

ARBITRATION HEARINGS

March 22, 1988 Columbus, Ohio

OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES

AND

OHIO CIVIL SERVICE EMPLOYEES  
ASSOCIATION/APSCME

Grievant: Jodelle E. Mixon

OCB Grievance No. G 87-2484

Appearances:

For the Employer

Marlaina Eblin, Advocate  
Shirley Terrel, DAS  
Carolyn L. Nellon, Witness  
Tim Wagner, OCB. observer

For the Union

Allyne Beach, Advocate  
Linda Feily, OCSEA/APSCME  
Jodelle E. Mixon, Grievane

Issue: Was the grievant, Jodelle E. Mixon, disciplined for just cause?

Position of the Employer

The grievant, Jodelle E. Mixon, was given a written reprimand for excessive absenteeism on October 13, 1987. Documents and oral statements were presented to indicate (1) that the discipline was for just cause and (2) that the written reprimand followed a previous verbal reprimand and was consistent with progressive discipline. The advocate stated that the employer was aware of the physical problems of the grievant and did exercise leniency in consideration of her record of absenteeism. But grievant, in spite of counseling and verbal warnings, continued to abuse unapproved leave time. Also, she did not explore or take advantage of the State's disability program.

The advocate concluded that the grievance should be denied.

Position of the Union

Documentation and oral testimony explained the unique features of the disease inherited by the grievant. Sudden and unanticipated

swelling of the joints could lead to complete immobility. This condition, together with dental surgery and unexpected reactions, contributed to the exhaustion of leave time early in 1987. Also, the Advocate contended that the supervisor, Ms. Nellon, instituted new work rules in early 1987 and that she did not adequately counsel the grievant and clarify standards concerning absences, doctor certificates, etc.

Further, the grievant had shown improvement during the period between the verbal (June 9) and written (October 13) reprimands.

The advocate concluded that the written reprimand was without just cause; that it was not commensurate with the offense and that it should be expunged from the record of the grievant.

#### AWARD

The position of the employer is sustained.

The grievance is denied in its entirety.



Harry E. Crewson  
Arbitrator

OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES  
AND  
OHIO CIVIL SERVICE EMPLOYEES  
ASSOCIATION/AFSCME

Grievant: Jack A. Smith

OCB Grievance No. G 87-2348

Appearances: For the Employer

Marlaina Eblin, Advocate  
Shirley Terrell, DAS  
James R. Harness, COS, Witness  
Raymond H. Lacy, Jr., COS, Witness

For the Union

Allyne Beach, Advocate  
Linda Feily, OCSEA/AFSCME  
Jack A. Smith, Grievant

Issue: Was the Five (5) days suspension of the grievant,  
Jack A. Smith, for just cause?

Position of the Employer

The grievant, Jack A. Smith, received a five (5) days suspension, effective October 12, 1987, for unauthorized use of a state vehicle, dishonesty, and failure of good behavior. On July 7, 1987, Mr. Smith, as a back-up driver for Central Office Supply, was dispatched with goods to be delivered to the Environmental Protection Agency and the Department of Liquor Control. At about 1 o'clock the state-owned vehicle was involved in an accident at a location that was not near either of the above-listed agencies.

Although proof was not offered, the employer surmised that Mr. Smith was planning to use the truck to stop at his residence for lunch. Previously, he had been warned that he should not use the truck for personal business.

The Advocate concluded that the five(5) days suspension should be upheld and the grievance denied in its entirety.

Position of the Union

The grievant, a three year employee of COS, was never given instructions as to specific routes to be used for deliveries. Drivers have some flexibility in selecting routes; maneuverability, of truck, condition of highway, time of day, etc. are relevant factors.

On July 7, 1987, Mr. Smith worked through the lunch hour; he did not eat lunch on that day, either at the workplace or at his home. At about 1 o'clock he stopped at the Highway Patrol office to see if there were any 'skids' to be picked up. This stop was not listed on the daily log but Mr. Smith, acting under a general request from Jim Milligan, storekeeper at the Highway Patrol, would stop when convenient to pick up 'skids'. On this day, July 7, there were none. The accident occurred shortly after leaving the Highway Patrol.


The Advocate also contended that dishonesty was a very serious charge and the employer did not offer any solid proof. She also maintained that the five (5) days suspension was not compatible with the practice of progressive discipline since the only previous discipline had been a verbal reprimand to the grievant.

The advocate concluded that the suspension should be expunged from the record of the grievant.

AWARD

The five (5) days suspension imposed on the grievant, Jack A. Smith, shall be reduced to a three (3) days suspension. Mr. Smith shall be reimbursed for two (2) days of lost wages; the three (3) days suspension shall be part of his record.

The suspension was imposed for just cause. The grievant used poor judgement in taking his loaded truck to the Highway Patrol for 'skids', especially since he had no space for them. This action did place him in an unauthorized location. However, the employer's position with regard to the charges of dishonesty and failure of good behavior is not convincing. Also, a three (3) days suspension is more consistent with progressive discipline than a five (5) days suspension.

  
Harry B. Crewson  
Arbitrator