

IN THE MATTER OF ARBITRATION  
UNDER THE 1986-89 CONTRACT

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Between:

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State of Ohio  
Department of Transportation

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Grievance No. 31-02(04/12/89)  
19-01-06

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THE EMPLOYER

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-and-

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The Ohio Civil Service  
Employees Association,  
Local No. 11, AFSCME,  
AFL-CIO

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Grievant: Troy Huston

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THE UNION

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Before: JAMES M. KLEIN, ARBITRATOR

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OPINION AND AWARD:

March 3, 1990

## CASE DATA

## SUBJECT

Two day suspension for insubordination, leaving work area without permission of supervisor and misuse of state vehicle.

(personal use)

## APPEARANCES

### For The Union:

Lois Haynes, Staff Representative, OCSEA, presenting the case

Larry Bockbrader, Local Union Steward

Troy Huston, Highway Worker 2, Grievant

Leon Coleman, Highway Worker 2, Witness

### For The Employer:

Rebecca Ferguson, Representative

John Earl, Superintendent, ODOT

John Daniel, Highway Worker Supervisor

## THE FACTS

Grievant has been employed as a highway worker by the Ohio Department of Employment Services since June 1, 1971. On January 26, 1989, at approximately 11:25 a.m., grievant was observed by the District Deputy Director leaving a shopping center at the time grievant was driving a state truck. The Employer contends that grievant failed to radio out-of-service when he "drove to the shopping center." At the hearing, grievant testified that at the time in question he was looking for a restroom and he admitted that

he failed to call in and inform the Employer that he was going out-of-service.

On February 6, 1989, while driving a state truck, grievant was observed by John Daniel, grievant's supervisor, on a side street which was off the grievant's assigned route. At the hearing, grievant testified that he left his assigned route to avoid an accident that had occurred on the route. Mr. Daniel testified that he saw no accident at that location. There was no record of the grievant's reporting the accident to the dispatcher or reporting that he was altering his assigned route.

The third incident giving rise to this disciplinary action occurred on February 23, 1989. The Employer contends that the grievant failed to properly perform his assigned duties on the afternoon of that day grievant and two others were assigned to pick up litter from the median of I-475 northbound of Airport Highway. Grievant's truck was observed by John Daniel and John Earl proceeding north on I-475 passing by pieces of litter on the median. Grievant's truck was flagged down and grievant was told to return to the site and pickup the litter. Late that afternoon, Daniel's returned to the site and observed that there was still a good amount of litter on the median. At the hearing grievant testified that the litter was frozen to the ground and could not be removed. The record also reflects that it was 14°F that day.

#### ISSUE

Did the Employer suspend Mr. Troy Huston, for a period of two (2) days, for just cause? If not, what shall the remedy be?

## EVALUATION

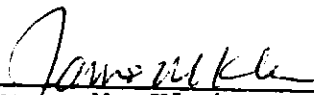
Grievant admits that he failed to call in on January 26, 1989, when he went out-of-service to find a restroom. He also admits making a detour from his assigned route on February 6, 1989, but states that he did this to avoid an accident. With regards to the February 23, 1989 incident, grievant said he passed the litter on the highway because he was on the way to locate a bathroom and the litter was frozen and could not be picked up.

After reviewing the evidence admitted at the grievance hearing which includes the grievant's prior verbal warning of 6-14-86 (failure to follow written policies by sitting under an overhead on the freeway) and a written reprimand of 12-12-88 (failure to pickup litter on I-475 and US 23) the arbitrator finds that the two day suspension is commensurate with the grievant's discipline. There is no question that the grievant was in violation of the rules in not calling in his going out-of-service on January 26, 1989, and if this continues, he will be subject to more discipline. There also is no question that the grievant did detour from his assigned route on February 6, 1989, which also constitutes a violation of the Employer's rules. The grievant was unable to produce any evidence (e.g. Police Accident Report) to rebut the supervisor's statements that they saw no accident at the location in question. With regard to the February 23, 1989, incident the arbitrator finds that while the grievant was unable to pickup the frozen litter, he should have called this in to the dispatcher and asked for a new assignment or

assistance. Under the circumstances presented there is no basis for finding that a two day suspension is unreasonable or excessive.

**AWARD**

There was just cause for the two day suspension. The grievance is denied.

  
James M. Klein  
Arbitrator

ARBITRATION  
BENCH DECISION AND AWARD

Arbitrator: James M. Klein

State of Ohio

Grievance No. 11-08-(38-05-09)-0009-01-09

Department O.B.E.S.

Grievant Helen Gonyer

Union OCSEA Local 11

Date of Hearing 8-28-90

Issue(s): Whether the grievant was suspended for three days without  
just cause, and if so what should be the remedy?

Appearances:

For the Employer: (Advocate) Egdillo J. Morales, Janice L. Viau

For the Union: (Advocate) Lois Haynes

AWARD: See attached.

Issued at Tolaco, OH

James M. Klein  
Arbitrator's Signature

The grievant, the secretary to the Office Manager of the Bowling Green OBES office, received a three day suspension for insubordination toward the Manager by refusing to follow a direct order, raising her voice and swearing at the Manager, and reporting to the police a threat of bodily harm from the Manager which never existed. After reviewing the evidence, the arbitrator finds that the grievance is denied and that the three day suspension stands. The record supports a finding that the grievant's conduct toward the Manager was inappropriate and constituted a violation of the Employer's rules.