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VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration	*	
Between	*	OPINION AND AWARD
	*	
OHIO CIVIL SERVICE	*	Anna DuVal Smith, Arbitrator
EMPLOYEES ASSOCIATION	*	
LOCAL 11, AFSCME, AFL/CIO	*	Case No. 28-18-961230-1402-01-04
	*	Case No. 28-18-961217-1397-01-04
and	*	
	*	Betty Williams, Grievant
OHIO DEPARTMENT OF	*	Removal
MENTAL HEALTH	*	

Appearances

For the Ohio Department of Mental Health:

Linda Thernes, Esq.
Labor Relations Officer
Office of Human Resources
Ohio Department of Mental Health

Cynthia Sovell-Klein
Ohio Office of Collective Bargaining

For the Ohio Civil Service Employees Association:

Herman S. Whitter, Esq.
Associate General Counsel
Ohio Civil Service Employees Association

Robert Robertson
Staff Representative
Ohio Civil Service Employees Association

I. HEARING

A hearing on this matter was held at 9:10 a.m. on May 28, 1997 and continued on May 29, at the Northcoast Behavioral Healthcare System South Campus in Northfield, Ohio, before Anna DuVal Smith, Arbitrator, who was mutually selected by the parties from their permanent panel, pursuant to the procedures of their collective bargaining agreement. The parties stipulated the matter was properly before the Arbitrator and presented one issue on the merits, which is set forth below. They were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn and excluded, and to argue their respective positions. Testifying for the Employer were Susan Kajfasz (Vice President of Nursing) and Willo Thomas (Nurse Supervisor). Also in attendance was Roger Beyer, Labor Relations Officer at Northcoast. Testifying for the Union were Therapeutic Program Workers Charlene Fields, Denise Gore, Vera Dean, Brenda Jones, Juanita Brown, Roary Montgomery, and Gregory Bronner, Licensed Practical Nurses Kevin Eisemann, Gaynell Hunt, and Charlene Cintavy, Account Clerk Sharon Williams, Community Service Worker Paula Gregory, Training Officer Sandra Wilson, and the Grievant, Betty Williams. A number of documents were admitted into evidence (Joint Ex. 1-3, Employer Ex. 1-20, and Union Ex. 1-17. The oral hearing concluded at 3:45 p.m. on May 29. Written closing statements were exchanged through the Arbitrator on June 19, whereupon the record was closed. This opinion and award is based solely on the record as described herein.

II. BACKGROUND

Northcoast Behavioral Healthcare System (NBHS) is a state psychiatric hospital for the severely mentally disabled and forensic population of northeast Ohio. Its South Campus, where the Grievant was employed as a Therapeutic Program Worker (TPW), has approximately 220 patients housed in nine units. There are about 96 TPWs on staff, four of which are assigned to each unit each shift in a 24-hour, 7-day operation. The four TPWs rotate days off so that normally there are at least two TPWs scheduled on any given day for each shift in each unit.

At the time of her removal on December 23, 1996 for absence without leave, the Grievant, Betty Williams, had been an employee of the State of Ohio since April 30, 1975, and local chapter president since 1990. She was never previously disciplined for attendance related infractions but had accumulated the following record for other infractions:

September 22, 1994	Written Reprimand	Neglect of Duty - Media contact
January 24, 1995	Written Reprimand	Failure of Good Behavior - Verbal outburst/abusive language
June 30, 1995	2-Day Suspension	Failure of Good Behavior - Verbal outburst
October 23, 1995	6-Day Suspension	Insubordination - Demeaning/ abusive treatment of management
April 21, 1996	6-Day Suspension	Insubordination - Refusal to obey instructions/orders; last chance notice.

Ms. Williams disputes the truth of the charges and questions Management's motives on the two written reprimands, which she testified went ungrieved because they are not arbitrable. The two-day suspension was grieved, but lost in arbitration, and the first six-day suspension was grieved but not pursued to arbitration. A charge of dress code violation on the second six-day suspension was dismissed, but the insubordination infraction remains on her record.

The events that led to Ms. Williams removal began with a birthday gift from her son in the form of prepaid holiday in November at an out-of-town resort. Ms. Williams testified she is 99 percent sure she requested leave for this trip in October as soon as she became aware of it. However, she was busy with meetings and other duties and did not follow up until November 7 when she returned from a two-day retreat and spoke to the timekeeper about it. The Grievant testified the timekeeper told her the paperwork was not in. Charlene Cintavy testified that she had had a problem a with missing leave request, too. The Grievant filled out a new request for 5 hours of personal time and 11 hours of vacation time on November 9 and 10 (November 8 was her scheduled day off). The personal leave request was granted in accord with Article 27.04 of the Collective Bargaining Agreement ("Personal leave shall be granted if an employee makes the request with one (1) day notice.") The vacation request was not recommended by supervisor Willo Thomas and was disapproved by the executive, Susan Kajfasz. The reason given on the form was "insufficient staff and insufficient notice. Please submit 2 wks," but Ms. Kajfasz testified the short notice was not an issue. The reason the request was denied was insufficient staffing to cover the weekend. Ms. Thomas testified when she notified the Grievant by telephone, Ms. Williams was loud and insubordinate, stating she was not coming to work. The Grievant testified that Ms. Thomas told her to just call off, an allegation Ms. Thomas denies, testifying she would not ever tell anyone to call off and that she expected the Grievant to come to work as scheduled. The Grievant testified she tried unsuccessfully to reach Ms. Kajfasz, so left word with Chief Operating Officer Pratt for Kajfasz to phone her at home. Ms. Kajfasz never telephoned, so at this point the situation became an emergency to the Grievant. Her son

could not get a refund, her leave requests had been unforeseeably lost and denied, and neither Pratt nor Kajfasz had called her. She therefore left as planned, and called off the next day, requesting emergency vacation for November 9 and 10. She said she might have used sick leave, as she had enough time on the books, but she was not sick and would not lie. She testified that in her experience as a Union official she knew of other staff who had had time off approved based on a prepaid vacation and of others whose initially disapproved requests had later been approved. The Union called a number of witnesses and a large volume of leave requests, payroll records, and disciplinary actions were submitted to document experiences with leave policy and practices. The Grievant further testified she expected that her own request for emergency vacation would be approved, that submitting documentation would help, and that she would probably have to make up the time as this was what others' experiences had been. She expected Management would use an intermittent or hire overtime to cover her absence if they were truly short-staffed that weekend.

As expected, NBHS had to hire overtime to cover the units, as it did every weekend from October through December, 1996. And in accordance with Article 28.03, the Grievant did bring in a brochure to document her written request for the eleven hours of emergency vacation which was submitted on November 11. She showed this material to her immediate supervisor, Inder Sharma, when she turned in her Request for Leave form and, she testified, he said he would take care of it. However, this leave request, too, was denied. Ms. Kajfasz testified she felt a planned trip to a resort was an inappropriate use of emergency vacation. She gave examples of what she thinks to be appropriate uses: death, emergency room visit,

severe illness, court summons, car breakdown. She would probably approve emergency vacation time for taking a family member to the hospital. None of the Union witnesses except the payroll clerk, Sharon Williams, had ever been in-serviced on emergency vacation, and hers was done informally by her supervisior seven or eight years ago. Training officer and Union steward Sandra Wilson could recall no in-service on it and testified that inconsistent practices in this area had been a subject of a labor-management meeting in March of 1997. Vice President Kajfasz agreed with Wilson on these points, but believes training on the Contract is the responsibility of the Union and that the supervisors' different practices are simply different but correct applications.

The leave denial was grieved on November 18, 1996, alleging disparate treatment and discrimination on the basis of Ms. Williams' union activities.

The denial of the emergency vacation also put the Grievant in an out-of-pay status, which resulted in her direct supervisor charging her with neglect of duty and unauthorized leave of absence. A pre-disciplinary conference was held on December 9, resulting in a recommendation for discipline. Ms. Williams was subsequently removed from employment on December 23, 1996.

This action, too, was grieved, on December 28, alleging violation of Articles 2.02, 24.01, 24.02, 24.03 and "any other pertinent articles and sections" of the Contract. Being unresolved at lower steps of the grievance procedure, the case, consisting of both grievances, was appealed to arbitration where it presently resides for final and binding decision, free of procedural defect.

III. STIPULATED ISSUE

Was the Grievant terminated for just cause? If not, what should the remedy be?

IV. PERTINENT CONTRACT PROVISIONS

ARTICLE 28 - VACATIONS

28.03 - Procedure

Vacation leave shall be taken only at times mutually agreed to by the Agency and the employee and shall be used and charged in units of one-tenth (1/10) hour. The Agency may establish minimum staffing levels for a facility which could restrict the number of concurrent vacation leave requests which may be granted.

Employees who work in seven (7) day operations shall be given the opportunity to request vacations by a specified date each year. Employees shall be notified of this opportunity one (1) month in advance of the date. If more employees request vacation at a particular time than can be released, requests will be granted in seniority order.

Employees in seven (7) day operations can also request vacations at other times of the year. If more employees request vacation than can be released, requests will be granted on a first come/first serve basis with seniority governing if requests are made simultaneously.

Emergency vacation requests for periods of three (3) days or less may be made by employees in seven (7) day operations as soon as they are aware of the emergency. An employee shall provide the Employer with verification of the emergency upon return to work.

Other employees shall request vacation according to current practices unless the Employer and the Union mutually agree otherwise. The Employer shall not deny a vacation request unless the vacation would work a hardship on other employees or the Agency. The Employer shall promptly notify employees of the disposition of their vacation requests. Unless the Employer agrees otherwise, an employee's vacation will not exceed one (1) year's accrual.

....

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 more written reprimand(s);
C. a fine in an amount not to exceed two (2) days pay for discipline related to attendance only; to be implemented only after approval from OCB;
D. one or more day(s) suspension(s);
E. termination.

V. ARGUMENTS OF THE PARTIES

Argument of the Employer

The Employer submits that it has shown the Grievant was guilty of neglect of duty as absent without leave. It is undisputed fact that she had her request for leave on days she was scheduled to work denied because of low staffing levels. When she was informed of the denial, she told Nurse Supervisior Thomas the purpose of the leave request, but the request was still denied. The Grievant called off anyway, submitting a request for emergency leave which was also denied, thus making her AWOL and subject to discipline.

Having established its prima facie case, the Employer argues the burden now shifts to the Union to prove its affirmative defense of disparate treatment. It points out the Union must show there were similarly situated employees treated differently for the same offense, citing Arbitrators Rivera and Graham to the effect that one case of differential treatment does not prove disparity and that absolute homogeneity of discipline is not expected or even possible. The Arbitrator must consider whether rational factors rationally and fairly explain the differential treatment.

The Employer next assails the Union's case on several grounds. First, it argues the Arbitrator should not admit and weigh disparate treatment cases offered by the Union because they were not provided at the pre-disciplinary conference or during the grievance procedure. The Union admitted it was never denied access to necessary files and the parties exchanged over 2000 documents, but only the last one hundred were received by the Union in the days prior to arbitration. It cites Arbitrator Fullmer who held the probative

value of such evidence is weakened when the Employer has inadequate opportunity to prepare its case in light of it.

Second, the Employer reviews each case offered by the Union through testimony of witnesses and submission of documents. Gore, Dean, Jones and Gregory were all differently situated, it says. Eisemann's case was the same except that Management had no right to deny vacation time for military duty to begin with and Eisemann had no choice but to attend to his military duties. Hunt's was also the same, including the fact that she was disciplined for being AWOL. Montgomery and Bonner were also differently situated in that, unlike the Grievant, they were not on notice by virtue of having a previous request for the same day denied. The cases presented through the timesheets of Union Exhibit 3 lack evidence of similar circumstances. These employees may have had legitimate FMLA certificates on file which the Employer could not present because of the law on confidentiality of FMLA records. In any event, arbitration was the first time the Union brought these cases to Management's attention. As far as Union Exhibit 4 is concerned, the Employer claims only one case, that of Fikes-Jackson, is the same as the Grievant's, and there is no record as to what kind of time she requested or if it was due to an FMLA event. Union Exhibit 10 shows cases in which short notice requests were granted, but short notice was not an issue in the Grievant's case; staffing was. Union Exhibit 12 shows four cases in which employees' emergency vacation requests were approved after their initial vacation requests for the same date were denied. However, these were for unforeseen events, not preplanned ones as was the Grievant's trip. It was the purpose of the leave that was the issue for the Employer, not its documentation. In the view of the Employer, the Grievant

simply forgot to request the necessary time off in advance. This was unfortunate but not an emergency. While the Grievant testified she was 99 percent sure she put in her request in advance, she offered nothing to corroborate this and her emergency request notes "2nd" not "3rd" request. She knew her weekend schedule in October when she received the gift and could have requested a change then or rescheduled the trip. Instead, she waited until two days before and then demanded approval. Her claim that Nurse Supervisor Thomas told her to call off was rebutted by Thomas's testimony and preposterous in any case. The Employer questions why she would make such extreme efforts to reach the vice president if she really was told by the supervisor to call off.

The Grievant knew staffing levels were low and that intermittents were not available, but she still felt her time should be approved. She has been disciplined before for refusal to recognize the rules of the hospital and accept authority, and she has had two extra chances over the usual Department of Mental Health progression, including an offer of EAP participation and a last chance notice. Although she has been employeed for 21 years, she has been unable to conform herself to the Employer's rules.

The Employer concludes that disparate treatment has not been proven. There is one case like the Grievant's, but one case does not establish a pattern. Thirty-nine of 74 who made the same request came to work, 31 beat the system with sick and personal leave. Then there is the Grievant who should have worked, then grieved if she felt the denial was improper. The Employer requests that its decision to remove her from State service in accord with its discipline grid, standard progression, and last chance notice be upheld and the grievance denied in its entirety.

Argument of the Union

The Union's position is that the Employer did not have just cause to remove the Grievant whose alleged violation was no more serious than her co-workers' who were also in an out-of-pay status but treated differently than she. It argues that the leave request policy/practice was not clear in its application nor uniformly enforced. The evidence shows supervisors were not consistently applying the practice, something even Kajfasz admitted. Some accepted documentation with leave requests, some questionable documentation, and some no documentation at all. Kajfasz testified she would approve emergency vacation for taking a child to the hospital, car trouble and death, but the requests of Hunt, Holt and Brown for these situations were denied while Mongtomery's and Bickerstaff's "no transportation" excuses were accepted many times. Thomas testified that requests had to be approved by an executive, but exhibits and the testimony of the account clerk show many went to the payroll office without that signature. The Employer's failure to inservice employees on its emergency vacation policy/practice also permitted confusion among employees and supervisors.

The Employer had a practice of disapproving leave requests, then later approving them. The Grievant had a reasonable expectation that her emergency request would be approved based on her prior experience which included assisting others such as Gore, Dean and Jones in getting second requests approved. Other employees used sick or personal time, some worked, four used emergency vacation when their requests were denied. The Grievant did not lie and call off sick though she had enough accumulated sick leave for that. She was not disrespectful of authority. She followed the Contract (which prevails over the

conflicting Policy #3-7) as she understood it, expecting her request to be approved with supporting documentation once her emergency was fully explained, but the Employer never made a serious attempt to consider her documents.

The Employer did submit evidence of employees being disciplined for excessive out-of-pay status, but all except the Scurry were disciplined after the Grievant and even she was in out-of-pay status fourteen times before being disciplined, while the Grievant was disciplined for a single incident. It is unjust to discipline her when there were so many others whose leave requests were approved without documentation and in an out-of-pay status, and when other employees have worse attendance records. The Union submits that the treatment of two probationary employees at the Madison State Operated Service (SOS) who were not disciplined, but rescheduled after an AWOL and the Employer's treatment of District 1199 members (including the CEO's wife) who take emergency vacation although their contract does not provide for it and whose payroll records reflect no-pay status supports its contention of disparate treatment.

Regarding the Employer's objection to its evidence of disparate treatment, the Union points out that the Employer had the names of most of the Union witnesses long before the hearing, but could not provide the complete list until after it reviewed all the requested documents, the last of which it received about a week prior to arbitration.

In sum, the Union contends the Employer was arbitrary and capricious in its application of the leave request policy and unjustly singled out the Grievant. It requests that both grievances be granted and that the Grievant receive back pay, benefits, seniority and be made whole.

VI. OPINION OF THE ARBITRATOR

Many of the central facts of this case are not in dispute. Unquestionably, the Grievant submitted a personal and emergency leave request on the day of her departure for a preplanned, prepaid holiday. While the personal leave portion was approved, the emergency vacation was not because the hospital was short-staffed that weekend as it was every weekend that fall. The Grievant was informed of the denial and sought to have it overturned, but was unable to reach the executive who might have done so. She left on her trip as planned and called off on emergency vacation even though she had sick time on the books. When she returned to work, she brought in documentation of her whereabouts and submitted another request for the time. This, too, was denied, which placed her in an AWOL status for 11 hours, in violation of hospital policy. She already stood at the top of the hospital's discipline progression and was under a last chance notice. She was, and is, the chapter president and had many years of service when the discipline decision was made. Two grievances were filed, one protesting the leave denial, one protesting her removal. The ultimate question is whether her removal was for just cause.

As I see it, the main issue in the case is whether the emergency leave policy and practice was clear enough in its communication and application such that an employee could predict with reasonable certainty whether a request for such leave would be granted and, if not, what the consequences, if any, would be. However, there are some less central issues that should also be addressed in the interest of providing a complete answer to the grievances. I deal with these first.

The Union contends that an emergency was created in part by the disappearance of the Grievant's alleged first request in October. The evidence on this is ambiguous. The Grievant may have put one in at that time or it may have slipped her mind, but it was nevertheless incumbent on her to follow through when she was not notifed of its disposition in a timely fashion and to document the request in case its submission became an issue. The burden must be on the Union on this point because the converse--that no application was received prior to November 11--is impossible to establish. It is an affirmative defense and the burden was not met.

The Union also makes much of the fact that the Grievant supplied documentation of her whereabouts upon her return while others who did not were granted the leave they requested. This argument is misplaced. The Employer is under no obligation to grant a request for emergency vacation simply because documentation is supplied. Verification is necessary (although some supervisors evidently waive it) but not sufficient to obtain the leave. First, it is "verification of the *emergency*" (emphasis added) that is required. Second, as with all vacation scheduling, "vacation leave shall be taken only at times *mutually agreed* to" (emphasis added) and the Employer has the explicit right to "establish minimum staffing levels for a facility which could restrict the number of concurrent vacation leave requests which may be granted." However, the Employer's right to refuse vacation requests is expressly limited to situations where the vacation "would work a hardship on other employees or the Agency." Thus, as Fajfasz testified, it was not documentation or timeliness that was at issue, but the nature of the "emergency" as weighed against hospital staffing needs. In other words, employees may request, but the Employer may, under certain

circumstances, refuse, even when "verification of the emergency" is supplied. In this case, the Employer's refusal was not arbitrary, as it was based on legitimate hospital needs. I also cannot find that it was capricious on the basis of the speed with which the decision was made. The Employer was in possession of the facts of its staffing needs, it was common for it to deny vacation requests on short notice and emergency ones without documentation, and speed was necessary in order to make a timely response.

Another contention of the Union is that the Grievant was singled out because of her union position. The Arbitrator is hard pressed to find clear evidence in the record to support this claim. The unfair labor practice charge on the Union election was dismissed (Employer Ex. 16) and a lengthy discipline record is not in itself evidence of employer malice any more than union office is a license to be insubordinate with impunity. Even if the Grievant's record was clear until the administration of the hospital changed some years ago, factors other than Employer malice could account for it. The fact of the matter is that no evidence that the Employer granted emergency vacation for other employees to take prepaid, nonrefundable vacations on weekends when staffing was inadequate was submitted. It thus seems to me that the denial of this leave was more likely rationally based on institutional needs than politically motivated. However, even though the Employer's decision to deny the Grievant's leave request is held to be neither arbitrary, capricious nor discriminatory, this still leaves unanswered whether removal, or indeed any discipline, was justified. It is to this problem that I now turn.

Whether discipline is justified in this case depends on whether the Grievant could reasonably expect her request to be granted when she came back and resubmitted it and,

if it was not granted, what consequences, if any, she could reasonably expect as a result of the denial. In short, was the Grievant on notice that she would be in an out-of-pay status and that discipline was likely to result?

Employee expectations regarding the rules of the workplace and their enforcement are created by the communication and application of policies, rules and procedures. In this case, there is no clear emergency vacation policy. The policy, such as it exists, is that there *is* no emergency vacation. And yet, by Contract, there is emergency vacation for the OCSEA unit. How, then, are bargaining unit members to know in advance of calling off whether their emergency request will be granted? Every witness asked, save the payroll clerk, said s/he was not in-serviced on the matter, and the payroll clerk's training was informal and by her own supervisor some years ago. In practice, sometimes a given scenario qualified for the leave, sometimes it did not. Accompanying a family member in need of medical attention is an example. Fajfasz testified she would probably approve emergency vacation for this, and Wilcher's request for August 7 was initially not recommended but evidently later approved when she brought documentation (at least the McBee reflects vacation time and no discipline resulted--Union Ex. 4). Hunt, on the other hand, was both denied and disciplined; significantly, both actions occurred after the Grievant's incident. The point is this: employees need to know what kinds of events are likely to be approved when weighed against the hospital's operational needs so they can tell whether it is enough of an emergency to them to warrant use of another form of paid leave which the Employer must grant, loss of pay, or even an AWOL violation. In the absence of a clear policy that is communicated to the workforce, employees are left to interpret even rationally-based but

unexplained variations and other ambiguities as based on favoritism or animus, and they call off at their peril.

Applying the foregoing to the Grievant, it is difficult to say whether she could reasonably have expected that her request would again be denied when resubmitted with documentation upon her return. The fact that it had been rejected once should cause her to predict a second denial. But to the extent others had second requests for the same type of leave approved, she could predict approval. To be sure, evidence of second-request approvals was submitted, but many of these approvals were obtained prior to the employee taking the leave, and relatively few employees got approval after the fact. Whether this was a distinction apparent to the Grievant is another matter, particularly since the advocates who had access to the voluminous records and more time to analyze them than the Grievant did struggled to identify patterns. In any event, it is not necessary to make this determination if the Grievant could reasonably expect not to be disciplined for being in no-pay status.

One way the Grievant might have been placed on notice to expect discipline is through a direct order from her supervisor. She did not receive one. What Ms. Thomas told her was that her leave request was denied, not that she was ordered to work as scheduled and that failure to appear would result in discipline. She might also have expected to be disciplined because hospital practice was to do so for a single occurrence of AWOL status. On the contrary, all the evidence submitted shows the Employer had lax enforcement of its AWOL rule at the time it disciplined the Grievant. The payroll records show many employees in out-of-pay status. Per stipulation, none of the employees named

on Union Exhibit 5 had current discipline related to AWOL. While it is true some or all of these may have been on approved unpaid leave such as FMLA, in many instances there was no indication of these on the record. The Employer argues it cannot, by law, breach the confidentiality of FMLA medical records. I have carefully read both the statute and the rules and find reference to confidentiality in the rules (29 C.F.R. 825.500(e)). Accepting arguendo that the Employer is shielded by this provision, it applies only to the medical certificates, recertifications and medical histories, not to an employee's request for or an employer's granting of FMLA leave. In any event, the Employer did not submit any AWOL disciplinary actions imposed before the incident giving rise to the Grievant's removal except Scurry's, and hers, significantly, was for "excessive absenteeism, unapproved leave status..." following months of extremely poor attendance (Union Ex. 14, Employer Ex. 7).

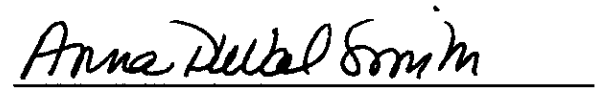
The Employer also objected to the admission of evidence on disparate treatment, arguing inadequate opportunity to prepare. However, it knew all along the case was about discipline for AWOL and that the Union would attempt to show disparate treatment, and even most of what the Union would offer as evidence. It prepared itself by collecting and offering discipline for many of these employees and it had additional opportunity to collect and submit rebuttal evidence over the two-day arbitration, yet no pre-Williams discipline other than Scurry's was submitted.

The record thus supports the conclusion that the Employer began its previously lax enforcement of unauthorized absences with the Grievant and without giving notice. The case for this being a subterfuge for ridding itself of a difficult union officer was not proven

(as held above) but it was still unjust. As I and many other arbitrators have held, if an employer decides to tighten enforcement of its rules, it must put the workforce on notice.

VII. AWARD

The grievance is granted. The Grievant was removed without just cause. She is to be restored to her former position forthwith with full back pay, benefits and seniority retroactive to the effective date of her removal, less normal deductions and any earnings from employment she may have had in the interim. The Grievant will supply such evidence of earnings as the Employer may require. All record of this removal will be expunged from her record. The Arbitrator retains jurisdiction for thirty (30) days to resolve any disputes that may arise in the implementation of this award.



Anna DuVal Smith, Ph.D.
Arbitrator

Cuyahoga County, Ohio
July 17, 1997

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