

---

IN THE MATTER OF THE ARBITRATION BETWEEN: \*  
\* Case No. 09-00  
State of Ohio, Department of Development \* (92-02-21)0022-01-14  
\*  
-and- \* Grievant: Dian T.  
\* Glover  
\*  
OCSEA/AFSCME Local 11 \*

---

ARBITRATOR: Mollie H. Bowers

APPEARANCES:

For the Employer: Michael Duco

For the Union: Maxine Hicks

The Hearing of this case was held on July 9, 1993, at 9:00 a.m. in Conference Room A at the OCSEA/AFSCME Headquarters, Columbus, Ohio. Both parties were represented. They had a full and fair opportunity to present evidence and testimony in support of their case and to cross-examine that presented by the opposing party. The parties stipulated at the outset that the case was properly before the Arbitrator for decision. At the conclusion of the Hearing, the parties together with the knowing and voluntary agreement of the Grievant, requested that the Arbitrator issue a bench decision. The Arbitrator agreed.

ISSUE

At the outset of the Hearing, the parties stipulated to the following issue:

Did the Employer suspend Dian Glover from her position of Administrative Assistant 11 with the Department of Development for just cause in accordance with Section 24.01 of the collective bargaining agreement?  
If not, what should the remedy be?

ANALYSIS

The key factors which shaped the Arbitrator's award are as follows:

(1) The Employer complied with the clear and unambiguous language contained in Section 24.05 of the collective bargaining agreement by making a final decision on the recommended disciplinary action no more than forty-five (45) days after the conclusion of the pre-discipline meeting;

(2) The manner in which discipline was subsequently imposed advertently or inadvertently had a harmful effect constituting double jeopardy by causing the Grievant to lose six (6) days' pay, rather than the penalty of five (5) days meted out for the conduct complained of, because the fifth day of the suspension fell on a day before an holiday;

(3) The Employer did not make a clear and convincing case that the Grievant failed to provide management with timely notice that she would be absent from work on October 28 and 29, 1991;

(4) The Grievant admitted that she did not call in on October 30, and that she did not call in until 2:00 p.m. on October 31, 1991. The Arbitrator deemed the testimony of the Employer's witnesses to be more credible than that of the Grievant with respect to whether or not she notified management, on October 29, that she would not return to work until November 4, 1991. Therefore, the Employer established a bona fide basis for just cause discipline of the Grievant for unauthorized attendance on October 30 and 31, 1991;

(5) The Grievant's past discipline was properly considered by management as part of the progressive discipline meted out in the instant case; and

(6) The appropriate penalty for the behavior complained of should be more than the one (1) day suspension indicated in the disciplinary guidelines for two (2) consecutive days of unauthorized absence, but less than the five (5) days imposed under these guidelines given the circumstances of this case.

AWARD

Two (2) of the five (5) days' suspension without pay meted out to the Grievant as discipline in the instant case shall be rescinded. The Grievant shall be made whole for all lost wages and benefits for the two days. She shall also be made whole for one (1) additional days' lost wages and benefits for the loss of holiday pay resulting from the timing of the imposition of discipline for the behavior complained of in the instant case. All records kept by the Employer with respect to this discipline shall be corrected to reflect the ruling in this award. Restitution of pay and benefits to the Grievant and changes in all Employer records with respect to this discipline, as ordered in this award, shall be accomplished by the end of the first pay period following the Employer's receipt of this award.

Date: July 10, 1993

Mollie H. Bowers

Mollie H. Bowers  
Arbitrator