

ARBITRATION

#177

STATE OF OHIO DEPARTMENT OF HEALTH
AND
OCSEA LOCAL 11 AFSCME, AFL-CIO (Grievance of Jeffrey Engberg)
ARBITRATOR: Andrew J. Love
CASE NO.: G87-1229
FOR ODH: Michael J. D'Arcy, Jr.
FOR GRIEVANT: Allyne Beach

DECISION AND AWARD

The issues presented in this proceeding on March 30, 1988, are whether the written reprimand of the Grievant by the Ohio Department of Health (ODH) was without "just cause" and therefore in violation of Section 24.01 of the parties' Collective Bargaining Agreement and, if so, what should the remedy be.

A number of exhibits were offered into evidence and were accepted.

The facts are as follows:

Freya J. McKethen testified that she became Chief of the Division of Management Services, ODH, in December, 1986. Her duties included supervision of the offices of purchasing, telecommunications, graphic arts, printing, and the mail center of ODH. She testified that this latter division or office is responsible for all ODH mail throughout the State, including delivery and receipt of mails. In addition to delivery and receipt of mails, this division is also responsible for delivery and receipt of other supplies.

Ms. McKethen stated that, when she started her position in December, 1986, the mail center operations were very poor in attitude, morale, unreliability, and organization. She stated that she was particularly concerned about preventing unauthorized persons from entering the mail center. She noted that there was a great deal of traffic in the area. In order to make the mail center

operate more professionally, Ms. McKethen conducted individualized meetings with all of the employees in the center in late December, 1986. During these meetings, Ms. McKethen discussed with them their respective job descriptions. She also invited each employee to render any ideas that would enable the mail center to operate more professionally.

Ms. McKethen testified that she met with the Grievant, who made suggestions for overall improvement of the mail center's operations. She stated that the Grievant discussed his job duties with her, which included bulk mailing and satellite office runs.

Ms. McKethen stated that she had had problems with the mail supervisor at the time, in that he did not conduct the mail center in a professional manner, e.g. timely breaks, lunch, etc. She stated that she would check the mail center at least two to three times per day on the average to let the employees and the then supervisor know that she expected improvement. Ultimately, she had to discipline the supervisor. She further stated that she had the mail center remodeled so that traffic flow could be stopped. She also obtained uniforms for the employees to wear, and she obtained new machinery and equipment for use in the mail center.

Ms. McKethen testified that the mail/messenger schedule, which was posted (State Exhibit No. 2) indicated times in which the Grievant was responsible for satellite deliveries. Satellite deliveries means the delivery and picking up of mail from satellite offices of ODH. Ms. McKethen stated that these satellite deliveries should only take 1/2 to 3/4 of an hour to do. The Grievant would have additional satellite runs at 2:15 in the afternoon. When the Grievant

returned, Ms. McKethen testified his duties included handling the bulk mail.

The witness further testified that Grievant's performance of his duties were "disturbing." She stated that she would receive complaints of mail not received or picked up by or from the Grievant at the various satellite offices. She was asked to review State's Exhibit No. 3, which was log of mail pick up times for the Employee Assistance Plan Office. This log shows that this unit was not getting its mail picked up on certain days. In late January or early February of 1987, Ms. McKethen stated that she invited the Grievant to come to her office to discuss infractions, at which time the Grievant admitted to those infractions. She stated that the Grievant felt that he was not treated fairly through the reclassification procedure, which changed his job classification from Office Machine Operator to Delivery Worker I. She testified that she encouraged the Grievant to demonstrate his skills and that she would assist him in his career development, including tuition assistance.

Ms. McKethen also mentioned that the Grievant was smoking in no smoking locations and discussed this with him. She also noted that the Grievant, at her invitation, would come in to her office to discuss problems on an average of once per month. She stated that as a result of these conversations, the Grievant's performance would improve for several days and then decline. She cited examples of poor delivery of mail and bad-mouthing other employees as evidence of his decline in job performance.

Ms. McKethen stated that each employee was told what she expected of them in respect to their job duties, and that she advised them of the possible consequences of failure to perform those duties properly. This notification was also presented to the Grievant. On or about March 12, 1987, Ms. McKethen

assigned one Harry Heath as the acting mail room supervisor. An Exhibit stating the same was posted.

As the basis for the Grievant's written reprimand, Ms. McKethen cited the Grievant's failure to make deliveries to the Bureau of Alcoholism, the State Office Tower, and the WIC Program office. She was advised by Harry Heath of this problem. She further went on to say that on March 23, 1987, that the Grievant reported to work a half an hour late, however, he wrote the time he was supposed to be at work (8:00 A.M.). Ms. McKethen saw this time sheet. On March 24, 1987, the Grievant was again late for work. Ms. McKethen instructed Mr. Heath to request that the Grievant get a leave slip. The Grievant refused to do so.

On March 25, 1987, the Grievant used his personal automobile to make mail runs. Ms. McKethen had previously admonished the Grievant not to use his personal automobile, because of potential liability to the State of Ohio. She testified that she also advised the Grievant of disciplinary action that could be taken if he continued his activity. In addition to this action the witness testified that the Grievant continued to smoke in the mail center, even though the smoking policy in ODH facilities was prohibited. On March 27, 1987, the Wic mail had not been picked up or delivered in the morning or the afternoon. Mr. Heath observed the Grievant putting the mail back in the mail slots at the center, and he advised the witness of this activity. Also, on March 31, 1987, the Grievant came in late for work and returned from lunch late, as well.

The witness further stated that the Grievant refused to remove pictures of pin-ups off of the wall behind his desk. This was noted in a Memorandum by Mr. Heath dated March 13, 1987.

Ms. McKethen stated that she gave the Grievant a written reprimand because he was defying her after she had counseled him on many occasions. She stated that she had instructed Mr. Heath to counsel the Grievant on previous occasions and was advised by Mr. Heath that this was done.

Jackie Randolph, Administrative Assistance, Maternal Health, ODH, testified that she is a steward for the union and was present at the Step 3 hearing. She stated that the Grievant's time sheets were requested but not received. She also stated that she had seen pictures of semi-nude women in other departments of ODH. (Ms. McKethen was later recalled to testify and said that she would enforce the policy of no semi-nude pictures being posted in those areas for which she was responsible, regardless of what other administrators in their respective divisions did.)

The Grievant testified that he has been a Delivery Worker I for approximately one year prior to receiving a written reprimand. Previously he was an Office Machine Operator.

The Grievant stated that the mail/messenger scheduled identified as State's Exhibit No. 2 was not his schedule. He stated that Charles McCoy was assigned to do all outside runs.

The Grievant said that Ms. McKethen only asked for his suggestions. He denied any other meetings or contacts with Ms. McKethen. He further stated that it was not until March 24, 1987 when Ms. McKethen said anything about disciplinary action.

As to late arrivals to work, the Grievant stated that the previous supervisor had always said not to worry about it.

Regarding satellite runs, the Grievant testified that he was only doing them for Charles McCoy, who was absent on a particular day. When the Grievant could not complete the satellite office runs, he would bring the mail back to the mail center for next day delivery. He also indicated that he had been given approval to use his personal car on some satellite runs.

The Grievant stated that he respectfully refused to follow certain orders from Mr. Heath, the acting supervisor, to remove his pin-up pictures on both March 13, 1987 and March 24, 1987, because he was uncertain that Mr. Heath was the acting supervisor. (It should be noted, however, that the Grievant acknowledged that Mr. Heath was the acting supervisor beginning on March 12, 1987. See the Step 3 Recommendation.)

A determination whether "just cause" exists rests heavily with the credibility of two individuals: the Grievant and Freya McKethen. This Arbitrator believes that Ms. McKethen, who became Chief over the mail center in December, 1986, was appalled at the condition and the professionalism of the mail center. This Arbitrator believes that her testimony was truthful regarding the steps that she took to bring the mail center and the work product of its employees to an acceptable standard of decorum and professionalism. Furthermore, all employees, including the Grievant, were aware that things in the mail center would not be done as business as usual. Changes were to be made. Each employee, including the Grievant, was advised of these changes. What the evidence has revealed is that, not one, but many incidents involving the Grievant had occurred during Ms. McKethen's tenure as Chief. Just one of

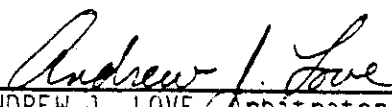
the incidents demonstrates that the Grievant was insubordinate to the immediate supervisor, Mr. Heath, when he "respectfully" refused to remove pin-ups in his work area and off of the bulletin board in the mail room in general. This Arbitrator feels that the problems are greater than the one incident that clearly proves that "just cause" existed for disciplinary action to be taken. It is the opinion of this Arbitrator that the Grievant had not yet recovered from his disappointment of his job reclassification to Delivery Worker I. He persisted in being late to work, ignoring or outright refusing to accept the directions of his immediate supervisor, and continuing to use his personal car even though he was advised not to do it, and not fulfilling job responsibilities in respect to mail delivery and pick up. Even if the Grievant were to be believed that Mr. McCoy was responsible for satellite deliveries, when Grievant did make those particular deliveries, he was not carrying out those tasks. In sum, the Chief of the mail center and the acting (and later) supervisor have made changes for the improvement of the functioning of the mail center. It is incumbent upon each employee to elevate his or her standards to meet those needs. Furthermore, none of the things that were acted upon by the Chief or the supervisor violated the Grievant's job duties and assignments.

Nor did the Grievant suffer disparate treatment in respect to the removal of the pin-up pictures or smoking. As stated earlier, Ms. McKethen stated that she would carry out the policies as they related to her areas of responsibility irrespective of the actions of Chiefs in other divisions. It was the responsibility of the Grievant not to smoke in the mail room and not to have certain unacceptable pictures posted in the vicinity of the mail room.

In addition, this Arbitrator finds that there was no procedural error in taking disciplinary action for the reason that for a period of three months the Grievant had been forewarned by Ms. McKethen and by Mr. Heath that certain activities would not be tolerated.

Turning to the issue of whether the disciplinary action taken was commensurate with the offense, this Arbitrator determines that the appropriate action taken to be a verbal reprimand. Section 24.02 outlines the principles of progressive discipline. There was no evidence of any prior disciplinary action taken against the Grievant. The offense or offenses in and of themselves constitute a series of non major offenses. However, when taken in their entirety, these actions by the Grievant need to be addressed in the form of the progressive discipline schedule.

Accordingly, the Grievance is DENIED; however, the written reprimand should be reduced to a verbal reprimand with appropriate notation in the Grievant's file.



ANDREW J. LOVE, Arbitrator

ARBITRATION

OHIO DEPARTMENT OF NATURAL RESOURCES
AND
OCSEA LOCAL 11 AFSCME, AFL-CIO (Grievance of Hugh Wait)
ARBITRATOR: Andrew J. Love
CASE NO.: G87-2464
FOR DNR: Jon E. Weiser
FOR GRIEVANT: Allyne Beach

DECISION AND AWARD

The issues presented in this proceeding on March 30, 1988, are whether the three day suspension of the Grievant by the Ohio Department of Natural Resources (DNR) on October 20 through 22, 1987 was without "just cause" and therefore in violation of Section 24.01 of the parties' Collective Bargaining Agreement; and whether the disciplinary action taken was commensurate with the offense.

As a preliminary matter, representatives for the Grievant and DNR argued against and for dismissal of the Grievance, respectively, due to the absence of the Grievant. In the first instance, this Arbitrator finds that DNR properly and timely notified the Grievant's representative as to the time, date, and location of this hearing. It was not stated as to why the Grievant did not appear. DNR stated that its case against the Grievant would be damaged without his presence. Although this Arbitrator is mindful of the fact that arbitrators' decisions whether to dismiss are relatively equal both ways, it is determined that DNR's position is not well taken in the instant matter. First, Section 24.01 of the parties' Collective Bargaining Agreement states:

The Employer has the burden of proof to establish just cause for any disciplinary action.

Even if the Grievant were present, it is not a requirement that he present testimony. The burden of proof of the existence of "just cause" remains with the Employer, even if the Grievant presents no witnesses on his behalf.

Second, Section 25.02 of the parties' Collective Bargaining Agreement defines and describes the procedure for the various grievance steps. At Step 5 (Arbitration), that section states as follows:

Grievances which have not been settled under the foregoing procedure may be appealed to arbitration by the Union by providing written notice to the Director of The Office of Collective Bargaining within thirty (30) days of the answer, or the due date of the answer if no answer is given, in Step Four. (emphasis added)

In this Arbitrator's view, the above cited section imposes no requirement that the Grievant be present. According to Step Five, it is the obligation of the Union to provide appropriate notice. In the absence of definitive rules and/or regulations, one must logically conclude that the Grievant may not necessarily be present or called to testify in his own behalf. Therefore, it is this Arbitrator's opinion that this hearing shall proceed in the Grievant's absence.

A number of joint exhibits and exhibits by DNR and by the Grievant were later admitted into evidence.

As to the evidence presented, Mr. Jeff Hughes, DNR Office of General Services, stated that he is Grievant's immediate supervisor. The Grievant is a Carpenter I by job classification. Mr. Hughes stated that the Grievant's responsibilities at the State Fair in 1987 included repairing displays and being available to remedy general problems, such as minor electrical work. The Grievant was assigned to work at the State Fair in August, 1987. Mr. Hughes

that, because of the large crowds and the number of displays presented by various agencies and organizations at the Fair, it was extremely important for the employees in the Office of General Services to be available for emergency repairs. In fact, it was sometimes required that two carpenters be present.

Mr. Hughes stated that the Grievant was scheduled to work on August 13, 1987 at the fairgrounds from 8:00 A.M. to 4:00 P.M. He testified that, while he was having lunch, Michael Canavan, Chief of Employee Services, notified him that the Grievant had a meeting. Mr. Hughes then went to the fairgrounds to look for the Grievant and could not find him. Mr. Hughes found Mr. Canavan who said that the Grievant left. No other carpenter was at the fairgrounds during this time. Mr. Hughes stated that Mr. Canavan is not in the same office of that of the Grievant. He stated that it was a requirement that employees in the Office of General Services are to notify the immediate supervisor of that same office if there is a need to leave. In that way, the immediate supervisor can summon another individual to take over those particular job duties of the employee who had to take leave.

On August 14, 1987, Mr. Hughes stated that the Grievant was scheduled to work on that day. Mr. Hughes decided to be at the fairgrounds on August 14, 1987, at the time that the Grievant was to arrive for work at 8:00 A.M. By 8:30 A.M., the Grievant did not appear for work and Mr. Hughes returned to his office. The Grievant had not called in to indicate that he would not be at work on that day.

On Saturday, August 14, 1987, the Grievant was scheduled to work again. Mr. Hughes stated that the Grievant requested to work on this day. Mr. Hughes

further testified that Saturday during the State Fair is a very busy day. This day required two carpenters to be present. On this day, however, one carpenter was present, but the Grievant did not come to work. Sometime after 9:00 A.M., Carl Miller, of Civilian Conservation, advised Mr. Hughes that the Grievant had contacted him stating that the Grievant had problems obtaining a babysitter and could not work on this day. Mr. Miller, who is involved with a different office, is not the person whom the Grievant is to notify about his inability to come to work. The Grievant is supposed to report to his immediate supervisor in the Office of General Services. Mr. Hughes testified that the Grievant knows that he can call into the radio dispatcher to leave a message that he would not be able to work. This was not done by the Grievant. In addition, Mr. Hughes testified that he had discussed call-inprocedures with the Grievant in the past. See Management Exhibit No. 10, wherein Mr. Dale E. Balser, Assistant Chief of the Office of General Services, prepared a Memorandum on the subject of absence without notification. In that communication, Mr. Balser referred to a July 1, 1986 incident wherein the Grievant did not report to his work site at the State Fairgrounds and did not notify his supervisor or anyone in the Office of General Services that he would not be at work. That communication goes on to say that Mr. Balser and Mr. Hughes talked to the Grievant at that time about the procedure to be employed if one cannot attend work on a given day.

Mr. Hughes testified as to his receipt of leave requests from the Grievant on August 18, 1987 for the days of absenteesim covering August 13 through 15, 1987. Mr. Hughes testified that, under normal circumstances, leave without pay requires advance notice. Here, the leave request came after the leave was taken. It should also be noted that, in respect to management Exhibit No. 7,

the Grievant listed illness as the basis for his request for leave on August 13, 1987. However, the Grievant had advised Mr. Canavan (again, not in the office where the Grievant works) that he had to attend a meeting. His other leave requests indicated personal business for the August 14, 1987 date and no babysitter for August 15, 1987.

Mr. Ronald Bruce, testifying on behalf of the Grievant, stated that he is a Radio Technician I and has been employed with DNR for 11 years. On August 13, 1987, Mr. Bruce came to DNR to pick up his paycheck from the secretary who advised Mr. Bruce that the Grievant was on the phone and wanted to speak with Mr. Balser or Mr. Hughes. Neither of these gentlemen were in at the time.

On cross-examination, Mr. Bruce stated that he is not required to call individuals who do not work in his unit if he is unable to work on a given day or at a given time of the day. Furthermore, he testified that he should contact the Radio Dispatcher if he could not contact his immediate supervisor. This is also the requirement of the Grievant if he cannot work on a given day or at a given time during the day.

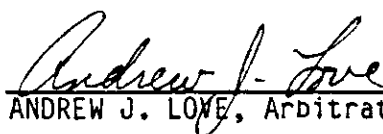
As to the determination as to whether "just cause" existed for the imposition of disciplinary action against the Grievant, this arbitrator finds that DNR has met its burden in establishing that issue. The evidence is overwhelming that the Grievant was absent without leave in that he did not follow the procedures for notifying his immediate supervisor or the assistant chief of his office, to wit: Mr. Balser. The Grievant was certainly aware of the procedure for call-in in order to notify the appropriate individuals in his own unit. In the absence of Mr. Hughes' availability, the Grievant was aware that he could call the radio dispatcher and that the message would be delivered

to his immediate supervisor or to Mr. Balser. On none of the days in question was this done. Moreover, the reason for the leave request for August 13, 1987 (sickness) is at odds with what was represented to Mr. Hughes by Mr. Canavan (attending a meeting).

In regard to the second issue, i.e. whether the disciplinary action taken was commensurate with the offense, this Arbitrator considers at least one previous warning to the Grievant, which, coincidentally, concerned a similar leave without notice during the 1986 Ohio State Fair. The Grievant was aware of the potential disruption of the normal ongoing events during the State Fair when no one would be available to take care of emergency needs, pursuant to the Grievant's job skills and duties. It is not clear whether the communication, marked as Management Exhibit No. 10 is part of the Grievant's personnel file. Hence, it is not clear whether this communication constitutes a written reprimand. However, it clearly states that the Grievant is put on notice of disciplinary action that could be taken if he continued to engage in this type of conduct. This Arbitrator is mindful of the problems that an employee's leave without notice can do to the orderly process of events in a certain situation, the Ohio State Fair in particular. It is therefore the view of this Arbitrator that, given the circumstances of the Grievant's absence without notification for a period of three consecutive days, that the disciplinary action taken was commensurate with the offense. In determining thus, this Arbitrator must weigh the gravity of the offense with the principles of progressive discipline as stated in Section 24.02 of the parties' Collective Bargaining Agreement. As previously stated, it is clear that the Grievant was aware of the problems that he would create if he did not follow proper notification procedures. It is

important to note that the above referred section requires, first, that disciplinary action shall be commensurate with the offense. It then goes on to cite the progressive discipline schedule. The obligation of DNR is to determine whether the usual steps of progressive discipline can be applied in the instant case. From the evidence adduced, it is clear that the gravity of the offense does not allow for the usual methods of progressive discipline. Hence in weighing the two elements under Section 24.02 (discipline commensurate with the offense and progressive discipline) the nature of the offense and its seriousness must take primacy with regard to discipline. Accordingly, the disciplinary action imposed by DNR is commensurate with the offense and is not violative of Section 24.02 of the parties' Collective Bargaining Agreement.

Accordingly, the grievance is DENIED.



ANDREW J. LOVE, Arbitrator

ARBITRATION

OHIO DEPARTMENT OF NATURAL RESOURCES
AND
OCSEA LOCAL NO. 11 AFSCME, AFL-CIO (Grievance of Blythe Lampkins)
ARBITRATOR: Andrew J. Love
CASE NO.: G-87-2245
FOR OHIO DEPARTMENT OF NATURAL RESOURCES: John Weiser
FOR GRIEVANT: Aylene Beach

DECISION AND AWARD

The issues presented in this proceeding on March 30, 1988, are whether the one day suspension of the Grievant was for "just cause" and, if not, what should the remedy be.

The Grievant is a Storekeeper II for the Ohio Department of Natural Resources (DNR). His job duties include, among other things, maintaining vehicles for DNR and making deliveries on behalf of that department.

On August 6, 1987, Donna Wahl, Administrative Assistant with DNR, received a telephone call from Mark Kowalskie in Personnel to deliver litter bags to the Ohio State Fair located at the fairgrounds in Columbus, Ohio. It should be noted that the duties of DNR with the Ohio State Fair include cleaning up litter on the fairgrounds premises.

Ms. Wahl testified that she instructed the Grievant to make the deliveries of the litter bags at a specific site at the fairgrounds. While the Grievant was away, Mr. Kowalskie called back to Ms. Wahl and advised her that he could not get the keys out of the automobile assigned to him. When the Grievant returned with the litter bags (because he could not find the location to drop said litter bags off), Ms. Wahl, who is the Grievant's supervisor, asked him to get the keys out of the car driven by Mr. Kowalskie. The Grievant complied. The car was not in neutral gear, which caused the keys to be locked in the ignition. The Grievant placed the car in neutral gear and removed the keys.

At that time, Ms. Wahl instructed the Grievant to return to keys to the Personnel Office to Mr. Kowalskie. The Grievant stated, "No, let him pick them up himself." Ms. Wahl then called Mr. Kowalskie. She then stated to the Grievant, "Blythe, go to Mark and find out where the bags go, and take the keys to him." She testified that this was a direct order to the Grievant. However, the Grievant responded, "No, I'm going to lunch." Ms. Wahl stated to the Grievant that his conduct was an act of insubordination. She elaborated during her testimony that the Grievant's lunch period was not assigned to a specific time of day. She stated that the reason for this was because of the Grievant's duties, which may require him to be unavailable for a normal lunch hour; and because he might be on a job assignment, the Grievant was allowed to take his lunch at different times of the day. In fact, according to Ms. Wahl, if the Grievant completed certain assignments at a relatively late time of the day, he was allowed to go home an hour earlier in lieu of lunch.

Although the Grievant stated that he was not going to take the keys to Mr. Kowalskie and was not going to deliver the bags per Ms. Wahl's request, he nevertheless delivered the bags at a later time during the day.

Ms. Wahl, who had subsequently recommended disciplinary action of one day's suspension, further testified that she had promoted the Grievant from Storekeeper I to Storekeeper II because of his abilities and his cooperation with her. However, during the year that he has been in the newer classification, the Grievant has demonstrated an inability to get along with other staff. Moreover, the Grievant received written reprimands for excessive absenteeism and abuse of State property (See Management Exhibits 5 and 6). Furthermore, although Ms. Wahl did not add to the Grievant's personnel file

previous verbal reprimands for the Grievant's telling her "no" on other occasions, the Grievant had not been very cooperative with her when she instructed him to do certain jobs consistent with his job description as Storekeeper II.

The Grievant testified that, although he got the keys out of the car driven by Mr. Kowalskie per instruction of Ms. Wahl, he stated to her that he would not take the keys to Mr. Kowalskie; rather, Mr. Kowalskie could pick the keys up himself. He stated that he was going to lunch. Grievant later took the keys to the building receptionist and delivered the bags to the fairgrounds at approximately 1:30 P.M. It should be noted that the Grievant was asked by Ms. Wahl to perform these tasks at approximately 11:30 A.M. The Grievant stated that, the first time he attempted to deliver the bags, he could not find the location in the fairgrounds to deliver them.

First, this Arbitrator finds that "just cause" existed for the imposition of disciplinary action by DNR. This Arbitrator is satisfied that DNR has met its burden of proof to establish just cause for disciplinary action, pursuant to Section 24.01 of the contract between the State of Ohio and OCSEA Local 11, AFSCME AFLCIO. The Grievant did not deny that he stated his refusal to carry out orders from Ms. Wahl. Even though this Arbitrator is of the opinion that the Grievant would ultimately carry out the directives of his supervisor, and further recognizing that the Grievant was somewhat frustrated by his not receiving a specific enough location to deliver the litter bags to the fairgrounds during his initial attempt, he clearly had to have recognized his obligation, pursuant to his job description, to carry out those orders at the time they were given to him. The Grievant would have not been disciplined for


complaining about both the inexactness of the location for the litter bags to be delivered and Mr. Kowalskie's inability to remove the keys from the car; however, his response to Ms. Wahl's directives was entirely inappropriate and amounted to insubordination.

Furthermore, this Arbitrator finds that the disciplinary action taken was commensurate with the offense, as required by Section 24.05 of the contract. The Grievant had sustained two prior written reprimands, albeit on the same day in June, 1987. It is this arbitrator's view that the Grievant was placed on notice that subsequent conduct that is inconsistent with his duties could result in further disciplinary action. Even though the Grievant received written reprimands for events unrelated to the instant cause, there is nothing in the contract that states that prior disciplines must be related to one arising out of the latest offense. "Progressive discipline is for the purpose of forewarning the employee that any substandard conduct violative of . . . the contract is protected against by further and greater discipline." See In re Carletta Brown, Grievance No. G87-0874. Hence, the disciplinary action taken against the Grievant in the instant cause was progressive. In addition, the Grievant's argument that the discipline was solely for punishment is without merit here. Section 24.05 of the contract states:

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment. (emphasis added)

The evidence shows that the action taken by DNR was not solely for the purpose of punishment, but, rather, for compelling the Grievant to recognize his duties in respect to his supervisor as well as for punishment.

Accordingly, the Grievance is therefore DENIED.



ANDREW J. LOVE, Arbitrator