

Arbitration Between:

Ohio Department of Public Safety, Division of the State Highway Patrol

and

Ohio State Troopers Association

Grievance of Brittany Randolph, DPS-20120-01613-01

State Highway Patrol Representatives

Staff Lt. Jacob Pyles, Ohio State Highway Patrol

Aaron Williams, Ohio State Highway Patrol, Labor Relations Officer

OSTA Representatives

Elaine Silveira, OSTA

Larry Phillips, OSTA

Witness for the Grievant: Grievant, Brittany Randolph, Larry Phillips, OSTA Staff Representative

Witness for the OSHP: Lt. Laura Taylor

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OSHP), issued a one-day fine to Dispatcher Brittany Randolph (Grievant) for a violation of Department of Public Safety Work Rule 501.05-2.2 Absent without approved leave, using more leave than available (0.1 to 8 hours LWP). OSHP issued this discipline because the Grievant took physician-authorized sick leave when she did not have any sick leave available in her leave bank.

At the time of the incident, the Grievant had been working as a dispatcher for ODSP for approximately 3 years in the Critical Information and Communication Center at DPSCIC. The Grievant had requested and received pre-approval to use eight hours of sick leave on February

20, 2020 for a planned medical procedure. At the time, she did not request any additional time off because she had previously undergone the procedure and had only had to miss one day of work. But, unfortunately, the Grievant did not feel well on the evening of February 20th, and reported her condition to her doctor, who told her she should not go to work the next day. She contacted her supervisor, Laura Windbigler, by text, and informed her that the Grievant's doctor did not think she should work the following day. Knowing that she did not have sufficient sick leave to cover the day, the Grievant asked her supervisor if she could use personal leave instead. Her supervisor said that she did not know whether the Grievant could use personal leave but would check into it. At 1:12 p.m. on February 21, 2020, Supervisor Windbigler informed the Grievant that she could not use personal leave as a substitute for sick leave. Unfortunately, the Grievant did not learn this information in time to come in to work (although it is unclear whether ODSP would have allowed her to come to work in any case). Thus, she was in a non-paid leave status for 2 hours and thirty-six minutes.

Ohio DPS Policy 501.16 states that an employee must “know and be accountable for their leave balances [and] ensure the availability of sufficient leave to cover leave requests at the time the leave is taken.” According to the same policy, a supervisor must “monitor leave balances and ensure leave usage follows agency and division directives.” (ME #2). The policy empowers ODPS to take corrective or disciplinary action when an employee uses “more sick leave than available resulting in an unpaid status”

The Grievant's department record includes tardiness infractions and a dishonesty infraction, for which she has received discipline. The policy she violated when she was tardy is DPS 501.05-2.1 and appears in the same policy document that articulates employees' obligations regarding sick leave. In issuing discipline, ODPS considered the Grievant's previous tardiness

infractions, together with its disciplinary grid, which authorizes the ODPS to issue discipline from a written reprimand through removal for employees who are absent without approved leave. (ME #4) After an investigation of this incident, ODPS issued a one-day fine to the Grievant, which she now challenges.

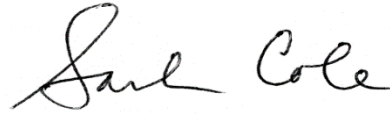
The Grievant in this case was in a difficult position. She knew she did not have enough sick leave to take a second day off, yet her doctor told her that she should not be working.¹ Compounding this situation was that her supervisor did not know with certainty whether the Grievant could use personal leave in lieu of sick leave and did not provide her that information until the next day, when it was too late for the Grievant to change her mind (and, again, it is not clear she would have been allowed to come to work because of her doctor's note. Lt. Laura Taylor, the Administrative Investigator in the Grievant's case, testified that an employee with a doctor's order not to come to work will not be permitted to come to work). Had the Grievant's supervisor informed her in a timely manner that she could not use personal leave, she could have made a better-informed decision. The fault in this situation lays both with the supervisor and with the Grievant. Under these circumstances, I find that the discipline issued was not commensurate with the infraction committed. At the same time, the Grievant bears some responsibility for the infraction. Thus, I find that discipline is justified but that it should be reduced to a written reprimand.

¹ ODSP noted that the Grievant could have applied for FMLA leave but failed to do so. The Grievant's failure to apply for FMLA is not fatal to her case. Had her supervisor given her information about her ability to take personal leave in lieu of sick leave, which the supervisor should have known, this infraction could likely have been avoided.

AWARD

The discipline should be reduced to a Written Reprimand and the Grievant should be made whole for all lost wages and benefits.

June 7, 2021

A handwritten signature in cursive script, reading "Sarah Cole". The signature is written in black ink and is positioned above a horizontal line.

Arbitrator Sarah R. Cole