

2013 IL App (2d) 120916
No. 2-12-0916
Order filed March 27, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE BOARD OF TRUSTEES OF)	Appeal from the Circuit Court
NORTHERN ILLINOIS UNIVERSITY,)	of De Kalb County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11-MR-92
)	
METROPOLITAN ALLIANCE OF POLICE,)	
NORTHERN ILLINOIS UNIVERSITY,)	
CHAPTER NO. 291; and)	
RACHAEL MUSZYNSKI,)	Honorable
)	William P. Brady
Defendants-Appellees.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* In finding that the university did not have just cause to suspend the officer, the arbitrator did not violate public policy, exceed his authority, or demonstrate a gross misunderstanding of the facts. Affirmed.
- ¶ 2 In August 2008, Northern Illinois University police chief Donald Grady issued a verbal order that no university officer shall exceed 7.5 hours of work per day without seeking advance approval. Officer Rachael Muszynski received a seven-day suspension without pay because, during a

November 2008 training session, she exceeded 7.5 hours of work per day. The case was submitted to arbitration per the parties' collective bargaining agreement, and the arbitrator was charged with resolving the following issue: "Was there just cause for the suspension of Officer Muszynski, and, if not, what is the remedy?" Plaintiff, the Board of Trustees of Northern Illinois University (University), sought to uphold the suspension. Defendants, Muszynski and the Metropolitan Alliance of Police, Northern Illinois University Chapter No. 2091 (Union), sought to vacate the suspension. After listening to testimony from Muszynski and her various supervisors, the arbitrator ruled that the University did not have just cause to suspend Muszynski and ordered that Muszynski be made whole. The University appealed to the circuit court, but the circuit court affirmed the arbitrator. The University now appeals to this court, arguing, as it did in the court below, that the arbitrator's decision violates public policy in favor of effective, efficient, and disciplined police departments. Alternatively, the University argues that the arbitrator exceeded his authority by answering questions not presented to him and that he based his decision on gross mistakes of fact. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4 In March 2003, the University hired Muszynski to work as a police officer.¹ Subsequently, she was assigned to work as an inspector in the North Central Narcotics Task Force, a multi-agency law enforcement effort supervised by the Illinois State Police. Thus, Muszynski answered to two sets of supervisors, those with the University and those with the Task Force. Her University supervisors included Sergeant Larry Ellington, Lieutenant Darren Mitchell, and Grady. Her immediate supervisor was Ellington. Ellington supervised eight University officers, two of whom,

¹ Muszynski voluntarily resigned from the University in 2012.

Muszynski and Michael Rettig, also worked for the Task Force. Muszynski's Task Force supervisors were Master Sergeants Terry Murphy and Joe Perez, as well as Officer Backus (first name absent from the record).

¶ 5 In March 2008, Muszynski learned that she had thyroid cancer. She informed Ellington at that time. Ellington confirmed that he knew of Muszynski's thyroid cancer. Ellington directed Muszynski to use her "personal sick time" when she missed work for treatment. He did not need to know the details of her treatment; that was her business.

¶ 6 In August 2008, Grady issued a verbal order that University officers' shifts were limited to 7.5 hours per day and the officers must receive advance approval from a direct supervisor prior to working overtime. The order was made in an effort to trim the budget. The order applied to Muszynski and Rettig, as University officers assigned to the Task Force.

¶ 7 In October 2008, Task Force supervisors informed Muszynski and Rettig that, in November, there would be a week-long training session focusing on undercover survival. Task Force supervisor Perez sent members of the Task Force an e-mail that stated: "Make both yourself and your officers available to attend. If officers have previously requested any part of this time off, please advise. Considerable effort has gone into bringing this nationally[] recognized training to Illinois for [the Task Force] and *I expect all to attend.*" (Emphasis added.)

¶ 8 One week before the training session, Muszynski informed Task Force supervisor Backus that she had scheduled for the upcoming Wednesday a medical scan related to her cancer treatment. Backus told her to attend the rest of the training session as she was able.

¶ 9 During the week of November 17, 2008, Muszynski attended the training session. On Monday, the actual training session ran 8.5 hours.² Additionally, Muszynski, who lived more than 60 miles from the site of training, accrued 2.5 hours of round-trip travel time. Muszynski learned for the first time on day one of the training session that lodging was available. Therefore, she would not have had to accrue travel time. However, she already had her car, so, she drove home. Additionally, she needed her car to get to her doctor on Tuesday, as she was scheduled to have lab work done that day. On Tuesday, the actual training session ran 8 hours, and travel time was 2 hours. On Wednesday, Muszynski stayed home from training to go to her medical scan, recording 7.5 hours of personal sick time. On Thursday, the actual training session ran 8 hours, and travel time was 1.5 hours. On Friday, the training session was 7.5 hours, and Muszynski did not submit travel time. Thus, during the week of training, Muszynski's hours were as follows: 11 (Monday), 10 (Tuesday), 7.5 (Wednesday), 9.5 (Thursday), and 7.5 (Friday). Muszynski exceeded the standard 7.5-hour day three times, for a total of 8 overtime hours (or 2 overtime hours excluding travel time).

¶ 10 On December 1, 2008, Muszynski met with the University's Ellington to submit her November 2008 time sheets. Muszynski later testified:

“A. *** [W]e had a brief discussion ***. I had produced two time sheets. I didn't give Sergeant Ellington both of them. I produced the time sheet that reflected the overtime hours as per our [collective bargaining agreement], and I produced another one that was our solid [7.5] hours. I went to [Ellington]. You know, he noticed right away that we had accrued the extra time. I said, you know, I understand you are probably going to deny these.

² We know this by comparing Muszynski's time sheet to that of Rettig, who only went to the training session and did not accrue travel time.

I'm not looking for a fight on them, but per our [collective bargaining agreement] we get overtime.

Q. Okay. So did you create two time sheets then when you handed them to [Ellington]?

A. I had two time sheets prepared. I only handed [Ellington] the one without the overtime.

Q. Okay. Why did you prepare two?

A. Because I thought that he would deny the one with the overtime.

Q. And if he had denied the one with the overtime, what would have been the next step?

A. It would have depended on what I wanted to do from there. We could have filed a grievance based off the [collective bargaining agreement].

Q. Okay. So he never denied the overtime?

A. I put in for it and I was paid for it.

Q. Did you know at the time that you put in the overtime you were going to be disciplined?

A. No.

Q. So [Ellington] had the option of denying you overtime?

A. Yes.

Q. *** Did [Ellington] write a request for discipline?

A. Yes.

Q. After you [submitted] the overtime?

A. Yes.

Q. And this would be the same overtime that he received from [you] when you [yourself] called it into question?

A. I'm not quite sure of your question.

HEARING OFFICER: I think I understand it. What he's basically saying, this is the same overtime that you handed the two sheets in but that he—in effect, you just handed the one that had overtime in [it]?

A. Yes.

HEARING OFFICER: And he was aware that you had the two sheets?

A. As far as I know, yeah. There was one—it was in my hand.”

¶ 11 Muszynski testified that she understood the University's official verbal order to be “just no overtime.” She admitted, however, that she knew she should get advance permission before working any overtime. Previously, she never had to ask permission from the University to attend a training session put on by the Task Force. She admitted, however, that the previous training sessions occurred before the introduction of the 7.5 hour rule. As the only two University officers who also answered to the Task Force, Muszynski and Rettig were the only two University officers disciplined for exceeding 7.5 hours at the Task Force training session.

¶ 12 Rettig testified that he understood the training session to be mandatory. Rettig explained that, during an October squad meeting, supervisor Murphy told him to “remember the mandatory training in November.” Rettig also cited the e-mail by Perez, which stated that everyone was “expected to attend” the training session. Rettig knew that he was not supposed to work overtime

without permission. However, heading into the training session, Rettig had “no idea” that it would exceed 7.5 hours per day; therefore, he did not seek advance permission to work more than 7.5 hours per day. After the first day ran long, he did not think to notify the University to seek permission in the event that the other days ran long. The University discharged Rettig for violating the 7.5 hour rule. As of the date of the arbitration proceedings, review of his discharge was pending.³

¶ 13 Ellington agreed that he and Muszynski had a discussion regarding her time sheets. He immediately noticed that she had accrued extra hours and asked her why. She responded that she went to a mandatory training session. Ellington had not previously heard of the training session. Ellington told her that she was supposed to have gotten advance approval for the overtime hours, and, to his knowledge, the training session was not mandatory. Muszynski repeated her position that it was mandatory. Ellington told her that they would “take a break” and he would determine whether “somebody higher up on the Task Force had gotten it approved through [the University’s] Mitchell.” Ellington spoke with Mitchell, who stated that he did not know about the training session. Ellington then filed a request for discipline, based on Muszynski’s failure to obtain advance approval for the extra hours.

¶ 14 In Ellington’s view, Muszynski should have known that she was required to request the extra hours in advance. Ellington stated that Muszynski demonstrated awareness that shifts were limited to 7.5 hours per day. For example, after the order issued, and aside from the training session in question, Muszynski’s time sheets “always had 7.5 a day.” Additionally, in October 2008,

³ This court upheld the Merit Board’s decision that there *was* just cause to discharge Rettig. *Rettig v. Northern Illinois University*, 2012 IL App (2d) 110862-U. However, as will be discussed below, there were factual and procedural differences between that case and the instant case.

Muszynski requested to work a drug bust that would necessitate going over 7.5 hours, and Ellington denied her request.

¶ 15 After filing the request for discipline, Ellington conducted a follow-up investigation with Task Force personnel. Murphy told Ellington he knew University officers were not to exceed 7.5 hours. Murphy said Muszynski should have reminded him that she was under the 7.5-hour constraint and, although inconvenient, he would have deferred to it. Murphy further informed Ellington that he was not aware whether the training session was “absolutely” mandatory, but that Perez would be the better authority on that question. Ellington then contacted Perez, who stated that he was not sure whether he made it “absolutely” mandatory; however, he “definitely wanted everyone to go.”

¶ 16 The University’s Grady testified that Task Force supervisors may schedule the University officers as they deem necessary; however, they must adhere to University overtime limitations, and, for the most part, they do. Grady, as the chief University officer, had the power to override any Task Force assignment. Therefore, in his view, the Task Force training session could not have been mandatory. He is the only one who could have made it mandatory.

¶ 17 In May 2009, Grady submitted to Human Resources the disciplinary recommendation for Muszynski of a seven-day suspension without pay. Grady’s recommendation was based on his characterization of the instant offense as three separate offenses (working more than 7.5 hours on three days during the training week), Muszynski’s prior offenses, and Muszynski’s “attitude.” Regarding the prior offenses, Muszynski had one three-day suspension for insubordination (based on bringing flavored water as opposed to natural water to a training session) that was ultimately overturned by an arbitrator. Additionally, Muszynski had two written reprimands, one for conduct unbecoming of an officer (when she and several other officers went to a strip club while off duty)

and one for a vehicle violation. Finally, Muszynski had one oral reprimand for “disobedience,” the details of which are not in the record. These offenses were evenly spaced across Muszynski’s five-year term of employment. When asked to be more specific regarding Muszynski’s attitude, Grady explained that, although she had the potential to be a “superstar,” she was performing beneath her capabilities. His written report stated that Muszynski acted “disinterested” in her relationships with her University supervisors, though she seemed to get along well with her Task Force supervisors.

¶ 18 The arbitrator ruled that the University did not have just cause to issue the seven-day suspension and ordered that Muszynski be “made whole.” The arbitrator explained:

“Muszynski gave [Ellington] two separate time sheets. One seeking overtime under the [collective bargaining agreement] and the other complying with the Department’s Rules and Regulations [the verbal order not to exceed 7.5 hours per day]. Ellington could have denied the overtime request and [Muszynski] would have had the option of grieving the denial as a [collective bargaining agreement] violation. She might not have chosen to grieve the denial.

Ellington appears to have used subjective criteria when he chose which of the overtime sheets he would rely on in this dispute. Ellington first approved the time sheet that sought overtime, rather than the time sheet that only asked for 7.5 hours of regular time. Then[,] he recommended that Muszynski be disciplined for seeking the overtime, which he approved, because Muszynski did not obtain *prior* approval. His action is incomprehensible to the arbitrator, and can only be described as arbitrary and capricious. He sought to have Muszynski disciplined for seeking something he could have easily denied. It is hard to

conclude that such an action was [] objective or even in good faith. It certainly does not establish ‘just cause’ for discipline of Muszynski.

Had Ellington denied the request for overtime, as [Muszynski] assumed he would, she may have filed a grievance. Arguably, that grievance could have been denied based on the evidence submitted. However, she would not have been the subject to the suspension or other disciplinary action.

The grievance is granted. The evidence does not establish just cause for any discipline, much less a seven-day suspension. [Muszynski] should be ‘made whole’ as to any prior assignments and loss of income, and the discipline must be expunged from her employment record.”

¶ 19 On July 29, 2011, the University filed with the circuit court a complaint to vacate the arbitrator’s award, arguing as it does here on appeal that the arbitrator violated public policy, exceeded his authority, and made gross mistakes of fact. Muszynski and the Union filed a combined motion to dismiss and for summary judgment. The University responded and filed its own motion for summary judgment. After hearing oral argument on the motions, the circuit court entered judgment in favor of Muszynski and the Union. This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 The University seeks to vacate the arbitrator’s decision that there was not “just cause” to suspend Muszynski and that Muszynski be made whole. We review the decision of the arbitrator, not the circuit court’s review of the arbitrator’s decision. See, e.g., *Firefighters v. City of Chicago*, 323 Ill. App. 3d 168, 169 (2001). The Illinois Uniform Arbitration Act authorizes courts to review

and, in certain circumstances, modify or vacate arbitration awards. 710 ILCS 5/12 (West 2010). However, judicial review of an arbitration award is extremely limited. *Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union, Local 1600*, 74 Ill. 2d 412, 418 (1979). The purpose of such limited review is to provide finality to labor disputes submitted to arbitration. *American Federation of State, County & Municipal Employees, AFL-CIO v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996) (*AFSCME II*). Courts must enforce an arbitration award so long as the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties' collective bargaining agreement. *Id.* at 305. In contrast to the deference given to an arbitrator who acts within his or her authority, the issue of whether an arbitrator exceeded his or her authority is reviewed *de novo*. *City of Chicago v. American Federation of State, County & Municipal Employees, Council 341*, 283 Ill. App. 3d 446, 451 (1996).

¶ 22 The University argues that the arbitrator's decision violates public policy in favor of effective, efficient, and disciplined police departments. Alternatively, the University argues that the arbitrator exceeded his authority by answering questions not presented to him and that he based his decision on gross mistakes of fact. For the reasons that follow, we disagree.

¶ 23 A. Award Does Not Violate Public Policy

¶ 24 The University's primary argument is that the arbitration award must be vacated because it violates public policy in favor of effective, efficient, and disciplined police departments. An arbitration award that violates public policy is not enforceable. *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 460 (2005). An application of the public policy exception is a two-step process. *AFSCME II*, 173 Ill. 2d at 307-08. First, the appellant must identify

a well-defined and dominant public policy. *Id.* Second, the court must determine whether the arbitrator's award violated that public policy. *Id.*

¶ 25 Here, the first step is satisfied; the appellant is able to identify a well-defined and dominant public policy. Both parties agree that public policy favors an efficient and disciplined police force. As explained by the First District:

“The police department is a para-military organization with a chain of command leading to the chief of police. In order to establish and maintain a leadership role, the chief of police must command the respect and obedience of all officers. Flagrant, deliberate[,] and continuing disobedience *** undermines that authority and weakens the entire structure of the organization. [] A rule permitting each officer to subjectively determine whether he believes an order to be lawful and reasonable would destroy the discipline necessarily inherent in a para-military organization such as the police department.” *Martin v. Mattys*, 149 Ill. App. 3d 800, 808 (1986).

¶ 26 The second step, however, has not been satisfied. The arbitrator's ruling has not violated public policy in favor of an efficient and disciplined police force. In determining whether there is “just cause” to discipline an officer, one must consider whether the failure to discipline the officer would be detrimental to the efficiency of the service. *Norman v. Board of Fire & Police Commissioners of the City of Zion*, 245 Ill. App. 3d 822, 830 (1993). Where the officer's conduct may be characterized as a “blatant or unfounded” refusal to follow an order, it is readily apparent that a finding of just cause is neither arbitrary or unrelated to the requirements of the department. *Id.* at 830-31. In contrast, where the facts are neither direct or simple, a finding of just cause may not be

appropriate. *Id.* (officer's failure to report to duty, based on doctor's advice, did not constitute cause for termination).

¶ 27 The University agrees that not all violations of lawful and proper police orders warrant discipline but argues that, because Muszynski's violation of the order was blatant, unfounded, and without extenuating circumstance or nuance, vacating the suspension would undermine public policy in favor of effective police departments. In support of its position that Muszynski's violation was blatant and without extenuating circumstances, the University notes that: (1) Muszynski understood completely that she was required to obtain advance approval from the University before exceeding a 7.5 hour shift with the Task Force, as demonstrated by her earlier compliance during the drug bust; (2) Muszynski did not seek approval for the extra hours after the first day of training exceeded 7.5 hours, thereby violating the rule on three separate occasions; and (3) Muszynski did not make the University adequately aware of her cancer treatment during the week in question. We note here that, though the University presents its argument as a legal issue of public policy, the argument, at its heart, is a challenge to the arbitrator's characterization of the facts, a province to which he is entitled deference. We now address each of the University's three points, and we disagree that the only reasonable conclusion to be drawn from them is that Muszynski blatantly disregarded the rules.

¶ 28 First, the drug bust incident wherein Muszynski demonstrated her understanding that she not exceed 7.5 hours differed from the facts here. That situation was without nuance. Muszynski learned of a Task Force opportunity to participate in a drug bust but, as she had already worked that day, knew the operation would bring her over the 7.5 hour mark. She called and asked permission to participate, but her request was denied. In contrast, here, her Task Force supervisors *instructed* her to attend the training session. While her supervisors may have minced words after the fact over

whether the training session was “absolutely” mandatory, she was told to attend in an e-mail by Perez and in person by Backus. They knew that she was not to exceed 7.5 hours per day and yet they instructed her to attend. We find noteworthy Ellington’s statement that, before submitting the discipline request, he sought to determine whether “somebody higher up on the Task Force had gotten [the training session hours] approved through [the University’s] Mitchell.” However, whether the Task Force supervisors got the hours approved reflected their actions, not Muszynski’s. Ellington’s decision to file a discipline request turned on a hindsight assessment of someone else’s actions. This supports the arbitrator’s view that Muszynski’s punishment was arbitrary. Moreover, that Muszynski did not violate the 7.5 hour rule on any other occasion before or after the training session only substantiates her position that she reasonably thought she was required to attend the training session—no questions asked. Muszynski’s earlier compliance with the overtime order does not necessarily support the University. The earlier compliance shows only that Muszynski understood the overtime order in clear circumstances. It shows she had a willingness to comply with the order and suggests that the circumstances at issue were not clear cut enough to trigger the highly proactive compliance envisioned by the University.

¶ 29 Second, the University’s characterization that Muszynski committed three separate violations is a bit unfair. When Muszynski presented her hours to Ellington on December 1, 2008, all three violations had already been committed. It is not as though she received a reprimand after the first day and did it again on day two, then received a reprimand on day two and did it again on day four. The three violations resulted from the single decision to attend the week-long training session.

¶ 30 Finally, while Ellington testified that he was not aware of the specifics behind Muszynski’s cancer treatment schedule, he did testify that he knew she had cancer. His practice had been to

accept her general explanation on the time sheet that she had taken “personal sick time.” Muszynski *did* tell Backus that she had cancer treatment during the week of the training session, and he told her to attend the training session as she was able.

¶ 31 Because we disagree that Muszynski’s violation of the order was blatant, unfounded, and without extenuating circumstance or nuance, we reject the University’s argument that allowing Muszynski’s conduct to go unpunished would violate public policy in favor of disciplined and effective police departments.

¶ 32 That Rettig’s discharge was upheld does not convince us to overturn the arbitrator’s decision. In *Rettig*, this court upheld the Merit Board’s decision that there *was* just cause to discharge Rettig. *Rettig*, 2012 IL App (2d) 110862-U. Rettig and Muszynski are *not*, as the University argues, privies. Privity is but one of three elements that must be met in order to apply the doctrine of *res judicata*. *People v. Progressive Land Developers*, 151 Ill. 2d 285, 296 (1992). Privity exists between parties who adequately represent the same legal interest. *Id.* True, Rettig committed essentially the same infraction as Muszynski, *i.e.*, working over 7.5 hours per day while attending the training session. However, Rettig was subject to discharge, a harsher disciplinary measure than that to which Muszynski was subject, because Rettig was working under a “last chance” agreement with the University after his gun discharged and injured another officer. Due to the “last chance” agreement, Rettig had different procedural rights, his cause being heard by a Merit Board rather than an arbitrator. Moreover, the testimony at Rettig’s hearing was not identical to that at Muszynski’s (wherein Muszynski testified that she informed a supervisor of her cancer treatment but was told to go to the training session anyway and wherein Muszynski testified that she made Ellington aware of the alternative time sheet without the overtime). For these reasons, the procedures secured by

Rettig at his hearing before the Merit Board did not adequately represent Muszynski's legal interests. Moreover, in *Rettig*, we noted that the Merit Board was in the best position to determine the effect of an officer's conduct on the proper operation of the department, and its decision would stand even if we were to consider another sanction more appropriate. *Id.* ¶ 36. The Merit Board's decision in *Rettig* and the arbitrator's decision here are entitled to deference. Therefore, that this court upheld the Board's decision in *Rettig* that there was just cause for discipline does not require us to reverse the arbitrator's decision in the instant case that there was *not* just cause for discipline.

¶ 33 B. Arbitrator Did Not Exceed His Authority

¶ 34 As an alternative to its public policy argument, the University contends that the arbitrator exceeded his authority by deciding issues outside of the question submitted for arbitration. Section 13.6 of the parties' collective bargaining agreement states that "[t]he arbitrators shall only consider and make a decision with respect to the particular issues necessary to resolve the grievance without recommendation or comment on any other matter." Indeed, it is well established that arbitrators only have authority to decide issues that the parties have agreed to arbitrate. *Shearson Lehman Brothers v. Hedrick*, 266 Ill. App. 3d 24, 28 (1994). Again, here, the submitted issue was: "was there just cause for the suspension of Muszynski, and, if not, what is the remedy?"

¶ 35 The University points to the following portion of the arbitrator's ruling in support of its position that the arbitrator exceeded the bounds of the submitted issue:

"Ellington could have denied the overtime request and [Muszynski] would have had the option of grieving the denial as a [L]abor [A]greement violation. She might not have chosen to grieve the denial.

Ellington appears to have used subjective criteria when he chose which of the overtime sheets he would rely on in this dispute. Ellington first approved the time sheet that sought overtime, rather than the time sheet that only asked for 7.5 hours of regular time. Then[,] he recommended that Muszynski be disciplined for seeking the overtime, which he approved, because Muszynski did not obtain prior approval. His action is incomprehensible to the arbitrator, and can only be described as arbitrary and capricious. *He sought to have Muszynski disciplined for seeking something he could have easily denied.* It is hard to conclude that such an action was [] objective or even in good faith. It certainly does not establish ‘just cause’ for discipline of Muszynski.” (Emphases added.)

According to the University, this passage shows that the arbitrator “focused entirely” on the question of “whether the University had the legal authority to deny Muszynski overtime pay [once she had worked the hours].” The University further states that, even if it had legal authority to deny overtime pay, it still would have had just cause to suspend Muszynski because she violated a lawful order. The University reasons that the suspension was about insubordination for violating a lawful order, not about overtime pay.

¶ 36 The University has taken the arbitrator’s reference to overtime pay out of context. The arbitrator did not rule on the issue of whether the University could deny a request for overtime pay. Rather, the arbitrator expressed his rationale for finding Ellington’s actions unreasonable. The reference to overtime pay was merely an illustration of the arbitrator’s broader point that Ellington’s actions seemed to lack good faith. In the arbitrator’s view, Muszynski’s supervisors created a tricky situation for her, and, because Muszynski did not resolve it in the manner they would have wished, she became subject to punishment. Again, Muszynski was told by her Task Force supervisors to

attend the training session. Those supervisors knew she was not to exceed 7.5 hours per day, yet the training session exceeded 7.5 hours per day. Muszynski offered to provide Ellington with the time sheet that did not include the overtime hours, yet he took the sheet with overtime, submitted it, allowed it to be approved, and then sought disciplinary action. This is on point with the submitted issue of “just cause,” and, therefore, we reject the University’s argument that the arbitrator’s reference to overtime pay establishes that he decided an issue not presented to him.

¶ 37 We also reject the University’s argument that the arbitrator did not have authority to order that Muszynski be “made whole.” The University did not cite any case law in support of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Even if it had, it did not explain why this would have exceeded the bounds of the question: “was there just cause for the suspension of Muszynski, and, *if not, what is the remedy?*” (Emphasis added.) The University argues, paradoxically, that the remedy is both too broad (due to its general language) and that it is too restrictive (imagining a scenario where it will lose control over Muszynski’s assignments). Neither of these concerns speaks to the issue of whether the arbitrator exceeded the bounds of the submitted question.

¶ 38 C. Award Not Based on Gross Mistakes of Fact

¶ 39 Also as an alternative to its public policy argument, the University contends that the award must be vacated because it was based on gross mistakes of fact. An award may be set aside where it is based on gross mistakes of fact. *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 393 (1993). However, the mistake must be apparent on the face of the award and render unreasonable the arbitrator’s decision. *Id.* at 393; *Colmar v. Fremantle North America Inc.*, 344 Ill. App. 3d 977, 992-93 (2003).

¶ 40 Specifically, the University points to the arbitrator’s statements that: (1) Ellington approved the overtime pay (when, in fact, Ellington merely submitted the time sheet for approval); (2) Muszynski submitted two time sheets, one with overtime pay and one without (when, in fact, Muszynski only made Ellington aware that she had created two time sheets); and (3) Muszynski was disciplined for requesting overtime (when, in fact, she was disciplined for violating the order not to exceed 7.5 hours per day). None of these alleged mistakes render unreasonable the arbitrator’s award.

¶ 41 The first statement is essentially a semantical error; the statement would be accurate if the word supervisor was substituted for the name Ellington. The second statement misrepresents the details, but its essence, *i.e.*, that Muszynski offered to turn in a time sheet without the overtime hours, is supported by the testimony. Muszynski testified that she “had two time sheets prepared,” and, when asked if Ellington was aware of the two sheets, she stated, “As far as I know, yeah. There was one—it was in my hand.” The third statement has already been discussed in the second portion of our analysis. The arbitrator did not expressly find that Muszynski was disciplined for requesting overtime pay. Rather, the arbitrator stated that “[Ellington] sought to have Muszynski disciplined for seeking something he could have easily denied.” As discussed above, this statement was not about overtime pay *per se*. It was about the broader point that Ellington’s actions seemed to lack good faith. In sum, none of these discrepancies undermine the arbitrator’s reasoning that Muszynski was treated unfairly. Therefore, we reject the University’s argument that the award should be vacated due to gross mistakes of fact.

¶ 42

III. CONCLUSION

¶ 43 For the aforementioned reasons, we affirm the decision of the arbitrator and of the circuit court.

¶ 44 Affirmed.