

ARBITRATION HEARINGS

In the Matter of:

STATE OF OHIO, DEPARTMENT
OF TRANSPORTATION

and

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION/ AFSCME

Pursuant to Article 25.09 - Expedited Arbitration Procedure - of the Contract, a number of grievance cases were presented to the Arbitrator on November 5 and 6, 1987, in the offices of OCSEA/AFSCME, Bldg. 8, Suite 801, Triangle Office Park, Cincinnati, Ohio.

In all cases, Rachael Livengood was the advocate for ODOT and Michael Temple was the advocate for OCSEA/AFSCME.

In each case, the two parties presented, in writing, an agreed statement of the (1) issue and (2) stipulations.

In all cases, both parties gave brief oral statements; also both presented documents, including a copy of the Contract, to the Arbitrator. Both parties had ample opportunity to respond to each other. Throughout the hearings, an air of mutual respect between Ms. Livengood and Mr. Temple was palpable.

Given these explanatory remarks, the following material is confined to specific cases and decisions by the Arbitrator.

Harry B. Crewson
Arbitrator

Grievance No. 11-87-D8-ODOT

Douglas Jansen, grievant

OCT 687-0536

APPEARANCES

FOR THE UNION

Michael Temple

Douglas Jansen, grievant

FOR THE EMPLOYER

Rachael Livengood

Robert Pugel, Project Engineer

Issue: Was the grievant, Douglas Jansen, disciplined for just cause? If not, what shall the remedy be?

Mr. Jansen, a Union Steward, on October 2, 1986, distributed union literature to employees he represented. Included in the literature was a flyer that was alleged to be partisan (political) in nature. ODOT officials determined that the document in question was political and in violation of Items 2 c and 24 in Directive A301. The Director ordered a five (5) days suspension for Mr. Jansen, effective January 5, 1987.

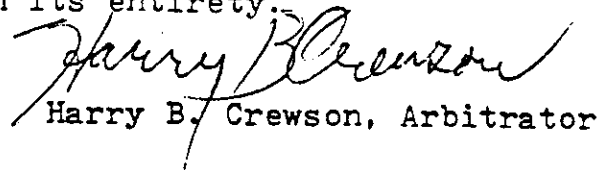
Finding

As a Union Steward and at one time a Highway Maintenance Superintendent 2, Mr. Jansen should have known Department rules. Although Mr. Temple presented some extenuating circumstances, i.e. Mr. Jansen distributed the material prior to work hours, he did not solicit votes or funds, and he was doing his duty as a Union Steward, the document at issue, "Celeste and Leonard '88" was political in nature. Therefore, the action of the grievant was in violation of Item 2 c and Item 24 in Directive A301.

Award

The five (5) days suspension was for just cause.

The grievance is denied in its entirety.


Harry B. Crewson, Arbitrator

Grievance No. 109-86-08-ODOT
OCS 687-0217

Vickie Pleska, grievant

APPEARANCES

FOR THE UNION

Mike Temple

Vickie Pleska, grievant

For the Employer

Rachael Livengood

Sheryl R. Fannin, Adm. Asst 2

Issue: Was the grievant, Vickie Pleska, suspended for just cause? If not, what shall the remedy be?

Position of the Employer:

The grievant was given a three (3) days suspension, effective December 2, 1986, by the Director for violating Item 16 in Directive A301. The suspension resulted from unauthorized absences on four days in late September and early October, 1986..

Position of the Union

Grievant did notify supervisor pursuant to Article 29.02 in Contract; and her son's illness was a valid reason for her absences from work, i.e. Article 29.01 in Contract. Although grievant's sick leave had been exhausted, she did have vacation time, Article 29.01 in Contract.

Finding

Grievant had received an oral and a written reprimand for unauthorized absences prior to the charges resulting in the three (3) days suspension. Grievant was aware of Department rules and the suspension was for just cause. However, due to mitigating circumstances, to wit: son's illness, attempts to notify supervisor, possible use of vacation time for some of the absences,

and the extended time period between alleged violations and service of the suspension, a one (1) day suspension would seem more appropriate. According to Item 16 a in Directive A301, a one (1) day suspension is suggested following a written reprimand.

Award

The three (3) days suspension is reduced to a one (1) day suspension. Grievant shall receive pay for two (2) days. The one (1) day suspension shall be part of her record.


Harry B. Crewson, Arbitrator

Grievance No. 37-87-08-ODOT Clyde King, grievant

OCB 487-1390 7

APPEARANCES

For the Union

Mike Temple

Clyde King, grievant

For the Employer

Rachael Livengood

George Barker, Supervisor

Issue: Was the grievant, Clyde King, issued a written reprimand for just cause? If not, what shall the remedy be?

Position of the Employer

The grievant was given a written reprimand on March 19, 1987, for alleged violations of Item 1 b and Item 2 a in Directive A301, on March 3, 1987. The grievant did not replace a lamp in a signal light at 10:10 p.m. and he was charged, " you knowingly left a potential unsafe condition at the intersection of SR-741 and Dayton Mall Entrance #6..."

Position of the Union

Grievant was on "standby" duty on the evening of March 3, 1987. He responded to a call from the Sheriff's office; he discovered only one lamp (instead of two as reported) was not working in the dual signal system. The grievant decided against immediate replacement of the lamp because of certain conditions: there was slight grade at the site, it was dark and he had no assistant. He believed that to park the truck (cherry picker) under these existing circumstances could be dangerous for him and possibly for others. He made a 'judgment call' and decided that the lamp should be replaced in daylight.

Finding

Given the circumstances, the grievant made a judgment call; to wit, that he should not attempt to replace the lamp at that

OCB 687-1390

time; rather, he should report it so that it could be fixed in daylight. Since there were dual signals, he believed there was no emergency and no need to call anyone that evening.

Only the grievant could possibly know the entire situation that evening. He had ten (10) years of experience and, while on standby duty, had made many similar decisions.

In oral testimony, Mr. Barker did not seem very familiar with the intersection at question; he did not know whether or not there was a slight grade at the site. Also, since the lamp was not replaced until 11:10 a.m. on March 4, it would appear that Mr. E Barker did not consider the condition as "potentially unsafe".

The grievant did make a good faith refusal to complete the assignment. On the basis of the written evidence and the oral testimony, just cause for the reprimand was not proven.

Award

The grievance is sustained. The written reprimand shall be expunged from the record of the grievant.


Harry B. Crewson, Arbitrator

APPEARANCES

For the Union

Mike Temple

Charles Freeland, grievant

For the Employer

Rachael Livengood

Russell Kilburn, Supt., ODOT

Issue: Was the grievant, Charles Freeland, suspended for just cause? If not, what shall the remedy be?

Position of the Employer

On October 29, 1986, the Director suspended the grievant, Charles Freeland, for a period of five (5) days, effective November 10, 1986, for violations of Items 2 c and 16 b in Directive A301. According to Item 16 b, three (3) days or more of consecutive unauthorized absences may result in removal. But given his work record and attempts to call his supervisor, it was decided that a five (5) days suspension would be appropriate.

Position of the Union

The policy used by the Employer to determine discipline in this case was in effect prior to the Contract and should not apply. The Contract language in Article 29 should apply and the grievant was in compliance. Therefore, there was no just cause for the suspension.

Finding

The grievant, as a long-term employee, was well aware of ODOT directives and the Contract articles which apply to sick leave, vacation, etc. Article 29.02 in the Contract includes the following "If sick leave continues past the first day, the employee will notify his/her supervisor or designee every day unless prior notification

CB 687-0321

was given of the number of days off".

The grievant did call once and his daughter called once but there was no explanation as to why the grievant did not fully comply with Article 29.02. As to the substitution of vacation time, employee and employer must agree to this in advance.

The grievant was disciplined for just cause. Mitigating circumstances were recognized by the employer and suspension rather than removal was ordered.

Award

The grievance is denied in its entirety. The suspension of five (5) days is sustained.


Harry B. Crewson, Arbitrator

Grievance No. 110-86-08-ODOT
OCB 687-0216

Darryl Davenport, grievant

APPEARANCES

For the Union

Mike Temple

Darryl Davenport, grievant

For the Employer

Rachael Livengood

Issue: Was the grievant, Darryl Davenport, suspended for just cause? If not, what shall the remedy be?

Position of the Employer

The Director suspended the grievant for a period of three (3) days, effective December 2, 1986, for violation of Item 7 in Directive A301. It was alleged that the grievant was careless in the operation of a truck on July 31, 1986, which resulted in bumping another employee. The grievant had received two previous disciplinary actions related to safety; the incident in question was the second violation of Item 7 which invokes a penalty of Suspension/Removal.

Position of the Union

According to the report by the State Patrol, the incident did not appear to be a grave accident, and the grievant was not cited. According to oral testimony, the employee who was bumped by the dump truck was small of stature and stooped over in the act of sweeping and so was not in view of the driver. The grievant was attempting to dislodge slag from the bed of the truck by a series of quick starts and sudden stops.

Also, it was maintained by Mr. Temple that an inordinate amount of time was involved in the procedure; from July 31 to December 2, 1

Finding

Given the potential seriousness of the incident and the prior violations of safety measures by the grievant, the Employer had just cause for disciplinary action.

However, in this case, the Union position, including reference to the extended time period, has some merit.

Award

The suspension shall be reduced from three (3) days to one (1) day. The grievant shall receive pay for two (2) days of the original suspension. The one (1)/^{day}suspension shall be on his record.


Harry B. Crewson, Arbitrator

ARBITRATION
BENCH DECISION AND AWARD

State of Ohio
Department - ODOT
Union - OCSEA/AFSCME

Grievance No. 47-87-08-ODOT
John Scott Carlton, grievant
and
Grievance No. 48-87-08-ODOT
Darrell Taylor, grievant

Date of Hearing - November 6, 1987

Issue: Were the grievants, John Scott Carlton and Darrell Taylor, issued written reprimands for just cause? If not, what shall the remedy be?

Appearances:

For the Employer: Rachael Livengood, Advocate
Richard Eltzroth, Dist. Bridge Engineer
Carl C. Best, Dist. 8, LRS
James Spurlock, Dist. 8, Admin. Asst.

For the Union: Michael Temple, Advocate
John Scott Carlton, grievant
Darrell Taylor, grievant

AWARD

The grievants are sustained. The written reprimands were issued without just cause; the reprimands shall be expunged from the records of the grievants.

Rationale

The order given to the grievants by Mr. Eltzroth, in its timing (2:20 on a Friday afternoon) and its method (oral and without documented witnesses) appeared to be almost provocative. Portions of the order, i.e. .."this afternoon", were not heard or clearly understood by the grievants.

Further, the order was unusual and a departure from ordinary procuring procedures which require purchase orders and requisitions. And, too, there is nothing in the job descriptions of the grievants relative to the examination and selection of equipment.

Grievance No. 47-87-08-ODOT, John Scott Carlton, grievant and
Grievance No. 48-87-08-ODOT, Darrell Taylor, grievant

Also, the order to the grievants to examine cameras was beyond their competence; and the order was at variance with the practice followed by Mr. Eltzroth with other bridge inspectors.

After giving the order, Mr. Eltzroth continued to observe the movements of the grievants and he gave the impression that he was anxious to charge them with insubordination. The relationship between Mr. Eltzroth and the grievants is obviously antagonistic.

Finally, both grievants are long-term employees in the Department and have good records.

In reaching this decision, I did recognize the objections stated by Ms. Livengood regarding the presentations made by Mr. Temple: to wit, charges of discrimination and a "pattern" of harassment by Mr. Eltzroth of the grievants. These charges were not factors in my decision.

Issued at Cincinnati, Ohio
November 6, 1987


Harry B. Crewson, Arbitrator