#5716

BENCH DECISION AND AWARD

Arbitrator Louis V. Imundo, Jr.

State of Ohio

Grievance No. 06-04(91-02-19)0003-01-14

Department Ohio Civil Rights Commisssion

Grievant Lon Brown

Union OCSEA Local 11 AFSCME

Date of Hearing May 29, 1992

Issue(s): See attached.

Appearances:

For the Employer: (Advocate) Mr. Dennis R. Van Sickle

For the Union: (Advocate) Mr. Steve Lieber

AWARD: See attached.

Issued at Dayton, Ohio

Louis V. Imundo, Jr.
Arbitrator's Signature

June 1, 1992
Date

Before Louis V. Imundo, Jr., Impartial Arbitrator

Expedited Arbitration

In the matter of arbitration between

STATE OF OHIO - OHIO CIVIL RIGHTS COMMISSION

and the

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION LOCAL 11, AFSCME

Grievance No. **06-04 (91-02-19) 0003-01-14**

Grievance of **Lon G. Brown**

For The Employer: Mr. [redacted] Dennis VanLieke

For the Union: Mr. [redacted]le Steve Lieber

ISSUES: DID THE EMPLOYER VIOLATE THE (1989-1991) UNION CONTRACT WITH OCSEA/AFSCME WHEN IT IMPOSED A (1) DAY SUSPENSION WITHOUT PAY TO GRIEVANT LON BROWN ON JANUARY 23, 1991? IF SO, WHAT SHALL THE REMEDY BE?

OPINION: The record clearly shows the Grievant, prior to the incident at issue, had a very poor work record. The fact that he had formal disciplinary action taken against him nine times in less than 18 months clearly shows his unwillingness to conform with the Agency's rules, regulations, and standards of conduct.

After thoroughly reviewing the testimony of the Parties' witnesses, it is the Arbitrator's opinion that Managements' witnesses were credible, and for the most part the Grievant's testimony was self serving and incredible.

In the incident at issue the Grievant was given a one day suspension for allegedly violating four rules. These rules are as follows:

- No. 1e - Neglect of Duty - Being inattentive to duties, or loafing on the job.
- No. 2b - Insubordination - Willful disobedience of a direct order by a supervisor.
- No. 3 - Posting or displaying abusive material, or use of insulting language toward another employee or a member of the public.
- No. 4 - Acts of discrimination on the basis of race, color, religion, sex, age, national origin or ancestry, and condition of handicap, which may include use of malicious, abusive or threatening language to other employees or members of the public.

In the Arbitrator's opinion Mr. Brown was derelict in the performance of his job duties when he failed to properly assist Mr. Alnardo Feliciano, a relatively inexperienced employee, who was attempting to do an intake interview with a Charging Party. Management had just cause to discipline Mr. Brown under Rule No. 1e.

In the Arbitrator's opinion Mr. Brown was not guilty of insubordination when instead of going into Mr. Rhines' office as he was so ordered by Mr. Rhines, he went to the bathroom. The record established that Mr. Brown was going to the bathroom when he walked past Mr. Rhines' office and made the insulting remark. Management failed to prove that Mr. Brown never intended to go to the bathroom, and instead went there as an excuse to avoid immediately complying with Mr. Rhines' directive. Mr. Brown never refused to go to Mr. Rhines' office, and in fact did so after exiting the bathroom. Mr. Brown did not violate Rule No. 2b.

In the Arbitrator's opinion Mr. Brown called Mr. Rhines a racist, and did so with the intent of insulting him. While the remark was possibly heard by Ms. Meadows, it was not uttered in such a manner as to get the attention of a wide audience. Nor was the insulting remark made in a face-to-face confrontation. It was uttered as Mr. Brown walked past Mr. Rhines' office in a deliberate attempt to insult and provoke him. In the Arbitrator's opinion Mr. Brown's motive to verbally assault Mr. Rhines arose from the events which occurred on December 17th and 18th. In the Arbitrator's opinion the Grievant acted with premeditation and malice. As a result of his remark to Mr. Rhines, Management had just cause to discipline the Grievant under Rule No. 4.

In the Arbitrator's opinion Mr. Brown's insulting remark to Ms. Pattillo-

Harper was done with malice and forethought. Like the remark made to Mr. Rhines it stemmed from resentment over earlier events which caused Mr. Brown to have a grievance. While referring to someone as a honkey is unacceptable in any organization, it is especially improper in the Agency. The referenced word was demeaning to Mr. Rhines, and insulting to Ms. Pattillo-Harper because of the way it was used towards her. In the Arbitrator's opinion Management had just cause to discipline Mr. Brown under Rule No. 4.

In the Arbitrator's opinion Management improperly charged Mr. Brown with misconduct under Rule No. 3. Because of the malice involved in the incidents with Mr. Rhines and Ms. Pattillo-Harper Rule No. 4 was the appropriate one to cite the Grievant for having violated. The Arbitrator believes that to a degree Rules Nos. 3 and 4 overlap. In the Arbitrator's view, charging the Grievant in both instances under two rules amounted to double jeopardy. Because of their overlap only one rule could be cited for each incident. In the case at bar the Arbitrator believes Rule No. 4 applied to both incidents.

AWARD

Management had just cause to discipline Mr. Brown for one violation of Rule No. 1e, and two violations of Rule No. 4. Considering the Grievant's record, and the seriousness of his misconduct a one day suspension was most lenient. The instant grievance is denied.

June 1, 1992
Date

Louis V. Imundo, Jr.
Louis V. Imundo, Jr.
Arbitrator

#771 Ex

BENCH DECISION AND AWARD

Arbitrator Louis V. Imundo, Jr.

State of Ohio

Grievance No. 31-12(07-08-91)37-01-06

Department ODOT

Grievant Clarence (Babe) Castellano

Union OCSEA Local 11 AFSCME

Date of Hearing May 29, 1992

Issue(s): See attached.

Appearances:

For the Employer: (Advocate) William A. Tallberg

For the Union: (Advocate) Steve Lieber

AWARD: See attached.

Issued at Dayton, Ohio

June 1, 1992
Date

Louis V. Imundo, Jr.
Arbitrator's Signature

Before Louis V. Imundo, Jr. Impartial Arbitrator

Expedited Arbitration

In the matter of arbitration between

OHIO DEPARTMENT OF TRANSPORTATION

and the

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION LOCAL 22, AFSCME

Grievance No. **31-12 (07-08-91) 37-01-06**

Grievance of **Clarence Castellano**

For the Employer: Mr. William A. Tallberg

For the Union: Mr. Steve Lieber

ISSUES: WAS THE GRIEVANT DISCIPLINED FOR JUST CAUSE? IF NOT, WHAT IS THE APPROPRIATE REMEDY?

OPINION: The record clearly established that Management and the Union, and in particular the Grievant have animus towards one another. The conflict between Mr. Castellano, a Union officer, Mr. Armenti, and others in Management is deep rooted, and long standing. In the Arbitrator's opinion, Management had a motive to set the Grievant up? The salient question in this case is whether Management set the Grievant up, or if the Grievant either intentionally, or unintentionally spread salt on roads that were dry.

In the Arbitrator's opinion all of the witnesses with the exception of Union advocate Mr. Lieber, and Management witness Mr. Lewanski gave self serving, and on occasion perjured testimony.

In reviewing the record the Arbitrator searched to uncover a motive for the Grievant to have allegedly dumped salt. The Arbitrator assigns little

credence to Management's contention that the truck would have been a lot easier to clean. As Mr. Lewanski and the Grievant testified by not dumping salt on the road, a driver could get a de facto break of considerable length by unloading salt at the yard. The driver would sit in the truck as the conveyor mechanism emptied the truck's contents into the receiving basin or area. In the Arbitrator's opinion whatever increased work a driver might have to do cleaning the truck would be offset by the idle time benefit gained during unloading. Bringing an empty truck into the yard means the driver has to immediately engage in washing it. Waiting in line to dump material, and then spending time dumping said material does not require the expenditure of much physical or mental energy on the driver's part.

In the Arbitrator's opinion the record clearly proves that salt was deposited on dry roads. The Arbitrator credits Management's testimony and evidence with respect to the roads shown in the photographs, the date, and time the photographs were taken. While, as previously stated, animus exists thereby creating a potential motive to set Mr. Castellano up, the Arbitrator does not believe that Management in this instance would go to such lengths, and incur the wrath of the community just to discipline Mr. Castellano.

In the Arbitrator's opinion Mr. Stefansky's testimony and sworn statement was unworthy of belief. In the Arbitrator's opinion truck No. 592 had a considerable amount of salt in it when the Grievant left the Montville yard. The record establishes that the gate was open at the time. The Arbirtrator discredits Mr. Hinkle's testimony that salt was coming out of the hopper as the Grievant left the yard.

The record shows that on February 11, 1991 the Grievant damaged a truck, and was subsequently charged with a violation of ODOT Directive A-601, No. 8. The Grievant was issued a written warning on March 12th. The incident at issue occurred on March 20th. In the Arbitrator's opinion given the feuding between Management and Mr. Castellano, the March 12 disciplinary action created a potential motive for the Grievant. The Grievant either knew, or should have known about the public's sensitivity over salt on county roads. Dumping salt on dry roads was certainly going to arouse public ire, and embarrass Management.

While Management's witnesses, with the aforementioned exception of Mr. Lewanski were less than wholly credible witnesses, Mr. Armenti gave uncontroverted testimony that during the time period material was deposited on the roads in questions, and truck No. 592 was the only truck with material in it on the road. In the Arbitrator's opinion much of Mr.

Castellano's testimony was self serving, and unworthy of belief. Given Mr. Castellano's diminished credibility, and Mr. Stefansky's total lack of credibility the Arbitrator, as previously stated believes truck No. 592 had six to eight tons of salt on it when Mr. Castellano left the yard. Mr. Castellano's truck was the only one on county roads at the time the salt was dumped, and Mr. Castellano arrived at the Burton yard with an empty truck. The inescapable conclusion is that Mr. Castellano, as a likely deliberate act of retaliation dumped the salt. In the Arbitrator's opinion Management had just cause to discipline Mr. Castellano for violating ODOT Directive A-601 No. 2c, and No. 8. The three day suspension was appropriate.

AWARD

Management had just cause to discipline the Grievant. The three day suspension was appropriate, and the instant grievance is denied.

June 1, 1992
Date

Louis V. Imundo, Jr.
Louis V. Imundo, Jr.
Arbitrator

#971 EY

BENCH DECISION AND AWARD

Arbitrator Louis V. Imundo, Jr.

State of Ohio

Grievance No. 04-00(20-02-91)48-01-07
04-00(22-03-91)52-01-07

Department Ohio Department of Agriculture

Grievant Sheila Jackson

Union OCSEA Local 11 AFSCME

Date of Hearing May 29, 1992

Issue(s): See attached.

Appearances:

For the Employer: (Advocate) Ms. Barbara Valentine

For the Union: (Advocate) Mr. Steve Lieber

AWARD: See attached.

Issued at Dayton, Ohio

June 1, 1992
Date

Louis V. Imundo
Arbitrator's Signature

Before Louis V. Imundo, Jr., Impartial Arbitrator

Expedited Arbitration

In the matter of arbitration between

OHIO DEPARTMENT OF AGRICULTURE

and the

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION LOCAL 11, AFSCME

Grievance Nos. **04-00 (20-02-91) 48-01-07**
04-00 (22-03-91) 52-01-07

Grievance of **Shelia Jackson**

For The Employer: Ms. Barbara Valentine

For The Union: Mr. Steve Lieber

ISSUES: WAS THE GRIEVANT SUSPENDED FOR JUST CAUSE? IF NOT, WHAT SHALL THE REMEDY BE?

OPINION The February 20, 1991 written reprimand for excessive absenteeism. The record clearly establishes that Ms. Jackson had suffered a variety of misfortunes which caused her to be absent. However, irrespective of how valid an employee's reasons are for being absent there comes a point where, in Management's view, an employee is unreliable. When an employee, like Ms. Jackson, is designated as being essential, the threshold point of being labelled unreliable is likely to come sooner when compared to non-essential employee. When an essential employee is absent, it is likely to have a greater adverse impact when compared to the absence of a non-essential employee.

On January 14, 1991 Management sent Ms. Jackson a letter informing her that evidence of "pattern abuse" of sick leave existed. Ms. Jackson was forewarned that continued "pattern absence" may result in disciplinary action. The record shows that subsequent to the January 14th letter Ms.

Jackson was off from January 29th to February 13th.

At the Hearing the Union failed to show disparate treatment of Ms. Jackson, or that Management cannot discipline employees for excessive absence irrespective of how valid the reasons are for being absent. In the Arbitrator's opinion, given that only a couple of weeks had passed from the date the warning letter was issued, and Ms. Jackson's being absent again for a couple of weeks, just cause for discipline existed. The written warning was appropriate.

The March 13, 1991 written reprimand for being absent without approved leave on February 15, 1991. As previously stated, on January 14th the Grievant was forewarned in writing about "pattern absence" and the potential consequences if such continued. On February 15th the Grievant called in to report that due to weather conditions she would be absent. A request for leave was made, and subsequently denied. This absence triggered a written warning.

In the Arbitrator's opinion the Grievant clearly understood how Management felt about her being absent. The record shows that Ms. Jackson has lived in the snowbelt area around Cleveland for many years, and therefore is no stranger to having to drive on snow and/or ice covered roads. The record further establishes that no weather emergency had been declared on February 15th. In the Arbitrator's opinion the Grievant, because of her attendance history, and her being designated an essential employee, could, and should have made a much greater effort to get to work. There are many things the Grievant could have done to get to work. The Grievant also knew that requests for leave without pay are not automatically granted. In not reporting for work as scheduled, or at least making every realistic effort to get to work, the Grievant risked being subject to disciplinary action. In the Arbitrator's opinion the Grievant gambled on getting her absence approved in order to avoid being disciplined. In the Arbitrator's opinion Management was justified in denying the request, and as a consequence had just cause to discipline Ms. Jackson. The written reprimand was appropriate.

The May 3, 1991 one day suspension for being absent without approved leave on March 4, 1991. In the Arbitrator's opinion the fact that on March 4th the Grievant had not been issued the warning for her February 15th absence is not a bona fide mitigating or extenuating factor. The Grievant had been issued a forewarning letter on January 14th, and a written warning on February 20th. The Grievant should have clearly understood that Management's patience had worn thin, and they would not be predisposed to approving additional absences.

The record establishes that no weather emergency was declared on March

4th. Even if it was, such would not have automatically meant the Grievant had a valid reason for being absent. The Grievant holds a responsible position with the Department of Agriculture. In order to keep her job, and its attendant benefits she must fulfill her job responsibilities in a satisfactory manner. One of those responsibilities is being dependable. In this instance, the Grievant once again did not make every reasonable effort to get to work. In the Arbitrator's opinion, Management had just cause to discipline Ms. Jackson. Considering the validity of the two previous written warnings the one day suspension was appropriate.

AWARD Management had just cause to issue the written warnings, and one day suspension. The instant grievances are denied.

June 1, 1992
Date

Louis V. Imundo, Jr.
Arbitrator