

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 578 EX

OCB GRIEVANCE NUMBER: 1) 27-25-901004-0175-01-03  
2) 27-25-900924-0173-01-03 3) 27-25-900723-0158-01-03  
4) 27-25-900605-0146-01-03

GRIEVANT NAME: 1) JORDAN, WILBERT 2) SPAULDING, MICHAEL  
3) WILLIAMS JOHN 4) MALONE, MICHAEL

UNION: OCSEA/AFSCME

DEPARTMENT: REHAB & CORRECTIONS

ARBITRATOR: IMUNDO, LOUIS

MANAGEMENT ADVOCATE: BURRIS, DAVID

2ND CHAIR: JOHNSON, WILLIAM

UNION ADVOCATE: SARGENT, DON

ARBITRATION DATE: MARCH 26, 1991

DECISION DATE: MARCH 27, 1991

DECISION: 1) MODIFIED 2) DENIED 3) DENIED 4) GRANTED

CONTRACT SECTIONS  
AND/OR ISSUES: 1 & 2) 3 DAY SUSPENSIONS 3) 2 DAY  
SUSPENSION 4) 1 DAY SUSPENSION

HOLDING: 1) JORDAN'S WAS FIRST VIOLATION AND THEREFORE REDUCED TO  
A 2 DAY; 2) SPAULDING SECOND VIOLATION & STANDS; 3)  
DISPARATE TREATMENT NOT PROVED; JUST CAUSE EXISTED; 4)  
UNWRITTEN RULE INCONSISTENT; NO JUST CAUSE.

ARB COST: \$465.25 (\$116.31 ea)

ARBITRATION  
BENCH DECISION AND AWARD

57884

ARBITRATOR: Louis V. Imundo

27-25-(10/4/90)-0175-01-03  
27-25-(9/24/90)-173-01-03

State of Ohio

Department Rehabilitation & Correction

Union OCSEA/AFSCME Local No. 11

Grievance No.

Grievant Wilbert Jordan  
Michael Spaulding

Date Of Hearing March 26, 1991

Issue (s) : Did Management have just cause to discipline the Grievants for allegedly  
violating Rules Nos. 8 & 40? If not, what is the appropriate remedy?

Appearances:

For the Employer: (Advocate) David Burrus

For the Union: (Advocate) Don Sargent

AWARD: See attached.

Issued at: Dayton, Ohio

Date: March 27, 1991

*Louis V. Imundo*  
Arbitrator's Signature

Before Louis V. Imundo, Jr., Impartial Arbitrator  
Expedited Arbitration

In the matter of arbitration between

**DEPARTMENT OF REHABILITATION AND CORRECTION**

and the

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION  
LOCAL NO. 11 AFSCME**

Grievance of **Wilbert Jordan and Michael Spaulding**

**OPINION**

**ISSUE NO. 1**

**DID MANAGEMENT HAVE JUST CAUSE TO DISCIPLINE THE GRIEVANTS  
FOR ALLEGEDLY VIOLATING RULES NOS. 8 AND 40?**

**Rule No. 8**

Failure to follow post orders, administrative regulations and/or written policies or procedures.

**Rule No. 40**

Any act or commission not otherwise set forth herein which constitutes a threat to the security of the institution, its staff, or inmates.

The Grievants are assigned to J-3 cell block at the Southern Ohio Correctional Facility. This facility is a maximum security prison and the J-3 cell block, also known as the Administrative Control Block is where the most dangerous inmates are kept. In effect, the J-3 cell block is where the most dangerous of the dangerous are kept. Obviously, security is of the utmost importance. To ensure that the highest possible degree of security is maintained at all times, Management has developed comprehensive administrative control procedures. The Grievants have been trained in security maintenance practices, are experienced working in this high security area and should be fully knowledgeable of all relevant policies and procedures. For their own personal safety, as well as the safety of others they should fully implement security control procedures at all times.

The event which precipitated the disciplinary action at issue was Mr. Armstrong's allegedly finding that a number of doors in J-3 cell block were unlocked when he went to the area to deliver mail. According to Mr. Armstrong the entrance door from the Day Room to the first Cage Gate was unlocked, and the north and south Wing Gate doors were also unlocked. In addition, the top north Range gate was also unsecured. According to Mr. Armstrong, when an inmate opened the J-3 Block Door for him a wedge of paper commonly known as a "paper key" fell out. The Grievants testified that only two of the Cage Gate doors were unlocked to facilitate moving food trays through the Cage Block area so the inmates in the respective wings could be served their meal in a timely manner.

After reviewing the record it is the Arbitrator's opinion that Mr. Armstrong was a fully credible witness and his testimony is credited over the Grievants' testimony. The record is devoid of anything to show that Mr. Armstrong had any motive whatsoever to create a disciplinary action incident, or give perjured testimony. Given Mr. Kimbler's uncontroverted testimony regarding the common practice of gates being left unlocked at meal serving times, the Grievant's testimony about two of the doors being unlocked, and the fact they were disciplined, the Arbitrator sees a motive for their giving less than credible testimony.

In the Arbitrator's opinion a number of doors in the J-3 area were unlocked when they should have been locked. The door from the Day Room to the Cage Gate area was unlocked and a "paper key" was used to keep the lock open. Even though the practice of keeping doors unlocked to expedite moving serving carts from area to area during meal times is apparently a common practice, such is in clear violation of written policy and procedure, and unconscionable in a maximum security area.

In the Arbitrator's opinion it is apparent that Management has been something less than diligent about enforcing the policy and procedure at issue. However, Management cannot be expected to be in all places at all times insuring that employees fully comply with policies and procedures. Employees also shoulder a responsibility to follow written policies and procedures. Despite Management's apparent laxity, given the uniqueness of the J-3 cell block area and the potentially grave consequences if inmates had been able to reach the unsecured area, the Arbitrator believes that just cause for taking disciplinary action existed.

## ISSUE NO. 2

### IF NOT, WHAT IS THE APPROPRIATE REMEDY?

The Union contended that even if just cause existed, the three day penalty was too severe, and in Mr. Jordan's case disparate because his record of service differs from Mr. Spaulding's record.

The record establishes that Mr. Armstrong, who is a very experienced Corrections Officer did not react with any great sense of alarm when he discovered the unlocked doors. While he did report what he found to Captain Potts he did not express any concern to the Grievants and tell them to take immediate corrective action because of the potential danger. The record is also devoid of anything to indicate that Captain Potts took immediate action to correct the situation. On the one hand Management has contended that the Grievant's misconduct was very serious, but on the other hand Management's actions are inconsistent with the alleged seriousness of their wrongdoing. No one in Management immediately went to the J-3 cell block, or even called to tell the Grievants to take immediate corrective action

Under the Department's Rules the range of disciplinary action for a first infraction of Rule No. 8 is an oral warning to a three day suspension, and for a first infraction of Rule No. 40 a written warning to discharge. In Mr. Spaulding's case, given that this is his second violation of Rule No. 8 in less than a year coupled with his first violation of Rule No. 40 the Arbitrator believes the three day suspension was appropriate. In Mr. Jordan's case since this is his first violation of both rules the Arbitrator believes he should receive less discipline. Considering what was meted out to Mr. Spaulding, the proper discipline is a two day suspension.

**AWARD**

Mr. Spaulding's grievance is denied in entirety Mr. Jordan's three day suspension is to be reduced to a two day suspension and he is to be made whole for the one day.

March 27, 1991  
Date

Louis V. Imundo  
Louis V. Imundo  
Arbitrator

ARBITRATION  
BENCH DECISION AND AWARD

ARBITRATOR: LOUIS V. IMUNDO

State of Ohio

Department REHABILITATION + CORRECTIONS

Union OCSEA / AFSCME

Grievance No. 27-25-(7-23-90)0158-01-03

Grievant JOHNNY WILLIAMS

Date Of Hearing 3-26-91

Issue (s) : 1. JUST CAUSE FOR DISCIPLINE  
2. APPROPRIATENESS OF 2 DAY SUSPENSION

Appearances:

For the Employer: (Advocate) DAVID BURRUS

For the Union: (Advocate) DON SARGENT

AWARD: MANAGEMENT HAD JUST CAUSE TO DISCIPLINE THE  
GRIEVANT. CONSIDERING GRIEVANTS PAST RECORD AND  
SERIOUSNESS OF MISCONDUCT, AND FACT THAT DISPARATE  
TREATMENT WAS NOT PROVEN TWO DAY SUSPENSION  
WAS APPROPRIATE.

Issued at: LUCASVILLE OHIO

Date: 3-26-91

Louis V. Imundo  
Arbitrator's Signature

ARBITRATION  
BENCH DECISION AND AWARD

ARBITRATOR: LOUIS V. IMUNDO

State of Ohio

Grievance No. 27-25-(6-5-90)-146-01-03

Department REHABILITATION AND CORRECTIONS

Grievant MICHAEL MALONE

Union OCSEA / AFSCME

Date Of Hearing 3-26-91

Issue (s) : 1. JUST CAUSE      2. APPROPRIATENESS OF ACTION

Appearances:

For the Employer: (Advocate) DAVID BURRUS

For the Union: (Advocate) DON SARGENT

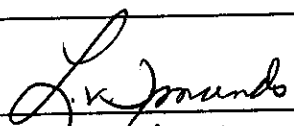
AWARD: THE ENFORCEMENT OF THIS PRACTICE I.E. UNWRITTEN  
RULE IS SO INCONSISTENT THAT TO ~~ITS~~ SELECTIVE  
WITHOUT FOREWARNING EMPLOYEES OF INTENTION TO  
STRICTLY APPLY, ENFORCEMENT HAS BEEN RENDERED  
NULL AND VOID IN THIS CASE MGT HAD NO JUST  
CAUSE TO DISCIPLINE THE GRIEVANT. DISCIPLINARY  
ACTION OF 1 DAY IS RESCINDED

Issued at:

LUCASVILLE OHIO

Date:

3-26-91

  
Arbitrator's Signature