

ARBITRATION SUMMARY AND AWARD LOG
OCB AWARD NUMBER: 1086

OCB GRIEVANCE NUMBER: 27-11-941103-0274-06-10

GRIEVANT NAME: Tammy Gates

UNION: OEA

DEPARTMENT: Rehabilitation and Correction

ARBITRATOR: Floyd Weatherspoon

MANAGEMENT ADVOCATE: Patrick Mayer

2ND CHAIR: Georgia Brokaw

ARBITRATION DATE: September 19, 1995

DECISION DATE: October 23, 1995

DECISION: Denied

**CONTRACT SECTIONS
AND/OR ISSUES:** Article 26.06 - Sick Leave Uses, Physician's
Verification
Article 13 - Progressive Discipline

HOLDING: The grievant received a 1-day suspension for
failure to provide physician's verification.
The grievance was denied because the
grievant knew she was on verification until
she accumulated 40 hours of sick leave, she
had brought in verification on other
occasions, and admitted that she did not
provide verification in a timely manner in this
instance. The employer correctly followed
the provisions set forth in Article 26.06.

STATE'S ARB COST:

IN THE MATTER OF THE
ARBITRATION BETWEEN

Ohio Education
Association, State Council
of Professional Educators,

(OEA/NEA/SCOPE)

Union

and

Lebanon Correctional Institution,
Ohio Department of Rehabilitation
and Correction

Employer

For The Employer: Patrick Mayer

For The Union: Henry L. Stevens

I. THE ISSUE

The parties stipulated that the issue is as follows:

Was the Grievant issued a (1) one-day suspension for just cause, and, if not, what shall the appropriate remedy be?

II. APPLICABLE CONTRACT PROVISIONS

Article 26.06 - Sick Leave Uses, Evidence of Use and Abuse

III. Procedure

A. Physician's Verification

At the Agency Head or designee's discretion, in consultation with the Labor Relations Officer, the employee may be required to provide a statement, from a physician, who has examined the employee or the member of the employee's immediate family, for all future illness. The physician's statement shall be signed by the physician or his/her designee. This requirement shall be in effect until such time as the employee has accrued a reasonable sick leave balance. However, if the Agency Head or designee finds mitigating or extenuating circumstances surrounding the

employee's use of sick leave, then the physician's verification need not be required.

Should the Agency Head or designee find it necessary to require the employee to provide the physician's verification for future illnesses, the order will be made in writing using the "Physician's Verification" form with a copy to the employee's personnel file.

Those employees who have been required to provide a physician's verification will be considered for approval only if the physician's verification is provided within three (3) days after returning to work.

III. STATEMENT OF FACTS

Tammy Gates, a teacher at the Lebanon Correctional Institution, [hereinafter the Grievant], received a "Notice of Disciplinary Action", dated August 3, 1994, (Joint Exhibit 2(a)) for a one (1) day suspension, effective September 19, 1994, for violating section 3(g) of the "Revised Standards of Employee Conduct - failure to provide a physician verification when required" (Joint Exhibit 4(a)).

At the time the notice of suspension was issued, the Grievant was required to provide a physician's verification within three (3) days after returning from an illness (Joint Exhibit 2(i)). The Collective Bargaining Agreement outlines the physician's verification procedures in Section 26.06(B) III (A). (Joint Exhibit (1)). There is no dispute that the Grievant was required to comply with this section of the contract when she was absent due to an illness.

The primary dispute is whether the Grievant complied with Section 26.06 when she requested leave June 14, 1994, for 3.3 hours; July 7, 1994, for .6 hours; and July 12, 1994, for 8.0 hours. There is no dispute that the Grievant was absent on the above cited dates.

IV. THE PARTIES' POSITION

A. Employer's Position

The Employer contends that the Grievant failed to present a physician's verification consistent with Article 26.06 of the Collective Bargaining Agreement. Specifically, the Employer states that the Grievant failed to submit physician's verification notices within three (3) days after returning from sick leave on three

different occasions. The Grievant was required to submit a physician's verification for all sick leave absences until she accrued a leave balance of forty (40) hours.

B. The Union's Position

The Union contends that the suspension was not for just cause; thus Section 13.01 of the Collective Bargaining Agreement was violated. Specifically, the Union raised the following arguments: that the Grievant was not "absent" on the days she partially worked; that the Grievant had accumulated a reasonable balance of forty (40) hours of sick leave; that she submitted a physician's verification form to the timekeeper to cover two of the dates she took sick leave.

During the arbitration hearing, the Union requested that the grievance be granted because the "Notice of Disciplinary Action" issued to the Grievant dated August 2, 1994, cited the wrong Union; therefore, the Employer lacked authority to issue the Grievant a disciplinary action under the Collective Bargaining Agreement as stated therein.

V. DISCUSSION AND FINDING

Having reviewed the testimony of the witnesses, the documentary evidence, the arguments of the parties, the following is my analysis of the issue presented.

This is a case where the crucial facts are not in dispute and the applicable section of the Collective Bargaining Agreement is clear and unambiguous. The crucial facts in this case support the Employer's position that the Grievant had prior notice and understood her obligation to provide a physician's verification for each occasion she was absent from work due to illness. The Grievant failed to provide a physician's verification for each occasion within three (3) days after she returned from work.

Uncontroverted testimony from Ron Hart, Labor Relations Officer and supporting documentation clearly substantiated that the Grievant was informed of the Employer's directive for her to provide a physician's verification form. Mr. Hart also testified that the Employer did not receive a physician's verification from the Grievant for one of the three occasions until August 1, 1994, the day of the predisciplinary hearing; consequently it was almost two weeks after the deadline for the Grievant to submit the required

physician's verification. There were no physician's verifications submitted for the other two occasions at the disciplinary hearing.

The Grievant testified that she submitted two timely physician's verification forms to the timekeeper's office and they lost the forms. The Grievant further stated that she was only able to locate a copy of one of the physician's verification forms she originally submitted to cover the June 14, 1994 absence (Employer's Exhibit 2). According to the Grievant, Exhibit 2 predates the June 14, 1994, absence because she was in the hospital after midnight on June 13, 1994, but the hospital had not changed the time to reflect the correct date. This explanation appears to be credible and consistent with the document. Because the Grievant was able to retrieve a copy of this document which appears to be authentic; it is probably that the Grievant submitted this document to the timekeeper's office in a timely manner. With regard to the July 12, 1994 sick leave, the Grievant admits that she did not submit a physician's verification form because she was unable to get in to see the doctor; therefore, she only had a fax copy from the doctor's office which indicated that she had called the office. The Grievant testified that she did not recall who or whether the fax was signed. The Union's witness testified that during the predisciplinary hearing, she recalled seeing a piece of paper that instructed the Grievant to continue taking the medicine already prescribed. The witness could not recall whether the note was signed. The note or fax was not provided at the arbitration hearing or circumstances surrounding its submittal or non-submittal to the Employer. The Grievant's explanation of the July 12, 1994, physician's verification form (fax) is weak at best. According to the Collective Bargaining Agreement, the Grievant had three (3) days after returning to work to obtain a signed physician's verification. The Grievant provided no clear explanation why she failed to meet her obligation under Article 26.06 and 3(g) of the Revised Standards of Employee Conduct.

The Grievant acknowledged that she did not obtain a physician's verification for her leave of July 7, 1994. The Grievant stated "I didn't remember to do so" at the time she went to the doctor because it was near closing time. Again, the Grievant had three (3) days after she returned to work to meet the requirements under Article 26 of the Collective Bargaining Agreement.

The Grievant further acknowledged that she was familiar with Article 26 and specifically the physician's verification provision. The record also indicated that the Grievant had received a written reprimand on January 18, 1994, for violating 3(g)-- "Failure to provide a physician's verification when required" (Employer's Exhibit (I)). Based on the Collective Bargaining Agreement, if the Grievant took any sick leave, the Employer could require a physician's verification as stated in Article 26. The Employer's witness testified that even for a partial absence due to illness, a physician's verification is required. The record indicates that when the Grievant received the written reprimand for violating Article 26, she had taken 1.5 hours of sick leave. This should have put the Grievant on notice that all leave due to illness required a physician's verification. The Union attempts to raise the issue that the Grievant was not absent the entire day on June 14 and July 7 of 1994; therefore a physician's verification was not required. This argument is not well founded.

The Collective Bargaining Agreement is clear on when a physician's verification is required. The Collective Bargaining Agreement states:

An employee may be required to provide a statement, from a physician...for all future illness".

The Union also asked the Employer's witness, Mr. Hart, a series of questions to determine whether the Grievant's leave balance had "accrued a reasonable sick leave balance". The purpose being, ostensibly, to determine whether the physician's verification requirement had expired. There is no evidence that the Grievant had accrued forty (40) hours of leave.

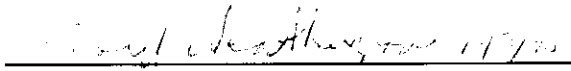
The Employer clearly met the "just cause" standard as required by the Collective Bargaining Agreement. The Employer complied with the procedure in the Collective Bargaining Agreement, the Grievant was familiar with the work rules, progressive discipline was taken, and the Grievant admitted to violating the physician's verification procedures by not submitting a signed physician's verification for the July 7, 1994, absence. Even if the Arbitrator accepted the Grievant's testimony with respect to the June 14 and July 12 absences, the July 7, 1994, absence was not in accordance with the

Collective Bargaining Agreement. The Grievant clearly failed to comply with the physician's verification provision of the Collective Bargaining Agreement.

With regard to the Union's motion that the grievance be granted because the Notice of Disciplinary Action form cited the wrong union, the Arbitrator finds that the Grievant's right to pursue the grievance was not impaired. The correct Union and contract were cited at the bottom of the notice. (Joint Exhibit 2(a)). The error was obvious to the parties and the grievance was processed under the correct Collective Bargaining Agreement; therefore, the error was harmless.

AWARD BY THE ARBITRATOR

The Grievant was disciplined for just cause; therefore, the grievance is denied.



Floyd Weatherspoon, Arbitrator

EXHIBITS

Joint-Stipulated Documents

1. OEA/State of Ohio Collective Bargaining Agreement
2. Discipline Trail
 - a. Order of suspension dated August 3, 1994
 - b. Notice of pre-disciplinary hearing dated July 29, 1994.
 - c. Management witness/document list dated July 29, 1994.
 - d. Investigatory interview dated July 27, 1994.
 - e. Incident report dated July 27, 1994.
 - f. Request for leave for June 14, 1994 for 3.3. hours.
 - g. Request for leave for July 7, 1994 for .6 hours.
 - h. Request for leave for July 12, 1994 for 8.0 hours.
 - i. Physician's verification form dated June 11, 1993.
3. Grievance Trail
 - a. Grievance form dated September 14, 1994.
 - b. Step 3 response dated February 8, 1995 (not submitted).
 - c. Request for arbitration dated February 8, 1995.
4. Standards of Employee Conduct
 - a. Standards revised 1990 in effect at the time of the alleged offense; Rule #3G.

EMPLOYER'S EXHIBITS

1. Report of Written Reprimand for Tammy Gates, dated January 18, 1994.
2. Physician's Verification for Tammy Gates, dated June 13, 1994.