

Lehigh Acres Fire Control and Rescue District

636 Thomas Sherwin Avenue S.

Lehigh Acres, Florida 33974

Report of Disciplinary Action

Name: Dale Pinheiro Rank: LT Present Assignment: St. 103/C-shift

Supervisor(s): Tim Christensen, Battalion Chief – Ken Craft, Assistant Chief

Date of Incident: September 18, 2014 Time: 10:59:56 hrs. Location: Inc.#14-0070844

Date of Informal: October 6, 2014

Date of Formal: November 11, 2014

Notice of Interrogation: Y

Rules & Regulations

To include, but are not limited to

Section: 4.00 Number(s): 4.01, 4.09-13, 4.21-22, 4.25, 4.30-31, & 5.08

Section: 12.00 Number: 12.00 (e)

Incident Overview

- Refer to the Formal Investigation Report and Recommendation of Disciplinary Action - dated November 19, 2014 (Ken Craft, Assistant Chief).

I have reviewed all of the written documentation in reference to this matter. I have also reviewed all of the audio recordings as well.

Acting as the Hearing Officer in this case, I have spent the last week reviewing the recommended disciplinary action regarding this matter. I have taken into consideration Lieutenant Pinheiro's tenure as an employee, and his employment record when it comes to prior disciplinary actions.

It is evident (after reviewing all of the documentation) that this incident did indeed take place on September 18, 2014 and Lieutenant Pinheiro does not deny this fact. The sworn statements by the Lee County Sheriff's Office personnel, as well as their testimony, speak for themselves. The shock and disbelief felt by the Sheriff's Office personnel by the unprofessional conduct, and the conduct unbecoming, as well as the embarrassment felt by the Fire District caused by his behavior in front of another agency's officers (or anyone at that point) cannot be tolerated.

It is apparent that Lieutenant Pinheiro does not see the big picture here when it comes to his poor decision making regarding this matter. During the Formal Investigation, Lieutenant Pinheiro attempts to "down-play" his behavior/actions by stating, "I can't tell you how many times we have had fires since then that I have heard deputies use the same language talking about a drunk or talking about a fire...it happens." In addition, Lieutenant Pinheiro also states, "I said fucking car, that is the only thing I did wrong...if I

bumped into her <VOICE Officer Hyde> she wasn't in the right place...their car placement set everything into motion." I find this to be a poor attempt to shift the responsibility of his actions onto the Sheriff's Office personnel. He claims that his actions were a mistake, I respectfully disagree. His actions were actually conscious decisions that were made based on very poor judgment.

Not only were Lieutenant Pinheiro's actions unprofessional, this lack of sound judgment exhibits conduct unbecoming a District employee and as Fire Chief, I have no tolerance for that. I find Lieutenant Pinheiro's actions a serious breach of duty as well.

On December 13, 2012, Mr. Pinheiro arrived at St. 105 to meet with Administrative Assistant Susan Platas to fill out the required re-employment paperwork as a result of the outcome of a previous arbitration hearing (termination), FMCS Case No. 120312-53992-3. I advised Susan Platas to send Mr. Pinheiro to my office after he was finished filling out the required paperwork with her. Once Mr. Pinheiro entered my office we had a discussion regarding what was expected of him once he returned to duty with the Fire District. The points of this discussion were as follows:

1. I asked Mr. Pinheiro if he had received a copy of the arbitrator's final decision on his case, he stated that he had received a copy.
2. I pulled the District's copy of the award and reviewed page 17 with Mr. Pinheiro, specifically the last paragraph as follows, "The Grievant shall be advised that further violations of Employer rules and policies may subject him to disciplinary action up to and including termination." A highlighted copy of the last page was provided to him as well.
3. I informed Mr. Pinheiro that he received a "gift" having his termination reduced to an eighty (80) hour suspension and the resultant re-instatement of his employment.
4. I also offered my opinion on the ruling and will quote a few points made by the arbitrator as follows:
 - The arbitrator did not condone the previous behavior/actions of Mr. Pinheiro and he agreed with the District's portrayal of him <Pinheiro> as a "bully," a man given to bombastic pronouncements and brusque behavior. He <arbitrator> also states, "The Grievant, no doubt, takes enjoyment from projecting himself as a big, bad, outlaw biker type of guy..."
 - The arbitrator also states, "The Grievant could have been placed on alert through counselings, suspensions or demotion during the period following his brief 2006 suspension that his behavior would not be tolerated...If for no reason other than the welfare of the Department, the Grievant should have been told during the period leading up to his termination that his behavior needed to change for the better."
 - The arbitrator also states, "the record reveals an in-your-face type of employee who was just not told in a clear and unmistakable terms that he was, over time, bit-by-bit, sliding down a career jeopardizing slope."
 - In the end, I informed Mr. Pinheiro that there was competent and compelling evidence that justified disciplinary action, however, the termination was found to be excessive due to the prior lack of "progressive" disciplinary action. This did not mean that he was found "not guilty" for his prior actions.
5. At this point, I looked Mr. Pinheiro right in the eye and informed him that if I was the Fire Chief at the time, his previous type of behavior would not have been

tolerated. The matter would have been handled differently and that I felt it would have warranted termination.

6. I informed Mr. Pinheiro, that further behavior of this type may subject him to further disciplinary action up to and including discharge. Again, this statement was backed up with the previous review of the arbitrator's award as well as him being provided a highlighted copy of page 17 referencing future conduct.
7. After listening to my position on the matter, Mr. Pinheiro offered me the following information:
 - He stated that over the previous nine (9) months of his termination, he had time to "reflect on what he had lost." He also stated, "our guys do not understand what they have here at the department...until you are out of work and cannot pay your bills...you will have a different outlook on life."
 - Mr. Pinheiro also stated, "I had a coming to Jesus with myself and understand what I need to do differently in the future."
8. I informed Mr. Pinheiro that I hoped he would stand behind his statements, congratulated him on his return, shook his hand, and he left the office.
9. I believe he returned to shift sometime the following week.

Again, Lieutenant Pinheiro's lack of sound judgment exhibits conduct unbecoming a District employee and is inexcusable. His statements made during the Formal Investigation further substantiate the fact that he knew his behavior/actions were inappropriate. Unfortunately, he failed to take into consideration the damaging effects his behavior could have on the organization and the discredit it brings to the District. This type of previous behavior has resulted in a four (4) hour suspension and a termination that was later reduced to an eighty (80) hour suspension.

Throughout the investigative process, Mr. Pinheiro appears to "down-play" his behavior/actions and even makes the comment, "I have been known to bend the rules and get myself in trouble." He also continually denies this type of behavior in the past, even though he has received two (2) previous suspensions as a result. He also states, "if I would not have said fucking car, we would not be here today...if the house would have been ripping, we would not be here today." Regardless of what he believes, sworn statements and testimony by the Sheriff's Office personnel paint a much different picture of what transpired that day. Deputy Jennings states, "I thought we were going to throw fists at each other...I thought this could go to blows...he's a good sized guy and kind of bowing up...he was up in my personal space." He <Jennings> went on further stating, "I don't know what your problem is...don't bow up to me...I was waiting for him to take a swing at me...it was to that point." This type of behavior mirrors the same previous types of behavior that Mr. Pinheiro has been reprimanded for in the past. He failed to adhere to his own statements to me on December 13, 2012 and to the expectations of the arbitrator. There is absolutely no justification for an employee, despite being forewarned previously, to continue to exhibit unprofessional and offensive conduct/behavior and remain a part of this organization. This case meets all tests of just cause as well as the concept of progressive discipline. Even if this case was an isolated, first time instance for an employee, I would strongly consider termination due to the totality of the evidence/circumstances.

In closing, after reviewing the totality of the evidence/circumstances regarding this case my decision is as follows:

- **I have reviewed the Recommended Discipline and I accept the recommendation in its entirety at this time.**

Developmental Plan

- None

Disciplinary action taken

Oral Reprimand _____ Written Reprimand _____ Suspension _____ (# Tours) _____

Demotion _____ (From) _____ (To) _____ **Discharge X**

Employee: [Signature] Date: 11/26/14

Supervisor: [Signature] Date: 11/26/14

Chief: [Signature] Date: 11/26/14

Witness: [Signature] Date: 11/26/14