THE STATE OF OHIO AND OHIO
CIVIL SERVICE EMPLOYEES ASSOCIATION
VOLUNTARY LABOR ARBITRATION PROCEEDING

IN THE MATTER OF THE ARBITRATION BETWEEN

THE STATE OF OHIO, DEPARTMENT OF REHABILITATION AND CORRECTION, MADISON CORRECTIONAL

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME, AFL-CIO

GRIEVANT: Anna Bisbee (Discharge)

#782

OCB CASE NO.: 27-15-(8-5-91)-172-01-03

ARBITRATOR'S OPINION AND AWARD
Arbitrator: David M. Pincus
Date: June 11, 1992

APPEARANCES

For the Employer	
Rex A. Zent	Warden
Ron Wilson	Personnel Officer I
Glenda Stanley	Major
Philip Lomax	Labor Relations Officer
David J. Burnes	Advocate
Lou Kitchen	2nd Chair
For the Union	
Anna Bisbee	Grievant
Patrick Mayer	Advocate

INTRODUCTION

This is a proceeding under Article 25, Sections 25.03 and 25.01 entitled Arbitration Procedures and Arbitration Panel of the Agreement between the State of Ohio, the Department of Rehabilitation and Correction, Madison Correctional, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, hereinafter referred to as the Union for the period July 1, 1989 through December 31, 1991. (Joint Exhibit 1).

The arbitration hearing was held on January 24, 1992 at the Office of Collective Bargaining, Columbus, Ohio. The Parties had selected David M. Pincus at the Arbitrator.

At the hearing the Parties were given the opportunity to present their respective positions on the Grievant, to offer evidence, to present witnesses and to cross examine witnesses. At the conclusion of the hearing, the Parties were asked by the Arbitrator if they planned to submit post hearing briefs. Both Parties indicated that they would not submit briefs.

STIPULATED ISSUE

Was the removal of Anna Bisbee for just cause? If not, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS

ARTICLE 24 - DISCIPLINE

Section 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just accused.

The Employer had 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.

Section 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

Disciplinary action taken may not be referred to in an employee's performance evaluation report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to being the disciplinary process.

...

(Joint Exhibit 1, Pgs. 37-38)

Section 24.05 - Exposition of Discipline

...

Disciplinary measures shall be reasonable and commensurate with the offense and shall be used solely for punishment.

...

(Joint Exhibit, Pg. 39)

Section 24.08 - Employee Assistance Program

In cases where disciplinary action is contemplated and the affected employee elects to participate in an Employee Assistance Program, the disciplinary action may be delayed until completion of the program, the Employer will meet and give serious consideration to modifying the contemplated disciplinary action.

(Joint Exhibit 1, Pg. 40)

ARTICLE 29 - SICK LEAVE

Section 29.03 - Notification

When an employee is sick and unable to report for work, he/she will notify his/her immediate supervisor or designee no late than on half hour after starting time, unless circumstances preclude this notification. The Employer may request a statement, personally written and signed by a physician who has examined the employee or the member of the employee's immediate family, be institutional agencies or in agencies where staffing requires advance notice, the call must be made at least ninety minutes prior to the start of the shift or in accordance with current practice, whichever period is less.

If sick leave continues past the first day, the employee will notify his/her supervisor or designee every day unless prior notification was given of the number of days off. When institutionalization, hospitalization, or convalescence at home is required the employee is responsible for notifying the supervisor at the start and end of such period.

Section 29.04 - Sick Leave Policy

It is the policy of the State of Ohio to grant sick leave to employees when requested. It is also the policy of the State to take corrective action for unauthorized use of sick leave and/or abuse of sick leave. It is further the policy to the State that when corrective and/or disciplinary action is taken, it will be applied progressively and consistently.

It is the desire of the State of Ohio that when discipline is applied it will serve the purpose of correcting the performance of the employee.

(Joint Exhibit 1, Pg. 52)

STIPULATED FACTS

1. She was employed with DR+C since Sept. 11, 1989
2. She has a written reprimand for Rule 26 - Interfering with or failing to cooperate in an investigation. Feb. 1991

CASE HISTORY

Anna Bisbee, the grievant, was employed as a correction officer by the Ohio Department of Rehabilitation and Correction, the Employer, at the Madison Correction Institution. At the time of the removal, she had been employed by the Institution for approximately three years. The Grievant enjoyed prior State of Ohio service at the Ohio Reformity for women during the period 1977-1978.

The facts for the most part are not in dispute. On February 17, 1991, the Grievant was working the Control Center, and while on duty, placed two outside personal phone calls. One personal call was to a staff person about a personal matter. It appears the staff person was offended by he phone call and reported it to her supervisor by filing an incident report. The phone call purportedly violated an institutional policy which prohibits phone calls unless authorized by a supervisor.

On March 5, 1991, the Grievant was relieved and ordered to report to the Captain's office, for further review of the February 17, 1991 incident. Rather than reporting, the Grievant punched out and left the facility. She went to the house of a fellow employee, Officer Schook, expressed she went under a great deal of job related stress, and that she had walked off the job. She returned the next day to Officer Schook's home and gave here a letter of resignation which was to be delivered to the institution. The letter was eventually delivered, but was later discounted as unacceptable because it was later discounted as unacceptable because it was unsigned and vague in terms of content.

The Grievant was scheduled to work overtime on March 6, 1991. She failed to call in or report which caused the Employer to designate her as absent without leave.

Her normally scheduled work week commenced on March 8, 1991. Prior to her shift, the Grievant arrived at the facility to pick up her pay check and leave forms at the personnel office. A confrontation ensued involving the Grievant and Rex A. Zent, the Warden. Zent reportedly told the Grievant he would give her the pay check if she

answered some questions. Major Glenda Stanley, the supervisor of all correctional staff, conducted an investigatory interview. Questions were raised concerning the following subject matter: the personal phone call; leaving work without authorization and failing to report for scheduled overtime.

The Grievant called the facility prior to her shift on March 8, 1991. The call, itself, was well-within the appropriate time frame and she spoke to Captain Harris. Harris was advised the Grievant was under doctor's care, and that she would be unavailable through March 19, 1991. It should be noted her "good days" were March 20, 1991 and March 21, 1991.

Another call in took place on March 22, 1991. The Grievant called in properly. She advised Harris she was still under a doctor's care and should be able to return to work on March 26, 1991.

The Grievant, once again, called in prior to her shift on March 26, 1991. The Grievant noted she was still under doctor's care and "will call upon return".

On April 15, 1991, the Grievant submitted a request for leave for the period March 5, 1991 to May 7, 1991. As justification, the Grievant specified stress under the sick leave section. It should be noted the Grievant did not submit a physician's statement indicating she was under treatment, the days of treatment and the day of return.

On May 9, 1991, the Grievant called in and spoke to Lieutenant W.J. Bierbaugh. She remarked she was still under doctor's care and unable to return to work. The Grievant reported her probable return date was May 17, 1991 or she would call.

The Grievant did, indeed, call the facility on May 17, 1991. She allegedly told Captain Swyers she was unable to return to work and would probably return to work on or about May 30, 1991. The Grievant called the facility twice on May 31, 1991. She initially stated she was needed a physician's release and would return to duty or call the next day. In fact, she called later on in the day and informed the facility she was, indeed, under physician's care and would return on June 3, 1991.

On June 3, 1991 the Grievant did return to work and submitted a request for leave form covering the period May 10, 1991 to June 2, 1991 (Joint Exhibit 6). Attached to the Request for leave from was a physician as statement authorized by a Dr.Dashko and dated May 31. It contained the following relevant particulars.

". . . The above patient has been under my care and may return to work without limitations on June 3rd. she is taking (drug name)."

...

(Joint Exhibit 6)

Lieutenant W.J. Bierbaugh, called the Grievant to the Captain's office. He allegedly claimed the May 31, physician's statement was deficient because it needed additional information; it did not contain the dates to Grievant was unable to work.

On June 18, 1991, the Grievant allegedly discussed the problem with Bierbaugh. She attempted to obtain a clarification concerning the information needed to validate her request for leave. The Grievant also asked if Bierbaugh would author an official information requests in writing, because the information was privileged. Bierbaugh refused this arrangement, and continued to invalidate the submitted request for leave.

On June 19, 1991, prior to the removal decision, Nancy Foreman, Clinical Psychologist, authored a letter of support of the Grievant's request for leave. It contained the following revelant particulars:

" ... I am writing this letter in Anna Bisbee's behalf. As you are aware, Anna has seen through several significant and stressful life events in the recent past. As a result, in March, 1991, she found herself unable to cope, in general, and waled off of her job. She phoned me on March 8, 1991, asking for help. I recommended regular therapy sessions, a medication evaluation with her physician, group involvement, and reading materials. Anna has complied with all of my suggestions, and, as a result, has made significant improvement. It is my hope that you will take this into account when you consider her future at your facility. Thank you for your consideration of this matter. ..."

(Joint Exhibit Pg. 6)

On June 24, 1991, the Grievant took part in a Predisciplinary Conference. She was charged with the following rule violations: 8-Failure to follow post orders, administrative regulations, and or written policies; 4(A)-Job abandonment; and #3(B)-Leaving the area without the permission of the supervisor. These charges related to the February 17, 1991 incident dealing with the personal phone calls; the March 5, 1991 incident when the Grievant left the institution instead of reporting to the Captain's Office; and a series of absences not properly verified via a doctor's statement upon returning to work.

On July 10, 18991, the Grievant was formally removed from her position. The Notice of Disciplinary Action (Joint Exhibit 3) contained the following justifications:

"...

You are to be removed for the following infractions:

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

#4 (A) Job Abandonment
#3 (B) -Leaving the work area without the permission of the supervisor.

Officer Bisbee left the institution during her shift on March 5, 1991 stating that she intended to resign and that she was under stress. Further, she has been given numerous opportunities to provide a doctor's verification of her condition which she failed to adequately do.

..."

(Joint Exhibit 3)

A grievance was filed on August 2, 1991. The Grievance Form (Joint Exhibit 3) maintained the Grievant was removed without just cause.

Neither party raised substantive nor procedural arbitrability issues. As such, the grievance is properly before the Arbitrator.

THE MERITS OF THE CASE

Position of the Employer

It is the position of the Employer it had just cause to remove the Grievant for a number of work ruled infractions. These infractions included the following particulars: Rule 4; Job Abandonment; Rule #36 (B)- leaving the work are without permission of a supervisor; and Rule #8 - Failure to follow post orders, administrative regulations and/or written policies and procedures. It was, moreover, alleged the removal was commensurate with the offense. The violations began on March 5, 1991 and continued in some varied form until June 18, 1991.

The March 5, 1991 incident was undisputed by the Grievant. She admitted to

leaving the institution at approximately 8:24 p.m. after being relieved from her post and instructed to report to the Captain's office. None of this was disputed by the Grievant. Rather, she merely provided justification for her action in the form of stress engendered by personal difficulties and problems with a prior disciplinary action.

The next incident occured on March 6, 1991. Again, the Grievant admitted she was scheduled to work overtime, but she failed to show up and/or properly call off.

The remaining violations deal with the Grievant's non-compliance with Section 29.03, the sick leave notification provision and Section 3 of the Standards of Employee conduct (Joint Exhibit 4). The violations in question took place while the Grievant was absent for medical reasons during the period March 8, 1991 to June 2, 1991. Several violations were discussed concerning the failure to follow proper call off procedures and failure to submit a proper doctor's statement covering the absence period.

On March 8, 18991 the Grievant properly contacted the institution and stated she would be under doctor's care from March 8, 1991 until March 19, 1991; at which time she would return to work. On March 19, 1991, the Grievant never returned to work, nor did she advise the facility that she would not be reporting to work.

March 20 and 21, 1991 were the Grievant's "good days". On March 23, 1991, the Grievant once again contacted the facility and spoke to Captain Harris. She noted she was still under doctor's care and would return to work on March 26, 1991. The Grievant did, in fact call the facility on March 26, 1991. But, by calling in at 2:48 p.m. she violated the ninety minute standard which must be initiated prior to the start of the shift.

Another violation took place regarding the content of her notice remarks. She noted she was still under doctor's care and "would call upon return". As such, she failed to provide a tentative return date.

The remaining violations deals with the Grievant's failure to submit a valid and detailed doctor's statement covering the time period for which she was absent. Upon her return on June 3, 1991, the Grievant submitted a request for leave (Joint Exhibit 6) covering the period May 10, 1991 through June 2, 1991. A physician's statement (Joint Exhibit 6) was attached, but it was viewed as defective. The statement did not specify when the treatment began nor the general nature of her illness. The Grievant was then instructed by Lieutenant Bierbaugh to submit a physician's statement for the entire period for which she was under a physician's supervision. It should be noted the Grievant failed to provide the appropriate verification prior to or during the predisciplinary conference held on June 24, 1991. The Employer, at the hearing, granted the Grievant additional time to supply the appropriate information dealing with the doctor's verification of her condition. She never did supply the requested information in a detailed and explicit fashion.

The Employer discounted the Grievant's justifications surrounding the verification issue. The confusion and misunderstanding raised by the Grievant seemed self-serving. On more than one occasion she was specifically informed of the deficiencies contained in the submitted verification. The Grievant, moreover, was provided with training surrounding the specific procedures involving proper call-ins and physician verifications.

Her physician's hesitance to provide verifications without a specific request authorized by the Employer was also viewed as suspect.

The Position of the Union

It is the position of the Union that the Grievant was not disciplines for just and proper cause. The Grievant and the Union did, however, admit some of the violations were engaged in by the Grievant. She admitted she walked off the job on March 5, 1991 after being relieved and asked to report to the Captain's office. She, moreover acknowledged she was scheduled to work overtime on March 6, 1991 and failed to report as scheduled. The other allegations were however, challenged and the administered penalty was also questioned based on several procedural defect claims.

The Union alleged the initial charges were changed during the course of the investigation. Initially, the Grievant was charged with allegations dealing with making a personal phone call, leaving work without proper notification and failing to report for scheduled overtime. Major Stanley admitted these were the items discussed during the course of the investigatory interview. And yet, at some late date the employer appeared to have dropped the personal phone call allegation, and added failure to notify the institution of absence and violation of the sick leave policy.

Some of the charges were challenged by the Union. With respect to the Rule 3 (B) violation, leaving the area without permission of a supervisor, the Union proposed some mitigating circumstances as justifications for the Grievant's action. She was under a tremendous amount of stress because she was recently written up for interfering in an

official investigation. The Grievant, moreover, thought the pending investigation regarding the use of a phone for personal purposes was merely an additional harassment attempt.

The Rule 4(A) violation, job abandonment, was also challenged because it was misapplied in this instance. There was no evidence presented that the Grievant abandoned her job by being absent "three or more working days consecutive without proper notice". The Union opined the Grievant complied with section 29.02 notice requirements. She either notified her supervisors every day beyond the first day of sick leave or provided the employer with prior notification by noting the number of days she would be unavailable for work.

It was alleged by the Union that the Employer assessed the removal penalty in a punitive rather than corrective fashion. Even if the revamped charges were proven and properly supported, only the job abandonment charge calls for summary removal. None of the remaining charges call for removal for any initial violation as evidenced by the grid contained in the Standards of Employee Conduct (Joint Exhibit 4).

The Employer's decision was also viewed as punitive because the Grievant could have been charged with other similar violations; violations with less severe penalties for initial offense. A series of alternative charges were offered with the understanding the Union did not waive its initial stand on the lack of cause in support of the designated charges. The Grievant could have been charged with a rule 3 (G)violation or a Rule 3 (F) violation if in fact the Employer felt her physical verifications were defective. Both of these violations deal with absence documentation and physician's verification.

The Union acknowledged the Grievant might have been absent for two and one-half months with a minimal amount of leave time available for coverage purposes. Rather than charging her with job abandonment, however, she could have been charged with a Rule 3 (K) violation which concerns excessive absenteeism situations. The grid suggests an oral or written warning for an initial offense of this type.

By failing to apply progressive discipline principles, the Employer "stacked charges until removal became the obvious end result. The Employer should have initiated progressive discipline protocols earlier during the series of events which led to removal. It was asserted an inappropriate call in on March 26, 1991, precipitated the Grievant's abandonment charge. She never provided a valid return date and failed to properly notify her Employer of her condition for three consecutive work days. Captain Archie took the call off on March 26, 1991, and yet, he failed to inform the Grievant that her call off was defective. Other similarly situated supervisors failed to subsequently provide the Grievant with specific notice concerning their problems with her call off practices. If the Employer had legitimately abided by its own disciplinary grid, it should have attempted to remove the Grievant on or bout March 29, 1991. The discipline was initiated at this time. Rather, the Employer waited three months to initiate discipline even though it had a great deal of difficulty with her call offs.

The Union raised similar concern with the Employer's physician verification arguments. The Employer never specifically provided the Grievant with a detailed listing

of what information she needed to comply with the physician's verification requirement. She made this request on June 2, 1991 when Lieutenant Bierbaugh told her she needed additional information. Warden Zent testified the Grievant was not told she had to provide a physician's statement. Philip Lomax, the Labor Relation Officer, confirmed this view. During the course of his testimony, he remarked he never specifically told the Grievant she needed additional information to cover the period of March 5, 1991 to June 3, 1991.

The physician verification statements submitted by the Grievant fully clarified the Grievant's status which perpetrated her absence. Special emphasis was placed on a letter (Joint Exhibit 6) authored by Dr. Foreman, and submitted in compliance with Lieutenant Bierbaugh's clarification request. Foreman noted the Grievant was unable to cope with job related stress. She also claimed the Grievant contacted her on March 8, 1991, and outlined the therapeutic steps engaged in to help the Grievant overcome her difficulties. The Union strongly countered the Employer's claim that Foreman's verification was somewhat inaccurate. Nothing in the record supported this assertion; Foreman never directly recanted the contexts of her verification.

THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony introduced at the hearing, and a complete and thoughtful review of the record, it is my judgement the Employer had proper cause to discipline the Grievant. The Employers however, did not have just cause to remove the Grievant based on the peculiar circumstances surrounding the disputed matter and a

number of glaring procedural defects which forced this Arbitrator to modify the administered penalty.

It is an established arbitral axiom that the corrective purpose of progressive discipline can be frustrated if an employer is allowed to delay imposition of a penalty for an unreasonable period of time. If this practice was condoned, discipline would be postponed for the benefit of an employer, an outcome which would result in the meting out of discipline in a punitive rather than corrective manner.[1] This principle is so critical to any just cause determination that it is rarely overlooked. Prompt imposition of discipline may only be delayed under unique sets of circumstances such as rehabilitative efforts engaged in by the Employer[2] or where the employer must protect the confidentiality of its investigation.[3]

These principles are recognized by the Parties in several provisions. General recognition of progressive discipline is specified in Section 24.02, with a specific reference to timeliness. This section provides for the initiation of disciplinary action as soon as reasonably possible. It also contains a clear mandate about an arbitrator's responsibility to "must consider the timeliness of an employer's decision to begin the disciplinary process." Section 29.04 causes application of progressive discipline to sick leave situations.

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[1] Inland Tool and Mfg. Co., 65 LA 1203 (Lipson, 1975); Federal Aviation Administration, 87 LA 697 (D'Spain, 1986); Astro-Valcour, 93 LA 91 (Rocha, 1989).

[2] Pratt and Whitney Aircraft Group, 91 LA 1016 (Chandler, 1988).

[3] City of St. Paul, 92 LA 641 (Scoville, 1989); Union Tribune Pub. Co., 89-2 ARB P 8542 (McBrearty, 1989).

These provisions represent the Parties' clear intent regarding the application of progressive discipline standards. This Arbitrator is required to factor these procedural matters into any evaluation of the merits. To do otherwise would result in a modification or a subtraction from the terms of the Agreement; a direct violation of an arbitrator's authority at specified in Section 25.03.

The application of the previously described principles to the present fact situation clearly indicates the Employer did not initiate disciplinary action as soon as reasonably possible. Some admitted infractions took place on March 5, 1991 and March 6, 1991. These dealt with leaving her job without permission and failure to work a scheduled overtime assignment. The triggering event for the job abandonment claim took place after an inappropriate call off on March 26, 1991 and three consecutive absence occurrences. A predisciplinary conference reviewing these and other potential infractions took place on June 24, 1991; approximately three months after the initial infractions. The Grievant was effectively removed on July 26, 1991.

The Employer failed to provide any justification for the merging of these infractions. The March 5 and 6, 1991 infractions should have been dealt with by a timely investigation and the imposition of discipline. An investigation of this sort would have resulted in proper progressive discipline and could have prevented the subsequent infractions. The same can be said for the March 26, 1991 incident. The Employer was well-aware that the call off was improper. The Grievant, however, was not promptly charged with this offense nor with the abandonment charge after the passing of the three

day absence standard. Again, progressive discipline could not be followed because the Grievant was never promptly charged with any violation.

Physician's verifications problems finally resulted in the Grievant's discharge. The Employer, however, aggregated all of the alleged violations which took place since March 5, 1991 in support of the removal. This practice, regardless of the intent, smacks of "building a record." One can reasonably infer the various reasons for discharge were never timely implemented in the hope of developing a critical mass resulting in discharge. No other plausible justification was offered by the Employer.

Another well-established principle was violated by the Employer. Obviously, an employer must implement an unambiguous charge; the nature of the misconduct must be explicitly identified to avoid due process concerns.[4] Without this protection, an employee would be unable to defend herself against the accusations. It becomes virtually impossible for facts to be discovered or to present valid and supportable defenses within this context.

Problems of due process relating to proposed charges took place in the present dispute because the Employer decided to charge the Grievant with a Rule 8 violation. This work rule deals with failure to follow post orders, administrative regulations and/or written policies and procedures. As I have mentioned in prior opinions involving the present Parties, the use of a general work rule when other more specific charges are available can lead to due process problems.

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[4] Bethlehem Steel Co., 29 LA 635 (Seward, 1957); Champion Spark Plug Co.. 93 LA 1277 (Dobry, 1989).

Within this institutional contest, and in light of the Standards of Employee Conduct (Joint Exhibit 4), every specific violation can also be viewed as a Rule 8 violation. Such a situation would allow the Employer to charge the Grievant, or any other employee, with the same misconduct under two separate offense categories; a practice which is undeserving of any support. It can also lead to a related abuse. Used in conjunction with other more specific violations, it can artificially hasten the progressive discipline process and worsen the appearance of an employee's work record. This becomes especially true where the employer does not promptly administer discipline.

Probably just as glaring a defect concerns the use of an overly broad work rule for a variety of specific violations; the record was extremely confused as a result of this practice. The charges initially discussed by Stanley in the investigatory interview dealt with the following subject matters: leaving the institution on March 5, 1991; failure to work overtime on March 6, 1991; and personal use of phone calls. Under cross examination , Warden Zent freely referred to specific charges contained in the Standards of Employer Conduct (Joint Exhibit 4), as well as Rule 8. Again, a proper defense is virtually impossible within this ambiguous context. This is especially true when specific charges have penalties attached which differ from the penalty attached to any Rule 8 violation. For example, a mandatory overtime initial offense has attached an oral or written warning, while an initial Rule 8 violation results in a charge of an oral warning up to and including a three day suspension.

Whether some or all of these charges were subsequently dropped by the Employer

appears unclear. Although some of these matters were discussed at the hearing and are contained in portions of the disciplinary trail, I am unsure whether the phone call and the overtime charges were used in support of the removal. Obviously, both deal with written policies and procedures and could have fallen under the Rule 8 proviso. Testing provided by Warden Zent and Lomax further confused the record. Zent discussed the March 5 and 6, 1991 incidents in detail, while Lomax stated he was dealing with what had happened as a consequence of the March 26, 1991 incident.

The institutional practice regarding valid physicians verifications also seems confused. Lomax stated certain information must be contained in any valid verification: a date certain dealing with the duration of doctor's care and whether an employee can return without restrictions. Lomax stated the Grievant did not need to provide any additional explanation in terms of prognosis; just an explanation that the Grievant was under a physician's care. This testimony differs dramatically from testimony provided by another Employer witness. Ron Wilson, a Personnel Officer I, stated the Grievant needed to bring in a doctor's statement with the reason she was under a physicians care.

Within this confusing context, I believe it becomes quite difficult for any employee to comply with a shifting doctor's verification standard. In my judgement, the abandonment charge dealing with the doctor's verification component was not properly supported. I also believe that any reasonable person reviewing the two doctor's verifications could have reasonably evaluated the beginning and ending dates of the Grievant's care, the nature of the care undertaken by the physicians and date of expected

return. Granted, all this information was not necessarily contained in Dr. Dashko's initial offering on May 31, 1991 (Joint Exhibit 6). Once the Grievant was granted a clarification opportunity, and she submitted Formen's verification (Joint Exhibit 6), the verification issue should have been dropped. The relevant information was readily available. Some of the confusion might have been engendered because of the two attending professionals: Foreman only dealt with the clinical component while Dashko dealt with the medication evaluations. Both statements, when viewed as related critical components of one physician's verification, clearly identified a beginning and ending date, the nature of the treatments, and ability to return without limitations. The form of the physician's verification might not have been ideal but the content sufficiently complied with the Employer's requirements.

The prior analysis clearly exposes certain areas where discipline should be administered, and others where procedural defects and proof requirements force this Arbitrator to discard certain charges. What remains for analysis purposes is an evaluation of several remaining charges and whether they justify removal or whether some form of modification seems in order. The remaining charges include: leaving the work area without the permission of a supervisor, failing to work overtime in March 6, 1991, and an improper call off on March 26, 1991.

When we evaluate the totality of the Grievant's conduct, one is left with an obvious conclusion. Removal of the Grievant falls outside the range of reasonable penalties available to this Arbitrator, based upon the circumstances under review. This

is especially true in light of the timing, progressive discipline and charge specificity issues previously discussed.

The Grievant admitted leaving the facility and failing to work overtime; these charge must be dealt with and discipline must be administered. She did not abandon her job but she did not follow the call off protocols. The Grievant violated Section 29.04 by failing to call the facility at least ninety minutes prior to the start of the shift, and failed to provide a tentative return date. The Grievant did, however, indicate she would return in some uncertain date. She noted she "will call in return." The Grievant did visit the facility on April 15, 1992 when she submitted a request for leave form covering the period March 5, 1992 to May 7, 1991. The Grievant, moreover, did properly call off on May 9, 1991. As such, she provided the employer with "imperfect notice" regarding her sick leave status, but she did not abandon her job.

The Grievant's lack of specificity will not be condoned by the Arbitrator. She had an obligation to provide a more certain return date; the Employer does have bonafide scheduling concerns. Nor will "imperfect notice" totally fulfill proper call off timing procedures. These matters are not viewed as trivial by the Arbitrator. Regardless of the circumstances regarding the March 5 and 6, 1991 incidents, the Grievant totally mishandled the situation. One does not walk off the job and fail to work overtime. She could have explored alternative avenues without placing her job in jeopardy and short-staffing the institution. These considerations helped fashion the modified penalty described below.

Award

The Grievance is sustained in part and denied in part. The administered removal is hereby modified to a disciplinary suspension. The suspension shall begin on the day the Grievant was removed and shall terminate sixty working days thereafter. The Employer is directed to correct its personnel files to reflect this modified penalty.

The Employer, moreover, shall compensate the Grievant at straight-time rates for all days she would have been scheduled to work if a sixty-day suspension had been imposed rather than removal. The Employer, however, shall restore the Grievant's full, unbroken seniority and compensate her for all actual demonstrated losses stemming from the removal rather than the sixty-day suspension.

June 11, 1992

David M. Pincus
Arbitrator