
In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

The State of Ohio, Department of
Mental Retardation and Developmental
Disabilities, Broadview Developmental
Center

Case No.:
G86-0489

Appearances: For OCSEA/AFSCME Local 11:

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For The State of Ohio:

Michael P. Duco
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Office of Collective Bargaining
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Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on July 23, 1987 before Harry Graham of Beachwood, OH. At that hearing the parties were provided complete opportunity to present testimony and evidence. Post-hearing briefs were filed in this dispute. They were exchanged by the Arbitrator on August 12, 1987 on which date the record was declared to be closed.

Issue: At the hearing the parties were able to agree upon the issue in dispute between them. That issue is:

A grievance protesting the suspension was properly filed. It was processed through the procedure of the parties without resolution. There is agreement that the grievance is properly before the Arbitrator for decision on its merits.

Position of the Employer: The State indicates that the Grievant has maintained that he overslept on July 2, 1986, thus missing the starting time of shift, 11:00PM. The Grievant indicated that he awoke at 2:30AM. This is some three and one-half (3 1/2) hours after the start of his scheduled work day. The Grievant did not call in to indicate he would not report or would report late. As will be discussed below, he asserts that he attempted to call the Developmental Center but that the telephone was inoperative. This tale should be viewed with skepticism in the State's opinion. Even if true, it does not excuse his actions, or more precisely his lack of action. His failure to report placed the Developmental Center in the position of requiring another employee to stay at work. This is due to the continuing need for care manifested by people under the custody of the Grievant and his colleagues.

The Grievant was aware of the call-in policy of Broadview Developmental Center. He had been disciplined on several occasions prior this event. He was on notice that continued infractions of institutional rules could lead to severe discipline. Other employees at the Developmental

There is an element of disparate treatment in this situation. Several other employees received lesser discipline for being absent without leave. In addition, the Union asserts that the "employer" in this instance should properly be regarded to be the Department of Mental Retardation and Developmental Disabilities. Other facilities operated by the Department, eg. Warrensville, near to Broadview, have somewhat different policies with respect to discipline for AWOL. The Grievant's instance of AWOL might have resulted in some lesser penalty at Warrensville. As this is the case, the suspension should be overturned the Union asserts.

Discussion: The Agreement at Section 24.01 establishes the traditional standard of just cause for imposition of discipline. It is against that standard that the suspension under review in this proceeding must be evaluated.

The people in Mr. Banks' care have very severe mental disabilities. To a large extent they are incapable of fending for themselves in any meaningful fashion. They require continuing supervision and assistance. When the Grievant failed to report on July 2, 1986 he imposed a burden on the Employer and fellow employees that manifests a disregard for his responsibilities.

The Union is on firm ground when it argues that in principle disparate disciplinary treatment of employees is to

exposed himself to discipline.

Award: Based upon the preceding discussion the grievance is DENIED.

Signed and dated this 25th day of August, 1987 at Beachwood, OH.

Harry Graham
Harry Graham
Arbitrator