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In the Matter of the
Arbitration Between

OCSEA, Local 11
AFSCME, AFL-CIO

Union

and

State of Ohio
Department of Rehabilitation
and Correction, Bureau of
Adult Detention

Employer.

Grievance No. 28-04-(93/01/19)
67-01-09

Grievant: M. Turker

Hearing Date: November 17, 1994

Closing Date: December 8, 1994

Award Date: January 9, 1995

For the Employer: David Burrus
Coleen Wise

For the Union: Steve Lieber

Present at the Hearing in addition to the Grievant and the Advocates named above were the following persons: Michael Lee, Director, Office of Criminal Justice (DRC) (witness), Deb Stewart, Administrative Assistant (DRC) (witness), Pete Molnar, Coordinator of Audits and Investigations (DRC) (witness), Dave Maley, Ohio State Highway Patrol (witness), Jill Goldhart, Deputy Director (DRC) (witness), and Dr. Emin Turker (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. The Contract
2. Grievance Trail
3. Discipline Trail
4. Discipline Grid
5. DRC Travel Policy (1-3-92)
6. Final Amended In-State Travel Rule (9-22-89)
7. Emergency Amended In-State Travel Rule (7-27-92)

Employer's Exhibits

1. IOC Entitled "New Field Contract Forms," dated 4/28/92, Directed to "Jail Inspectors"
2. IOC from Peter J. Molnar to Jill D. Goldhart dated 10/2/92, Subject: The Grievant
- 2A. Travel Expense Sheet of the Grievant dated 6/29/92
3. Evaluations of the Grievant from 1985-1991
4. Agenda of a Staff Meeting April 14, 1992
5. Intra-Departmental Reference dated 9/18/92 by Michael Lee with reference to the disciplinary action against the Grievant

Union Exhibits

1. IOC from Michael Lee to the Grievant dated 2/11/92 and entitled "Documentation of Meeting 2/6/92"
2. 1984 Evaluation of the Grievant

Stipulated Facts

1. The Grievant was employed with the State of Ohio in September of 1976.
2. The Grievant was removed from her position as a Jail Inspector December 30, 1993.
3. The Grievant acknowledged receipt of the Standards of Employee Conduct on June 12, 1990.

Statement of the Issue

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

Facts

The Grievant in this case held the position of Jail Inspector in the Bureau of Adult Detention within the Ohio Department of Rehabilitation and Correction. She began her service with the Department in 1976. Her work changed significantly in January 1987 when she was required to spend considerable time in travel. Her duties were to ensure that all local, county, and municipal detention facilities within her district complied with State of Ohio standards. The Grievant was also responsible for providing technical assistance to detention facilities. One of her primary

responsibilities was to conduct an annual review of each detention facility within her district. The Headquarters for the Grievant's district was in Cleveland. To carry out these responsibilities, the Grievant was required to travel to the various facilities within her district. According to a departmental witness, approximately fifty (50%) percent of the Grievant's job duties required travel.

To meet her travel requirements, the Grievant was required to provide her own transportation, and the State reimbursed her for her travel expenses. One method of accomplishing her tasks might have required the Grievant to come into the office in Cleveland every day and then to travel from the Headquarters to whatever site she needed to visit. Under this scenario, the Grievant would have borne the costs of commuting to and from work and the cost of parking her car near her office. Then, the State would reimburse her for her mileage for any official trip from the office and would reimburse her for parking at the office if she had to return to the office after visiting a site. However, the Grievant, as other jail inspectors, was allowed flexibility in how she planned her visits and was allowed to make her visits directly from her home rather than coming into the office and traveling from there. The travel reimbursement rules were arranged to accommodate this method. If the first site visited from the home of the employee was less or equal miles to the mileage that would have been incurred in the commute, the employee was not reimbursed for that mileage. Any mileage over the commute mileage was reimbursed. With regard to

parking, if the employee came to the headquarters for the first time that day after various site visits, no parking reimbursement was allowed as that payment was equivalent to the employee coming to work the first time.

Mr. Michael Lee was the Grievant's immediate supervisor. Mr. Lee started in this position in January 1992. Shortly after assuming this position, Mr. Lee noticed that Grievant's Travel Expense Reports were not the "norm" when compared to the Travel Expense Reports of other employees that Mr. Lee was routinely reviewing. Mr. Lee said that he noticed that the Grievant regularly and routinely reported a payment of \$5.00 for parking at the Cleveland Headquarters. Mr. Lee said that when he went to that office he routinely paid about \$2.50 so that the \$5.00 charge caught his eye. Secondly, Mr. Lee said he was very familiar with the Cleveland area and that the mileages reported between various sites in that area seemed over stated on a regular basis. He said he asked other employees who regularly visited the Cleveland office how much they paid for parking, and they reported that the charge was usually \$2.50, sometimes as much as \$4.00.

Mr. Lee discussed the issue with his Administrative Assistant and then took his suspicions to his immediate superior, Jill Goldhart, Deputy Director of the Division of Parole and Community Services. He said that he did not take his suspicions to the Grievant because he believed that the apparent irregularities in the Travel Expense Reports showed a purposeful pattern of behavior. At the direction of his superior, Ms. Goldhart, Mr. Lee turned the

matter over to Peter Molnar, Coordinator of Audits and Investigation for Review. Mr. Molnar suggested that for audit purposes that the Department should introduce for all jail inspectors the use of a report already being used by parole officers, called a field contact sheet. On April 28, 1992, Mr. Lee distributed a departmental memo requiring jail inspectors to complete field contact sheets. These sheets required the employee to list each place visited and to record the actual odometer readings connected with each travel sequence. The form was to show the actual destinations of the employee with corresponding arrival and departure times. Prior to the use of the form, the employee prepared itineraries showing planned travel and then submitted once a month the Travel Expense Report. Mr. Lee stated that after these field contact sheets were implemented that some obvious discrepancies appeared in the Grievant's sheets and that Mr. Lee met with her personally and went over how the sheets worked.

Mr. Lee testified that on February 6, 1992, shortly after he became the Grievant's supervisor, that he held a one-on-one meeting with her to discuss her work. In particular, he told her that he wished the department to apply all its policies and procedures consistently and that he wished the department to be "user friendly." He forbade her from "intense" monitoring, which he characterized as above and beyond the monitoring required by law. He also forbade her from meeting with elected city officials in one city and told her that such a meeting was the responsibility of the

Bureau Administrator. Mr. Lee reduced his instructions to writing on February 11, 1992. (See Union Exhibit 1)

Mr. Lee said that all during the investigation of the Grievant that he continued to certify her Travel Expense Reports even though he suspected that they were erroneous. He said he had been instructed to do so by his superior, Ms. Goldhart.

Deborah Stewart, Mr. Lee's Administrative Assistant, identified Joint Exhibit 5 as the ODRC Travel Policy that was effective January 3, 1992. Under that policy (as well as under previous policies), the Grievant's headquarters was the Cleveland Office. Ms. Stewart defined "commute mileage" as the distance that an employee drives to and from their home to the headquarters office. This mileage is not reimbursable under the provisions of the policy. In addition, expenses incurred as part of the normal commute are not reimbursable, i.e. tolls, parking, etc. Tips are also not reimbursable in any circumstances.

Ms. Stewart testified that, on April 14, 1992, a staff meeting was held and that she was present and that the Grievant was present. One agenda item for this staff meeting was the Travel Policy. (See Employer Exhibit #4) Ms. Stewart reviewed the travel policy completely and in detail. She offered her notes to indicate that reimbursement policies were discussed and explained. Ms. Stewart stated that the Grievant asked no questions as this meeting about the travel rules. Ms. Stewart also stated that the Grievant had not, at any time after the travel policy had been implemented, come to her with any questions about how the policy worked.

Ms. Stewart said on that on May 8, 1992, the Grievant's itinerary indicated that she planned to attend a meeting at an architect's office in Cleveland. This office, according to Ms. Stewart, was 4 miles from the headquarters office. (The Arbitrator takes arbitral notice of this distance based on her own knowledge of Cleveland where she was a resident for over two years.) Ms. Stewart called the office and was told by the receptionist that the meeting had been from 9:00 a.m. to 11:00 a.m. and that the Grievant had left the premises. Since the itinerary showed a planned return to headquarters, Ms. Stewart called there at 1:00 p.m., and the Secretary said that she had not yet seen the Grievant that day. The Grievant's field contact sheet, submitted subsequently, showed a return to the office at 12:15 p.m.

Jill Goldhart, Deputy Director of Parole and Community Services, stated that Mr. Lee came to her with his suspicions. She stated that she told him to turn the information on which his suspicions were based to Mr. Molnar and to continue to certify the Grievant's Travel Reports during the pendency of the investigation.

Ms. Goldhart testified that after the investigation had been completed and the results presented to her that she recommended to the Director that the Grievant be removed. She said she based her recommendation on the facts that showed that the Grievant had been systematically falsifying various travel documents and was, through false reimbursements, stealing from the state.

Under cross-examination, Ms. Goldhart said that in the past the Grievant had problems with accuracy of her various reports and

that the matter has been discussed with her. Ms. Goldhart said that the Grievant had never been disciplined for the inaccuracies in her various reports.

Mr. Peter Molnar, at the request of Mr. Lee, conducted a preliminary paper review of the Grievant's Travel Expense reports. The mileages as reported seemed to him to be unreasonable. On May 6, 1993, Mr. Molnar drove to the Grievant's headquarters. During that day, she never came into the headquarters. However, in her Travel Expense Report for that day (See Employer Exhibit E-2), the Grievant signed a statement certifying that she had begun and ended her travel that day from the Cleveland office and that she had incurred a \$5.00 parking charge that day at the office. These claims by the Grievant were patently untrue.

On May 21, 1993, Mr. Molnar conducted a surveillance on the Grievant. (See Employer Exhibit E-2) On that day, Mr. Molnar saw the Grievant park in the Coyne and Kangessor parking lot for \$2.50. However, on her Travel Expense Report for that day, the Grievant reported a \$5.00 parking fee. The Travel Report lists travel to Rocky River; however, the Grievant made no trip to Rocky River. The odometer readings listed on the Travel Expense Report were 79,754 to 79,822. Mr. Molnar testified that when he observed the odometer it read 82,577. Mr. Molnar said that the Grievant actually traveled 10 miles that day but sought reimbursement for 68 miles on her certified Travel Expense Report.

After these observations, Mr. Molnar contacted the State Highway Patrol and turned the investigation over to them. Based

solely on the Travel Expense Reports for March 4, 1992 through August 28, 1992, Mr. Molnar estimated that the Grievant had received over \$212.31 improperly.

Trooper David Maley of the Ohio State Highway Patrol testified on the investigation he conducted and the results. (See Employer Exhibit 6)

On June 25, 1992, the Grievant reported odometer readings of 84,440 to 84,494. The Trooper looked at her odometer that day while her car was parked outside the Cleveland Clinic and the reading was 84,077.

On July 8, 1992, the Grievant was under full surveillance. She traveled from her home to the Bratenahl City Jail, then to the B & B Appliance store in Euclid, Ohio, then to the Rini Rego supermarket in Mayfield Village, Ohio and then to her home. Her Travel Expense Report claimed that she traveled from Headquarters to Bratenahl City Jail and back and claimed a \$5.00 parking charge downtown. She also claimed 55 miles of reimbursable mileage. The mileage from her home to Bratenahl is less than the mileage from her home headquarters and hence not reimbursable. The actual mileage from headquarters to Bratenahl is 16 miles round-trip. She did not park downtown at any time.

On July 10, 1992, the Grievant was again under surveillance. The Grievant drove from her home to the Bay Village Police Department. Her Travel expense report indicated that she drove from Headquarters to Rocky River to Bay Village. The Troopers observed the Grievant go from Bay Village to lunch and then to

Fairview Police Department. From Fairview, the Grievant drove to the West Side Market where she apparently ended her work day. The Travel Expense Report shows her returning to Headquarters. The Troopers also observed the actual odometer readings on the Grievant's car, and they were not consistent with the odometer readings on the field contact sheet. On her Travel Expense Report, the Grievant claimed 83 miles of reimbursable mileage and a \$5.00 parking fee. The Troopers reported that only 44 miles were actually traveled and that no parking fee was incurred.

On June 25, 1992, July 22, 1992, August 7, 1992, and August 14, 1992, the Highway Patrol observed other discrepancies. The odometer readings were never consistent with the field contact sheets. On July 22, 1992, the Grievant claimed a \$5.00 parking fee, and the Troopers saw her park in a \$3.00 lot. On August 14, 1992, the Grievant's beginning and ending odometer readings were observed and, when she had only driven 34 miles in total, she claimed 91 reimbursable miles.

Trooper Maley stated that the Patrol examined the Grievant's travel expense reports from March 26, 1992 to August 31, 1992 and that during that time the Grievant had submitted 155 Systems Parking Incorporated receipts for \$5.00 each. The tickets indicated that the lot number was Lot 313-C. Trooper Maley met with an official from the Systems Parking Incorporated. She said that Lot 313-C was a \$4.00 lot not a \$5.00 lot. In addition, the official examined the tickets and pointed out that the sequence numbers on the tickets made it impossible that the parking had been

done over a period of time because the sequence numbers were too close. Trooper Maley then interviewed the lot attendant for Lot 313-C. The lot attendant recognized a picture of the Grievant and said that she often requested blank tickets from him because she said she had forgotten to get one. He said that he had given her "handfuls" of blank receipts. He said he had been giving her receipts since the Fall of 1991.

Then Trooper Maley pulled the Grievant's travel reports back to August 5, 1987. He assumed that every reported travel site was correct and, using the official mileage book of the Public Utilities Commission of Ohio, he calculated the mileage between the various sites listed. Trooper Maley said that, using this method, the Grievant had overcharged the state for 42,396 miles or \$9,101.88.

The Grievant testified in her own behalf. She described her education. She had graduated from law school in her native Turkey. She received a Masters in Corrections Law from Cleveland Marshall College of Law in 1976. In 1988, she had provided assistance to the United Nations with regard to corrections issues in under-developed nations.

She started working for ODRC in 1976. Between 1976 and 1987, she had limited occasions for travel in her work. Starting in 1987, she began to have a significant portion of her work involve travel. She said her problems began when Michael Lee became her supervisor, and he ordered her to do less monitoring of the jails under her supervision. She said all the Travel Expense Report

problems occurred because she did not understand the system and had trouble keeping records. She said she never kept daily records and at the end of the month had to put together a report. She said she often asked her husband to add up the miles for her. She said she had no direction in doing the reports and hence had to consult with some persons outside her section, namely parole officers. She said that the parole officers told her that they "just made up their mileage." She said she could never get the odometer reading right because she used two cars. She claimed that she always parked in a \$5.00 lot because she usually came back in mid-day and no cheap places were left.

The Grievant adamantly denied any intention to steal. She said the whole investigation was a result of her "tough enforcement" that her new boss did not like. She said that it was "all politics," that people called Columbus to complain about her tough enforcement, and that she was being unfairly harassed. With regard to the May 8th issue, she said that she returned to downtown after the meeting with the Architect's and then went to lunch. She said she was back in the office between 1 and 1:30 p.m. and that she saw the message from Ms. Stewart and called her. She said that Ms. Stewart did not ask where she had been.

Under cross examination, the Grievant said she has been at the staff meeting where the travel policy had been explained and had asked no questions. She also said that she had asked no questions of either Mr. Lee or Ms. Stewart about the Travel reports etc.

The Grievant's husband testified and said that his wife was a very bad record keeper.

As a consequence of the investigation, the Grievant was charged with violation of Employee Conduct Rule #1-Violation of ORC 124.34-dishonesty failure of good behavior; #10 Commission of a Felony-Theft in Office #16 Theft (In or out of employment) #24 Falsifying, altering, or removing any official document arising out of employment with ODRC #3-Absenteeism. She was removed as a consequence of these charges.

Union's Position

The Grievant was a victim of harassment. She was harassed because she was a strict enforcer of the ODRC standards, and her new supervisor did not want her to strictly enforce the rules. Secondly, the Grievant was a sloppy record keeper. Third, the Employer failed to notify the Grievant of its suspicions. When apparent discrepancies appeared the Employer should have asked the employee about those discrepancies. Lastly, the Grievant did not receive proper training or supervision with regard to the Travel Expense Reports.

Employer's Position

The record reveals a systematic falsification of travel expense records that benefited the Grievant monetarily. She received proper notice of the standards of employee conduct, she received complete documentation of the travel rules, she received

a staffing on the travel rules, and her supervisors were always available to answer her questions. She asked none. The record reveals a long term pattern of dishonesty. The Grievant was dismissed for just cause.

Discussion

The evidence is overwhelming that the Grievant systematically and routinely falsified her travel reports. The claim of inability to understand the rules is unbelievable. The Grievant is an educated and intelligent person. Sloppiness is no excuse. All her "sloppiness and problems" just happened to benefit her and in effect increased her after-taxes-take-home-pay.

The Union claims that the failure of the Employer to notify the Grievant of the potential discrepancies violated just cause. The Union confused this contention with the "notice" required by just cause. The standards of just cause require that the employee be on notice of the rules to which the employee is expected to adhere. The standards of just cause do not require notice of apparent irregularities.

The Grievant claims that she is a victim of political harassment, that she is a strict enforcer, and that the current administration does not want strict enforcement of the law. The Grievant presented no convincing evidence of this claim. Assuming, arguendo, that the Grievant's claim is true, the Grievant herself gave the administration that ability to stop her enforcement by her dishonest acts.

The Employer has made a number of charges that are not supported by the record. The Employer has charged the employee with absenteeism based on Ms. Stewart's call. That charge is petty and frivolous and unsupported by sufficient evidence. The Arbitrator finds no just cause for a violation of Rule #3. The Employer has charged the employee with Commission of a Felony. The Employer presented no proof that the employee had been convicted of a "felony." Only a court can convict someone of a "felony"; this Arbitrator has no power to make such a finding nor to convict the Grievant of a "felony." The Arbitrator finds no just cause for a violation of Rule #10. What is absolutely clear is that the Grievant has been egregiously dishonest and has falsified her travel reports and has, in effect, misappropriated state funds. No employee needs "official" notice not to steal, no employee needs "official" notice not to falsify travel expense reports, and no employee needs "official" notice not to submit false receipts. All employers reasonably expect honesty from their employees, and all employees should know that. However, Rule #16 gives very adequate notice that theft is not permitted.

Rule # 26 makes quite clear that falsification is not permitted. (The Arbitrator has on numerous occasions indicated that Rule #1 violates this Arbitrator's sense of just cause standard. It is both a catch all and simultaneously contains vague and meaningless standards ("failure of good behavior"). The Arbitrator finds that Rule #1 does not provide sufficient notice

to the employee as to constitute the notice requirement of just cause.)

The official Standards of Employee Conduct did quite clearly put the employee in this case on notice of the probable consequence of her acts. Theft in office carries the possible discipline of a 5/10 day suspension to removal; falsification of documents carries a possible suspension of 3/5 days to removal.

The major question to be answered is whether removal is justified. This Grievant is a 16 year employee of the Department with no prior discipline. These factors weigh heavily in any decision. Moreover, progressive discipline is the norm, for the purpose of correction. Removal is a discipline of the last resort. Removal is often called the "capital punishment" of employment law. The standard of proof in such a case must, of necessity, be clear and convincing.

Some offenses are so serious as to justify removal as the first and final discipline. Theft of public monies by a public servant falls within that scope. While the Grievant is a long term employee without prior discipline, the seriousness of the offense, in the mind of the Arbitrator, overweighs those factors. Moreover, this behavior was not a one time or a two time event. The evidence is clear that the behavior of the Grievant was systematic and routine. Lastly, nothing the Grievant said indicated that she truly appreciated what she had done nor that anything would "correct" her behavior. In the transcript of the predisciplinary hearing, provided by the Grievant, the Grievant's husband explains

the philosophy underlying the way the Grievant, with his help, filled out her expense reports. He said that every time the Grievant left their home on her job an expense was created for which her Employer was responsible. (See P.84 "it doesn't matter where she goes, the State is imposing an expense on her.") That philosophy may be the philosophy of the Grievant and her spouse (whose testimony she offered in support of her position.) However, that philosophy violates the policies and procedures of ODRC, and the Grievant knew that. Finally, the evidence is quite clear that the expenses charged by the Grievant even exceeded her claimed philosophy of collecting her commutation expenses.

The Arbitrator finds no evidence of any factors that mitigate the offense.

Award

The Grievance is denied.

January 9, 1995
Date


Arbitrator