

#333

In the Matter of the  
Arbitration Between

OCSEA, Local 11  
AFSCME, AFL-CIO

Union

and

Ohio Department of  
Transportation

Employer.

Grievance 60-87-D8 ODOT

Grievant (Morris Alexander)

Hearing Date: October 13, 1989

Opinion: Bench  
(Written 10/23/89)

For the Union: Patrick Mayer, OCSEA Staff Representative

For the Employer: Rodney Sampson OCB  
Wiatt McDowell, OCB

Present in addition to the above named advocates and the  
Grievant Morris Alexander, were Jonathan Lee Jones, witness,  
George L. Miller, ODOT-Dist. 8, witness, Charles W. Hatfield,  
PSU.

Preliminary Matters

The Arbitrator asked permission to record the hearing for the  
sole purpose of refreshing her recollection and on condition that  
the tapes would be destroyed on the date the opinion is rendered.  
Both the Union and the Employer granted their permission. The  
Arbitrator asked permission to submit the award for possible

publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

### Issue

Was the Grievant, Morris Alexander's, 10-Day Suspension for just cause? If not, what should be the remedy?

### Joint Exhibits

1. The Contract between The State of Ohio and The Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, 1986-1989.
2. The Grievance Trail (7 pages).
3. The Discipline Trail (5 pages).
4. ODOT Directive No. A-301 dated May 28, 1986.
5. PSU Formal Complaint dated October 16, 1986 is stipulated to and made evidence for any value determined by Arbitrator Rivera.
6. Employee Performance Evaluation dated 8-17-87.
7. Roadside Rest Inspection Form by Douglas Ziemer
8. IOC from R.L. Zook to N.H. Wailzee and W.H. Feir
9. Position description - in effect at time of Grievance.

### Stipulated Facts

The Grievant, Morris Alexander was hired by The Ohio Department of Transportation, District 8, on July 2, 1984.

At the time the Employer disciplined the Grievant, he was classified as a Maintenance Repair Worker 2.

During the period of time encompassing the events which resulted in discipline, the Grievant was regularly assigned to work at the rest area on Interstate Route 75 near Lebanon, Ohio.

The Grievant, in performing his regular work tasks, regularly interfaces with contract personnel from an agency known as Production Services Unlimited (PSU).

The employees from PSU are functionally handicapped employable persons.

The services from PSU resulted from a contract between ODOT and The Ohio Industries for the Handicapped, with PSU being a sub-contractor, for approximately eight years.

#### Relevant Contract Provisions

##### § 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action.

##### § 24.05 - Imposition of Discipline

The Agency Head or, in the absence of the Agency Head, the Acting Agency Head shall make a final decision on the recommended disciplinary action as soon as reasonably possible but no more than forty-five (45) days after the conclusion of the pre-discipline meeting.

#### Bench Opinion

At the close of the Employer's case, the Arbitrator found for the Union and sustained the Grievance on two grounds:

1. § 24.05 of the contract was violated when discipline was not rendered with the contractually mandated 45 days.

2. § 24.01 places the burden on the employer to show "just cause." The Employer failed to meet that burden.<sup>1</sup>

Grievance Sustained.

October 25, 1989

Date

Rhonda R. Rivera

Rhonda R. Rivera

Arbitrator

1. The Arbitrator notes that the long period of time between the event in question and the hearing caused considerable difficulties for both Union and Employer. The main Employer witness had died and two other witnesses were out of state. The memory of the other two witnesses were shaky at best. Even the Grievant had difficulty recalling facts. The Arbitrator found both the Employer's main witness and the Grievant truthful and forthright. Whatever may be the truth of these alleged events, remains the secret of a higher authority.
2. The Arbitrator commends ODOT for the PSU program; however, a concomittant responsibility is human relations training for all affected ODOT employees, including the Grievant.