

OCB Award Number: 0477

OCSEA Award Number: 0284

#-1777

TEXT OF THE OPINION:

**Arbitration Proceedings
Before
Linda DiLeone Klein**

In The Matter of Arbitration

between

**State of Ohio
Department of Rehabilitation
and Correction**

and

**Ohio Civil Service Employees
Association, Local 11
AFSCME, AFL-CIO**

Grievance No.:

27-19-90-02-210131-01-03

Grievance of:

Victoria Greene

Heard:

July 13, 1990

APPEARANCES

For the Employer:

Thomas E. Durkee

For the Union:

Patrick Mayer

ISSUE

"Was the grievant discharged for just cause? If not, what shall the remedy be?"

OPINION

The grievant was hired on March 17, 1986 as a Correction Officer 2 at the Ohio Reformatory for Women. Her employment was terminated effective February 7, 1990 based upon the following violations of the Standards of Employee Conduct: 1) willful disobedience of a direct order of a supervisor; 2) unauthorized absence including habitual absenteeism, pattern abuse, tardiness and early departure; and 3) excessive absenteeism.

The grievant's record includes nine elements of prior discipline: 1) a written warning dated September 3, 1986 for failure to comply with post orders and unauthorized absence; 2) a written warning dated September 18, 1986 for failure to work specific hours or shifts when required to do so; 3) a one day suspension dated November 17, 1986 (served November 21, 1986) for failure to work specific hours or shifts when required to do so; 4) a three day suspension dated June 10, 1987, (served beginning June 23, 1987) for failure to work specific hours or shifts when required to do so; 5) a verbal warning on September 21, 1988 for unauthorized absence; 6) a verbal warning on November 9, 1988 for attendance related infractions; 7) a two day suspension dated March 24, 1989 (served starting April 13, 1989) for attendance related infractions; 8) a ten day suspension dated May 16, 1989 (served starting June 3, 1989) for absenteeism (see Case 27-19-89-06-13-0048-01-03); and 9) a fifteen day suspension dated October 6, 1989 (served commencing October 26, 1989) for attendance related infractions.

In addition, in March 1988, the grievant was advised that her sick leave balance was low, and she was told that she could speak to her supervisor about any extenuating or mitigating circumstances concerning her need for such leave. In July 1989, the grievant was again advised of her low sick leave balance and she was offered the opportunity to discuss the matter with a labor relations officer or an agency designee. On August 1, 1989, the Warden was informed that the grievant had "no leave balances"; the grievant was subsequently notified that she was being scheduled to meet with the Warden and a labor relations officer to discuss any extenuating circumstances regarding her sick leave.

After Management considered the grievant's history of sick leave usage, the determination was made to require her to provide a physician's verification for all future absences due to illness and injury. The grievant received notification of this requirement on August 30, 1989.

The incident which precipitated the removal action occurred on December 1, 1989. The grievant called in to advise the Employer that she was ill and unable to work that day; the grievant had stomach cramps and diarrhea, and she stayed home because she felt that she would not be able to satisfactorily perform her duties. The Union contends that although she was truly incapacitated, she nevertheless did not need to be under the care of a physician. Because she did not see a doctor, she was unable to present a medical statement upon her return to work, as required.

When the grievant returned to duty, she completed the appropriate "Request for Leave" form and she asked to use vacation time to cover the absence because she had no sick leave available. The grievant's request was denied for the reason that she had previously been required to document all absences due to illness and she had failed to do so in this instance. Shortly thereafter, an incident report was written, and then a pre-disciplinary meeting was held to discuss the matter. A review of the grievant's record was conducted by the Warden and he ultimately forwarded his recommendation for removal to the Director of the Department of Rehabilitation and Correction. On January 11, 1990, the determination was made to discharge the grievant effective February 7, 1990.

On February 13, 1990, the instant grievance was initiated to protest Management's action.

The Union contends that the State did not have just cause to terminate the grievant's employment. Although the grievant has been disciplined in the past for attendance deficiencies, the Union asserts that she has shown significant improvement subsequent to the issuance of the fifteen day suspension; in fact, the absence of December 1, 1989 was the first absence since said discipline was imposed. It was unfair to remove her on the basis of this single incident, says the Union.

On December 1, the grievant properly reported her absence, and upon her return to work, she initiated a "request for leave". Under the terms of Article 29.02, she could have been permitted to use vacation time, personal leave or leave without pay since she had a zero sick leave balance; accordingly, the Union asserts that Management abused its discretionary authority by not permitting the absence to be charged to another type of leave.

Under the circumstances of this case, discharge was unduly harsh and punitive, states the Union. The grievant was truly unavailable for work, yet her illness did not require medical treatment; consequently, she was unable to provide substantiation for her absence. It was unreasonable to demand a physician's statement from an employee who was not ill enough to seek medical attention, adds the Union. In

flexible policies such as the one involved here can hardly be deemed just or fair; the rule requiring medical certification is too rigid for this situation. Even though Management had previously been willing to discuss mitigating circumstances for her absences, the Union maintains that the grievant was never told the conditions under which she might be relieved of her responsibility to provide documentation.

The Union contends that removal was not warranted under the circumstances of the absence of December 1, 1989. The Union asks the Arbitrator to grant the grievance and reinstate the grievant to her position as a Correction Officer 2.

After evaluating the evidence and after considering the issues raised by the Union on behalf of the grievant, the Arbitrator finds that there was just cause for the action taken by Management.

A review of the grievant's 3 1/2 year employment record shows a pattern of excessive absenteeism, especially on days surrounding her regular days off. A review of the grievant's discipline record shows two verbal warnings and three suspensions for similar attendance related offenses. In addition, she was notified by Management when her sick leave balance fell below 16 hours and when it was "zero". She was given every opportunity to discuss any extenuating circumstances which might have

necessitated the use of sick leave. Furthermore, she was put on notice that all future absences due to illness had to be verified and documented by a physician. Pursuant to policy, the grievant could have absences recorded as leave without pay if "ample justification" were provided. The evidence establishes that the grievant was fully aware of work rules and policies relative to attendance; she was also fully apprised of the consequences of any continued unauthorized absenteeism.

Despite having knowledge of the requirement to, verify her absence, the grievant failed to obtain any documentation to substantiate her illness on December 1, 1989. The failure to provide a medical statement constitutes "willful disobedience of a direct order". Her absence was, therefore, unauthorized and it reflects a continuation of her pattern of "habitual excessive absenteeism".

While it may be true that this absence was the first since the issuance of the 15 day suspension, the fact remains that an attendance record is cumulative, and the absence was another incident in the grievant's long history of sick leave abuse. By the time the grievant had received a 15 day suspension, it should have been clear to her that Management expected strict compliance with procedure. Even if she did not need medical attention, she was nevertheless obligated to see her doctor for the purpose of verifying that she was not capable of working. Her failure to produce the required document shows her complete disregard for work-related responsibilities. Based upon the grievant's past record and the unauthorized, undocumented absence on December 1, 1989, removal was warranted. Management was not obligated to permit the absence to be charged to another type of leave since she was required to provide medical documentation to substantiate her illness.

The Employer has the right to expect its employees to report with reasonable regularity and acceptable frequency. The grievant failed in this regard. Accordingly, her removal was justified.

AWARD

The grievance is denied.

LINDA DILEONE KLEIN

Dated this 10th day of August, 1990
Cleveland, Ohio