

496EA

IN THE MATTER OF ARBITRATION  
UNDER THE 1986-89 CONTRACT

\* \* \* \* \*

Between: \*

State of Ohio \*  
Department of Rehabilitation \*  
and Correction \*  
Lima Correctional Institute \*

Grievance No.  
G87-1769

THE EMPLOYER \*

-and- \*

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

Grievant: James Wilkerson

THE UNION \*

Hearing Date: Sept. 25, 1990

\* \* \* \* \*

Before: JAMES M. KLEIN, ARBITRATOR

\* \* \* \* \*

OPINION AND AWARD:

September 28, 1990

CASE DATA

SUBJECT

Three day suspension for violation of articles 28.03 and 24.01 of the Contract and Rules 1a, 1b and 3a of the Standards of Employee Conduct.

APPEARANCES

For The Union:

Bob Rowland, Staff Representative, OCSEA  
Ernest Conner, Local Chapter President  
James Wilkerson, Corrections Officer, Grievant

For The Employer:

Brenda Shelly, Representative  
Robert Rogers, Corrections Supervisor I  
William Huff, Corrections Supervisor III

THE FACTS

Grievant, a Corrections Officer at Lima Correctional Institute, received a three day suspension for violation of Rules 1a, 1b, and 3a of the Standards of Employee Conduct (SEC):

- 1a Unauthorized Absence: Excessive or habitual absenteeism including tardiness and early departures.
- 1b Being absent for a period of one full shift without proper notification.
- 3a Insubordination: Refused to carry out a work assignment.

The record indicates that during the period January 30, 1987 to May 1987, the Grievant had been late for shift assembly three times, late for shift seven times and absent without leave for an entire shift one time. However during the hearing the parties stipulated that the Grievant had received no prior discipline for

tardiness or absenteeism. Consequently the Arbitrator finds that pursuant to Rules 1a and 1b of the SEC, the penalty should be a Written Warning.

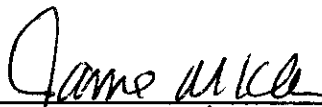
The insubordination charge arises out of an incident that occurred at the beginning of the morning shift of April 30, 1987. The Grievant reported to shift assembly and picked up his assignment: Lobby Officer at the salley port -- a job that required Grievant to attend an inside lobby and occasionally go outside to inspect vehicles passing through the port (gate). It was a cold morning and Grievant did not bring a coat. Shortly after the shift commenced, Grievant was reassigned to the T.U.C. gate, a job that involved substantially outside work. Grievant initially refused to go until he was provided a coat. The supervising officer who made the reassignment did not attempt to locate a coat for the Grievant. After approximately ten minutes, the Grievant began to walk to his new assignment (without a coat) and was called back to the salley port to answer a second call from the supervising officer. After talking to the supervisor, Grievant proceeded to the new assignment and arrived there at 9:23 A.M. Part of the delay was caused by Grievant stopping on the way to talk to another officer. The record does reflect that the Grievant did arrive at the T.U.C. gate in time to carry out his first duty -- the inspection of a vehicle.

While the Grievant's conduct in this matter was not exemplary, the Arbitrator finds that it did not constitute insubordination, or a refusal to carry out a work assignment. There was a initial objection to the outside assignment because

the Grievant did not bring a coat and because the supervisor did not request one for the Grievant. However, the Grievant did attempt to report to the new assignment but was delayed by a second phone call. Considering all of the evidence, the Arbitrator finds the charge of insubordination is unfounded and that the grievance relating to a violation of Rule 3b should be granted.

**AWARD:**

- (1) Violation of Rule 1a and 1b - written warning
- (2) Three day suspension removed and back pay seniority restored

  
\_\_\_\_\_  
James M. Klein  
Arbitrator

IN THE MATTER OF ARBITRATION  
UNDER THE 1986-89 CONTRACT

\* \* \* \* \*

Between: \*

State of Ohio  
Department of Rehabilitation  
and Correction  
Lima Correctional Institute

Grievance No.  
27-12-(12-29-88)-00-85-01  
-02

THE EMPLOYER \*

-and- \*

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

Grievant: Wallace Mann

THE UNION \*

Hearing Date: Sept. 25, 1990

\* \* \* \* \*

Before: JAMES M. KLEIN, ARBITRATOR

\* \* \* \* \*

OPINION AND AWARD:

September 28, 1990

CASE DATA

SUBJECT

One day suspension for violation of 1a of the Standards of Employee Conduct.

APPEARANCES

For The Union:

Bob Rowland, Staff Representative, OCSEA  
Wallace Mann, Local Union Steward  
Ernest Conner, Chapter President  
William Tuttle, Local Union Steward

For The Employer:

Brenda Shelly, Representative  
David Dunifon, Corrections Supervisor I

THE FACTS

Grievant, a Corrections Officer at Lima Correctional Institute (LCI) received a one day suspension for violation of Rule 1a of the Standards of Employee Conduct (SEC):

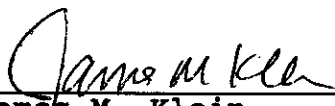
1a Unauthorized Absence: Excessive or habitual absenteeism including tardiness and early departures.

On September 21, 1988 at 5:03 P.M. (two hours into his shift) Grievant reported to the LCI Nurse because he suffered a nosebleed and lightheadedness. The nurse measured Grievant's blood pressure at 120/90 and sent him back to shift office. After informing his Supervisor that he was ill, Grievant left work and went home. The Grievant was charged with failure to submit a Request for Leave form. (Grievant also was charged with an unauthorized absence on September 15, 1988 but that charge was

withdrawn at the hearing). Grievant contended that he was not aware that he was required to submit a Request for Leave form because he orally informed the Supervisor that he was leaving work ill. The Arbitrator finds that it was the Grievant's responsibility to know that the Request for Leave form must be filed for all absences and has failed to file a form constitutes a violation of the Standards of Employee Conduct. However the Arbitrator further finds that there are mitigating circumstances in this case that should result in a removal of the one day suspension. First, one of the two charges that led to the one day suspension was withdrawn by the employer at the hearing. Second, the employer had ample opportunity to include the charge arising out of the September 21 incident at Grievant's predisciplinary hearing conducted on October 21, 1988. For these reasons, the Arbitrator finds that the one day suspension should be reduced to Written Warning and that Grievant receive one day back, benefits and seniority.

AWARD:

Grievance granted. One back pay with benefits and seniority restored.

  
James M. Klein  
Arbitrator

IN THE MATTER OF ARBITRATION  
UNDER THE 1986-89 CONTRACT

\* \* \* \* \*

Between: \*

State of Ohio \*  
Department of Rehabilitation \*  
and Correction \*  
Lima Correctional Institute \*

Grievance No.  
27-12-(11-29-88)-79-01-03

THE EMPLOYER \*

-and- \*

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

Grievant: Wallace Mann

THE UNION \*

Hearing Date: Sept. 25, 1990

\* \* \* \* \*

Before: JAMES M. KLEIN, ARBITRATOR

\* \* \* \* \*

OPINION AND AWARD:

September 28, 1990



CASE DATA

SUBJECT

One day suspension for violation of Rule 1a and 1b of the Standards of Employee Conduct.

APPEARANCES

For The Union:

Bob Rowland, Staff Representative, OCSEA,  
Timothy Tuttle, Local Union Steward  
Wallace Mann, Corrections Officer, Grievant

For The Employer:

Brenda Shelly, Representative  
Vern Schnipke, Corrections Supervisor II, LCI  
William Huff, Correctional Supervisor III, LCI

THE FACTS

Grievant, a Corrections Officer at Lima Correctional Institute (LCI), received a one day suspension for violation of Rules 1a and 1b of the Standards of Employee Conduct (SEC):

- 1a Unauthorized Absence: Excessive or habitual absenteeism including tardiness and early departures.
- 1b Being absent for a period of one full shift without proper notification.

The record indicates that as a result of receiving a Pattern of Abuse Statement on May 25, 1988, Grievant was obligated to provide a physician's verification for all future illnesses (J-5). On August 15, 1988, Grievant had minor throat surgery after which he went home to rest. While he never requested a leave prior to August 15, Grievant did report it to his supervisor at 4:28 P.M. that day. On August 16, 1990, Grievant called LCI at 2:10 P.M. indicating he would be two hours late.

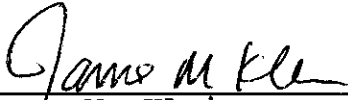
However Grievant overslept due to his medication and did not come to work until 7:12 P.M. Grievant failed to timely provide a physician's verification as required by the employer. While the record does indicate that Grievant's failure to timely provide the verification may have been because the Union Steward had misplaced it, the Arbitrator finds that it was the Grievant's responsibility to fulfill his obligation to provide the employer the verification in a timely manner.

On August 21, 1988 Grievant orally informed LCI that he would be absent that day due to a death in the family and Grievant was absent for that reason. However, the Grievant failed to submit the required Request for Leave either before or after August 21, 1988. While Grievant stated that he did not know how to complete the Request Leave form, the Arbitrator finds that Grievant did fail to comply with the employer's rules.

Consequently the one day suspension for these two violations was reasonable. The grievance is denied.

**AWARD:**

The grievance is denied.

  
James M. Klein  
Arbitrator

IN THE MATTER OF ARBITRATION  
UNDER THE 1986-89 CONTRACT

\* \* \* \* \*

Between: \*

State of Ohio \*  
Department of Rehabilitation \*  
and Correction \*  
Lima Correctional Institute \*

Grievance No.  
27-12-(89-02-04)-0031-01-03

THE EMPLOYER \*

-and- \*

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

Grievant: Timothy Tuttle

THE UNION \*

Hearing Date: Sept. 25, 1990

\* \* \* \* \*

Before: JAMES M. KLEIN, ARBITRATOR

\* \* \* \* \*

OPINION AND AWARD:

September 28, 1990

CASE DATA

SUBJECT

One day suspension for violation of Rule 6b and 10 of the Standards of Employment Conduct.

APPEARANCES

For The Union:

Bob Rowland, Staff Representative, OCSEA  
Timothy Tuttle, Corrections Officer, Grievant  
Ernest Conner, Chapter President

For The Employer:

Brenda Shelly, Representative  
Otis Pearson, Supervisor II, LCI  
Paul Davenport, Deputy Warden of TIE

THE FACTS

Grievant, a Corrections Officer at Lima Correctional Institution (LCI), received a two day suspension for violation of Rules 6b and 10 of the Standards of Employee Conduct:

- 6b Willful disobedience of a direct order of a supervisor.
- 10 Willfully making false, abusive, obscene statements toward or concerning another employee, a supervisor or the general public.

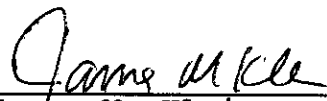
On December 17, 1988 at approximately 2:40 P.M., Grievant was at the LCI front gate waiting to enter. The control operator did not see the Grievant and it was cold outside. Frustrated and angry at having to stand outside, Grievant pounded on the door and cursed at and insulted the control officer. After entering the office, Grievant continued to carry on. Shortly thereafter

the Grievant was asked to report to Sergeant Glover. When he did, the Grievant referred to the control operator as an "a--hole", and he became upset and began to leave the office. Despite being ordered back into the office by Sergeant Glover and Captain Davenport (also present at the meeting), Grievant left the meeting.

Grievant defends his action by referring to his cursing as "shop talk". The arbitrator finds that when the derogatory language is directed at a fellow officer in the form of insults, it is more than shop talk and constitutes "willful making of abusive statements towards another employee" in violation of Rule 10. Further, walking out of a meeting with supervisory officers against a direct order constitutes willful disobedience in violation of Rule 6b. For these reasons the grievance is denied. The two day suspension is reasonable.

**AWARD:**

Grievance is denied.

  
\_\_\_\_\_  
James M. Klein  
Arbitrator