

ARBITRATION

Ohio Department of Transportation
and
OCSEA/AFSCME (Grievance of Carl Blair)

For ODOT: Rodney Sampson
For GRIEVANT: Robert Goheen
ARBITRATOR: Andrew J. Love
CASE NO: 31-03 (890710) 0055-01-06

DECISION AND AWARD

This proceeding was heard on December 4, 1989 on the issue of arbitrability. Essentially, the Grievant, a highway worker at the Lorain County Facility of the Ohio Department of Transportation (hereinafter "ODOT"), was cited for violating Directive A-301, Section 15, to wit: unexcused tardiness.

On May 11, 1989, the Grievant was presented a notice of a predisciplinary hearing. He then signed a waiver of his right to attend this hearing, and he stated to Art Weber, an administrator at ODOT, "I'll take my punishment."

A second notice for a second prediciplinary hearing was received by the Grievant. Again, the Grievant signed a waiver of his rights to this hearing and, further, in writing, accepted the proposed action by ODOT.

Based on the evidence presented at this hearing, it is clear that the Grievant knowingly, intelligently, and voluntarily waived his procedural due process right to a prediciplinary hearing and agreed to accept the proposed disciplinary action. Grievant's efforts to grieve the disciplinary action taken by ODOT is outside the scope of the contract between the State of Ohio and

OCSEA/AFSCME.

Accordingly, this arbitrator finds that this grievance is not arbitrable, and the grievance is denied.

January 5, 1990
DATE

Andrew J. Love
ARBITRATOR

ARBITRATION

Ohio Department of Transportation
and
OCSEA/AFSCME (Grievance of Samuel Yelic, II)

For ODOT: John Thompson
For GRIEVANT: John Hall
ARBITRATOR: Andrew J. Love
CASE NO: 31-03 (1-9-89) -01-01-06

DECISION AND AWARD

Issues:

The issues presented in the proceeding on December 4, 1989, can be identified as follows:

- (1) Whether the three-day suspension of the Grievant imposed on January 10, 11, and 12, 1989 was for "just cause";
- (2) Whether Management violated Articles 24.02, 24.04, and 24.05 of the contract between the State of Ohio and the Union; and
- (3) If "just cause" is found, what should the remedy for discipline be.

Statement of the Facts:

On July 26 and July 27, 1988, the Grievant, an Equipment Operator I with ODOT, caused to write six or seven names with sealant on Interstate 271 in an area near Medina, Ohio. He wrote these names with a "spray bar," an instrument used to spray sealant in areas where cracking occurs on the roadway. When confronted by his supervisor, the Grievant admitted to him that he was responsible for the defacing of the roadway. Dana Moore, who was

the Grievant's supervisor, administered a verbal reprimand to the Grievant for horseplay, a violation of ODOT's administrative rules regarding employee conduct. Mr. Moore reprimanded the Grievant in front of the work crew and apparently failed to make a note of said disciplinary action in the Grievant's file. Mr. Moore, however, did state to his superior, Matt Blankenship, that he did issue a verbal reprimand to the grievant and "took care of it."

It should be noted that Mr. Blankenship observed the names written on the pavement with the sealant in October, 1988, approximately three months after the Grievant had defaced the roadway. Mr. Blankenship discussed the matter with Malcolm Terrell, Maintenance Engineer for ODOT, at that time. Mr. Terrell stated that ODOT took action against the Grievant for insubordination, horseplay, and deliberate destruction or damage of state property. Subsequently, a three-day suspension was ordered in January, 1989.

Dennis Hay, district maintenance superintendent for ODOT, testified that he witnessed the writings on I-271 by means of a spray bar. He stated that the cost of removal of the names would be quite expensive. He stated that the sealant can only be burned off or ground off. Burning off the sealant would not be financially practical, because the heat required for burning the sealant would break down the asphalt below the surface of the roadway. The other alternative would be to grind the sealant off; however, the person who would be hired for such work would charge at a rate of \$395.00 an hour. Also, the pavement would have to be replaced. This would entail additional expense to ODOT.

Arguments of the Parties:

ODOT argues that the actions by the Grievant were such that property was damaged, because the removal of the defacement would incur great financial loss to the State of Ohio. Furthermore, ODOT argues that the verbal reprimand imposed by the Grievant's supervisor in July, 1988 was invalid because no evidence of discipline took place until ODOT management began its own investigation process in October, 1988.

The Grievant argues that the actions taken by ODOT constitute "double jeopardy" inasmuch as the Grievant received a verbal reprimand for the same offense. He argues that it is not his fault that his supervisor, who had the authority to impose disciplinary action, failed to include such a notation in his file. Furthermore, the Grievant argues that, even if the verbal reprimand was not determined to have occurred, ODOT failed to timely file and process its notification to the Grievant of violations and, further, proposed disciplinary action.

Decision:

This arbitrator is persuaded from the evidence adduced that the Grievant was, in fact, disciplined in July, 1988 for horseplay. At that time, the Grievant was given a verbal reprimand. It is this Arbitrator's view that the subsequent action taken by ODOT to bring charges against the grievant for the same offense on or about October, 1988, constitutes "double jeopardy" in the sense that the Grievant has already been disciplined for the same offense. It is not the responsibility or the fault of the Grievant that his

supervisor, for whatever reason, failed to document this verbal reprimand in the Grievant's file. The Grievant was aware of the disciplinary action taken against him on or about July 27, 1988. Moreover, administrative personnel for ODOT were advised by Dana Moore, the Grievant's supervisor that the Grievant was administered a verbal reprimand. Accordingly, since this arbitrator finds in favor of the Grievant, it is unnecessary to turn to the issue of contract violations.

The grievance is hereby granted, and the Grievant shall be reimbursed for the loss of pay as a result of the three day suspension.

January 5, 1990
DATE

Andrew J. Love
ARBITRATOR