

ARBITRATION AWARD SUMMARY

OCB Award Number: 285

OCB Grievance Number: 35-02-880810-0019 (Carrie Anthony)

Union: 1199

Department: DYS

Arbitrator: Jonas Katz

Management Advocate: John Patterson

Union Advocate: Robert Callahan

Arbitration Date: 4-19-89

Decision Date: 6-5-89

Decision: Modified

BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO

Carrie Anthony Grievance

and

OHIO HEALTH CARE
EMPLOYEES UNION,
DISTRICT 1199

OPINION AND AWARD

ISSUE

The issue in this case is whether or not grievant, Carrie Anthony, was discharged for just cause.

RELEVANT CONTRACT PROVISIONS

ARTICLE 8 - DISCIPLINE

§8.01 **Standard**

Disciplinary action may be imposed upon an employee only for just cause.

DYS GENERAL WORK RULES

I. NATURE AND PURPOSE

The purpose of this Directive is to establish written work rules for all employees of the Department of Youth Services.

...
iii. IMPLEMENTATION

...
B. Policy

1. The Department of Youth Services shall establish uniform, written work rules regarding subjects

which have general applicability for all employees regardless of their location or affiliation. The unauthorized activities contained herein shall not be considered as all inclusive, but are intended to be representative examples of activities which warrant immediate corrective action. This Directive shall supercede local directives concerning matters contained herein. It is expected that each Managing Officer shall maintain local rules regarding matters not covered by this Directive. Violation of this Directive and other Department of Youth Services directives as well as those directives developed by each Managing Officer shall constitute cause for corrective action, up to and including removal depending on the gravity of the situation.

...

IV. PROCEDURE

A. Employees participating in the following activities shall be considered to be in violation of the Department of Youth Services work rules:

...

14. Aiding in the escape of a youth, making an escape possible by neglect of duty or in any way aiding a youth under Department custody subsequent to an escape.

...

17. Corresponding with, or accepting correspondence from youth confined in the Department's custody without authorization of the appropriate deputy or Director. Contacting or visiting youth, except for official work purposes, who are still in custody of the Department without prior authorization from the Director or appropriate deputy director, even when such youths are not living in a Department institution at the time.

STATEMENT OF FACTS

The Ohio Department of Youth Services is a juvenile correction agency for the State of Ohio. Buckeye Youth Center is a facility run by the Department of Youth Services

father's custody. After a month of poor performance, Traylor found himself back in the Department of Youth Services. In August, 1987, Traylor had once again been assigned to the grievant at Buckeye Youth Service. During this second assignment, Traylor escaped from Buckeye. After his recapture, in an interview, Traylor claimed that the grievant had given him her telephone number after he had mentioned the possibility of escaping; and later, upon escaping, provided him a place to stay. Traylor, however, did state that the grievant had not helped him escape. To substantiate his claim, Traylor proceeded to describe the grievant's apartment in detail, gave the location of the apartment, and recited the grievant's telephone number, both of which are not listed in the telephone directory.

At this point it should be mentioned that the grievant maintained two homes, so to speak; one with the grievant's parents and a second "private" unlisted residence. The grievant explained that the second "private" residence was a place where she could go to write and "to do the things the grievant was good at". The second residence also had a pool for the summer months. The Employer had been informed only of the grievant's first residence. Traylor's claims were directed toward the "private" residence.

and houses 319 adolescent males. The Department handles youths who have been adjudicated as felons - not minor offenders. The typical child is 16 years old, been arrested seven or eight times, in many cases has committed at least one prior felony, and it is not uncommon for them to come from criminal families. In addition, a majority of the youth have a drug or alcohol abuse problem. The primary function at Buckeye is security. It is a holding and rehabilitation facility for youths to be transferred to a more civilian environment.

The grievant, Carrie Anthony, was employed as a social worker at the facility for approximately six to seven years and was responsible for a case load of approximately 40 youths. Her responsibilities included coordinating weekly team meetings with staff members at the institution regarding the youth's progress, providing progress reports to the parole officers and to the Judge, and letting the parole officers know when it was time for a youth to be released into the community so that that parole officer could make a placement.

In 1987 the grievant was assigned the case of a youth, Melvin Traylor. The grievant had previously handled Traylor's case in 1986 when he had been released to his

The grievant, although surprised by the semi-accurate description of her apartment, theorized that the youth pieced such information together from several different sources. The grievant explained that she had daily conversations with Traylor in which she had discussed her hobby of refinishing furniture from which it could have been deduced that her apartment contained antiques. On another occasion the grievant had shown Traylor a poster of New York City at work which Traylor claimed was hanging on a wall in her apartment (the Employer never substantiated what the apartment looked like). The grievant also claims that Traylor could have discovered the contents of her apartment because she had advertised several pieces of furniture for sale through a trade magazine. Traylor stated that the grievant had a dog. The grievant admitted to having a dog, however, she claimed that the dog was always at the parent's residence because no dogs were allowed at the "private" apartment. The grievant also stated that the dog was a "show" dog and that she had shown pictures to Traylor. Finally the grievant claimed that Traylor could have possibly taken her telephone number from her desk when she had not noticed.²

² Both parties agree as to the manipulative behavior of the youths at Buckeye.

The Employer also relied on testimony from the grievant's landlord that three black youths had been hanging around the apartment complex and had asked for the grievant saying that she was their cousin. It was never shown that Traylor was one of the youths.

The Employer, however, gave credence to the testimony of Traylor and subsequently informed the grievant that she was being dismissed for neglect of duty in that she had given a youth her telephone number in violation of work rules and in harboring the same youth when he went AWOL. The grievant subsequently applied for another job with the Ohio Department of Human Services. Her current salary is greater than that when she was working for the Department of Youth Services, although she has lost seniority status. The grievant is currently represented by the same collective bargaining representative, 1199 of the Ohio Health Care Employees Union, as she had been in her old position.

POSITIONS OF THE PARTIES

Employer's Position

The Employer claims that the evidence, namely Traylor's ability to describe the grievant's apartment, shows that the grievant did in fact harbor an escapee and that the

grievant had given Traylor her telephone number in violation of work rules. Therefore, the Employer had just cause for dismissal as provided in the collective bargaining agreement. Furthermore, the Employer claims that reinstatement of the grievant is not in the best interest of the grievant, or the institution, in that the grievant is exceptionally vulnerable to the manipulative ways of the juveniles in light of the facts herein which are well known at Buckeye Youth Center.

Union's Position

The Union claims that the Employer was not able to show by clear and irrefutable evidence that the grievant had in fact harbored Traylor while he was AWOL or that she had given him her telephone number. The Union, therefore, claims that the Employer violated the collective bargaining agreement for dismissal of the grievant without just cause pursuant to Section 8.01 of the collective bargaining agreement. The Union further claims that the youths are manipulative and try to "get at" the staff members by making false accusations and if permitted to succeed in this case, will only cause more problems for security in the future.

DISCUSSION

The question in this case is whether the grievant did in fact harbor Traylor. The Union does not contend that harboring an escapee would not justify her dismissal, but it does argue that the Employer has not shown that the grievant in fact harbor Traylor. The Employer relies on the statements made by Traylor and on his ability to describe the grievant's apartment, to give the location of the apartment, and to recite the grievant's telephone number. The grievant responded by stating that Traylor could have obtained such information by other means, mainly by her discussions with him and through deviant means such as taking the telephone number from the grievant's desk. The grievant points out that the description of the apartment was not totally accurate. Furthermore, the Employer never verified what the apartment looked like.

The Employer also relies on the testimony of the grievant's landlord. The landlord stated that she had seen three black youths around the apartment complex and that they had asked for the grievant. However, no evidence was shown that any of these youths were Traylor. In view of all of the foregoing, it is the Arbitrator's opinion that the State has not established that grievant harbored

Traylor or assisted him by giving him her phone number in anticipation of his escape.

The question now turns to what the appropriate remedy should be. As stated, the Employer has not met its burden of proof in showing that the grievant had in fact harbored an escapee and no such finding is being made here. However, it could be reasonably concluded that the grievant had a closer than normal relationship with Traylor. Traylor knew the grievants' private unlisted phone number and the address of the private residence, which information grievant's fellow social worker did not have. He knew many accurate facts about her apartment, whether obtained from personal knowledge or by assumption. While these facts may not be dispositive of just cause, it is a factor to be considered in determining the question of reinstatement. In this respect, the aforementioned facts demonstrate grievant's closeness to an inmate to an unusual and unacceptable degree. Further, these facts, and all other accusations by Traylor against the grievant, are undoubtedly well known to the youths at the Buckeye Youth Center through its well known in-mate grapevine. This leads the Arbitrator to conclude that it would not be in the best interests of the grievant, the institution or the youths to have

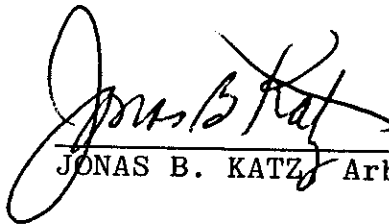
the grievant reinstated to her former position. She would be extremely vulnerable to attempted blackmail and other accusations based upon what was perceived to be her role with Traylor. Clearly her credibility would not be fully accepted by her fellow social workers. All of this would hamper the grievant in the performance of her responsibilities at the institution in her former position and would create substantial problems of discipline. On the other hand, grievant is currently employed by the State of Ohio, is earning more income in her present position, and is not now in a position of vulnerability.

For the foregoing reasons and in the best interests of all concerned, I will not reinstate grievant to her former position. However, because the discharge was not for just cause, the grievant is entitled to back pay from the time of her discharge until the time she commenced employment at her current position. The grievant has also lost valuable seniority time for the purposes of vacation pay. Therefore, the grievant must be compensated in one form or another for vacation purposes, either by crediting her past seven years of service time for the purposes of Article 10 of the agreement or by a yearly cash conversion by the Department of Youth Services of the difference between

the vacation pay the grievant would have earned and that which the grievant will earn in her present position.

AWARD

The grievance is sustained in part and denied in part. The Employer is ordered to pay back pay from the date the grievant was discharged until the grievant began work in her current position; however, the grievant will not be reinstated to her former position. The Employer will also make arrangements either for the transfer of the grievant's seniority for vacation purposes pursuant to Article 10 of the collective bargaining agreement or for the cash conversion of the difference between the vacation pay that the grievant would have earned and that which the grievant will earn in her current position. Grievant's discharge from the Ohio Department of Youth Services is to be expunged from her record.



JONAS B. KATZ Arbitrator

Issued at Cincinnati, Hamilton County,
Ohio, this 5th day of June, 1989.