IN THE MATTER OF ARBITRATION

BETWEEN

OCSEA/AFCSME, Local 11, AFL-CIO and State of Ohio, Department of Mental Health, Western Reserve Psychiatric Hospital	CASE NO. 23-18-(92108)-0878-01-04 GRIEVANT: JULIUS FERGUSON OPINION AND AWARD

APPEARANCES:

On Behalf of the Union

Robert Robinson	Staff Representative
Julius Ferguson	Grievant
John Coates	Witness
Betty Williams	President, Chapter 7715, OCSEA
Michael Fisher	Witness

On Behalf of the Employer

Linda J. Thernes	Labor Relations Officer
Roger Beyer	Labor Relations Officer
Jeanette Shy	Food Service Supervisor
Doris Grace	Witness
Patrick Okpara	Witness

LAWRENCE R. LOEB, Arbitrator
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I. STATEMENT OF FACTS

On September 11, 1992 the Employer sent a certified letter to the Grievant informing him that he was being removed from his position as a Food Service Worker at the Western Reserve Psychiatric Hospital as a result of incidents which had occurred on June 28, 1992. The actual order for the Grievant's removal had been signed by the Agency's Director on August 28, 1992. The incident which triggered his discharge began at approximately 6:30 on the morning of June 28, 1992 when the Grievant reported for work and, according to the Order of Removal, told his Supervisor that he was going to kick another employee's ass because the other man owed him money. Shortly after that, Management maintains that the Grievant attacked the other employee, repeatedly punching him, throwing him around and raising a chair to strike the employee and would have done so had he not been restrained by other staff members. After the two men were separated they were ordered to straighten up the room where the altercation occurred which they did without further incident. Later that day the Grievant received medical treatment at an ambulatory care center where he complained of a bite on his left thumb and abrasions and contusions on his chest. The other employee also received medical treatment later that same evening in a local hospital emergency room where he complained of pain over his left ribs and had an abrasion under his right eye as a result of having been:

> . . . jumped by 3 or 4 gentlemen and beaten multiple times about the head and chest.

He also told the emergency room staff that he had lost consciousness for fifteen minutes as a result of the attack.

When it made the decision to discharge the Grievant, Management did not have the benefit of that information as the employee had not turned his medical records over to the Employer at that time. What Management did have were

statements from two employees and the Grievant's Supervisor all of whom saw part of the incident as well as statements from the Grievant and the other employee. It was on the basis of those statements that the Employer concluded that the Grievant had instigated the attack and that he deserved to be disciplined for his actions.

The Grievant, who was hired on January 5, 1987, had already been disciplined four other times before the June 28, 1992 altercation. According to records maintained by the Employer he had received a verbal reprimand on September 26, 1989 for excessive absenteeism and being tardy; a written reprimand on June 13, 1990 for readjusting his work schedule without approval; a two-day suspension on September 20, 1990 for tardiness or failing to report for work or call in; and a six-day suspension on September 26, 1991 for leaving without authority before the end of his shift, unapproved leave, no call/no show, tardiness and insubordination. The progressive nature of the discipline levied against the Grievant was in keeping with the Hospital's policy on corrective action which declares:

> All hospital employees are subject to corrective action for any violation of internal policy or work rule and for behavior or conduct which falls within the areas listed in Section 124.34 of the Ohio Revised Code . . ..
>
> The principles of progressive/corrective action will normally be applied for any such violation or inappropriate behavior. The type of corrective action will be based upon the merits of each individual situation and the seriousness of the violation. Emphasis will be placed on prevention and employee development rather than strict punitive intent and in accordance with existing Collective Bargaining contracts.

Following that preamble, the policy lists the types of corrective action available and then provides under the heading of "Appropriate Discipline" the

mechanism and tenets supervisors are to follow when imposing discipline. Specifically, the policy declares that:

> For the purpose of achieving reasonable uniformity in imposing the like corrective action for like offenses, a Standard Guide for Disciplinary Action is appended. The offenses and corrective actions set forth in this guide may not successfully meet the demands of all situations, but is sufficiently broad to meet most occasions in which some form of corrective action is required. It is stressed that this listing is only a guide. The recommended corrective action for each offense must take into account the circumstances surrounding the incident and be adjusted accordingly.
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> Supervisors should consider both mitigating and aggravating factors in recommending discipline. These include, but are not limited to, the severity of the infraction, existence of length of time elapsed from last infraction.

The Standard Guide for Disciplinary Action Penalties calls for a six-day suspension or removal for the first offense of physical fighting on the premises and the employee's removal for the second offense.

Not every employee who had been involved in a physical altercation at the facility had been removed as a result of his or her actions. Specifically, the record reveals that in 1987 an employee who got into a name-calling match with another employee which ended up in a pushing contest was initially charged with failure of good behavior because of the verbal outburst and the use of profane and abusive language and physical fighting on duty, but was subsequently given only a written reprimand for the failure of good behavior because of the verbal outburst charge. On June 4, 1990 Management notified another member of the Bargaining Unit that he had to appear at a pre-disciplinary conference because he had been involved in a physical altercation with another employee which occurred when the second employee started after the first with a fork. While the second employee was being restrained (by the Grievant), the first employee turned around and began choking the second individual who then stabbed

the first one with the fork in the thigh. Both employees received six (6) day suspensions as a result of their actions. In a third incident which occurred on January 2, 1993, one employee deliberately splashed water over another one, knocked a cup of tea out of her hand and threatened to get her outside State grounds. Again, Management did not remove that employee, choosing instead to suspend her for only two days. In addition to those incidents, there have been a significant number of verbal "assaults" between employees at the facility for which Management has apparently not disciplined anyone.

The record also reveals that ten individuals who violated the Employer's rules were initially given removals which were subsequently held in abeyance with a mandatory EAP agreement. Of the ten, six were removed for violation of attendance standards; one for dishonesty, neglect of duty and violation of attendance standards; another for neglect of duty, tardiness and violation of attendance standard; a third for failure of good behavior, verbal outburst and neglect of duty and violation of attendance standards; and the last, for incompetency, performance at substandard levels. The Grievant also enrolled in the EAP after the pre-disciplinary conference at which time he knew that he would be removed. The Grievant had been made aware of the Employee Assistant Program by the individual in charge of the Hospital's Human Resources Department who also conducted the pre-disciplinary meeting. Upon being told of the program the Grievant indicated that he thought he could benefit from EAP because he had been under a considerable amount of stress due to events in his personal life prior to that time. He did present himself for mental health services on August 26, 1992. This was a voluntary act on his part as Management had not offered a removal in abeyance if he participated in EAP.

The Grievant applied for disability later in the year, but his request was denied because he had not filed his application within the prescribed time.

He appealed the decision, arguing that he never received the copy of the removal order Management sent to him in September, 1992. Instead, he only received a copy at a meeting held on October 5, 1992. As of December when he appealed the denial of his disability claim the Grievant still had not received the original order.

The Grievant protested Management's decision to terminate his employment, alleging that it lacked just cause to do so. In addition, he maintained that he was a victim of disparate treatment and that Management had failed to follow the procedural requirements mandated by the Contract when it attempted to discharge him. In support of those arguments, the Union relied upon the following provisions of the parties' Contract:

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. . . .

24.02 -- Progressive Discipline

> The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.
>
> . . .
>
> 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 begin the disciplinary process.

24.05 -- Imposition of Discipline

> The Agency Head or, in the absence of the Agency Head, the Acting Agency Head shall make a final decision on the recommended disciplinary action as

soon as reasonably possible but no more than forty-five (45) days after the conclusion of the pre-discipline meeting. . . .

If a final decision is made to impose discipline, the employee and Union shall be notified in writing. . . .

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

24.09 -- 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. Upon successful completion of the program, the Employer will meet and give serious consideration to modifying the contemplated disciplinary action. Participation in an EAP program by an employee may be considered in mitigating disciplinary action only if such participation commenced within five (5) days of a predisciplinary meeting or prior to the imposition of discipline, whichever is later. Separate disciplinary action may be instituted for offenses committed after the commencement of an EAP program.

It was upon these facts that this matter rose to arbitration and award.

II. POSITION OF THE EMPLOYER

Management maintains that it had more than adequate justification to remove the Grievant who deliberately attacked another employee. Apparently, the assault grew out of a dispute over money. In the end, it doesn't really matter why the Grievant acted as he did. The important point is that he viciously set upon another employee in clear violation of the Employer's rules against such conduct.

It takes little thought to realize that Management at this facility or any employer, for that matter, cannot tolerate such behavior if it is to have any hope of efficiently conducting its operations or being able to stay in business at all. Employees cannot be permitted to assault one another for any reason, but

most especially over the type of petty incident which apparently triggered the Grievant's attack. It is those principles which underlie the rule against fighting on the premises and it is those principles which demand the Grievant's removal.

The Union seeks to avoid that result, alleging that the Grievant was a victim of disparate treatment. Nothing could be further from the truth. The best the Union could offer to support that allegation was hearsay, speculation, innuendo and one unusual incident report. From that mix, the Union would create a byzantine plot of immense proportions in which the Employer permitted the work place to become an arena. Not only is there no hard evidence to support that contention, but simple common sense would tell the Arbitrator that such is not the case. If it were, there would have been a total breakdown at the facility. Since there wasn't, the Union's contentions are obviously nothing more than castles in the air and deserve to be treated as such.

This is especially so as Management presented evidence that other employees have been disciplined for fighting on the premises. In the face of those definite episodes of discipline being imposed, the Union was unable to offer any hard proof that Management had failed to act in similar circumstances. It may be that in one incident Management did not impose the same penalty it imposed in all the other cases. That does not mean, though, that the Grievant was the victim of disparate treatment or that Management is picking and choosing among employees as the Union alleged. It is simply not possible to have absolute homogeneity of discipline at any facility. This is especially so as the Employer has an obligation to review every case to determine what the appropriate punishment should be. As a result, even if there is evidence of different penalties being imposed in different situations, it simply means that Management

was doing exactly what it was obligated to do under the Contract, not that the Grievant is the victim of some plot or discriminatory action.

Likewise, there is no merit to either of the Union's other two claims, that Management violated the Contract when it failed to give him timely notice of his removal or that it was precluded from removing him because he had entered the EAP program. As to the former argument, the record clearly establishes that the Grievant received the requisite notice within the time period prescribed by Article 24.

As to the latter, it may very well be that the Grievant was sincere when he entered the Employee Assistance Program. However, it is clear from the record that he chose to do so only after the pre-disciplinary meeting was over and the handwriting was on the wall. Under the circumstances, Management was not obligated to take his action into consideration and, instead, was free to deal with the Grievant's case in the same manner it dealt with every other similar case. In the end, there is simply no justification to sustain this grievance.

III. POSITION OF THE UNION

The Union asserts that there is absolutely no basis to remove the Grievant even though he was involved in some kind of incident with another employee. The State maintains that the Grievant attacked that employee. The record, however, clearly does not support that conclusion. If anything, the scratches, bruises and bite marks on the Grievant point to the exact opposite situation being true, that the Grievant was attacked by the other employee who then, along with his girlfriend, fabricated a story in order to cover the employee and get the Grievant fired. Unfortunately for the Grievant, their plan worked in spite of the glaring inconsistencies in their testimony. The fact of the matter, though, is even the most casual review of the testimony of the various witnesses who appeared in this matter fails to establish that the Grievant ever punched the other employee as he is alleged to have done or that he

attacked the employee or told the employee he was going to kill him as the employee's girlfriend alleged. Beyond those problems in the State's case, there were glaring inconsistencies between the girlfriend's testimony and that of other employees who arrived to separate the two men. Management, however, starting with the proposition that it wanted to remove the Grievant, refused to consider any evidence which did not support its preconceived decision. The Contract, though, does not permit it to do so.

The Employer's failure to consider any evidence which would have exonerated the Grievant is not the only impropriety in this case. It is, unfortunately, just one of many such faults. Among them is Management's lax enforcement of its own policies against assaults. The record is replete with instances where employees have verbally or physically assaulted each other. Yet, the record is silent with regard to Management terminating any of those employees let alone moving against most of them. Instead, there is a clear pattern of ignoring all such incidents up to the time that Management decided to remove the Grievant. The Contract and more specifically the concept of just cause does not permit Management to behave in such a fashion. It is one thing to enforce the rules of the work place, it is another thing to ignore those rules entirely or, as happened in this case, selectively enforce them for a particular end. That Management cannot do.

That, however, is exactly what Management did in view of the Employer's failure to hold the Grievant's removal in abeyance while he participated the Employee Assistance Program (EAP). Management, at the beginning of the hearing, stipulated that ten employees who had been given removals had those removals held in abeyance because of EAP agreements. The Grievant is the only individual who was not accorded that right even though Management offered EAP participation and even though he took it. All of this would be bad enough if there were not

employees who had been removed and not offered the EAP yet still were put back to work. Management was reluctantly forced to admit that one of those employees was returned on a settlement agreement. How, it must be asked, can all of those employees be entitled to hold their jobs in spite of their infractions when they went through the EAP program or even where they spurned it and the Grievant is not afforded the same opportunity?

The answer is simple, the Employer cannot do so. The Contract does not permit Management to pick and choose among employees, deciding which it will accord certain rights to and which it will not. Where Management has treated an employee differently from all other similarly situated individuals, he or she has the right to be reinstated as a victim of disparate treatment. This is especially so considering that Management has never consistently disciplined or removed employees in the past who were involved in altercations.

Were these the only mistakes Management made, the Grievant would be entitled to reinstatement. Again, there were even more errors, ones which demand the Grievant's reinstatement. Thus, while the Contract calls for an employee to be notified of his removal within forty five (45) days, Management waited seventy seven (77) days before it gave the Grievant the required notification. It tried to cover its error by claiming that it had inadvertently sent the letter to the Grievant without including his apartment number. If it was a mistake, the mistake is entirely Management's since the Grievant's apartment number appeared on his personnel records. The Contract says nothing about such errors. Instead, it simply says that an employee is entitled to notice within a certain specified period of time. Management's claims, whether true or not, are really a red herring because even assuming that Management would have put the right apartment number on the letter to the Grievant, he still would not have received it until ten (10) days after the contractually mandated time.

Management would have the Arbitrator overlook that error, claiming that it was simple negligence and doesn't really impact the outcome of this matter. Nothing could be further from the truth. Management is attempting to remove the Grievant for a violation of the Contract. But the Employer should not be and cannot be allowed to have it both ways. If the Grievant is to be held to the letter of the Contract, then so too must Management be. Since it failed to uphold its responsibilities, the Grievant deserves to be reinstated.

IV. OPINION

The initial question which has to be answered is whether the Grievant assaulted another employee as Management alleges or was he the victim of an assault as the Union alleges? It should be easy to answer that question since the assault occurred in a public area and there were a number of witnesses present who, if they didn't see all of the action, at least saw part of it. Unfortunately, their stories are not in complete accord and all of the major players in the drama have some blot on their credibility. Thus, while the alleged victim claims that the Grievant attacked him for no reason, repeatedly punching him and then when he broke free, assaulting him yet again and then threatening him with a chair, he told the emergency room staff of the hospital where he had gone for treatment that he had been beaten by three or four men and had lost consciousness for fifteen minutes. Those statements are totally implausible and bear absolutely no relation to the written statement he gave to the investigating officer or the testimony he presented at arbitration. Likewise, a woman co-worker indicated that the Grievant yelled, "I'm going to kill you," before he attacked the other employee. No one, however, corroborated that statement, not even the alleged victim. Further, both he and the woman co-worker denied that they were more than friends, yet he listed her name as a person to contact on the hospital records in case of emergency, indicating that

perhaps they had a much closer relationship than the two of them were willing to admit to.

While the testimony of the Grievant's Supervisor, at first glance, seems untainted, she was forced to admit that shortly before the events of June 28, 1992 the Grievant had come to her complaining of chest pain and asked that she allow another employee to take him to the hospital which she refused to do even though in the past she had routinely released other employees to take sick co-workers to the hospital. The Grievant ultimately left work and drove himself to the hospital where he was confined for observation because of the chest pain. The Union made much of the incident, pointing to it as proof that the Supervisor was prejudiced against the Grievant. It was especially intense in its attack on her because she testified that when the Grievant arrived at work he told her that he was going to kick the other employee's ass, indicating that his subsequent actions were premeditated as opposed to the result of emotions running out of control. Beyond attempting to show that the Grievant's Supervisor testified against him out of animosity or some hidden motive, the Union argued that it would have been impossible for the Grievant to have made the statement since the two men would have had no way of knowing that they were going to be together as they were both not scheduled that morning. Further, it alleged that the Grievant could not have made the statement since his Supervisor did absolutely nothing to counter the threat.

While all of those points would ordinarily be well taken, they must be cast aside in the face of the notes of the third step meeting at which the Grievant participated and which indicate that he repeated the statement offering the explanation that he made it because he wanted to enlist his Supervisor's aid in getting the other employee to pay the monies owed him. While the Union argued that the notes should be disregarded because they were compiled by the same employee who recommended that the Grievant be discharged, there is nothing beyond

the Union's suspicion to warrant that action. Therefore, the undersigned must conclude the Grievant made the threat.

There are a number of other discrepancies in the other testimony which was offered in the course of the arbitration hearing concerning the incident. When all of the testimony is weighed together, however, the picture which emerges is of the Grievant attacking the other employee, knocking him to the floor and eventually picking up a chair in a manner indicating he was about to strike the other employee. In large measure, what leads to that conclusion is the Grievant's own testimony, particularly his explanation of how he came to be injured and especially how his left thumb was bitten. Those explanations are just not plausible.

Concluding that the Grievant physically assaulted the other employee, though, does not end this inquiry as the concept of just cause extends beyond the threshold question of whether or not an employee violated a rule Management had a right to implement. Rather, the concept is broad enough to require that whatever punishment Management imposes must fit the "crime" the employee is alleged to have committed. In deciding if it does, one of the questions which must be asked is whether or not Management treated this employee differently from every other employee who has committed the same offense. The fact that it did creates a rebuttable presumption that the employee is the victim of disparate treatment and, therefore, Management did not have just cause to impose whatever penalty it did.

In this case, the Union raised that claim on the Grievant's behalf, alleging first that Management has singled the Grievant out for removal having ignored other incidents where employees were involved in physical altercations or treated those incidents lightly, giving the participants what could only be considered a mere slap on the wrist, and second, that Management refused to hold

the Grievant's removal in abeyance while he participated in the EAP even though it had accorded numerous other employees the same right. While the Union argued both positions passionately, neither argument has any validity.

With regard to the Union's first claim, that Management has effectively singled the Grievant out for special treatment because it discharged him while it only suspended other employees who engaged in fights, if it took any action at all, much of the Union's evidence is simply hearsay, statements by people who have heard of other altercations, but did not investigate those incidents and do not know for sure what did or did not take place. The problem with hearsay is that the statements are being offered as true, but the declarant is not present and, therefore, subject to the test of cross-examination. Because they are not, such evidence is of dubious value.

Of the three incidents which the Union was able to document, Management took action against both participants, in one, suspending both parties for six days, while in the second it suspended the aggressor for two days and, in the third, gave the aggressor a verbal reprimand. Of the three incidents, the worst was the one which resulted in both employees receiving six-day suspensions. Management was able to establish, however, that neither of those individuals had ever been disciplined before that incident. Therefore, Management's decision to impose a six-day suspension, instead of establishing disparate treatment, simply reflected its commitment to follow the standard table of penalties for the offense of physical assault where the situation had been severe but, in the undersigned's opinion, not as severe as this episode. Management obviously broke from the table in the other two cases, treating one incident as a relatively minor affair and the second one as of almost no concern of all. In focusing on the punishments which Management meted out in those cases and comparing them to the penalty imposed on the Grievant, the Union has lost sight of both the Grievant's past disciplinary record and the nature of his actions.

He had already been disciplined four times before the events of June, 1992 having received a six-day suspension the year before. The Employer was entitled to consider the Grievant's past record in deciding the level of discipline to impose in this case. To take the opposite position would mean that Management would effectively have to start at the lowest disciplinary level each time an employee committed an offense which fell into a different category. Neither the concept of just cause nor the Employer's commitment to impose discipline in a progressive manner requires that result.

In addition to an employee's past disciplinary record, the concept of just cause also requires that the Employer look at the facts of each case and weigh the severity of the employee's conduct against the penalty to be imposed. There is a vast distinction between what the Grievant did on June 28, 1992 and what happened in the incident which led to the employee receiving a verbal reprimand or the other employee receiving a two-day suspension. Had the Grievant merely pushed his co-worker or knocked coffee over on him, then he might have a basis upon which to argue that Management did not have just cause to discharge him and that he was the victim of disparate treatment. The record, however, reveals that the Grievant went much further, repeatedly assaulting a much smaller man and threatening him with great bodily harm when he picked up the chair.

While the Grievant may argue that he did not significantly injure the other employee, the fact remains that the nature of the Grievant's assault was far more severe than in any of the other documented cases the Union pointed to as examples that the Grievant was being singled out for special punishment and, therefore, was the victim of disparate treatment. Likewise, had this been the Grievant's first offense, he would have grounds to argue that the decision to remove him was too harsh a penalty under the circumstances of the case. The Grievant, however, did not have a clean record. He was at the point that his

next offense, regardless of what it was, would most probably have caused the Employer to remove him. The fact that he assaulted another employee in a particularly violent episode only added impetus to Management's decision to discharge him.

The Union's second argument, that the Employer discriminated against the Grievant by not holding his removal in abeyance while he attended EAP, suffers from the same malady as its first. While the record is clear that Management has taken that step at least ten times in the past, the record also reveals that Management has never made that offer where an employee had been disciplined as a result of engaging in a physical altercation. Further, in each of the instances where the removal was held in abeyance because of the employee's participation in the EAP, the employee's participation was mandatory, apparently part of an explicit agreement between the Employer and the employee designed to afford the latter one last chance to maintain his or her employment with the State. Management made no such offer in this case. At best, the Personnel Officer who presided at the pre-disciplinary conference suggested that the Grievant could benefit from enrolling in the EAP. Beyond that suggestion, there is no evidence that Management ever promised the Grievant that it would hold his removal in abeyance while he participated in the EAP or that he had to attend the EAP if he had any hope of avoiding termination.

The real issue is not whether Management offered to hold the Grievant's removal in abeyance pending his mandatory participation in EAP, but whether the Employer was obligated to do so because it had made that offer to other employees in the past. As in deciding what level of discipline to impose, Management has the freedom under Article 24.09 of the Contract to decide to which employees it will offer the benefit of one last chance by holding their removals in abeyance while they participate in the EAP. So long as the decision as to who will be afforded that right is not made arbitrarily, capriciously or discriminatorily,

Management's failure to offer to hold the removal in abeyance pending EAP participation does not provide grounds to set aside a discharge. Since the Union could not establish that Management ever took that step in any other physical altercation case and because the evidence established that the altercation was not the product of sudden impulse, but rather was a premeditated assault on the other employee, Management's decision not to offer to hold the Grievant's removal in abeyance pending mandatory EAP participation was neither arbitrary, capricious nor discriminatory and, therefore, does not require that the removal be set aside.

The same is true of the Union's claim that the Grievant's removal should be set aside because the Hospital had a policy of not discharging employees who are on or are awaiting disability. As the party attempting to rely on an affirmative defense, it is the Union's obligation to establish all of the salient points of that defense by at least a preponderance of the evidence. The best that it could show is that one employee who is currently on the disability waiting period has not been removed. This is a far cry from establishing the existence of a practice. Further, even if the Union had been able to show other instances in which Management delayed removing an employee while he or she was on disability, it would still have to establish that Management had a hard and fast policy of doing so to avoid suffering the same defect as its other arguments. Again, the fact that Management may have treated the Grievant differently than some other employees does not automatically mean that he was the victim of discrimination or disparate treatment. Rather, the difference may reflect the different factors which went into Management's decision in this case versus the others where it decided to withhold taking action while the employee was on disability. Again, absent a showing that Management's actions were arbitrary, capricious or discriminatory, the fact that it chose to discharge the Grievant

even though he had made a disability claim does not, per se, render the removal void.

The Union's final argument, that the removal should be set aside because the Grievant was not timely notified of Management's decision, is also meritless. The Order of Removal was signed by the Agency Head on August 28, 1992. Management attempted to send it to the Grievant by certified mail on September 11, 1992. He never received it, though, because his apartment number was not included along with his address he never received the letter. However, by his own admission the Grievant received a copy of the Order of Removal on October 5, 1992, thirty-eight days after the Agency Head signed the Order. Section 24.05 of the parties' Agreement provides that the Agency Head must make a final decision on any recommended discipline no later than forty-five days after the conclusion of the pre-disciplinary hearing, which in this case took place on July 29, 1992, or thirty days before the Agency Head made his final decision. In view of the time sequence, the undersigned has to conclude that Management complied with the provisions of the Contract and, therefore, there is no procedural grounds upon which to set aside the discharge.

V. DECISION

For the foregoing reasons, the grievance is denied.

LAWRENCE R. LOEB, Arbitrator

July 21 1993
Date