

#1612

VOLUNTARY EXPEDITED LABOR ARBITRATION TRIBUNAL

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In the Matter of Arbitration

Between

OHIO CIVIL SERVICE

EMPLOYEES ASSOCIATION

LOCAL 11, AFSCME, AFL/CIO

and

OHIO DEPARTMENT OF MENTAL

RETARDATION &

DEVELOPMENTAL DISABILITIES

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OPINION AND AWARD

Anna DuVal Smith, Arbitrator

Case No. 24-14-100401-2339-01-04

Aaron Jenkins, Grievant

Suspension

APPEARANCES

For the Ohio Civil Service Employees Association/AFSCME Local 11/AFL-CIO:

Dennis A. Falcione, Staff Representative

Ohio Civil Service Employees Association/AFSCME Local 11/AFL-CIO

For the Ohio Department of Mental Retardation & Developmental Disabilities:

Jeffrey V. Wilson, Labor Relations Coordinator

Ohio Department of Mental Retardation & Developmental Disabilities

Neni Valentine, Labor Relations Specialist

Ohio Office of Collective Bargaining

## I. HEARING

A hearing on this matter was held at 1:40 p.m. on October 8, 2002, at the Northcoast Behavioral Healthcare System's Northfield Campus in Northfield, Ohio, before Anna DuVal Smith, Arbitrator, who was mutually selected by the parties, pursuant to their collective bargaining agreement. The case was submitted under the expedited procedure of the Agreement but the parties mutually agreed to waive that procedures' limitation on number of witnesses. The parties were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn or affirmed and excluded, and to argue their respective positions. No transcript was made. Testifying for the Ohio Department of Mental Retardation & Developmental Disabilities (the "State") were Eucharia Eweroke, Vedia Satchel, Duane Todd and Mike Griffin. Testifying for the Ohio Civil Service Employees Association/AFSCME Local 11/AFL-CIO (the "Union") were Patricia McKissick, Robin Scott, Willie Haymon and the Grievant, Aaron Jenkins. Joint Exhibits 1-30 were entered into evidence. The oral hearing was concluded at 6:50 p.m. following oral summations on October 8, 2002, whereupon the record was closed. This Opinion and Award is based solely on the record as described herein.

## II. BACKGROUND

The Grievant has been employed by the Ohio Department of Mental Retardation and Developmental Disabilities at its Warrensville Development Center ("WDC") since March 6, 1995 and has been a Therapeutic Program Worker ("TPW") since 1998. He has two active disciplines on his record, both for AWOL/Failure to Follow Policy: a two-day suspension on August 16, 2000 and an oral reprimand on April 27, 2001. On May 23, 2001, a co-worker, TPW Eucharia Eweroke, filed a sexual harrassment complaint against him with the WDC's EEO officer, Mike Griffin. At the conclusion of his investigation, Griffin wrote a report stating he found it probable that some of the Grievant's interactions with his accuser were inappropriate. A pre-disciplinary meeting was convened on July 30, 2001, the result of which was a finding of just

*Was the suspension order untimely?*

As ruled from the bench, the suspension order was not untimely because the Agreement calls for a "final decision on the recommended disciplinary action," not service on the employee, within forty-five days of the pre-disciplinary meeting. Although the director's signature was not dated, the date the order was faxed is indicative that the decision was made and signature affixed on or before September 13, thus meeting the 45-day requirement.

*Was the investigation fair and objective?*

Neither a lack of witness statements about alleged events to which there were no witnesses, nor witness statements unauthenticated by the alleged interviewees, nor the investigator's summary supporting his conclusions harmed the Grievant because no evidence was irretrievably lost or tainted and the Grievant had a full hearing *de novo* from the Arbitrator, who reviewed and evaluated all evidence admitted into the record, giving each the weight it was due. Nothing done or not done by the investigator is sufficient to modify or vacate the disciplinary action, but some of the statements he collected cannot be and are not relied on because they are hearsay or were repudiated by the interviewee.

*Was there substantial evidence of guilt?*

No. The case boils down to the testimony of one person against another. To be sure, there are reasons to find one witness more credible than the other. Two supervisors, for instance, corroborate the complainant's demeanor and the Grievant's behavior at the charge office. However, no witness testified that they saw any improper behavior or interactions consistent with what the complainant reported, or supported her story of past affronts in any way. Nor did the complainant make a record of them at the time they allegedly occurred. The steward's testimony was simply unhelpful. She even admitted in her handwritten notes that her memory may have been affected by family problems occurring at the time. In any event, a high degree of proof is necessary to sustain a charge such as this and the evidence presented does not rise to that level.

IV. AWARD

The five-day suspension was not for just cause. The grievance is granted.

Cuyahoga County, Ohio  
October 17, 2002



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Anna DuVal Smith, Ph.D.  
Arbitrator