

Arbitration Decision and Award
In the Matter of Arbitration Involving:

State of Ohio Office of Collective Bargaining
and
Service Employees International Union District 1199

Grievance No.: 27-21-(6-21-94)-1043-02-12
(Zakee MūMin Grievant)

Marcus Hart Sandver, Ph.D.
Arbitrator

Hearing Date: July 27, 1995
Decision Issued: August 8, 1995

Representing the OCB:

Mr. Drew Hildebrand
Labor Relations Officer 2

Representing the Union:

Mr. Charles Lester
Organizer

I. BACKGROUND

This case involves the three day suspension of Mr. Zakee MūMin for violation of Standards of Conduct Rule 27. The alleged violation of the rule occurred on June 15, 16 and 17 when the grievant, while on administrative leave, participated in an Ohio Department of Health training seminar as a presenter and then accepted \$150 as payment for his services. The grievant was notified by the Ohio State Highway Patrol in November of 1993 that the organizers of the June 1993 seminar were under investigation for improper payments. In January of 1994, Mr. MūMin was notified that he was a suspect in the investigation.

On February 11, 1994 a summons was serviced upon the grievant at his workplace, the Orient Correctional Institute (OCI). On February 24, 1994 a predisciplinary conference was held to investigate violations of rules 1, 16, 27 and 41. Discipline was recommended for the violation of rules 16 and 27. The grievant was suspended for three days beginning June 13, 1994.

On June 13, 1994 the grievant filed a grievance claiming his three day suspension was unjustified. A step three hearing on the matter was held at O.C.I. on November 3, 1994. On April 6, 1995 a step three answer was issued to the grievant denying his grievance. On or about June 9, 1995 Marcus Hart Sandver was chosen by mutual agreement of the parties to arbitrate the matter. The hearing date of July 27, 1995 was mutually agreed by all parties to the matter.

II. THE HEARING

A. Attendees

The hearing was convened at 9:00 A.M. on July 27, 1995 in the offices of the Office of Collective Bargaining in Columbus. In attendance at the hearing for the union were:

- | | |
|-----------------------|----------------------------------|
| 1. Mr. Charles Lester | Chief Spokesperson and Organizer |
| 2. Mr. Zakee MūMin | Grievant |

In attendance at the hearing for the State of Ohio were:

- | | |
|---------------------------|---|
| 1. Mr. Drew Hildebrand | Chief Spokesperson - Labor Relations Officer 2 |
| 2. Mr. Ted Durkee | Office of Collective Bargaining Policy Specialist |
| 3. Mr. James D. Robinson | Former Deputy Warden - OCI |
| 4. Ms. Carol M. Stevenson | Payroll Officer - OCI |

B. Exhibits

The following were submitted as joint exhibits.

- | | |
|-------------------|---|
| Joint Exhibit # 1 | Collective Bargaining Agreement
State of Ohio/SEIU District 1199 1994-1997 |
| Joint Exhibit # 2 | Standards of Employee Conduct Rule
Violations and Penalties
Dated June 17, 1990 |
| Joint Exhibit # 3 | The Grievance Trail |
| Joint Exhibit # 4 | The Discipline Trail |

In addition, the following were submitted as Union exhibits:

- | | |
|-------------------|--|
| Union Exhibit # 1 | Letter from Vivian Jackson to Zakee MūMin.
Dated June 14, 1993 |
| Union Exhibit # 2 | "Unlawful Compensation Case Delayed"
<u>Columbus Dispatch</u> , p. 1C. February 1994. |
| Union Exhibit # 3 | "Double Standard Claimed in Prosecution of
Employee" <u>Worthington Suburbia News</u> , p. 16.
June 1, 1994. |
| Union Exhibit # 4 | "State Worker Spared Trial Over Speaking Fee"
<u>Columbus Dispatch</u> , (no page indicated).
September 3, 1994. |

The following were submitted as Management exhibits:

- | | |
|-----------------|--|
| OCB Exhibit # 1 | Opening Statement of Mr. Drew Hildebrand |
| OCB Exhibit # 2 | Acknowledgment of receipt of Revised Standards
of Employee Conduct. Signed by Mr. Zakee MūMin
Dated May 29, 1990 |
| OCB Exhibit # 3 | Acknowledgment of receipt of Ohio Ethics Law
Chapter 102 of O.R.C. Signed by Mr. Zakee MūMin
Dated May 15, 1989 |

C. The Issue

The parties stipulated to the statement of the issue as follows:

"Was the three day suspension that was administered to the grievant for just cause? If not what shall the remedy be?"

D. Opening Statements

1. Employer Opening Statement

In his opening statement, Mr. Hildebrand briefly reviewed the background and facts surrounding the grievant's suspension in 1994. Mr. Hildebrand stated his view that the grievant knew that he was a suspect in an Ohio Highway Patrol investigation beginning in November of 1993 yet he never informed his supervisors that he was the subject of such an investigation. In Mr. Hildebrand's view, Mr. MūMin's actions were a violation of rule # 27 and the three day suspension was administered for just cause.

2. Union Opening Statement

In his opening statement, Mr. Lester stated his view that the grievant was not disciplined for just cause. Mr. Lester pointed out to the Arbitrator that the language of rule # 27 states that an employee may be disciplined for "failure to immediately report a violation of any work rule, law or regulation that could jeopardize the security of the work place or affect job performance." Mr. Lester stated that in his opinion, Mr. MūMin's actions did not have the effect of jeopardizing the security of OCI and did not affect Mr. MūMin's job performance. Thus, Mr. Lester asks that Mr. MūMin's record be expunged, and back pay awarded for the three day suspension.

E. The Witnesses

1. Employer Witness - James D. Robinson

The first witness called by the Office of Collective Bargaining was Mr. James D. Robinson, the former Deputy Warden of O.C.I. The witness was sworn-in by the Arbitrator.

In his testimony, Mr. Robinson testified that he first became aware of the Ohio Highway Patrol investigation of the grievant in late November or early December of 1993. Mr. Robinson testified that he was contacted by the Ohio Highway Patrol and informed that Mr. MūMin was the target of an investigation and that leave records for Mr. MūMin were requested from OCI. Mr. Robinson testified that he supplied the leave records to the OHP investigators as requested.

Mr. Hildebrand asked the witness if he spoke to Mr. MūMin about the investigation. Mr. Robinson testified that he did not contact Mr. MūMin directly concerning the investigation. Mr. Robinson did testify, however, that he talked to Mr. MūMin twice while the investigation was in progress and asked him "if everything was OK".

Mr. Hildebrand asked Mr. Robinson if he initiated the discipline against the grievant. Mr. Robinson testified that once the summons was served upon Mr. MūMin at OCI that the matter had become public and management initiated disciplinary action against Mr. MūMin for violating rules 1, 16, 27 and 41 (see Joint exhibit # 4 Part A).

Next, Mr. Hildebrand asked Mr. Robinson to discuss paragraph 4 of Joint exhibit # 4 Part A. In this paragraph, Mr. Robinson testified, he is discussing the conversation which occurred between Mr. MūMin and Ms. Carol Stevenson in November of 1993. At that time, Mr. MūMin had made a request to Ms. Stevenson to have his administrative leave of June of 1993 changed to vacation time.

Next, Mr. Hildebrand asked Mr. Robinson to discuss part B of Joint exhibit # 4. Part B of Joint exhibit # 4, Mr. Robinson testified, is an incident report filed by Ms. Carol Stevenson on February 14, 1994 detailing the events of the request Mr. MūMin made to have his leave records changed in November of 1993.

Next, Mr. Hildebrand asked Mr. Robinson to discuss part C of Joint exhibit # 4. Mr. Robinson identified Joint exhibit # 4 part C as a letter written from Mr. MūMin's attorney (Mr. Frank Macke) to Mr. David Buchman (Columbus City Attorney's Office) notifying Mr. Buchman that Mr. MūMin would decline any further requests for information from the Ohio Highway Patrol now that Mr. MūMin was a suspect in the investigation. Mr. Hildebrand asked Mr. Robinson if he thought that the investigation could have an effect on Mr. MūMin's job performance and Mr. Robinson answered that in his opinion that this investigation could have an effect on the grievant's job performance. Finally, Mr. Hildebrand asked Mr. Robinson if Mr. MūMin had an opportunity to notify him about the investigation and Mr. Robinson testified that Mr. MūMin had lots of opportunities to talk to him about the investigation.

On cross examination, Mr. Lester asked Mr. Robinson to specify the exact date that it could be established that Mr. MūMin knew he was a suspect in the Highway

Patrol investigation. After some discussion, Mr. Robinson testified that on or about January 6, 1994 Mr. MūMin knew for certain that he was a suspect in the investigation.

Mr. Lester asked Mr. Robinson if he believed that Mr. MūMin had an obligation to notify his supervisor at OCI when he became aware that he was a suspect in an investigation. Mr. Robinson testified that it was his opinion that under rule # 27, an employee has the obligation to notify his or her supervisor when they are the subject of an investigation. Next, Mr. Lester asked Mr. Robinson to specify what was the work rule, law or regulation that Mr. MūMin had violated. Mr. Robinson testified that Mr. MūMin had violated section 2921.43 of the Ohio Revised Code which prohibits a public servant from receiving supplementary compensation for services performed while he or she is being paid by the State.

Next, Mr. Lester asked Mr. Robinson how the State evaluates the performance of its employees. Mr. Robinson testified that the State has a standardized performance evaluation form it uses to evaluate its employees. Mr. Lester asked Mr. Robinson if Mr. MūMin was evaluated during the period in which he was the subject of the investigation. Mr. Robinson testified that Mr. MūMin was not evaluated during this period. Mr. Lester asked Mr. Robinson if the investigation had had any noticeable effect of Mr. MūMin's job performance. Mr. Robinson testified that in his opinion the investigation had affected Mr. MūMin's credibility within the institution. Mr. Lester asked Mr. Robinson if there was any publicity about the investigation. Mr. Robinson testified that there was a story in the Columbus Dispatch about the investigation. Finally, Mr. Lester asked Mr. Robinson if there were any problems with Mr. MūMin's

performance when he came back to OCI after his suspension. Mr. Robinson testified that he did not know of any specific problems but he did recall some inmates making comments about the incident after Mr. MūMin returned from his suspension.

On redirect examination, Mr. Hildebrand asked Mr. Robinson if in his opinion Mr. MūMin's job performance was affected by the investigation which was conducted in late 1993 and early 1994. Mr. Robinson testified that in his opinion, and in the opinion of the Warden of OCI, Mr. MūMin's credibility and his job performance were affected by the investigation.

Next, Mr. Hildebrand asked Mr. Robinson to look over § 2921.43 of the Ohio Revised Code. Mr. Hildebrand asked Mr. Robinson if this was the section of the law that Mr. MūMin had violated by accepting the \$150 for participating in the seminar in June of 1993. Mr. Robinson testified that this was the law that Mr. MūMin had broken and that Mr. MūMin was disciplined for not notifying his supervisor about the matter. Finally, Mr. Hildebrand asked Mr. Robinson to identify OCB exhibits 2 and 3. Mr. Robinson testified that OCB exhibit # 2 was Mr. MūMin's acknowledgment of receiving a copy of the code of conduct and that OCB exhibit # 3 was Mr. MūMin's signed acknowledgment of receiving the code of ethics. At this point the witness was excused.

2. Employer Witness - Ms. Carol Stevenson

The next witness called to testify was Ms. Carol Stevenson, the payroll officer at OCI. Mr. Hildebrand asked Ms. Stevenson to identify part B of Joint exhibit # 4. Ms.

Stevenson testified that part B of Joint exhibit # 4 was a statement she gave to Mr. Robinson describing a request she received from Mr. MūMin in November of 1993. Ms. Stevenson testified that Mr. MūMin's request was that she change the administrative leave that Mr. MūMin had taken in June of 1993 to vacation leave. Ms. Stevenson further testified that she told Mr. MūMin she could only change historical leave records for one pay period, she could not change leave records that were any older than that. When asked by Mr. Hildebrand if Mr. MūMin seemed upset or anxious when he made this request, Ms. Stevenson testified that Mr. MūMin did not seem anxious or upset.

There was no cross examination and the witness was excused. At this point, the defense rested.

3. Union Witness - Mr. Zakee MūMin

The first witness called by the Union was the grievant, Mr. Zakee MūMin. The witness was sworn-in by the Arbitrator.

Mr. Lester asked Mr. MūMin how long he had been employed by the Department of Rehabilitation and Correction and Mr. MūMin testified that he had been employed by Rehabilitation and Correction since July of 1984. Mr. Lester asked Mr. MūMin how long he had been employed as a Substance Abuse Coordinator and Mr. MūMin testified that he had been employed in this capacity since 1990.

Mr. Lester asked Mr. MūMin about his training as a non-violence specialist. Mr. MūMin testified that he received his non-violence certification in August of 1992.

Mr. MūMin further testified that he has been involved in more than 100 hours of non-violence training since then.

Mr. Lester next asked Mr. MūMin to describe how he got involved in the June 1993 program conducted by the State Department of Health. Mr. MūMin testified that he was contacted by Ms. Vivian Jackson on June 14, 1993 and asked to teach in a training program that was to be held on June 15, 16, 17 and 18 in Columbus. Mr. MūMin testified that he notified his supervisor, Mr. Weingard, about the program and he was granted administrative leave to attend the program. The leave request was forwarded on to Mr. Robinson who also signed and approved it.

Mr. MūMin testified that he was in attendance at the program for four days (Tuesday through Friday). On Friday, when the training program was over, Ms. Jackson gave Mr. MūMin a check for \$150. Mr. MūMin testified that Ms. Jackson characterized the payment as an honorarium for his participation in the training program. Mr. Lester asked Mr. MūMin if Ms. Jackson had discussed the matter of an honorarium with him prior to this time and Mr. MūMin testified that no discussion of an honorarium had occurred prior to the time it was received on June 18, 1993.

Next, Mr. Lester asked Mr. MūMin to discuss his experiences as a union representative. Mr. MūMin testified that he had represented State employees for the Union for eight years. Mr. Lester asked Mr. MūMin if he was familiar with the standards of conduct for State employees and Mr. MūMin testified that he was aware of these standards. At this point, Mr. Lester asked Mr. MūMin to share with the Arbitrator his interpretation of rule # 27. Mr. MūMin testified that in his opinion, rule

27 is a rule that requires one employee to report another employee if the first employee witnesses the second employee breaking a work rule or a law of the State.

Next, Mr. Lester asked Mr. MūMin if, in his opinion, he jeopardized the security of the institution by accepting the \$150 honorarium on June 18, 1993. Mr. MūMin testified that in his opinion he did not violate rule # 27 when he accepted the honorarium. Further, Mr. MūMin testified that the investigation did not threaten the security of the OCI or affect his job performance. Mr. MūMin testified that in his opinion if he had committed a felony or if he had brought drugs or ammunition into the institution then he may have threatened its security and at that point he could be punished.

Mr. Lester asked Mr. MūMin if, in his opinion, the investigation had affected his job performance. Mr. MūMin testified that the investigation had not affected his job performance. Mr. MūMin testified that no one who he comes in contact with at OCI ever discussed the investigation with him or even indicated that they knew an investigation was in progress.

Mr. Lester asked Mr. MūMin if he felt he was obligated under rule # 27 to report to his supervisor that he was a suspect in an investigation. Mr. MūMin testified that, in his opinion, he was under no obligation to notify his supervisor if he was the suspect in a misdemeanor violation. Mr. MūMin testified that a felony investigation would obligate an employee to notify his supervisor but not a misdemeanor investigation.

Next, Mr. Lester asked Mr. MūMin to describe his involvement in the investigation. Mr. MūMin testified that he was contacted by Officer Smith in

November of 1993 who requested an interview. Mr. MūMin testified that he went to Officer Smith's office and talked to her about the training program he had participated in the previous June. Mr. MūMin testified that he asked Officer Smith directly if he was a suspect in the investigation and Officer Smith, according to Mr. MūMin, answered that he was not a suspect in the investigation. Mr. MūMin further testified that he contacted an attorney to represent him in this matter in January of 1994. Mr. MūMin testified that Officer Smith never told him he was a suspect in the investigation and he further testified that he never saw the letter labeled Joint exhibit # 4 part C from his attorney (Mr. Frank Macke) to Mr. David Buchman in the City of Columbus Prosecutor's Office.

Mr. Lester next asked Mr. MūMin why he asked Ms. Stevenson to change his leave records in November of 1993. Mr. MūMin testified that after talking to some friends at work he was advised by them to have his leave records changed. Mr. Lester asked Mr. MūMin why he would make such a request to Ms. Stevenson even before he knew he was a suspect in the investigation and Mr. MūMin testified that he felt that this change would "make things easier for me".

Mr. Lester next asked Mr. MūMin to describe the events which transpired after January of 1994. Mr. MūMin testified that he was scheduled to go to court over this matter in February of 1994, but the case was postponed. At a later date, the case was postponed again. Finally, in November of 1994, the case was dismissed. Mr. MūMin testified that the allegation that he had violated ORC 2921.43 was never mentioned in his court proceedings. Mr. MūMin testified that he did not know at the time that

accepting the \$150 from Ms. Jackson was a violation of State law.

Mr. Lester asked Mr. MūMin if he has had any prior discipline while employed at OCI. Mr. MūMin testified that he has had no prior discipline. Mr. Lester then asked Mr. MūMin to examine Joint exhibit # 2. Mr. Lester asked Mr. MūMin to describe the principle of progressive discipline as he understood it from reading Joint exhibit # 2. Mr. MūMin testified that the concept of progressive discipline as outlined in Joint exhibit # 2 implies that on the first offense of rule # 27 you would receive anything from an oral reprimand to a one day suspension and that on the second offense you would receive anything from a one to a three day suspension, on the third offense you would receive anything from a five day to a 10 day suspension and on the fourth offense you would receive a removal. Mr. Lester asked Mr. MūMin if he felt the discipline he received was justified under the guidelines found in Joint exhibit # 2 and Mr. MūMin testified that the three day suspension was the maximum penalty for the second offense not the first.

Next, Mr. Lester asked Mr. MūMin if he remembered Mr. Robinson asking him if everything was "OK" in November of 1993. Mr. MūMin testified that he vaguely remembered Mr. Robinson asking him this, but he further testified that he did not think much about this conversation. Mr. Lester asked Mr. MūMin if he knew he was a suspect at the time Mr. Robinson asked him this and Mr. MūMin testified that he did not know he was a suspect in the investigation at this time. At this point the witness was excused and the Union rested its case.

F. Closing Statements

1. Union Closing Statement

In his closing statement, Mr. Lester pointed out to the Arbitrator what he saw to be the central facts of the case. Mr. Lester stated that in his opinion the State did not meet its burden of proof in demonstrating it had just cause to suspend Mr. MūMin for three days in 1994. Mr. Lester asked the Arbitrator to make Mr. MūMin whole and to restore the three days pay he lost in 1994 stemming from the suspension.

2. Employer Closing Statement

In his closing statement, Mr. Hildebrand directed the Arbitrator's attention to Joint exhibit # 2. Mr. Hildebrand emphasized that the language of rule # 27 clearly states that the failure to immediately report a violation of any work rule, law or regulation that could jeopardize the security of the work place or affect job performance was violation of the standards of employee conduct. Mr. Hildebrand stated his view that Mr. MūMin should have contacted his supervisor as soon as he became aware that he would be involved in the OHP investigation. Mr. Hildebrand pointed out the fact that Mr. MūMin contacted Ms. Stevenson in payroll in November of 1993 and asked that his leave records be changed. Mr. Hildebrand stated that in his opinion Mr. MūMin's conduct in November of 1993 demonstrated that he (Mr. MūMin) knew something was wrong.

Mr. Hildebrand stated that the grid in Joint exhibit # 2 was a guideline for management action not a hard and fast dictate of procedure. Mr. Hildebrand stated

that his was a serious case in the eyes of management at OCI and the Warden felt that the three day suspension was justified under the circumstances. At this point both sides rested and the hearing was closed.

III. OPINION

The central facts of this case are not in dispute. In June of 1993, Mr. Zakee MūMin participated in a training program in Columbus while he was on administrative leave from his position at OCI. On June 18, 1993 at the close of the training program, Mr. MūMin accepted a check for \$150 to compensate him for his participation in the training program.

Mr. MūMin testified that he did not know he was violating State law when he accepted the check in June of 1993. This may well be true. When he requested that Ms. Stevenson change his leave records in November of 1993, however, the rational observer must conclude that Mr. MūMin suspected that he was in trouble. By his own testimony, Mr. MūMin admitted that in January of 1994 he knew that he was a suspect in the OHP investigation. The facts of the case indicate that Mr. MūMin never contacted his supervisor about this matter prior to the summons being served upon him at OCI on February 11, 1994.

There is some difference of opinion about whether or not this investigation of Mr. MūMin could have affected his job performance. In my opinion, there is no question that this investigation would have affected Mr. MūMin's job performance. For someone who is a counselor at a prison to be the target of an OHP investigation is

a serious matter. I would imagine that his matter weighed heavily on Mr. MūMin in the Fall of 1994. The fact that he contacted Ms. Stevenson to have his leave records altered is an indication of this concern.

In my view, Mr. MūMin violated ORC 2921.43 when he accepted the \$150 check in June of 1993. In January of 1994, Mr. MūMin became aware that he had violated the law too. When he failed to notify his supervisor that he had violated State law by his actions in June of 1993 he violated standard of conduct rule # 27.

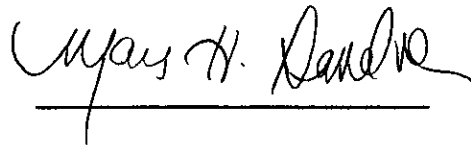
The issue at this point becomes one of severity of discipline. Under the States' own rules, the penalty for a first offense of rule # 27 is either an oral reprimand or a one day suspension. There is nothing in the record to indicate that this is anything other than a first offense for Mr. MūMin. I agree with the State that this is a serious matter and agree that the Warden at OCI was justified in giving Mr. MūMin the maximum penalty allowed under the discipline grid: a one day suspension. I do not see anything in this case that justified more than a one day suspension for Mr. MūMin.

IV. AWARD

The grievance is sustained in part and denied in part. The discipline for violating rule # 27 given to Mr. Zakee MūMin is to be reduced to a one day suspension. The grievant is to be paid back two days pay plus full benefits by the State.

V. CERTIFICATION

The arbitration opinion and award contained herein is based upon evidence and testimony presented to me at an arbitration hearing on July 27, 1995.

A handwritten signature in cursive script, reading "Marcus H. Sandver", written over a horizontal line.

Marcus Hart Sandver, Ph.D.
Arbitrator

Upper Arlington, Ohio

August 8, 1995