

ARBITRATION AWARD SUMMARY

OCB Award Number: 304

OCB Grievance Number: 27-24-890511-0029-06-10

Union: OEA/SCOPE

Jerry Grim

Department: R & C

Arbitrator: Andrew LOVE

Management Advocate: Ted DURKEE

Union Advocate: Henry STEVENS

Arbitration Date: 6-8-89

Decision Date: 7-21-89

Decision: Granted

ARBITRATION

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

and

OEA/SCOPE (Grievance of Jerry Grim)

FOR DRC: Thomas E. Burkee
FOR GRIEVANT: Henry Stevens
ARBITRATOR: Andrew J. Love
GRIEVANCE NO.: 27-24-(5/11/89)-29-06-10

DECISION AND AWARD

The issues presented in this proceeding on June 8, 1989, are: (1A) whether the May 12, 1989, one day suspension was for just cause; (1B) whether the suspension is in violation of the contract; and (2) if the suspension was for just cause, or if the suspension was in violation of the contract between the State of Ohio and OEA, what should the remedy be?

A number of exhibits were admitted into evidence, either by stipulation or by subsequent admission by this Arbitrator.

The parties stipulated to the following facts:

1. Grievant was appointed January 20, 1987, as a Librarian I at the Southeastern Correctional Institution (hereinafter "SCI").
2. Grievant received a copy of the Standards of Employee Conduct on October 28, 1989.
3. Inmate Paul Smith was sentenced to serve two years for Forgery 3 counts and Breaking and Entering.
4. The Grievance is properly before the Arbitrator.

The facts are as follows: The grievant was suspended for one day for violating Rule 6C of the Standards of Employee Conduct, which states:

"Failure to follow post orders,
administrative regulations and/or written
policies or procedures."

The grievant, a Librarian I, recently obtained through the aegis of SCI a computer for the library. The purpose was to assist the library staff in organizing and locating materials for educational purposes. The grievant availed himself of the services of an inmate clerk by the name of Paul Smith. During the supervision of this inmate by the grievant, the inmate surreptitiously began to collect data from various sources within the institution on ten blank computer disks which had been previously obtained by the grievant himself. These disks were not authorized by the supervisory staff at SCI.

Brad Hedges, a psychologist and chairman of computer security at SCI, testified that he was present when the computer in question was confiscated by SCI staff. He found pirated software not associated with this particular computer. He also testified that he determined that there was copyright tampering, preparation for a modem to connect into other computers inside and outside SCI; that the grievant reported only one-half as much storage capacity of which the computer actually could store; that hidden files were contained in a software program intended to in fact hide files; and that the inmate in question actually left his name in the programs.

Margaret Kearns, a Teaching Supervisor at SCI testified that the grievant is a librarian and, therefore, part of the

education department at SCI. She also supervises the grievant. Additionally, she took part in the investigation of the grievant in connection with the computer incident. She stated that the grievant never advised her that an inmate would be programing for the newly obtained computer in the library. Furthermore, the witness stated that the grievant never advised her that he would obtain the floppy disks for the computer. She testified that inmates are only allowed use of the computer for remediation purposes. This, she stated was the essence of a memorandum supplied by the director of SCI, which referred to the use of any computers by inmates to be for educational purposes only.

On cross-examination, the witness was shown a memo prepared by the grievant which indicated that the grievant intended to allow inmates to use the computer in the library. Nevertheless, the witness stated that she advised the grievant that inmates would only be allowed to use the library computer for remediation purposes only.

The grievant testified that he did not become aware of two memos indicating the use of any computers (not as yet obtained at that time for library use) by "unauthorized personnel". He stated that, when the computer arrived, he issued a memo to Margaret Kearns identifying how the computer would be used. He acknowledged that Ms. Kearns told him that, prior to his memo to her, his use of the computer was not proper in light of the directors' memos. He stated that he obtained the software for

this computer because he had not received any software from an order, if any, from SCI. He stated that it was his intention for the computer to be used by an approved inmate or inmates for general library functions and for no other. He further stated that he was not provided any guidance in respect to parameters of the computer use by inmates.


As to the issues presented, the grievant states that Article 13, Section 13.03 of the contract between the State of Ohio and OEA had been violated inasmuch as contemplated disciplinary action was not stated by way of written notice in the pre-suspension notice. This Arbitrator disagrees. The grievant received a notice that he was in violation of the Employee Standards of Conduct Rule 6c. The grievant was aware of this rule. The rule itself identifies the range of penalty for which an individual may be disciplined. The mere fact of the notice not identifying the range of penalty does not affect the contemplated disciplinary action inasmuch as the rule violation supplies its own reference.

However, this Arbitrator agrees with the grievant that there has been a violation of Article 14, Section 14.01 of the contract. The pertinent part of that section states as follows:

"Work rules shall not conflict with any provision of the Agreement. The Association will be furnished with a copy of the work rules in advance of their effective date."

Evidence had been received at this hearing that SCI had never submitted either the directors' memos or the Employee Standards of Conduct to OEA for review prior to the effective date of such rules. It should be noted that the contract between the State of Ohio and OEA took effect in 1986. The memoranda in question and the Employee Standards of Conduct were effective after the date of the contract. It was the duty of SCI in particular, and the Ohio Department of Rehabilitation and Correction in general, to supply to OEA those documents. There was no testimony indicated during this hearing that these work rules were ever submitted to OEA. In fact, testimony from the president of SCOPE was uncontroverted that no such documents had ever been submitted to this effect.

Accordingly, this Arbitrator finds that there has been a violation of Article 14 of the contract between the State of Ohio and OEA. Therefore, the grievance shall be UPHELD.


Arbitrator