**OCB AWARD NUMBER: 2104**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2104** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **34-17-20100326-0016-01-09** |
| **DEPARTMENT:** | BWC |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Mitchell B. Goldberg |
| **GRIEVANT NAME:** | Ingrid Jonas-Perry  |
| **MANAGEMENT ADVOCATE:** | Rhonda Morris |
| **2ND CHAIR:** | Ryan Sarni |
| **UNION ADVOCATE:** | James Hauenstein |
| **ARBITRATION DATE:** | October 12, 2010 |
| **DECISION DATE:** | October 30, 2010 |
| **DECISION:** | Modified |
| **CONTRACT SECTIONS:** | Article 24—Discipline  |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.6364—Absence-Emergencies; 118.6367—Tardiness  |
|  |  |

**HOLDING: Grievance MODIFIED. The Grievant was removed for failing to provide proper Physician Verification for numerous absences. The Arbitrator found the PV requirement excessive under these facts and that the punishment was not commensurate with the offense. The discipline was reduced to a one day suspension.**

The Grievant was employed as a W.C. Claims Assistant at the BWC Lima Service Office. The Grievant’s discipline record at the time of her removal consisted of a verbal reprimand, a one (1) day working suspension with pay and a ten (10) day suspension without pay on May 13, 2008. The Grievant also carried less than 20 hours of sick leave and the Grievant’s supervisor placed her on Physician’s Verification (PV) on December 22, 2009.

The Grievant was ill, and did not report for work on January 5, 2010. The Grievant submitted a Certificate to Return to Work signed by her treating physician on the same date and the Employer accepted it. The Grievant was also ill on January 7, 2010, and left early and missed work on January 8, 2010. The Grievant submitted another Certificate, similar to the January 5 one; which stated that the Grievant was under her physician’s care on the January 7 and 8, and would be able to return on January 11, 2010.

The issues to be resolved were whether the Grievant violated the PV language in the CBA and/or policy; if there were mitigating or extenuating circumstances that would excuse a violation; and whether the Grievant’s tardiness on January 7, 2010, justified her removal.

The Employer arguedthat the Grievant violated the PV for her absences on January 7 and 8. It also argued that the Grievant’s PV from Dr. Waldron dated January 11 was deficient because it did not indicate the Grievant had been examined by Dr. Waldron on either January 7 or 9. The January 11 statement was insufficient for the 7 and 8 dates.

The Union provided another statement from Dr. Waldron dated February 20, 2010 that stated the Grievant visited her on January 5, 2010, but Dr. Waldron could not see the Grievant. She referred the Grievant to Dr. Ellis. The Grievant called Dr. Waldron again on January 8, 2010, and informed her to see Dr. Ellis for treatment.

The Arbitrator foundthat the evidence presented did not support a finding under any recognizable arbitral standard of proof that the Grievant’s absences on January 7 and 8 should have been considered as being unexcused. Requiring a PV employee to visit a doctor or emergency care center to prove what was already known and apparent to management was a superfluous, unreasonable and unnecessary requirement under these facts. The Grievant’s tardiness was unexcused. The Grievant did not have an unexcused absence for January 7 or 8, and it could not be found that discharging her for the January 7 tardiness was a reasonable penalty commensurate with her offense. Corrective and progressive discipline should focus on her attendance performance, not her insubordination charge. The discharge was vacated and removed from the Grievant’s personnel records and the Grievant is to be reinstated to her former position, but receive a 1-day suspension without pay for her tardiness on January 7, 2010