

In the Matter of the
Arbitration Between

OCSEA, Local 11
AFSCME, AFL-CIO

Union

and

State of Ohio
Department of Mental Health

Employer.

Grievance No. 23-08-(93-08-20)-
1018-01-03

Grievant: Wagoner, A.

Hearing Date: March 17, 1994

Award Date: March 17, 1994

Arbitrator: R. Rivera

For the Employer: Jeff Fogt, ODMH
Cindy Sovell, OCB

For the Union: Penny Lewis, OCSEA

Present at the Hearing in addition to the Grievant and Advocates were Patricia Torvik, CEO-DMNC (witness), Dora Moore (witness), Kay Schoening, Psy. Attendant (witness), and Sherl Miller, Steward.

Preliminary Matters

The Arbitrator asked permission to record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

Issue

Was the Grievant removed for Just Cause? If not, what shall the remedy be?

Joint Exhibits

1. Contract
2. Grievance Trail
3. Discipline Trail

Union Exhibits

1. ODMH Incident Reporting System
2. ODMH Corrective Action Procedure
3. Grievant's Evaluations 1986-1993

Employer's Exhibits

1. ODMH Patient Abuse Standards
2. Hearing Officer's notes

Relevant Contract Sections

ARTICLE 24 - DISCIPLINE § 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02.

§ 24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.

Disciplinary action shall include:

- A. One or more oral reprimand(s) (with appropriate notation in employee's file);
- B. One or more written reprimand(s);
- C. One or more suspension(s);
- D. Termination.

Disciplinary action taken may not be referred to in an employee's performance evaluation report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

BENCH DECISION

Upon hearing the evidence, the Arbitrator finds that the evidence is insufficient to support the charge of patient abuse. The Grievance is sustained. The Grievant is to be returned to work and made whole in all employment aspects.

March 17, 1994
Date

Rhonda R. Rivera
Arbitrator