

ARBITRATION AWARD SUMMARY

OCB Award Number: 236
 OCB Grievance Number: SEE below
 Union: AFSCME
 Department: MR/DD
 Arbitrator: Andrew Love
 Management Advocate: SEE below
 Union Advocate: Brenda Persinger
 Arbitration Date: 11-30-88
 Decision Date: 12-7-88
 Decision: SEE below

| <u>Grievance No.</u> | <u>Grievance Name</u> | <u>Advocate</u> | <u>Decision</u> |
|-------------------------|-----------------------|-----------------|-----------------|
| 24-09-880310-0033-01-04 | Barbara Pryjda | Bill Demidovich | Modified |
| G87-0852 | Betty Jean Clark | " | " |
| G87-2972 | Carolyn Posey | John Tornes | Denied |
| 24-09-880406-0046-01-06 | Dale Whipple | Janice Viau | Denied |

ARBITRATION

25-09-680810-11

MT. VERNON DEVELOPMENTAL CENTER
AND
OCSEA LOCAL 11 AFSCME, AFL-CIO (Grievance of Barbara Pryjda)
FOR MVDC: William F. Demidovich, Jr.
FOR GRIEVANT: Brenda Persinger
ARBITRATOR: Andrew J. Love
CASE NO.:

DECISION AND AWARD

The issues presented in this proceeding on November 30, 1988, are: (1) was the three day suspension imposed on the Grievant for "just cause", and (2) if not, what shall the remedy be?

First, this Arbitrator finds that the Grievant was afforded due process that included a predisciplinary hearing; that the Mt. Vernon Developmental Center (hereinafter "MVDC") made available and applied its rules, orders and penalties without discrimination; and that all other procedural matters in respect to the Grievant and MVDC were timely noticed. Second, the parties stipulated to the following facts:

1. The Grievant's last day worked was May 5, 1987.
4. The Grievant has had no prior disciplines.

The Grievant received notice that, effective March 2, 1988, she would be suspended for three work days for neglect of duty, to wit: unauthorized absence from work on May 9 and 10, 1987. MVDC Policy No. E-2 states at Section 5.2.1 (Unauthorized Absence):

If an employee is unable to report to work at the assigned time, he/she shall properly notify the appropriate supervisor/designee at the Center. The Supervisor shall note the absence as an LWP (Leave Without Pay) status on the Daily Absence Report.

It is the policy of MVDC that any person who is unable to report to work at his or her assigned time must call in to the appropriate personnel at least one half hour after the employee is scheduled to report to work.

Barry Groseclose, a Mental Health Administrator II, testified that he is the unit manager over Living Unit II, which consists of ten separate units where retarded and developmentally disabled residents reside. His duties include supervising staff and meeting the needs of the residents in the living unit, such as appropriate staffing of personnel and security. He added that the mission of MVDC is to fulfill the educational, sociological, and physical needs of the residents. There are 630 employees at MVDC who are directly or indirectly involved with 364 residents, whose ages range from 14 to 78 years of age. These residents are severely or profoundly retarded in many cases, and, therefore, close attention must be paid to meet the needs of said residents.

Each employee is made aware of the policy enacted by MVDC. All employees are required to read the policy documents. In the case of policy no. E-2, the Grievant was one of the persons who signed off, thereby acknowledging that she was aware of the policy regarding unauthorized absence prior to the dates of the incidents which involved her.

Mr. Groseclose stated that he was advised that the Grievant was absent from work on May 9 and 10, 1987. He testified that her shift was from 6:30 A.M. to 3:30 P.M. He also stated that he was the Grievant's mediate supervisor. The Grievant provided no notification of her absence on May 9, 1988. She did, however, notify MVDC of her absence on May 10, 1988; however, such notification was made at 7:30 P.M., some four hours after her normal work shift would have ended on that day. According to Mr. Groseclose, the Grievant called in on May

10, 1987, stating that she was going on medical leave. The Grievant's normal days off were Thursday and Friday, which were May 7 and 8, 1987.

Because the Grievant failed to use the call-off procedure, Mr. Groseclose stated that her actions were inappropriate. He cited Management Exhibit 1, which showed an approved request by the Grievant for sick leave on May 5, 1986, indicating that she was aware of the proper method of informing MVDC when she would not be available for work.

Mr. Groseclose stated that employees who are absent without approval and without using proper call-in procedures cause critical problems of employee shortages, thus affecting the meeting of the needs of residents. It requires that employees must be reassigned, thus impeding other programs in which those reassigned employees are normally involved.

The witness also noted that the Grievant called in for sick leave on May 9 and 10, 1988, however, the Grievant called in on May 11, 1987 for such leave. This request was denied, because the Grievant failed to call in in accordance with the requirements of policy.

Mr. Groseclose further referred to Joint Exhibit No. 5, entitled Policy and Procedures No. A-7, which at page 5 of the appendix lists two different types of absence without leave (hereinafter AWOL). According to Joint Exhibit A-7, which, coincidentally is dated April 10, 1987 (as is Joint Exhibit No. 6 Policy and Procedures No. E-2), there are two types of "AWOL". One type calls for removal as a first offense if the AWOL is the result of neither calling in nor showing for work for three days or over. The other type calls for a three to ten day suspension if the no call/no show occurs for one or two full days. In this Arbitrator's view, policy and procedures A-7 is somewhat at odds with E-2,

inasmuch as AWOL, as defined in E-2, states, at Section 5.3.1:

Any employee who absents him/herself from work for three or more consecutive duty days without approved leave, and without notice to his/her assigned supervisor/designee of the reason for such absence may be subject to removal for neglect of duty.

Clearly, AWOL constitutes a three consecutive day absence, whereas the Grievant has been charged with missing two consecutive days of work. This Arbitrator shall discuss the implications of this seeming conflict below.

Mr. Groseclose stated that, although the Grievant is a Hospital ~~Administrator~~ ^{Aide} (HA), he has had no personal involvement with training of HA's. He further testified that MVDC has had training in the Employee Assistance Program (EAP). All employees sign a statement that they are aware of the contents of the EAP manual. The witness stated that he was aware of certain medical problems of the Grievant and further stated that mitigating circumstances were considered in imposing discipline. That is why, according to the witness, the Grievant received the least recommended suspension of three days, according to the standard guidelines for progressive corrective action under AWOL: no call/no show. For a first offense these guidelines recommend a three to ten day suspension. As an administrative matter, the ultimate authority for suspension is determined by the Corrective Action Committee.

Roberta Hardwick, a Therapeutic Program Worker (TPW), is a union steward and was employed in May, 1987, in Living Unit 4. She testified that the Grievant was made aware of the EAP at the end of her disciplinary conference. That is, the Grievant was not familiar with her potential eligibility for assistance through that program until she concluded that step of her grievance procedure.

However, the witness stated that, once apprised of the EAP, the Grievant did not indicate entering into that program.

Laurie Steltz is an Activity Specialist I, is a Chief Steward at MVDC. She stated that she was not aware of training of stewards of the EAP, and usually an employee does not know of this program until management advises such at the predisciplinary hearing. The witness, however, did acknowledge that an EAP course was held in October, 1986, in which the then Chief Steward and Union President attended it and signed off acknowledging that they had received training.

The Grievant, an HA, has been employed with MVDC for seven years. She has no prior disciplinary actions against her.

On May 5, 1987, the Grievant took medication from her physician. This medication was for depression arising from a messy divorce and disobedient children. The effects of this medication caused drowsiness and constant sleep. The Grievant did not call in on May 9 and 10, 1988, due to the sleep induced medication. She subsequently filed for a disability claim, which was ultimately approved. The Grievant further stated that she was aware of the requirement to call in. She stated, however, that the medication affected her so badly that she literally slept for the two days in which she was to be at work. During that same period, the Grievant was taking additional medication for menses cramping, although the effects of this medication were not sleep inducing. She stated that, if it were not for her older son arousing her on the evening of May 10, 1987, she would not have called in at all on that day.

Turning to the issue as to whether "just cause" existed for the imposition of disciplinary action, this Arbitrator finds that "just cause" existed for

disciplinary action. The Grievant was taking the same or similar medication on May 6, 1987, and had the presence of mind to call in on that day. In the fact finding report (Joint Exhibit No. 3) the Grievant stated that she was put on medication in April of 1987. She stated that the medication was an antidepressant with the side effect of sleeping almost constantly. She stated that she started the medication approximately May 4, 1987. This is five days before she failed to call in or appear for work on May 9. The Grievant would have known of the effect of said medication prior to her failure to call in on May 9 and 10.

As to the second issue, this Arbitrator finds that the penalty is not commensurate with the offense. This Arbitrator finds that the Grievant is truthful when she states that she required her doctor to change her medication in order to work and not be drowsy. Ultimately, the Grievant took corrective steps on her own to resolve this problem.

More important to this Arbitrator, is the nature of the offense committed. This Arbitrator finds that the Grievant should have been disciplined for unauthorized absence as stated in the standard guidelines for progressive corrective action.

Joint Exhibit No. 5 suggests that the penalty for Unauthorized Absence is a verbal reprimand. Since the Grievant missed two consecutive days of work without calling in, the Grievant should receive a written reprimand as the disciplinary action commensurate with the offense. Again, pursuant to MWDC's definition of AWOL (3 or more days of absence without approved leave and without notice), the Grievant has not committed this offense and, thus should not be subject to its penalties.

ACCORDINGLY, the grievance is DENIED, but the Grievant shall receive a written reprimand. The Grievant shall also be awarded back pay of three days' wages.

ANDREW J. LOVE, Arbitrator

ARBITRATION

G87-0852

MT. VERNON DEVELOPMENTAL CENTER
AND
OCSEA LOCAL 11 AFSCME, AFL-CIO (Grievance of Betty Jean Clark)
FOR MVDC: William F. Demidovich, Jr.
FOR GRIEVANT: Brenda Persinger
ARBITRATOR: Andrew J. Love

DECISION AND AWARD

The issues presented in this proceeding on November 30, 1988, are: (1) was the one day suspension imposed on the Grievant for "just cause"; and (2) if not, what shall the remedy be?

On February 3, 1987, the Grievant, a Therapeutic Program Worker (hereinafter "TPW") received a one day suspension for failure of good behavior in violation of policies and procedures at the Mt. Vernon Developmental Center (hereinafter "MVDC"). A grievance was timely filed and all matters regarding the steps requirements were met by MVDC.

JoAnne Guinther, a Mental Health Administrator II, testified that, among her duties, she supervises the cottage areas. In November, 1986, she was advised via a fact finding form indicating that a resident had in his possession shoes that did not belong to him. The shoes were one and one half sizes too small and were pinching the resident's toes. The name of the resident wearing the shoes was written on the sides. In addition, the fact finding form indicated that the resident wearing the shoes had toe nails that were too long. This fact finding form also indicated that the shoes were given to this resident by the Grievant. The Social Worker was not notified that the Grievant gave one resident's shoes to the other. Ms. Guinther stated that permission must be received by the Social Worker to give one resident's shoes to another.

Ms. Guinther stated that the Grievant was her subordinate at the time of this incident. The Grievant's duties include direct care, personal care, and charting of residents assigned to her. She further stated that TPW's are responsible for anywhere from four to six residents each. She further defined the term "floater" as a person who fills in for vacationing employees. A floater TPW has the same responsibilities as a permanent TPW. If a TPW has problems administering direct care or personal hygiene for a resident, he or she is to contact the medical staff, which includes a licensed practical nurse or a registered nurse.

Ms. Guinther further stated that each resident's property is listed on a Resident Personal Inventory Belongings list. The TPW's assigned to various residents are responsible for the personal belongings inventory. Social Workers also are required to know whether such belongings need to be replaced. If the TPW sees a need to replace certain items of property, then he or she must notify the Social Worker by means of a client needs evaluation.

Ms. Guinther further stated that it is her policy that items of personal property of the residents, such as clothes, are to be marked on the inside of such items and not on the outside, so as not to draw attention to the residents who are profoundly and severely retarded.

The witness testified to certain memoranda which spoke to the issue of grooming and cleaning residents. One such item (Management Exhibit #2) referred to clipping of the residents' toe nails. This memo was signed off by the Grievant on June 10, 1986, hence she was aware of the intent and purpose of this requirement. The witness stated that she was not aware of the Grievant's ever contacting medical staff regarding the toe nails of the resident to whom she

transferred another's shoes, nor was the witness ever approached by the Grievant about this matter.

On cross examination, Ms. Guinther stated that even floater TPW's should have a list of residents to care for. She stated, however, that she did not know whether the Grievant, who was a floater during the week of November 13, 1986, had received a list of residents. She further acknowledged that the resident in question suffered from fungus in his toe nails. This meant that the toe nails were extremely thick due to the fungus growth and that a nurse would have the appropriate clippers to clip those nails. Furthermore, in many instances, a nurse would be the one to clip the nails. The witness did not know whether the Grievant informed a nurse about the resident's nails.

Ms. Guinther was shown a client need evaluation form (Union Exhibit #3), which was a request by Lynne Kaylor, a Social Worker III, and a TPW for items needed for the resident who received the shoes from the Grievant. One of those items requested included a need for leather shoes. This request was made in April of 1986. In addition, the witness acknowledged that the resident in question was finally fitted with proper shoes on November 17, 1986.

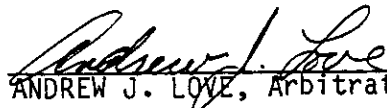
In any event, Ms. Guinther stated that the Grievant had no authority to remove the shoes from the resident who owned them and transfer those shoes to another resident without appropriate permission.

Jayne Shotts, TPW and Union Steward, stated that in November of 1986 she was a chief Steward. She testified as to the duties of a TPW, which includes responsibility for direct care of residents. She stated, however, that in November, 1986, the average number of residents cared for by one TPW was anywhere from one to eight residents.

There was also some confusion as to the appropriate personnel who grants permission of transferring of personal property from the inventory of one resident to another. Ms. Guinther stated that Social Workers have that responsibility; the Grievant and Ms. Shotts say that the Hospital Aide has that responsibility. In any case, this Arbitrator is satisfied that the Grievant made reasonable efforts to alert appropriate personnel and staff of the problem with the resident who did not have adequate shoes.

Turning to the second issue, i.e. the appropriateness of the remedy, this Arbitrator feels that the disciplinary action taken was not commensurate with the offense, for the reasons stated above. The Grievant demonstrated concern for the resident in question, where the ordinary channels of correcting the problem were, unfortunately in this instance, entirely too slow. The Grievant did not secrete these shoes from the other resident. She provided clear notice as to what she had done. Again, this is further supported by Exhibits which had demonstrated that other staff requested the same items for the resident in question 7 months earlier, with no results. Nevertheless, the Grievant should have demonstrated the same concern for this resident by notifying her supervisors of the extreme length of the resident's toenails.

ACCORDINGLY, the grievance is DENIED, but the disciplinary action shall be a written reprimand only. The Grievant shall be compensated for one day's pay.


ANDREW J. LOVE, Arbitrator

ARBITRATION

MT. VERNON DEVELOPMENTAL CENTER
AND
OCSEA LOCAL 11 AFSCME, AFL-CIO (Grievance of Carolyn Posey)
FOR MVDC: John Tornes
FOR GRIEVANT: Brenda Persinger
ARBITRATOR: Andrew J. Love
CASE NO.: G-87-2972

DECISION AND AWARD

This issues presented in this proceeding on November 30, 1988, are (1) whether the five day suspension of the Grievant for unauthorized absence was for "just cause"; and (2) if said suspension was for just cause, what should the remedy be?

The Grievant was duly notified that she would be suspended for a period of five (5) consecutive work days beginning on December 15, 1987, for reason of unauthorized absence from the workplace on October 3, 1987.

Glenna Beckholt, Food Service Manager, testified that her duties include supervising the operations of the kitchen at the Mt. Vernon Developmental Center (hereinafter MVDC). She stated that when neither she nor her assistant are available to supervise the kitchen, then the most senior person (usually a Cook #1), assumes these duties. She testified further that a person such as a Cook #1 is considered the most senior person and has responsibilities for supervising the kitchen. The testimony from this witness was not altogether clear as to the extent such a senior person's responsibilities extend regarding such matters as approval of employees' meetings with union stewards during work hours. Ms. Beckholt did, however, state that an employee with temporary supervision of the kitchen shall contact Ms. Beckholt for instruction on matters that do not often occur in the usual course of the work activities of personnel in that area.

There are two work shifts for the kitchen area. The early shift constitutes hours from 5:00 A.M. to 1:30 P.M. The lunch break for the early shift begins at 10:30 A.M. The second, or late, shift begins at 10:30 A.M. and ends at 7:00 P.M. The lunch break for this shift is at 2:15 P.M. Each shift has a lunch break of one half hour.

Ms. Beckholt stated that the period of time between 10:30 A.M. and 11:45 A.M. is a very busy time, because it is a start of meal preparation for residents. It is important that these meals be served timely for several reasons: State and Federal regulations require timely meals and appropriate hours separating the various meal times during the course of the residents' day; delays in serving meals would throw off various program schedules of other staff with these same residents; and, further, some residents may become excited or agitated because of the lateness of meals distributed to them, the result of which may be seizures. It should be noted that the residents at MVDC are profoundly and severely retarded individuals, and, therefore, close attention must be paid to their medical, physical, and emotional needs inasmuch as they are unable to do a number of activities without supervision and assistance.

On October 3, 1987, neither Ms. Beckholt nor her assistant were available to supervise the kitchen. Joann Sharp, a Cook #1, was designated to run the kitchen in their absence. According to Ms. Beckholt and Carl Mackie, a Labor Relations Officer I and the hearing examiner at one of the phases of the Grievant's steps, Ms. Sharp reported that an employee by the name of Lucille Wilson was crying. The Grievant was approached by Ms. Wilson, who then called a Union Steward and left the work area. The Grievant initially requested that Ms. Sharp allow Ms. Wilson and the Steward, Susan Snelling, to use the kitchen

office to discuss Ms. Wilson's problem. Ms. Sharp denied that request. The Grievant, Ms. Snelling, and Ms. Wilson then left the work area and met in the hallway outside of the kitchen. Thereafter, the three individuals went to the dentist's lounge area. The Grievant returned to the kitchen area forty minutes later. It should be noted that the time period in which this occurred was from 10:30 A.M. (the time that the Grievant clocked in for late shift duty) to approximately 11:10 A.M. On October 6, 1987, Joann Sharp reported this incident to Mary Thompson, assistant to Ms. Beckholt, and Ms. Thompson prepared a fact finding report which lead to the previously mentioned suspension of the Grievant.

Susan Snelling, an L.P.N. and a Union Steward, testified that on October 3, 1987 she received a call from the Grievant, Ms. Wilson. She stated that she, the Grievant, and Ms. Wilson, moved to the hallway to discuss Ms. Wilson's problem, however the noise level was high. The three of them then moved to the dentistry lounge to continue to meet. According to Ms. Snelling, the Grievant's presence was necessary, because Ms. Wilson was crying and had difficulty articulating her problem.

The Grievant testified that she is a Food Service Worker, and that her duties included general kitchen operation (preparing meals, cleaning, etc.). The Grievant testified that on October 3, 1987, she reported to work at 10:30 A.M. Ms. Wilson stopped her and asked her to get a Steward. The Grievant then clocked in for work and called for an available Steward. She confirmed that Ms. Sharp denied permission to use the kitchen office to a union Steward because any such talks constituted "union time". When asked what the definition of "union time" was, the Grievant stated that it was such time that was deemed

necessary to talk to a union Steward over a labor related matter.

The Grievant stated that, as a result of this meeting, the meals to be served to the residents were approximately 10 minutes late.

The Grievant also testified that she has had previous disciplines of absence without leave (AWOL).

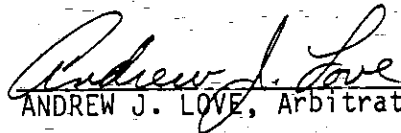
As to the instant grievance, the Grievant stated that she did not ask for authorization for such a meeting from Ms. Sharp. She also acknowledged that the time period between 10:30 A.M. and 11:30 A.M. was a very busy time. She then stated that, in terms of her participation with the union Steward and Ms. Wilson (who had the problem) she did not know whether this was in fact "union time".

As to the determination as to whether "just cause" existed for the imposition of disciplinary action against the Grievant, this Arbitrator finds that MVDC has met its burden in establishing that issue. The evidence, in this Arbitrator's view, is more than sufficient that the Grievant was absent from her work station without leave, in violation of MVDC policy and procedure E-2 Division 5.2.4, which states that "an employee who absents him/herself from the work site without the knowledge and approval of the supervisor will be considered in an unauthorized absence status and subject to corrective action." It is also clear from the testimony that the Grievant should have known to obtain permission for such a meeting if it in fact affected her. The evidence is clear that "union time" was not applicable to the Grievant, but rather to Lucille Wilson, who in fact was the aggrieved party and to whom the union Steward, Ms. Snelling, should have spoken.

As to the second issue, this Arbitrator finds that the penalty imposed by MVDC was commensurate with the offense. The Grievant had been put on notice on

several occasions by way of previous disciplinary action taken against her, to wit: a letter of reprimand for neglect of duty in July, 1984; another letter of reprimand for neglect of duty in July, 1985; and a three-day suspension for neglect of duty in October, 1986. This Arbitrator finds that the discipline was progressive and fair and was not used as a means of punishment, but was used as a method to enable the Grievant to be aware of certain violations of the rules and regulations. In this case, these rules and regulations clearly apply in that such violation could have a negative effect on the severely and profoundly retarded residents at MVDC.

Accordingly, the Grievance is denied.


ANDREW J. LOVE, Arbitrator

ARBITRATION

MT. VERNON DEVELOPMENTAL CENTER

AND

OCSEA LOCAL 11 AFSCME, AFL-CIO (Grievance of Dale Whipple)

Arbitrator: Andrew J. Love

For MVDC: Janice Viau

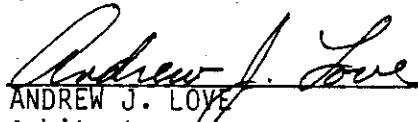
For Grievant: Brenda Persinger

24-09-880406-0046-01-06

STIPULATED AWARD

Based on the evidence adduced, the parties agree, and this Arbitrator so finds, that the suspension of the Grievant should be upheld.

Accordingly, the Grievant's one day suspension is hereby upheld. Such suspension shall be expunged one year from the date of suspension of March 30, 1988.


ANDREW J. LOVE
Arbitrator