ARBITRATION SUMMARY AND AWARD LOG
OCB AWARD NUMBER: 1346 Expedited

OCB GRIEVANCE NUMBER:
1) 14-00-971014-0059-01-13-S
2) 14-00-980126-0005-01-13-S
3) 27-30-980602-0769-01-03-F

GRIEVANT NAME:
1) William Hayward
2) William Hayward
3) Shawn Woolum

UNION: OCSEA/AFSCME Local 11

DEPARTMENT:
1) Department of Health
2) Department of Health
3) Department of Rehabilitation and Correction

ARBITRATOR: Sandra Furman

MANAGEMENT ADVOCATE:
1) Debra Payne
2) Debra Payne
3) Beth Lewis

2ND CHAIR: Heather Reese

UNION ADVOCATE:
1) Dan Smith
2) Dan Smith
3) Butch Wylie

ARBITRATION DATE: February 17, 1999

DECISION DATE: February 17, 1999

DECISION:
1) DENIED
2) MODIFIED
3) DENIED

CONTRACT SECTIONS:
1) 24.01, 24.02
2) 24.01, 24.02, 24.03, 24.04
3) 24.01

HOLDING: 1) Grievance was DENIED.

2) Grievance was MODIFIED. Issues: Arbitrability - grievance was untimely filed. Merits - insubordination; punitive penalty, not corrective in nature.

3) Grievance was DENIED. Issue: Timeliness of the pre-disciplinary hearing held six months after investigation into attendance violations was begun.

COST: $275.00

BENCH DECISION AND AWARD

ARBITRATOR: Feuman	HEARING DATE: 2-17-98
GRIEVANT: Bill Hayward	GRIEVANCE #: 14-00780 126 008 01 B
DEPARTMENT: ODOT	UNION: OCSEA
MANAGEMENT ADVOCATE: Debra Payne	UNION ADVOCATE: Dan Smith

ISSUE

Was G issued a 5 day susp for just cause? If not, what is the appropriate remedy?

AWARD

The record in this case is relatively straightforward. G was a 22 yr employee of ODOT. In 1996-97, he began to receive memos, e-mails, and oral notice regarding purported noncompliance with agency record keeping + reporting requirements. In October, 1997, he served a 3 day suspension in part due to failure to ~~properly~~ timely file W.A.R. In Dec 1997, Management again cited G for noncompliance w/ timely submission of the W.A.R. G produced evidence of an attempt, albeit untimely, to file at least one of the

ISSUED AT: Cols OH
DATE: 2-17-99

ARBITRATOR'S SIGNATURE:

3/16/95 cjs

reports for the dates in contention. However, Mgmt met its burden that G. did file timely reports for the dates of 10-4, 10-11, 10-18, 10-25, & 11-8-97.

G's explanation for noncompliance was that he attached great efforts and energy to come up to task for the mini surveys, & overlooked the need to file timely W.A.Rs. The Union offered the test may of foreign to bolster its claim of unequal enforcement of the policy on timely submission of W.A.Rs. G. also pointed to his schedule reflecting time spent on union matters, his own disciplinary appeals/grievance, state wide committees, and the like.

~~The~~ Mitigation is the primary defense offered; in this case the Arbitrator finds a 5 day suspension is too harsh. G. had just served a 3 day yet he is ~~sep~~ disciplined for conduct occurring prior to the imposition of the 3 day. Longest [He gets notice of the 3 day on or about 10-8 & serves it on Oct 15. 1997. He is disciplined for conduct occurring prior to the & during the 3 day suspension period. This admittedly was done w.o. adv'l oral/written notice to G that he was out of compliance with the WAR submission requirements again.

Some discipline is warranted because G had notice of the policy, had prior discipline in part because of the failure of timely submission of the WARs, and the status of G as an upper level, long term union official who is clearly able to understand written communications. But 5 days is simply overkill as it appears to be punitive, not corrective. Unfortunately, the A.C.W. where the 3 day suspension are suspended by date for a similar infraction. The discipline is accordingly modified to a 3 day suspension, which is consistent with Mgmt's grid, and serves the purpose of putting G on clear + unambiguous notice that the WARs must be completed timely, or else he is at peril for add'l discipline. IT IS SO HEREBY ORDERED.

#1346

BENCH DECISION AND AWARD

ARBITRATOR: Thorman	HEARING DATE: 2-17-99
GRIEVANT: William Hayward	GRIEVANCE #: 14-00980126-008-01-13
DEPARTMENT: DO Hospital	UNION: OCSEA
MANAGEMENT ADVOCATE: Debra Payne	UNION ADVOCATE: Dan Smith

ISSUE

Hayward's 5 day suspension arbitrable?

AWARD

Management argues that the instant grievance was untimely filed, as it does not bear a time stamp showing it was received on any date prior to 1-29-98. Mgmt claims that proper internal procedures were not followed - that the Steward, Carter, knew about the date stamp process because many other grievances filed by him did bear a date stamp. Mgmt further argues that the matter was raised to timeliness argument even though it was raised until Aug. 1998.

ISSUED AT: Columbus, Oh DATE: 2-17-99	ARBITRATOR'S SIGNATURE: [signature]

3/16/95 cjs

The Union argues that the grievance was timely filed on December 8, 1997. that management's logs are not conclusive; that the K d/r require a date stamp to establish timeliness. that management had an opportunity on at least 3 dates prior to August 1990 to raise arbitrability. that the step 3 grievance was in fact scheduled for 1-29-98 and no prejudice inures to Mgmt even assuming untimeliness.

The A finds the Union has met its burden on arbitrability. Mgmt offered no rebuttal evidence as to Carter's claims he deposited the grievance at an appropriate desk, even if no t.s. was placed on the document. Since the K d/r require date stamping Carter's testimony suffices in the absence of rebuttal. His testimony is further bolstered by the uncontested fact that on 1-29-98 a Step 3 hearing was anticipated & scheduled in the instant matter.

Despite there have been a need for Union Exh D of there has been a timely grievance filed on Hayward's 5 day suspension. Management's logs for the 1st part of January 1998 illustrates the receipt system is not devoid of human errors on its side.

Hayward's 5 day grievance bears a ~~H~~ admittedly offered by Management. and (Union A + Exh 1)

Admittedly.

Moreover refers to the 3 day suspension 012 as being filed in January 1998 a fact that this Arbitrator knows to be wrong from the predecessor case heard this date.

~~By stipulation, Management has conceded this Arbitrator that~~

Whether or not G believes this grievance to be untimely is irrelevant: the Union processed this grievance in a ~~timely~~ manner. It is so Hereby Ordered.

#1346

BENCH DECISION AND AWARD

ARBITRATOR: FURMAN	HEARING DATE: 2-17-99
GRIEVANT: Bill Hayward	GRIEVANCE #: 14-00 971014 0590 13
DEPARTMENT: Health	UNION: OCSEA Local 11
MANAGEMENT ADVOCATE: Debra Payne	UNION ADVOCATE: Don Smith

ISSUE

Was G. 3 day suspension for just cause? If not, what is the appropriate remedy?

AWARD

This matter was heard after witnesses were sworn. Management witness Scott Gordon's testimony amplified the extensive exhibits presented by Mgmt. Gordon outlined the work expected of a Sanitarian 4 the various paperwork and procedural requirements attendant upon G. the mission of the Agency as it relates to the food service inspections oversight activities; the organizational (office + reporting authority lines) structure, and various connections

ISSUED AT: Cols Ohio
DATE: 2-17-99

ARBITRATOR'S SIGNATURE:

3/16/95 cjs

held at different times spring summer 97 period.

G. ¶ There appears to be little fact despite of significance.

G. was assigned to food service inspection oversights in spring 1997; this represented a significant departure from his most recent prior assignments. He worked with a co-worker doing same + similar activities, but essentially worked independently consistent with a Scan 4 classif. specification. G. was uncomfortable with the ins + outs of the food service inspection duties + survey preparation and asked for assistance from Gordon, who promptly provided it. G. went out + did an inspection with his co-worker in Coshocton. The record reflects no add'l requests for technical assistance by G. to management.

¶ G. was put on notice through several communications of the need to timely submit weekly activity reports, and specific directions + orders were given vis a vis, the completion of the food service inspection "mini surveys". Receipt of these communications is undisputed. The surveys take between 1½-2 days to complete after the field work is completed.

¶ Gordon testified that it takes him 20-25 minutes to complete weekly activity reports. Regard dr volunteer how long it takes him. It is undisputed that there were other ODOH employees who failed to timely submit weekly activity reports who were not disciplined.

(Hayward 3 day suspension)

It is undisputed that G failed to sign in and/or out on certain dates specified on EYR Exh 1. It is undisputed that at least one (1) other b.u. member also failed to sign in & out at various dates & times, & w/r disciplined.

Mgmt has stb each of the factual allegations by the requisite quantum of evidence. The issue for the A is whether the discipline is commensurate w/ the offense. The Union offered a laundry list of reasons as to why a 3 day is inappropriate. These are: "newness" of the work to be performed resulting in unreasonable expectations

of timeliness; family and emotional upset and physical dislocation during the relevant time period; ~~extension~~ union and joint 1-M obligations thereby decreasing ~~allow~~ available time to complete the work; failure of management + co-workers to assist him with an untenable work load; uneven enforcement of work rules (signing in + submission of weekly activity reports).

II The A. wishes to state that she is not convinced of disparate treatment in the classic sense. The 2-3 ~~other~~ Union cited instances did not clearly appear to be cases of apples || apples. The U. bears the burden on disparate treatment. As to the other arguments, the A. finds that they are not sufficient to mitigate under the

facts here present. The A is concerned with the following: G was put on sufficient notice by the written reprimand of timeliness issues related to paperwork: there are 2 policy directives on point, as well. Although paperwork may be indeed, ~~[illegible]~~ ~~[illegible] completed [illegible]~~ an employee c/r prior to discharge when it may be completed. The time frame for completion of the f.s. mini surveys was repeatedly adjusted either at G's request or on Mgmt's initiative. G offered no explanation relative as to why, once he knew he c/r meet the 9-2-97 deadline, he did not seek an add'l extension. Mgmt had given direct orders as to its timetable, but ~~[illegible]~~ Gordon did not exhibit

an inflexible, authoritarian response when ~~confronted~~ advised about G's difficulties. So, if G CW meet the unilaterally imposed deadline, he did nothing to get Mgmt to recognize his asserted dilemma. The 22 days would ∴ seem to be enough time to get at least several of the reports done; none were.

But the sign in/out noncompliance issue, standing alone, in isolation, the A WM sustain a 3 day suspension. But the failure to sign in/out on the dates specified fits in in the context of G's general noncompliance with the Agency's paperwork policies & procedures, and further troubles the A.

The ~~[illegible]~~ Environmental environment described ∑ G & CW cause him to seek SMLA leave & seek a substitute for his Union activities. Again he did not ~~[illegible]~~ ask Mgmt to

flex its deadline after he got the last "Hungary" memo.
Whether Mgmt will agreed to do so is they
speculation. Having carefully weighed all of the above.
the A sustains the deregulation + deems
the finance - IT to be Hardly crashed.

#1346

BENCH DECISION AND AWARD

ARBITRATOR: Furman	HEARING DATE: 2-17-99
GRIEVANT: Shawn Wadum	GRIEVANCE #: 27-30-980602-0769-01-03-F
DEPARTMENT: ODR+C	UNION: OCSEA
MANAGEMENT ADVOCATE: Beth Heiss	UNION ADVOCATE: Butch Wylie

ISSUE

STIP. Was G 2 day fire for the violation of the Dept of Educ conduct rules 2b, 3b & 3h for just cause? If not, what shall the remedy be?

AWARD

There is no dispute as to the salient facts: G. violated rules 2b, 3b + 3h on the dates set forth in St Exh 2. He has prior discipline of record for similar infractions. His reasons for tardiness / failure to follow call off procedures are insufficient to support mitigation of the discipline as there were not first time occurrences. The A is less convinced that discipline is appropriate for applying for leave when leave balances are insufficient. The employee may have some knowledge of his available

ISSUED AT: Cols Oh. DATE: 2-17-99	ARBITRATOR'S SIGNATURE:

3/10/95 cjs

leave balances, but the Ee is the timekeeper of record. ~~It is not clear that~~ the Ee has not proved ~~to~~ intentionally applied for leave w/o sufficient leave balance, but in the context that he had prior notice of a problem in this regard, that w/h been produced & incumbent upon him to verify his sufficient leave balance prior to application for service on 8-8-97. He was not short ½ hr, but 6.5 hrs — this is significant.

Although the A. finds the cited work rules were violated, + discipline issued was consistent with the internal grid, the just cause inquiry in this case includes a Union due process argument, which ~~may~~ could affect the right of management to impose the 2 day fine.

The U. asked the Arb to consider prior rulings of other Arbs. who interpreted Lang. in Art 24. ~~The~~ Has done so, but finds none of the 3 cited cases should control the ~~rationale~~ result here, as the facts are ~~not~~ ~~[illegible]~~ distinguishable. Here, the Union essentially contends that the acts for which discipline was imposed occurred in Aug–October 1997, (8-8, 9-29–10-4-97) investigatory interviews ~~took~~ place 10-21 + 10-29-97, but no pre-disc conf. was held until 4-6-98. The Union claims dp/procedural violation of Art 24 ~~[illegible]~~ due to the approx 6 mo delay b/tw the investig interv + the ~~[illegible]~~ holding of the pre disciplinary hearing.

(4

(There is no dispute the discipline issued and found after the Mediation hearing

The Union does argue that the time lapse between 8-8-97 & 10-29-97 was (related to Mgmt's alleged to move forward)

~~The Union argues that the ARB should view the time lapse~~

The union argues that management's and the failure of Mgmt to schedule the pre-disc conference until 4-6-98 violate the K? Although the ARB is not convinced there was any valid management reason for such a delay, the delay is not a violation of the K. Had Mgmt delayed its investigation until 4-6-98 a different result would have likely obtained. The Arb does condone six month delays especially

when the facts are so clear & the investigation is almost pro forma — if you are tardy or did not call in on time is not difficult of proof. But the K requires discipline to be initiated in a reasonably prompt manner, & over both parties steps. That the investigatory interview begins the disciplinary process, she is constrained from finding the 6 mo delay in holding the pre disciplinary conference vitiates the discipline. Clearly Mgmt C/H called the pre disc hrg at a much earlier date, but its failure to do so does not prevent its ultimate disciplinary action from being timely. Mgmt's argument of "no prejudice" may not avail them in another case, with different facts, ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ However, in this case, G dp rsfd

were not prepared to a degree sufficient to sustain the discipline. Therefore, the grievance is denied