#1195

OCB-OCSEA VOLUNTARY GRIEVANCE PROCEEDING
ARBITRATION OPINION AND AWARD

Arbitration Between:	*	
	*	
STATE OF OHIO	*	Case No. 34-23-960320-0056-01-09
Ohio Bureau of Workers	*	
Compensation	*	
	*	
-and-	*	Decision Issued:
	*	April 2, 1997
OHIO CIVIL SERVICE EMPLOYEES	*	
ASSOCIATION, OSCEA/AFSCME	*	
Local 11	*	

FOR THE EMPLOYER

Thomas V. Gulla	Chief Advocate
Roger A. Coe	Second Chair
Colleen Ryan	OCB Representative
Sandy Blunt	Deputy Administrator
Maureen Corcoran	Supervisor/Team Leader
Duane Godman	Witness
Donald Spitz	Witness
Dennis Fenske	Witness
John Urban, Esq.	Witness
Katrina Williams	Witness
Paula Rowe-Knyszek	Witness

FOR THE UNION

Steve Lieber	OCSEA Advocate
Christina Boris	Grievant

Jonathan Dworkin, Arbitrator
101 Park Avenue
Amherst, Ohio 44001

DISPUTE SUMMARY:
THE ISSUE

The decision to discharge an eleven-year employee led to this controversy. Grievant was hired by the Ohio Bureau of Workers Compensation (BWC) in 1985. She began as a clerical worker, later advancing to Claims Specialist at a suburban Cleveland BWC office (Independence, Ohio). She remained in that job until March 5, 1996, when her removal became final. The stated causes were "Failure of Good Behavior, Discourteous and/or rude treatment of a Customer."

As a Claims Specialist, Grievant was in continual contact with claimants and their attorneys. Her chief duties were to process the files in her assigned caseload and respond as positively as she could to claimant requests. According to the Employer, she did not meet the second responsibility. Her curt responses to clients -- outright impudence to some -- generated many complaints, verbal and written. Toward the end of her tenure, law offices and claimants bypassed Grievant and dealt with the Supervisor because of their bad experiences. Here is some of what Grievant allegedly said to callers who asked her for information or help:

"I'm busy; I'll get to it when I get to it."
"Get your act together."
"It's not my concern that you have cancer."
"I have other work to do."
"I have other priorities."
"I have fifty files on my desk, wait your turn."
"I'm going to lunch."

Also, she purportedly hung up on people and neglected to return calls.

Management became increasingly concerned about the complaints. Grievant's Supervisor made it a priority to identify the problems and help to find solutions. Through 1994 and 1995, she counseled the Employee at least fifteen times. Also, she applied progressive discipline. December 15, 1994, she issued a Written Reprimand to Grievant citing nine client/attorney complaints for rudeness, failure to give assistance, and neglect of duty. Afterwards, Management saw no sustained improvement. Between December 15, 1994 and February 19, 1995 -- just two months -- the Supervisor documented eleven complaints about Grievant. Nine concerned late processing and discourtesy, two others were from coworkers. Consequently, the Supervisor sent in a request for discipline and, on August 25, 1995, a five-day suspension was imposed. The suspension letter said in part:

> After reviewing the recommendation of the hearing officer, it has been determined that just cause exists for this action. The charges you have been found in violation of include BWC Disciplinary Guidelines, Insubordination, Failure to Follow Written Policies of Management; Neglect of Duty, Work Production/Failure to Meet Work Standards, Comply with Performance Improvement Plans; and Failure of Good Behavior, Discourteous Treatment of Fellow Employees, Management or the Public.
>
> . . .
>
> Continued behavior of this type will result in stronger disciplinary action.

The Supervisor kept notes on Grievant's progress. They show the Employee did better after her suspension. There were no complaints recorded in September and October. But they began again and continued through November, December, and January. Management concluded that there was no realistic hope for improvement. Counselings, a voluntary EAP referral, and progressive discipline had not worked. In December 1995, the Employer began the process that culminated in the March 1996 removal.

* * *

The Union initiated a timely grievance demanding reinstatement and back pay. It alleged that the removal violated Article 24, Sections 24.01 and 24.02 of the governing Collective Bargaining Agreement. Those provisions restrict Management's disciplinary authority. They require the Employer to follow principles of corrective discipline and mandate that no discipline will be valid unless supported by just cause. Sections 24.01 and 24.02 provide in part:

ARTICLE 24 - DISCIPLINE

24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action.

. . .

24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. ***Disciplinary action shall be commensurate with the offense***.

Disciplinary action shall include:

A. One or more oral reprimand(s) (with appropriate notation in employee's file);

B. one or mare written reprimand(s);

. . .

D. one or more day(s) suspension(s);

E. termination.

The Union advanced several arguments to establish that the removal lacked just cause. Chief among them was the assertion that during the period in question, Grievant suffered early menopause and attending physical/psychological disorders, which provoked extremely high stress levels and lowered her irritability threshold. According to the Employee's testimony, she was never deliberately discourteous. She admits, however, that stress made her abrupt on occasion, and people could have mistaken her tone for rudeness. As the Union argues, illness is not misconduct or just cause for discipline.

Grievant contends she deserved understanding and, more important, she deserved help. Instead, she believes Management "set her up" for the removal. Her proof is the written criticisms from Agency clients. They were not spontaneous; BWC supervisors encouraged the

clients to write them. It follows, according to the Employee and Union, that the letters, supervisory notes of conferences, and prior suspension comprised a carefully constructed paper trail to give an appearance of legitimacy to an unjust discharge.

* * *

The dispute progressed through the contractual grievance levels to arbitration. At the outset of the hearing, the Advocates stipulated that the matter was procedurally arbitrable and that the Arbitrator was empowered to issue a conclusive award on its merits. The scope and limitations of arbitral authority are defined by the following language in Article 25.03 of the Agreement:

> The decision and award of the arbitrator shall be final and binding on the parties.
>
> . . .
>
> Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement.

AGENCY EVIDENCE AND ARGUMENTS

Joint Arbitration Exhibit IV was the BWC Disciplinary Guidelines, as amended July 1, 1995 (about eight months before Grievant's removal).

Each State agency publishes and distributes similar guidelines categorizing employment misconduct and the potential penalties for each offense. This Arbitrator and others have held that such predetermined penalties are not etched in stone; they do not replace just cause. Nevertheless, they are valuable for advising employees in advance of the kind of behavior that is prohibited and the way in which Management expects to exercise its disciplinary prerogatives. Many arbitrators hold that prior notices of this kind are an essential ingredient of just cause. Also, by comparing the discipline attached to each offense, an arbitrator can determine how seriously an agency views an item of misconduct.

BWC Guidelines illustrate that Management regards discourtesy to clients as one of the most offensive acts an employee can commit. The disciplinary grid prescribes a major suspension for a first incident and removal for a second. This category of misconduct is more seriously regarded than even insubordination or obscenities directed toward a supervisor. Management will suffer one violation of the rule and apply corrective discipline; it will not tolerate a second violation.[1]

---

[1] At the hearing, the Employer offered a record of a three-day suspension Grievant received for the same offense. The disciplinary letter was issued December 7, 1992, and the penalty was served December 15 to 18, 1992. The Union objected to its admission on grounds that it should have been expunged under Article 24, §24.06. The Section states that suspensions will be removed from an employee's file after twenty-four months "if there has been no other discipline imposed

There is a reason for this inflexibility. The Deputy Administrator of Customer Service was the Employer's first witness, and he explained the reason. In the past, BWC has had a terrible reputation. The public perceived it as staffed by uncaring bureaucrats who gave careless, untimely service and held client needs hostage to their whims. The reputation was not deserved, but there probably was a grain of truth at its foundation. The Governor and the Agency resolved to change the image and brought in skilled people to do it. They formed implementation teams whose mission was to root out and correct such abuses as discourtesy. That made Grievant's behavior and similar behavior of others primary targets for correction.

The Agency's second witness was the Supervisor and Team Leader of Grievant's Section. She came to her position in July 1994 and was immediately confronted with complaints about this Employee. The criticisms were in three categories -- late payments, irresponsiveness to telephone calls, and an argumentative attitude. The Supervisor

---

during the past twenty-four (24) months." The discipline following the three-day suspension was the written reprimand of December 15, 1994. That was twenty-four months and one week after the suspension, and there was no discipline in the interim. The Employer argued that its proffer should be received into evidence, because the twenty-four month period did not begin to run until the Employee "felt" the corrective benefit of the discipline, and that started to occur December 15, 1992 when the suspension was served. While this is an innovative interpretation, the Arbitrator finds that it does not comport with the plain language of §24.06. The three-day suspension was contractually stale on December 7, 1994. It is excluded from evidence and will not be considered.

focused on Grievant in a concentrated effort to change the situation. She conducted fifteen job counselling sessions in the one and one-half years and found they were not effective. Nothing changed. It seemed that Grievant did not understand. According to the Supervisor, she was defensive and reacted to criticisms saying she was busy, had her priorities, and regarded telephone calls as disruptive.

The Supervisor did more than just counsel. She conducted a special evaluation, issued the written reprimand, obtained higher-level concurrence, and proposed the five-day suspension. She also recommended EAP counselling when Grievant complained of physical and emotional problems.

In September 1995, the efforts seemed to take hold. For two months, the Employee made noticeable efforts to improve, and there was reason to hope she was going to be successful. Those hopes fell apart in November. Around the middle of that month, a claimant's attorney telephoned Grievant with an emergency request. He represented an injured worker who had obtained court ordered cessation of his child-support obligations. However, the order had not been entered on the BWC computer, so support payments were still being withheld. Grievant could have corrected it with quick action and a few key strokes on her computer. Instead, she refused to cooperate with the attorney beyond telling him what forms should be filed. Subsequently, the attorney called the Supervisor who did make the correction.

In the ensuing weeks, there was what the Supervisor characterized as a "barrage" of complaints concerning Grievant. She had returned to her old, unacceptable patterns -- putting telephone messages aside, refusing to return calls, and being discourteous to people who did manage to reach her. After reviewing the situation, the Supervisor felt she had no alternative left and requested authority to issue the removal.

The Agency called five witnesses who had formally complained about Grievant's treatment of them. One was a former Firefighter who had suffered a work-related heart attack and was on compensation for his disability. After Grievant took over his file, he routinely experienced late payments and from time to time would call the Employee to ask about delays (and to prod her). He testified that often she did not return his calls. When he was able to speak with her, the answers she gave him were curt and unhelpful. She would complain about the size of her workload and tell him that his was not the only file she had to process. On November 26, 1995, he wrote to the Supervisor:

> When Michelle Washington was my claims representative I never had a problem! If there was a glitch, a phone call to her was pleasant and effective. I've given up on calling [Grievant], because she always has an excuse why she couldn't process my claim, i.e. she's too busy, or too many claims, or she can't find my claim. I thought that is why a claims representative is there --***To Handle Claims!!!!***

Another claimant-witness testified about a telephone conversation with Grievant, also concerning a late payment. The Employee purportedly told him: "I'm busy. I'll get around to it when I get around to it." When that conversation ended, the claimant called Grievant's Supervisor to protest. He followed the call with a written complaint. It said in part:

> Since my file had been transferred from Elmer Blyhe (Team #5) to [Grievant] (Team #2), I have been experiencing nothing but problems with getting paid. I have only spoken to [Grievant] once since this transfer and that conversation was not a pleasant one. I was left feeling that I was at the mercy of [Grievant]. The attitude displayed during that conversation left much to be desired. It appears that the only way I will receive any benefits from B.W.C. [is] if I deal with her supervisor direct. Should this be the case, then what purpose does this Controller ([Grievant]) serve?
>
> . . .
>
> I would like to take this time to [formally] request that my file be placed back with Mr. Elmer Blyhe in Team #5 or someone else in your Team who can communicate with claimants.

Perhaps the most devastating of the Employer's witnesses was a Supervisor for the Lorain County Child Support Enforcement Agency (CSEA). In January 1996, she had what she viewed as an unpleasant phone conversation with Grievant. Her subsequent letter to the BWC Supervisor, which she confirmed in her testimony, accused Grievant of dealing with her problem in a confrontational way. The telephone call concerned support withholding notices that had not been acted

upon. Grievant said that they should have been mailed directly to the Independence office, not to Columbus. When the CSEA Supervisor countered that she had been instructed to send the notices to Columbus, Grievant purportedly said, "Columbus doesn't always do what they are supposed to do." The CSEA Supervisor ended her letter with a clear accusation that instead of trying to help, Grievant constructed barriers.

> She stated she didn't care what we received and it is not their procedure; we should send withholding notices directly to the Service Office. I told her I would FAX her a copy of the letter our Agency received from Columbus with the instructions where to send the notices and she again stated that the letter we received didn't matter ***and that she wasn't going to continue discussing this with me; that if I wanted monies withheld the order would have to be sent to the Service Office in Independence. I requested the name of her Supervisor; she asked, "in regards to what?"*** [Emphasis added.]
>
> . . .
>
> In summary I feel that [Grievant] was very rude and totally unprofessional . . .

On cross examination, the CSEA Supervisor readily acknowledged she had a cordial, friendly conversation with Grievant several days later. In the Arbitrator's opinion, this "admission" only adds to the credibility of the witness. It shows she had no malice toward Grievant and that her complaint was strictly about the Employee's conduct as a Claims Specialist.

* * *

There were other witnesses and other letters. One accused Grievant of calling a claimant an ass who didn't know what he was doing. Several people alleged that Grievant hung up on them abruptly; others protested that she never returned their phone calls.

* * *

One Employer witness was an attorney who wrote a letter remonstrating Grievant for rudeness. The Arbitrator rejects that testimony because the evidence confirms the attorney himself was rude, provocative, overbearing, and probably had an axe to grind. From that perspective, neither his letter nor the contents of his testimony was persuasive. Similarly, a paralegal testified at length about the Employee's inordinate delays in processing files. Most of her statements, while believable, were not relevant. The charge against Grievant is specific. She was dismissed for being rude, not for failing to do her job punctually.

* * *

The Agency concedes that Grievant's length of service -- eleven years -- could be viewed as a mitigating circumstance. It contends, however, that there is a limit to the "reservoir of leniency" that a long-term employee earns. It argues that Grievant's consistent

misconduct and her demonstrated imperviousness to corrective discipline exceeded that limit. At some point, even a senior employee's continual rule violations have to become just cause for dismissal. The Agency concludes:

> Given the seemingly endless disciplinary record of the grievant, the Employer believes that it's removal was justified. As such, the Employer strongly urges this Arbitrator to uphold the discipline and deny this grievance in its entirety. The Employer believes that to do otherwise would encourage [Grievant] to continue the discourteous treatment of our customers. The Employer would argue that sustaining this grievance would only validate the blatant disregard of our customers and BWC's mission which seems to be standard behavior for [Grievant].

UNION EVIDENCE AND ARGUMENTS

The case for Grievant's reinstatement was extremely well documented. Though the Employee was the Union's only witness, her testimony was reinforced by three written statements, which described her physiological and psychological problems in striking detail. First was an undated response the Employee wrote after receiving the disciplinary proposal. Later, on April 19, 1996, she wrote a letter to the BWC Director of Employee & Labor Relations appealing the removal. Attached to that explanation was voluminous medical documentation. The last statement, which Grievant wrote for the arbitration hearing, outlined the previous two. Its initial paragraph aptly summarized her position:

> I have always been a loyal employee, even in the face of adversity. Beginning in the fall of 1993, throughout 1994 and 1995, I experienced medical problems beyond my control. These medical problems were accelerated by episodes of great mental and physical stress, both at my home and especially my workplace. I requested relief in reassignment to another area which was recommended by my supervisor, medical and mental health providers.

When the Arbitrator first considered Grievant's assertions, they seemed contradictory. On one hand, she maintained that she did not commit the misconduct charged against her; on the other, she said that the misconduct was caused by stress and, therefore, she was not to blame. However, Grievant removed the contradiction by explaining that she tried to treat clients decently but sometimes her stress levels put an unintentional edge on her verbal communications: "I have never used profanity, or been intentionally rude or expressed anger to any of our customers, only frustration."

According to Grievant, there were both external and internal factors that caused her anxieties. Since 1993, she had the victim of hostile events beyond her control. In 1993, malicious tenants in the apartment complex where she lived harassed her endlessly until the landlord evicted them. They spitefully damaged her suite and her automobile, putting her in real fear for her life. Consequently, she began suffering bouts of insomnia. Another incident, in 1995, added to her distress. A motorist tailgated her for about two miles, struck the rear of her vehicle, and then fled the scene.

These happenings were minor compared to Grievant's physical problems. She claims that the nightmares and lack of sleep suffered from the aggressions at her apartment altered her menstrual cycle, pushing her into early menopause. Beginning in 1994, she experienced almost every known affliction of menopause -- hot flashes, insomnia, fatigue, vertigo, migraine headaches, loss of memory, depression, irritability, and lack of emotional control.[2] The symptoms worsened over the next year, and Grievant sought medical help. Ordinarily, treatment would have been hormone replacement therapy although it is known that there is a possible link between estrogen treatment and cancer. In the Employee's case, the therapy posed a special danger because in November 1995, her routine mammogram turned out positive; there was an unidentified mass, possibly cancerous, in one of her breasts.

---

[2] Attached to one of Grievant's statements is an excerpt from Luckmann and Sorensen's *Medical-Surgical Nursing, A Psychophysiologic Approach* (4th Ed.). The text is part of the Agency's medical library. It states at page 2127:

> Some women report insomnia or other sleep disturbances, headache, forgetfulness, nervousness, apprehension, and irritability. Wardrop found a high incidence of oral symptoms such as dryness of the mouth, a burning sensation in the mouth, and altered taste perceptions among perimenopausal clients. Many myths abound about depression occurring at the time of menopause, but no relationship can be demonstrated. Psychosocial stress may affect other menopausal symptoms. The psychosocial changes experienced by some women may result from a combination of hormone imbalance and adjustment to the aging process.

The BWC office environment aggravated Grievant's discomfort. Heating and air conditioning problems augmented her menopausal fluctuations of body temperature. This, coupled with the Employee's loss of concentration and the fact that Unit 2 is understaffed and overworked, made it impossible to do the job efficiently. Also, Grievant found the loud socializing of her coworkers extremely distracting. She described all of this in one of her written statements:

> In general, ever since I was assigned Team 2, I have been asking Management to please assign me to another team because of the LOUD personality types. I have difficulty working with numerous interruptions from loud personal discussions about CATS, TV Talk Shows, loud laughing and personal conversations, etc. I have complained to Jerry Elbicki, when he was the team supervisor, and when Maureen Corcoran was assigned supervisor, also to her on many, many occasions. Her response was to tell the person to please quiet down, and I felt uncomfortable doing so because I have to work with this team, and don't want to cause hard feelings.
>
> . . .
>
> I have not had a decent night's sleep since 1993 because of repeated night sweats, depression, mood fluctuation and extreme anxiety attacks. I wake in the middle of the night worrying on how to increase my focus on claims, BWC problems and my depression over the personal problems I cannot control. The chemical imbalance in my body has been triggered by job related stress and a constant "heat problem" in the Team 2 area. Building management has made a few attempts to correct the problem, however all team 2 complains continuously, and this heat affects me to the point where I have to walk to another part of the building to cool down and catch my breath.

Grievant tried to take charge of her life. She obtained psychological counseling through the Employee Assistance Program, but it turned out to be what she described as a "total disaster." Specialty Care of Ohio, the State's health-care provider at the time, did not pay the bills, so the therapist stopped treatment. Sessions resumed later when the Employer switched to another provider, but Grievant found that she could not afford the $10 per-visit copay.

Meanwhile, the Employee was moving ever closer to losing her job. Pressures of working in Team 2 had become unbearable. She was on a discipline track and had already received a fourteen-day suspension. Her Supervisor was calling her in for counseling almost monthly. She still believed she could be an effective Claims Specialist, but she needed a change of scenery. She asked for a transfer to a C-92 Section (Permanent Partial Disability). She asked her Supervisor and the Department Manager. No one would help her. According to her testimony, one Manager she consulted responded with sexual innuendo.

* * *

Grievant testified that there will be improvement. Against her physicians' recommendations, she has begun hormone replacement therapy because "this is the only solution to my insomnia, mood fluctuation and anxiety problems." It will take about a month for her body to

adjust. The removal has not helped her situation. Her application for unemployment benefits was turned down. She cannot afford COBRA benefits and worries, "If the small lump in my breasts grows, the situation will go unremedied as diagnostics and treatment will be unavailable."

In the Union's view, Management issued the removal without giving attention to these mitigating factors. That was not just cause. It was not just cause for the Employer to ignore Grievant's eleven years of good and valuable service, summarily cutting her off from her livelihood because she was ill. The Union also argues that returning Grievant to her job would not perpetuate behavior the Agency regards as "intolerable." Grievant is well on the way to recovery. She is honestly remorseful for any misunderstandings that might have troubled clients. The concluding paragraph of her written submission to the Arbitrator says it all:

> I have suffered great financial loss and complete ruination of a perfect credit record. This has resulted in harassing, threatening phone calls to my home. Through all these unfortunate events, I have learned how short and precious life is. I apologize to anyone that misconstrued my anger and frustration with my own horrible situation as intentional rudeness or discourteous treatment. I recall telling some customers that I was having a "bad day" and apologized for any expressions of frustration. I only wish to earn a living in peace and harmony with all especially now that my physical problems are under control with a new hormone replacement prescription (Estratab) from organic (soy) origins.

The Union urges the Arbitrator to issue an award granting Grievant the chance she asks for and deserves.

OPINION

Two questions are key to practically every removal governed by just cause: 1) Was the misconduct ***adequate*** to support the penalty? 2) Was the aggrieved employee reasonably salvageable? The first question calls for a two-dimensional approach. To determine adequacy, an arbitrator need look only to the offense or series of offenses to see if they were sufficiently detrimental to the employer to warrant the disciplinary response. It is when reviewing this part of just cause that arbitrators sometimes decline to second-guess management's judgment. In other cases, however, where a discharge stands out as extraordinarily harsh when weighed against the misconduct, an award will sustain the grievance or at least temper the penalty.

The second question adds another dimension. Just cause exacts more of an employer than simply fitting the penalty to the offense. It requires that before discipline is imposed, the employer must give as much consideration to the employee as to the misconduct. It must review mitigating factors, not just aggravating ones. As this Arbitrator has held before, just cause compels salvation of employees who are salvageable and allows removals of those who are not.

* * *

Management has the right, initially, to decide the adequacy of discipline. That right is not, however, an unbridled prerogative. Whenever a collective bargaining agreement controls employer-employee relations, Management is not at liberty to change employment conditions by taking actions that are unreasonable, arbitrary, or purely whimsical. Discipline is subject to the same principle. The penalty imposed on an employee for misconduct must be reasonable. That means it must be genuinely tied to legitimate employer needs and must be a rational reaction to the adverse impact the misconduct has on those needs. Moreover, the employer cannot arbitrarily single out an individual for treatment that is dramatically harsher than the treatment of others who committed the same or similar offense under the same or similar circumstances. And, the aggrieved employee must have been adequately informed in advance that his/her offense could lead to terminal discipline.

In arbitration, the Employer has the burden of proving that the discipline at issue meets these standards. BWC fulfilled that burden. The Agency is in the business of providing public service, and unrefuted evidence showed that its Claims Specialists are its front-line personnel. They are the ones who have the most public contact. When they are rude or less than helpful to clients, their discourtesy transfers to the Agency -- it becomes BWC's reputation.

This Agency refuses to tolerate employees who give it a bad reputation. By distributing Guidelines, it notified Grievant and every other employee of this fact. It told them that impolite treatment of clients would be severely disciplined the first time it occurred and would be cause for removal the second time. It went much further to inform Grievant, with counselings practically every month and progressive discipline more lenient than what the Guidelines called for.

There was nothing arbitrary, unreasonable or capricious in the Agency's expectations. Management's right to demand courtesy of its front-line employees was plainly rational and had a demonstrable relationship to the BWC mission. It would be an abuse of arbitral discretion -- an unjustified intrusion on Management Rights -- for this Arbitrator to hold that the accusations against Grievant were unimportant, trivial, or did not provide adequate cause for her removal. It is held that the misconduct, coupled with past discipline, were adequate causes for the penalty imposed.

* * *

Grievant argues that she was not wilfully at fault or intentionally rude to anyone. She repeated this several times. She honestly sees herself as a skilled employee, dedicated to her job, and victimized by demanding clients, uncaring Management, discourteous coworkers and, most of all, physical/psychological changes of life that had

dominion over her. This was Grievant's testimony, but the Arbitrator finds it was not supported by the facts. The evidence shows that this Employee suffered stress because of her reaction to a variety of influences. It shows nothing more. The medical reports say only that she had stress:

> March 15, 1996
>
> Dear Sir:
>
> I am the primary doctor who has been taking care of [Grievant] since October, 1993.
>
> On October 22, 1993 she complained of irregular menstruation for 6 months and was referred to Dr. Parikh [OB-GYN].
>
> The note of May 18, 1995 revealed that [Grievant] had a lot of stress and had been in counselling.
>
> On October 12, 1995 [Grievant] complained of not having menstruation for 2 months. This can be read as a sign of stress and she was again referred to Dr. Parikh . . .
>
> Sincerely,
>
> S/Chong Lim, M.D. [Grievant's Internist]

. . .

> January 31, 1996
>
> To Whom it May Concern:
>
> [Grievant] has notified me that additional disciplinary measures are being considered regarding her job performance. She has asked that I inform you of the content of our sessions. We met 11 times from April 5, 1995 to September 27, 1995. The focus of most of our sessions had to do with job stress. Additionally, in 1993 she experienced much harassment at her apartment complex which added to her already stressful life.

. . .

Sincerely,

S/Ritt Rousseau, LISW, LPC, BCD, Gestalt [Grievant's Therapist]

Stress is a common ingredient and one of the discomforts of everyday life. Nearly everyone experiences it. To a lesser extent, anxiety and depression (both of which affected Grievant) are also common diseases in our social structure. People learn to cope with it and do their jobs. Nowhere is it written that an employee has to carry out his/her job responsibilities properly only if s/he can do so in absolute comfort. Service workers suffer losses, deal with personal tragedies, handle disappointments, and even suffer menopausal changes without the compulsion to be rude to customers.

The evidence proves that Grievant committed the misconduct charged. She was ***repeatedly*** discourteous and communicated an irritated, unhelpful attitude to clients. The evidence also establishes that Management was sensitive to her situation (despite the Employee's arguments to the contrary). It nursed her through fifteen job counselings and at least two rounds of corrective discipline. Nothing worked. Complaints about Grievant proliferated. The Arbitrator recognizes that client complaints, verbal or written, do not prove that an employee committed misconduct. Here, however, the evidence was

overpowering. Grievant's protestations of innocence cannot survive it.

* * *

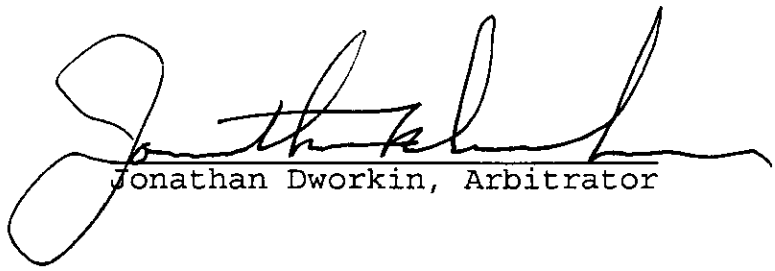
When considering whether to award reinstatement, arbitrators frequently consider a quality they call "remorse." In this Arbitrator's judgment, true remorse is irrelevant. Employees do not need to feel abject, sorrowful regret for their misconduct. But where they have committed offenses, they at least have to be aware of it. Otherwise, rehabilitation is impossible. Grievant has no such awareness. To this day, she insists she did nothing wrong. Menopause and personal misfortunes made her irresistibly irritable and, without meaning to, she communicated her distress to others. She maintains that what seemed to be rudeness was not; it was just the natural and unavoidable consequence of her physiological and psychological problems.

It is obvious that reinstating this individual, even with a long disciplinary suspension, would not give the Agency an employee on whom it could rely to provide adequate service to clients and preserve its reputation. Management had both just and adequate cause to impose the removal. The grievance will be denied.

AWARD

The grievance is denied.

Decision issued at Lorain County, Ohio April 2, 1997.



Jonathan Dworkin, Arbitrator