

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 561 EX

OCB GRIEVANCE NUMBER: 27-20-891106-0429-01-03

GRIEVANT NAME: McDONALD, BENJAMIN

UNION: OCSEA/AFSCME

DEPARTMENT: REHABILITATION & CORRECTIONS

ARBITRATOR: FULLMER, JERRY

MANAGEMENT ADVOCATE: FISHMAN, ELLIOT and  
ABDURRAQIB, IDRESS

2ND CHAIR: SAMPSON, RODNEY

UNION ADVOCATE: PAGANI, JIM

ARBITRATION DATE: FEBRUARY 21, 1991

DECISION DATE: FEBRUARY 25, 1991

DECISION: GRANTED

CONTRACT SECTIONS

AND/OR ISSUES: 10 DAY SUSPENSION FOR RULE VIOLATIONS:  
1) FAILURE TO MAKE SECURITY CHECKS &  
2) FALSIFICATION OF LOG BOOKS

HOLDING: GRIEVANT CLAIMED THAT SUPERVISION "STOLE" HIS  
SECURITY CHECK NOTES; NO REBUTTAL OF THIS CLAIM BY  
MANAGEMENT. EXISTENCE OF THE VIOLATION HAS NOT  
BEEN ESTABLISHED TO THE DEGREE REQUIRED TO SUPPORT  
A JUST CAUSE FINDING. GRIEVANT TO RECEIVE 10 DAYS  
BACK PAY AND EXPUNGEMENT.

ARB COST: \$253.56



#561 Ef  
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February 25, 1991

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Re: Ohio Civil Service Employees Association, Local 11  
AFSCME, AFL-CIO and the State of Ohio; Case 27-20-  
(891106) 0429-01-03 (McDonald) (Dept. of Rehabilitation  
and Correction)

Dear Sirs;

The above case was heard in expedited format in a hearing held at the headquarters of OSCEA, Local 11 on February 21, 1991 between the hours of 10:00 a.m. and approximately 3:30 p.m.. At the close of the hearing the parties jointly requested a written decision within five calendar days instead of a bench decision.

1. Facts

The incident in question took place on September 21, 1989 on the West Cell Block of the Ohio State Reformatory in Mansfield. The Grievant is a Correctional Officer II and a Union Steward at that institution and is employed on the third shift. He is supervised by Lieutenant J.J. Johnson

One of the tasks involved in the Grievant's work is that of making a "skin count" of the inmates on the cell block. This involves walking past the cells; peering in and making sure that he can view the "skin" of the inmates inside. As he passes the cells he takes a count of the number of inmates. Eventually this is turned in first to the Control Room and then to the Count Room where a comparison is made between the C/Os count and the Count Room's count. Both sides are in agreement that the skin counts are very important in the security of the institution in that they assure that the inmates are where they are supposed to be.

Prior to the evening in question the supervisory staff had received some information indicating that the required skin counts

were not actually being made by some of the C/Os. To observe the proceedings Lt. Johnson took a perch on the 6th floor, i.e. the floor above the ranges for which the Grievant was responsible (3, 4, and 5, both South and North). He testified that he had the opportunity to observe the Grievant from this perch. He testified that he could see that the Grievant did not make the required skin count.

The Grievant eventually turned in Daily Count slips showing the correct counts for the various ranges. The Grievant was then confronted by Lt. Johnson as to his not making an actual skin count. He was sent back to count all the ranges in the West Cell Block. His second count showed a discrepancy of one inmate on Range 3 SW. Two other C/Os were eventually called in to recount Range 3 SW and the original count was eventually re-established.

The Grievant was eventually given a ten day suspension because he "failed to make range counts or security checks as required by post orders and you falsified your log books to indicate that you had made such checks." (Jt. Ex. 1)

The Grievant testified that he made the requisite skin check. The joint issue is thus presented of:

"Was the Grievant, Benjamin McDonald, disciplined for just cause? If not, what shall the remedy be?"

## 2. Discussion

The just cause standard is the applicable one. The case turns on whether there is sufficient evidence to establish the Employer's claim that the Grievant did not make the skin check in question.

In many cases arbitrators find that there is no reason to reason to question the testimony of a supervisor as to the violation simply because the supervisor has no particular reason to falsify that testimony. That is in contrast to the supposed motivation of a grievant to falsify his testimony to save his job. However, this principle is usually not applied in cases where there is actual or structural hostility between the particular supervisor and grievant involved in the case. Here the Grievant is a union steward and the supervisor is one who has apparently had a number of "run-ins" with the union. The "presumption" is thus not applicable.

Being a union steward is, of course, not a license to engage in disciplinary offenses with impunity. At the same time caution must be exercised in any situation where the discipline is based solely on the word of the "run-in" supervisor against the word of the union steward. Corroboration by testimony of other witnesses and/or objective evidence (e.g. photographs, documents, videotapes, etc.) may establish the violation beyond cavil. The absence of such

evidence is one difficulty with the Employer's case.

A second difficulty has to do with the Grievant's notebook papers. He testified that he had difficulty keeping skin counts in his head so that he marked them on paper with "sticks" in groups of five sticks. The Grievant claimed that he made such notes on both of his counts, but that they were stolen that night by supervision. There was no rebuttal of this claim and it is somewhat disturbing to think that the Grievant may have been deprived of some evidence to establish his claim of having taking two full skin counts.

### 3. Conclusion

The evidence does not assure the arbitrator that the Grievant did in fact make the skin check in question. Nevertheless the factors discussed above lead the arbitrator to conclude that the existence of the violation has not been established to the degree required to support a just cause finding.

### 4. Award

Grievance sustained. Grievant to receive the ten days back pay and expungement.

Respectively submitted

  
Jerry A. Fullmer  
Arbitrator

