

## ARBITRATOR OPINION

Between	)	Issue: Termination of Employment
	)	
Humboldt County	)	Jason Daniels
	)	
and	)	
	)	
Jason Daniels, Appellant	)	
	)	
	)	

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### Impartial Arbitrator

Bonnie Prouty Castrey  
Post Office Box 5007  
Huntington Beach, California 92615

### Hearings Held

June 19, 20, 21 2018  
August 29, 30 2018

Humboldt County Correctional Facility  
825 Fifth Street  
Eureka, California 95501

### Appearances

For the County: Heather Roberts Coffman, Esq.  
Liebert, Cassidy, Whitmore  
135 Main Street  
San Francisco, California 94105

For the Appellant: Julia D. Fox, Esq.  
Rains, Lucia, Stern, St. Phalle & Silver  
2300 Contra Costa Boulevard, Suite 500  
Pleasant Hill, California 94523

## **BACKGROUND**

The Appellant in this case, Jason Daniels, was employed by the Humboldt County Sheriff's Office (HCSO) or (the Employer), from January 2000 until his employment was involuntarily terminated on February 19, 2014. He commenced his law enforcement career in 1995 at age 21. During his service, he received the Sheriff's star for bravery, Deputy of the Year by his peers and acclamations for his handling of very challenging cases.

Mr. Daniels held the rank and title of Sergeant, a supervisory position within the Sheriff's office at the time of his termination from employment.

On October 19, 2013, Mr. Daniels was arrested by the Humboldt County District Attorney's Office (HCDA), for alleged sexual battery and penetration with a foreign object of Jane Doe #1 on August 29<sup>th</sup>, 2013. A second woman, Jane Doe #2, filed a separate complaint against Mr. Daniels for his alleged misconduct while on-duty on or about March 13, 2013. As part of the investigation, the District Attorney's office obtained a search warrant for Mr. Daniels personal cell phone, in addition to his personal computers, lockers, official car and other evidence. Mr. Daniels frequently used his personal cell phone for Sheriff Department business as he was not provided an HCSO phone. The search warrant was to search for pornographic information sites. The contents of the cell phone revealed numerous text messages containing racial and sexual content that Mr. Daniels had sent to and received from peers and subordinates.

The search of Mr. Daniels patrol car revealed drug paraphernalia in the form of a pipe used for methamphetamine with his DNA on it, although he was not charged for this.

Mr. Daniels was subsequently charged and tried for the sexual battery and penetration charges and was found to be not guilty of those charges by a unanimous jury of 12 peers in June 2016 (CX 76).

Following the arrest of Mr. Daniels, the Employer commenced an Internal Affairs investigation into possible policy and procedure violations by Mr. Daniels. The Internal affairs investigation determined that many of the text messages were in violation of Sheriff's Office policy and procedures. Accordingly, he was charged, a Skelly Hearing was held and Mr. Daniels employment was terminated effective February 19, 2014 (CX 3,4,5).

Following the trial, the Sheriff's Office notified Mr. Daniels of additional charges in support of termination based on evidence produced during the trial (CX 6).

When the parties were unable to reach a solution to the matter, they chose Bonnie Prouty Castrey, Arbitrator, to hear the matter and to make a final and binding decision, as provided in their County Merit System Rules.

Both parties were provided full opportunity to present their cases in five (5) days of hearings. The witnesses testified under oath and were examined and cross examined by Counsel.

The official proceedings were transcribed by certified court reporters and the Arbitrator was provided the original transcripts.

The parties exchanged their briefs electronically and provided the Arbitrator hard copies.

### ISSUES

The parties stipulated that this matter is properly before the Arbitrator for final and binding decision. They agreed to the following statement of the issue:

1) Whether or not there is just cause for the termination and, if not, what is the appropriate remedy (TX Vol. 1, pg 58 L 25 and pg. 59 L 1-2).

### PERTINENT POLICY LANGUAGE

#### County of Humboldt - Sexual Harassment Policy

Sexual harassment is defined as conduct which consists of unwelcome sexual advances, requests for sexual favors and other conduct of a sexual nature when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's continued employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, for example, but not limited to, promotion, assignment, schools, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

An employee alleging sexual harassment shall follow the grievance procedure outlined in Humboldt County Merit System Rule VIII. Grievances filed under this Article will be processed in an expedited manner. When a complaint involves a person in the employee's chain of command, the grievance process shall be initiated at the next higher level in the chain of command.

Upon receipt of a complaint of sexual harassment at Step 4 of the grievance procedure, the department head shall immediately investigate the circumstances and take whatever action he or she deems to be appropriate and necessary.

Questions regarding the County's Sexual Harassment Policy should be directed to the Personnel Director.

## **HUMBOLDT COUNTY SHERIFF'S OFFICE POLICY MANUAL**

### **Discriminatory Harassment**

#### **328.1 PURPOSE AND SCOPE**

This policy is intended to prevent department members from being subjected to discrimination or sexual harassment.

#### **328.2 POLICY**

The Humboldt County Sheriff's Office is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation. The Department will not tolerate discrimination against employees in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.

The non-discrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject an employee to discipline.

#### **328.3 DISCRIMINATION PROHIBITED**

##### **328.3.1 Discrimination**

The Department prohibits all forms of discrimination, including any employment-related action by an employee that adversely affects an applicant or employee and is based on race, color, religion, sex, age, national origin or ancestry, genetic information, disability, military service, sexual orientation and other classifications protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment, can include making derogatory comments, crude and offensive statements or remarks, making slurs or off-color jokes, stereotyping, engaging in threatening acts, making indecent gestures, pictures, cartoons, posters or material, making

inappropriate physical contact, or using written material or department equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to department policy and to the department's commitment to a discrimination free work environment.

#### **328.4 RESPONSIBILITIES**

This policy applies to all department personnel. All members shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory, or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher ranking supervisor or manager. Complaints may also be filed with the Sheriff, the Personnel Director or the County Administrative Officer.

Any member who believes, in good faith, that he/she has been discriminated against, harassed, subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

##### **328.4.1 SUPERVISOR RESPONSIBILITY**

Each supervisor and manager shall:

- (a) Continually monitor the work environment and strive to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Take prompt appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- (c) Ensure that their subordinates understand their responsibilities under this policy.
- (d) Ensure that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.

- (e) Notify the Sheriff or Personnel Director in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment, or retaliation no later than the next business day.

#### **328.4.2 SUPERVISOR'S ROLE**

Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing, or retaliatory. Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of our Department and professional law enforcement standards.
- (b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.
- (c) Supervisors and managers must act promptly and responsibly in the resolution of such situations.
- (d) Supervisors and managers shall make a timely determination regarding the substance of any allegation based upon all available facts.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling employees or issuing discipline, in a manner that is consistent with established procedures.

#### **328.8 TRAINING**

All new employees shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new employee. The employee shall certify by signing the prescribes form that he/she has been advised of this policy, is aware of and understands its contents and agree that they will continue to abide by its provisions.

#### **CONDUCT**

##### **340.3.2 CONDUCT**

- (k) Discourteous, disrespectful or discriminatory

treatment of any member of the public or any member of this department.

- (m) Engaging in on-duty sexual relations including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.

#### **340.3.5 PERFORMANCE**

- (f) The wrongful or unlawful exercise of authority on the part of any employee for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (g) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of the Department or subverts the good order, efficiency and discipline of the Department or which would tend to discredit any member thereof.
- (o) Criminal, dishonest, infamous, or disgraceful conduct adversely affecting the employee/employer relationship, whether on or off-duty.
- (aa) Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.

#### **340.3.8 SUPERVISION RESPONSIBILITY**

- (a) Failure of a supervisor to take appropriate action to ensure that employees adhere to the policies and procedures of this department and the actions of all personnel comply with all laws.
- (b) Failure of a supervisor to timely report known misconduct of an employee to his or her immediate supervisor or to document such misconduct appropriately or as required by policy.

## **1058 EMPLOYEE SPEECH, EXPRESSION, AND SOCIAL NETWORKING**

### **1058.1 PURPOSE AND SCOPE**

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech, or expression that is protected or privileged under law. This includes speech and expression protected under state and federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or deputy association, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

#### **1058.1.1 APPLICABILITY**

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

### **1058.4 PROHIBITED SPEECH, EXPRESSION, AND CONDUCT**

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or deputy associations, on a matter of public concern):

- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of an employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination, or illegal behavior.
- (e) Speech or expression this is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Humboldt County Sheriff's Office.

# **HUMBOLDT COUNTY SHERIFF'S OFFICE OPERATIONS POLICY AND PROCEDURE**

**POLICY      OP-S-1**

**SUBJECT     SERGEANTS DUTIES AND RESPONSIBILITIES**

## **I. PURPOSE**

The purpose of this policy and procedure is to provide general guidelines and direction for Sergeants assigned to various work units within the Operational Services Bureau. Although this policy lists many duties and responsibilities, it is understood that no policy and/or procedure can address every possible situation. Therefore, each Sergeant must assume responsibility and exercise diligence, intelligence, and interest in the pursuit of his/her duties, and in accordance with the applicable Orders, Policy, and Procedures of the Sheriff's Office.

## **II. PRIMARY DUTIES AND RESPONSIBILITIES**

Each Sergeant's position in the Sheriff's Office is considered a first-line supervisory position. As such, the primary duty of each Sergeant is to enforce organizational policy, and to provide the quality of leadership and supervision which will result in the achievement of the Sheriff's Office goals and objectives.

## **III. GENERAL DUTIES AND RESPONSIBILITIES**

- C. Exercise direct command in a manner that assures the good order, conduct, discipline, and efficiency of subordinates.
- E. Enforce the rules and regulations and ensure compliance with Sheriff's Office policy and procedure.

## **IV. SPECIFIC DUTIES AND RESPONSIBILITIES**

### **V. INTERNAL/EXTERNAL RELATIONS**

1. Treat your coworkers with dignity and respect.
4. Avoid religious, racial, gender-based, ethnic, sexual, etc, slurs or derogatory comment that might cause offense.
5. Avoid sarcasm, put downs, profanity, and derogatory remarks.

6. Avoid backbiting, rumors, etc.
8. Avoid any unnecessary behavior which would discredit the Sheriff's Office.

## **HUMBOLDT COUNTY MERIT SYSTEM RULES**

### **RULE X**

#### **DISCIPLINARY ACTIONS**

##### **1. BASIS FOR DISMISSAL, SUSPENSION, AND REDUCTION IN RANK OR COMPENSATION**

The tenure of every employee holding a probationary or permanent appointment in the classified service shall be during good behavior and fit and efficient service. Any employee may be discharged, suspended or reduced in rank or compensation for good cause including, but not limited to, the following:

- A. Discourteous treatment of the public or fellow employees while on duty.
- B. Incompetence or inefficiency.
- C. Insubordination or willful disobedience.
- D. Inexcusable neglect of duty.
- E. Fraud in securing appointment.
- F. Mental or physical incapacity.
- G. Abuse, damage to or waste of public equipment, property, or supplies due to gross negligence or willful acts.
- H. Drunkenness on duty.
- I. Unauthorized absence from duty.
- J. Falsification of any records.
- K. Conviction of a crime, the nature of which has a direct bearing on continued employment.
- L. Any other failure of good behavior which has been demonstrated to have impaired the effectiveness of the employee in rendering services to the County.

### **RULE XI**

#### **APPEALS PROCEDURE**

##### **1. PURPOSE**

It is the purpose of this rule to provide a fair and orderly process by which appeals as specified in Rule X (DISCIPLINARY ACTIONS) are to be administered.

All remedies for resolving grievances, disputes, and contested matters prior to appeal shall be exhausted before appealing under this rule.

## **POSITIONS OF THE PARTIES**

### **Position of the County:**

The County insists that Jason Daniels was properly terminated for just cause because he engaged in racist, misogynistic, and sexually harassing communication with subordinates and members of the public; and abused his power while searching a female civilian.

The County explains that when he searched two women on the side of the road, he was accused by one of the women, Jane Doe 1, of digitally penetrating her during the search. She further accused him of soliciting oral sex while he was transporting her to a safer location. Mr. Daniels was ultimately arrested and tried for sexual battery against Jane Doe 1. He was acquitted of the charges by a jury of his peers.

The County explains that as part of the investigation of the charges, a search warrant was issued for, among other items, Mr. Daniels' personal cell phone which he frequently used for Sheriff's Office business. According to the County, Mr. Daniels' cell phone contained dozens of images and text messages with racist and race-based content, as well as sexually explicit and sexist content.

The County claims that the Internal Affairs investigation determined that Mr. Daniels sent and/or forwarded these racist and sexually explicit texts to male and female subordinates in addition to members of the public. Further, the County avers that Mr. Daniels also received race-based and sexually explicit texts from subordinates and did not endeavor to stop the conduct. Additionally,

it is alleged that Mr. Daniels sent vulgar, and derogatory text messages to subordinates about other employees of the Humboldt County Sheriff's Office, including both peers and subordinates. The County points out that Mr. Daniels both condoned and encouraged misconduct by subordinates in violation of his supervisory duties.

Further, the County states that DNA from Mr. Daniels found on a pipe with traces of methamphetamine during a search of Mr. Daniels patrol vehicle provides additional support for his termination for just cause.

The County insists that as a supervisor, Mr. Daniels was obligated to refrain from engaging in racist, sexist and misogynistic conduct, and also to ensure that subordinates refrain from such conduct. The County points to the extensive training that Mr. Daniels has received: to lead by example, follow policy and procedures, and enforce policy and procedure to subordinates. Further, they point out that Mr. Daniels was responsible for understanding and complying with the County's Sexual Harassment Policy, and received refresher training on this policy and procedure on an annual basis.

Finally, the County maintains that Mr. Daniels is unfit to serve as a law enforcement officer for the Humboldt County Sheriff's Office as evidenced by his refusal to acknowledge the texts and images he admits that he exchanged with colleagues, subordinates and members of the public are racist, sexist, and inappropriate and constitute misconduct.

For the foregoing reasons, the County requests that the Arbitrator find that the County had just cause to terminate the employment of Mr. Daniels, and uphold the County's decision to dismiss Mr. Daniels based on the seriousness of his misconduct and for the protection of the public and others employed by the County. (The County's Final Argument is incorporated by reference and importantly, by properly referring to the alleged victims as "Jane Doe 1" and "Jane Doe 2" and minus all testimony that they cited which was stricken from the Record of Arbitration).

**Position of the Appellant:**

The Appellant insists that he was falsely accused of egregious misconduct by criminals and drug addicts seeking financial gain and preferential treatment by the criminal justice system. He points to his acquittal of the criminal charges against him as well as the letter from Jane Doe 2's male friend seeking a meeting and remuneration stating "she is willing to settle this matter out of court" (UX F).

Mr. Daniels admits that there is a string of text messages between himself and his friends, who also happen to be his co-workers, and while the content of some of these messages is shocking, insists that there was no malice in these exchanges, but rather, these were attempts to decompress and cope with an extremely challenging and stressful profession. He further claims that these exchanges are completely consistent with the culture of the Humboldt County Sheriff's Office at the time that Mr. Daniels engaged in these

conversations. Furthermore the testimony of officers supports a finding that this is the culture of HCSO.

Additionally, he asserts that

Mr. Daniels contends that he is neither a racist nor misogynist,  
and that it was never his intent to be offensive. Moreover, that he  
was not aware of any complaints, or of any individuals who were  
offended by these remarks or he would have apologized. He further  
contends that the Sheriff's Office Sexual Harassment Policy applies  
to all employees equally and that it is indefensible that his  
employment was terminated while [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] This is disparate treatment.

Mr. Daniels states that he never did and does not use drugs, including methamphetamine. He contends that he touched the pipe, but would never put it to his lips or smoke methamphetamine, and that he has a habit of touching his mouth with his hands and the transfer of DNA could have occurred in that manner.

Mr. Daniels further argues that the search warrant was unconstitutional and that the cell phone data was seized in violation of the Fourth Amendment and should be suppressed from consideration at this hearing. Further, that this is the proper forum in which to

object to the search of his cell phone and use of content to discipline him.

The Appellant also points out that he has received several prestigious awards and was recognized publically for his professional service, in saving a person from suicide off of the local bridge. He has worked diligently to foster his career and has mentored other employees, who then asked to work with him.

Finally, Mr. Daniels requests that his termination be overturned, and further requests that the Hearing Officer award interest on each pay period not subject to the tolling agreement between the parties, computed from the pay day for each such pay period to the date the County makes Mr. Daniels whole.

(The Appellant's closing argument is hereby incorporated by reference.)

### **OPINION**

Termination of employment has often been referred to as the capital punishment of employment law. As such, these cases merit substantial care and consideration, as loss of income and in this matter, possible loss of career/profession are very heavy penalties.

Sexual misconduct while at work is always a serious matter that merits swift, thorough, and as much as feasibly possible, a confidential investigation; appropriate application of discipline; and safeguards against retaliation.

In this case, the alleged sexual misconduct toward female civilians was decided through criminal litigation, and the Appellant

determined to be not guilty of the charges of sexual battery by a unanimous decision of a jury of his peers in June, 2016.

Hence, even though the standard in this forum is lower than in a criminal court, there was not one piece of evidence presented in the hearing to prove that the Appellant is guilty of such a despicable act. In fact, what is clear, is that the County had dispatch records, that he had timely called in to dispatch, documenting precisely where he was and what he was doing, including transporting two women to safety from the side of a busy highway where they had been arguing. Moreover, had the Appellant engaged in this horrific behavior, it is likely that when Jane Doe 1 had the opportunity to leave the Sheriff's vehicle with her friend at the first stop, she would have done so and certainly not requested a ride to Arcata from Eureka. The total stop, search and transport of these women was some 21 minutes.

Moreover, both Jane Doe 1 and Jane Doe 2 changed their stories during investigations and at the criminal trial. As stated at the hearing, while the evidence of the criminal trial was admitted, it was given minimal weight as the Arbitrator could not view these witnesses for herself, nor hear their stories at this hearing, nor question them herself.

After thoroughly studying the supplemental charges and testimony, the undersigned finds that the HCSO did not provide evidence that the Appellant did an improper search of either Jane Doe 1 or Jane Doe 2. Further, there was no evidence or testimony

provided that supports a finding that he could have called a female officer to conduct the search and it is unknown if a female officer was even on duty.

Next, the Appellant has claimed that the search warrant issued by the court at the request of investigators from the District Attorney's Office was illegal and insist that none of the information obtained regarding the contents of his phone should be permitted as evidence in this disciplinary appeal hearing. The question raised by the Appellant regarding the legality of the search warrant is outside the scope of this hearing as the judge signed it. However, it certainly is a questionable practice that the District Attorney's Office simply gave it to the Sheriffs' Department without a proper search warrant from the Sheriff. The undersigned will handle this matter in the question of whether a full and fair investigation was conducted in order to establish just cause for the termination of the Appellant's employment.

Distinguished Arbitrator Carroll Daugherty enunciated the principles of just cause, stating seven tests which employers must prove in discipline cases and further, if anyone of them fails, the employers' case fails.

The first is notice or was the employee forewarned of the consequences of his behavior?

In this case, employees, including the Appellant, received and signed for copies of the harassment and discrimination policies. The policies are stated above. However, the testimony is replete with

examples of employees participating in "dark humor" including sexual joking, talking about sex and sending jokes, including gross pictures and verbage on their personal cell phones. This, they assert was a way of relieving the stress and tension of their very stressful job of law enforcement. They made off color jokes and engaged in "dark humor". Significantly, they did not report any incidents as offensive, harassing or racist. Many actively participated either by laughing or sending their own pictures or messages or telling jokes and laughing.

In one case [REDACTED] [REDACTED] [REDACTED] stated that she didn't report an incident about which she was uncomfortable, because "she wouldn't have been believed and '**the club**' would have made her life as a deputy sheriff difficult" (Emphasis added; Deputy [REDACTED] interviewed 11/19/2013 by Lt. Morey; EX 3). However, that same officer went to a training and allegedly took pictures which she shared with colleagues at the training, of an instructor's bulging trousers. Her testimonial response to a question regarding this behavior was "I think it was inappropriate to have an instructor whose penis is so large that the majority of the class isn't able to pay attention ..." (TX Vol 2, pg 238,L112-15).

Mr. [REDACTED] a former deputy, [REDACTED] [REDACTED] [REDACTED] [REDACTED] testified that whoever was on a shift would sit around "the fire" (figurative fireplace) and tell "fuck stories" and laugh and joke about sex, blow jobs etcetera. Further that this talk and laughter included supervisors and deputies and was done to relieve stress and

tension. (TX Vol 3, summary of testimony Conlin pp 106-149).

Deputy [REDACTED] also testified that it was common for supervisors to engage in this off-color, sexual banter. He testified that he did not hear or see "racial-type" stuff. He also described an instance when he was with two other deputies on a marijuana case, in the car talking about oral sex and one deputy simulated with "her hand and mouth giving oral sex to the gun rack". He testified further that he was not offended by any of the texts, jokes, etcetera. He added that the Appellant was his training officer and "back up" and that "I'd trust him with my life".

On cross examination, he, [REDACTED] identified at least two other supervisors who were present when off color joking of a sexual nature was going on. (TX Vol 3 pg 153-185).

In analyzing the record, it is clear that while there are strict, well written policies regarding all types of harassment and discrimination, including the supervisor's role in overseeing the policies and annual updates of the policies; there was, at the time of this incident, wide spread sexually oriented talk and texting and racially charged texts and behavior that the employees regularly engaged in. Moreover, this shocking behavior was known in the Sheriffs' Office and was not corrected, until the Appellant was disciplined. "The club" was embedded in the culture.

The investigation uncovered facts that other employees engaged in this behavior, however, no other deputy's or sergeant's cell phone was subjected to a search and the scrutiny to which the Appellant's

cell phone was subjected. This, even though other deputies and sergeants, whose names showed up in the Appellant's phone search and who admitted sending and/or receiving sexist and/or racially charged texts, is a huge hole in the investigation. A full and fair investigation would have sought to discover just how wide spread this texting was occurring and then determined appropriate discipline.

Moreover, the evidence and testimony supports a finding that [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] This demonstrates the  
disparate treatment in meting out discipline for similar offenses.

Therefore, in sum, the Arbitrator concludes that the investigation was not complete and hence was not fair. Although the Appellant's phone text messages are gross, there is substantial evidence and testimony, as cited above, that this was the known culture of this HCSO. (see exhibit 3 and testimony). This finding is supported by ample evidence of the foul, off color joking that apparently took place during this time period. The Appellant established that the behavior was in fact part of the culture and that many officers engaged in the joking. This wide spread behavior was testified to throughout the five days of hearings.

On cross examination, even the HCSO's rebuttal witness, Sergeant [REDACTED] admitted when asked about a movie, The Forty Year Old Virgin, discussing the movie and his knowledge of the various sexual positions in the film. He remembered the Roman Helmet position, but

did not recall several others. When asked if he ever joked with colleagues in a light hearted manner about those sexual positions, he responded "yes, I have maybe not been the specific vocalist. But, I've definitely been part of conversations throughout the last seventeen years where that stuff was discussed in private." (Vol 5, pg 199, L 15-25). He then goes on to differentiate private conversations (Vol 5 pp 200-205).

Based on the five days of testimony and the voluminous evidence, it is clear that there was indeed a culture of very off color sexual and racial "joking", in this organization. Further, they used these sick, off color remarks and jokes as part of their work environment to relieve tension. As nothing was done to stop this behavior, the employees continued to engage in the behavior, in spite of the well written policies. In short, the policies were not enforced for years and so the behavior continued.

Next, the testimony of the Appellant's peers and subordinates is that they wanted to work with him, found him supportive and willing to mentor them and they trusted him to have their back. It is also important to note that he had many awards, including special recognition from the sheriff and his colleagues and there is no record of prior discipline. That record of accomplishments does not appear to have been considered when determining the level of discipline appropriate for the Appellant's infractions of policies.

The Appellant posits that this harsh, punitive punishment of termination of his employment, was because of all the news coverage

of Jane Doe 1's belated claim of digital penetration during the lawful search. That is possible but cannot be proven.

In conclusion, having carefully studied all the evidence and testimony numerous times, and in consideration of the parties arguments and the cases cited and studied, I find that there was not a full, fair investigation. Furthermore, the discipline is far too harsh for the policy violations actually committed by an employee with an otherwise good record.

Therefore the Appellant, Jason Daniels, is ordered to be immediately reinstated, to his prior position of Sergeant, with full back pay, with interest, to the maximum amount allowed by law and restoration of all benefits including seniority, minus a two week suspension, which has already been served. Additionally, the Sheriffs' Department is to send him to a Sexual Harassment and Discrimination educational program and provide him a cell phone for business.

**AWARD**

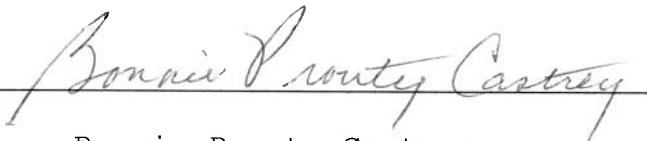
Based on the foregoing discussion and study of the voluminous evidence, testimony, argument and cited cases, the Arbitrator finds that the Humboldt County Sheriffs Office, did not have just cause for terminating the employment of Appellant, Jason Daniels.

The remedy is:

Appellant, Jason Daniels is ordered to be immediately reinstated, to his prior position of Sergeant in the Humboldt County Sheriffs Office, with full back pay with interest, in the maximum amount allowed by law, and full restoration of all benefits including seniority, minus a two week suspension without pay, which has already been served.

Additionally, the Sheriffs' Department is to send him to a Sexual Harassment and Discrimination educational program and to review all pertinent policies with him.

He is to be issued a cell phone that is the property of the Sheriffs' Office which is to be used for official business.



Bonnie Prouty Castrey

January 30, 2020

Date