

**The State of Ohio and Ohio Civil
Service Employees Voluntary Labor
Arbitration Proceeding**

#1259

In the Matter of the Arbitration Between:

The State of Ohio, Department of Rehabilitation
and Correction

-and-

Ohio Civil Service Employees Association,
Local 11, AFSCME, AFL-CIO

Grievant: Regina Harris
Grievance No.: 27-03-970218-0690-01-03-TX

Arbitrator's Opinion and Award
Arbitrator: David M. Pincus
Date: February 12, 1998

APPEARANCES

For The Employer

Gary Mohr	Warden
Michael A. Lansing	Lieutenant
John R. Branham	Investigator
Barb Denton	Observer
Lou Kitchen	Second Chair
Gabriel J. Jiran	Advocate

For The Union

Regina Harris	Grievant
Jim Mustard	Stewart
David Justice	Advocate

Introduction

This is a proceeding under Article 25 entitled Grievance Procedure, Section 25.03 - Arbitration Procedures, Section 25.04 - Arbitration/Mediation Panels of the Agreement between The State of Ohio, The Department of Rehabilitation and Correction, hereinafter referred to as the "Employer," and Ohio Civil Service Employees Association, AFSCME, Local 11, hereinafter referred to as the "Union," for the period March 1, 1997 - February 29, 2000 (Joint Exhibit 1). The arbitration hearing was held on December 8, 1997. The parties had selected David M. Pincus as the Arbitrator.

At the hearing, the parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and to cross-examine witnesses. At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit post hearing briefs. The parties did not desire to submit briefs.

Stipulated Issue

Was the Grievant removed for just cause? If not, what shall the remedy be?

Stipulated Facts

1. The removal order contained violation of Rule(s) #1, 7, 25, 37, 38, 45a, 46a, and 46g of the Standards of Employee Conduct.

2. As a consequence of a Step 3 Hearing Officer Response, the Employer and the Union concurred that the following Rules would apply to this particular removal: #7, 25, 38, 46a and 46g.

Pertinent Contract Provisions

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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(1).

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 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.

Disciplinary action taken may not be referred to in an employee's performance evaluation record. The event or action giving rise to the disciplinary action may be referred to in a performance evaluation report without indicating the fact that disciplinary action was taken. Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of the Article. An arbitrator deciding a discipline grievance, must consider the timeliness of the Employer's decision to begin the disciplinary process.

The deduction of fines from an employee's wages shall not require the employee's authorization for withholding of fines.

(Joint Exhibit 1, Pgs. 81-82)

Case History

Regina Harris, the Grievant, has been employed by the State of Ohio for five years at the time of the removal. She worked as a Correction Officer throughout this time period.

On December 26, 1996, Lieutenant M. Lansing conversed with an Inmate Harvel. Inmate Harvel informed him that the Grievant had given cards to himself and an Inmate Imler. Inmate Harvel also accused the Grievant of passing items between Inmate Imler and Correctional Officer Natalie Hutchinson.

Inmate Harvel provided the card he alleged the Grievant had mailed into the facility. The card contained the following message:

Harvel may your Christmas be the merriest, your new year the happiest!
I appreciate the biblical material you let me read and even the material
I kept. You are a (sic) good friend good luck in life.

(Joint Exhibit 8, Attachment #9)

On December 26, 1996, Inmate Brian Imler's cell was shaken down. Several cards, letters, and notes were confiscated from the cell. Lieutenant Lansing also asked Inmate Imler to remove a silver necklace which had a ring attached. Further interrogation indicated that he had received the card, ring, and necklace from Correctional Officer Natalie Hutchinson. He stated, however, that these items were personally delivered by the Grievant. The card from Hutchinson contained the following message:

. . . can't bear it when we're apart!

Love Ya

The ring means a lot to me and so do you. Please take care of yourself and the ring. I'm giving it to you so you don't forget that I'll always be here for you! I can't wait till we see each other again. You are such a sweetheart! I have the picture you gave me. As soon as I looked at it, I couldn't stop smiling. I hope and pray you do get out. When you do get out, we are going to have some fun.

I never stop thinking about you. Don't forget that I will always be here for you and also

I LOVE YOU!

TAKE CARE!

(Joint Exhibit 8)

Inmate Imler also accused the Grievant of giving him a Christmas card. This specially created card said Best Wishes, Messenger. **(Joint Exhibit 8)**.

In the evening of December 26, 1996, John R. Branham, Institute Investigator, interviewed Correctional Officer Natalie Hutchinson. She admitted that she was the author of the previously mentioned card, sent him the card, ring, and silver necklace, **(Joint Exhibit 8)** via the Grievant. Officer Hutchinson also stated that the Grievant

had given her poems and notes authored by Inmate Imler for approximately one month.

On January 15, 1997, the Grievant was removed from office. The Notice of Disciplinary Action contained the following relevant particulars:

You are to be removed for the following infractions:

You admit to giving Inmate Harvel #209-131 a card which read " Harvel may your Christmas be the merriest, your new year the happiest! I appreciate the biblical material you let me read and even the material I kept. You are a good friend good luck in life."

Furthermore, you admit to taking a bag with items in it to Inmate Imler #235-860 from Natalie Hutchinson. You admit to Inmate Imler talking to you about crushes he had on employees of this facility, which you failed to report to your supervisor.

You admit to reading various material during your scheduled work time. Although you state that you realize that this is against the rules of this institution.

Your actions constitute a violation of rules 1, 7, 25, 37, 38, 45a, 46a, and 46g of the Employee Standards of Conduct. Accordingly, I am removing you from your position with the Chillicothe Correctional Institution.

(Joint Exhibit 2)

On February 7, 1997, the Grievant formally tested her removal. The Grievance contained the following Statement of Facts:

Sir, the investigatory interview tape and transcript is badly broken up you can't fully identify the questions and answers. **Officer Harris admits from the beginning she gave an inmate a Christmas card, but is not guilty of any other conduct rules.**

Neither party raised substantive nor procedural arbitrability concerns. As such, the grievance is properly before the Arbitrator.

THE MERITS OF THE CASE

The Employer's Position

The Employer opined that it had just cause to remove the Grievant. It argued no due process violations were committed in the imposition of discipline. The record more than adequately supports the determination surrounding the disputed matter.

The removal order does not disclose any attempt to "stack" the charges and the related offenses. Each penalty is well-linked with the record used in support of the imposed removal.

The Grievant was placed on clear and unambiguous notice that the actions in question were clearly a violation of the Standards of Employee Conduct. She received training regarding the dangers surrounding inmate/employee relationships, and signed a copy of the Standards of Employee Conduct. The Standards, and related training, provide clear warnings of the negative consequences associated with this type of misbehavior.

The nature of this misconduct fails to warrant any form of progressive discipline. If returned to work, the Grievant would be hard-pressed to perform her duties as inmates could use her prior misbehavior as leverage or harassment. Her own co-workers could be wary of her conduct because their safety and health could be placed in jeopardy.

The conduct which placed the Grievant in harms way was viewed as quite abhorrent and unsuceptible to corrective action. It took place on more than one occasion, evidenced deception and egregious poor judgment. The potential for harm,

in terms of safety and security, was quite substantial if the matter had not come to the Employer's attention. Inmates could have used the available information to manipulate the Grievant. She could have been forced to provide additional favors, involving items of a more serious nature; and blackmailed to do so under the threat of disclosure.

The Grievant's own admissions and other testimony and evidence support the removal order. She acted as a "messenger" between Inmate Imler and Officer Hutchinson, which caused her to aid and abet an unauthorized relationship. She acknowledged that she delivered a bag to Inmate Imler. A bag later discovered as containing a card and a ring. The Grievant also admitted that on another occasion she had delivered a necklace and a note. The Grievant, moreover, acknowledged she had taken a note from Inmate Imler which she delivered to Officer Hutchinson.

These various transactions, notwithstanding the Grievant's denials, raise a strong inference that the Grievant did send Inmate Imler a Christmas card. The card readily acknowledges the critical role played by the Grievant as the "messenger."

The Grievant not only engaged in serious transgressions dealing with Inmate Imler and Officer Hutchinson, but also engaged in misconduct in her dealings with Inmate Harvel. The Grievant admitted she had authored and delivered a Christmas card because he provided her with religious material which she read at her post. Her message, moreover, contained a representation of "friendship." This exchange provided an independent justification in support of the imposed removal decision.

The Union's Position

The Union posited that the Employer did not have just cause to remove the Grievant. Several due process issues were raised, as well as the propriety of the imposed penalty.

The Union argued that the Employer "stacked" the charges against the Grievant. It intentionally engaged in this activity to justify her removal.

Removal was inappropriate in this instance. The Grievant's prior disciplinary history, work record and cooperation during the investigatory phase of the process should have triggered some form of corrective action. She did not plot or plan any of the misconduct reflected in the record. Rather, the Grievant found herself in the middle of a relationship; which she "tried to handle on her own" by telling the other participants she would no longer be involved.

The Arbitrator's Opinion And Award

From the evidence and testimony introduced at the hearing, a complete review of the record including pertinent contract provisions, it is this Arbitrator's opinion that the Employer had just cause to remove the Grievant. The due process violations proposed by the Union were not supported by the record. Submitted proofs, including the Grievant's own admissions, support the removal decision.

The record supports the conclusion that the Grievant acted as an intermediary on several admitted occasions. As such, I do not view her as a mere bystander who somehow got duped by Inmate Imler and Officer Hutchinson. She played a critical on-going role which aided and abetted a clearly unauthorized relationship. A clear

violation of Rule 46(g), which could have compromised or impaired her ability to carry out her duties which violates Rule 38.

Probably the most egregious portion of this entire episode is the delivery of a parcel to Inmate Imler. The Grievant attempted to modify the perceptions surrounding the incident by stating she followed Officer Hutchinson's instructions and did not look in the bag. She merely left it on her desk and Inmate Imler picked the bag up during the course of the shift. Failure to look inside the bag does not serve as a legitimate defense. The bag should not have been delivered regardless of the contents. That bag could have contained any known contraband up to and including weapons.

The Grievant's predilection toward this type of misconduct is further supported by her involvement with Inmate Harvel. Her actions violated Rule 45(a) when she admittedly gave him a Christmas card in exchange for religious material he left at her disposal. This action further supports the notion that she disregarded the risks placed on herself and her co-workers by these types of relationships.

The frequent number of times she abetted the previously mentioned relationship raises a strong inference that she, indeed, was the "messenger" on the card found in Inmate Imler's cell. The record, and the Grievant's admissions, indicate the bag incident was not an independent incident. Cards, notes and poems seemed to freely flow between Officer Hutchinson and Inmate Imler. None of this activity could have taken place without the Grievant's involvement.

The Grievant acknowledged she was previously placed on notice and knew of the severe consequences associated with the misconduct in question. Yet, she

violated Rule 25 by failing to immediately report the unauthorized relationship once it came to her attention. She attempted to thwart the relationship and her involvement by telling the participants that they "(were) putting me in the middle of everything, back off, (she) wasn't going to do it anymore." The Grievant clearly understood the implications attached to her actions. By the time she wished to extricate herself from the devious triangle, it was too late. Still, she failed to notify the Employer even after the most recent episode.

The previous review of the various proven allegations clearly establishes that "stacking" of offenses was not realized in this instance. The number of violations contained in the removal order merely reflect offenses nested within an intricate web of related acts of misconduct. They do not represent a situation where multiple progressively more severe penalties are administered for a particular act of misconduct.

Award

Grievance Denied

February 12, 1998

Date

Moreland Hills, Ohio



Arbitrator

Dr. David M. Pincus