

ARBITRATION AWARD SUMMARY

OCB Award Number: 135  
OCB Grievance Number: 87-0564; 86-0827  
Union: OCSFA / AFSCME  
Department: R&C  
Arbitrator: Duda  
Management Advocate: Hall / Bernadini  
Union Advocate: Persinger  
Arbitration Date: 12-21-87  
Decision Date: 12-23-87  
Decision: modified; Denied

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. 11, AFSCME,  
AFL-CIO

THE UNION

Union Grievance No. OSR-M-312

OCB Grievance No. G 87-0564

ND 556

Grievant: Durkin Milliron

Hearing Date: December 21, 1987

Before: NICHOLAS DUDA, JR., ARBITRATOR

OPINION AND AWARD:

December 23, 1987

**CASE DATA****SUBJECT**

Five day suspension for alleged insubordination and careless workmanship.

**APPEARANCES****FOR THE UNION**

Barbara Persinger, Staff Representative, Presenting the Case

Dennis J. Cowell, Local 7010, Chief Steward

Durkin Milliron, Carpenter 2, Grievant

**FOR THE EMPLOYER**

Richard Hall, Labor Relations Specialist, Presenting the Case

Felicia Bernardini, Labor Relations Specialist, Co-Counsel

Lonnie Atichson, Administrative Assistant II

Joe Henderson, Plant Maintenance Engineer III

Fred Kershner, Carpenter Supervisor

**ISSUE**

Whether Grievant was guilty of violating the work rules prohibiting careless workmanship and insubordination and if so whether progressive discipline was followed.

**THE FACTS**

During September 1986 Grievant, a qualified carpenter, was given the assignment, assisted by a crew of inmates, of erecting partitions and hanging drywall in the Social Services building. Grievant worked with his crew for several weeks. Then he turned the job over to painters who painted the

partitions. The Parties stipulate that the drywall project was careless work and required several days to correct.

On September 30, 1986, Grievant's supervisor assigned him to work on a roof. For roofing work there was a standing order that Truck 602 was to be used unless that truck was not available due to breakdown. Despite that standing order which was known to Grievant, the supervisor who was scheduled to be away October 1-3, expressly directed Grievant to use 602 because he believed Grievant had been avoiding 602 contrary to the standing order.

Grievant checked the maintenance supervision who said 6022 would be available for his use on October 1, 2 and 3. That truck actually was available and fit for service on those days but he used another truck.

#### EVALUATION

Grievant was guilty of careless workmanship in hanging the drywall. The drywall work had many examples of careless workmanship. Grievant was responsible to have the job done properly — by his crew or by his own labor if necessary.

Grievant says that if he had been given several more days to inspect the work he could have discovered the poor workmanship and then corrected it. As indicated, the careless work was obvious. The work should have been done properly as it progressed; he should not have allowed poor workmanship to pervade the project.

Grievant says he didn't hear his foreman direct him to use Truck 602 for the roofing work. Under the circumstances, his denial is not persuasive and determinative. Even if he hadn't heard the order given expressly on September 30, 1986, he knew the standing order and that the truck was available. Thus he was still guilty of insubordination by refusing to use truck 602.

Grievant says that when his supervisor first discussed the two alleged violations with him on October 8, 1986 the supervisor said management was considering discharging him for the violations. That was certainly true but such consideration in and of itself was not improper.

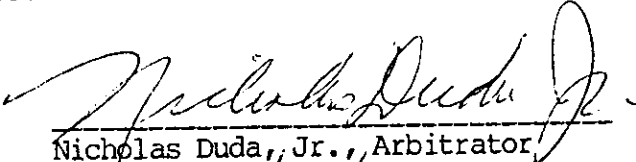
Grievant assumed that his supervisors were "retaliating" because "I started causing trouble with the grievances". That was a reference to the fact that Grievant was a Union Steward. His assumption is not very reasonable under the circumstances. Whereas five hundred written grievances had been filed in the period of a few months, only one of them had been written by Grievant. Quite possibly supervision was upset by the volume but the brunt of its displeasure was directed at the Stewards who filed the cases, not at Grievant who did not.

Grievant was guilty of insubordination and careless workmanship, both work rule violations for which progressive discipline is appropriate.

The five day suspension was excessive. At most he had been counseled twice before orally for poor or careless workmanship; a written reprimand was the appropriate next step. There is no showing that he had ever been disciplined for refusal to obey; a reprimand with appropriate notation in his file should have been given.

#### AWARD

The grievance is granted in part. Although there was just cause for discipline, reprimands pursuant to progressive discipline rather than a suspension should have been issued. The Employer is directed to make Grievant whole for the earnings he lost and to correct his file as stated herein.

  
Nicholas Duda, Jr., Arbitrator

12/21/87

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THE EMPLOYER

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The Ohio Civil Service  
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AFL-CIO

THE UNION

Union Grievance No. OSR-M-261

OCB 86-0827

ND 566

Grievant: William Richie

Hearing Date: December 21, 1987

Before: NICHOLAS DUDA, JR., ARBITRATOR

OPINION AND AWARD:

December 23, 1987

**CASE DATA****SUBJECT**

Five day suspension for alleged "sexual harassment".

**APPEARANCES****FOR THE UNION**

Barbara Persinger, Staff Representative, Presenting the Case

Dennis J. Cowell, Local 7010, Chief Steward

William C. Richie, Correction Farm Supervisor, Grievant

**FOR THE EMPLOYER**

Richard Hall, Labor Relations Specialist, Presenting the Case

Felicia Bernardini, Labor Relations Specialist, Co-Counsel

Delores Taylor, Correction Officer

Lonnie Atichson, Assistant to the Superintendent

**THE ISSUE**

Whether there was just cause to discipline Grievant for sexual harassment and if so, whether the five day suspension violated principles of progressive discipline or was excessive/unreasonable.

**THE FACTS**

Grievant had been employed as a Correction Farm Supervisor for about thirteen years prior to his suspension in November, 1986 for alleged sexual harassment of Ms. T\_.

For several months their duties brought them into proximity with each other. According to Grievant, Ms. T\_ was "friendly" initially. Grievant regarded her friendliness as indicating a receptivity to amorous activity and pursued it by various verbal and physical action. Over a period of time his verbal and physical actions toward Ms. T\_ were clearly sexual and threatening to Ms. T\_ who did not desire and attempted to discourage them. Grievant persisted and went even further.

#### EVALUATION

Grievant's verbal and physical actions on August 18, 1986 and on several other days clearly fell within the area of sexual harrassment. The specifics need not be discussed any further.

Even without formal, written, published rules Grievant knew or should have known that his conduct was improper in the absence of permission. Actually he and all other employees had been notified of the Employer's rules prohibiting acts of sexual harassment.

Grievant admits having committed some, although not all of the improper acts reported by Ms. T\_. However he asks to be excused for several reasons which will be considered below.

First Grievant says that Ms. T\_ "encouraged" him by talking "sweet", that she was friendly so he decided to pursue the possibilities. Construing his claims in the light most favorable to Grievant, Ms. T's "friendliness" was ambiguous. Possibly she was encouraging greater intimacy but maybe she was "friendly" and nothing more. To engage on the job in intimacy efforts was immediately a violation of his duties to the Employer. Even more, if his efforts proved to be unwelcome, he was guilty of a greater offense — sexual harassment. Making his "moves" put him at risk.



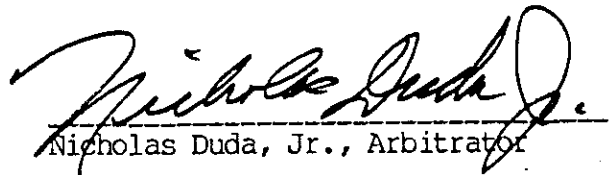
Ms. T\_ very quickly disabused Grievant of any ambiguity by firmly and clearly rebuffing his flirtations. Despite the rejection he continued and intensified his misconduct; it was inexcused.

Grievant says that an officer to whom Ms. T\_ reported Grievant's misconduct told Ms. T\_, "Honey, I don't blame him". It's not clear that the Grievant was aware of the officer's comment before the suspension. That conduct by another person was a separate and distinct act of sexual harrassment, although of a much lesser degree than those committed by Grievant and certainly could not mislead Grievant to believe his conduct was permissible. (It's noteworthy that this same officer was later discharged for sexual harrassment).

The Arbitrator finds that there was just cause for discipline as required by Section 2401. Furthermore in view of the seriousness and number of separate incidents of which Grievant was guilty the issuance of a five day suspension was not a violation of Section 24.02 nor was it arbitrary or unreasonable.

**AWARD**

The grievance is denied.

  
\_\_\_\_\_  
Nicholas Duda, Jr., Arbitrator  
12/23/87