

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 665 EX

OCB GRIEVANCE NUMBER: 1) 31-12-901009-0049-01-06  
2) 31-12-910429-0027-01-09; 3) 07-00-901113-0095-01-04 and  
4) 07-00-910116-0105-01-14

GRIEVANT NAME: 1) HARTFIELD, DENISE 2) FELLOWS, CATHERINE  
3 AND 4) MILLER, MARK

UNION: OCSEA/AFSCME

DEPARTMENT: TRANSPORTATION AND COMMERCE

ARBITRATOR: BITTEL, PATRICIA THOMAS

MANAGEMENT ADVOCATE: TORNES, JOHN (ODOT)  
ULLMAN, VICKI (COMMERCE)

2ND CHAIR: SAMPSON, RODNEY

UNION ADVOCATE: EALY, JOE

ARBITRATION DATE: SEPTEMBER 12, 1991

DECISION DATE: SEPTEMBER 12, 1991

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

**CONTRACT SECTIONS**

AND/OR ISSUES: 1) 3 DAY SUSPENSION FOR FAILURE TO GIVE PRIOR  
NOTICE OF ABSENCE; 2) 5 DAY SUSPENSION FOR UNAUTHORIZED ABSENCE;  
3) 3 DAY SUSPENSION FOR LEAVING WORK W/O PERMISSION, AWOL AND  
DISOBEDIENCE OF A DIRECT ORDER. 4) 15 DAY SUSPENSION FOR  
INSUBORDINATION, ABUSIVE & RUDE CONDUCT, LEAVING WORK W/O  
PERMISSION.

HOLDING: 1) SHE DID GIVE NOTICE TO EMPLOYER ON FIRST OCCASION  
AND SECOND CIRCUMSTANCE WAS MITIGATED BECAUSE MANAGEMENT WAS AWARE  
OF HER CONDITION. REDUCED FROM 3 TO 1 DAY SUSPENSION. 2)  
DOCTOR'S SLIP INADEQUATE; DIDN'T SPECIFY WHY SHE WAS UNABLE TO  
WORK; 3) HIS PREVIOUS WARNINGS AND PRIOR DISCIPLINE MADE THIS  
PROGRESSIVE AND COMMENSURATE. 4) EVIDENCE SHOWS GRIEVANT'S WORK  
HABITS WERE DEGENERATING RAPIDLY DESPITE PRIOR RECENT SUSPENSION.

COST: \$412.06 (\$103.02 EACH CASE)

In the Matter of Arbitration Between )  
)  
)  
The Ohio Department of Transportation ) Case No. 31-12(10-  
) 09-90)-49-01-06  
)  
and )  
) Grievant:  
The Ohio Civil Service Employees ) Denise Hartfield  
Association, AFSCME )

Patricia Thomas Bittel,  
Arbitrator

#### APPEARANCES

For the State:

John Tornes  
R. Sampson  
H. Hueber  
D. Dickens

For the Union:

Joe Ealy  
Denise Hartfield

#### ISSUE

Is the grievance arbitrable in accordance with Article 25, sections .02, .03 and .05? If so, was the three day suspension imposed upon Grievant for just cause? If not, what shall the remedy be?

#### EXPEDITED DECISION

The grievance is arbitrable as the Union produced evidence the request for arbitration was timely sent by certified mail. The three day suspension given to Grievant lacked just cause in that she was penalized for failure to give prior notice of absence on July 10-13, 19 and 20 when in fact she gave notification or provided timely doctor's slips for those dates. While she failed to provide prior notice for her absences on July 16-18, the offense was mitigated because management was aware of her condition. Her suspension shall be reduced to one day.

#### DISCUSSION

Grievant was disciplined for two violations: failure to follow written policies and unauthorized absence. On July 9, she was injured and provided timely evidence she was unable to work. Management received a message through the timekeeper that she would not be able to work on July 10.

On July 10, Grievant went to the doctor and was given a doctor's slip noting minimal use of her left hand under the restricted work column and setting her next appointment for July 13. The note was reasonably interpreted by Grievant as placing her in the restricted work category until her next examination. As her employer has no restricted work, she understood she would be off from work until cleared from medical restrictions. She provided this note to management


early on the morning of the 11th. Up to this point, none of her actions breached policy.

On the 13th, she spoke with her supervisor and promised to submit her doctor's excuses as she received them. She went to the doctor and remained on restricted work, minimal use of the left hand, until her next examination of July 17. She did not give this doctor's note to her supervisor in a timely fashion and did not call in.

When she visited the doctor on the 17th, he changed her restriction to working "as limited by bandage/splint" until her next appointment on July 23. Grievant did not submit this or the slip from the 13th to her supervisor until July 19. Her testimony that she called in on July 18 is not credited as a timely call-in for that day. She therefore left her supervisor uninformed about her status on July 16, 17 and 18.

Management disciplined her for failure to call in or come to work for approximately nine days when only three were not timely accounted for. The discipline was not commensurate with the offense.

Respectfully Submitted,

  
Patricia Thomas Bittel,  
Arbitrator

Dated: Sept. 13, 1991

Arbitrator: \_\_\_\_\_

State of Ohio

Grievance No. 31-12(10-09-90)49-01-06Department ODOTGrievant Denise HartfieldUnion OCSEADate of Hearing 9-12-91

Issue(s): Is the grievance arbitrable in accordance with Article 25, sections .02, .03 and .05? If so, was the three day suspension imposed upon Grievant for just cause? If not, what shall the remedy be?

Appearances:

For the Employer: (Advocate) John Turner  
R. Sampson, H. Hatcher, D. Dickens

For the Union: (Advocate) Joe Ealy  
D. Hartfield

AWARD: The grievance is arbitrable as the Union produced evidence the request for arbitration was timely sent by certified mail. The 3-day suspension given to Grievant lacked just cause in that she was penalized for failure to give prior notice of absence on July 10-13, 1990 when in fact she gave notification or provided timely doctor's slips for those dates. While she failed to provide prior notice for her absences on July 16-18, the offense was mitigated because management was aware of her condition. Her suspension shall be reduced to a one-day.

Issued at Fairlawn

Patricia Thomas Bethel  
 Arbitrator's Signature

9-12-91  
 Date

State of Ohio

Department ODOT

Union OCSEA

Grievance No. 31-12(04-29-91) 27-01-097

Grievant Cathy Fellows

Date of Hearing 9-12-91

Issue(s): Was the five (5) day suspension imposed upon the Grievant for just cause? If not, what shall the remedy be?

Appearances:

For the Employer: (Advocate) John Tornes  
R. Sampson, R. Deems, C. Ray

For the Union: (Advocate) Joe Ealy  
C. Fellows

AWARD: The grievance is denied. Management had just cause for considering Grievant's absence unauthorized because her doctor's slip was inadequate and failed to specify why she was unable to work. She was fully aware that the doctor's slip must specify the reason for the absence because she received a three-day suspension for the same problem less than two months prior to this case.

Issued at Fairlawn, OH  
9-12-91  
Date

Patricia Thomas Bittel  
Arbitrator's Signature

665EX

In the Matter of Arbitration Between )  
 )  
 )  
The Ohio Department of Commerce ) Case No. 07-00(11-  
 ) 13-90)-0095-01-14  
 )  
and )  
 ) Grievant:  
The Ohio Civil Service Employees ) Mark Miller  
 )  
Association, AFSCME )

Patricia Thomas Bittel,  
Arbitrator

#### APPEARANCES

For the State:

For the Union:

Victoria Ullman

Joe Ealy

R. Sampson

Mark Miller

Adam Tonti

Sylvia Keberle

#### ISSUE

Was the three day suspension imposed upon Grievant for just  
cause? If not, what shall the remedy be?

### EXPEDITED DECISION

The grievance is denied. The evidence has shown that Grievant repeatedly left his work area without permission, was absent without leave and ignored the instructions of his supervisor. He had been previously warned and disciplined about such violations. His suspension was progressive in nature and was commensurate with his offense.

### DISCUSSION

At first blush, the constant, meticulous scrutiny of Grievant's work habits appears to be a pattern of petty harassment. However, upon closer examination, this scrutiny is found to have been warranted if not necessary in dealing with Grievant's behavior.

The allegations of leaving work without permission and absence without leave were testified to by Grievant's supervisor. Her testimony was specific as to dates and times, being based on notes and memoranda made at the time. Her testimony was reliable.

Grievant did not deny many of the allegations made against him. Indeed, he admitted to tardiness, saying, "I'm not on time all the time." He did not rebut any of the specific instances of unauthorized absence from work, nor did he deny that he failed to respond to his supervisor's requests for explanations and ignored instructions about getting permission to leave or procedures for submitting



request for leave forms. Rather, his defense appears to be based on his own allegations of harassment.

If Grievant was "harassed" by numerous memoranda from his supervisor and burdensome procedures for getting permission to go to the law library, it was because his pattern of unaccountability and disdain for supervision warranted firm measures. The fact that management may have been wooden or picky in its approach does not exonerate Grievant from his offenses. The three day suspension was for just cause.

Respectfully Submitted,

  
Patricia Thomas Bittel,  
Arbitrator

Dated: Sept. 13, 1991

In the Matter of Arbitration Between )  
 )  
 )  
The Ohio Department of Commerce ) Case No. 07-00(1-  
 ) 16-91)-0105-01-14  
 )  
and )  
 ) Grievant:  
The Ohio Civil Service Employees ) Mark Miller  
Association, AFSCME )

Patricia Thomas Bittel,

Arbitrator

#### APPEARANCES

For the State:

Victoria Ullman

R. Sampson

Adam Tonti

Sylvia Keberle

For the Union:

Joe Ealy

Mark Miller

#### ISSUE

Was the fifteen day suspension imposed upon Grievant for  
just cause? If not, what shall the remedy be?

## EXPEDITED DECISION

The grievance is denied. While the jump from a three day to a fifteen day suspension is substantial, the evidence shows Grievant's work habits were degenerating rapidly despite a prior suspension only a few weeks before. His utter refusal to acknowledge his supervisor's authority over him warranted a disciplinary measure geared to waken him to the seriousness of his situation. The penalty was appropriately progressive in view of these facts.

## DISCUSSION

Grievant was given a fifteen day suspension for insubordination, abusive and rude conduct toward others, leaving his work area without permission and absence without leave. His supervisor, Sylvia Keberle, testified about a number of specific instances of unauthorized absence from work. Supervisor of Investigations Adam Tonti also testified about Grievant's unauthorized absences, again without any denial by Grievant. Grievant did not refute any of the cited instances of absence, but simply stated many were denied at the time. This testimony is not sufficient to rebut the extensively documented instances of unauthorized absence from work.

Each of Keberle's memos to Grievant alleging unauthorized absence instructed him to prepare an

explanation. Her un rebutted testimony established that he complied with none of her numerous requests. These refusals were in direct defiance of her role as his supervisor. Further, Keberle gave Grievant specific instructions regarding submission of request for leave forms, which he completely ignored. These incidents establish the offense of insubordination.

Keberle did not appear to have any control over Grievant whatsoever. Though he is an attorney and as a professional would ordinarily anticipate less supervision than a non-professional, he nevertheless works for an organization which has assigned a supervisor to him and he must respect that. The evidence demonstrates Keberle has been utterly unable to exercise authority over any aspect of Grievant's work habits. Management cannot be expected to ignore such conduct.

Both Keberle and Tonti testified to an incident where Grievant shouted and screamed in front of office personnel. Grievant's response was that such behavior was not like him. The testimony of two supervisors as to this incident is more credible than Grievant's unconvincing denial.

Management has proven its allegations by clear and convincing evidence. Grievant's record of refusal to acknowledge management's expectations of his performance warranted a suspension long enough to get his attention.

Mitigating circumstances sufficient to call for a lesser  
penalty have not been shown.

Respectfully Submitted,

  
Patricia Thomas Bittel,  
Arbitrator

Dated: Sept. 13, 1991