

In the Matter of the
Arbitration Between

OCSEA, Local 11
AFSCME, AFL-CIO

Union

and

Ohio Department of Mental
Health

Employer.

Grievance 23-12
(89-06-01) 0109-01-03
(6 day suspension)

Grievant (Melvin Ward)

Hearing Date: February 20, 1990

Award Date: March 28, 1990

For the Union: Bob J. Rowland

For the Employer: George R. Nash

In addition to the advocates and the Grievant, the following persons were present at the hearing: David Slone, Chief Steward (witness), Rick Mawhorr, LRO-ODMH (witness), Hope E. Craig, PNSII (witness), Alice M. Knofla, RN (witness).

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.

Joint Exhibits

1. Union Contract
2. Discipline Trail
 - A) Request for Corrective Action dated 10/20/88.
 - B) Request for Corrective Action dated 11/8/88.
 - C) Notice of Pre-Disciplinary Conference dated 11/28/88.
 - D) Recommendation Notice to the Director dated 12/20/88.
 - E) Director's Order of Removal dated 1/2/89.
 - F) Employee Assistance Program Participation Agreement dated 1/25/89.
 - G) Employee Assistance Contract Compliance dated 5/1/89.
 - H) Recommendation of Modification to Mr. Ward dated 5/5/89.
 - I) Recommendation to Director for Modification dated 5/10/89.
 - J) Modification of Removal to Six (6) Day Suspension by Director 5/10/89.
 - K) Notification of Dates of Suspension dated 5/22/89.

- L) Prior Record of Discipline
- 3. Grievance Trail
 - A) Grievance Form dated 5/29/89
(23-12-890601-0109-01-03)
 - B) Step 3 Request dated 6/2/89.
 - C) Step 3 Response dated 7/17/89.
 - D) Step 4 Response dated 8/1/89.
 - E) Request for Arbitration dated 8/8/89.
- 4. Work Rules
 - A) Sign In/Sign Out and Call-In dated 10/19/87.
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 - E) Corrective Action dated 10/19/87.
 - F) Corrective Action dated 7/19/88.
 - G) Sign In/Sign Out for Lunch dated 2/3/88.
- 5. Time Documents
 - A) Call-In Log, dated 10/20/88.
 - B) Daily Time Record 10/20/88 (3 pages).
 - C) Request for Leave Slip 10/20/88.
 - D) Daily Time Record 10/27/88.

Issue

Was the removal of the Grievant which was held in abeyance and modified to a six (6) day suspension for just cause? If not,

what shall the remedy be?

Relevant Contract Sections (1986-1989)

Article 9 - Employee Assistance Program (in part)

The Employer and the Union recognize the value of counseling and assistance programs to those employees who have personal problems which interfere with their job duties and responsibilities. The Union and the Employer, therefore, agree to continue the existing E.A.P. and to work jointly to promote the program.

The Employer or its representative shall not direct an employee to participate in the E.A.P. Such participation shall be strictly voluntary.

Seeking and/or accepting assistance to alleviate an alcohol, other drug, behavioral or emotional problem will not in and of itself jeopardize an employee's job security or consideration for advancement.

Section 13.06 - Report-In Locations (in part)

All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.

Section 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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse.

Section 24.02 - Progressive Discipline

The Employer will follow the principles of

progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- A. Verbal reprimand (with appropriate notation in employee's file)
- B. Written reprimand;
- C. Suspension;
- D. Termination.

Disciplinary action taken may not be referred to in an employee's performance evaluation report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

Section 24.05 - Imposition of Discipline (in part)

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

Section 24.08 - Employee Assistance Program

In cases where disciplinary action is contemplated and the affected employee elects to participate in an Employee Assistance Program, the disciplinary action may be delayed until completion of the program. Upon successful completion of the program, the Employer will give serious consideration to modifying the contemplated disciplinary action.

Relevant Work Rules

Sign-In/Sign-Out and Call-in

Policy

All employees are expected to be on duty from the

beginning to the conclusion of their eight hour work shift, and are required daily to sign in at the start of the shift, sign out at the end of the shift, sign out and sign in for lunch break, and record hours worked in hazard/secure area. If unable to report for duty as scheduled, employees are to call in as specified in this policy.

Procedure

A) Daily Time Record

- 1) Each employee will record and total his/her hours worked and other time used or accumulated on the Daily Time Record (DTR), and initial this date at the end of the work shift. Each employee shall record time of arrival and departure from work; time out and in from lunch, and hours worked in hazard/secure duty area.
- 4) Recording false time in any manner shall be cause for corrective action. The department head will be required to enter the correct time beside the falsified time on the DTR and initial it.

B) Call-In

- 1) Employees in a 24-hour operation shall call in at least one hour in advance of their scheduled starting time to request approved leave. Requests for leave will not be approved by the supervisor if the call is not made as required.

- D) All related attendance and timekeeping paperwork, such as Request for Leave (ADM-4258) and Authorization for Overtime (DMH-P-15) must be initiated and processed on a timely basis through the current channels of employee-supervisor-Superintendent for all necessary approvals. All unscheduled requests for leave must be submitted upon employee's return to work. It shall be the employee's responsibility to initiate a Request for Leave form for any leave taken or the request will be disapproved and logged as absent without leave.

Employee Absenteeism

Definitions

- A. Absent without Leave: Absence from duty during scheduled working hours without approval from your supervisor, and subject to corrective action. This includes:
- 1) Failure to report for work at the scheduled starting time.
 - 2) Leaving work without supervisory authorization prior to the end of your scheduled work shift.
 - 3) Out of work area without supervisory authorization.
 - 4) Extending work breaks or lunch breaks without supervisory authorization.
 - 5) Calling in to request the use of leave time which you do not have accumulated (even though request may be approved initially by the supervisor). It is the employee's responsibility to know his accumulated leave balances.

Procedure

- A. Employees in a 24-hour operation shall call in at least one hour in advance of their scheduled starting time to request approved leave.
- E. Incidents of Absent without Leave Subject to Corrective Action:
- 1) Three (3) absences of less than 5 minutes each in a 60-day period.
 - 2) Two (2) absences of 5 minutes each or more but less than sixty (60) minutes each in a 60 day period.
 - 3) One (1) absence sixty (60) minutes or more.

- 4) Unauthorized departure prior to completion of shift.

Facts

The Grievant was a Psychiatric Attendant at Oakwood Forensic Center. Oakwood Center houses mentally ill prisoners who cannot be placed in regular prisons. The Grievant was appointed September 4, 1984. His disciplinary record at the time of the incident, which is the subject of this Grievance, was as follows:

DATE	CORRECTIVE ACTION TAKEN	CHARGE
12/13/84	Verbal Reprimand	Tardiness (AWOL)
03/25/85	Oral Counseling	Tardiness (AWOL)
10/02/85	Oral Counseling	Extending Lunch Break Without Prior Approval (AWOL)
04/23/86	Oral Counseling	Tardiness (AWOL)
08/06/86	Oral Counseling	Tardiness (AWOL)
08/25/86	Written Reprimand	Tardiness (AWOL)
09/16/86	Written Reprimand	Tardiness (AWOL)
02/19/87	Two (2) Day Suspension	Tardiness (AWOL)
11/27/87	Six (6) Day Suspension	Tardiness (AWOL)
10/11/88	Written Warning Regarding Sign-In/Sign-Out Procedures	

At the time in question, the Grievant was assigned to the second shift (3 p.m. to 11 p.m.). Under the call-in rules (J-4), any call-in of lateness, tardiness, or absence had to be made by 2 p.m. for the second shift. The Grievant's assigned sign-in spot was on a table in front of the glass window of the nurse's station

in his ward.

On October 20, 1988, the Grievant called in late (2:10 p.m.) and was 5 minutes late to sign-in (3:05 p.m.). He claimed car trouble. On October 27, 1988, the Grievant signed in at 3:00. His Supervisor claimed he really signed in at 3:02. That same day, the Grievant signed out for dinner at 6:06; the Supervisor claimed the time was 6:04. Then the Grievant signed in from supper at 6:39, either 5 minutes or 3 minutes late. The Employer treated these events as three (3) charges.

10/20/88	AWOL 5 minutes late call-in
10/27/88	False sign-ins (2)
10/17/88	AWOL 5 minutes

On January 2, 1989, the Director of Mental Health notified the Grievant that he was removed from his position. On January 2, 1989, the Grievant entered into a contract for EAP participation for the "problem of absenteeism without leave". As part of that agreement, the Employer held the removal in abeyance.

On May 1, 1989, the EAP administrator notified the Oakwood Personnel Director that the Grievant had completed the EAP. On May 10, 1989, the Director of Mental Health lowered the removal to a 6 day suspension to run May 31 through June 7, 1989. On May 29, 1989, the Grievant grieved the 6 day suspension.

At the Arbitration hearing, the Grievant admitted his late call-in and his late arrival on October 20, 1989. As the Grievant

explained the situation, he had a faulty battery in his car so he called off "in anticipation" of being late. He said he attempted to call in "earlier", but the line was busy. To assure arriving on time, the Grievant maintained that he started the car before he had to leave but that when he was leaving, the car did not start back up immediately.

With regard to the incidents of the 27th, the Grievant said that he was not "late" because he was standing in line at the metal detector. With regard to the 6:06 sign out, he guessed he had mis-read the clock. He was late returning because he was held up by the basketball team. With regard to the 3:02 sign in, the Grievant was observed by Nurse Craig who testified that she held up the clock to the Grievant and pointed out the correct time. With regard to the 6:06 sign out, Nurse Knofla testified that she was at the book at 6:04 and noticed that the Grievant had already signed out at 6:06.

The Employer introduced into evidence various documents which clearly indicated that the Grievant was on notice as to the various policies and procedures. The Grievant did not dispute this knowledge. The Employer also introduced Arbitration G87-2611 by Arbitrator Graham wherein this same Grievant had grieved his suspension of 11/27/87. That decision clearly spells out to the Grievant his work responsibilities and also should have left no doubt in the Grievant's mind about the seriousness of his situation.

David Slone, the Chief Steward, admitted on cross-examination that 90 persons used the same sign in spot as Grievant, including Slone himself. Slone acquiesced that he managed to reach the sign in table by 3:00 p.m.

Discussion

The Arbitrator finds little substance in the Grievant's testimony. His explanation of the 10/29/89 incident simply makes no sense. Moreover, the duty of Grievant is to get to work on time and to do whatever is necessary to be there on time. If a car has a faulty battery, the Grievant has a number of options: 1) get a new battery, 2) call a cab, 3) call a friend, 4) start walking in sufficient time. Moreover, the "call-in" in "suspicion" of lateness is absurd. This excuse is not mitigating because the situation was not unexpected nor beyond the Grievant's control.

The incidents of 10/27/89 are similarly unexplained. If the Grievant had been held up previously, as he testified, at the metal detector or by the basketball team, his responsibility was to adjust his time to allow for such problems and be on time. The two falsifications were witnessed by credible witnesses.


Given the Grievant's past record, the removal was progressive and commensurate. However in honoring the EAP, the Employer reduced a removal to a 6 day suspension. This modification was

more than fair and equitable.

Award

Grievance Denied.

March 28, 1990
Date


Rhonda R. Rivera
Arbitrator

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(89-09-25)-0146-01-03

(Discharge)

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timeliness of the Employer's decision to begin the disciplinary process.

Section 24.05 - Imposition of Discipline (in part)

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

Section 24.06 - Prior Disciplinary Actions

All records relating to oral and/or written reprimands will cease to have any force and effect and will be removed from an employee's personnel file twelve (12) months after the date of the oral and/or written reprimand if there has been no other discipline imposed during the past twelve (12) months. Records of other disciplinary action will be removed from an employee's file under the same conditions as oral/written reprimands after twenty-four (24) months if there has been no other discipline imposed during the past twenty-four (24) months. This provision shall be applied to records placed in an employee's file prior to the effective date of this Agreement.

Issue

Was the discharge of Melvin Ward, the Grievant, for just cause? If not what shall the remedy be?

Facts

This Arbitration award should be read in sequence with 23-12(89-06-01)0109-01-03 (Suspension of Melvin Ward) issued 3/28/90.

At the time of the incident and discipline which gave rise to

this Grievance, the Grievant had a grave and serious history of discipline. He had received numerous clear warnings about his work behavior.

In particular on 10/11/88, the Superintendent wrote directly to the Grievant the following statement (E-2).

You are warned that continuation of your employment at Oakwood Forensic Center is entirely up to you. You are instructed to:

- 1) Sign in and sign out on the daily time record.
- 2) Record your time in and time out legibly and accurately.
- 3) If the sign-in/out book is not there, find it. Verify your time in/out with the Security Supervisor or a security officer at the entrance, and call your nurse supervisor if she is not in the office.

Oakwood Forensic Center places a great value on all of its employees, and we do not like to see employees reach this level in the corrective action process. For this reason, it is highly recommended that you investigate the Employee Assistance Program which is available to all State employees. Dr. Alexander Thiry is our E.A.P. Coordinator, and can explain to you what is available through the program; or, you may contact the Ohio E.A.P. directly at 1-800-221-6327.

I, again, warn you that these violations can not continue and will not be tolerated.

On May 24, 1989, the Grievant called in and requested Personal Leave. He was told that he could not be spared. The Grievant said he "would call John Allen the CEO of Oakwood". The Grievant signed in at 2:57 p.m. and never signed out. However, the RN Supervisor noted on the time sheet that the Grievant left at 3:30 because he said he was ill. On the 25th of May, the

Grievant requested Comp Time for his illness (no Sick Leave existed). This request was denied because the Grievant failed to bring in a doctor's slip.

On July 31, 1989, the Grievant signed out for dinner at 6:45; however, according to the testimony of the RN Supervisor, at 7:30 p.m. he had not signed back in from supper. However, on 8/1/89, the next day, the time sheet showed a 7:15 return from supper. Edward R. McPheron, R.N. signed a statement which indicated that he saw the Grievant return at 7:21, that R.N. Craig showed the Grievant and McPheron the clock, and that McPheron verified the time by the telephone.

On August 2, 1989, the Grievant signed out for supper at 5:59 and returned at 6:36, 2 minutes late.

The Grievant's explanations for these incidents were as follows:

On the 24th he had called in because he was feeling ill and asked for Personal Leave (Sick Leave was exhausted). When told that he was needed, he called the CEO of the Oakwood Forensic Center who allegedly said "there was nothing he could do. . . come in, and we'll go from there". After 1/2 hour on the job, the Grievant told the nurse supervisor that he was ill and was going to leave. She reminded him of the need for a doctor's slip. He said he told her that he did not have a family doctor. She told him to go to a hospital emergency room.

On the 31st, the Grievant said he was back before 7:15 p.m., but that the time sheet was missing, so he went to the medical

unit to drop off someone's dinner.

On the 2nd of August, the Grievant admitted he was late but said he asked for leave after returning but R.N. Alice Knofla did not approve it. He said she often approved leave after the fact for others.

Nurse Alice Knofla testified that when Grievant was not signed in at 7:15, she called security at the metal detector station. On cross-examination, the Grievant said he has just passed through when she called, that then he went to give a medical unit member her food, and then went to sign in and found the time sheet page missing. He also claimed that he did not see Ms. Craig hold up the clock at 7:21. He had said he did not ask the R.N. about the time sheet page because then he would get "an additional charge for asking a question".

Discussion

June 7th, 1989, the Grievant served his last day of a 6 day suspension for incidents similar to the ones described above. That suspension was the modification of a removal; the modification was in light of the Grievant's successful completion of an E.A.P. for repeated and persistent absenteeism.

The first incident in this discipline happened on 5/24/89, after the completion of the E.A.P. The second two incidents occurred after the 6 day suspension. The excuses of the Grievant are not credible. In fact, he contradicted himself with regard to

his behavior on July 31, 1989 between his direct examination and the cross examination. He originally said he was back at his post before 7:15 and subsequently testified that at 7:16 approximately he was through the metal detector, then went to the medical unit, and then to sign-in.

One could argue that the actual time involved in this discipline was minimal and the failure to have a doctor's slip was minor. In the case of another employee, that argument might suffice.


Given the previous disciplines, the Grievant was clearly on notice as to expected behavior with regard to absenteeism, tardiness, etc. In that position, the Grievant should have gone to extra lengths to be on time, sign-in and out properly, etc.

The Grievant's behavior indicates that his job was not apparently important enough to him. His dismissal was for just cause.

Award

Grievance denied.

March 28, 1990
Date


Rhonda R. Rivera
Arbitrator