

In the Matter of the
Arbitration Between

OCSEA, Local 11,
AFSCME, AFL-CIO

Union

and

Department of Rehabilitation
and Corrections

Employer

Grievance No. 27-13-(8-8-88)

36-01-03

Grievant: (Williams)

Hearing Date: February 2, 1989
postponed to February 10, 1989

Decision: February 10, 1989

Written Award: February 14, 1989

For the Union: Carol Bowshier

For the Employer: Thomas E. Durkee

In addition to the Grievant James Williams and the advocates named above, the following persons were present at the hearing: Andy Markley, OCSEA-Chapter President LOCI (witness), Troy Pagels, LOCI (witness), Harold Byrd (witness), Mary York, LOCI (observer), Mary Abel, Co-Advocate, H. Wayne Tipton, Lieutenant (witness), Terry L. Tolle, Co-II (witness).

Preliminary Matters

Both parties agreed that the Arbitrator might tape record the proceedings on the condition that the tapes are used solely to refresh her memory and on the condition that the tapes are destroyed when the written opinion is rendered.

Both parties agreed that the Arbitrator could submit any written opinion for publication.

The parties agreed that the matter was properly before the Arbitrator.

Witnesses were sequestered; all witnesses were sworn.

Issue:

Was the 15-day suspension for just cause? If not, what should the remedy be?

Stipulated Facts:

1. James L. Williams was appointed as a Correction Officer 2 at London Correctional Institution May 11, 1987.
2. Grievant had no prior discipline.
3. Grievant received a copy of the Department of Rehabilitation and Correction Standards of Employee Conduct.
4. On June 28, 1988, Grievant was assigned to East side Perimeter Patrol.
5. On June 28, 1988, Zone 14 sounded an alarm on nine occasions between 12:13 p.m. and 1:43 p.m.
6. Grievant acknowledged all alarms on Zone 14 and cleared same as secure.

7. Grievant was on the West side Perimeter Road of the institution at 1:10 p.m. and 1:11 p.m. on June 28, 1988.
8. Correction Officer Tolle was supervising a crew of inmates on the recreation field the afternoon of June 28, 1988.
9. Officer Williams informed Officer Waddell that inmates going onto the recreation field was the reason for the alarm.

Relevant Contract Section:

§ 24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- A. Verbal reprimand (with appropriate notation in employee's file)
- B. Written reprimand;
- C. Suspension;
- D. Termination.

Facts:

The facts were constituted the behavior of the Grievant which had subjected him to discipline in the amount of a 15 day suspension were not at issue. The basic thrust of the Union's argument was that the 15 day suspension was not progressive, not corrective, and not commensurate. Moreover, the Union argued that #36 the alleged offense (See Joint Exhibit No. 8)

#36. Any act or commission not otherwise set forth herein which constitutes a threat to the security of the institution, its staff, or inmates.

was vague and hence unfair. The facts indicated that the Grievant was an employee of 1 year 3 months at the time of the incident and that he had received no prior discipline.

The Arbitrator found that the Grievant had made a false report when he "secured" a fence alarm without visibly checking the site. This conduct did constitute a threat to the security of the institution. Moreover, the Grievant also violated a post order by wearing radio headphones while on duty. In mitigation, 1) the Grievant had no prior discipline, 2) the headphone offense was minor and but for the "alarm" offense, probably would have earned him only a verbal counseling.

The penalties listed after No. 36 on the grid ranged from a Written Reprimand to termination. The Arbitrator found that the imposition of a 15 day suspension was not commensurate with the offense nor progressive.

One element of the seven tests of just cause involves a look at mitigating circumstances. On one hand, the employee had no prior discipline and some evidence was adduced to indicate that his training was less than rigorous. Moreover, the apparent lack of on site post orders and vagaries of a changing job site presented some level of "explanation" for the Grievant's behavior. On the other hand, the evidence indicated that the Grievant failed to fully comprehend that his behavior constituted a "false" report or to

fully comprehend the limited nature of his discretion in a para-military organization.

Weighing the nature of the offense and even considering the Grievant's failures, the severity of the discipline clearly fails to be commensurate with the offense.

Award (as rendered from the bench)

Grievance denied in part.

Employee's suspension shall be reduced to ten (10) days, and he shall be made whole for the five (5) days.

February 14, 1989

Date


Rhonda R. Rivera
Arbitrator