determined that a progressive disciplinary policy was not properly followed and which arbitrator noted that Ms. Palmer misreported her work time for periods when she was not at work and that Ms. Palmer was not disciplined. (Pl. Ex. 1)

The Defendant's program manager, John Lucas, who conducts investigations on behalf of the Defendant, Judicial Branch, personnel services, testified that he conducts investigations concerning disciplinary or potential disciplinary matters involving personnel matters for the Defendant, Judicial Branch. (Lucas Trans. 10/23/24, Excerpt 2:01 to 3:01, pg. 20-21) Mr. Lucas confirmed he was ordered to conduct investigations of the Plaintiff pertaining to attendance issues. As part of the investigation into the Plaintiff's attendance, Mr. Lucas testified that he spoke to Roberta Palmer who was becoming supervisor of the Housing Session division of civil matters. (Tran. 10/23/24, Vol II, pg. 5-6) Mr. Palmer was the source of information supplied to Mr. Lucas which ultimately led to the Plaintiff's termination. Ms. Palmer initially in October 2015 indicated to Mr. Lucas that she "always heard about problems with her (the Plaintiff) in the past. (Def. Ex. E) During the pre-disciplinary meeting of December 10, 2015, Mr. Lucas indicated in his meeting note with the Plaintiff at which meeting Ms. Palmer was present, that the Plaintiff's position was "that the common thread is Roberta Palmer". (Def. Ex. K, pg. 2)

Plaintiff testified that she also reported Ms. Palmer's tardiness and inaccurate time reporting initially in November 2016. (Trans. 10/22/24, pgs. 180-181; Trans. 10/23/24, pg. 19-20) Subsequent to reporting Ms. Palmer's theft of time, Ms. Palmer in an email communication to Mr. Lucas on December 2, 2016, stated that the Plaintiff "often plays games" with her time entries. (Def. Ex. U) On

December 21, 2016, about two and one half months before the Plaintiff's discharge, Ms. Palmer sent an email to Mr. Lucas inquiring "I haven't heard anything about where we stand presently with the issues of Magalie's time . . . This is such a problem!!!" (Def. Ex. X, pg. 3) In an email dated December 29, 2019 by Ms. Palmer to Jon Lucas and Julie Rooney, Ms. Palmer reports that Plaintiff did not get prior approval for a request for time off and as a result, Ms. Palmer considered the Plaintiff to have an unauthorized leave. (Def. Ex. Y) On January 9, 2017, Ms. Palmer had further email communication with Mr. Lucas concerning the Plaintiff's attendance with Ms. Palmer providing information to Mr. Lucas about the Plaintiff's attendance. (Def. Ex. AA, BB) In addition, the Defendant's pre-disciplinary correspondence dated January 17, 2017 (Pl. Ex. 6) indicates that a pre-disciplinary meeting would be held on January 19, 2017 to determine if just cause exists to impose discipline for specific dates that are the pre-disciplinary characterized as "unauthorized absences". All the dates in the pre-disciplinary meeting notice are dates that Ms. Palmer reported to Mr. Lucas that the Plaintiff allegedly had unauthorized leave. (See Def. Ex. U,X,Y) (Trans. 1/22/25, pgs. 18,20,22-26) These same dates that were provided by Ms. Palmer were repeated in the Defendant's termination letter given to the Plaintiff. Again, Ms. Palmer supplied the information to facilitate the discharge of the Plaintiff. (Trans. 1/22/25, pg. 53-54) Before the Plaintiff was discharged, on March 1, 2017, Mr. Lucas in his meeting note of pre-termination meeting note of January 19, 2017, indicates that a complaint is being made on behalf of the Plaintiff that the time card swipes of Ms. Palmer are "off" in that Ms. Palmer is not accurately reporting her own time. (Def. Ex. DD, pg. 4)

Mr. Lucas inquired of Ms. Palmer concerning a flex-time policy or procedure, in which employees who came in late or missed time

would be allowed to make up the time on the date of missed time or on a later date. Mr. Lucas testified there was an issue as to the interpretation of the flex-time policy and how it could be used by employees, and Ms. Teixeira applied it differently than Ms. Palmer. (Trans. 10/23/24, Vol. 3, pg. 29) The Plaintiff had indicated that a flex-time procedure was allowed when she reported to her previous supervisor, Cynthia Teixeira. (Lucas Trans. 10/22/24, pg. 62) There was a disagreement as to the interpretation and/or application of the flex-time policy between the supervisors, Ms. Teixeira and Ms. Palmer. (Lucas Trans. 10/23/24, pg. 29, Vol. 3) The initial unauthorized absence investigation by Mr. Lucas resulted in a stipulated agreement between the Defendant and Judicial Branch (Plaintiff's Exhibit 7) The stipulated agreement was dated November 16, 2016. (Plaintiff's Exhibit 7) The stipulated agreement provided that the next occasion of unauthorized leave will result in a fifteen day suspension. (Plaintiff's Exhibit 7) The stipulation did not make any reference to termination of employment as a part of the discipline. (Plaintiff's Exhibit 7)

As indicated above, the Plaintiff testified that she complained about the theft of time by her supervisor, Ms. Palmer, including in November 2016. (Pl. Trans. 11/23/24, pgs. 19-21) Immediately after the stipulation, and after the Plaintiff complained about Ms. Palmer's theft of time, Ms. Palmer monitored the Plaintiff's attendance and Ms. Palmer provided Mr. Lucas with alleged new dates of unauthorized absences by the Plaintiff. (Def. Exhibit V)) (Lucas Trans., 10/23/24, pgs. 7-8) Ms. Palmer also acknowledged that after November 2016 she participated in investigating the Plaintiff's work time. (Palmer Trans., 1/22/25, pgs. 51-52) A pre-disciplinary meeting was held on January 19, 2017 pertaining to alleged new unauthorized absences of the Plaintiff which information against the Plaintiff was provided by Ms.. Palmer (Palmer Trans., 1/22/25, pgs. 51-52) (Lucas Trans. 10/23/24,

Vol. 2, pg. 16) The information about the Plaintiff's absences provided by Ms. Palmer to Mr. Lucas also contained Ms. Palmer's critical opinions about the Plaintiff, including that the Plaintiff was "such a problem" (Def. Exhibit X) (Palmer Trans., 1/22/25 pg. 20); that the Plaintiff "often plays games" with her time entries (Def. Exhibit U); Ms. Palmer inquiring of Mr. Lucas concerning the status of the investigation into the Plaintiff (Def. Exhibit Y), by highlighting attendance issues with the Plaintiff, addressing an email "FYI" about the Plaintiff (Def. Exhibit Y). Ms. Palmer after the Plaintiff presented a complaint about her in November 2016, was presenting her (Ms. Palmer's) own critical opinions and commentary about the Plaintiff. (Lucas Trans., 10/23/24, Vol. II, pg. 16) Mr. Lucas admitted that an issue was raised on behalf of the Plaintiff concerning Ms. Palmer's attendance issues and theft of time, indicating in his own meeting note that it was alleged on behalf of the Plaintiff at her pre-disciplinary meeting on January 19, 2017, that Ms. Palmer should be investigated for her theft of time. (Exhibit DD) The Plaintiff was discharged in March 1, 2017 after the pre-disciplinary hearing on January 19, 2017 with the discharge taking place after Ms. Palmer's attendance and theft of time claims were raised by the Plaintiff. At meetings held before the Plaintiff's discharge (which meetings were held in November, 2016 and January, 2017) issues were raised about Ms. Palmer's attendance and theft of time.

As indicated above the investigation that led to the Plaintiff's discharge was based on a claim that the Plaintiff had unexcused absences, which dates of unexcused absences was provided to Mr. Lucas by Roberta Palmer. Mr. Lucas then reported back to his supervisor, Maria Wells, who was the Deputy Director of Administration for the Judicial Branch. (Lucas Trans., 10/23/24, Vol. 2, pg. 21) After Ms. Palmer's attendance issues were raised by the

Plaintiff (Exhibit DD), and after receiving dates from Ms. Palmer that the Plaintiff had alleged unexcused absences, Mr. Lucas reported back to his supervisor, Ms. Wells, and the Plaintiff was subsequently discharged. (Exhibit 2). Although Mr. D'Alesio signed the Plaintiff's termination letter, testimony was presented that the letter was prepared by Mr. Lucas (who after conducting the investigation into the Plaintiff's alleged unexcused absences, used dates of unexcused absences which were provided by Ms. Palmer). (See also, Palmer Trans. 1/22/25, pg. 54)

In *Buscetto v. St. Bernard High School*, Superior Court, Judicial District of New London, Docket No.CV-11-6011089-S (July 25, 2014, Devine J.) (58 Conn. L. Rptr. 764, 765-66, 2014 Conn. Super. LEXIS 1898), the court addressed two incidents alleged to be matters of public concern: (1) one demonstrating the mismanagement of funds and charitable donations; and, (2) the other relating to the conduct of the facilities director and student safety. The court found that the misappropriation of funds was a public concern because it was important to all parties involved that the donations were used for the stated purposes for which they were given. *Id.*, 768-72, 2014 Conn. Super. LEXIS 1898. As for the employer's illegal or fraudulent behavior, such acts have consistently been found by our courts to be a matter of public concern. *Id.*, 770, 2014 Conn. Super. LEXIS 1898

The Plaintiff's complaints about misappropriation of public funds by a supervisor who was paid for time not worked alleges facts to support speech related to a matter of political, social, or a community concern and the Plaintiff has specifically alleged that actions in the misuse of state funds was unethical and theft of time from the state. The misuse of taxpayer funds by public employees is not a private matter but pertains to a matter of public concern. The Plaintiff has

sufficiently proven a claim in support of an alleged violation of Connecticut General Statutes Section 31-51q.

The Connecticut Supreme Court decision of *Trusz v. UBS Realty Investors, LLC*, 319 Conn. 175, 123 A.3d 1212, 2015 in which our Supreme Court took a broader view of defining which work place speech would be considered a Constitutional violation. Significantly, the court noted the difference between the Federal and State Constitution of Connecticut. The court in *Trusz* in distinguishing the Federal constitution indicated that the state constitution includes a principle that speech on *all* subjects should be protected to the maximum extent possible. (The *Trusz* case distinguished *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951 (2006)) As the court in *Trusz* has indicated, a much broader approach in protecting free speech indicating such speech on matters of public concern should be protected to the “maximum extent possible.” The trial court erroneously interpreted the law pertaining to whether the Plaintiff, about an issue of public concern, pursuant to the court’s decision in *Trusz*, the Plaintiff’s speech, although made during her employment pertaining to a supervisor’s theft of time, is protected speech that does not lose its protected basis simply because the Plaintiff may have been involved in employment disciplinary meetings.

II. THE PLAINTIFF HAD PROVEN A CAUSAL CONNECTION BETWEEN HER PROTECTED SPEECH AND DEFENDANT’S RETALIATORY DISCHARGE OF HER EMPLOYMENT.

Section 31-51q retaliation claims have been analyzed using the three-step *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) burden-shifting analysis. See *Perez-Dickson v. Bridgeport Board of Educ.*, Superior Court, judicial district of Fairfield, Docket No. CV-13-6033116-S, 2016 Conn. Super. LEXIS

3233 (December 5, 2016, Kamp, J). "Under this framework (when opposing summary judgment on free speech retaliation claims) [the plaintiff] must first establish a prima facie case of retaliation ... If the court so finds, the burden then shifts to the defendant to offer evidence of a legitimate, nonretaliatory reason for its employment action ... If the defendant succeeds in doing so, the *McDonnell Douglas* presumption of unlawful retaliation falls away, and the burden shifts back to the plaintiff to produce evidence from which a reasonable jury could find that the employer's stated reason is merely pretext for illegal retaliation." (Citation omitted; internal quotation marks omitted.) *Id.* The shifting burden test is instructive in reviewing the evidence presented in the instant case which reflects that the Defendant violated Connecticut General Statute Section 31-51q in discharging the Plaintiff in the instant case.

"Courts in Connecticut have consistently held that the causation element of a section 31-51q claim requires that [the plaintiff] prove that his speech was at least a substantial or motivating factor in the adverse employment action ... " *Cubilla v. Montville*, Superior Court, judicial district of New London, Docket No. CV-11-6010874-S (March 18, 2014, Cole-Chu, J.) (57 Conn. L. Rptr. 860,865, 2014 Conn. Super. LEXIS 669). In the instant case, the alleged nonretaliatory reason for termination offered by the defendant was not legitimate, or pretextual for retaliation based on the evidence presented. In the instant case, the Plaintiff was terminated for her reporting her supervisor's theft of time, which was a substantial or motivating factor in her termination and the Defendant's explanation for Plaintiff's discharge which is not the true reason, and the Defendant improperly deviated from its own policies in discharging the Plaintiff.

Sufficient evidence was presented to infer that the decision to terminate the plaintiff was motivated by retaliation. See *Kordick v.*

Greenwich, Superior Court, judicial district of Stamford/Norwalk, Docket No. CV-20-6047359-S, 2022 Conn. Super. LEXIS 2630 (November 29, 2022, Krumeich, J.).

While the Defendant alleged that the Plaintiff was terminated for “theft of time” and unauthorized absences during the investigation of the Plaintiff, prior to her discharge she reported the theft of time of her own supervisor, which supervisor was not discharged or disciplined (Lucas Trans., 10/23/24, Vol. 2, pgs. 11-12), but the Plaintiff was subsequently discharged. (Exhibit 2) A causal connection between the Plaintiff’s speech concerning theft of time committed by a supervisor and the Plaintiff’s discharge may be established by disparate treatment of similarly situated employees.

While the Defendant attempted to prove that the Plaintiff was terminated for “theft of time” and unauthorized absences during the investigation of the Plaintiff prior to her discharge she reported the theft of time of her own supervisor, which supervisor was not discharged, but the Plaintiff was subsequently discharged. *Hammond v. Bridgeport*, 139 Conn. App. 687, 695-96, 58 A.3d 259 (2012), cert. denied, 308 Conn. 916, 62 A.3d 527 (2013) (“evidence ... that a retaliatory motive played a part in the adverse employment action ... may be established ... through ... evidence such as disparate treatment of fellow employees who engaged in similar conduct”). It is clear in the instant case that the evidence reflected that the Plaintiff was treated differently than another employee, Roberta Palmer, which employee admitted at the arbitration proceeding concerning the Plaintiff’s discharge that she (Ms. Palmer) had attendance issues which resulted in misreporting of her own time. (Exhibit 1, pg. 39) The arbitrator in reviewing whether the Plaintiff was properly discharged considered whether other similarly situated employees were treated the same as the Plaintiff. (Exhibit 1, pg. 37) In determining whether the Plaintiff

was treated differently, the Arbitrator noted that Ms. Palmer who the Plaintiff complained about concerning theft of time , was treated differently than the Plaintiff. The arbitrator noted that in pertinent part; "...a review of Palmer's record of tardiness is appropriate particularly since she was the Grievant's supervisor at the time the termination was issued. Moreover it is worthy of note that in her November 19 2015 e-mail to the mediation specialists she stated that she used the JETT system to report her attendance. Even accepting the branch's argument that Palmer was not specifically involved in the decision to terminate the Grievant, it is clear from the evidence that she announced and implemented the stricter enforcement of the rules and she was the one to raise the issue with the Grievant directly and through her annual review..... Palmer had numerous occasions on which she agreed she was tardy. On other occasions she was not clear on the reason that records indicated that she was tardy. In addition, although Palmer raised concern with the Grievant for not making the appropriate entry in the travel log she agreed that while attending the first day of hearing in the instant case (arbitration) she did not make an entry in the travel log. Although Palmer agreed that she self-reported her tardiness to her supervisor, and considered her own tardiness to be a problem she never received discipline for her tardiness." (Exhibit 1, pg. 39) Thus, Mr. Palmer was treated differently than the Plaintiff in that she was not disciplined for her own unauthorized loss of time from work, which disparate treatment creates an inference of a retaliatory motive against the Plaintiff in the instant case. See *Hammond v. Bridgeport*, 139 Conn. App. 687, 695-96, 58 A.3d 259 (2012)

Another method of proving the causal connection between the Plaintiff's protected speech and Defendant's adverse action in discharging the Plaintiff is to present evidence that an employer

departed from its usual employment practices and procedures involving a particular incident involving an employee. *Stern v. Trustees of Columbia University*, 131 F.3d 313 (2nd Cir. 1997). The Defendant's employment policies were not followed in its termination of the Plaintiff in the instant case. The arbitrator in the instant case found that the Defendant, Judicial Branch's policy 518 "relied upon in the letter of termination issued to the Grievant" provides "seven levels of discipline prior to an employee being terminated for 'unauthorized leave'". (Exhibit 1, pg. 40) (Ex. MM) The arbitrator in further explaining that the Defendant did not follow its own disciplinary policy stated ; " It is well established that progressive discipline is intended to provide an employee with the opportunity to correct his or her behavior. In the instant case the Branch's termination letter incorporated suspensions of 15 and 30 days in the same letter that informed the Grievant of her termination however the Branch's own policy provides for seven levels of discipline prior to termination. The fact that other similarly situated employees received last chance agreements after being initially terminated, the Grievant's supervisor had issues with attendance, taken together with the fact that the Branch moved to termination in a manner that is not consistent with the principle of progressive discipline supports the conclusion..... that it (the Defendant) did not have just cause to terminate the Grievant without providing the Grievant with "one last chance". (Exhibit 1, pg. 40) Clearly the Defendant departed from its own progressive disciplinary policy when it wrongfully discharged the Plaintiff. A causal connection between the Plaintiff's protected speech and the Defendant's adverse action in discharging the Plaintiff can also be established indirectly by showing that the protected activity was followed close in time by adverse action; see, e.g., *Reed v. A. W Lawrence & Co.*, 95 F.3d 1170, 1178 (2d Cir. 1996); There is no "bright

line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship between [protected activity] and an allegedly retaliatory action." *Gorman-Bakos v. Cornell Cooperative Extension Assn. at Schenectady County*, 252 F.3d 545, 554 (2d Cir. 2001) inquiry into whether temporal proximity establishes causation is factual in nature. There is no "bright line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship between [protected activity] and an allegedly retaliatory action." *Gorman-Bakos v. Cornell Cooperative Extension Assn. of Schenectady County*, 252 F.3d 545, 554 (2d Cir. 2001). Plaintiff's "presentation of a temporal connection" between the protected activity and the adverse action, can be "enough, in and of itself . . . to permit a reasonable jury to find causation." *Summa v. Hofstra Univ.*, 708 F.3d 115, 127 (2d Cir. 2013); see also *Separ v. Nassau Cnty. Dept. of Soc. Servs.*, No. 11-CV-2668, 2014 U.S. Dist. LEXIS 126054, 2014 WL 4437676, at *7 (E.D.N.Y. Sept. 9, 2014) ("Plaintiff's burden to establish a prima facie case, which is 'minimal,' can be met by proffering evidence of a close temporal connection between the protected activity and the adverse employment action."). There is no "bright line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship between the exercise of a federal constitutional right and an allegedly retaliatory action," and a court must "exercise its judgment about the permissible inferences that can be drawn from temporal proximity in the context of particular cases." *Summa*, 708 F.3d at 128 (quoting *Espinal v. Goord*, 558 F.3d 119, 129 (2d Cir. 2009)) (internal quotation marks omitted). Many cases clearly hold that a Plaintiff can indirectly establish a causal connection to support a discrimination or retaliation claim by "showing that the protected activity (complaining about a supervisors theft of time) was closely

followed in time by the adverse employment action. *Reed v. A.W. Lawrence & Co.*, 95 F. 3d 1170, 1178 (2d Cir. 1996) (citation and quotation marks omitted) *Grant v. Bethlehem Steel Corp.*, 622 F.2d 43, 45-46 (2d Cir. 1980) (finding that the lapse of eight months between an EEOC complaint and retaliatory act indicated a causal connection). *Richardson v. New York State Department of Correctional Services*, 180 F.3d 426, 446-47 (2d Cir. 1999) (abusive acts within one month of receipt of deposition notices may be retaliation for initiation of law suit more than one year earlier); *Quinn v. Green Tree Credit Corp.*, 159F.3d 759, 769 (2d Cir. 1998) (discharge less than two months after plaintiff filed a sexual harassment complaint with management and ten days after filing complaint with state human rights office provided prima facie evidence of a causal connection between protected activity and retaliation);

The Plaintiff was terminated within close temporal proximity to her reporting the actions of her Supervisor. The Plaintiff was discharged within approximately ninety days after she complained of her supervisor's theft of time and being paid for work that she did not perform due to her tardiness or absence from work.

The Plaintiff presented sufficient evidence to prove that the Plaintiff's protected activity was a substantial or motivating factor in causing her termination. Accordingly, retaliation can be inferred from the evidence presented.

The Defendant at trial attempted to claim that it had a legitimate non-retaliatory basis to terminate the Plaintiff, but contrary to this claim and supported by the arbitrator's decision, the Defendant did not have a legitimate basis to terminate the Plaintiff. As indicated above the Defendant treated the Plaintiff differently based on similar conduct committed by the Plaintiff's supervisor, the Defendant failed to follow its own progressive disciplinary policy by summarily

discharging the Plaintiff and the Plaintiff was discharged in close temporal proximity to the Plaintiff's complaint about the Plaintiff's supervisor committing theft of time. (Ex. 1, Arbitrator's decision, pg. 40) as a result the Plaintiff has sufficiently proven that the Defendant acted in a retaliatory manner in discharging the Plaintiff in violation of Connecticut General Statutes Section 31-51q. The Defendant did not have a legitimate non-retaliatory basis to terminate the Plaintiff.

The trial court in its memorandum of decision discusses the issue of damages if on appeal it is determined that it erred in its determination of liability. (Clerk Appdx. Pg. 41) The court's reasoning is improperly based on its reasoning that the arbitration decision already determined that the loss of income for the approximate 28-29 months between her termination and reinstatement by the arbitrator was determined to be "an appropriate sanction for the Plaintiff's misconduct." But the trial court has mistakenly failed to recognize that the arbitrator was making a determination of whether the Plaintiff was wrongfully discharged based on the collective bargaining agreement and the instant action is a separate statutory action for which damages may be awarded based on the Defendant's retaliatory action in violation of Connecticut Constitution.

5. CONCLUSION

For the foregoing reasons the Plaintiff respectfully requests that the trial court's decision granting summary judgment be reversed and that the instant case be remanded for trial.

THE PLAINTIFF-APPELLANT

BY

/s/

JOHN T. BOCHANIS

DALY, WEIHING & BOCHANIS, LLC

1776 North Avenue

Bridgeport, CT 06604

203-333-8500

Juris No. 101227

A.C. 49365

MEGALIE SEMEXANT-COFFY

APPELLATE COURT

v.

**STATE OF CONNECTICUT,
JUDICIAL BRANCH OF THE
STATE OF CONNECTICUT**

AUGUST 3, 2026

6. CERTIFICATION OF BRIEF AND APPENDIX

This is to certify that this Brief and Appendix complies with and conforms to all provisions of P.B. Section 67-2; and that two copies of the foregoing Brief and Appendix has been filed with the Appellate Clerk, 231 Capitol Avenue, Hartford, Connecticut, 06106 and said Brief and Appendix is a true copy of that which was submitted electronically pursuant to Section 67-2(g); and, in accordance with P.B. Section 62-7, and that a copy of the foregoing Brief and Appendix has been sent today to : (1) Attorney Laura Vitale, State of Connecticut, Attorney General's Office, 165 Capitol Avenue, 5th Floor, Hartford, CT 06106, email: laura.vitale@ct.gov; (2) the Honorable Kenneth B. Povodator, Judge, c/o Superior Court, 1061 Main Street, Bridgeport, CT 06604.

The undersigned further certifies, pursuant to Practice Book Section 67-1, that any "Personal Identifying Information" as defined by Practice Book Section 4-7 and prohibited thereby from disclosure has been redacted or is otherwise not revealed in the Brief. The undersigned also certifies that the Appellant's Brief and Appendix has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule,

statute, court order or case law; and certification that the document complies with all applicable Rules of Appellate Procedure.

The undersigned further certifies the following; 1) a copy of the Brief and party Appendix has been sent electronically to each counsel of record in compliance with Section 62-7; 2) the Brief and party Appendix being filed with the Appellate Clerk are true copies of the brief and party appendix that were submitted electronically pursuant to subsection 67-2A; 3) the Brief and part Appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; 4) the word count in the Brief is 7,693; 5) the Brief and Appendix complies with all provisions of Practice Book Sections 67-2A and 67-3 and 67-8; 6) no deviations from Practice Book Section 67-2A were requested.

THE PLAINTIFF-APPELLANT

BY: _____/S/
JOHN T. BOCHANIS
DALY, WEIHING & BOCHANIS, LLC
1776 North Avenue
Bridgeport, CT 06604
Phone: 203-333-8500
Fax: 203-334-0305
Email: lawdwb@sbcglobal.net
Juris No. 101227

FILED UNDER THE ELECTRONIC BRIEFING RULES
APPELLATE COURT

OF THE
STATE OF CONNECTICUT

A.C. 49365

MEGALIE SEMEXANT-COFFY

Plaintiff-Appellant

V.

STATE OF CONNECTICUT, JUDICIAL BRANCH OF
THE STATE OF CONNECTICUT

Defendant-Appellee

APPENDIX OF PLAINTIFF-APPELLANT

JOHN T. BOCHANIS
DALY, WEIHING &
BOCHANIS, LLC
1776 NORTH AVE
BRIDGEPORT, CT 06604
203-333-8500
JURIS NO. 101227
Email: lawdwb@sbcglobal.net

To Be Argued By:
John T. Bochanis, Esq.

TABLE OF CONTENTS – APPENDIX

	PAGE
1. Plaintiff's Trial Exhibit 1-Arbitration Decision.....	36-78
2. Defendant's Trial Exhibit DD-1/19/2017 Meeting Notes of Jon Lucas.....	79-82

In the Matter of the Arbitration

Between

Judicial Professional Employee Union
AFT/CT, AFL-CIO

AWARD/OPINION
Grievance No. 42-11-82

and
State of Connecticut
Judicial Branch

Grievant: Magalie Semexant-Coffy (Termination)

Appearances:

For the Employer- George J. Kelly, Esq.
For the Union - Marshall T. Segar, Esq.

In accordance with the Collective Bargaining Agreement between the State of Connecticut Judicial Branch (hereinafter referred to as the "Branch" or "Employer") and Judicial Professional Employees Union AFT/CT, AFL-CIO (hereinafter referred to as the "Union") the Undersigned was designated as Arbitrator to hear and decide this matter. The Parties agreed to the following issue:

Did the State of Connecticut Judicial Branch have just cause, pursuant to Article 14 of the Collective Bargaining Agreement between the parties to terminate employment of the Grievant, Magalie Semexant-Coffy, on March 1, 2017? If not, what shall be the remedy in accordance with the Collective Bargaining Agreement?

A hearing was held on February 26, 2018, December 5, 2018 and February 8, 2019 in Hartford, Connecticut at which representatives of the Parties appeared. They had full opportunity to offer evidence and argument, including post-hearing briefs and reply briefs. The evidence and all briefs have

been carefully reviewed.¹

Background

Magalie Semexant-Coffy (hereinafter "Grievant" or "Semexant-Coffey")² was appointed to the position of Temporary Assistant Clerk- Accredited on October 27, 1998. She was transferred to the position of Housing Specialist on November 3, 2000, and was promoted to the position of Mediation Specialist II/Housing on December 4, 2009. At all times relevant to this arbitration, the Grievant served as a Mediation Specialist II in the Norwalk and Bridgeport Housing Courts. She continued in that position until March 1, 2017. Cynthia Teixeira (hereinafter "Teixeira") was the Grievant's direct supervisor. Teixeira reported to Roberta Palmer (hereinafter "Palmer") Deputy Director for Civil Matters. When Teixeira went on medical leave in late October or early November 2015 Palmer became the direct supervisor of the mediation specialists until Teixeira returned. On July 1, 2016 Teixeira retired and Palmer became the supervisor of the mediation specialists.

The Grievant testified that her duties included negotiating landlord/tenant disputes, contract disputes, foreclosure issues, and housing code issues. She stated that her goal as a housing mediator was to try to settle cases to prevent a trial. The Grievant noted that she would usually have a partner with her during the mediations. She stated that her job was to make sure that the tenants were not forced to sign an agreement that they were uncomfortable with, to make the necessary adjustments, and to explain the agreement to them.

The Grievant testified that on Mondays, Wednesdays, and Fridays she would travel to Bridgeport, and on Tuesdays and Thursdays she would work in Norwalk. Her usual work hours were from 8:45am to 5:15pm. She noted that on occasion she would work in the Waterbury court. Semexant-Coffy explained that at 9:30 a.m. the clerk would call the docket, so by 10:00 a.m. the

¹ By agreement, of the parties, the decision of the arbitrator was due on or before July 8, 2019. The decision has been timely submitted to the Branch and Union.

² The Grievant was born in Haiti and came to the United States when she was six years old. She went to Hunter College, received her master's from NYU, and received a law degree from CUNY Law School. Before going to law school she taught at the College of New Rochelle and Long Island University. After law school she clerked with the housing court. Semexant-Coffy is separated from her husband, has seven children, and has an aunt that is living in her home.

cases would begin, but she would often start prior to 10:00 a.m. Though there are morning breaks, she explained that there was rarely anytime to take them. She noted that she mostly dealt with unrepresented parties. The Grievant noted that when she worked at the Waterbury location she would try to be done with the docket by 1:00 p.m. so that she could return to Bridgeport, which was closer to home. The Grievant stated that she would even work through her lunches to get through the cases.

Teixeira was located in New Haven. During the period Teixeira was the Grievant's supervisor the Grievant would contact her via telephone regarding issues. Semexant-Coffy noted that she rarely saw Teixeira unless she covered a shift in New Haven. She described Teixeira's supervisory style as allowing housing mediators to take the initiative, and ensuring that the job was handled professionally. It was her recollection that when she was supervised by Teixeira and had an emergency or illness she would contact Teixeira to ensure coverage, and then later enter the information into JETTS. According to the Grievant, Teixeira stressed that the housing mediators should bring to her any issues that arise so she would not have to hear about them through someone else.

In the spring of 2016 the Grievant slipped on black ice and was hospitalized for approximately five or six days and did not return to work for over two months. The Grievant testified that the Branch was aware of her medical issue because of a medical related issue at work after her hospitalization. Semexant-Coffy applied for FLMA. The evidence indicates that from on or about May 2016 until September 2016 the Grievant was on Family Medical Leave. Palmer testified that in the fall of 2016 she was contacted by human resources regarding the Grievant's Family Medical Leave. The evidence indicates that Palmer received an e-mail regarding the FMLA and forwarded it to her supervisor stating, in part, the "saga never ceases." Palmer explained that her comment meant that since she took over for Teixira there were multiple issues that she was not made aware of. Human resources requested that Palmer reach out to the Grievant to obtain updated medical information in order to qualify the grievant for the leave. Palmer testified that her attempts to contact the Grievant failed. Palmer believed that the Grievant was ultimately denied the leave. The Grievant testified that she did not recall being contracted regarding FMLA. However, she stated that at some point she was made aware that her FMLA had expired and she went to her doctor and obtained additional information. She stated at that point she "was still required per my doctor to not work more than the five-hour day." Palmer

also stated that she "vaguely" recalled the Grievant requesting an accommodation for parking because of a medical condition. Palmer testified that she believed that she referred the Grievant to the unit responsible for accommodations. According to Palmer, she could not have approved the accommodation of a parking space. The Grievant testified that she was not given an accessible indoor space at the Bridgeport court "even with the doctor's note and recommendation and I had a temporary handicap sticker."

Palmer has worked for the State of Connecticut Judicial Branch, since 1988. She started her employment in 1988 as a temporary assistant clerk, moving to the position of a mediation specialist in 1989 and to the position of project manager in the civil unit in 2008. She was promoted to the position of Deputy Director in 2012.

Palmer testified that since 2008, employees use the Judicial Employee Time Tracking System (JETTS), as a centralized electronic attendance monitoring system. JETTS is managed in Wethersfield by Lori Lanzi, (hereinafter "Lanzi") who is part of the administrative staff in the central office.³ Lanzi reports to Palmer. JETTS allows employees to track attendance, request time off, enter in a travel log, and review their hours for that pay period. According to Palmer, employees are generally required to obtain pre-approval before taking time off. However, in cases when an employee has an emergency requiring unexpected time off, or flexing hours, direct contact with a supervisor is permitted.

To request time off on the JETTS system the employee must enter a request into the system, "save it" and hit the "send" button. If an employee does not hit the send button Palmer would not receive the request until the end of the pay period, resulting in unapproved time off. Palmer noted that it is also important for an employee to complete a travel log so that if an employee is working in a location that differs from his or her

³ Palmer explained that Lanzi is permitted to alter the attendance of certain managers who were out of the office a lot or not available to enter manager approved time and to fix any mistakes that had been made. Palmer stated that there have been occasions that she had not approved leave time but Lanzi has subsequently gone into the system and approved the leave. She noted that in some cases the leave had already been taken and the employee had forgotten to hit "send" on the system and approval would be granted after the employee sent an e-mail or called explaining. Palmer indicated that she did not know if this process is consistent with policy.

regular location to allow employees and supervisors to know where to contact the employee if necessary.⁴

Palmer sent an e-mail to the housing mediation specialists on November 19, 2015, that contained the JETTS user manual and outlined provisions of the attendance policy. The e-mail stated:

As you know, I have recently been given management oversight of the housing mediation specialist program. With this change, it has been decided that as of Friday, November 20, 2015, you will enter all your time off requests and attendance information into the Jetts system. Cynthia and I both use this system to report our attendance and it is a much more efficient way than the paper process that you use now. Below is a link to the Jetts web page. Lori Lanzi, Administrative Services Coordinator in my office, will be the contact person for any changes or questions you may have concerning attendance issues so please copy her on attendance requests through email that you may send to Cynthia. In order for us to electronically submit the full pay period, please email Lori any time off you may have entered on your paper timesheet for the time period Friday, November 13, 2015 through Thursday, November 19, 2015. She will need this information by the morning of Tuesday, November 24, 2015. Also, there is a manual for using the Jetts program which Lori can email to you

The e-mail went on to describe the procedures in some detail. According to Palmer, prior to taking responsibility for the direct supervision of the housing medication specialists, including the Grievant, she had discussion with Teixeira about attendance issues among the housing mediation specialists.

Palmer testified that on February 26, 2016, she met with the housing specialists, including the Grievant, to discuss attendance issues. On March 17, 2016, Palmer sent an e-mail to all of the housing specialists, containing her personal cell phone number with the request that during the period that their regular supervisor was on leave any unexpected time off must be

⁴ Palmer agreed that when she was out of the office to attend the first day of hearing in this case she did not note it in her travel log.

reported to her either through a call or text to ensure proper coverage. The e-mail stated:

Each of you should have received electronically your 2015 Attendance Report. Please review it so as to ensure its accuracy. I am not sure what policies or procedures that Cynthia had in place in the past but now that you all report to me, I want to be sure you are aware of attendance policies, some of which we discussed at the staff meeting on February 26, 2016:

1. Please contact me directly on my personal cellphone (203-606-1181) when you will be out unexpectedly. You may leave a message if I don't pick up or text me if you prefer. I will need to know the reason for the absence (e.g. illness, immediate family illness, emergency) and the length of time that you expect to be absent from work.
2. Please understand that absenteeism, for whatever reason, creates hardship for other staff and limits the overall ability of the unit to function properly.
3. I will be reviewing attendance records on a regular basis.
4. Excessive absenteeism will have a bearing on your work record.
5. As we discussed at the staff meeting, please let me know any concerns/suggestions that you might have concerning the work you do each day. We all must strive to ensure that the mission of the Branch is fulfilled through a positive attitude toward our work and a commitment to the customers of the Branch and the public. I am committed to helping you do that.

On March 21, 2016, Palmer sent the following e-mail to the Grievant: The e-mail stated:

Please send me by tomorrow afternoon at 3:00 pm. the stipulations that are missing as outlined in your email below. In the materials that you sent, there are no summaries for Feb. 11, Feb. 16 and Feb. 18. Were there no dockets on those days? I also have not received your case summary forms/stipulations for the week of March 7th which were due on March 14th and the case summary forms/stipulations for the week of March 14th which are due today. You must be sure to comply with my original directive as outlined in the email of February 8, 2016

which requires them to be sent to me by Monday for the prior week.

On another subject, I want to be sure that you understand that in light of Cynthia's absence, I am your immediate supervisor and must be informed of all attendance requests as outlined in my email to the housing specialists dated November 19 2015. In that role, I also want to remind you of Judicial policies that were outlined in the email:

1. All time off requests must be made in advance unless you cannot come to work because of illness or emergency.
2. If you are unable to be at work for any portion of your work day because of an emergency or because of illness, you must contact me by phone.
3. If you are late because of inclement weather, or because of a major traffic problem, you must contact me directly to let me know.
4. You may only flex your daily schedule with supervisory approval in advance unless extraordinary circumstances exist. I have noticed for the pay period from March 4, 2016 through March 17, 2016, you have arrived late to work every day and adjusted your schedule without informing me. Please note that as discussed at the staff meeting on Friday, February 26, 2016, flex time should not be used daily and you must have approval to use it. Flex time is not a substitution for tardiness. It is expected that you are at work for your scheduled start and end times. If you have factors that may qualify you for FMLA, please contact HRM to apply accordingly.
5. You must use the Travel Log in Jetts to track any time that you are not at work as normally scheduled, including the travel between courts and other offices as well as time you are out of the office for non-judicial time. A review of the log for the months of February and March thus far shows that you entered information on only 1 occasion when you left the office early on February 23rd. Please let me know the reasons for your failure to account for your travel between courts and your time out of work. If you have questions about the use of the log please contact me immediately.

Please let me know if you have any questions. Thank you.

In an e-mail dated March 22, 2016 the Grievant stated:

At your recommendation, I attempted to contact you at your office in Wethersfield; I was told that you were not available. I just finished my Norwalk docket and upon review of my files here in Norwalk - the missing summaries are still missing. We did have court on those days however, I will have to duplicate my Stips from the court clerk files. The Marcy summaries are in Bridgeport. I will forward them tomorrow. With regards to the Judicial Policies, I have not in the past 3 months travelled between courts (with Friday 2/26 being the exception).

I am requesting a meeting to review what exactly you are referring to and, to elaborate on any inaccuracies you believe exists.

Thank you for your consideration.

In an e-mail to the Grievant dated March 24, 2016 Palmer stated:

I am happy to meet with you. I will review my calendar and send some dates next week.

In the meantime, as you mentioned yourself, one date that I was referring to in my email was Friday, February 26, 2016 when you traveled to New Haven for a staff meeting and then to Waterbury for training. There is no notation of your travel in the log as is required. Also, you are required to enter the time you are out of the office for non-judicial purposes into the log as well which was outlined in my November email. There are multiple dates since then where that was not done. We certainly can discuss anything that you feel is inaccurate.

Question? Do you stay in Bridgeport until the end of your day on Monday, Wednesday and Friday of each week even if the docket is completed earlier? Certainly if that's the case, there is no need to make any notation into the travel log.

We'll be in touch next week. Enjoy the long weekend.

With regard to the February 26th travel, the Grievant testified that she explained to Palmer that it was

unnecessary for her to log the travel since she traveled with Palmer on that day to Waterbury.

According to Palmer, she did not receive a response from the grievant regarding this e-mail. Palmer noted that other housing mediation specialists generally complied with the attendance procedures in place and provided both immediate communication for unexpected time off and the JETTS automatic emails requesting supervisor approval for time off. She agreed that employees did not always comply or would forget to hit the send to supervisor button but it was never on a consistent basis, as was the case of the grievant. The Grievant testified that although she did miss steps in the JETTS system by not sending messages about attendance properly she was not missing the steps intentionally.

Jon-Paul Lucas (hereinafter "Lucas") held the position of Program Manager in the Human Resource section of the Court Operations for approximately five years at the time of the hearing. Prior to holding this position he was a Court Planner for seven years. Overall, he has worked for the Branch since 1998. As a Program Manager his duties consist of conducting investigations into complaints or alleged misconduct, writing investigatory reports based upon his investigation for review by his supervisor as well as the executive director, and conducts pre-disciplinary meetings when necessary.

Lucas first became involved in the investigation of the Grievant on October 15, 2015. At that time he was added to an already existing email thread that started on September 10, 2015. Lucas was asked to investigate the alleged theft of time by the Grievant. Lucas testified that he began his investigation by gathering information from the card access reports for the Grievant and any of the Grievant's time sheets. He noted that the information he gathered indicated that the Grievant was regularly entering the building during off hours. In his investigatory report Lucas created a chart that included the dates he was reviewing, the times the Grievant signed in on the time sheet, the time that was logged on the card access report, the minutes the Grievant was late on specified dates, and when the Grievant signed out. He also reviewed video surveillance of when the Grievant came and went, how many minutes over and under, whether or not there were any applicable charges to the employee's accrual, and whether there was a discrepancy with regard to what the Grievant listed in her biweekly time sheets.

On October 26, 2015, Lucas held an investigatory interview with the grievant. Also present were her attorney Abram Heisler, Union Attorney Chip Segar, and Union President Carmen Roda. Lucas took notes during the interview. According to Lucas, the Grievant explained that her entries were late because she did not have a computer to enter the information. Lucas testified that based upon his investigation and review of the Grievant's access reports he concluded that she had many unauthorized tardiness and absences. Lucas submitted his report to his supervisor. It was determined that a pre-disciplinary meeting was necessary.

On December 9, 2015 the Grievant received notice of a pre-disciplinary meeting from Lucas to be held on December 10, 2015. The letter stated:

You are hereby notified of a pre-disciplinary meeting to be held with you on Thursday, December 10, 2015 at 12:30 p.m. in room 304 at 90 Washington Street in Hartford.

The purpose of said meeting is to determine if just cause exists to impose discipline upon you for theft of time, falsifying Judicial Branch attendance documents, excessive tardiness, and entering a Judicial Branch facility after hours in violation of Judicial Branch policies 501-Absences, and 502-Reporting Attendance.

After the pre-disciplinary meeting Lucas contacted Teixeira via e-mail to request the Grievant's time sheets during the period she was the Grievant's supervisor. Lucas stated that the new information did not alter the findings or conclusions in his report.

In October of 2016 the grievant received a letter, from Joseph D'Alesio, (hereinafter "D'Alesio") Executive Director of Superior Court Operations,⁵ regarding her attendance from February 9, 2015 to October 29, 2015. The letter stated:

⁵ D'Alesio held the position of Executive Director of Court Operations until his retirement on December 22, 2017. In that position, he was responsible for all of the superior court clerks' offices, including housing court and the housing mediation specialists, centralized infractions bureau, jury administration, judicial marshal services, legal services (bar examinations and bar grievances), support enforcement services, and the administrative offices that oversee court reporters and interpreters, among other things. D'Alesio's duties also included issuing discipline to employees. D'Alesio

As a result of information gathered during the investigatory process, including your own statements made at a pre-disciplinary meeting, I find that just cause exists to impose discipline upon you.

A review of your attendance records from February 9, 2015 through October 29, 2015 was conducted, after information was discovered that you may not be accurately recording your arrival times at work. It was determined that on eighty (80) occasions during the review period you arrived at work later than your scheduled starting time of 8:45 a.m. On all occasions in question you misrepresented your arrival time on official attendance documents. You did not report being tardy to your supervisor, nor did you charge any of your accrued time. The total number of hours unaccounted for is 62.75.

At a pre-disciplinary meeting you stated that you have been coming to work for seventeen years and getting the docket done. You also claimed that there was a "degree of understanding" between you and your supervisor at the time, regarding your time usage and she was aware what was happening.

Ms. Semexant-Coffy, the Judicial Branch trusts employees to truthfully and accurately report their attendance on a daily basis. Your dishonesty has caused the Branch to question your trustworthiness as an employee. Your actions are in violation of Judicial Branch policies 501-Absences and 502-Reporting Attendance and as a result you are being suspended from work without pay for a period of five (5) days commencing on October 31, 2016. You are to return to work on November 7, 2016. You are being formally advised that you are expected to arrive at work on time every day, report any tardiness to your supervisor, accurately record your arrival time and charge your accruals accordingly. You are also being

testified that he met every week or two with Maria Kewer, a member of the court operations administrative unit, to discuss issues including, the results of pre-disciplinary meetings, and possible options.

notified that you will be charged unauthorized leave on the eighty (80) occasions that you arrived late and did not charge your accrued time. You are required to pay back the equivalent number of hours (62.75) through payroll deduction. Any further violations of a similar nature may result in more serious discipline.

Palmer received a "cc" of the letter. Lucas acknowledged that there was a gap between the December 2015 hearing and the October 2016 imposition of discipline. Lucas explained that the gap was due to the fact that several other investigations going on at the time by one of his co-workers and it was decided that the discipline could wait until the investigations were concluded because they were "similar in nature" in that they related to theft of time and improper recording of time sheets. Palmer testified that she was aware of stipulations signed with some employees regarding discipline resulting from another investigation.

A letter from Julie Rooney (hereinafter "Rooney"), Program Manager of Court Operations for Human Resources to the Grievant dated November 8, 2016 stated:

You are hereby notified of a pre-disciplinary meeting to be held with you on Tuesday, November 15, 2016 at 10:00 a.m. in room 306 at 90 Washington Street in Hartford.

The purpose of said meeting is to determine if just cause exists to impose discipline upon you for violating Judicial Branch policies 501-Absences, 502-Reporting Attendance, 513-Leaves of Absence without Pay and 518-Unauthorized Absences. These violations are a result of unauthorized absences on September 28, 29 and 30, 2016 and October 14, 17, 18, 19, 20 and 21, 2016. Be advised that each occurrence of unauthorized absence will be considered separately and handled independently in the disciplinary process.

You are further notified of your right to union representation.

Rooney noted that the letter was based upon her investigation, and identified the dates of the grievant's unauthorized absences.⁶

The pre-disciplinary meeting was scheduled for November 15, 2016. Rooney testified that she did not meet with the Grievant face-to-face that day but rather met with Attorney Chip Segar in her office. According to Rooney, she was not provided with any justification for the Grievant's unauthorized absences. It was agreed by both sides to enter into a Stipulated Agreement to resolve the matter. Rooney noted that by lumping unauthorized absences together it was agreed to reduce the discipline. She stated that the "lumping" was something that had been done in other cases involving similar circumstances. She noted that normally each unauthorized absence represents its own occasion and individual discipline. The stipulation provided for a five day suspension and the Grievant reimbursing the Branch for 62.75 hours of unauthorized absences.

The Stipulated Agreement dated November 15, 2016 stated:

The Parties, to amicably resolve this issue without use of the grievance and arbitration procedure, agree as follows:

1. The employee has failed to report to work as scheduled, resulting in numerous unauthorized absences. In lieu of termination, for multiple instances of unauthorized absences, the employee will receive a five (5) day suspension without pay or benefits. The suspension will be served from November 15, 2016 - November 21, 2016. The employee will return to work on November 22, 2016.
2. The employee understands that her next occasion of unauthorized leave will result in a fifteen (15) day suspension without pay or benefits.
3. The Union and the employee agree individually and jointly not to grieve or arbitrate the suspension. This agreement will serve as the suspension letter and a copy will be placed in her personnel file.
4. Effective immediately, the employee agrees to report for duty on time and as scheduled, unless she has received prior written approval for time off from supervisory staff.

⁶ The Grievant testified that in October 2016, she texted Palmer requesting to take a half-day to attend parents' weekend at her daughter's school. According to the Grievant, she offered to make the time up. The Grievant stated that Palmer denied the request responding that the Grievant had no time left and she could not make the time up. According to the Grievant, Palmer also informed her that she had spoken with HR and if the Grievant did take off it would be recorded as unauthorized absence.

She agrees to comply with all Judicial Branch and Superior Court attendance policies. She acknowledges that she is responsible for reporting to work as scheduled and for managing her need for time off in a manner that avoids removal from the payroll. She understands that she must have sufficient accruals of the appropriate type to cover any absences from work.

5. The Union and the employee agree individually and jointly to withdraw all grievances, arbitration requests and state prohibited practice complaints filed on behalf of the employee.
6. In signing this stipulation, the employee relieves the State of CT Judicial Branch and its agents and the Union and its agents, from any possible liability or cause of action known or unknown which may arise from the document or the facts or transactions involving this document.
7. This agreement is specific to this matter and the discipline issued on October 28, 2016, is entered into with prejudice and without precedent in any pending or future matters. Neither this agreement nor any facts or circumstances leading to the resolution of this dispute shall be admissible as evidence in any proceedings involving any other employees.
8. The employee freely and voluntarily enters into this stipulation. The employee's signature on the stipulation is an acknowledgement that she has read it and understands its contents, meaning, intent and implications.
9. The Union and the employee agree that this agreement fully resolves all issues that were or could have been raised, and that they will not seek further redress for any such issues in any forum that is now or may later become available, including but not limited to the statutory or negotiated grievance procedure, arbitration requests, state prohibited practice complaints, or any other appeals in any forum, provided however that they are not waiving or releasing any claims that cannot be lawfully waived, including the right to file an administrative charge of discrimination. The Union and the employee acknowledge, however, that they are waiving all rights to seek damages or any other monetary recovery as a result of such a charge of discrimination or any other complaint, grievance, demand, lawsuit or action.

According to Semexant-Coffy she agreed to a resolution of the matter because she wanted to keep her job in order to care for her seven children and her aunt who had a stroke.

On January 17, 2017, the Grievant was informed of another pre-disciplinary hearing. The letter stated:

You are hereby notified of a pre-disciplinary meeting to be held with you on Thursday, January 19, 2017 at 12:30 p.m. in room 304 at 90 Washington Street in Hartford.

The purpose of said meeting is to determine if just cause exists to impose discipline upon you for violating Judicial Branch policies 501-Absences, 502-Reporting Attendance, 513-Leaves of Absence Without Pay and 518-Unauthorized Leave. These violations are a result of unauthorized absences on November 25, 2016, December 12, 16, 22, 23, 27, and 28, 2016. Each occurrence of unauthorized leave will be considered independently and handled separately in the disciplinary process.

Lucas conducted the meeting. Lucas testified that during the hearing he asked the Grievant about each instance of alleged absence and she responded with explanations that he recorded in his notes. For example in his notes he wrote "Click to notify," "Didn't click to notify supervisor, had a story for it." Lucas also asked the Grievant if she notified Palmer if she was going to be absent. According to Lucas, the Grievant responded that she usually notified her in the morning and would call the clerk's office to inform them as well. Lucas stated that he specifically referred to an unauthorized absence on December 23, and Semexant-Coffy said that she had contacted the clerk but not her supervisor because Palmer was on vacation. The Grievant also told Lucas that Palmer allowed for others to stay later or use time but excluded her from this practice. At hearing the Grievant confirmed that she did not text or call Palmer on December 12, 16, 22, 23, 27 or 28. However, she stated that she did note the dates in JETTS. She noted that because she did not send the information properly it got to Palmer late. Palmer could not recall if she contacted the Clerk or any other supervisors inside the courthouse where the Grievant worked before reporting the Grievant's attendance issues to human resources. Lucas testified that he did not believe that he contacted the clerk's office to confirm the Grievant's statement that she had contacted the clerk when she was late.

There was no investigative report or investigatory meeting before or after the pre-disciplinary meeting. Lucas explained there was no prerequisite to hold an investigative meeting because the allegation dealt with unauthorized absences whereas the previous investigation was about access reports. Lucas

testified that the policy on unauthorized absences provided that such absences go to a pre-disciplinary meeting without an investigatory phase or report. Lucas testified that after the meeting he met with Maria Kewer of the Human Resource staff.

The evidence indicates that a complaint was filed with the CHRO by the Grievant against the Branch on or about January 26, 2017. The Grievant alleged discrimination based upon her race, color, ancestry, sex, and physical disability. An e-mail dated February 2, 2017 requested that Palmer provide to the Branch any documentation and information pertaining to the specified allegations in the complaint. At hearing Palmer acknowledged that she knew that the complaint was filed.

The Grievant received a letter of termination dated March 1, 2017 from Joseph D'Alesio Executive Director of Court operation at the time.⁷ The letter signed by D'Alesio stated:

As a result of information provided, including your own statements made at a pre-disciplinary meeting, I find that just cause exists to impose discipline upon you.

Judicial Branch Policy 518 - Unauthorized Leave states, "Judicial Branch employees in permanent positions who are absent in excess of their accrued leave time and who are not in an authorized unpaid leave status will be subject to disciplinary action." Furthermore, it was stated that each occurrence of unauthorized leave regardless of duration would be considered independently.

On November 16, 2016, you entered into a stipulated agreement which stated that your next occasion of unauthorized leave would result in a fifteen (15) day suspension. It further stated that you were expected to report for duty on time, as scheduled, unless you had prior written

⁷ D'Alesio testified that when imposing the discipline he followed all policies, and did not treat the Grievant's situation any different than past cases. Having had to impose termination in the past, D'Alesio noted that it is one of the most difficult things he had to do, but there were many chances given to the Grievant and it was the only way to correct the situation in accordance with policy.

approval for time off from supervisory staff. You were also to comply with all Judicial Branch and Superior Court attendance policies.

On November 25, 2016, you were out of the office for .5 hour without properly notifying or receiving prior approval from your supervisor. On December 12, 16, 22, 23, and 27, 2016, you failed to arrive for duty on time and did not notify your supervisor. Subsequently, on December 28, 2016 you were out of the office for .5 hour without properly notifying your supervisor or receiving prior approval from your supervisor. As a result, your absences were deemed unauthorized for all seven (7) occasions.

At a pre-disciplinary meeting you offered explanations for each of the occasions noted above which were considered in the determination of discipline.

Ms. Semexant-Coffy, despite agreeing to a five day suspension in November 2016, you incurred seven (7) new unauthorized absences which has resulted in four (4) new occasions of unauthorized leave. Therefore, given your demonstrated unwillingness to comply with the basic requirement of your position which is adherence to attendance expectations and for violating the stipulated agreement and Judicial Branch policies 501 - Absences, 502 - Reporting Attendance, 513 - Leaves of Absence Without Pay, and 518 - Unauthorized Leave, in accordance with the progressive disciplinary actions imposed for each occasion of unauthorized leave, your four (4) new occasions of unauthorized leave have resulted in the following actions being imposed:

- For November 25, 2016, you are being suspended without pay for a period of fifteen (15) days.
- For your occasions of tardiness during the bi-weekly pay period which included December 12, 16, and 22, 2016, you are being suspended without pay for a period of thirty (30) days.
- For your occasions of tardiness during the bi-weekly pay period which included December 23, and 27, 2016,

your employment is being terminated effective close of business March 1, 2017.

The noted suspensions will not be served due to the final disciplinary action of termination of employment. Disciplinary action for the unauthorized absence from December 28, 2016 is not issued also due to your termination.

Enclosed please find information concerning benefits available upon separation from the Judicial Branch.

Palmer testified that other than being told to deliver a notice of termination to the grievant by her supervisor, she was not involved in the decision to terminate.

With regard to a November 25th incident included in the letter, Palmer testified that the Grievant was out of the office for half-hour without notifying or getting approval. Palmer noted that she telephoned the Grievant on December 2, 2016 to discuss the attendance issue. According to Palmer, the Grievant told her that she was ill and needed to go to the pharmacy and that she entered it into JETTS. Palmer stated that the Grievant had been informed on multiple occasions that for unexpected time off or flexing hours she needed to have immediate communication for approval. Palmer noted that four other entries that the Grievant made in late November were not properly entered into the JETTS system and were therefore not preapproved before being taken off. According to Palmer, had the instances been properly entered she would have received notice and she did not know about the time until the end of pay period.

The Grievant was shown her termination letter dated January 17, 2017. The letter noted that on November 25, 2016, she had taken unauthorized leave for thirty minutes. Semexant-Coffy explained that she had not been feeling well and since there were no cases on the docket she took a longer lunch to go to the pharmacy. She noted that she is allowed 30 minutes for lunch. The Grievant stated that when she returned she entered into JETTS that she had taken an additional thirty minutes. The Grievant did not recall whether or not she requested sick time during the day, but she explained that it was necessary that she go to the pharmacy and that there was no pharmacy close to downtown Bridgeport. She does not recall if she used the proper code for sick, but she did recall noting that she went to the pharmacy. She agreed that she did not hit the proper button that

sent the information to Palmer. She also explained that she did not call or text Palmer because Palmer was not at work that day and because she was already out on her lunch break. The Grievant testified that even if it was an emergency Palmer would not answer the call. At another point in her testimony the Grievant stated that Palmer called her but did not listen to her explanation. She stated that since Palmer did not answer her calls she would just enter it into JETTS.

With regard to December 12, 2016, she did not recall the specific reason why she had unauthorized leave. However, she noted that it was a day she was in Bridgeport and it was likely due to traffic. She stated that she did call the chief clerk to alert him to her absence. Semexant-Coffy agreed that although it was her practice to call the court clerk when she was going to be late, Palmer instructed her to text her. The Grievant stated that she does not text and drive. As for December 16, 2016, she was a quarter of an hour late and did not recall the reason why. When asked if she called the clerk, she claimed that she always called whenever she thought she would be late more than five to ten minutes. She claimed the clerk she would call was George Papallo. She did not recall why she had unauthorized leave on December 22, 2016. She explained that her half-hour of unauthorized leave on December 23, 2016 was due to her having to put air in her tires and stopping at Stew Leonard's for bagels for the office holiday breakfast. She claimed that she called the clerk to explain. She recalled that Palmer was on vacation that day. She does not recall why she had a quarter of an hour of unauthorized leave on December 27, 2016, but she noted that she usually does call the clerk to alert him. She thinks that Palmer was still on vacation that day. The final date listed on her termination letter was December 28, 2016, and she explained that the half-hour of unauthorized leave was because she had to take her son to the doctors for a physical. She explained that it was the only appointment available and that he had to have the physical by the end of the year or else her health insurance would fine her for violating their one physical a year policy. Lucas testified that it was his understanding that the Health Enhancement plan did require those covered to visit the doctor within a certain period of time and required annual physicals, annual eye exams and dental cleaning. Upon reviewing his notes, Lucas agreed that he did not investigate the Grievant's claim regarding taking her son to the doctor. The Grievant believed that she did note the use of time in JETTS that her unauthorized leave was for either "family leave" or "family sick," but could not fully recall. She agreed that she did not call Palmer on any

of the dates listed in the termination letter. Palmer agreed that she was on vacation on November 25, 2016, and that she was either on vacation or family illness time on December 22, 23, 27, and 28. She stated that on December 12, she was working.

The Grievant testified that it was her understanding that she had flex time. She testified that she informed Lucas of her flex time. According to the Grievant, under flex time if she worked through lunch or if she came in a little late, she had the ability to make up the time within the day or by the next day. She agreed that she did not have the ability to come and go as she pleased, but she had the ability to notify Teixeira and ask to make up the time if she had arrived late by working through her lunch and breaks. It was her understanding that all housing mediators had the ability to flex their time.

With regard to the flex time question, an e-mail exchange was introduced into evidence between Lucas and Teixeira. The e-mail exchange was as follows:

Lucas to Teixeira on December 11, 2015 at 7:58 AM:

I am following up on something that Ms. Semexant-Coffy said during her investigatory meeting. Was she allowed to flex her time?

Teixeira responded on December 11, 2015 at 10:16 AM:

Well as a matter of fact yes, except I called it makeup time... when we did "flex" it was work 9 days extra hour, have 10th off. I recently found that "flex" was the term we now use for "makeup".

Lucas responded on December 11, 2015 at 11:38AM:

She essentially said that she could come and go as she pleased and if she came late she would work through her breaks and lunch or stay late. She said that this was the "understanding" that she had with you as her supervisor. Can you let me know if this was the case? Thanks.

Teixeira responded at 12:11 PM as follows:

The difficulty is that when we are doing our dockets, it's difficult to stop working with clients when we are on the edge of an agreement, or if the courtroom is full of litigants, including lawyers who are anxious to get their cases done, or pro se parties who need to go to

work or pick up their kids or have medical issues (like diabetes, for example) these folks all want to be heard asap. Judges typically take their recess at one (1pm) but we have primarily worked to help get all parties heard so that if the court convenes at two and there isn't an agreement, these parties can be heard by the court. I wish you would take the time to come sit in the court while these dockets are going on (can come sit with me) and see what occurs, this would give you a better understanding of the mediation process. Yes, staff can take lunch, but again, when faced with all these issues for whomever waiting to be served, we serve them. You might also want to talk to some of the housing clerks and judges who do housing matters. That could also help you understand this process. We serve the communities and we try to serve them well but not keeping them waiting from 9am to 5 o'clock....

Lucas responded on December 16, 2015 at 9:19AM:

I have a pretty clear understanding of what transpires during the mediation docket. I need to know if Ms. Semexant-Coffy was explicitly told by you that she could arrive and depart at times other than her scheduled work hours. Thank you.

Teixeira responded on December 21, 2015 at 11:50AM:

Well not on an ongoing basis, but of course it would depend on the circumstances.

Lucas testified that he did not investigate the Grievant's claim that other similarly situated personnel were flexing their hours as well because the question came up during a pre-disciplinary hearing not an investigatory meeting.

During the period that Teixeira supervised the Grievant she gave the Grievant multiple performance appraisals finding the Grievant's attendance acceptable and in one instance indicated that her attendance showed improvement. In the evaluation completed by Teixeira for the period October 1, 2014 to September 30, 2015 she rated the Grievant as "Y=Met Expectations" to the statement "Adheres to established guidelines and rules of the Branch and Division." With regard to the category "attendance" she was rated "Y-Met Expectation." The narrative section included the comment "... we have had conversation regarding timeliness and there has been improvement

in this area." Palmer completed the Grievant's evaluation covering the period October 1, 2015 to September 30, 2016. In contrast to Teixeira, Palmer rated the Grievant "I-Met Expectation Inconsistently" to the statement "adheres to established guidelines and rules of the Branch and Division." Among the specific areas in which Palmer rated her work as inconsistent was in the area of "attendance." The narrative section included the following:

This manager has been advised that attendance policy violation occurred during this rating period. Therefore, Magalie has been rated "I" for Attendance (L) and Adherence to guidelines and rules of the Branch. . . This manager has directed Magalie on several occasions to send to her manager weekly reports outlining her daily caseload along with the agreements written for each case. Magalie fails to do so even after multiple requests . . The limited number of reports that Magalie has sent to [her] manager shows instances where stipulations are sometimes illegible which causes hardship for the parties involved.

Palmer explained that she rated the Grievant in this manner because prior to her taking over as the Grievant's direct supervisor, the Court Operations Personnel Unit told her that there had been disciplinary issues that needed to be reflected in the Grievant's performance appraisal.

At hearing Palmer was asked about her own attendance record.⁸ Palmer stated that she can report her attendance

⁸Palmer agreed that on May 1, 2015 she arrived at work 1 minute late. She could not recall where and if she was on vacation time on May 5. On May 6, she did not know if her arrival time at 8:58:22 a.m. was late or not. She agreed according to the May 12 swipe in that she was late when she arrived at 8:31:48 a.m. On May 22, Palmer noted in the JETTS system that she had taken two hours of personal time to attend Olivia's honors ceremony, but it was authorized. On May 28, 2015, when she signed into JD New Haven at 9:00 a.m. she does not recall where she was coming from. She agreed to being late June 1, 2015 at 12:09 p.m., June 2, 2015, at 8:34 a.m., and June 23, 2015 at 8:41 a.m. Palmer noted on June 23, 2015, that she was late because of traffic. On June 30 she arrived late at 8:35 a.m. On July 2, she arrived late at 12:53 p.m. On July 8 she arrived at 8:32 a.m. On July 9, 2015, it was indicated that Palmer took fifteen minutes of sick time. On July 10, she arrived at 8:39 a.m. R 60:16. On July 23, her time in was logged as 1:40 p.m., with no notation of being at a different location. On July 28, Palmer arrived at 8:43 a.m., but she used the flex policy, and worked till 5:40 p.m. On July 30, Palmer arrived at 8:35 a.m. On August 31, 2017 she signed in at 8:40 a.m.. She noted that if she did not make an entry in the travel log she might have been at a location where she did not have access to a computer or she was at the Spring Street location. She clarified that if there was no indication in the travel log then she was supposed to be at the 225 Spring

remotely but she could not do this at all the locations. She noted that she is given a branch laptop that she keeps at her home to use off hours. She testified that she considered her own tardiness to be a problem. Palmer stated that she has self-reported her tardiness to her supervisor. She noted that she makes up her late time by getting approval to stay later. Palmer testified that she has never been disciplined.

Evidence was introduced relating to discipline issued to other employees. Of the discipline introduced into evidence one employee was in the same bargaining unit as the Grievant. The Branch notes that the policy at issue in this case was applicable to all the employees and each of the employees were employed in the Court Support Services Division under D'Alesio. In the case of Employee Jt. 23,⁹ employee in the same bargaining unit, the letter of termination indicated that "your absences since April 7, 2014 have resulted in seventeen (17) consecutive days of unauthorized absences." In addition, the letter stated that the employee had been informed of a pre-disciplinary meeting and that if he "failed to attend the meeting, it would be considered abandonment of your position." The letter goes on to indicate that the employee did not attend the meeting. Within the letter of termination, the Branch issued a written reprimand, 1, 3, 5, 10, 15, and 30 day suspensions to the Grievant for specific unauthorized absences since April 7, 2014. It was agreed at hearing that a grievance was filed on behalf of the employee but was withdrawn. In the case of employee Jt. 24a the employee was terminated for not adhering to attendance policies. The employee had received a written reprimand, and a 1 day suspension before being terminated. Within the letter of termination, the employee was issued suspensions of 3, 5, 10, 15, and 30 days for unauthorized leave between October 20, 2015 and October 28, 2015. The termination was based upon an unauthorized absence on November 24, 2015. Another employee, Jt.

Street location. Palmer agreed that on April 25, 2017 she arrived at 8:32 a.m. On August 18, 2017, records indicate a late arrival without an entry in the travel log indicating she was at a different location from her regular location. Palmer claims that she did adhere to the travel log requirement but on the days that she did not log it was probably due to her not knowing she was traveling that day. On September 11, 2017, Palmer worked from 8:30 a.m. till 5:45 p.m.. She could not recall if she had received approval for those flexed hours. Palmer agreed that on the day she attended the first day of hearing in this case she did not enter her location in her travel log.

⁹ It was agreed that employees previously receiving discipline would not be referred to by name. Therefore, the employee is referred to by the exhibit number that relates to the employee's case.

24b, was initially terminated for attendance issues. In the letter of termination the Branch issued a 1 day suspension, 3 day suspension, 5 day suspension, 10 day suspension, 15 day suspension, and a 30 day suspension. Each suspension described a specific day of unauthorized absence. The termination was based on an additional day of unauthorized leave. The dates relied upon for the discipline were clustered between April 26, 2016 and April 29, 2016, and May 2, 2016 and May 4, 2016. Subsequent to the issuance of the letter of termination the Branch and Union entered into a Stipulated Agreement. The Agreement returned the employee to work under a last chance agreement stating, in part, "This is a last chance agreement which will remain in effect until March 31, 2019. On the next occasion of unauthorized, regardless of reason or duration, the Grievant will be terminated without appeal in any forum. If the grievant violates any Judicial Branch or Judicial Marshal Services policies related to attendance, she will be immediately terminated without appeal in any forum." Employee Jt. 24c. was terminated for an unauthorized absence "which resulted in violation of a stipulated agreement with the Judicial Branch signed on June 26, 2015 and violation of Judicial Branch policies" The stipulated agreement that was violated provided, "On the next occasion of unauthorized leave, regardless of reason or duration, the employee will be terminated." Employee Jt. 24d was terminated for unauthorized leave on October 21, November 17, 21, and 22 2016. The letter of termination noted that the employee had previously received "five and ten day suspensions in August and September 2016," and had been "repeatedly warned by Human Resources of the importance of managing your accrued time in a manner that avoids removal from payroll" Subsequent to the issuance of the letter of termination the Branch and Union entered into a Stipulated Agreement returning the employee to work returning him to work without pay or benefits under a last chance agreement. The Agreement also provided that the employee would have preference for a transfer. Employee Jt. 24e was terminated on December 2, 2016 for six occasions of tardiness violating a last chance agreement executed on May 31, 2016. Similarly, employee Jt. 24f was terminated for violation of a last chance stipulated agreement. Employee Jt. 24g was terminated for unauthorized leave regarding the employee calling out sick on 13 occasions between March 16 and April 17, 2015. The letter of termination noted that the employee had received a 10 day suspension in December 2014 and had been warned. Within the letter of termination the Branch issued a 15 day suspension and a thirty day suspension. Subsequent to the issuance of the termination letter the Branch and Union entered into a Stipulated Agreement allowing the

employee to resign and have the letter removed from her personnel file and maintained in the grievance file.

Positions of Parties

Branch

The Branch argues that the Grievant was aware of the attendance policy and the consequences of not complying with the policy. It argues that under Policies 501 and 502 absences must either be approved in advance or in the case of an emergency or illness must be reported to the employee's supervisor personally as soon as possible. It notes that the policy is accessible to all employees, and Palmer verbally and in writing explained the policy to the mediators generally and to the Grievant individually. The Branch notes that "In the eight months preceding her termination, Grievant had twice accepted significant discipline for violating Branch attendance policies." It points out that in one of the two cases the Grievant entered into a stipulation agreeing to follow the attendance policies. It contends that subsequent to the stipulation she violated the policy on seven occasions. Further, the Branch argues that the discipline issued to the Grievant placed her on notice of the Branch policy regarding absences.

The Branch contends that a supervisor can establish a policy providing for direct supervisor/employee contact when an employee calls in to report an absence. In the instant case, the Branch argues that during the period that Palmer was the Grievant's direct supervisor Palmer set forth rules regarding the reporting of absences. It notes that on November 19, 2015 Palmer sent an e-mail to the Grievant and the other housing mediators regarding their reporting of absences and specifically set forth a summary of the policy and the use of JETTS. The Branch points out that the e-mail noted that in the event of any unexpected schedule changes they were to "contact Cynthia [Teixeira] by phone so that coverage can be arranged and then enter the appropriate time off into Jetts when you return to the office." Further, the Branch notes that on February 26, 2016, Palmer and Teixeira held a meeting for all the housing mediators during which "Palmer instructed the mediators that if they were unexpectedly out of the office they were to call her directly on her personal cell phone. Moreover, the Branch points out that on March 17, 2016 Palmer "repeated these instructions in an email she sent to all housing mediators after reviewing their 2015 attendance reports," and four days thereafter Palmer sent the

Grievant an e-mail reiterating that she would be her immediate supervisor and that the Grievant should inform her of any absences. In its brief, the Branch notes that the e-mail also stated that "You may only flex your daily schedule with supervisory approval in advance unless extraordinary circumstances exist" and that that "as discussed at the staff meeting on Friday, February 26, 2016, flex time should not be used daily and you must have approval to use it. Flex time is not a substitution for tardiness."

The Branch notes that authorized and unauthorized absences are treated differently under the attendance policy. It argues that "Authorized absences are those for which the employee has (1) supervisory approval, either in advance or if that is not possible, as soon as practicable; and (2) sufficient accrued time to cover the absence. If the absence does not satisfy both of these criteria it has to be treated as unauthorized leave." Using this criteria, the Branch argues that an authorized absence for illness may be counted as one occasion of absence even though it extends for multiple days," but that an unauthorized absence "must be treated as a single occasion, and is subject to the more strict progressive discipline standards of the Unauthorized Leave Policy."

With regard to the investigatory element of just cause, the Branch argues that it conducted a "fair investigation... grounded in substantive fact." It notes that the investigation found that the Grievant violated established policy and the stipulated agreement she had entered into. It argues that having the policy was particularly important since Palmer's office was in Wethersfield and the mediators worked in courts throughout the state, and Palmer could not observe the mediators coming to work. Further, it notes Palmer needed to know if a mediator was out of work so that she could arrange coverage of the docket. With regard to the November 25, 2016 absence, the Branch argues that the Grievant violated policy. It argues that it is not credible that the Grievant entered the information into JETTS but forgot to hit "send" in light of her experience and educational background. Further, it contends that entering the information into JETTS would not have been sufficient since it was not a substitute for direct contact with Palmer by cellphone or text. The Branch asks the Arbitrator to reject any suggestion that the Grievant called Palmer but Palmer did not answer. It argues that there was no voice mail left or a follow up text message. With regard to the Grievant tardiness on December 12, 16 and 22, the Branch argues that each instance constitutes a separate unauthorized absence under policy. However, it notes

that it handled the 3 instances as "one occasion of absence." The Branch notes that according to the Grievant these absences were related, respectively, to "traffic/weather", "traffic", and "traffic". The Branch notes that Palmer was not aware of the instances until her review of her employees' time at the end of the two-week pay period. The Branch notes that Policy 502 provides that late arrival due to unavoidable traffic conditions "shall be excused if the employee agrees to make up the time lost by the next work day."

With regard to the Grievant's absences on December 23 and 27, the Branch notes that Semexant-Coffy testified that on December 22, 2016 she informed the court clerk that she would be late and did not notify Palmer because she believed Palmer was on vacation. As to the December 27 absence, she testified that she did not call Palmer but that she "usually" called the clerk. With regard to the Grievant's claim that she notified the clerk of absences or lateness, the Branch notes that the clerk was not her supervisor and she had a variety of different methods to inform her supervisor of her absence or lateness.

The Branch contends that the termination was a fair penalty and was consistent with discipline issued to other employees. It notes that the Grievant's "history of discipline shows a pattern of recent, and flagrant, violations of the attendance policy." It notes that "For the eighty instances of unauthorized leave documented in the first investigation she received a five-day suspension, when, according to schedule of progressive discipline in Policy 518, the first nine of these occasions would have been enough to justify termination.

It notes that "according to the stipulation, the next occasion of unauthorized leave would result in a fifteen-day suspension, which would still put her at only **the sixth** of the nine progressive disciplinary steps in the Policy." In its reply brief, the Branch states that there was no ambiguity in the Stipulated Agreement. It argues that the Arbitrator should reject any suggestion by the Union that "the absences which led to the Grievant's termination should have been combined rather than treated as separate occasions." It notes that Policy 518 applies to the absences of the Grievant and not Policy 501 which allows the lumping together of consecutive days of absence cause by the same illness.

With regard to the termination being consistent with discipline issued to other employees, the Branch argues that D'Alesio testified that he had no knowledge of inconsistent

treatment. The Branch argues in its brief that it presented other instances in which employees were terminated for violation of the unauthorized leave policy. Although the Branch agrees that only one of the examples of consistent treatment involved an employee in the same bargaining unit as the Grievant, it argues that the policy is Branch-wide and that each of the employees were employed in the Court Support Services Division under D'Alesio.

The Branch argues that the Union's suggestion that Palmer was treated more leniently for similar conduct should be rejected. In its reply brief, the Branch notes that Palmer was "not even Grievant's direct supervisor when Grievant incurred the eight unauthorized absences that led to her first discipline, and Palmer had no part either in that decision or the other two decisions to discipline Grievant. " The Branch contends that instances that the Union points to of Palmer being late were simply "instances when the record showed Palmer "swiping in" a few minutes after her start time of 8:30. The Branch argues that "To be technical (and fair), by law and by the terms of Policy 502, a 'late' arrival cannot even be considered as an unauthorized absence until 7 1/2 minutes after the scheduled arrival time."

Union

The Union argues that the Branch did not have just cause to terminate the Grievant. It notes that the Branch failed to meet its burden with regard to several of the factors under the principle of just cause. Although the Union does not dispute the promulgation of attendance policies, it argues that in the instant case "the straight forward nature of the policies is debatable." In part, it argues that there is no evidence "that definitively demonstrates that the Grievant had knowledge of the policies in question." It notes that the Stipulated Agreement does not specify what policies were violated. Moreover, it contends that the Branch has not been "consistent and unbiased in applying the rule or standard."

With regard to the attendance issues set forth in the termination letter, the Union argues that the Grievant "provided detailed explanations for each date," and such information was not taken into consideration. Further, the Union argues that "based upon the evidence submitted regarding the discipline issued to other employees for attendance issues, and the lack of action taken against Roberta Palmer, it is the Union's belief that appropriate discipline was not taken" in the case of the

Grievant. With regard to Palmer, the Union argues that "Palmer admitted that she was late and that her computerized attendance entries were wrong or incomplete." It argues that Palmer gave her assistant the authority to "click" the button for JETTS regarding her attendance if she forgot. The Union states that while a failure to "click" led to the Grievant's discipline, Palmer could have a subordinate take the action without any ramifications. In its reply brief the Union asks the Arbitrator "to go into the Palmer record with great detail as it is the primary example of disparate treatment and unequal enforcement" Further, the Union suggests in its reply brief that the Branch's attempt "to isolate and distance [Palmer] from the actual disciplinary decisions that impacted the grievant," is "hollow and deceptive as the Branch's brief is full of references and indices that point directly to Robert Palmer's intimate involvement in the discipline that fell upon the grievant"

With regard to the discipline issued to other employees for similar conduct. The Union contends only one example of the application of the policies and subsequent discipline to another employee involved a member of the Judicial Professional Employees Union (JPEU). It argues that Broderick, the employee in the bargaining unit, was on FMLA and he used more time than was available to him under the law and policies and never returned to work. It notes that Broderick failed to respond to letters, independent attempts by the Union to locate him, and failed to attend his pre-disciplinary meeting and therefore was a "no show, no call." Thus, the Union contends that the facts of the Grievant's case and Broderick case are not similar or the same. In its reply brief, the Union contends that the Branch mischaracterizes the Broderick case.

With regard to the non-bargaining unit members the Union notes that six of the employees received discipline short of termination. It argues that of the seven examples of discipline five were settled with last chance agreements. Further, it contends that of the seven examples of discipline offered three included ethics violations and all three employees charged with such ethics violations were brought back to work. It points out that the Grievant was not found to have violated ethics regulations. The Union notes that the Grievant was never offered a last chance agreement.

With regard to the investigatory element of just cause, the Union contends that Lucas did not conduct an independent investigation into the dates relied upon in the decision to

terminate the Grievant in question. It disputes Lucas' claim that he did not have to investigate the Grievant's actions on those dates. Further, it argues that Lucas was aware of the "flex" provision put in place by the Grievant's previous supervisor, and was aware of all of the information conveyed to him by the Grievant at the pre-disciplinary meeting held on 1/9/17 but did not convey the information to his supervisors for review prior to the decision to terminate the Grievant. Further, it notes that although the Grievant informed Lucas that she had contacted the Clerk of the Court regarding absences, Lucas never confirmed the information with the Clerk. Thus, it argues that although the termination letter indicates that the Grievant's explanations were considered, Lucas' testimony does not indicate that he did any follow up on the Grievant's explanations or that he forwarded the information to those making the decision to terminate.

With regard to the remedy, the Union states in its brief that a remedy should be fashioned consistent "with the handling of the cases in Joint Exhibit 24." It goes on to state, "Although not optimal for the Grievant, awarding a return to work with no back pay decision would, in essence be tantamount to a last chance agreement as further violations would result in termination considering the Grievant has already been out of work for over two years."

Discussion

At the time of her termination the Grievant held the position of Mediation Specialist II. The Grievant testified that her duties as a housing mediator included negotiating landlord/tenant disputes, contract disputes, foreclosure issues, and housing code issues. The evidence indicates that on Mondays, Wednesdays, and Fridays the Grievant would travel to Bridgeport, and on Tuesdays and Thursdays she would work in Norwalk. Her usual work hours were from 8:45am to 5:15pm. The Grievant stated that she would work through her lunches to get through the cases. On occasion she would work in the Waterbury court. The Grievant noted that when she worked at the Waterbury location she would try to be done with the docket by 1:00 p.m. so that she could return to Bridgeport, which was closer to home.

The evidence indicates that since 2008 employees use the Judicial Employee Time Tracking System (JETTS) as a centralized electronic attendance monitoring system. JETTS allows employees to track attendance, request time off, enter in a travel log,

and review their hours for that pay period. To request time off on the JETTS system the employee must enter a request into the system "save it" and hit the "send" button. If an employee does not hit the send button Palmer would not receive the request until the end of the pay period, resulting in unapproved time off. Palmer noted that it is also important for an employee to complete a travel log so that if an employee is working in a location that differs from his or her regular location to allow employees and supervisors to know where to contact the employee if necessary. Palmer agreed that when she was out of the office to attend the first day of hearing in this case she did not note it in her travel log.

Cynthia Teixeira (hereinafter "Teixeira") was the Grievant's direct supervisor until late October or November 2016 when she went on medical leave. The evidence indicates that Teixeira retired on July 1, 2106. Teixeira reported to Palmer. The evidence indicates that during the period that Teixeira was the Grievant's supervisor the Grievant received only limited negative comment about her attendance. In the evaluation completed by Teixeira for the period October 1, 2014 to September 30, 2015 she rated the Grievant as "Y=Met Expectations" to the statement "Adheres to established guidelines and rules of the Branch and Division." With regard to the category "attendance" she was rated "Y-Met Expectation." The narrative section included the comment "..., we have had conversation regarding timeliness and there has been improvement in this area." Palmer completed the Grievant's evaluation covering the period October 1, 2015 to September 30, 2016. In contrast to Teixeira, Palmer rated the Grievant "I-Met Expectation Inconsistently" to the statement "adheres to established guidelines and rules of the Branch an Division." Among the specific areas in which Palmer rated her work as inconsistent was in the area of "attendance." The narrative section of the evaluation included the following:

This manager has been advised that attendance policy violation occurred during this rating period. Therefore, Magalie has been rated "I" for Attendance (L) and Adherence to guidelines and rules of the Branch. .. This manager has directed Magalie on several occasions to send to her manager weekly reports outlining her daily caseload along with the agreements written for each case. Magalie fails to do so even after multiple requests .. The limited number of reports that Magalie has sent to his manger shows instances where stipulations are sometimes illegible which causes hardship for the parties involved.

Palmer explained that she rated the Grievant in this manner because prior to her taking over as the Grievant's direct supervisor, the Court Operations Personnel Unit told her that there had been disciplinary issues that needed to be reflected in the Grievant's performance appraisal.

Palmer noted that other housing mediation specialists generally complied with the attendance procedures in place and provided both immediate communication for unexpected time off and the JETTS automatic emails requesting supervisor approval for time off. She agreed that employees did not always comply or would forget to hit the send to supervisor button but unlike the Grievant it was never on a consistent basis. The Grievant testified that although she did miss steps in the JETTS system by not sending messages about attendance properly she was not missing the steps intentionally.

The evidence indicates that during the period that Teixeira was the Grievant's supervisor she permitted the Grievant flexibility in her arrival and departure times. The Grievant testified that Teixeira was located in New Haven and during the period Teixeira was the Grievant's supervisor the Grievant would contact her via telephone regarding issues. Semexant-Coffy noted that she rarely saw Teixeira unless she covered a shift in New Haven. She described Teixeira's supervisory style as allowing housing mediators to take the initiative, and ensuring that the job was handled professionally. It was her recollection that when she was supervised by Teixeira and had an emergency or illness she would contact Teixeira to ensure coverage, and then later enter the information into JETTS.

The Grievant testified that it was her understanding that she had flex time. She testified that she informed Lucas of her flex time. According to the Grievant, under flex time if she worked through lunch or if she came in a little late, she had the ability to make up the time within the day or by the next day. She agreed that she did not have the ability to come and go as she pleased, but she had the ability to notify Teixeira and ask to make up the time if she had arrived late by working through her lunch and breaks. It was her understanding that all housing mediators had the ability to flex their time. With regard to the flex time question, an e-mail exchange was introduced into evidence between Lucas and Teixeira. The e-mail exchange was as follow:

Lucas to Teixeira on December 11, 2015 at 7:58 AM:

I am following up on something that Ms. Semexant-Coffy said during her investigatory meeting. Was she allowed to flex her time?

Teixeria responded on December 11, 2015 at 10:16 AM:

Well as a matter of fact yes, except I called it makeup time... when we did "flex" it was work 9 days extra hour, have 10th off. I recently found that "flex" was the term we now use for "makeup".

Lucas responded on December 11, 2015 at 11:38AM:

She essentially said that she could come and go as she pleased and if she came late she would work through her breaks and lunch or stay late. She said that this was the "understanding" that she had with you as her supervisor. Can you let me know if this was the case? Thanks.

Teixeira responded at 12:11 PM as follows:

The difficulty is that when we are doing our dockets, it's difficult to stop working with clients when we are on the edge of an agreement, or if the courtroom is full of litigants, including lawyers who are anxious to get their cases done, or pro se parties who need to go to work or pick up their kids or have medical issues (like diabetes, for example) these folks all want to be heard asap. Judges typically take their recess at one (1pm) but we have primarily worked to help get all parties heard so that if the court convenes at two and there isn't an agreement, these parties can be heard by the court. I wish you would take the time to come sit in the court while these dockets are going on (can come sit with me) and see what occurs, this would give you a better understanding of the mediation process. Yes, staff can take lunch, but again, when faced with all these issues for whomever waiting to be served, we serve them. You might also want to talk to some of the housing clerks and judges who do housing matters. That could also help you understand this process. We serve the communities and we try to serve them well but not keeping them waiting from 9am to 5 o'clock....

Lucas responded on December 16, 2015 at 9:19AM:

I have a pretty clear understanding of what transpires during the mediation docket. I need to know if Ms.

Semexant-Coffy was explicitly told by you that she could arrive and depart at times other than her scheduled work hours. Thank you.

Teixeira responded on December 21, 2015 at 11:50AM:

Well not on an ongoing basis, but of course it would depend on the circumstances.

Lucas testified that he did not investigate the Grievant's claim that other similarly situated personnel were flexing their hours as well because the question came up during a pre-disciplinary hearing not an investigatory meeting.

Lucas first became involved in the investigation of the Grievant on October 15, 2015 to investigate the alleged theft of time by the Grievant. Details of his investigation are described in the background section of this decision. In October of 2016 the Grievant received a letter from Joseph D'Alesio, regarding her attendance from February 9, 2015 to October 29, 2015. In the letter the Grievant was informed that she "on eighty (80) occasions during the review period you arrived at work later than your scheduled starting time of 8:45 a.m. On all occasions in question you misrepresented your arrival time on official attendance documents. You did not report being tardy to your supervisor, nor did you charge any of your accrued time. The total number of hours unaccounted for is 62.75." As a result the Grievant was suspended from work without pay for a period of five (5) days. She was also required to pay back the equivalent number of hours (62.75) through payroll deduction. Lucas testified that the gap between the December 2015 hearing and the October 2016 imposition of discipline was due to the fact that several other investigations were being conducted by one of his co-workers and it was decided that the discipline could wait until the investigations were concluded because they were "similar in nature" in that they related to theft of time and improper recording of time sheets.

The Grievant was subsequently informed of another pre-disciplinary hearing to be held on November 15, 2016 concerning unauthorized absences on September 28, 29 and 30, 2016 and October 14, 17, 18, 19, 20 and 21, 2016. Subsequent to the issuance of the letter a Stipulated Agreement was executed. The stipulation provided for a five day suspension and the Grievant reimbursing the Branch for 62.75 hours of unauthorized absences.

It specified that "The employee understands that her next occasion of unauthorized leave will result in a fifteen (15) day suspension without pay or benefits," and that the "agreement is specific to this matter and the discipline issued on October 28, 2016, ..."

On January 17, 2017, the Grievant was informed of another pre-disciplinary hearing to be held on January 19, 2017 regarding unauthorized absences on November 25, 2016, December 12, 16, 22, 23, 27, and 28, 2016. Lucas testified that during the hearing he asked the Grievant about each instance of alleged absence and she responded with explanations that he recorded in his notes. For example in his notes he wrote "Click to notify," "Didn't click to notify supervisor, had a story for it." Lucas also asked the Grievant if she notified Palmer if she was going to be absent. According to Lucas, the Grievant responded that she usually notified her in the morning and would call the clerk's office to inform them as well. Lucas stated that he specifically referred to an unauthorized absence on December 23, and Semexant-Coffy said that she had contacted the clerk but not her supervisor because Palmer was on vacation. The Grievant also told Lucas that Palmer allowed for others to stay later or use time but excluded her from this practice. At hearing the Grievant confirmed that she did not text or call Palmer on December 12, 16, 22, 23, 27 or 28. However, she stated that she did note the dates in JETTS. She noted that because she did not send the information properly it got to Palmer late. Palmer could not recall if she contacted the Clerk or any other supervisors inside the courthouse where the Grievant worked before reporting the Grievant's attendance issues to human resources. Lucas testified that he did not believe that he contacted the clerk's office to confirm the Grievant's statement that she had contacted the clerk when she was late.

The Grievant received a letter of termination dated March 1, 2017 from Joseph D'Alesio Executive Director of Court operation at the time. The letter of termination included the issuance of lesser discipline leading up to the termination. It stated:

For November 25, 2016, you are being suspended without pay for a period of fifteen (15) days.

For your occasions of tardiness during the bi-weekly pay period which included December 12, 16, and 22, 2016, you are being suspended without pay for a period of thirty (30) days.

For your occasions of tardiness during the bi-weekly pay period which included December 23, and 27, 2016, your employment is being terminated effective close of business March 1, 2017.

At the outset, under the principle of just cause the question is whether the Employer has met its burden that the Grievant has committed a disciplinary offense or offenses and that the Grievant was on notice that she was not complying with the Branch's attendance policy. Upon careful review of the evidence introduced by the Branch and the testimony of the Grievant regarding the dates listed, I conclude that the Grievant was tardy for work on the dates alleged in the letter of termination and that her tardiness violated Branch policy and the policy outlined by Palmer in her e-mails and meeting with medication specialists. I have reviewed Grievant's testimony regarding the reasons she was late and I am not persuaded that the reasons justified her not properly entering the information in JETTS, calling Palmer, leaving a message for Palmer, or texting Palmer. Even accepting the Grievant's reasons for being tardy (i.e.; going to the pharmacy on November 25, being delayed by traffic on December 12, and stopping to pick up food for a holiday party on December 22) does not excuse the Grievant from not following the stricter standard established by Palmer. I have also considered the fact that Palmer agreed that on November 25, December 22, 27 & 28 she was on vacation. The Grievant knowing that the attendance and tardiness of mediation specialists was being scrutinized knew of should have known to text Palmer even if she was on vacation and to have at least properly entered the information regarding her tardiness in the JETTS system. Although excusing the Grievant for not appropriately hitting the "send" button on rare occasion might be reasonable, her more than occasional use of that reason is not reasonable. Further, even if the Grievant called or contacted the clerk at the courthouse when she was going to be late, such an approach was clearly not provided for in the Branch policy or in Palmer's communication with the Grievant. Therefore, I conclude that the Grievant engaged in the conduct relied upon by the Branch in its decision to discipline the Grievant.

With regard to notice of the rules and policy being given to the Grievant, it is clear from the testimony and e-mails from Palmer to the mediation specialists generally and the Grievant specifically that when Teixeira went on medical leave and Palmer became the supervisor of the

mediation specialists Palmer notified the mediation specialists that the flexible approach regarding attendance issues was significantly changing. Palmer made clear that under her supervision things were changing and as fully described in the background section of this decision she set forth her policy in the form of e-mails to all the mediation specialists, an individual e-mail to the Grievant, and during a meeting she held with mediator specialists. In her November 19, 2015 e-mail Palmer attached a copy of the JETTS user manual and outlined provisions of the attendance policy. In her March 17, 2016 e-mail Palmer stated, in part, "Please contact me directly on my personal cellphone (203-606-1181) when you will be out unexpectedly. You may leave a message if I don't pick up or text me if you prefer. I will need to know the reason for the absence (e.g. illness, immediate family illness, emergency) and the length of time that you expect to be absent from work." Based upon the evidence, I conclude that the Grievant was placed on notice that Palmer intended to enforce rules requiring mediation specialists to properly enter attendance information in JETTS and to directly communicate with her via telephone or text regarding attendance issues, including being tardy.¹⁰

The question remaining is whether the penalty of termination imposed by the Branch was consistent with the principle of just cause. In considering this question, it is appropriate to consider whether other similarly situated employees were treated the same as the Grievant. Of the discipline introduced into evidence one employee was in the same bargaining unit as the Grievant, and the other employees were in other units in the Court Support Services Division under D'Alesio. I agree that, under the facts of this case, it is appropriate to consider both the employees in the bargaining unit and those outside the bargaining unit. Those employees outside the bargaining unit worked under the same Branch policies and under the ultimate supervision of D'Alesio. Each

¹⁰ I have considered the Union's argument that the Branch's investigation of the allegation upon which the termination was based did not meet the just cause standard. Although Lucas did not conduct the type of investigation that he had previously conducted regarding the Grievant's conduct and did not issue an investigatory report, he did hold a pre-disciplinary hearing during which the Grievant was given an opportunity to respond to questions from Lucas and had an opportunity to give his side. In light of the nature of the allegations being reviewed and the fact that the arbitration hearing is a denovo review, I conclude that the Branch did not breach the investigatory standard required under the just cause standard.

of the employees in this category are fully discussed in the background section. In summary, each employee was alleged to have engaged in unauthorized absences. The employee in the same bargaining unit as the Grievant, Employee Jt. 23, was informed in his letter of termination that if he "failed to attend the [pre-disciplinary] meeting, it would be considered abandonment of [his] position." The letter goes on to indicate that the employee did not attend the meeting. It is undisputed that a grievance was filed on behalf of the employee but was withdrawn. The other employees similarly situated to the Grievant were from outside the bargaining unit. In the case of employee Jt. 24a the employee was terminated for not adhering to attendance policies. The employee had received a written reprimand, and a 1 day suspension before being terminated. Within the letter of termination, the employee was issued suspensions of 3, 5, 10, 15, and 30 days for unauthorized leave between October 20, 2015 and October 28, 2015. The termination was based upon an unauthorized absence on November 24, 2015. Another employee, Jt. 24b, was initially terminated for attendance issues. As in the prior two cases in the letter of termination the Branch issued a 1 day suspension, 3 day suspension, 5 day suspension, 10 day suspension, 15 day suspension, and a 30 day suspension. Each suspension described a specific day of unauthorized absence. The termination was based on an additional day of unauthorized leave. Subsequent to the issuance of the letter of termination the Branch and Union entered into a Stipulated Agreement. The Agreement returned the employee to work under a last chance agreement. Employee Jt. 24c. was terminated for an unauthorized absence "which resulted in violation of a stipulated agreement with the Judicial Branch signed on June 26, 2015 and violation of Judicial Branch policies" The stipulated agreement that was violated provided, "On the next occasion of unauthorized leave, regardless of reason or duration, the employee will be terminated." Employee Jt. 24d was terminated for unauthorized leave on October 21, November 17, 21, and 22 2016. The letter of termination noted that the employee had previously received "five and ten day suspensions in August and September 2016," and had been "repeatedly warned by Human Resources of the importance of managing your accrued time in a manner that avoids removal from payroll" Subsequent to the issuance of the letter of termination the Branch and Union entered into a Stipulated Agreement returning the employee to work without pay or benefits under a last chance agreement. The last chance agreement also provided that the employee would have preference for a transfer. Employee Jt. 24e was terminated on December 2, 2016 for six occasions of tardiness violating a last chance agreement executed on May 31, 2016. Similarly, employee Jt. 24f was

terminated for violation of a last chance stipulated agreement. Employee Jt. 24g was terminated for unauthorized leave regarding the employee calling out sick on 13 occasions between March 16 and April 17, 2015. The letter of termination noted that the employee had received a 10 day suspension in December 2014 and had been warned. Within the letter of termination the Branch issued a 15 day suspension and a thirty day suspension. Subsequent to the issuance of the termination letter the Branch and Union entered into a Stipulated Agreement allowing the employee to resign and have the letter removed from her personnel file and maintained in the grievance file.

Thus, of the similarly situated employees only Employee JT. 24a was a straightforward case of termination for unauthorized absence. Employees Jt. 24b and 24c were reinstated under a last chance agreement. Employee Jt. 24c and Jt. 24e were terminated after violation of a last chance agreement. Employee Jt. 23, the one employee in the same bargaining unit as the Grievant was terminated after not showing up to a mandatory pre-disciplinary hearing and Employee Jt. 24g had his termination converted to a resignation. This evidence shows at best a varied approach to disciplining employees similarly situated to the Grievant.

In addition to the variation in discipline to similarly situated employees is evidence concerning Palmer's attendance record. I agree with the Union that a review of Palmer's record of tardiness is appropriate particularly since she was the Grievant's supervisor at the time the termination was issued. Moreover, it is worthy of note that in her November 19, 2015 e-mail to the mediation specialists she stated that she used the JETTS system to report her attendance. Even accepting the Branch's argument that Palmer was not specifically involved in the decision to terminate the Grievant, it is clear from the evidence that she announced and implemented the stricter enforcement of the rules, and she was the one to raise the issue with the Grievant directly and through her annual review. As fully described in the background section of this decision, Palmer had numerous occasions on which she agreed she was tardy. On other occasions she was not clear on the reason that records indicated that she was tardy. In addition, although Palmer raised concern with the Grievant for not making an appropriate entry in the travel log she agreed that while attending the first day of hearing in the instant case she did not make an entry in the travel log. Although Palmer agreed that she self-reported her tardiness to her supervisor, and considered her own tardiness to be a problem she never received discipline for her tardiness.

Another consideration, in evaluating the penalty of termination in the instant case is the question of whether the Branch fulfilled its obligation under its Stipulated Agreement with the Grievant and under the principle of progressive discipline. The Stipulated Agreement entered into with the Grievant provided that the Grievant "understands that her next occasion of unauthorized leave will result in a fifteen (15) day suspension without pay or benefits."

Branch Policy 518 was cited and relied upon in the letter of termination issued to the Grievant. The Policy provides seven levels of discipline prior to an employee being terminated for "unauthorized leave."¹¹ It also provides that "each instance of unauthorized leave, regardless of duration, will be considered an individual occasion." It is well established that progressive discipline is intended to provide for an employee with the opportunity to correct his or her behavior.¹² In the instant case, the Branch's termination letter incorporated suspensions of 15 and 30 days in the same letter that informed the Grievant of her termination. I recognize that under Branch policy each occurrence of unauthorized leave is a separate occasion that can lead to its own discipline. However, the Branch's own policy provides for seven levels of discipline prior to termination. The fact that other similarly situated employees received last chance agreements after being initially terminated, the Grievant's supervisor had issues with attendance,¹³ taken together with the fact that the Branch moved to termination in a manner that is not consistent with the principle of progressive discipline supports the conclusion that, although the Branch has just cause to discipline the Grievant, it did not have just cause to terminate the Grievant without providing the Grievant with "one last chance."

Therefore, based upon all the evidence and the above analysis, I conclude that the termination of the Grievant shall be reduced to a suspension for the period commencing with the

¹¹Branch Policy 501 is also cited. It also provides for progressive discipline and provides a supervisor with discretion even after "the ninth occasion of absence."

¹² Certain types of conduct can justify discipline without progressive discipline or justify skipping steps in the progressive disciplinary process. This is not one of those cases.

¹³ In considering Palmer's attendance, I am not evaluating whether her tardiness was the same or similar to the Grievant's. I have considered it for the purpose of evaluating how strictly the Branch and Palmer apply the attendance rules in evaluating the penalty of termination imposed on the Grievant.

date of her termination until the date of her reinstatement. I do not reach this decision to reduce the termination to a long term suspension lightly. The Grievant needs to understand that her tardiness is not acceptable, and that she needs to follow the procedures set forth by Palmer and the Branch to communicate her absence and tardiness.

It is directed as follows:

1. The Grievant shall be reinstated to her position as a Mediation Specialist II/Housing. Such reinstatement shall take place within thirty (30) days of the issuance of this decision.
2. The period from the Grievant's termination to the date of her reinstatement shall be converted to a suspension.
3. The Grievant shall not be entitled to back pay or benefits for the period of the suspension.
4. The Grievant shall be required to attend any training and orientation that is regularly part of mediation specialist training and orientation prior to starting work. The Grievant shall be paid at the rate of a mediation specialist II during the period of any such training.
5. For a period of 12 months¹⁴, commencing from the date the Grievant is reinstated, the Grievant shall be subject to termination for her next occasion of unauthorized absence.
6. In the event that the Grievant is terminated under paragraph 5 above, the only issue of just cause that may be subject to the grievance/arbitration procedure is whether or not the Grievant violated Branch policy regarding unauthorized leave.¹⁵

Award

It is directed as follows:

1. The Grievant shall be reinstated to her position as a Mediation Specialist II/Housing. Such reinstatement shall take place within thirty (30) days of the issuance of this decision.

¹⁴ I recognize that in the last chance agreements entered into with other similarly situated employees the period was 2 years. In light of the length of the Grievant's suspension, I conclude that a 12 month period is appropriate.

¹⁵ I note that it is outside of my authority to deny the Grievant the right to bring an action in another forum. Similarly, it is outside my authority to require the Grievant to withdraw cases she might have currently pending in other forums.

2. The period from the Grievant's termination to the date of her reinstatement shall be converted to a suspension.
3. The Grievant shall not be entitled to back pay or benefits for the period of the suspension.
4. The Grievant shall be required to attend any training and orientation that is regularly part of mediation specialist training and orientation prior to starting work. The Grievant shall be paid at the rate of a mediation specialist II during the period of any such training.
5. For a period of 12 months¹⁶, commencing from the date the Grievant is reinstated, the Grievant shall be subject to termination for her next occasion of unauthorized absence.
6. In the event that the Grievant is terminated under paragraph 5 above, the only issue of just cause that may be subject to the grievance/arbitration procedure is whether or not Grievant violated Branch policy regarding unauthorized leave.¹⁷



Harvey M. Shrage
Arbitrator

July 8, 2019

¹⁶ I recognize that in the last chance agreements entered into with other similarly situated employees the period was 2 years. In light of the length of the Grievant's suspension, I conclude that a 12 month period is appropriate.

¹⁷ I note that it is outside of my authority to deny the Grievant the right to bring an action in another forum. Similarly, it is outside my authority to require the Grievant to withdraw cases she might have currently pending in other forums.

1/19/17

Semexant-Coffey

w/Chip

LWS

Re: 11/25/16

- Told Palmer that she had an emergency + had to go to pharmacy, was not an extension of lunch, could have been a break. (After 2pm, closer to 3)

- Palmer was not in that day, Palmer called her the following week + Palmer told her "I don't care". S-C ^{asked} ~~told~~ her if she wanted to hear why, Palmer said no + hung up the phone.

- entered time in Jetts when she got back, should have been only 15 mins b/c of break.

click to notify?

- ~~Sometimes~~ Didn't click notify supervisor, (had a story for it) "I don't think I did". She hits save but not the email, most likely @ diff times.

Re: 12/12/16

chip - when did you notify Roberta?

SC "I usually do that morning. I don't text + drive". I call the clerk's office.

Curded in @ 918 - "I don't know"

Chip - no clock

12/16/16 + 12/22/16

chip - Do you always call the clerk?

- "I always call the court clerk"
B-George Pop

2/23/16
 Contact - yes I contacted the Clerk (George) + Roberta was on vacation
 - Roberta told her a week later that S-C would have to get prior approval. ^{S-C for a flat fee?}
 "I think I had checked notify Supervisor"
 "I purposefully put LU"
 Chip - she has time
 S-C - Roberta allows others to stay later or use time, but not her.

2/27/16
 Contact - Notified George, Roberta was on vacation.

2/28/16 Dr's appt.
 "This was for my son." "They had a last minute cancellation and his father couldn't take him."
 - "I could not put in for pre-approval" b/c she was on vacation.
 - There was no court & "I had the time."

S-C - Last Friday 1/13 brought her daughter to doctor for emergency & notified Roberta day before (Thurs). Clicked notify supervisor
 * "you know it cuts both ways" and no response to date". So I wait.

Does SC have a way to see it was approved?

Chip-

S-C is making the effort to contact the court clerk who is her day to day contact.

Who does she call when Roberta is on vacation? You can ask the court clerk.

Can't be unreasonable delay in the approval or disapproval of time off request.

- were these HEP compliance Dr's appts? She can't be denied. S-C claims Son's was a HEP dr's appt.

- Can get receipt for fire repair

- Can provide proof of medical emergency on 11/25/16.

- Call

Chip-

does not think the circumstances w/ these LWS Warrant 15 → more serious delay.

- prior permission can't be asked for for car problems

S-C Plenty of people flexing on a regular basis but not for me, I'm sure I'll be back soon.

(does not know if they are union)
(she can see everything in JETTS)

- Union prepared to argue that Palmer offers benefits to others but not S-C (flex)
- Also noted that Palmer's JETTS entries + card swipes are off just like S-C's.
- Roberta has ignored her requests for handicapped parking @ B'Port.