

BENCH DECISION

Arbitrator: Anna D. Smith

State of Ohio

Department Workers CompensationUnion OCSEAGrievance No. 34-03-900430-0053-01-09Grievant Edward WeaverDate of Hearing Sept. 5, 1990

Issue(s): Is the Three day suspension of grievant Edward Weaver issued for just cause? If not, what shall be the remedy?

Appearances:

For the Employer: (Advocate) Robert Thornton
Thomas V. GullaFor the Union: (Advocate) Dennis A. Falcione

AWARD: The record shows that a verbal altercation between the Grievant and his supervisor did occur, during which the Grievant admittedly said, "Get off my ass." Use of this language & thus the rule infraction was aggravated by the presence of other Bureau employees & clients who overheard at least portions of the argument. Under the circumstances the discipline imposed by the Employer is within the bounds of reasonableness. Despite the pressures created by the volume of business that day, employees - and especially a 16-year employee - must be held accountable for their behavior. Grievance denied in its entirety.

Issued at Fairlawn, OhioSept. 5, 1990
DateAnna D. Smith
Arbitrator's Signature

BENCH DECISION

Arbitrator: Anne D. Smith

State of Ohio

Department Industrial CommissionUnion OCS&AGrievance No. 17-00-890905-0069-01-09Grievant Marie Dubose WilliamsDate of Hearing Sept. 5, 1990

Issue(s): Is the Three day suspension of grievant Marie Dubose Williams issued for just cause? If not, what shall be the remedy?

Appearances:

For the Employer: (Advocate) Robert ThorntonFor the Union: (Advocate) Dennis Falcione

AWARD: Mitigating circumstances of an unforeseeable event existed to which the Employer failed to give adequate weight. Grievance is sustained. The 3-day suspension is to be expunged from the grievant's records, she is to be paid 3 days lost wages and made whole.

Issued at

Fairlawn OhioSept. 5, 1990
DateAnne D. Smith
Arbitrator's Signature

EXPEDITED ARBITRATION DECISION

Arbitrator: Anna D. Smith

State of Ohio

Case No. 17-00-890809-0061-01-09

Dept.: Industrial Commission Grievant: Marie Dubose Williams

Union: OCSEA Local 11, AFSCME Date of Hearing: Sept. 5, 1990

Issue: Is the ten day suspension of grievant Marie Dubose Williams issued for just cause? If not, what shall be the remedy?

Appearances:

For the Employer: Robert Thornton, Advocate

For the Union: Dennis A. Falcione, Advocate

AWARD: The grievance is denied in part, sustained in part.

There is just cause for discipline, but a major suspension is unjustly harsh. (Supporting opinion is attached.) The suspension is reduced to three (3) days. Grievant is to be paid seven (7) days lost wages and made whole.



Anna D. Smith, Arbitrator

Issued at
Shaker Heights, Ohio
September 6, 1990

Arbitrator's Opinion

The Employer contends that the Grievant acted in a threatening manner towards her supervisor, for which she received the just discipline of a 10-day suspension. It denies the Grievant's claim that the incident was provoked by the Supervisor, but argues that even if the Supervisor's behavior was inappropriate, the Grievant's correct remedy was to grieve, not to threaten.

The Union contends that the Employer has not proved its claim that the Grievant did anything worse than use language that was interpreted by the Supervisor as threatening. It claims that the Grievant's behavior was the result of a history of harassment and discriminatory treatment by the Supervisor. It argues that in view of the Supervisor's role in the incident, the lack of proof that the Grievant struck her supervisor, and the Employer's failure to specify the form of discipline on the pre-disciplinary conference notice, the suspension should be overturned.

The words used by the Grievant are not in contention, nor is the fact that she touched her supervisor. The meaning and effect of these actions is, however, in dispute. I am persuaded that the confrontation between the two about coverage of the telephones escalated when the angry Grievant followed the Supervisor into the copy room, whereupon the Grievant behaved in a threatening and abusive manner, rather than in an informative one. That this was the culmination of a history of

poor relations between the two does not excuse the Grievant's loss of control. As the Employer correctly points out, the Grievant has other remedies at her disposal. Corrective discipline is therefore warranted.

With respect to form of discipline, the Grievant did more than use abusive and threatening language. She also touched her supervisor inappropriately. What is called for is discipline stronger than that for abusive language alone, but weaker than touching with the intent or effect of causing harm. Thus, the Employer correctly used its disciplinary grid as a guideline, rather than as an immutable and binding standard. However, I am not convinced that the Grievant used sufficient force upon her supervisor to justify a major suspension. Ten days for the behavior in question crosses the line from corrective to punitive. The discipline is accordingly reduced to a three-day suspension.

The Union's argument regarding lack of forewarning is misplaced. The charges on the prediciplinary conference notice coupled with an established disciplinary grid are sufficiently specific to meet the Employer's obligation under the Contract. Moreover, the Union did not establish any prejudice to the Grievant on account of insufficient degree of specificity.



Anna D. Smith, Arbitrator

Shaker Heights, Ohio
September 6, 1990