

OCB Award No: 21

OCB Grievance No: G86-0310

Union: 1199

Department: Mental Retardation + Dev. Disabilities

Arbitrator: Leach, Donald

Award Date: 87/2/25

## O P I N I O N   A N D   A W A R D

OHIO HEALTH CARE EMPLOYEES UNION  
District 1199, WV, KY, OH, National  
Union of Hospital and Health Care  
Employees, AFL-CIO

and

Date February 25, 1987

STATE OF OHIO  
DEPARTMENT OF MENTAL RETARDATION  
AND DEVELOPMENTAL DISABILITIES  
(Cleveland Developmental Center)

ARBITRATOR: DONALD B. LEACH, appointed by the Office of Collective Bargaining, Department of Administrative Services, State of Ohio

APPEARANCES: FOR THE EMPLOYER:

Ms. Cheryl J. Nester, Assistant Attorney General  
of Ohio, 10th Floor, 30 East Broad Street, Columbus,  
Ohio 43215

FOR THE UNION:

Mr. Tom Woodruff, President, Ohio Health Care Employees  
Union, District 1199, 1313 East Broad Street, Columbus,  
Ohio 43205

## D I S C U S S I O N

Under the Agreement, a discharge matter, such as is involved here, is required to be treated under the procedure called "Expedited Grievance / Arbitration". The Arbitrator originally assigned to hear the matter was unable to do so and this Arbitrator was assigned on only two days' notice. As a result, the parties agreed that more time than is allowed in the Agreement might be taken in reaching a decision. Notwithstanding, the Agreement seems to require only an abbreviated type of Opinion. Accordingly, that type format is followed here.

Grievant, Mrs. Carmen Patti-Reynolds, R. N., was discharged by notice dated August 18, 1986, from her position at the Cleveland Developmental Center for failure on June 25, 1986, to follow Doctor's Orders for administering a client's allergy injection; for incorrect documentation of the amount of such medicine the week before, together with failure to document the date of administration. Her failures were held to have jeopardized the client's safety. A charge similar to the first was noted as having occurred earlier for which Grievant had been reprimanded in writing.

Grievant had been the nurse in charge of the Center on the afternoon shift, 3:00 to 11:30 P.M., which was staffed by three L.P.N.'s and Grievant, the sole R.N. during those hours.

The Director of Nursing at the Center testified that Grievant could delegate medicine administration to an L.P.N., but it appeared in the case of the client involved here, Grievant undertook to handle the matter.

No failure respecting medication and no other failures or breaches of procedure had ever been alleged against Grievant until the incidents arose that led to her discharge. All of those incidents related to an injection of an allergy medication administered to the same client.

The client suffered from a variety of problems, including allergies and asthma, although the two were not alleged to have been related.

That client was away from the Center regularly every day, participating in a work shop off the premises. He left rather early in the morning and did not return until about 3:00 P.M. or about the time the shifts changed. He was supposed by doctor's orders to receive an injection weekly of an allergy medication. That involved taking his vital signs first, making the injection, and then observing him for a period for signs of adverse reactions.

When the first incident arose, the injection was directed to be given on Thursday. Grievant missed one as noted above, for which she was reprimanded. Thursday was also the time of a doctor's visit for examinations at which Grievant was required to assist. That duty made the client's injection somewhat difficult to time. As a result of the incident and the obvious problem, the injection day was moved to Wednesday.

Under the procedures in force at the time, the allergy medication used for the client was stored in the pharmacy some distance away. The injection was drawn from the bottle by the nurse at approximately the time the injection was about due, carried by her back to her station and administered there.

The pharmacy closed at 4:30 P.M., about an hour and a half after Grievant came on duty. The early part of her shift was occupied with receiving the report of the prior shift, counting the narcotics and performing other preliminary duties. On one occasion, apparently, Grievant drew the injection from the Pharmacy for the client one day, intending to administer it the following day. It was found in the refrigerator, however, and being susceptible to contamination and possible chemical change, was disposed of. Grievant was reprimanded for that action.

On another occasion, she noted the date as being a month earlier than it was on the Pharmacy log and on the nursing log misstated the amount, i. e., as .04 instead of the correct .4. That nursing log entry was made about a week after the day the dosage was actually administered.

Finally, on June 25, 1986, Grievant failed to administer the dosage and also failed to record that on the nurses' notes or log and failed to report it to her supervisor or to the following shift. That prompted the discharge, which is in issue here.

The discharge was decided on in relation to a policy issued under date of July 21, 1986, which prescribed various offenses and appropriate discipline for each. Grievant was categorized under classification of "Refusal to Obey Orders: Whereby the safety of persons or property is thereby endangered".

The discharge notice was delayed until August because an administrative reorganization at the Center had delayed the paper work. Grievant continued to work until that date.

## C O N T R A C T P R O V I S I O N S

### ARTICLE 8 - DISCIPLINE

#### §8.01 Standard

Disciplinary action may be imposed upon an employee only for just cause.

#### §8.02 Progressive Discipline

The principles of progressive discipline shall be followed. These principles usually include:

- A. Verbal Reprimand
- B. Written Reprimand
- C. Suspension
- D. Demotion or Removal

The application of these steps is contingent upon the type and occurrence of various disciplinary offences.

The most striking facts here are that Grievant, at the time of the first incident, had been employed at the Center for more than a year and had had no other discipline imposed on her, thus having a clean record up to that time; that the incidents here all related to an injection of allergy medication for one client; and that, between the date of the discharge incident and the actual discharge date, a period of about two months, she had had no other infractions marked against her.

Generally, the Grievant appears to have been a responsible employee except in the case of one client. That raises more questions of the reason for that one type of failure than it does of discipline.

Discipline is in order, nonetheless, in that a nurse must follow the orders of the doctor in charge, especially where administration of medication is involved. That is true whether the matter involves potentially great injury to a patient or not. As to the client involved here, the failures were of various categories. Some, like recording the wrong dosage and the wrong date, are clearly not very serious in that one was a misplaced decimal point and the other a difference of one month, rather clearly clerical errors creating no necessary misunderstandings. The failure to follow orders is serious as is the failure to report the omission.

In light of Grievant's relatively good record, her failures would seem to warrant the application of progressive discipline for the purpose of correction, not of penalization. It is well known that errors are committed in medications, treatments, etc., even in the best run institutions. They are not to be condoned but their existence must be recognized and considered with some understanding. It is not the lot of humans to be perfect. Thus, efforts must be made to improve performance without resorting too quickly to discharge, a determination that the problem is hopeless.

Progressive discipline is the standard set out in Section 8.02 of the Agreement as generally applicable. (That Section recognizes, of course, that particular circumstances may warrant greater or lesser discipline.)

The Employer used a standard of discipline that wasn't even applicable at the time of the offenses and also categorized her actions under the class of "refusal" to follow orders even though the actual charge made was merely "failure" to follow orders, a far different thing. Refusal implies a sort of insubordination while failure implies negligence at most. The seriousness of the two is vastly different.

It follows that the discipline imposed, discharge, was improperly conceived and, thus, too great.

The second incident of failure to administer the allergy medication was compounded by Grievant's failure to note the omission so that others could be alerted to the need for remedial action respecting the client. They both are serious matters and warrant severe discipline but discipline which, in light of Grievant's general record, must be focused on improvement, not termination.

For the above reasons, the discipline must be reduced from discharge to suspension for twenty days. Accordingly, Grievant should be offered her former position and must be made whole for her loss of earnings between the date beginning twenty days following her improper discharge and ending on the date of her reinstatement, but for no longer period than two weeks following the date of this decision. It is recognized that Grievant has obtained other employment in the meantime, so that the loss of earnings is to be computed in terms of the remuneration she has actually received.

#### A W A R D

1. Grievance, dated August 20, 1986, of Mrs. Carmen Patti-Reynolds, is hereby upheld in part.
2. Grievant forthwith shall be offered reinstatement to the position she held on the date of her discharge, August 18, 1986.
3. Grievant shall be deemed properly to have been under disciplinary suspension for twenty working days following her last day worked.
4. Grievant shall be paid for loss of earnings resulting from the improper discharge beginning twenty working days following the last day she worked and ending the day before she returns to employment, provided that no payment hereunder is required to be made for any period more than two weeks following the date of this Opinion and Award.

  
Donald B. Leach