

BEFORE THE ARBITRATOR

Case No. 28-02(1/25/90)-08-02-12

In the Matter of:

OHIO DEPARTMENT OF ADMINISTRATIVE
SERVICES, OFFICE OF COLLECTIVE
BARGAINING

and

DISTRICT 1199/SEIU

OPINION AND AWARD

This grievance arises as a result of the discharge of Otis Crusoe on January 12, 1990 by the Department of Rehabilitation and Corrections for repeated violations of the Department's Standards of Conduct and prior disciplines.

The following Standards of Employee Conduct which perpetrated the removal are:

6a - Failure to carry out work assignment.

6c - Insubordination. Failure to follow post orders, administrative regulations and/or written policies or procedures.

The alleged misconduct is as follows:

Violation of the Standards of Employee Conduct Rule #6a by failing to carry out a work assignment, to-wit: dictation of a Special

Report concerning parolee Kelvin Cowan #168-717 on or about April 10, 1989.

Grievant failed to follow the provisions of Bulletin #610 of the Adult Parole Authority Supervision Manual by failing to file a Short Form Arrest Report within 24 hours of his knowledge of the arrest of parolee Kelvin Cowan #168-717.

Grievant failed to follow the provisions of Bulletin #640 Section 3 C 1 of the Adult Parole Authority Supervision Manual by failing to "immediately" notify his unit supervisor of the arrest of parolee Kelvin Cowan which occurred on or about July 8, 1989.

Grievant failed to follow the provisions of Bulletin #649 Section 4 A 1 of the Adult Parole Authority Supervision Manual by failing to serve APA Form 15A on parolee Kelvin Cowan within 5 calendar days after the APA Detainer was issued.

Grievant has been a parole officer for eight years. His early record as a parole officer appears to be without discipline until June, 1987. From that time until the instant removal grievant's disciplinary record is as follows:

<u>Date</u>	<u>Violation</u>	<u>Penalty</u>
6/25/87	3A - Failure to Carry Out a Work Assignment	
	3B - Failure to Follow Written Policies & Procedures	Written Reprimand
6/28/88 to 7/1/88	6A - Failure to Carry Out a Work Assignment	

	6C - Failure to Follow Written Policies & Procedures	3 Day Suspension
12/12/88 to 12/24/88	6A - Failure to Carry Out a Work Assignment	
	21 - Willfully Falsifying ... Any Official Document Arising Out of Employment with DR&C	10 Day Suspension
10/16/89 to 10/21/89	6C - Failure to Follow Written Policies & Procedures	5 Day Suspension

Grievant's defense relies on the fact that at the time of the incident resulting in termination, he was under severe emotional strain because of the hospitalization of his sister with an incurable illness from which she later died.

POSITIONS OF THE PARTIES

Union Position

It is the Union's position that grievant was discharged without cause and because of his Union activity of being a Union steward. In addition, the Union argues that the discharge was unfair because the Agency failed to work with and improve grievant's performance.

Agency Position

The Department of Rehabilitation contends that

grievant has repeatedly violated the Policies and Procedures of the Department and that after imposing discipline of written reprimand, three day suspension, ten day suspension and five day suspension for repeated violations, it had just cause to discharge grievant.

DISCUSSION

There is no dispute that grievant violated the Policies and Procedures which caused his discharge and there is no dispute that the previous disciplines have not been reversed or otherwise modified. Furthermore, I find no credible evidence that the removal of grievant was in any way affected by his Union activity.

The Union's argument that the Agency had an additional obligation to work with and help grievant is without merit. The grievant has been a parole officer for eight years, and for the first five and a half years appears to have performed his job without discipline. It can hardly be argued that grievant needs additional training or counseling to familiarize himself with the job and the disciplinary action, including the three suspensions, were warnings to grievant.

In spite of all the foregoing, there are some mitigating circumstances. I do not believe that

preoccupation with his sister's illness warrants much consideration. What does warrant consideration is the eight years of service of the grievant as a parole officer, the first five and a half years of which appear to be without incident. It appears coincidental that grievant's problems arose shortly after his present supervisor was assigned as his unit supervisor. That is not to suggest that the supervisor has been anything but diligent in performing his duties relevant to the grievant. It appears that for some reason unknown that grievant's efficiency and adherence to policy has suffered greatly in the last two and a half years. Yet I am reluctant to affirm the discharge of grievant, a middle aged person with eight years of service without giving him one final chance to get himself together and pay strict attention to his duties. Maybe the realization that he had lost his position and the loss of earnings over the past ten months will serve to bring the message home.

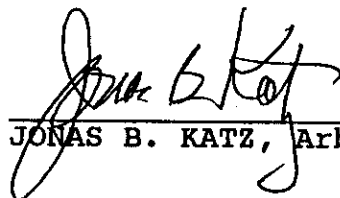
Therefore, I will reinstate the grievant, without back pay, on probation for a period of two years, without accrued seniority, and without any other benefit during the period of his removal. The condition of this

reinstatement and probation is that if at any time during the two years following his reinstatement, grievant engages in any further significant acts or conduct for which he has been disciplined since June 6, 1987, he may be immediately discharged.

The Arbitrator retains jurisdiction during the probationary period for purposes of determining that the conditions of probation are observed.

AWARD

The grievance is granted in part and denied in part. The grievant will be reinstated, without back pay, without accrued seniority and without any other benefit during the period of his removal. Grievant will be placed on probation for a period of two years following reinstatement as set forth above, with the Arbitrator retaining jurisdiction during the probationary period.


JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Hamilton County,
Ohio, this 26th day of October, 1990.