

#325

ARBITRATION

Marion Correctional Institution
and
SCOPE/OEA (Grievance of Raymond Perdue)

FOR MCI: Thomas Durkee

FOR GRIEVANT: Henry Stevens

ARBITRATOR: Andrew J. Love

CASE NO.: 27-16-(12-19-88)-325-06-10

DECISION AND AWARD

The issues presented in the proceeding on July 12, 1989, can be distilled into the following:

- (1) Whether the five-day suspension of the Grievant imposed on January 9, 1989 was for "just cause"; and
- (2) If not, what should the remedy be.

On December 14, 1988, the Grievant, a vocational welding teacher at MCI, received a 5-day suspension for violation of the Standards of Employee Conduct Rules to wit:

6C - Failure to follow post orders, administrative regulation, and/or written policies and procedures.

21 - Willfully falsifying, altering, or removing any official documents, arising out of employment with the Department of Rehabilitation and Correction.

23 - Failure to immediately report a violation of and work rule, law or regulation that could jeopardize the security of the workplace or affect job performance.

26 - Loss of control of any instrument that could result in a breach of security and/or jeopardize the safety of others, e.g., to include, but not limited to Class A tools, keys, communication devices, etc.

A Grievance was timely filed and all matters guiding the steps requirements were met by MCI.

Sgt. Thomas Morehart, a Correctional Supervisor I, testified that his duties include enforcing tool security and auditing tool control throughout MCI. He testified that he knows the Grievant through tool control and has met with him several times from April, 1988 to the present. He further testified that the Grievant had seen and was aware of Sgt. Morehart's tool control policy.

On October 7, 1988, Sgt. Morehart was given a screwdriver by Major Vogle of MCI. This screwdriver was retrieved in an inmate shower area. Sgt. Morehart testified that this particular screwdriver, which had been sharpened, contained the initials "WS" engraved in the handle. Furthermore, the screwdriver was color-coded blue. This screwdriver, by virtue of the initials and the color code, is unique to the welding school of MCI, which is the location where the Grievant teaches inmates.

Thereafter, Sgt. Morehart went to the Grievant and asked if he was missing a screwdriver. The Grievant stated "no" to him. The Grievant's inventory showed four screwdrivers missing, that his "shadowboard" (a board on which tools are placed) nevertheless had screwdrivers on them. According to Sgt. Morehart's inventory, such a list showed that the Grievant had four screwdrivers. However, the Grievant's own inventory list did not show that he had four screwdrivers. The Grievant advised this witness that he obtained the tools from the "crib" (a bin where various tools are kept). The Grievant stated to Sgt. Morehart that the four screwdrivers not listed on the grievant's inventory were broken, and that the

Grievant destroyed them.

Sgt. Morehart stated that the purpose of the tool control policy was to maintain accountability for all tools and to prevent inmates from getting to use as weapons or tools to escape the institution. He further stated that the shop supervisor must maintain accountability. If the welding school is missing tools then the supervisor must notify Sgt. Morehart or Major Vogle. At that point, the shop is shut down and a shakedown of all inmates is undertaken.

Sgt. Morehart stated that the screwdriver, which was obtained in the inmates' shower area is a Class A tool and can be used to do bodily harm.

Sgt. Morehart testified that any tool removed from inventory (either by turn-in or lost) must be stated in a report. Such a report goes to Sgt. Morehart. In this instance, the Grievant did not report a turn-in or lost items. He further stated that inmates in the shop must turn in tools at lunch and at the end of the inmates' workday. Unmarked tools or extra tools not in inventory are not permitted.

Sgt. Morehart testified that he had brought to the Grievant's attention on previous occasions that the Grievant should not leave the shop unattended, because Class A tools, such as the screwdriver recovered, would be available to unsupervised inmates.

Sgt. Morehart testified that the Grievant had yearly training in matters of security, tool control and contraband.

Ronald E. Harbert, a Vocational Facilitator, testified that he supervises ten vocational teachers. He stated that he is

familiar with the Grievant as he is the Grievant's facilitator. He further stated that he followed up on the missing screwdrivers. On approximately October 6, 1988, Sgt. Morehart came to Mr. Harbert regarding the screwdriver found in the inmate dormitory. Both Mr. Harbert and Sgt. Morehart talked with the Grievant regarding four missing tools from the Grievant's tool inventory, the Grievant told Mr. Harbert that he got replacement tools from a cabinet. The originals were cut up and discarded, according to the Grievant. Mr. Harbert reported this information to his supervisor. He stated that the Grievant never turned in a lost tool or turn-in tool report.

Lowell Baxter, an instructor in the vocation masonry school, stated that tools in his department at MCI are also pastel blue in color. He testified that he found an old rusty, homemade hammer in May of 1989 and turned it in to tool control. As to a tool control policy, this witness testified that he had not seen this policy. He further stated that his training did not include discussion on tool security. He was aware, however, that broken or damaged tools were to be turned in to tool control. He further acknowledged that he attended an in-service training in 1988. When advised that this particular in-service included security issues, this witness recalled receiving a manual regarding these matters and may have seen the tool control book.

The Grievant testified that he did not lose any tools and denied any violations. He stated that he had received the tool control policy in January, 1988. However, no one ever discussed this policy with him.

The Grievant acknowledged that he received a written reprimand prior to this disciplinary action for lost side cutters. The side cutters were found the next day.

The Grievant stated that he received boxes of tools when he started in his position in 1985.

As to the statements that he made to Sgt. Morehart and Mr. Harbert, the Grievant stated that he was acting "facetiously" when he advised them that he ground up some tools. He testified that he did not have screwdrivers ground up. He further acknowledged that he advised Sgt. Morehart that he took screwdrivers from the crib to replace those missing screwdrivers from the shadowboard. The Grievant could not explain why he showed four screwdrivers missing (including the one which was retrieved in the inmates' shower) on his inventory list.

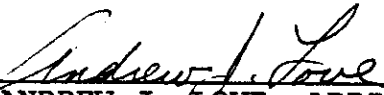
As to the determination as to whether "just cause" existed for the imposition of disciplinary action against the Grievant, this Arbitrator finds that MCI has met its burden in respect to Rules 6C, 23, and 26 of the Standards of Employee Conduct Rules. This Arbitrator believes that the grievant was clearly aware of tool control and security policy; that the Grievant was further aware of the need to take all security measures to keep items such as Class A tools away from inmates when not in use in the vocational school. The screwdriver retrieved in the inmates' dormitory area is an item that could be used either to escape from MCI and/or jeopardize the safety of MCI personnel or inmates.

Furthermore, the Grievant clearly failed to immediately report a violation of security. The recovered screwdriver was both pastel

blue in color and initialed "WS" which identifies the tool's location as the vocation school. The Grievant never reported this tool missing or three other tools missing. This information became known only when Sgt. Morehart and Mr. Harbert questioned the Grievant after the tool was found. Taking all of the evidence in its entirety, this arbitrator finds that "just cause" for disciplinary action has been established.

Turning to the five-day suspension, this Arbitrator further finds that the action taken by MCI in this instance is appropriate. The Grievant had received a prior written reprimand regarding reporting lost tools. He, again, could not account for missing tools, especially the retrieved screwdriver, either through inadvertence or negligence. Nevertheless, because of the potential harm that could befall personnel or inmates if this tool is in the wrong hands, and because the Grievant was aware of the need for security over such tools, the imposition of a five-day suspension by MCI was commensurate with the offense. Moreover, this Arbitrator finds that the disciplinary action is progressive. As stated in Section 13.04 of the contract, the system of progressive discipline will be ordinarily followed. This is not an ordinary matter, as stated above.

ACCORDINGLY, the grievance is DENIED.



ANDREW J. LOVE, ARBITRATOR

October 12, 1989