EXPEDITED ARBITRATION PANEL

In the Matter of Arbitration between STATE OF OHIO (Department of Mental Health) and OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION	GRIEVANT: Daniel L. Baker GRIEVANCE NO.: MH-O-OCSEA-029-87 ND No.: 832 G 87-1382

BEFORE: NICHOLAS DUDA, JR., ARBITRATOR

APPEARANCES:

For the State of Ohio:
Karlin R. Dunlap
Labor Relations Officer
Office of Collective Bargaining
65 East State Street, 16th Floor
Columbus, Ohio 43215

For the Union:
Mr. Bob J. Rowland
Staff Representative
Ohio Civil Service Employees Association
1680 Watermark Drive
Columbus, Ohio 43215

Place of Hearing: Lima Oakwood Forensic Center

Date of Hearing: March 9, 1989

AWARD:

The Department has just cause to suspend Grievant. The grievance is denied.

Date of Award: March 10, 1989

Nicholas Duda, Jr., Arbitrator

ISSUE

Whether there was just cause to suspend Grievant for two days. If not, what remedy is appropriate.

FINDINGS OF FACTS

Grievant, an Accounting Clerk, had worked for the State since 1978. During that employment he received 20 counselings, warnings and/or suspensions prior to the March 18, 1987 incident which led to the suspension challenged in this case. The majority of that discipline concerned various forms of failure to maintain the work schedule. His last prior discipline was a verbal reprimand on 10/10/86 for "tardiness." The discipline before that was a 10 day suspension on 6/16/86 for "absent without leave."

On March 18, 1987 Grievant called in at 8:42 A.M. reporting that he would be late for his work shift which had begun at 8 A.M. He did not report until 9:45 A.M.

As an employee in a non-24 hour-a-day department Grievant was required to call in his absence "no later than one-half hour after [his] scheduled work shift begins." He failed that requirement. He also violated the duty "to be on duty from the beginning...of [his] scheduled...work shift". For violation of these two requirements he was suspended two days. At the time the suspension was issued, the Mental Health Department applied a Hospital Policy which provided for "progressive" discipline for "minor offenses" beginning with counseling and progressing through written reprimand to suspensions and removal. Under the policy, a major violation "is serious enough that it does not require prior corrective action."

EVALUATION

Grievant admits that he did not report off within the prescribed time and that he was almost two hours tardy. However he argues that he should only have been given a written reprimand. That claim assumes Grievant's misconduct constituted a second minor violation for which only a written reprimand was appropriate. Why was it only the "second violation"? Grievant believes that because his last prior violation had been punished by a "verbal reprimand— the maximum penalty for a first violation — the State was limited to giving a written reprimand, the next more severe discipline.

In the first place, at the time of Grievant's infraction AWOL was considered a major offense, which was combined with the minor tardiness offense. However, even if only the minor offense is considered, the State could issue a suspension because Grievant had 20 prior "violations".

A discipline record is not eliminated by less-than-maximum current discipline; the discipline record does not start out all over again just because only a verbal reprimand is issued. Grievant has not shown a basis under the Agreement or common sense to believe that his long extensive record of discipline was "cancelled" by issuance of the October 1986 verbal reprimand for absenteeism.

The Arbitrator has also considered another argument by Grievant to the effect that Grievant was not responsible for his horrendous discipline record. He says that much of his poor attendance record stemmed from his dislike for the work his prior job. He likes working his present job but he didn't like his first supervisor, so his attendance continued to be poor for a time after the job change. Mere statement of these explanations show the absence of any merit to the explanations. Perhaps Grievant's performance was effected by the

nature of the work and by his supervisor, but he is not thereby a "victim," whose misconduct must be ignored. In the final analysis Grievant has to accept responsibility for his misconduct.

AWARD

The Department has just cause to suspend Grievant. The grievance is denied.

Nicholas Duda, Jr., Arbitrator

EXPEDITED ARBITRATION PANEL

In the Matter of Arbitration between STATE OF OHIO (Department of Mental Health) and OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION	GRIEVANT: Donald Moneer GRIEVANCE NO.: 23-12-3-22-88-12-01-03 ND No.: 709

BEFORE: NICHOLAS DUDA, JR., ARBITRATOR

APPEARANCES:

For the State of Ohio:

Rick Mawhoor
Labor Relations Officer
3200 N. West St. Road
Lima, Ohio 45801

For the Union:

Mr. Bob J. Rowland
Staff Representative
Ohio Civil Service Employees
Association
1680 Watermark Drive
Columbus, Ohio 43215

Place of Hearing: Lima Oakwood Forensic Center

Date of Hearing: March 9, 1989

AWARD:

The grievance is sustained. The State is directed to expunge the March 5, 1988 suspension from Grievant's personnel record and convert it to a written reprimand for tardiness on December 31, 1987. The State is also directed to make Grievant whole for the two days he lost.

Date of Award: March 13, 1989

Nicholas Duda, Jr.

Nicholas Duda, Jr., Arbitrator

ISSUE

Whether the Company has shown just cause to suspend Grievant for two days? If not, what remedy is appropriate?

FINDINGS OF FACT

Grievant has been employed by the State for approximately fifteen years. Before the events involved in this case, his prior discipline included two reprimands for attendance violations, one on September 26, 1986 for AWOL and another on May 4, 1987 for tardiness.

On September 28, 1987 the Superintendent promulgated a new "Hospital Policy" on "Employee Absenteeism" for Oakwood. That policy gave five different definitions of "absent without leave", including "failure to report for work at the scheduled starting time". The policy also stated four different "incidents of absence without leave subject to corrective action". The document did not enumerate or explain "corrective action".

On October 5, 1987 Grievant signed a roster which stated that by "affixing signature beside your name you are acknowledging you have read" the following:

Name of Policy	Dated
Visiting	9-28-87
Patient Viewing of Deceased Member of Immediate Family	8-18-87
Confidentiality	9-9-87
Solicitation and distribution Activities by Employees and Non-Employees	9-28-87
Equal Employment Opportunity (EEO)	9-9-87
Sick Leave	9-28-87
Vacation Leave	9-28-87
Employee Absenteeism [This was submitted in Arbitration]	9-28-87
Sexual Harassment	9-28-87
Handicapped Parking	8-18-87
Access to OFC Premises by Staff Representatives of Recognized Labor Organizations	9-28-87

Several weeks later, on October 22, 1987, Grievant signed another roster form with the same "signature" caption concerning several other policies as follows:

Name of Policy	Dated
Affirmative Action	10-19-87
Sign In/Sign Out and Call In [This was not submitted in Arbitration]	10-19-87

Grievant's normal starting time is 6:00 A.M.

On December 15, 1987 Grievant was 45 minutes late for duty. His tardiness occurred when his truck slid off the road into a ditch as he drove to work.

On December 31, 1987 Grievant was forty minutes late for work because he had forgotten to set his alarm.

On January 19, 1988 Grievant called in at 6:28 A.M. saying he would be late. He reported at 7:00 A.M. His electric alarm had not "gone off" at the set time of about 5:00 A.M. because of a power failure during the night. [The State does not question the truthfulness of this reason.]

Grievant's shift supervisor made out a "Request for Corrective Action" citing the three incidents mentioned above. On January 22, 1988 his department head interviewed Grievant and made the following comments:

> Discussed the corrective action request with CO II [Grievant]. He stated that he was on the way to work on December 15, 1987 and slid into the ditch. He did not have access to a phone so could not call. Officer [Grievant] did not want a union representative during our discussion. He did not make any excuses for his absences for the other dates involved. I have found [Grievant] to be very honest when discussing problems where corrective action is a possibility. [underline supplied]

Grievant's written comment on the corrective action request was:

I purchased a new alarm clock and hope to solve this problem.

Grievant did not have any subsequent tardiness before or after the discipline imposed in connection with the above mentioned incidents.

Predisciplinary meetings and management review were held over the next six weeks. Grievant and his Union representative admitted that he had been late as mentioned above. On March 5, 1988 the Director suspended Grievant for two consecutive days citing

> ...on or about 12/31/87 you were forty (40) minutes absent without leave and on or about 1/1988 you were one (1) hour absent without leave. These are violations of Oakwood Forensic Center policies dealing with Sign-In/Sign-Out/Call-In, Absenteeism and Corrective Action.

Apparently the December 15, 1987 lateness was excused because his sliding off the road was regarded as an acceptable excuse.

EVALUATION

The Arbitrator has reviewed the facts and exhibits given to him. Some of the exhibits had been listed on the rosters signed by Grievant on October 5 and 22, 1987. In addition the Arbitrator was also given the Hospital's "Corrective Action" policy dated January 21, 1986.

Under the circumstances of this case the Arbitrator finds that the State has not shown just cause to suspend Grievant for two days. The reasons are as follows:

1. One of the requirements of just cause is that the employee be told in advance for non-heinous offenses the progressive discipline for each type of misconduct.

   There was no evidence of when or whether Grievant had ever read or been told about the "corrective action" policy. Furthermore the 1/21/86 disciplinary policy provides for only a progression to written reprimand

on the third violation.

2. It was unreasonable not to accept Grievant's reason for tardiness on January 19, 1988 in the absence of any question of the truth of the reason he gave for being tardy. Thus the only actionable matter was Grievant's forty minutes tardiness on December 31, 1987 which was admittedly due to his negligence in not setting the clock.

3. Even if the January 19, 1988 incident is not excused, the State treated it with the other tardiness in the same proceeding as one "violation" under the "Corrective Action" policy. Inasmuch as he had been disciplined only twice before for this type of infraction, this was his "third violation". The prescribed discipline for the third violation of the same type of misconduct is a "written reprimand."

4. At arbitration the State argued that Grievant's lateness was a "major offense" defined in the corrective action policy as

> offenses which affect safety and/or security of patients and/or staff; or disrupt the therapeutic environment of patients; or violate the Ohio Revised Code. The violation [on 1/19/88] is serious enough that it does not require corrective action.

As already pointed out there is no evidence that this policy was ever brought to Grievant's attention. Even if he had read the policy, it is not shown that tardiness is, under the circumstances of 1/19/88, a major offense; to so contend is unreasonable and arbitrary.

5. Substantially before the State determined discipline, Grievant took effective, corrective action about tardiness and attendance.

AWARD

The grievance is sustained. The State is directed to expunge the March 5, 1988 suspension from Grievant's personnel record and concert it to a written reprimand for tardiness on December 31, 1987. The State is also directed to make Grievant whole for the two days he lost.

Nicholas Duda, Jr., Arbitrator