

#1366ex

BENCH DECISION AND AWARD

ARBITRATOR: <u>ROBERT Stein</u>	HEARING DATE: <u>5/24/99</u>
GRIEVANT: <u>Darren Hall</u>	GRIEVANCE #: <u>27-23-980924-0655-01-03</u>
DEPARTMENT: <u>DR & C</u>	UNION: <u>OCSEA</u>
MANAGEMENT ADVOCATE: <u>Beth Lewis</u>	UNION ADVOCATE: <u>Don Sargent</u>

ISSUE

15 day suspension

AWARD

Suspension reduced to 10 days (Rule 5 " " 20) Ms Collier and Mr. Hall
Consent to receive 5 days in back pay and benefits
both participated in horseplay on June 28, 1998. However,
the evidence indicated Mr. Hall escalated the horseplay in two ways:
he picked up Ms. Collier and he handcuffed himself to her.
The Grievant did more in this situation and he compromised
his ability to respond to an emergency. The state
proved that the Grievant violated Rule 11 and 20. I do not
concur that the Grievant's action rose to a Rule 30 violation.
Rule 5 appears to be a more appropriate charge in this matter and it
is noted that this is the Grievant's third Rule 5 violation

ISSUED AT: <u>ROSS</u>	ARBITRATOR'S SIGNATURE: 
DATE: <u>5/24/99</u>	

#1366ex

BENCH DECISION AND AWARD

ARBITRATOR: ROBERT STEIN	HEARING DATE: 5/24/99
GRIEVANT: Scott Dunn	GRIEVANCE #: 27-23-980723-0637
DEPARTMENT: DR & C	UNION: OCSEA
MANAGEMENT ADVOCATE: LaDonie Coathray	UNION ADVOCATE: Don Sargent

ISSUE

1 day suspension

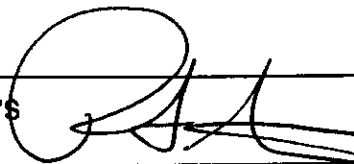
AWARD

Grievance denied. The Employer proved that the Grievant violated Rule 7 and 8. This is Grievant's second violation of Rule 7 (1st discipline WR 6/15/97) and the Employer correctly applied progressive discipline. However, I don't agree that Employer proved a violation of Rule 1 occurred and this charge shall be removed from the record.

ISSUED AT:
DATE:

ROSS
5/24/99

ARBITRATOR'S
SIGNATURE:



#1366

BENCH DECISION AND AWARD

ARBITRATOR: Robert Stein	HEARING DATE: 5/24/99
GRIEVANT: Leon Hines	GRIEVANCE #: 27-23-981106-0685-01-03
DEPARTMENT: DR & C	UNION: OCSEA
MANAGEMENT ADVOCATE: Rhonda G. Beep	UNION ADVOCATE: Don Sargent

ISSUE

10 day suspension

AWARD

See attached award

ISSUED AT: ROSI / Summit Co.
 DATE: 5/25/99

ARBITRATOR'S SIGNATURE: 

#1366

BENCH DECISION AND AWARD

ARBITRATOR: Robert Stein

HEARING DATE: 5/24/99

GRIEVANT: James Osborne

GRIEVANCE #: 27-23-981106-0686

DEPARTMENT: DR & C

UNION: OCSEA

MANAGEMENT ADVOCATE: Rhonda G. Beebe

UNION ADVOCATE: Don Sargent

ISSUE

10 day suspension

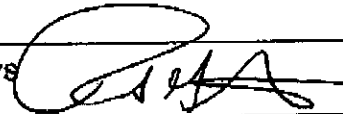
AWARD

See attached Award

ISSUED AT:
DATE:

Ross/Summit Co.
5/25/99

ARBITRATOR'S
SIGNATURE:



#1366

BENCH DECISION AND AWARD

ARBITRATOR: Robert Stein

HEARING DATE: 5/24/99

GRIEVANT: Albert Hyland

GRIEVANCE #: 27-23-981106-0677-01-03

DEPARTMENT: DR&C

UNION: OCSEA

MANAGEMENT ADVOCATE: Rhonda G. Bell

UNION ADVOCATE: Don Sargent

ISSUE

5 day suspension

AWARD

See attached Award.

ISSUED AT: Rost / Summit Co.
DATE: 5/25/99

ARBITRATOR'S SIGNATURE: 

#1366

AWARD**Albert Hyland grievance**

The facts in this case do not support the Union's contention that Inmate Massey was perpetuating a falsehood. What is missing here is a motive for Massey and all the inmates to lie and to place the employment of Officers Hines, Hyland, and Osborne in jeopardy. Officer Hines testified that he didn't even know Massey or Kocak. Officer Osborne testified that Inmate Kocak hated him. However, most of the other witnesses for the State and the Union painted a picture of Inmate Kocak as someone who was a chronic complainer and had trouble with everyone and everything. Officer Hyland's testimony did not help to establish the basis for a motive for Inmate Kocak, Massey, and other inmates to conspire against the three Grievants.

The Employer has the burden of proof in this matter, and Ms. Bell presented a very well organized and convincing case. Testimony from porters Johnson and Umphries and inmates Powell, Jordan, Lederer, and Kirk, corroborate Massey's statement. Inmate Kocak's reputation for being difficult was legendary (See Captain Payne's testimony), and the description of his offensive behavior provided a plausible motive for the Grievant's actions. Officers Osborne and Hyland worked in the Isolation Unit for a considerable period of time and testified that they were very familiar with Inmate Kocak and his obnoxious behavior. These factors serve to provide a foundation for the Employer's case and for the plausibility of the Grievants' actions. In the words of the well respected Arbitrator Samuel Kates,

"The arbitrator as the trier of fact, must seek to find the truth from the credible evidence. The personal interest of the witnesses is a factor to be taken into account, as also must the nature of their testimony, their demeanor on the witness stand, and all the other factors appearing in evidence..." (Koppers Co. Inc. 68-1 ARB 8084 at 3307 (Kates 1967))

It is recognized that polygraph testing is commonly used by public employers and by the private sector. In the instant matter the Employer submitted polygraph evidence in order to substantiate the truthfulness of Inmate Massey's testimony. However, in submitting polygraph evidence it is critical for the party proffering the evidence to have the polygrapher present. It has long been recognized that the expertise of the polygraph examiner is a key component if such evidence is to be given even minimal significance. In the words of Arbitrator Loskin:

"The machine and its component parts are only as good as the person performing the tests, and the value of the findings is the result of experience, qualifications or inexperience of the operator of the machine." (Jones, "Truth" When

the Polygraph Operator Sits as Arbitrator (or Judge): The Deception of Detection" in the Diagnosis of Truth and Deception, " TRUTH, LIE DETECTORS, AND OTHER PROBLEMS IN LABOR ARBITRATION, Proceedings of the Thirty-first Annual Meeting, National Academy of Arbitrators, J. Stern and B. Dennis, eds. (Washington BNA Books, 1979), p. 97 n. 55.)

Without getting into a discussion of the merits of polygraph evidence, it is concluded that the polygraph evidence in this case cannot be considered without the accompanying testimony of the polygrapher.

No one was seriously injured in this matter, and it is unclear whether the Grievants' actually intended to have Massey beat-up Inmate Kocak. It is conceivable that they may have just wanted to intimidate Kocak with Massey's presence. The Grievants were in control of this situation and Inmate Massey only knew what he was told. Nevertheless, even the intent to carry out this type of action is a serious matter and the Employer had a right to address it. Acts of retaliation of this nature are a health and safety risk, are unprofessional, can seriously affect the reputation of the Department of Corrections, and are accompanied by enormous financial liability. I find the Employer had just cause to discipline the Grievants for violation of Rules 1, 8, 25 and 39.

Grievance denied.