

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 1322 Expedited

OCB GRIEVANCE NUMBER: 1) 29-01-971112-0050-01-09-S
2) 29-01-980413-0057-01-09-S

GRIEVANT NAME: 1) Toby Damron
2) Toby Damron

UNION: OCSEA

DEPARTMENT: Ohio Rehabilitation Services Commission

ARBITRATOR: Dr. Everette Freeman

MANAGEMENT ADVOCATE: 1) Darla J. Burns
2) Darla J. Burns

2ND CHAIR:

UNION ADVOCATE: Robert Steele

ARBITRATION DATE: October 21, 1998

DECISION DATE: October 21, 1998

DECISION: 1) GRANTED
2) MODIFIED

CONTRACT SECTIONS: 1) 24.02, 24.03
2) 24.01, 24.02, 24.03, 24.05

HOLDING: 1. Grievance was GRANTED. Grievant was charged with failing to meet production standards. The Employer argued that the Grievant had sufficient notice of his performance expectations in the form of performance evaluations and other discussions with management. The Employer noted that the Grievant's production was consistently below that of his co-workers, even though he was the most senior employee on the team. The Union argued that the Employer violated Article 44.03 by not notifying the Union prior to implementation of any new work rule. It also argued that other employees were not subject to "performance expectations" and, therefore, disparate treatment existed in this case. The Arbitrator held that the Employer did not adhere to Article 44.03 and therefore, it could not discipline the Grievant for violation of a rule that had not been discussed with the Union prior to its implementation.

2. Grievance was MODIFIED. The second grievance was basically about the same issue as the first with the addition of a sleeping while on duty charge. The Grievant admitted to sleeping while on duty on one occasion. Because the first grievance resolved the performance expectation issue, and because of the Grievant's admission of sleeping, the Arbitrator modified the 10-day suspension to a 3-day suspension.

COST: \$

BENCH DECISION AND AWARD

ARBITRATOR: Dr. Everett Freeman

HEARING DATE: 10-21-98

GRIEVANT: Toby Damron

GRIEVANCE #: 29-01-(04-13-98)0057 - 01-09

DEPARTMENT: ERSC

UNION: OCSEA

MANAGEMENT
ADVOCATE: Ms. Darla J. BurnsUNION
ADVOCATE: Mr. Robert Steele**ISSUE**

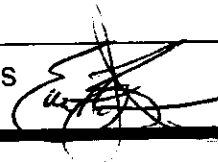
Did just cause exist to suspend Mr. Damron? If
not, what is the proper remedy?

AWARD

While disposition of the 3 DAY suspension in favor of the
Grievant raises issues of performance expectations, the
State has a reasonable basis for disciplining an employee
for sleeping on the job. The State proved, the Union did
not refute, & the Grievant acknowledged at least 1 instance
of sleeping on the job for which, given previous warnings,
discipline is warranted. Accordingly, the 10 day discipline
imposed in MR. Robert Rabe's Nov 12, 1997 letter (J#A.) is
reduced to 3 DAYS.

ISSUED AT:
DATE:

Oct 21, 98

ARBITRATOR'S
SIGNATURE:


BENCH DECISION AND AWARD

ARBITRATOR: Dr. Everett Freeman

HEARING DATE: 10-21-98

GRIEVANT: Toby Damron

GRIEVANCE #: 27-01-(11-12-97)0050-01-09

DEPARTMENT: ORSC

UNION: OCSEA

MANAGEMENT
ADVOCATE: Ms. DARLA J. BurnsUNION
ADVOCATE: Mr. Robert Steele

ISSUE

Did just cause exist to suspend Mr. DAMRON? If not,
what is the proper remedy?

AWARD

While the state through its ORSC management, developed a strong paper trail in documenting the Grievant's performance plans, weekly meetings, most critically, performance evaluations, it did not adhere to Article 44.03 of the CBA in providing the union prior notification of processing quotas. Moreover, the state could not clearly or convincingly demonstrated a rational consistent basis for its 500 case standard that either the grievant or the union discussed prior to implementation. Grievance upheld.

ISSUED AT:
DATE: 10-21-98ARBITRATOR'S
SIGNATURE: 

3 day suspension
reinstated
3/18/99 cjs
grievant to be
made whole.