

ROBERT BROOKINS

LABOR ARBITRATOR ♦ PROFESSOR OF LAW ♦ J.D. ♦ PH. D.



#13⁶²

Bench Opinion and Award
OCSEA and North Central Correctional Institution
Grievance # 27-30-980602-0768-01-03
Shawn Woolum, Grievant
Robert Brookins, Arbitrator

6518 GREENRIDGE DR., INDIANAPOLIS, IN 46278-2224

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I. Preliminary Statement

The circumstances that led to this bench decision and award warrant explanation. At 9:00 a.m. on March 18, 1999, the Arbitrator arrived at the North Central Correctional Institution (NCCI) for a scheduled hearing of grievance # 27-30-980602-0768-01-03, which OCSEA filed in behalf of Corrections Officer Shawn Woolum. The parties had scheduled the hearing with the Arbitrator approximately one month earlier. The following persons appeared for the hearing in timely fashion.

A. For NCCI

1. Ms. Beth A. Lewis, Labor Relations Specialist, Ohio Office of Collective Bargaining
2. Ms. Rhonda G. Bell, Labor Relations Specialist, Ohio Office of Collective Bargaining
3. Mr. Jerry Ballenger, Labor Relations Officer

B. For OCSEA

1. Butch Wylie, Lead Staff, OCSEA
2. Ms. Patty Howell, Chief Steward, OCSEA
3. Mr. Todd J. Hawes, Chapter President

When the Grievant failed to report for the hearing at 9:00 a.m., the parties waited for him until approximately 11:15 a.m. Between 9:00 a.m. and 11:15 a.m., Mr. Wylie tried in vain to contact the Grievant. These circumstances obliged the Arbitrator to dismiss the parties for that day with the understanding that the Union would contact the Grievant to determine why he failed to report for the hearing. From March 18, 1999 to approximately April 2, 1999, the Union made repeated, albeit unsuccessful, attempts to contact the Grievant to reschedule a second hearing date.

On April 2, 1999, the Arbitrator met with Ms. Beth Lewis at the Office of Collective Bargaining. After Mr. Wylie was contacted on a conference telephone call, Ms. Lewis and Mr. Wylie read their opening statements to the Arbitrator and subsequently provided the Arbitrator with copies of those statements. Then, the parties asked the Arbitrator to render a bench decision in this matter

because of the unusual circumstances that led to the meeting of April 2, 1999. Also, the parties asked the Arbitrator to base his bench decision solely on the above-mentioned presentations of Mr. Wylie and Ms. Lewis. The bench decision below is based entirely on those presentations.

II. The Facts

Mr. Shawn Woolum, the Grievant, was employed as a Corrections Officer with NCCI for approximately three years. During his tenure with NCCI, the Grievant comported himself as a professional and developed an excellent work record. For example, while performing his duties as a Corrections Officer, he had to use physical force against inmates on approximately 13 occasions without being accused of using excessive force. After three years of service, NCCI terminated the Grievant for using excessive force against Inmate Douglas Thomas who had spent approximately 9 years as an inmate at NCCI. Section 5120-9-01 of the Ohio Administrative Code defines excessive force as "[A]n application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which is reasonably necessary under all the circumstances surrounding the incident."

Unlike most inmates, Inmate Thomas frequently opted to spend time in solitary confinement (seg.). Inmates are placed in solitary confinement when they fail to follow certain procedures. During his time at NCCI, Inmate Thomas learned what he needed to do to receive time in seg.

The incident that triggered the Grievant's dismissal occurred on November 5, 1997 when he was ordered to escort Inmate Thomas to seg. after the Inmate refused to follow procedures for an institutional count. When the Grievant arrived to escort Inmate Thomas to seg., he and Inmate Thomas exchanged harsh words, and Inmate Thomas told the Grievant to "suck my dick." The Grievant followed procedure when he prepared Inmate Thomas to be escorted to seg., handcuffing the Inmate's hands behind his back. In route to seg., the Grievant stopped at Lieutenant Springer's

(Lt. Springer)¹ office where he reported the foregoing incident with Inmate Thomas. Lt. Springer advised the Grievant to submit a written report of the incident.

The Grievant left Lt. Springer's office and continued to escort Inmate Thomas to seg. Shortly thereafter, the Grievant contacted Lt. Springer and said that he had to use force against the Grievant to control him. Lt. Springer took a camera to seg. to investigate the matter. When she arrived, she found blood on the inside of seg. door two and on the floor of the sallyport. Inmate Thomas was found on the floor of a holding cell in either an unconscious or a semi-conscious condition. Subsequent physical examination revealed that Inmate Thomas had suffered a fractured clavicle, a fractured fibula, and multiple contusions, abrasions, and cuts. One cut above his right eye required stitches. Moreover, several weeks later, physicians discovered that Inmate Thomas had a broken nose and three broken ribs. However, these injuries were never directly linked to the November 5 incident.

Not surprisingly, there are conflicting accounts of how Inmate Thomas was injured. For example, an Inmate who claimed to have observed the incident said that the Grievant launched an unprovoked attack on Inmate Thomas, kicking and stomping on him. In addition, the Grievant punched Inmate Thomas in the back of the head, threw him against the back wall of the sallyport, pushed him against the inside of seg. door two, and stomped and kicked him on the ankle. The inmate fell to the ground.

In contrast, the Grievant claims that in route to seg., Inmate Thomas began to disobey orders and resist the Grievant's efforts to control him. To maintain control of Inmate Thomas, the Grievant placed his hands on Inmate Thomas' handcuffs. While attempting to pull away, Inmate Thomas threw both men off balance, causing them to fall to the floor. The Grievant said that, with

¹ Lieutenant Springer has since been promoted to Captain.

his hands cuffed behind his back, Inmate Thomas could not break his fall and, thus, fell especially hard on the cement floor. Another Corrections Officer who claimed to have observed the incident said that both men fell after their feet became entangled.

To investigate the incident, Warden John Morgan empaneled a Use of Force Committee, which concluded that the Grievant used excessive force on the inmate as set forth in OAC 5120-9-01. Warden Morgan, then, recommended that the Grievant be discharged.

III. The Decision and Award

The facts in this case and the definition of excessive force provide a basis for a decision in this matter. First, no one but the Grievant was in control of Inmate Thomas from the time he and the Grievant left from Lt. Springer's office until they arrived at the holding cell. Consequently, only the Grievant had an opportunity to injure Inmate Thomas during that trip. Second, the Arbitrator finds it highly unlikely that the extensive injuries which Inmate Thomas suffered could have resulted from a fall, even with his hands cuffed behind his back. Third, even if Inmate Thomas were disobedient in route to seg., the record does not establish that his alleged disobedience warranted an application of the type or extent of physical force required to produce the injuries which Inmate Thomas suffered.

As mentioned above, excessive force is defined as "[A]n application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which is reasonably necessary under all the circumstances surrounding the incident." The Arbitrator holds that the circumstances established in this case did not warrant the application of the type or extent of physical force that must have been applied to inflict the above-mentioned injuries on Inmate Thomas. In other words, the use of such force was *not* "reasonably necessary under all the circumstances surrounding" any alleged or established incident in the record of the instant case.

For all of the foregoing reasons, the grievance is hereby DENIED.

Notary Certificate

State of Indiana)

)SS:

County of Marion

Before me the undersigned, Notary Public for Hendricks County, State of
Indiana, personally appeared Robert Brookins, and acknowledged the
execution of this instrument this 19th day of April, ~~1998~~ 1999

Signature of Notary Public: Susan K. Agnew

Printed Name of Notary Public: SUSAN K. AGNEW

Notary Public, State of Indiana
County of Hendricks

My commission expires: My Commission Expires 11/13/2006

County of Residency: _____

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