

IN THE MATTER OF ARBITRATION
UNDER THE 1986 CONTRACT

Between:

State of Ohio
Department of Rehabilitation
and Correction

THE EMPLOYER

-and-

The Ohio Civil Service
Employees Association,
Local No. 1, AFSCME,
AFL-CIO

THE UNION

Union Grievance No. OSR-M-242

OCB Grievance No. G-86-0578

ND 541

Grievant: Henry G. Carter

Before: NICHOLAS DUDA, JR., ARBITRATOR

OPINION AND AWARD:

September 25, 1987

CASE DATA**SUBJECT**

Five day suspension for "sleeping on duty".

APPEARANCES**FOR THE UNION**

Brenda Persinger, Staff Representative, OCSEA, Presenting the Case

John Porter, Attorney, Assisting

Henry G. Carter, Correction Officer 2, Grievant

Dennis J. Cowell, Local Union Steward

FOR THE EMPLOYER

Nicholas G. Menedis, Department Chief of Labor Relations, Presenting the Case

Richard Hall, OSR Labor Relations Representative, Assisting

Felicia Bernardini, Labor Relations Specialist, DRC

Dean Millhone, MCI Labor Relations Representative

Jack Burgess, Chief, Arbitrations Services, Ohio Office of Collective Bargaining

Jerry Wente, Deputy Superintendent - Programs, Ohio State Reformatory at Mansfield

THE FACTS

Grievant had been employed as a Correction Officer for less than three years before August 13, 1986. On the latter day he was assigned to work in the West Tower on the third shift beginning at 10:00 P.M. He failed to make his scheduled report-in call at 11:30 P.M. About ten minutes later his captain attempted to attract his attention by flashing a beam of light up into the tower. Despite the captain's efforts, which lasted about five minutes,

Grievant did not reply. Finally the Captain radioed to have a telephone call made to Grievant. The ringing telephone woke the Grievant.

The Employer issued Grievant a five day suspension for sleeping on duty.

In his grievance, Grievant asked that he "be paid for five day suspension and records expunged". At arbitration Union argued that the the Employer had not followed the principles of progressive discipline, particularly because prior discipline had been issued without cause.

THE ISSUES

Whether suspending Grievant for five days for sleeping on duty on August 13, 1986, violated principles of progressive discipline or was excessive and/or unreasonable.

EVALUATION

Grievant admits that sleeping on duty is neglect of duty and that he was sleeping on duty on August 13, 1986.

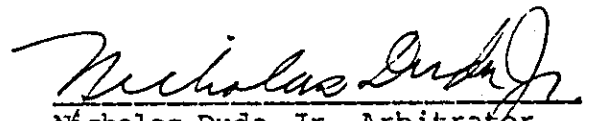
According to the Employer sleeping on duty by the employee is especially serious where the employee is directly responsible for the security of inmates, Grievant's assignment on August 13, 1986. The Union asserts a general principle that a five day suspension for sleeping on duty violates the principle of progressive discipline or is excessive. Even if that position had merit as a general proposition, the argument cannot apply to the facts in this case. The Arbitrator finds that prior to August 13, 1986 Grievant received oral and written reprimands and a three day suspension specifically for sleeping on duty as well as for other neglects of duty. (Even Grievant admits the sleeping for which he had received the three day suspension.) Thus the Employer has applied the principles of progressive discipline set forth in Section 24.02 of the Labor Agreement, whether the Employer was required to do

so or not.

Despite the history of prior discipline for neglect of duty and specifically for sleeping the Grievant repeated the misconduct on August 13, 1986. Under these circumstances there is no basis whatsoever for finding that a five day suspension is unreasonable or excessive.

AWARD

There was just cause for the five day suspension. The grievance is denied.


Nicholas Duda, Jr., Arbitrator