

IN THE MATTER OF ARBITRATION
UNDER THE 1986 CONTRACT

Between:

State of Ohio
(Department of Mental Retardation
and Developmental Disabilities
Apple Creek Developmental Center)

THE STATE

-and-

Ohio Civil Service Employees
Association, Local 11
AFSCME, AFL-CIO

THE UNION

Grievance No.
AP-07-87-MR/DD-AF-3-87-052

OCB No. G-87-0471

ND 554

Grievant:
Bruce M. Beachy

Hearing Date:
December 4, 1987

Before: NICHOLAS DUDA, JR., ARBITRATOR

OPINION AND AWARD:

December 5, 1987

CASE DATA**SUBJECT**

One day suspension for alleged "absence from duty without approval".

APPEARANCES**FOR THE STATE**

William T. Johnson, Advocate, Presenting the Case

Marilyn Reiner, Labor Relations Coordinator, Witness

Joyce Frazier, Commerce Department, Observer

Dick Daubenmire, Observer

FOR THE UNION

Dennis A. Falcione, Staff Representative, Presenting the Case

STIPULATED FACTS

1. The Grievant was suspended without pay on January 15, 1987.
2. The Grievant was charged with Tardiness.
3. The Grievant was scheduled to report to work at 7:00 AM on November 16, 1986.
4. On November 16, 1986, the Grievant called into work at 7:40 am, and reported to work at approximately 8:10 am.
5. The Grievant received a verbal reprimand on August 5, 1986, [for 5 separate tardiness in the period 6/26/86 - 8/4/86] and a written reprimand on October 27, 1986 [for being "AWOL" on 9/9/86 and 10/16/86]
6. The parties agree to proceed under the expedited rules of arbitration.
7. This grievance is properly before the arbitrator.

STIPULATED ISSUE

Was the discipline imposed upon the Grievant for just cause? If not what shall the remedy be?

EVALUATION

The grievance challenges the suspension issued on January 15, 1987 for tardiness on November 16, 1987.

At the hearing the Parties agreed that Grievant had been issued the two disciplines stipulated while he was probationary employee who had no right to challenge the propriety of either discipline.

The written reprimand on October 29, 1986 was for the alleged "AWOL" on two days, 9/9/86 and 10/16 /86. Grievant claims without refutation by the State that the incidents on 9/9/86 had been forgiven.

The Department imposed the subject discipline on the basis it was justified under progressive discipline policy specified in an Apple Creek Developmental Center Operational Directive. The only evidence of such a directive was testimony by a witness not employed at the Center that the State Director of Youth Services in Columbus requires that all centers have such a policy. No center policy was submitted and the witness acknowledged that she had never seen a policy for this center until one dated July 87, many months after the incident and suspension in question.

There was no evidence presented to support a finding that an operational directive had been in effect at the time of the incident on November 16, 1986. Neither was there evidence of any kind the Grievant had ever been told of a progressive discipline policy. In this respect the Arbitrator also notes that the claimed policy had not been applied according to the terms claimed in respect to the two disciplines stipulated above.

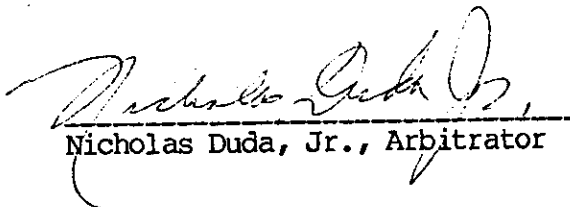
The case file was not even complete.

If other tests of just cause were considered, their satisfaction is also questionable; the deficiencies need not be belabored.

Although the rules for expedited arbitration suggest a liberal acceptance of testimony and documentary evidence, those rules do not eliminate the State's responsibility to present sufficient evidence to justify a finding of just cause. In this case there was no evidence to support that anyone at Apple Creek had actually developed the claimed rules or made them known to Grievant or that such rules actually had existed at the time in question.

AWARD

The grievant is granted. The State is directed to make Grievant whole by paying him the one day's pay that he lost.


Nicholas Duda, Jr., Arbitrator

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Between:

The State of Ohio
(Department of Youth Services)

THE STATE

-and-

Ohio Civil Service Employees
Association, Local 11
AFSCME, AFL-CIO

THE UNION

Grievance No.
153-03-487 MYC

OCB 3 G-87-0970

ND 555

Grievant: Michael L. Byles

Hearing Date:
December 4, 1987

Before: NICHOLAS DUDA, JR, ARBITRATOR

OPINION AND AWARD:

December 5, 1987

APPEARANCES

FOR THE STATE

Deneen D. Donough, Labor Relations Specialist, Presenting the Case
George A. Oliver, Superintendent - Mohican Youth Center
David C. Dutton, Unit Coordinator - Mohican Youth Center

FOR THE UNION

Dennis A. Falcione, State Representative, Presenting the Case
Richard E. Young, Mohican Chapter President
Michael L. Byles, Youth Leader, Grievant

AWARD

Whereas after the arbitration hearing for this case the Parties moved to settle on an adequate and reasonable basis satisfactory to the Grievant, the Arbitrator approves their Settlement Agreement (copy attached) as the final and binding arbitration award for this case.



Nicholas Duda, Jr., Arbitrator

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UNDER THE 1986 CONTRACT BETWEEN

The State of Ohio
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-and-

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Grievance No. 153-03-487 MYC
OCB # G-87-0970
ND 555

In the interest of continuing progress toward harmonious relationships between the Parties and of being just to the Grievant, the Parties reached a basis for settlement on the following terms:

1. Grievant will be paid one day's pay for April 1, 1987;
2. The two day suspension issued Grievant will be reduced to a one day suspension subject to expungement from Grievant's personnel file if he is not disciplined for "neglect of duty" in the period December 4, 1987 to June 3, 1987;
3. The Parties request that the Arbitrator approve this settlement as the final and binding award for this case.

FOR THE UNION:

Dennis A. Falcione/s

Richard E. Young/s

FOR THE STATE:

Deneen D. Donough/s

George A. Oliver/s

David C. Dutton/s

Grievant: Michael L. Byles/s

Approved: Nicholas Duda, Jr./s
Arbitrator