

ARBITRATION SUMMARY AND AWARD LOG
OCB AWARD NUMBER: 1274 Expedited

OCB GRIEVANT NUMBER: 1) 24-02-960701-1218-01-04-S 3) 24-02-950915-1094-01-04
2) 24-02-960425-1175-01-02 4) 24-02-970730-1348-01-04

GRIEVANT NAME: 1) Mabel Haven
2) Tracy Henderson
3) Tracy Henderson
4) Banks Johnson

UNION: OCSEA

DEPARTMENT: MR/DD

ARBITRATOR: L. Camille Hebert

MANAGEMENT ADVOCATE: Carolyn Borden-Collins

2ND CHAIR: Angie Plummer

UNION ADVOCATE: Steve Wiles

ARBITRATION DATE: April 27, 1998

DECISION DATE: April 27, 1998

DECISION: 1) Modified 3) Sustained
2) Denied 4) Denied

CONTRACT SECTIONS 1) 2 Day Suspension
2) 2 Day Suspension
3) 2 Day Suspension
4) 2 Day Suspension

HOLDING: 1) The Grievant was charged with unapproved behavior. Arbitrator Hebert decided that the Grievant was guilty of using poor judgement. The Grievant had a prior oral reprimand for using poor judgement. The suspension was modified to a written reprimand.
2) The Grievant was charged with improper conduct for failing to change her schedule so that she could attend an inservice training. She claimed that she was not notified of the training. The Supervisor testified about her refusal to change her schedule. Arbitrator Hebert found the Supervisor's testimony to be credible and denied the grievance.
3) Management conceded that there was no just cause for the suspension. The suspension is expunged from the Grievant's record and the two days of pay should be returned to the Grievant.
4) The Grievant was charged with inefficiency for failing to complete the program documentation for 211 individuals assigned to their group. The Grievant admitted to failing to complete the documentation. The suspension was found to be for just cause and the grievance was denied.

COST: \$

BENCH DECISION AND AWARD

ARBITRATOR: L Camille Hébert

HEARING DATE: 4/27/98

GRIEVANT: Mabel Haven

GRIEVANCE #: 24-02-(7-1-96)-1218-01-04

DEPARTMENT: MR/DD Apple Creek Devel. Center

UNION: OCSEA Local 11

MANAGEMENT
ADVOCATE: Cardyn Borden - Collins

UNION
ADVOCATE: Steve Wiles

ISSUE

Was the grievant's two day suspension for just cause? If not, what should the remedy be?

AWARD

There appears to be a factual dispute concerning where the incident occurred and the location of the grievant and the client, at the time she was observed holding the back of his shirt. Based on the statements made close in time to the incident, I find that the incident with the mail boxes occurred on the first floor, at which time the grievant grabbed the client's shirt. When the elevator arrived, the grievant and the client got on the elevator, which apparently went to the 2d floor. Accordingly, the grievant was still holding the shirt at the time ^{Mr.} Armentrout and Ms. Frye got on the elevator. At this point, it appears that the grievant should have let go of the shirt and restrained the client in another way. The question is whether her failure to do so constitutes unapproved behavior intervention and inconsiderate treatment?

ISSUED AT:
DATE: 4/27/98

ARBITRATOR'S
SIGNATURE: L. Camille Hébert

#1074

BENCH DECISION AND AWARD

ARBITRATOR: L. Camille Hebert	HEARING DATE: 4/27/98
GRIEVANT: Tracy Henderson-Hyde	GRIEVANCE #: 24-02-(4-25-96)-1175-01-02
DEPARTMENT: MR/DD Apollo Creek Devel. Center	UNION: OCSEA/AFSCME, Local 11
MANAGEMENT ADVOCATE: Carolyn Borden-Collins	UNION ADVOCATE: Steve Wilcs

ISSUE

Was grievant's two day suspension imposed for just cause? If not, what shall the remedy be?

AWARD

Although the grievant was initially cited for inefficiency, it appears that the suspension was ultimately imposed for "improper conduct." The notice of 3/4/96 was sufficient to inform the grievant that she was also being charged with improper conduct. Within the definition of "improper conduct" is included "abusive language." In order to determine ~~what~~ ^{whether improper} conduct is occurred, I must make a credibility determination as to whether the incident occurred as described by Ms. Henderson-Hyde or as described by Ms. Gravis. I credit the testimony of Ms. Gravis. Therefore, I conclude that the suspension was for just cause and deny the grievance. I am concerned about the allegations of disparate treatment made by Ms. Henderson-Hyde but conclude ^{even if those allegations are true, they do not justify her} ~~that~~ ^{that} they do not justify her suspension.

ISSUED AT: DATE: 4/27/98	ARBITRATOR'S SIGNATURE: L. Camille Hebert
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BENCH DECISION AND AWARD

ARBITRATOR: L. Camille Hébert	HEARING DATE: April 27, 1998
GRIEVANT: Tracy Henderson	GRIEVANCE #: 24-02(915 195) 1094-01-04
DEPARTMENT: MR/DD Apple Creek Devel. Center	UNION: OSEA Local 11 AFL-CIO
MANAGEMENT ADVOCATE: Carolyn Collins	UNION ADVOCATE: Steve Wiles

ISSUE

Was there just cause for the two-day suspension and if not, what should the remedy be?

AWARD

Management has conceded for purposes of this grievance hearing only that there was no just cause for the suspension. Accordingly, the arbitrator finds that the suspension was not for just cause. The suspension should be expunged from the grievant's record and the two days of pay should be returned to the grievant. Both the union and management understood that this award will have no effect on any pending charges filed by the grievant with the EEOC or OHR.

ISSUED AT: Apple Creek, Ohio
 DATE: 4/27/98

ARBITRATOR'S SIGNATURE: L. Camille Hébert

BENCH DECISION AND AWARD

ARBITRATOR: L. Camille Hébert

HEARING DATE: 4/27/98

GRIEVANT: Banks Johnson

GRIEVANCE #: 24-OZ (7-30-97) 1348-01-04

DEPARTMENT: MR/DD Apple Creek Devel. Center

UNION: OCSEA Local 11

MANAGEMENT
ADVOCATE: Carolyn Borden-Collins

UNION
ADVOCATE: Steve Wilcs

ISSUE

Was the grievant's two-day suspension for just cause? If not, what should the remedy be?

AWARD

The grievant is charged with inefficiency, for failure to complete the program documentation for all individuals assigned to the group. ~~The~~ Management has the burden of proof on this issue, but it is satisfied by the grievant's admission that he forgot to perform this documentation. The reasons given for problems with this policy, including shortage of supervisors, does not ~~have~~ ^{appear to have} been the cause of this failure. The union's defense is essentially that of disparate treatment, on which the union must bear the burden of proof. Merely the suggestion of disparate treatment without supporting evidence is not sufficient to meet that burden. The suspension appears to be for just cause and is consistent with progressive discipline (excluding 6 day suspension subsequently reversed). The grievance is denied.

ISSUED AT:
DATE: 4/27/98

ARBITRATOR'S
SIGNATURE: J. Camille Hébert