

#919

In the Matter of the
Arbitration Between

OCSEA, Local 11
AFSCME, AFL-CIO

Union

and

State of Ohio
Lottery Commission of Ohio
Employer.

Grievance No. 22-10-(93-04-03)
0009-01-09-T
Grievant (Wells, R.)

Hearing Date: November 2, 1993

Award Date: November 3, 1993

Arbitrator: Rhonda R. Rivera

For the Employer: Lou Kitchen

For the Union: Steve Lieber

Present at the Hearing in addition to the Grievant and Advocates were Michael Musarro, Personnel Director (witness), Audrey Cole, Manager/Sales Division (witness), Laurie Tall, EEO (witness), Scott Ford, Labor Relations Officer, and James LaRocca, Steward (witness).

Preliminary Matters

The Arbitrator asked permission to record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission.

The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

Joint Exhibits

1. Contract
2. Grievance Trail
 - a. Arbitration Request
 - b. Step 3 Response
 - c. Grievance
3. Discipline
 - a. Notice of Disciplinary Hearing dated August 24, 1992
 - b. Memorandum of September 21, 1992
 - c. Employee Assistance Program Agreement and Releases for Information
 - d. Notice of Disciplinary Hearing dated February 19, 1993
 - e. Notice of Termination
4. Disciplinary Guidelines and Actions
5. Tardiness Abuse Policy

Stipulated Facts

1. At the time of removal, the Grievant held the position of Public Inquiry Assistant, Hot Line Section.
2. The Grievant's prior discipline history is listed in the notice of termination dated March 26, 1993.

Issue

Was the Grievant removed for just cause? If not, what shall the remedy be?

Award

The Arbitrator found that the removal was not commensurate nor progressive. The Grievant is to be re-instated on November 3, 1993. The time period from removal through November 2, 1993 is to be treated as a suspension for AWOL and excessive absenteeism.

The Grievant is to enter into an EAP/last chance agreement. Conditions are 1) continuation of weekly (at least) substance abuse program for the next two (2) years, 2) no AWOL's for the next 6 months (i.e., no late call offs), and 3) no leave to be taken for the next year (1) except for good cause shown (the burden is on Grievant to proof good cause).

The Arbitrator retains jurisdiction to approve the EAP/last chance agreement.

November 3, 1993
Date

Shonela Rivera
Arbitrator