

#148

ARBITRATION

RE: William McDonnell Grievance  
FOR EMPLOYER: Ed Morales  
FOR GRIEVANT: Bob Rowland

GRIEVANCE NO.: G87-1575

DECISION AND AWARD

The issues presented in this hearing are whether the written reprimand issued to the Grievant was for "just cause" and if not, what the remedy should be.

A number of exhibits were admitted, which include the following:

Joint Exhibit 1 - Contract between the State of Ohio and OCSEA-AFSCME.

Joint Exhibit 2 - Grievance trail.

Joint Exhibit 3 - Letter of Reprimand dated May 5, 1987 for the Grievant being absent without leave (AWOL).

Employer Exhibit 1 - Prior disciplinary record of tardiness.

Employer Exhibit 2 - Call in Log and Daily Attendance Record.

Union Exhibit 1 - Statement from Grievant's mother.

The facts are as follows:


On April 25, 1987, Robert Meier, Second Shift Supervisor at the Oakwood Forensic Center, was at work and noticed that the Grievant did not show up for his second shift work duties. Mr. Meier checked the call in sheet and determined that no one called in for the Grievant indicating notification of absence. Therefore, Mr. Meier marked the Grievant AWOL. Mr. Meier checked with other persons who would have taken in any telephone calls on behalf of the Grievant but may have failed to note it on the call in sheet, and he determined from his investigation that no one took a call from anyone representing the Grievant or the Grievant himself indicating absence for April 25, 1987. Mr. Meier then marked the Grievant AWOL for that day.

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at approximately 11:00 A.M. to report that the Grievant was ill and would not come in to work that day. Taking this letter for what it is worth, this evidence does not overcome the evidence presented by the individuals who testified at this proceeding. According to Mr. Meier, there were at least two people available for most of the morning of April 25, 1987 to take any calls from employees who would not be able to go to work on that day. None of the individuals with whom Mr. Meier spoke took a call from the Grievant's mother.

It is clear that the Grievant intended to attend his sister's wedding and the reception afterward. Of course, nothing is wrong with the intent of the Grievant to do this. Nevertheless, the evidence does not support the position of the Grievant that a call was made to clear him from work on that day.

Accordingly, the Grievance is denied.

  
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ANDREW J. LOVE  
Arbitrator

ARBITRATION

RE: Rolando Gonzales Grievance  
FOR EMPLOYER: Ed Morales  
FOR GRIEVANT: Bob Rowland

GRIEVANCE NO.: G87-1800

DECISION AND AWARD

The issues presented in this hearing are whether the Grievant was suspended for just cause, and, if not, what the remedy should be.

Exhibits admitted into evidence are as follows:

Joint Exhibit 1 - the Collective Bargaining Agreement between the State of Ohio and OCSEA-AFSCME.

Joint Exhibit 2 - Grievance trail.

Joint Exhibit 3 - Disciplinary trail.

Joint Exhibit 4 - Discipline Policy.

Joint Exhibit 5 - Grievant's doctor's statement with translation.

Employer Exhibit 1 - Call-In Log.

Employer Exhibit 2 - Grievant's original request for leave.

Employer Exhibit 3 - Grievant's request for leave dated January 30, 1987.

Employer Exhibit 4 - Grievant's attendance record for January, 1987.

Union Exhibit 1 - Certificate showing illness of Grievant.

Union Exhibit 2 - Letter from Air Panama.

Union Exhibit 3 - Affidavit from Officer Lewis Hiller dated October 5, 1987.

Union Exhibit 4 - Affidavit.

Union Exhibit 5 - Affidavit.

This matter comes on for hearing in respect to action taken by Lima Correctional Institution (LCI) alleging that the Grievant was absent without

leave for eight (8) consecutive working days in January, 1987. On January 27, 1987, the Grievant was found to be in violation of DR and C Administrative Rule 1C - being absent for a period of three (3) consecutive working days without notification. The Grievant was subsequently suspended for a period of five (5) days.

The facts are as follows:

The Grievant, a Correction Officer at LCI, requested sick leave to visit his sister who was ill and residing in Grievant's native country of Peru. Because sick leave is not available for an employee unless the employee is ill or unless an immediate member of his family is ill, such leave was denied. However, the Grievant was granted leave without pay and any other leave, such as vacation time, available to him. The Grievant was required to return on January 6, 1987 (see Employer Exhibit 2).

Prior to his return date, the Grievant became ill with what was later to be determined as Typhoid Fever. He then called his wife in Lima, Ohio, who advised Glenda Harris, a Personnel Officer at LCI, that the Grievant was ill and would not be able to return from Peru until January 15, 1987.

The Grievant did not return to work on January 15, 1987. This was due to the recommendation of the Grievant's physician in Peru (Joint Exhibit 5) who, on January 5, 1987, recommended physical rest for two (2) weeks from that date. The Grievant did not notify his wife of the recommendation for additional rest, because he did not want her to fear for his health. He did not advise his wife that he had Typhoid Fever.

The Grievant subsequently attempted to return to Lima, Ohio in order to return to work. However, because his flight from Peru was based on stand-by status, he could not return until there was an available seat. See Union Exhibit 2.

When the Grievant returned on January 25, his wife handed him a notice from LCI of a pre-disciplinary hearing on January 27, 1987. On the morning of January 26, 1987, the Grievant called Elaine Mayberry as to the nature of the notice he received from her. On January 27, 1987, the Grievant was suspended for ten (10) days for failure to notify LCI of his extended absence. This suspension was subsequently reduced to a five (5) day suspension.

It should be noted that the Grievant arrived in Lima, Peru on November 29, 1986. He then went to his hometown two weeks later. The Grievant's hometown is a very small village. It is there that he contracted Typhoid Fever on or about December 20, 1986. He was treated in Lima, Peru on or about December 24, 1986, where he received medication. He then had a relapse and saw a doctor again. He attempted to fly from Peru on January 18, after following his physician's advice of two weeks rest, but could not travel as a result of lack of flight availability.

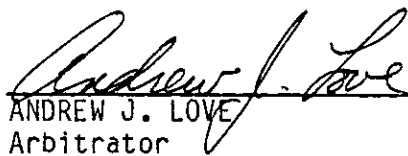
It is true that the Grievant failed to report to work for at least three consecutive days without notifying LCI. However, as Elaine Mayberry stated during the hearing, the accuracy of dates of return depends on the severity of illness. In other words, circumstances, such as extended illness, can militate against strict adherence to return to work days.

This Arbitrator must take into account the circumstances involved in the Grievant's situation with illness and inability to return from Peru to Ohio. This Arbitrator also recognizes that the Grievant should have provided proper notification as to when he would return, if possible. The totality of the circumstances in which the Grievant was involved, however, satisfies this Arbitrator that the Grievant did act reasonably in attempting to return to work

as soon as possible and at the same time protecting his health so that he would be able to work when he returned. The Grievant was credible in his presentation of his scenario of events that occurred from his arrival date in Peru to his departure date and return to Lima, Ohio.

Although the management at LCI properly charged the Grievant with the violation which brought this matter to arbitration, this Arbitrator is persuaded by the evidence presented by the Grievant and his witnesses that "just cause" did not exist for the disciplinary action taken in this case.

Accordingly, the Grievance is affirmed, with five (5) days back pay awarded to the Grievant.

  
ANDREW J. LOVE  
Arbitrator

## ARBITRATION

RE: David Rodney Grievance  
FOR EMPLOYER: Ed Morales  
FOR GRIEVANT: Bob Rowland

GRIEVANCE NO.: G86-0507

## DECISION AND AWARD

The issues presented in this hearing are whether the Grievant was suspended for just cause, and, if not, what the remedy should be. The joint exhibits included the contract between the State of Ohio and OSCEA-AFSCME, the Grievance trail, the disciplinary trail; and employer's exhibits, which include the sign in and sign out and call in procedure containing the Grievant's signature, the policy on corrective action (Oakwood Forensic Center), Grievant's sign off on the policy on corrective action, Grievant's past discipline, and Grievant's attendance records and call in log.

On June 19, 1986, the Grievant, a Criminal Psychiatric Attendant at the Oakwood Forensic Center, clocked in one minute after the beginning after his second shift, which began at 3:00 P.M. This was observed by his supervisor, Robert F. Meier. Although the Grievant signed the sign in sheet the time of 3:00 P.M., Mr. Meier noted that it was 3:01 P.M. when the Grievant arrived on the second floor of the assigned building to sign in. It should be noted that the Grievant has been disciplined in the past for tardiness. As a result of the allegation of tardiness on June 19, 1986, the Grievant received a two (2) day suspension.

The Grievant has been employed as a Criminal Psychiatric Attendant for a period of ten (10) years. He handles dangerous patients from criminal institutions. Such handling requires specialized training.

The Grievant testified that, prior to the changing of the location of the sign in responsibilities, delays at the salley port were caused by security checks. This problem, the Grievant stated, was aggravated by persons visiting the patients, who would also have to be checked for security purposes. Sometimes employees were detained when a sergeant would not open the gate at the salley port for security reasons. However, since there is a new location to sign in (at the point of entrance into the facility) the Grievant has not experienced problems with tardiness.

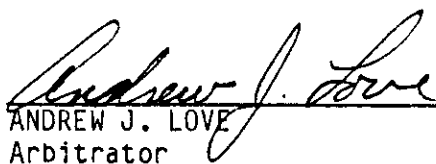
James Gladden, Jr., a Psychiatric Attendant Coordinator and President of the Union Chapter, testified that employees used to have to enter the salley port, which was controlled by Correction Officers with the Department of Rehabilitation and Correction. Another 100 yards separated the salley port from the main building where an officer unlocked the door. Employees would have to go to the second floor of the main building, get keys to enter their assigned work place, and then sign in. Now, Mr. Gladden testified, sign in is much easier in that this is done before the security check and other requirements, such as obtaining keys, occurs.

This Arbitrator is not persuaded by the testimony of the Grievant as to why he was tardy. As the Grievant stated during the course of the hearing he lives a short distance away from the facility. He had had many opportunities through verbal reprimands to correct the problem of tardiness. This Arbitrator is satisfied that the evidence shows that it is necessary for employees to be on time for work if for no other reason to enable previous shift employees to leave. At all times the patients in the various sections of the facility must be supervised and handled. This cannot be done when employees are late. In addition, it requires other employees to remain after their shift until the next shift employees arrive. The appropriate action Grievant should have taken was to leave earlier to factor in the delays of which he spoke.



This Arbitrator does feel, however, that the appropriate remedy should be one day's suspension rather than two days' suspension. The Grievant was late only one minute. It is this Arbitrator's view that a one day suspension is commensurate with the offense.

ACCORDINGLY, the Grievance is denied, with back pay of one (1) day to be awarded to the Grievant.

  
ANDREW J. LOVE  
Arbitrator