

# 172

IN THE MATTER OF ARBITRATION  
UNDER THE 1986 CONTRACT

Between:

STATE OF OHIO

DEPARTMENT OF REHABILITATION  
AND CORRECTION (LIMA  
CORRECTIONAL INSTITUTION

THE EMPLOYER

-and-

THE OHIO CIVIL SERVICE  
EMPLOYEES ASSOCIATION  
LOCAL NO. 11, AFSCME,  
AFL-CIO

THE UNION

UNION GRIEVANCE NO. LCI-3-1-87

OCB GRIEVANCE NO. G-87-1421

ND 599

GRIEVANT: DARYL STYER

Before: NICHOLAS DUDA, JR., ARBITRATOR

OPINION AND AWARD:

March 26, 1988

**CASE DATA****SUBJECT**

One day suspension for alleged "Insubordination: refusal to carry out a work assignment."

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

Bob J. Rowland, Staff Representative, Presenting the Case

Daryl Styer, Correction Officer II, Grievant

**FOR THE EMPLOYER**

Freddie Sharp, Labor Relations Specialist, Presenting the Case

Edward Flynn, Labor Relations Officer

Jerry Dunnigan, Labor Relations Officer, Lima Correctional Institution

Mark Newland, Correction Supervisor I

**BACKGROUND**

Grievant was hired as a Correction Officer on November 5, 1983. His normal assignment for some time has been to work in the Control Room on the 3 to 11 turn.

**POSITIONS OF THE PARTIES****THE EMPLOYER'S POSITION**

Grievant was called and accepted an overtime turn. When he reported for duty, he was notified to work in 6 Dorm. He refused to carry out the work assignment and left, thereby violating rule 3a and providing just cause for a

one day suspension.

#### **THE UNION'S POSITION**

Although Grievant accepted the overtime assignment it was on the understanding that he was to work in the Control Room. When he discovered the true assignment he did refuse to work overtime, but he left the institution without ever punching his time card so he did not report for the overtime work. The penalty is to credit him with double the amount of overtime accepted; it does not include suspension. In this case discipline would constitute double jeopardy. Therefore there was no just cause for discipline.

#### **FINDINGS OF FACT**

Grievant was hired as a Correction Officer on November 5, 1983. For years his regular duty position has been in the Control Room working the 3 to 11 shift. For years he knew Sergeant Newland, who was promoted to Sergeant shortly prior to the incident in question, because Sergeant Newland had also worked in the Control Room.

Correction Officers are frequently called in regard to overtime. They have the option to accept or to refuse. If an employee accepts, the normal procedure is for the officer to come to the institution, punch his/her time card and get the specific assignment from the Correction Officer in the Control Room unless the Employee is told to get the assignment from someone else.

Grievant is often called to work overtime. He always refuses unless the overtime is in the Control Room.

On January 20, 1987 a Captain told Sergeant Newland to call a list of employees to obtain two volunteers to work overtime. Newland understood that if an employee asked what the assignment was, the Sergeant was not to give the

information. The Seageant called 18 officers without success, before Grievant. When offered the overtime, Grievant specifically asked where he would work. The Sergeant answered "in here". Grievant said he would come in. He came to the institution about 10:55 A.M. He walked down the hall toward the time clock which was just beyond the Control Room window but stopped at the Control Room window when the Correction Officer on duty said that he was to work at 6 Dorm. Grievant said he would not work at 6 Dorm and left the institution.

#### EVALUATION

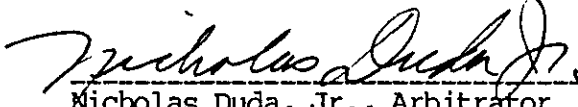
Under the circumstances of this case the Arbitrator believes that Grievant did in fact report even though he had not yet punched in when he received the assignemnt. Furthermore the Arbitrator accepts Grievant's admission that he refused to carry out the work assignment. The only question is whether Grievant was justified in that refusal. In other words did he commit insubordination within the meaning of Rule No. 3A.

The Employer has the burden of showing the insubordination. The Sergeant knew Grievant and probably knew that he never accepted overtime assignments other than in the Control Room. Under the circumstances, and from Grievant's frame of reference, the Sergeant answered that the overtime was in Control; at the very least the Sergeant's answer was ambiguous and non-specific. Grievant's refusal when told the assignment was the same as it would have been had he been given the information when requested during the telephone conversation.

Perhaps Grievant was not entitled to be informed of the assignment before he decided whether to accept, but at least he was entitled to be told clearly that Supervision would not give the information before he reported.

**AWARD**

The grievance is sustained. The State is directed to make Grievant whole.

  
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Nicholas Duda, Jr., Arbitrator

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EMPLOYEES ASSOCIATION

LOCAL NO. 11, AFSCME,

AFL-CIO

THE UNION

UNION GRIEVANCE NO. LCI-87-D-011

OCB GRIEVANCE NO. G-87-1801

ND 585

GRIEVANT: RICKY L. LONES

Before: NICHOLAS DUDA, JR., ARBITRATOR

OPINION AND AWARD:

March 26, 1988

**CASE DATA****SUBJECT**

Five day suspension for allegedly "sleeping on duty".

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

Bob J. Rowland, Staff Representative, Presenting the Case

Ricky L. Iones, Correction Officer II, Grievant

**FOR THE EMPLOYER**

Freddie Sharp, Labor Relations Specialist, Presenting the Case

Edward Flynn, Labor Relations Officer

Jerry Dunnigan, Labor Relations Officer, Lima Correctional Institution

Jim Baldauf, Retired Former Captain

**POSITIONS OF THE PARTIES****THE EMPLOYER'S POSITION**

On April 16, 1987 Grievant was sleeping on duty, a violation of Rule 5. Only ten months earlier Grievant had been suspended three days for the same violation. Accordingly there was just cause for the discipline and a five day suspension was not excessive or unreasonable.

**THE UNION'S POSITIONS**

Grievant was not sleeping. He had merely lowered his head because his neck hurt due to an injury he had received at home. Furthermore he performed all his duties, which consisted of waking a cafeteria worker and taking the count and calling it in. There was no just cause for discipline.

**THE ISSUE**

Whether there was just cause for suspending Grievant five days for sleeping on duty on April 16, 1987?

**ANALYSIS****FINDINGS OF FACT**

Grievant was hired as a Correction Officer on May 12, 1986. Approximately a month later, as a result of an investigation of Grievant's failure to phone his scheduled lock count, supervision discovered Grievant sleeping. For that violation he was suspended three days.

On the 11:00 to 7:00 A.M. shift on April 16, 1987 Grievant was the only Correction Officer on duty in 8 Dorm, which had 70 inmates, some of whom were serious offenders including murderers. At about 4:30 A.M. he awoke an inmate who was scheduled for cafe duty. The inmate got up and went into the bathroom. Later, at 4:53 A.M. Captain Baldauf was advised that 8 Dorm had not called in its block count. Captain Baldauf went to 8 Dorm where he walked up to Grievant's desk, watched him sleep and ultimately woke him up by knocking on the desk and shouting. When Grievant awoke the Captain instructed him to take and phone in his lock count, which Grievant did.

Mr. Baldauf's testimony was detailed, logical, unbiased and very persuasive.

Grievant admitted that his head was down on his arms on the desk and that he didn't raise his head for a time after the captain walked to his desk and stood for a time before shouting. According to Grievant he thought the person who walked up to him and stood silently was one of the inmates -- so he did not raise his head or open his eyes until he heard the Captain talk. Under the circumstances that explanation is incredible and does not approach overcoming the supervisor's testimony.



**EVALUATION**

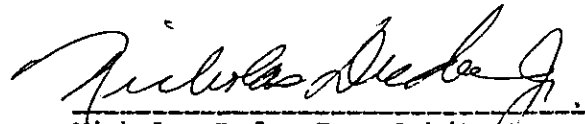
As indicated above there is very clear and convincing evidence that Grievant was sleeping on duty. Furthermore, it is not true that he performed all his duties; when he called in the count he was already late; that is why Captain Baldauf had come to investigate.

At the time Grievant was sleeping there were approximately seventy inmates who were free to enter the hallway from the dormitory rooms. Grievant had his keys on his possession. Sleeping under the conditions present in 8 Dorm was extremely unsafe for Grievant, for the inmates, and for others.

In view of the seriousness of the offense and the prior three day suspension there was just cause for a five day suspension.

**AWARD**

The grievance is denied.

  
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Nicholas Duda, Jr., Arbitrator