
In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

The State of Ohio, Department
of Transportation

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Case No. G 87-2989

Appearances: For OCSEA/AFSCME Local 11:

Daniel Smith
General Counsel
OCSEA/AFSCME Local 11
995 Goodale Blvd.
Columbus, OH. 93212

For State of Ohio:

Mary Abel
Department of Transportation
C/O Office of Collective Bargaining
65 East State St.
Columbus, OH. 43215

Background: Pursuant to the procedures of the parties a hearing was held in this matter on January 4, 1989 before Harry Graham of South Russell, OH. At that hearing both parties were provided complete opportunity to present testimony and evidence. The hearing commenced in mid-morning of January 4, 1989 as inclement weather prevented the Arbitrator from arriving in Columbus in time for the 9:00AM scheduled starting time. The Grievant was apprised by the Union of the revised starting time. When the hearing commenced the Grievant had not arrived. After all concerned

waited approximately one-half (1/2) hour the State was permitted to present its case. A recess was taken to wait for the Grievant to arrive at the hearing site. After approximately a half hour (1/2) hour recess the Grievant failed to present himself and the Arbitrator directed that the Union go forward with its case. It did so. When the Union concluded its case and the Grievant had failed to appear the Arbitrator declared the hearing to be closed.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant disciplined for just cause? If not, what shall the remedy be?

Background: The Grievant, Phillip Payne, was first employed with the Department of Transportation in early Fall, 1986. His work site was the ODOT facility in Marion, OH. In the course of his employment he received a verbal reprimand on February 13, 1987 for improper backing of a State vehicle. On June 3, 1987 he was given a one day suspension for sleeping on duty.

On August 25, 1987 Mr. Payne telephoned his supervisor, George Ferguson, and asked for permission to use sick leave. That permission was granted. Later that day another employee in Marion facility approached Mr. Ferguson and told him that Payne was not ill. Rather, he had been arrested the prior evening and was in jail according to this employee. Mr. Ferguson went to City Hall in Marion and viewed the Grievant

to satisfy himself that the story of arrest and incarceration was true. The Grievant had, indeed, been arrested. It was alleged he had committed a variety of traffic offenses.

Later that day, August 25, 1987 another employee told Mr. Ferguson that Payne had been arrested on prior occasions and had been convicted of felonies. Upon receipt of that information the Department of Transportation commenced an investigation and found that Payne had been arrested and convicted for two felony offenses: breaking and entering and Burglary. He also had a record replete with traffic offenses.

When a person completes an application for employment they must respond to a number of questions on the application form. Among those questions is "Have you ever been convicted of any felony?" Mr. Payne checked the "no" box in response to that question. Upon discovering that he had improperly completed his application for employment and also improperly sought and been granted use of sick leave, the Grievant was discharged.

A grievance was filed protesting the discharge and processed through the procedure of the parties. No resolution of the grievance was reached and the parties agree it is properly before the Arbitrator for determination on its merits.

Position of the State: The State insists it had "just cause" as specified by the Labor Agreement and that the discharge

it could prevail in this dispute. The record establishes without any doubt that the State met the contractual standard of "just cause" in this situation.

Award: The Grievance is denied.

Signed and dated this 13th day of January, 1989
at South Russell, OH.

Harry Graham
Harry Graham
Arbitrator