

#1474

**David M. Pincus  
Arbitrator  
4026 Ellendale Road  
Moreland Hills, Ohio 44022**

February 23, 2001

Mr. Mike Duco  
Manager of Dispute Resolution  
Office of Collective Bargaining  
106 N. High Street  
Columbus, Ohio 43215-3019

-and-

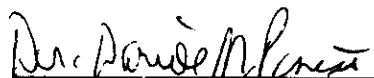
Ms. Lisa Hetrick  
State Organizer  
District 1199, SEIU, AFL-CIO  
1395 Dublin Road  
Columbus, Ohio 43215

Re: The State of Ohio, Ohio Department of Rehabilitation and Correction, and  
District 1199/SEIU, AFL-CIO  
Grievant: Ron Willingham (Removal)  
Grievance No.: 28-02(990813)-076-02-12

Dear Lisa and Mike:

Enclosed please find the Opinion and Award dealing with the above-captioned matter. I have also enclosed an Arbitrator's Invoice for services rendered.

Sincerely,

  
\_\_\_\_\_  
Dr. David M. Pincus  
Arbitrator

**OHIO DEPARTMENT OF REHABILITATION AND CORRECTION  
VOLUNTARY LABOR ARBITRATION PROCEEDING**

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**In The Matter of Arbitration Between:**

**OHIO DEPARTMENT OF REHABILITATION AND CORRECTION,  
EMPLOYER,**

**and**

**DISTRICT 1199/SEIU, AFL-CIO,  
UNION.**

**GRIEVANT:               RON WILLINGHAM (REMOVAL)  
GRIEVANCE NO.:       28-02 (990813)-076-02-12**

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**Arbitrator's Opinion and Award  
Arbitrator: Dr. David M. Pincus  
Date: February 23, 2001**

**Appearances**

**For the Employer  
Theresa Pomerleau  
  
Don Kinkilla**

**Position  
Parole Services Supervisor  
Cincinnati District Office  
Chief of Adult Parole Authority**

**For the Union  
Ronald Willingham  
Matt Mahoney**

**Grievant  
Union Advocate**

## **I. Introduction**

This is a proceeding under the grievance procedure of the agreement between the State of Ohio, Ohio Department of Rehabilitation and Correction, (the Employer) and the Service Employees International Union/ District 1199, the Health Care and Social Service Union, AFL-CIO (the Union). The parties had selected Dr. David M. Pincus as the arbitrator. At the hearing, the parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses, and to cross-examine witnesses

## **II. Stipulated Issue**

Was the grievant removed for just cause? If not, what should the remedy be?

## **III. Stipulated Facts**

1. Grievant was hired in the Ohio Adult Parole Authority on 7-18-88.
2. Grievant was removed from employment on 8-4-99.
3. Grievant Prior Disciplinary History  
11-4-97; 3-day suspension:

Rule 38 - Actions that could compromise or impair the ability of the employee to effectively carry out his/her duties as a public employee

Rule 46b - Engaging in any other unauthorized personal or business relationship(s) with any current or former individual under the supervision of the Department or friends or family of same

6-7-99; 10-day suspension:

Rule 7 - Failure to follow post orders, administrative regulations, policies, procedures or directives

Rule 40 - Any act that would bring discredit to the employer

Rule 46b - Engaging in any other unauthorized personal or business relationship(s) with any current or former individual under the supervision of the Department or friends or family of same

#### **IV. Pertinent Provisions**

##### **Standards of Employee Conduct**

##### **Rule Violations and Penalties**

Steps in Progressive Discipline:

- |                |   |
|----------------|---|
| - OR           | - Oral Reprimand  |
| - WR           | - Written Reprimand   |
| - <i>FINES</i> | - <i>IN AN AMOUNT NOT TO EXCEED FIVE (5) DAYS PAY FOR ANY FORM OF DISCIPLINE UP TO A FIVE (5) DAY SUSPENSION; TO BE IMPLEMENTED ONLY AFTER APPROVAL FROM CENTRAL OFFICE LABOR RELATIONS AND OCB</i> |
| - 1-3          | - 1- to 3-day suspension  |
| - 3-5          | - 3- to 5-day suspension  |
| - 5-10         | - 5- to 10-day suspension   |
| - R            | - Removal   |

\* DENOTES RULE VIOLATION FOR ON OR OFF DUTY CONDUCT. OFF DUTY CONDUCT REQUIRES JOB NEXUS.

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Offenses					
1st	2nd	3rd	4th	5th	
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*46. Unauthorized relationships					
b. Engaging in any other unauthorized personal or business relationship(s) with any current or former individual under the supervision of the Department or friends or family of same					
	1-5/R	5-10/R	R		

#### **V. Case History**

The grievant, Ronald Willingham, was formerly employed as a Parole Officer 3 at the Cincinnati Regional Office of the Adult Parole Authority. He was terminated on August 4, 1999 for violation of DRC Standards of Employee Conduct, Rule Number 46b. That rule prohibits unauthorized personal or business relationships with any current or former individual under the grievant's supervision. The grievant had been an employee since July 18, 1988. He had a prior disciplinary record that included three day and ten day suspensions involving violations of Rule 46b.

In May, 1999, Theresa Pomerleau, Parole Services Supervisor, became aware of a 1998 incident in which the grievant allegedly engaged in an unauthorized relationship with parolee, Mr. John Pribble. Ms. Pomerleau had been informed by Kim Shad, a case manager at the Talbert House, Cornerstone Halfway House facility (Talbert House), that Mr. Pribble had performed repairs on the grievant's personal automobile.

Ms. Pomerleau interviewed Mr. Pribble on June 10, 1999. During his interview, Mr. Pribble indicated that during a routine visit to the Talbert house, the grievant asked him if he was a mechanic. Mr. Pribble told the grievant that he is a mechanic and the grievant then proceeded to describe a problem with his car smelling badly and leaking oil.

Mr. Pribble said he offered to take a look at the grievant's car, an older model Ford Granada. Mr. Pribble said he looked at the grievant's car and told the grievant that he needed a new valve cover gasket. The grievant also indicated that his car needed new front brake pads.

Mr. Pribble advised the grievant as to which parts would be needed to repair the grievant's car. The grievant asked Mr. Pribble how much he would charge to do the work. Mr. Pribble indicated he would do the job for twenty dollars. He said that the grievant came back to the Talbert house a few days later, on a cold Sunday afternoon, at which time Mr. Pribble replaced the valve cover gaskets and attempted to replace the front brake pads. Although Mr. Pribble did not complete both brake pads, the grievant paid him twenty dollars because he worked on the car on such a cold day.

Ms. Pomerleau interviewed the grievant on June 21, 1999. The grievant informed her that his brakes went out when he was driving his car near the Talbert house. He went to the Talbert house to make a phone call for help. While he was making phone calls from inside the Talbert house, Mr. Pribble overheard him and advised him that the grievant could repair the car himself.

The grievant then asked Mr. Pribble to examine his car. Mr. Pribble did so and advised the grievant what parts would be needed. The grievant returned to the Talbert house several days later with the parts. The grievant said that Mr. Pribble showed him how to replace the brake pads but

did not do the work. The grievant denied that Mr. Pribble helped him replace the valve cover gaskets. He admitted that he paid Mr. Pribble twenty dollars for his advice and support that day.

A predisciplinary hearing was held for the grievant at 10:00 a.m. on Thursday, July 22, 1999 at the A.P.A. Cincinnati Regional Office, 7710 Redding Road, Cincinnati, Ohio. The purpose of the predisciplinary hearing was to provide the grievant another opportunity to explain his conduct before any proposed discipline was imposed for a violation of work rule 46b.

During his predisciplinary hearing, the grievant said that his brakes gave out on his way to the Talbert house and that his car was stuck outside of the house. He indicated that Mr. Pribble, upon learning about the grievant's car, told him that the grievant could repair the car himself. He indicated that Mr. Pribble showed him how to put new brake pads on but did not help him put them on. He admitted giving Mr. Pribble twenty dollars for instructing him.

As a result of Ms. Pomerleau's investigation, including the grievant's predisciplinary hearing, the Employer concluded that the grievant engaged in financial dealings with a client under the supervision of the Department, in direct violation of Rule 46b. Especially compelling was the grievant's admission of having paid Mr. Pribble twenty dollars for either performing repairs on the grievant's car or for assisting him in doing so. This was the third time the grievant was being disciplined for unauthorized relationships in violation of Rule 46(b). The Employer therefore determined that just cause existed for the grievant's termination.

## **VI..The Merits of the Case**

### **The Employer's Position**

The grievant had been suspended twice for violation of Rule 46b. He admittedly gave twenty dollars to Mr. Pribble. Whether the twenty dollars to Mr. Pribble was for actually performing work on the grievant's car, or for advising the grievant as to how to do the work, the financial transaction established an unauthorized business relationship. Termination therefore was appropriate progressive discipline.

### **The Union's Position**

The grievant, an eleven year veteran of the APA, has been terminated for giving a person a tip for being a good samaritan. The rationale for the grievant's dismissal is based on the statement of a parolee, seven months after the incident, as well as the reluctant statement of a case worker during this same period of time. This is weak evidence that does not support an unauthorized business relationship.

In addition, the grievant's payment of twenty dollars to Mr. Pribble was no different than the Adult Parole Authority's purchase of lunch for parolees moving furniture and desks for that agency. Based on the context of this case, no business relationship existed that would have adversely compromised the Ohio Department of Rehabilitation and Correction.

## **VII. The Arbitrator's Opinion and Award**

From the evidence and testimony introduced at the hearing, and a complete and impartial review of the record, including pertinent contract provisions, the Employer's work rules, and the parties' submissions, it is this Arbitrator's opinion that the grievant was terminated for just cause.



This Arbitrator believes that the Employer met its burden to demonstrate that the grievant had engaged in an unauthorized business relationship with a current or former individual under his supervision in violation of work rule 46(b).

The grievant's prior disciplinary history for violations of work rule 46(b) is undisputed. On November 4, 1997, the grievant received a three day suspension for actions that could compromise or impair the ability of the grievant to effectively carry out his duties as a public employee and for engaging in unauthorized personal or business relationships with any individual under his supervision. He was given a ten day suspension on June 7, 1999 for his failure to follow post orders and administrative regulations, for engaging in conduct bringing discredit to the Employer, and for once again engaging in an unauthorized personal business relationship with an individual under his supervision. Hence, given this prior history of offenses, in accordance with the Employer's standards of employee conduct under Rule 46(b), the grievant was at the removal stage for his third offense.

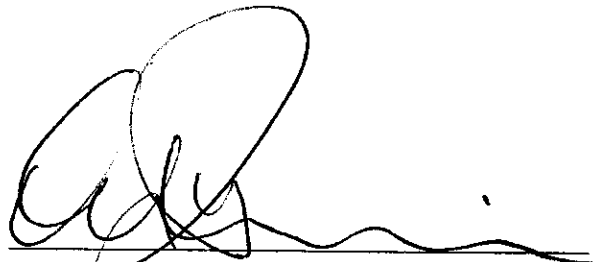
Here, the grievant admittedly gave Mr. Pribble, an individual under his supervision, twenty dollars for either performing work on the grievant's car or for instructing the grievant on how to do the work. The grievant argues that it was for instruction instead of work performed. But in either instance, in this Arbitrator's view, the twenty dollars was exchanged for service or for advice. This exchange therefore created a business relationship between the grievant and Mr. Pribble that is in direct violation of Rule 46(b). Given the grievant's prior disciplinary record, termination is appropriate progressive discipline.

Neither can the Union finesse the grievant's conduct by alleging it was based on distant facts and recollections. The lapse of time prior to the grievant's termination was not based on the Employer's delay in investigating known facts. Upon learning of the grievant's transgression, the Employer investigated the incident immediately. All of the evidence gathered by the Employer appeared to be consistent recollections of the incident in question. Indeed, the grievant's admission of paying Mr. Pribble twenty dollars moots any allegation of stale corroborating evidence.<sup>1</sup> Due process because of the time lapse was not compromised here.

#### **VIII. The Award**

The grievance is denied. The grievant's termination is sustained.

February 23, 2001  
Moreland Hills, Ohio



Dr. David M. Pincus

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<sup>1</sup>In any event, the parties stipulated on the record that no procedural arbitrability issues existed here.