

VOLUNTARY EXPEDITED LABOR ARBITRATION TRIBUNAL

\*\*\*\*\*

In the Matter of Arbitration

Between

OHIO CIVIL SERVICE  
EMPLOYEES ASSOCIATION  
LOCAL 11, AFSCME, AFL/CIO

and

OHIO DEPARTMENT OF  
NATURAL RESOURCES

\*\*\*\*\*

OPINION AND AWARD

Anna DuVal Smith, Arbitrator

Case No. 25-12-960322-0018-01-06

Dale Shoemake, Grievant  
Suspension

Submission

A hearing in this matter was held on April 24, 1997, at the Office of Collective Bargaining, Columbus, Ohio, under §25.09, Expedited Arbitration Procedure, of the parties' Collective Bargaining Agreement. Presenting the case for the Ohio Department of Natural Resources was Shelly Ward. Presenting the case for the Ohio Civil Service Employees Association was Maxine Hicks. The parties stipulated the matter is properly before the Arbitrator for final and binding decision, and presented one issue on merits: Was the Grievant's ten-day suspension for just cause? If not, what shall the remedy be?

164-16  
97-43

97-43 164-16

### Opinion of the Arbitrator

This case came about when the Grievant, who is not employed in a classification subject to random testing under Appendix M1, misled the Employer into believing that he possessed a Commercial Drivers License. This led to the order to submit to a random drug test under the Federal Omnibus Transportation Employee Testing Act, which the Grievant resisted in a variety of ways, including admission that he did not have a CDL, refusal to take the test, and various misrepresentations about the test and its results. This placed the Grievant into the disciplinary procedure, which he protested by making certain statements in a threatening manner as well as filing the subject grievance. The charges against him are: insubordination, dishonesty, failure of good behavior, and violating the Drug-Free Workplace Policy.

The drug charge must be dismissed, as it is founded on a test that was conducted without the contractual requirement of reasonable suspicion. However, the entire sequence of events was caused by the Grievant's dishonesty about his qualifications. But for his misrepresentation of himself, he would not have been subjected to the FOTETA random testing, for his classification does not require a CDL and the Contract calls for "reasonable suspicion" testing for all but Appendix M1's exceptions. The Grievant then compounded his error by behaving in a threatening manner, and making additional untruthful statements to the test facility and his supervisor. He must be held accountable for his own role in the affair.

2000.00

97 MAY 1 12:43

Award

The grievance is granted in part, denied in part. The Grievant's ten-day suspension is reduced to a two-day suspension. He is to be made whole for eight days lost wages, seniority and benefits. The Employer is directed to expunge the drug charge from his record.



Anna DuVal Smith, Ph.D.  
Arbitrator

Shaker Heights, Ohio  
April 27, 1997

97-1131 P2:18

ODNR375X-B