

**ARBITRATION SUMMARY AND AWARD LOG**

**OCB AWARD NUMBER: #1421ex**

**OCB GRIEVANCE NUMBER:** 1) 27-16-990303-3029-01-03  
2) 27-30-981116-0881-01-03

**GRIEVANT NAME:** 1) Burgraff  
2) Pope

**UNION:** OCSEA/AFSCME Local 11

**DEPARTMENT:** Department of Rehabilitation and Corrections

**ARBITRATOR:** Sandra Furman

**MANAGEMENT ADVOCATE:** 1) Kevin Shafer  
2) Charles Scruggs

**2ND CHAIR:** Meredith Lobritz

**UNION ADVOCATE:** Lynn Belcher

**ARBITRATION DATE:** February 2, 2000

**DECISION DATE:** February 2, 2000

**DECISION:** 1) Denied  
2) Modified

**CONTRACT SECTIONS:** Article 24

**HOLDING:**

**COST:** \$

#1421

**BENCH DECISION AND AWARD**

ARBITRATOR: FURMAN	HEARING DATE: 2-2-00
GRIEVANT: BURGRAFF	GRIEVANCE #: 27-16(3-3-99)-3029-01-03
DEPARTMENT: R+C	UNION: OESGA Loc 11
MANAGEMENT ADVOCATE: Kevin	UNION ADVOCATE: Lynn Belcher

**ISSUE**

Was G. issued a ten (10) day suspension for just cause?  
If not, what is the appropriate remedy?

**AWARD**

FACTS: G was not present at the hearing. Therefore, the ARBITRATOR is confined in her considerations to the written statements taken by management as to what occurred on 8-25-98. In G's interview, his replies to Investigator Kevin's ~~statements~~ queries as to whether he made certain statements were "no, no", "I don't remember", "I cannot say". His conduct on the date in question was directly

ISSUED AT: Marion OH  
DATE: 2-2-00

ARBITRATOR'S SIGNATURE:

Witnessed by 2 COS: Griffiths + Lester  
The Union did not claim that their  
written testimony was motivated by hostile enmities  
or bias. (U) The Arbitrator, ~~without~~

~~benefit of~~ ~~Griffiths + Lester~~ ~~the~~ ~~Union~~  
concludes that the following remarks  
were made by G. 8-25-98 to two  
employees of the Department:

- ① ~~I~~ "hated Officer Griffiths"
- ② "I wouldn't mind seeing you or you & everyone  
else come out of here in body bags And I hope  
they leave them open so I can see."
- ③ "The only reason I came back in here was because  
I was thinking about shooting the bitch."

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U To the contrary, the reluctance of ~~Griffiths~~  
employee witness ~~Griffiths~~ Lester to  
relate the ~~incident~~ incident is stated on his  
incident report. Griffiths's statement also ~~lacks~~ the  
favor of someone who is "out to get" ~~Griffiths~~ G.

4. If he [G] was going to shoot them, he wouldn't use a 38 he would get a [G] weapon from his truck and do it. He [G] always ~~has~~ has a weapon in his truck.

5 Not him [dester] or you [Guffin] or any of you mean shit to me I'll shoot any fucker here who fucks with me. I don't care about you, their families, or your kids. I'll shoot you fuckers.

None of these remarks were made in a joking tone; the context was not one of a humorous back & forth that may occur between employees. ~~who are~~ - The Union don argue that this is commonplace shop talk. There is a present feel & immediacy to remarks 3+4; a reasonable person hearing those remarks could believe they were in

immediate danger, as G stated he had <sup>in</sup> weapons in his truck, and he did go out to his truck.

The Arbitrator <sup>agrees w/ Mgmt.</sup> ~~states~~ that remarks in the tone & context ~~are~~ utilized by G cannot be tolerated. Even absent

a workplace violence policy, the Employer has a duty & obligation to all to ensure a safe workplace. ~~The contract~~

<sup>also</sup> the Arbitrator concludes that the Employer met ~~to~~ keep that threats and/or intimidatory remarks were made to employees of DR+C on 8-25-78.

The dilemma for the Arbitrator is the appropriate level of discipline for G's conduct. Although there were ~~no~~ <sup>frankly</sup> remarks made in the past by G to co workers, no one felt there were serious enough to bring to Management's attention until this investigation began.

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OPINION

The Arbitrator ~~states~~ <sup>agrees w/ Mgmt.</sup> that remarks in the tone & context ~~are~~ utilized by G cannot be tolerated. Even absent a workplace violence policy, the employer has a duty & obligation to all to ensure a safe workplace. ~~The contract~~ the Arbitrator concludes that the Employer met its duty that threats and/or intimidatory remarks were made to employees of DR+C on 8-25-78.

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in his truck, and he did go out to his truck.  
OPINION

The Arbitrator ~~believes~~ <sup>agrees w/ Mgmt.</sup> that remarks in the  
tone & context ~~are~~ utilized by G.  
cannot be tolerated. Even absent  
a workplace violence policy, the  
Employer has a duty & obligation to all  
to ensure a safe workplace. ~~No context~~

The Arbitrator concludes that the Employer  
met ~~to~~ <sup>to</sup> keep that threats and/or  
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employees of DR+C on 8-25-78.

The dilemma for the Arbitrator is the  
appropriate level of discipline for G's conduct.  
Although there were ~~no~~ <sup>frankly</sup> remarks made in the  
past by G to co workers, no one felt  
there were serious enough to bring to Management's  
attention until this investigation began.

In the ~~summary~~ witness statements of <sup>Collins</sup> Allen, <sup>Trimmer</sup> Oskins, Glass, and Sliff there is a noted lack of sense of immediate danger from G, or a sense that he was a <sup>"reel"</sup> danger to himself. In fact, the Arbitrator is curious about the seeming disregard of his co-workers + management personnel before the E-245 incident of the patent

inappropriateness of G's verbal expressions. But the part ~~of~~ <sup>lack of overture</sup> <sup>action by the Ely</sup> does not, <sup>in the Arbitrator's opinion,</sup> <sup>produce discipline on</sup> the Union. Argued that G's <sup>very</sup> <sup>low</sup> <sup>level</sup> <sup>of</sup> <sup>overture</sup> <sup>action</sup> <sup>by</sup> <sup>the</sup> <sup>Ely</sup> <sup>is</sup> <sup>not</sup> <sup>enough</sup> <sup>to</sup> <sup>justify</sup> <sup>the</sup> <sup>Union's</sup> <sup>action</sup> <sup>on</sup> <sup>the</sup> <sup>matter</sup>.

then date

factor. The Union argued that there is evidence of disparate treatment as an employee who actually ~~struck~~ <sup>worked</sup> <sup>with</sup> <sup>him</sup> <sup>as</sup> <sup>a</sup> <sup>co</sup> <sup>worker</sup> on got 10 days in contrast to G who only talked about his intentions. The Union argued that there was no present



intention to harm, and that if the Employer felt he was a real danger, he s/r have been permitted to work 2/3 days prior to being placed on AL. The Union also advised that G was allowed to return to his post after his AL for a significant period of time, and that at that post he was armed. The Union was @ +

all of the above in mitigation 2  
~~At 13 days suspension for~~ A 13 day suspension for a 22 yr employee with no prior discipline on a first offense ~~is~~ is ~~subject to~~ a significant discipline. The <sup>Employer's</sup> ~~rule~~ provides an option of 1-3 days to Removal as possible appropriate disciplines.

2) The Union also ~~also~~ points out G went to EAP. The ~~Arbitrator~~ ~~was~~ (albeit after the pre-disciplinary hearing)

Although there is no evidence of a workplace violence policy in place at MCI,

that did foreclose Miquit from treating these types of remarks with

great seriousness. A 22 yr / <sup>local</sup> employee

S/b given the utmost consideration to his contractual rights to be disciplined

only for just cause. ~~that all the facts in the record of the Arb~~

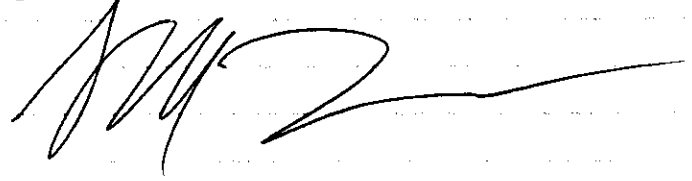
~~clearly find that the employer acted in discretion in~~

Despite the Union's arguments, which were made in G's behalf,

the Arb finds there was just cause for the 10 day suspension.

AWARD

Grievance Denied.



#1421

**BENCH DECISION AND AWARD**

ARBITRATOR: <u>TURMAN</u>	HEARING DATE: <u>2-2-00</u>
GRIEVANT: <u>James Pope</u>	GRIEVANCE #: <u>27-30698-11-1601-03</u> <sup>0881-</sup>
DEPARTMENT: <u>R+C</u>	UNION: <u>OCSEA local 11</u>
MANAGEMENT ADVOCATE: <u>LABRITZ</u>	UNION ADVOCATE: <u>Belcher</u>

**ISSUE**

Was officer James Pope fired for just cause? And if not, what shall the remedy be?

**AWARD**

FACTS  
 At the time of the discipline, G was a two year employee of NCC1. As a third shift employee report a fine was 9:50 AM 2-24-98 <sup>pm.</sup> G. came to work with a bottle of beer in his lunch box. He discovered it upon entry <sup>at the front door</sup> removed it from his box, gave it to a fellow officer to dispose of in an appropriate fashion. At 10:10 pm, G. contacted (then) Lt. Stewart <sup>ostensibly</sup> to report the fact he had brought a bottle of beer on grounds.

ISSUED AT: <u>Maion 04</u>	ARBITRATOR'S SIGNATURE: <u>[Signature]</u>
DATE: <u>2-2-00</u>	

Stewart and G did not have a conversation at that time as Stewart was busy. A conversation did occur between Stewart and G approximately two and a half hours later in the shift. G claims he filled out an incident report that night [Minn Ex. 1] which states the beer bottle was empty and unopened.

Two incident reports were prepared on later dates: St. Stewart's on 3-6-98; G's on 3-1-98. Both confirm a self report of G bringing in a beer bottle to the gate. Then having it disposed of immediately upon discovery.

~~The discrepancy between the reports~~

G's <sup>3-1-98</sup> report says he took it back to his car; St Stewart says G stated to him that Johnson was given the bottle to destroy as G was going to his car to dispose of the bottle.

~~Conclusion~~  
Opinion

G. was charged with a violation of R. 25 -  
 failure to report a violation of any work rule, law,  
 or regulation. The Arbitrator finds no just  
 cause to sustain a violation of R. 25.  
 G. attempted a report at 10:15 pm, but  
 the hurried change prevented him  
 from stating his story to St Stewart. He  
 made a report at 12:10 am, ~~with~~

~~his report at that time he was not~~  
~~directed to fall out~~ <sup>resulting out to Stewart at 10:15 pm,</sup>  
 His promptness in <sup>with the intention of</sup> self-reporting a rule violation  
 results in a finding that R. 25 was violated  
 on 2-24-78.

The Arbitrator finds evidence to support  
 the <sup>alleged</sup> violation of R. 30A. The Arbitrator  
 believes it is more likely than not that the  
 beer bottle was empty. As such, the  
 rule was violated in that G. "conveyed"  
 an alcoholic beverage into a state facility  
 at least to the entry point of ACCI.

The Arbitrator believes the emergency was neglectful + inadvertent, and notes also the self report. However, the disciplinary guide states that the penalty for violation of the rule ~~was~~ is removal. Management has already exercised its discretion by modifying the discipline to a 5 day fine. It is ~~assumed~~

assumed that G's self report is a ~~key~~ reason for the modification <sup>his relatively dear D.F.</sup> and the further fact that she been <sup>N</sup> dr note I inside the institution. The Arbitrator

also ~~finds~~ <sup>finds</sup> that but for the self report, no discipline at all would have been meted out to G. ~~There seems~~

~~not~~ <sup>different</sup> ~~just~~ <sup>the</sup> ~~cause~~ <sup>for</sup> ~~the~~ <sup>the</sup> ~~BO5~~ <sup>BO5</sup> ~~discipline~~ <sup>violation</sup>.  
G's own ~~violation~~ <sup>violation</sup> was ~~never~~ <sup>never</sup> out of G's own ~~hands~~ <sup>hands</sup>. But the rule was well known <sup>likely</sup> + consequences of its violation ~~was~~ <sup>is</sup> likewise well known. Under all facts + circumstances of this

notes also the self report. However, the disciplinary guide states that the penalty for violation of the rule ~~was~~ is removal. Management has already exercised its discretion by modifying the discipline to a 5 day fine. It is ~~assumed~~ assumed that G's self report is a <sup>his relatively dear P.R.</sup> reason for the modification and the further fact that she been <sup>N</sup> in the custody. The Arbitrator

also ~~finds~~ finds that but for the self report, no discipline at all would have been noted out to G. ~~There is~~

~~no~~ ~~just~~ ~~cause~~ for the ~~BOB~~ discipline violation. ~~different~~ ~~rule~~ ~~BOB~~ violation was ~~never~~ out of G's own mouth. But the rule was well known & <sup>likely</sup> consequences of its violation ~~was~~ <sup>is</sup> likewise well known. Under all facts & circumstances of this case, the Arbitrator is unable to conclude that a

- no discipline is warranted. As it is the practice of ACCI to allow employees to remove controls prior to entry, as ~~is~~ ~~with~~ ~~the~~ ~~process~~, and there was no ~~proper~~ violation of R 25, the Arbitrator finds a 3 day fine serves the purpose of punishing the union that he must follow the strict guidelines of R 30A & be more vigilant, as ~~to~~ ~~the~~ ~~rule~~

- AWARD - ~~is~~ ~~that~~ ~~the~~ ~~grievance~~ ~~is~~ ~~sustained~~ in part - a 3 day fine is imposed for the R 30A violation.