

ARBITRATION HEARINGS

OHIO DEPARTMENT OF REHABILITATION
AND CORRECTION

(hereafter referred to as the Department)

and

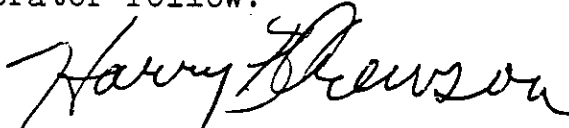
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION/AFSCME
(hereafter referred to as the Union)

Pursuant to Article 25.09 -- Expedited Arbitration Procedure --
of the Contract, four grievance cases were presented before the
Arbitrator on April 4, 1989, at the Southern Ohio Correctional
Facility, Lucasville, Ohio.

Thomas E. Durkee was the advocate for the Department and
Don Sargent was the advocate for the Union. Patrick A. Mayer
served with Mr. Sargent in one case.

In each case, the two parties presented stipulated facts,
opening statements, supporting documents and closing statements.
Both parties presented witnesses. Both advocates had ample
opportunities to question witnesses and grievants and to respond
to each other.

Brief summaries of the positions of both parties in the
four cases and decisions by the arbitrator follow.


Harry B. Crewson
Arbitrator

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FOR THE UNION

Don Sargent
Patrick A. Mayer
Michael L. Engard
Larry Troutman

For THE DEPARTMENT

Thomas E. Durkee
Barbara Deaton
Hobart W. Jenkins III
Donald R. Wiseman

Issue:

Was the three (3) days suspension of November 14, 1989, for just cause? If not, what should the remedy be?

Position of the Department

On August 19, 1988, authorities at the Chillicothe Correctional Institute conducted a shakedown in the butcher shop and contraband items were found in a knife cabinet. On September 3, 1988, another shakedown of the butcher shop was conducted and two knife boxes and a bone saw were found in the meat cutting cooler instead of in the knife cabinet.

As the Food Service Supervisor of the butcher shop, the grievant failed to follow written policies and this negligence constituted a threat to the security of the institution. It was determined that the grievant was in violation of Rules 6 c and 36 and he was suspended for three (3) days.

Position of the Union

Grievant had not received proper job description. He was not present at either shakedown of the butcher shop. One shakedown occurred late on a Saturday evening and many hours after the end of the grievant's work shift. As to security of the area in question, the fact is that a number of people have keys to the butcher shop and to the knife cabinet.

Larry Troutman, grievant

The Department did not prove there was just cause for discipline. The grievant had not received any prior discipline. Further, the three (3) days suspension was not compatible with progressive discipline.

Award

The three (3) days suspension imposed on the grievant, Larry Troutman, shall be reduced to a one (1) day suspension. The grievant shall be reimbursed for two (2) days of wages.

The suspension was imposed for just cause. It is difficult to understand how the grievant could remain unaware of contraband items in the knife cabinet.

At the same time, it seems unfair to hold the grievant liable for the security of his entire work area 24 hours a day, 7 days a week in view of the fact that a number of other employees have keys to the butcher shop as well as the knife cabinet.

A one (1) day suspension is both corrective and compatible with progressive discipline.


Harry B. Crewson
Arbitrator

Robert L. Williams, grievant

FOR THE UNION

Don Sargent
J. E. Kimbler

FOR THE DEPARTMENT

Thomas E. Durkee
Victor Crum
Austin Stout
David Dunn

Issue:

Was the one (1) day suspension of June 8, 1988, for just cause?
If not, what should the remedy be?

Position of the Department

On April 6, 1988, the grievant, Robert L. Williams, was on duty as a CO in J-corridor. At about 9:10 a.m., three inmates were to be moved from J-2 to K-8 PC overflow. Their cuffs were removed and they were placed between the J-Complex gates. As required by post orders, Officer Williams should have arranged for an escort for the movement of the inmates. He failed to do this and the inmates went to the designated location without escort.

The failure to carry out post orders was in violation of Rule 6 c and a one (1) day suspension was imposed on June 8, 1988. The grievance should be denied.

Position of the Union

Grievant did not have time to read the post orders that particular morning. It was a busy morning and he admits to an honest mistake. The one (1) day suspension was too harsh and not commensurate with the offense; rather it was solely for punishment. Management did not have just cause. "No harm came to the inmates in this instance and it was unlikely anything would have happened".

Robert L. Williams, grievant


Award

The position of the Department is sustained.

The grievance is denied in its entirety.

Although a degree of compassion for the grievant may result from an understanding of the facts of the case, the seriousness of the offense should not be minimized.

Not only was the safety of the three inmates put at risk; serious charges and potential litigation against the institution could have resulted.


Harry B. Crewson
Arbitrator

Grievance No. 27-25-(6/23/88)-038-01-03

Patrick Burnett, grievant

Grievance No. 27-25-(6/23/88)-039-01-03

David K. Shonkwiler, grievant

FOR THE UNION

Don Sargent, advocate for grievant Shonkwiler
Patrick A. Mayer, advocate for grievant Burnett
Patrick Burnett, grievant
David K. Shonkwiler, grievant

FOR THE DEPARTMENT

Thomas E. Durkee
Victor Crum
Austin Stout
Randolph Halcomb
Richard Taylor
Daryle Skaggs

Issue:

Was the two day suspension on June 20, 1988, for just cause?
If not, what should the remedy be?

Position of the Department

On April 18, 1988, the two grievants were preparing 23 inmates for transportation to a hospital and return. During this process, the two officers engaged in a heated exchange. Profanity, abusive language and threats were exchanged. The situation escalated to the point where the two grievants were relieved from the assignment and given other duties.

There is no real disagreement as to the facts of the incident. The dispute centers on the culpability of the two grievants. The grievance should be denied.

POSITION OF THE UNION

Although Mr. Sargent was the advocate for grievant Shonkwiler and Mr. Mayer was the advocate for grievant Burnett, the Union arguments were similar for both. The following points were expressed by one or both of the Union advocates.

Patrick Burnett, grievant
David K. Shonkwiler, grievant

Verbal bantering between employees is a common practice. Horseplay is normal and usually is not serious. Profanity and abusive language are not uncommon. The dispute was heated but not as serious as pictured by the Department.

Both grievants had good records and no prior discipline. The argument did not prevent the officers from continuing with their duties; there existed a time lag before they were relieved.


The Department did not prove just cause and the two (2) days suspensions were punitive, not corrective. The grievance in each case should be sustained.

Award

In both cases, the position of the Department is sustained. The grievance of Officer Patrick Burnett is denied in its entirety. The grievance of Officer David K. Shonkwiler is denied in its entirety.

The incident was very serious and constituted a threat to security of individuals and the institution. The evidence supported a just cause for discipline.

From the accumulation of evidence, both grievants were equally culpable and the two (2) days suspension for each was commensurate with the offense.


Harry B. Crewson
Arbitrator

Gregory R. Miller, grievant

FOR THE UNION

Don Sargent
Gregory R. Miller, grievant
Elmer D. Justice

FOR THE DEPARTMENT

Thomas E. Durkee
Victor Crum
Austin Stout
Jerry Tovine
Terry Morris, Warden

Issue:

Was the five (5) days suspension of December 1, 1987, for just cause? If not, what should the remedy be?

Position of the Department

On June 30, 1987, the grievant submitted a fraudulent travel expense voucher. About a month later he admitted to the Training Officer that he had not driven to Columbus; he said that he would reimburse the institution the amount, \$35.20, which he had received. He did make this payment in August.

On December 1, 1987, a five (5) days suspension was imposed on the grievant for violating Rule #18 in the Standards of Employee Conduct. Given the recommended penalty in these Standards - 5-10/R -, the issue is whether the penalty is commensurate discipline.

The grievance should be denied.

Position of the Union

The grievant is a 4½ year employee with no prior discipline. It is true that he signed a travel voucher for a mileage allowance that he was not entitled to. However, the inmate clerk in the Training Office had prepared a travel voucher and handed it to the grievant to sign. He did sign it but without "malicious intent". The grievant did not initiate the preparation of the travel voucher. Later when the

Gregory R. Miller, grievant

Training Officer talked with him, he admitted his mistake and he reimbursed the institution. At that point, the grievant thought the matter was closed.

The Union also contended that management violated Article 24.02 of the Contract because of the prolonged period of time before the suspension was imposed. Further, management did not follow the principle of progressive discipline.

Award:

The five (5) days suspension imposed on the grievant, Gregory R. Miller, shall be reduced to two (2) days suspension.

The grievant shall be reimbursed for three (3) days of wages.

The Department did show just cause for imposing a suspension on the grievant. The offense was serious and should not be treated lightly. According to the Department position, no prior discipline and the above-average performance of Mr. Miller as well as his repayment of \$35.20 were all mitigating factors in the decision to suspend.

However, there seem to be other extenuating circumstances. For example, the process of travel voucher preparation and signing, as explained at the hearing, seems ill-advised at best. A process with better controls might have the Training Officer order the inmate clerk to prepare travel vouchers for only those individuals entitled to them and, even though he may not witness the signing of vouchers, the Travel Officer should verify the signatures as soon as possible. The existing process appears to lend itself to unnecessary enticement or even entrapment.

Gregory R. Miller, grievant

Also, the written material and oral testimony, including that of the grievant, did not suggest any deliberate and planned attempt to defraud the institution.

Given the circumstances, the two (2) days suspension is compatible with the principles of corrective penalty and progressive discipline.

A handwritten signature in cursive script, reading "Harry E. Crewson". The signature is written in dark ink and is positioned above the printed name and title.

Harry E. Crewson
Arbitrator