

NTA

#1655

BENCH DECISION AND AWARD

ARBITRATOR: S. FURMAN

HEARING DATE: 5-13-03

GRIEVANT: BRANDON L. TAYLOR

GRIEVANCE #: 27-03-20020904-1110-01-03

DEPARTMENT: DRC

UNION: OCSEA

MANAGEMENT ADVOCATE: B. RAHR

UNION ADVOCATE: D. JUSTICE

WAS GRIEVANT ISSUED A (2) DAY FINE FOR JUST CAUSE? IF NOT, WHAT SHALL THE REMEDY BE?

AWARD

G. was charged with violation of ORC R. 7 & 44.

The Arbitrator heard no evidence supporting a R 7 violation and the charge is therefore inappropriate & s/b stricken from the notice of discipline.

The R 44 charge concerns ^{alleged} events occurring on 6-6-02. G. came to assist w/ inmate count on E-2.

In the process of counting, G. used curse words and threatening language towards one or more inmates.

~~At the time of the hearing on 6-6-02, G. was~~

ISSUED AT: Chillicothe Oh

DATE: 5-13-03

ARBITRATOR'S SIGNATURE:

S. Furman

→ The AAB notes that G. had very recently received special incentive pay for communication skills although interpersonal details were not

OVER

in accordance

The language was more colorful and meaning than shop talk; the threatening language was unambiguous.

G. did deny using curse words; he either did remember if he cursed or denied that he ever used the words "m-f". It was ^{implicit} ~~conceded~~ that if the m-f language was in fact used ^{by the Union}, it goes beyond shop talk. G. claimed that if he cursed, Bennington was not in a position to hear it.

~~This case turns on a credibility determination, and the AAB is applying the preponderance of evidence standard for BOP.~~
The case turns on a credibility determination. Sgt Bennington's testimony was detailed and unambiguous. He refused to provide an answer to a question ~~that~~ ^{for which} he had no 1st hand knowledge.

His reasons for delay in preparing the U.I. ^{report} were logical and reasonable: he did not want to compromise a co-worker. Yet the G's action was of such immediate concern to Bennington that he called in a superior officer - Byce - to investigate ^{the night} ~~the next~~ day.

There is no evidence of bad or illegal animus between Bennington & G. ^{that is a consequence of Bennington's report to the AAB for his reasoning.} Bennington was not threatened w/ consequences if he didn't do the write up, ~~and~~ his report was not the product of coercion. He was reluctant to get involved, but felt that G had crossed the line in his conduct. The fact that no inmate statements were presented is non-determinative. Bennington's testimony was sufficient to meet the State's BOP; Bennington was an eye & ear witness to the ~~complaint~~ charged conduct. The ARBITRATOR finds that the State had just cause to discipline G for the events of 6-6-02 for violation of R 44. Grievance denied.