

MARC A. WINTERS
ARBITRATOR

In The Matter of Arbitration

Between

Ohio Department of Youth Services
Cuyahoga Hills Juvenile Correctional Facility.

Employer

And

Ohio Civil Service Employees Association
Local 11, AFSCME

Union

OPINION & AWARD

Arbitrator Case No.:	DYS-2023-01370-03
Employer Advocate:	Bradley A. Nielsen, LRO3
Union Advocate:	David Harper, Staff Representative
Subject:	Removal
Grievant:	Alexandra Calliens
Grievance No.	DYS-2023-01370-03
Date of Hearing(s):	January 30, 2024
Location of Hearing:	Highland Hills, Ohio
Record Closed:	February 16, 2024
Opinion and Award Issued:	March 15, 2024

APPEARANCES

For the Union:

David Harper, OCSEA Staff Representative

Also Present:

Fredrick Wilson, Chapter President

Alexandra Calliens, Grievant

For the Employer:

Bradley A. Nielsen, Management Advocate, LRO3

Also Present:

Victor Dandridge, OCB Representative

Scott Sooy, LRO2

Darrin Kreis, Training Program Manager

Robert Underwood, Unit Manager

Yolanda Ware, Investigator

Andrew Blank, Investigator

PRELIMINARY STATEMENT

The parties, Ohio Department of Youth Services, (“Employer”) and OCSEA Local 11, (“Union”), having failed to resolve a dispute involving a removal, proceeded to final and binding arbitration pursuant to the terms of their collective bargaining agreement, (“Agreement”). Marc A. Winters was appointed to serve as impartial arbitrator. The Grievance was filed on May 22, 2023. An oral hearing was held on January 30, 2024. Both parties were given full opportunity to present evidence, to cross-examine the witnesses and to argue their respective positions. A stenographic record of the hearing was not made. The Arbitrator has full authority to resolve any arbitral challenges or procedural issues and to decide the case on its merits. Post-hearing briefs were filed electronically on February 16, 2024 and exchanged, electronically, through this Arbitrator on February 16, 2024.

BACKGROUND AND SUMMARY

Alexandria Calliens, the Grievant, was hired by the Ohio Department of Youth Services (DYS) at Cuyahoga Hills Correctional Facility as a Juvenile Correctional Officer (JCO) on October 22, 2018. Grievant was placed on administrative leave on February 18, 2023. Grievant was removed on May 22, 2023, for violating provisions of the Ohio Department of Youth Services General Work Rules.

Parties’ Joint Stipulations:

- 1) Grievance #DYS-2023-01370-03 is properly before the arbitrator.
- 2) Grievant commenced employment with the Ohio Department of Youth Service (DYS)-Cuyahoga Hills Juvenile Correctional Facility (CHJCF) on October 22, 2018, in the Juvenile Correctional Officer (JCO) classification.
- 3) Grievant served continuously in the JCO classification until her removal on May 22, 2023.
- 4) CHJCF placed the Grievant on paid administrative leave on February 18, 2023. Grievant remained on paid administrative leave until the date of her removal.
- 5) At the time of her removal, the Grievant did not possess any active discipline.
- 6) CHJCF consists of eight (8) housing units. Units A, B, C, E & F can each house a maximum of twenty-four (24) youth. Units D, G & H can each house a maximum of thirty-two (32) youth.
- 7) Youth are housed at CHJCF in an open dormitory setting. Youth beds are housed in one room and youth have access to a communal bathroom for the unit. Each youth maintains a locker to store personal possessions.
- 8) CHJCF operates the following three (3) shifts:
 - a) 1st shift 6:00AM-2:00PM
 - b) 2nd shift 2:00PM-10:00PM
 - c) 3rd shift 10:00PM-6:00AM
- 9) Each housing unit is staffed with a minimum of two (2) JCOs, with most shifts having a third JCO assigned to the unit.
- 10) Each housing unit is staffed with one Unit Manager. One Correctional Program Specialist (eight (8) total) and an Administrative Professional 1 (four (4) total) is assigned for every two (2) housing units.
- 11) At least two (2) Operations Managers work on each shift and provide overall supervision for the safety/security of the CJCF.
- 12) CHJCF operates a year-round school to provide high school education to youth and operates a medical clinic staffed 24/7 by nursing staff.
- 13) Grievant was assigned pt shift on Unit H (Huron) from October 2022 through February 14, 2023.
- 14) Grievant failing to wear security equipment incident (October 19-20, 2022)

- a. Grievant volunteered to work 3rd shift overtime on the evening of October 19, 2022.
 - b. Grievant assigned to work Unit E (Erie) on 3rd shift.
 - c. Upon entering the facility, Grievant received her key ring, radio, man down alarm and 911 pouch.
 - d. At approximately 041SAM Grievant entered the Operations Office stating she needed to leave the facility for a family emergency.
 - e. Operations permitted the Grievant to leave the facility to attend to her emergency, expecting her to return to work her regularly scheduled 1st shift.
 - f. The Control Center spoke with Operations after the Grievant left the facility stating she failed to turn in her man down alarm and 911 pouch before leaving the facility.
 - g. Operations retrieved the Grievant's clear lunch bag she left behind on Unit E.
 - h. Operations could visually identify the Grievant's man down alarm and her 911 pouch stored inside the clear plastic lunch bag.
 - i. Grievant failed to properly wear her man down alarm and 911 pouch during her shift (3rd shift, October 19-20, 2022).
 - j. Grievant punched out at 427AM (October 20, 2022) and returned to CHJCF at 526AM (October 20, 2022).
- 15) Grievant powering off body worn camera and placing item in youth locker incident (January 18, 2023). Underwood
- a. On January 18, 2023, Grievant worked 1st shift on Unit H, her regularly assigned unit.
 - b. The Control Center assigned body worn camera serial number X6OA3414J to the Grievant to wear for her shift.
 - c. Per DYS Policy 110-SAF-17 Body Worn Cameras, body worn cameras are to remain powered on at all times, until the end of the shift or expressly authorized by a supervisor.
 - d. At 3:08:24PM while still on her assigned unit, the Grievant powered off her body worn camera.

- e. At approximately 309PM, Grievant exits open door staff (restroom and walks across the unit to Youth M locker.
 - f. The Grievant then returns to the youth restroom area and begins to comb her hair.
 - g. A subsequent search of Youth M locker discovered Bath and Body Works Lotion, with a retail price of \$16.50.
 - h. DYS (Operations Manager Darius Smith) trained the Grievant how to operate the body worn camera on January 13, 2023. The Grievant successfully passed all the proficiencies related to the body worn camera practical exam on January 13, 2023.
 - i. Youth M is not a designated porter for Unit H from October 2022 through February 2023.
- 16) February 8, 2023, touching youth head incident
- a. At approximately 701AM on February 8, 2023, while assigned to Unit H, Grievant escorted unit youth to cafeteria for breakfast.
 - b. Grievant touched Youth W head while youth had head down sitting at the cafeteria table.
- 17) Removed from assigned unit (Unit H) while PREA allegations investigated, failure to follow direction to have to contact with Unit H or youth assigned to that unit & turning off body worn camera mid-shift incident.
- a. On February 15, 2023, Operations Manager Lamar Wilson advised the Grievant she is to have no contact with Unit H or the youth assigned to Unit H.
 - b. On February 15, 2023, Operations Manager Wilson assigned the Grievant to work the Sallyport.
 - c. On February 15, 2023, at approximately 1113AM, the Grievant powers off her body worn camera for approximately twenty (20) minutes. During this time, the Grievant interacts with several youth from Unit H.
 - d. On February 15, 2023, at approximately 1131AM, the Grievant enters the cafeteria hallway and speaks/interacts with five (5) youth from Unit H (Youth W, Youth P, Youth T, Youth WE & Youth WH).
 - e. On February 18, 2023, Grievant is assigned to work Unit D.
 - f. On February 18, 2023, at approximately 0610AM, the Grievant left her assigned unit and proceeded to walk to Unit H.

- g. On February 18- 2023, at approximately 0618AM, Grievant is outside Unit Hand interacting with Unit H Youth.
- h. On both February 15 & 18, 2023, the Grievant failed to follow DYS management instructions to have no contact with Unit H or the youth assigned to Unit H.

The following documents were entered into the Record:

Joint Exhibits:

- 1) Collective bargaining agreement between State of Ohio and Ohio Civil Service Employees Association.
- 2) Discipline Trail
Removal letter dated May 22, 2023
Grievant Administrative Leave Notification dated February 18, 2023
Pre-disciplinary conference meeting officer report
- 3) Discipline Trail
Investigation report #25012200522 (redacted) completed April 18, 2023
- 4) Discipline Trail
Investigation report #25012300003 (redacted) completed April 11, 2023
- 5) Discipline Trail
Investigation report #10012300008 (redacted) completed March 24, 2023
- 6) Discipline Trail
Videos of Incidents
- 7) Grievance Trail
OHGRIEV Grievance Snapshot #DYS-2023-01370-03
- 8) DYS Policy 131-SEM-05 General Work Rules/Rules Violations/Grid
- 9) DYS Policy 100-SAF-17 Body Worn Cameras
- 10) DYS Policy 179-YSA-04 Sexual Abuse and Sexual Harassment: Prevention, Detection and Education
- 11) DYS Policy 185-RPS-08 Security Equipment and Storage
- 12) Map/Layout of CHJCF

- 13) Juvenile Correctional Officer/Grievant Position Description
- 14) General Work Rules & Sexual Abuse/Harassment Training Records
- 15) Prison Rape Elimination Act Training Records
- 16) Security Overview and Youth Supervision Training Records
- 17) DYS Policy 109-INV-02 Investigations

Employer Exhibit 1, Dailey Unit Log, Unit H, January 18, 2023

Union Exhibit 1, Sexual Abuse and Sexual Harassment Policy

PERTINENT PROVISIONS OF THE AGREEMENT

ARTICLE 24 – DISCIPLINE

24.01 – Standard

Disciplinary action shall not be imposed upon any employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action.....

ISSUE

Did the Ohio Department of Youth Services-Cuyahoga Hills Juvenile Correctional Facility have just cause to remove the Grievant from employment? If not, what is the remedy?

DISCUSSION AND FINDINGS

The Advocates for the Employer and for the Grievant have raised numerous issues during the Hearing and in their respective post-hearing briefs. It, however, may not be necessary arriving at a decision to discuss each and every issue raised.

The facts, for the most part, are really not in dispute as depicted in the parties joint stipulations.

The basic principle in arbitration, when discussing discipline or discharge/removal, is that an Employer must have just cause for imposing such a penalty. The burden of proof falls directly on the Employer. Here, the DYS bears the burden of proving their charges by a preponderance of the evidence.

Preponderance of the evidence, simply put, means the evidence has to be sufficient, to create, in this Arbitrator's mind, that the DYS has established its case.

The Grievant, in this case, has been charged with and removed from her employment for engaging in inappropriate behavior in violation of Ohio Department of Youth Services General Work Rules.

When addressing discharge/removal, Arbitrators normally look for two distinct areas of proof. First, whether guilt has been established. Second, has the proper penalty been handed out?

For this case, this Arbitrator needs to determine if the Grievant's conduct did in fact rise to the level of misconduct which would satisfy the elements of just cause for which the end result would warrant discharge/removal.

The question becomes. Was the evidence presented at the Hearing, in support of the charges, sufficient to prove the allegations made by the DYS against the Grievant?

The most important evidence in a case, such as this, for this Arbitrator, comes in the form of testimony from witnesses. The source of such testimony, whether it is firsthand knowledge or merely hearsay is an important part for proving just cause and whether the appropriate penalty was handed out. This Arbitrator relies heavily on the firsthand knowledge of such witnesses since the consequences to the Grievant are so great.

The Grievant, as stated above was charged with and removed from employment for engaging in inappropriate behavior in violation of Ohio Department of Youth Services General Work Rules.

Specifically,

Rule 5.01P - Failure to follow policies and procedures:

DYS Policy 131-SEM-05 General Work Rules

DYS Policy 110-SAF-17 Body Worn Cameras

DYS Policy 179-YSA-04 Sexual Harassment/Sexual Abuse: Prevention, Detection, and Education

DYS Policy 185-RPS Security Equipment and Storage

Rule 5.08P – Contraband.

Rule 6.04P – Intimidation or harassment of any youth under the supervision of the Department.

Rule 7.05P – Showing partiality toward or becoming physically, emotionally or financially involved with a youth.

More specifically and as detailed:

On October 19, 2022, Grievant's Failure to wear her "man down alarm" and "911 pouch" and failure to return the items to the Control Center before leaving the facility.

On January 18, 2023, Grievant powered off her BWC for approximately twenty (20) minutes and during that time, placed contraband in Youth M locker.

On February 8, 2023, Grievant inappropriately touched Youth W.

On February 15, 2023, Grievant intentionally powered off her BW Camera for approximately twenty (20) minutes.

On February 15 and February 18, 2023, Grievant failed to follow direction on two (2) occasions to not have contact with Unit H or Unit H youth per a PREA allegation/investigation.

The Employer argues that: the Grievant's removal from employment with the DYS is appropriate based upon her repeated failure to follow DYS policies designed for the protection of staff and youth.

The Union argues that: the Union believes there were procedural errors from the beginning. The Union contends the Department of Youth Services did not complete a fair and objective investigation. The investigation was done without the Union being given a full Pre-D packet. During the pre-disciplinary meeting there were no videos or audios supplied to the Union.

The Union also contends that all mitigating factors were not considered when dealing with Ms. Calliens and her emergency and DYS did not evenhandedly apply their policies to all employees.

With respect to each incident:

For the October 2023 incident when the Grievant failed to wear and secure her assigned security equipment, the Union stipulated to all facts and conclusions found in the investigation. The Grievant did not wear her assigned security equipment and failed to turn in her assigned security equipment prior to leaving the facility which is in complete violation of DYS Policy.

For the January 18, 2023 incident, the Union stipulated the Grievant powered off her BWC at 308 PM, while still on her assigned shift. The Union further stipulated DYS Policy 110-SAF-17 Body Worn Camera states BWC are to remain powered on at all times, until the end of the shift or expressly authorized by a supervisor.

Additionally, on January 18, 2023, the Employer presented evidence that the Grievant placed a bottle of Bath & Body Works lotion, which is not permitted and in violation of DYS Policy, in Youth M's locker. Per the Preliminary Investigation Review and related Incident Report, the Grievant is observed placing an item in Youth M locker, multiple youth are observed behaving in an "excited manner" when the youth opened the locker and when Operations subsequently searched the locker, they found the lotion in question and confiscated the item.

The Grievant does not deny placing an item in the locker of Youth M claiming she placed a “food item” in the locker.

The Employer similarly found an additional, subsequent bottle of lotion on the unit on January 25, 2023. Management witness CHJCF Investigator Ware testified the youth reaction to seeing the inside of the locker indicated the presence of something of consequence not just potato chips.

For the February 8, 2023 incident, the Union stipulated the Grievant touched Youth W’s head on February 8, 2023, while the youth sat with his head down in the cafeteria. Staff are not permitted to touch youth, especially in a non-therapeutic manner as in this instance. Per testimony from CHJCF Investigator Ware, this inappropriate touching led to a Prison Rape Elimination Act (PREA) complaint from Youth W and a subsequent investigation. Per the preliminary investigation report filed by Investigator Ware and the Grievant’s testimony during direct examination, the Grievant regularly would rub/pull Youth W’s hair making him feel uncomfortable, discuss sex and the youth losing his virginity and requested he “link up with her” when he is released from CHJCF. Further testimony was that when the Grievant touched Youth W again in the cafeteria on February 8, 2023, it was simply the “last straw” for the youth and he reported the inappropriate behavior to the Unit Manager, the unit Correctional Program Specialist and to Investigator Ware.

Per DYS Policy 179-YSA-04 Sexual Abuse and Sexual Harassment: Prevention, Detection and Education, DYS maintains a “zero tolerance” stance related to sexual harassment and abuse.

For the February 15, 2023 incident, the Grievant again inappropriately powers off her BWC during the middle of her shift. At approximately 1113 AM, the Grievant powered off her BWC for approximately twenty (20) minutes. Video and investigation pictures show the Grievant leaving her assigned Sallyport post and walking to the cafeteria. As Investigator Ware testified, staff are only permitted to power off BWC at the end of the shift or with the permission of an immediate supervisor.

Additionally, on February 15, 2023, Operations Manager Lamar Wilson advised the Grievant she is to have no contact with Unit H or the youth assigned to Unit H. The Grievant powered off her BWC and interacts with several youth from Unit H.

For the February 18, 2023 incident, the Grievant again interacts with youth from Unit H. On this date, the Grievant is assigned to work Unit D. Grievant left her assigned post, walked to the complete other side of the facility to the hallway/stairway outside Unit H. At approximately 618 AM, the Grievant is outside Unit H and interacting with Unit H Youth P.

The results of the Employer’s investigation, including the videos to corroborate, not only were found to be credible, believable and for the most part uncontested, those results overwhelmingly justifies the Employer’s decision to remove the Grievant from her employment.

The acknowledgement of the Grievant's conduct and violation of the rules as listed and agreed to in the Parties Joint Stipulations, alone, carries enough weight to justify the Grievant's removal.

The evidence presented at the Hearing clearly shows that the Grievant repeatedly powered off her BWC in violation of DYS Policy, repeatedly interacted with youth from Unit H in violation of direction from DYS Management and clearly violated DYS Zero Tolerance Policy with the inappropriate touching of Youth W.

The Union tried, unsuccessfully, to mitigate the Grievant's conduct and what occurred even though for most of the charges the Union and the Grievant admitted to the Grievant's conduct which was in violation of DYS Policies and Rules.

Although some of the Employer's evidence was circumstantial such as the issues surrounding the bath and body lotion being placed in the locker, the inferences drawn carries enough weight to help establish guilt for that conduct.

Based on the reasoning and discussion above and the entire record before me, this Arbitrator finds that the evidence presented at the Hearing, in support of the charges, were sufficient to show just cause exists whereby the end result would justify discharge/removal.

AWARD

This grievance is denied.

Based on the reasoning and discussion above and the entire record before me, this Arbitrator finds that the evidence presented at the Hearing, in support of the charges, were sufficient to show just cause exists whereby the end result would justify discharge/removal.

The evidence presented, the weight associated, and the credibility of the witnesses support these findings and conclusions.

It is hereby so Ordered, this 15th Day of March 2024.



Marc A. Winters
Arbitrator
Seven Fields, Pennsylvania