

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 593

OCB GRIEVANCE NUMBER: 35-03-901012-0075-01-03

GRIEVANT NAME: VARGAS, RICARDO

UNION: OCSEA/AFSCME

DEPARTMENT: YOUTH SERVICES

ARBITRATOR: DWORKIN, JONATHAN

MANAGEMENT ADVOCATE: ELDER, DONALD

2ND CHAIR: WAGNER, TIM D.

UNION ADVOCATE: MILLER, TIM

ARBITRATION DATE: APRIL 30, 1991

DECISION DATE: MAY 6, 1991

DECISION: MODIFIED

CONTRACT SECTIONS
AND/OR ISSUES: REMOVAL FOR INMATE ABUSE AND DERELICTION OF
DUTY

HOLDING: DISCHARGE IS MODIFIED TO A DISCIPLINARY SUSPENSION
COVERING ENTIRE PERIOD FROM REMOVAL TO JUNE 2,
1991, WITH NO REPAYMENT OF LOST WAGES OR BENEFITS.
GRIEVANT GIVEN "SECOND CHANCE" DUE TO LONG, CLEAN
WORK RECORD. HIS REINSTATEMENT SHALL BE TO A
LOCATION OTHER THAN F DORM.

ARB COST: \$518.18

SUMMARY OF DISPUTE

This was a discharge dispute. As such, it was controlled by Article 24 of the Agreement, particularly the following provisions:

ARTICLE 24 - DISCIPLINE**§24.01 - Standard**

Disciplinary action shall not be imposed upon an employee except for just cause. *The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse.* [Emphasis added.]

§24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- A. One or more verbal reprimand(s) (with appropriate notation in employee's file);
 - B. One or more written reprimand(s);
 - C. One or more suspension(s);
 - D. Termination.
- . . .

§24.05 - Imposition of Discipline

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

Grievant was a Youth Worker at Cuyahoga Hills Boys School in Highland Hills, Ohio. The School is a facility of the Ohio Department of Youth Services. It is, in effect, a medium-maximum security juvenile prison for delinquents ages twelve to twenty-one. Designed as a two-hundred-bed institution, it houses approximately three hundred fifty boys, all of whom have been adjudged felons by Ohio Juvenile Courts.

As a Youth Worker, Grievant's job was to maintain discipline and security in F Dorm, an intake residence for approximately forty-five youths new to Cuyahoga Hills. The State alleges that, on May 13, 1990, while working alone in the dorm, he took an unruly boy into the isolation room and beat him with a belt. It is charged that he accentuated his misconduct by giving his keys to a "cadre" (trustee) inmate with instructions to lock him and his victim inside the room until he signaled for the door to be opened. The Employer further maintains that when the door was unlocked ten minutes later, Grievant responded to the boy's continuing impudence by chasing him to his bunk, grabbing him around the neck, and threatening to smash his head against the bed rail.

Grievant was charged with several violations, including (but by no means limited to) abuse of an inmate and dereliction of duty. The latter charge related to turning his keys over to an inmate and permitting himself to be locked into the isolation room. After the requisite investigation of charges and pre-disciplinary hearing, he was discharged. The discipline was grieved, appealed to arbitration, and heard at Cuyahoga Hills on April 30, 1991.

THE "BENCH" DECISION

Although the dispute was uncomplicated, pertinent aspects of it were in hopeless conflict, and the hearing was prolonged. When all testimony and documentary evidence had been entered, the Arbitrator met with the Representatives of the parties and disclosed his findings:

1. While the State's presentation forcefully suggested that Grievant committed abuse and the Arbitrator suspected that he was "guilty as charged," the evidence fell short of proving the misconduct. Article 24, §24.01 burdens the Employer with a strict obligation to prove allegations in support of discipline or termination; while that does not mean the evidence must be absolute and unqualified, it must at least convince an arbitrator of a probability (as contrasted with a possibility) if the State is to prevail. The Employer's evidence of abuse did not meet this standard and, therefore, the charge should be dismissed.

2. The evidence that Grievant relinquished his keys to a juvenile inmate and permitted himself to be locked into the isolation room was markedly more persuasive. The Employee's denials were not credible; the Arbitrator

did not believe them. He was firmly convinced that Grievant did not tell the truth about the incident even though he testified under oath. This was a tactical error on Grievant's part. Had he been candid and remorseful concerning his misconduct, his attitude would have been relevant on the question of whether or not the contractual goal of discipline -- correction -- could have been accomplished through the progressive policy outlined in §24.02. Remorse might have impelled greater moderation of the disciplinary penalty than will be awarded.

3. As will be discussed in the next section of the decision, Grievant's action when he handed his keys to a cadre inmate was a glaring violation responsibilities. It was so perverse that, standing alone, it could well have supported discharge. It is only because of his strong record of long and valuable service that just cause requires granting the Employee a second chance.

After these findings were reviewed, the Representatives agreed that the bench decision should be finalized in a brief, summary award.

DECISION

It is hard to imagine a stronger condemnation of Grievant's misconduct than the facts themselves. It was between 9:00 and 10:00 o'clock at night on May 13, 1990. Grievant was alone on F Dorm -- the only adult in charge of roughly forty-five juvenile felons, some potentially violent. He was a nine-year Youth Worker who knew his job and presumably understood the seriousness of his obligations. He gave his keys to one of the inmates, and purposely disabled himself by instructing the youth to lock him in the

isolation room -- a room that could be unlocked only from outside. There is literally nothing more to say about the action. Any attempt to describe or characterize it would detract from its stark reality. It was truly unthinkable that even a novice Youth Worker would act with such cavalier irresponsibility.

As the Arbitrator informed the Representatives of the parties at the close of the hearing, the discipline will be modified to the extent necessary to give Grievant a second chance. The Employee will be reinstated, but without lost wages or benefits; and his reinstatement will be postponed until the start of the first pay period in June to accommodate the Employer's record-keeping needs.

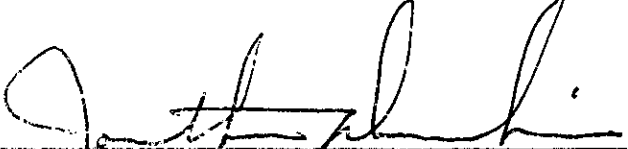
AWARD

The grievance is partially sustained. The discharge is modified to a disciplinary suspension covering the entire period of time from Grievant's removal to June 2, 1991. The Employer is directed to correct its records to reflect the modification.

Grievant shall be reinstated to his classification, with unbroken seniority, on his first scheduled workday of the pay period beginning June 2, 1991. His reinstatement shall be to the 3:00 to 11:00 p.m. shift, at a location other than F Dorm.

The Employer's obligations under this Award shall be fulfilled upon its compliance with the foregoing directives. It shall not be liable to Grievant for lost wages or benefits resulting from his removal.

Decision Issued at Lorain County, Ohio, May 6, 1991.


Jonathan Dworkin, Arbitrator