

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 1235 Expedited

OCB GRIEVANT NUMBER: 1) 27-29-951206-0135-01-03
2) 27-29-950424-0055-01-03

GRIEVANT NAME: Derrick Thrash

UNION: OCSEA

DEPARTMENT: Rehab & Corrections

ARBITRATOR: Everette Freeman

MANAGEMENT ADVOCATE: Pat Mogan

2ND CHAIR: Mike Duco

UNION ADVOCATE: Robert Jones

ARBITRATION DATE: November 12, 1997

DECISION DATE: November 12, 1997

DECISION: 1) Denied
2) Denied

CONTRACT SECTIONS 1) 2 Day Suspension
25.02 2) 7 Day Suspension

HOLDING: 1) The grievance was found to be inarbitrable by the arbitrator due to the untimely filing of the step 4 response. The grievance was denied.

2) Grievance denied. The arbitrator felt that the physical evidence and witness statements support management's claims and the discipline imposed was fair.

COST:

BENCH DECISION AND AWARD

ARBITRATOR: Dr. Everett J. Freeman

HEARING DATE: 11/12/97

GRIEVANT: Derrick Thresh

GRIEVANCE #: 27-29-950424-6055-01-03

DEPARTMENT: METRC

UNION: OCSEA

MANAGEMENT ADVOCATE: Pat Mogan

UNION ADVOCATE: Robert Jones

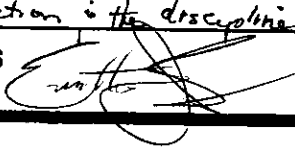
ISSUE

Was the seven (7) day suspension issued to the grievant for just cause?

AWARD

The fact situation before the arbitrator happened on 2/2/95. Previous instances are not within the purview of this case. The incident on Gettysburg Ave did occur a mere 3 days after the impeachment vote and exchange of words between Thresh & Penic and cannot be seen as coincidence by this arbitrator. Both failed to go their separate ways, whatever the reason to do otherwise, creating a confrontation situation. Without witnesses, the arbitrator is left with the physical evidence of what happened to Thresh & Penic and it would appear that Penic was hit more than once by Thresh. The physical evidence carries the most burden of proof that Thresh's actions were a violation of Rule #21, insofar as Penic was informed of Thresh reported on 2/3/95, a day permitting some time to reflect, that he had indeed "kicked butt". Such behavior warrants disciplinary action & the discipline imposed was fair & proper.

ISSUED AT: DATE: November 12, 1997

ARBITRATOR'S SIGNATURE: 

By repeatedly striking Penic, Thresh demonstrated an intentuality to do more than defend himself even if
(1) ... the initial ... Denied ground

BENCH DECISION AND AWARD

ARBITRATOR: Dr. Everett J. Freeman

HEARING DATE: 11/12/97

GRIEVANT: Derrick Thresh

GRIEVANCE #: 27-29-950424-0135-01-03

DEPARTMENT:

UNION: OCSEA

MANAGEMENT ADVOCATE: Pat Moran

UNION ADVOCATE: Robert Jones

ISSUE

Did the grievant/Union file a timely Step 4 appeal (To the grievance properly before the arbitrator?)

AWARD

Once a grievant files a grievance, the grievance is under the control and dominion of the Union not the grievant. All actions relative to the grievance, then, are to be taken by the Union on behalf of the grievant. Accordingly, the Union has an affirmative duty to make sure and all filing dates regardless of the employment circumstances of the grievant. The evidence presented, including the contract, joint exhibit 5, and the appeal preparation sheet (JS #3) place the Step 3 response date at February 1, 1996. The Union had a contractual obligation to inquire about the Step 3 response or initiate a Step 4 within the specified contract period even if circumstances did not allow the Step 3 response to be in hands

ISSUED AT:
DATE:

November 12, 1997

ARBITRATOR'S
SIGNATURE:

The arbitrator is bound by the time requirements of the contract for appeals, etc. and has no recourse but to adjudicate the grievance as inadmissible. The fact that some may have been discussed at mediation is not relevant.

3/18/98