

2189

IN THE MATTER OF ARBITRATION

BETWEEN

**STATE OF OHIO
DEPARTMENT OF REHABILITATION & CORRECTION
TOLEDO CORRECTIONAL INSTITUTION**

AND

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
LOCAL 11
AFSCME. AFL-CIO**

Arbitration Dates: December 13, 2012

Grievant Shawna Giddens: # 27-35-20120515-0140-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Don Overstreet
Ohio Dept. Of Rehabilitation & Correction
770 West Broad Street
Columbus, Ohio 43222

Advocate for the Union:

Jim Hauenstein
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082

I. HEARING

The hearing was held at the Toledo Correctional Institution on December 13, 2012. The hearing commenced at 10:15 A.M. The joint issue before the arbitrator is "Was the Grievant, Shawna Giddens, removed from her position of Correction Officer for Just Cause? If not, what shall the remedy be?"

Testifying for the Toledo Correctional Institution ("the Employer") was Warden Edward Sheldon. Testifying for the Ohio Civil Service Employee's Association, Local 11 AFSCME ("the Union") were Augustus Randy Deeble, Chapter President and Shawna Giddens, the Grievant.

II. STATEMENT OF THE CASE

On March 8, 2012 an incident occurred at the Employer's facility which resulted in the Grievant Shawna Giddens being charged with "Falsifying, altering or removing any document or record." The Grievant was specifically removed for violations of the Standards of Employee Conduct Rule 22. The Grievant's effective removal date was May 15, 2012. The Union timely filed a grievance and the Case is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Employer's witness was Edward Sheldon. Mr. Sheldon is the Warden at Toledo Correctional Institution. He has been Warden for thirteen (13) months. Prior to becoming Warden at Toledo Correctional Institution he was Warden at North Central for three and a half (3 ½) years. Mr. Sheldon has also served as Deputy Warden for Operations at Mansfield and

Lorain. He was Administrative Assistant to the Warden at Lorain and has been a Case Manager and a Corrections Officer. Mr. Sheldon has twenty-four (24) years with the Department of Rehabilitation and Correction.

Mr. Sheldon testified that Housing Unit Log Books exist so the Institution can document activities, counts, incidents and related matters. The Corrections Officers are to be accurate and timely.

Mr. Sheldon was referred to Pre-Disciplinary Exhibit Page 14 and said it was the B 314 North Log Book. Mr. Sheldon was then referred to Pre-Disciplinary Exhibit Page 15 and testified it showed the Grievant on Duty at 0600. It also showed the equipment Grievant got.

Mr. Sheldon then testified that the Log Book had the following entries 0605 Security Check, 0611 Passed out passes, 0609 Count, 0629 Tested Alarm, 0631 Signal 20, 0630 Security Check, 0650 Released early chow, 0730 Security check, 0755 Security check, 0815 Security check, 0835 Security check.

Mr. Sheldon signed in at 7:40 A.M. and saw security checks written in Advance. He testified he checked the time on his blackberry. Mr. Sheldon testified that he pointed this out to the Grievant and said the Log Book looked falsified. Mr. Sheldon testified he can't remember what the Grievant said.

Mr. Sheldon testified that the first shift starts at 0600 and that's when the Grievant logged in. Mr. Sheldon said the Grievant shows seven (7) rounds in an hour and forty (40) minutes. The Log Book shows three (3) rounds after 7:40 A.M.

Mr. Sheldon was referred to Pre-Disciplinary Exhibit Page 1, and identified it as the

Investigatory Interview with the Grievant and that she signed it on Page 2.

Mr. Sheldon then read the Question and Answer to Question 6. Question " Were you in charge of keeping an accurate Log Book ?" Answer "Yes".

Mr. Sheldon then read the Question and Answer to Question 8. Question "Did you tell him what time it was so he could log onto the Log Book?" Answer "My last entry stated approx 0835 and I looked at my watch and I said 0830 and he said are you sure? I then double checked my watch again and noticed that the Warden was correct with the time that he logged into the log book. I had looked at my watch and showed him my watch that shows 12, 3, 6, and 9. Which is why there was a discrepancy with the times and I pointed that out to the Warden right away. There is no clock in the day room. I stayed in my pod so I had no other time to go by other than my watch. I did not purposely post time in my log book for the time in question and no further incidents did happen during the time in question. This was an oversight error. All rounds were made staggered times with in the time frame. The pod was secured".

Mr. Sheldon then read the Question and Answer to Question nine (9). Question "After the Warden's entry of 0740 your next entry was 0859, why did you not start making correct time entries in the log once you knew your times were ahead by 55 minutes ?" Answer "Because they were already logged into the log book considering it is a legal document I was not going to deface my entries. Per To CI policy nothing is to be scratched out in the log book."

Mr. Sheldon then testified that Log Books are legal documents. Lots of liabilities are attached to Log Books. It is very important that times are accurate.

Mr. Sheldon then read Pre-Disciplinary Exhibit Page 18 and said it is the Post Orders for

the Unit. These Orders create the Standard Operating Procedure. This Order applies to all including the Grievant.

He then read Pre-Disciplinary Exhibit Page 19 #3 and testified that Log Books are to be secured at all times. Mr. Sheldon testified these Orders were current March 9, 2012 and not the Orders on March 8. The Union agreed that these Orders could be used. The Union then stipulated that the Grievant was on Post. Mr. Sheldon testified that the employees sign they have read Post Orders.

Mr. Sheldon testified that he makes rounds at least weekly. He testified he checks for security and talks to Inmates. It is DR&C Policy to do this and it is also good practice.

Mr. Sheldon then read the Notice of Discipline Exhibit and testified the Grievant was removed for a violation of Rule 22. The Grievant was charged because the Log Book showed rounds 55 minutes in advance.

Mr. Sheldon read SOEC Exhibit which is the Discipline Grid at Page 37. He testified that Rule 22's penalties are 1st Offense WR, 1 day or R, 2nd offense 2 day or R, 3rd 5 day or R, 4th R.

He testified that the Grievant had a 2 day working suspension and a 5 day reduced to a 2 day.

Mr. Sheldon reviewed the Stipulations and testified that the 5 day reduced to a 2 day concerned the Grievant covering the Control Room Cameras. The 2 day concerned excessive force.

Mr. Sheldon reviewed the Grievant's statement in the Investigatory Interview Packet. He testified the Grievant said she misread her watch. Mr. Sheldon said the Grievant was only on

duty one (1) hour and forty (40) minutes and he can't believe she lost track of time that soon. He said she couldn't do that many rounds and that he sees a pattern of deception.

Mr. Sheldon says the nature of the prison has changed and it is now a high security institution. The Inmates now are dangerous. There is now big liability. Mr. Sheldon testified he doesn't think the Grievant is suitable. Mr. Sheldon said at the time of the incident he had been Warden here for three (3) months. He testified that this is the 3rd Discipline on the Grievant.

Mr. Sheldon reviewed Pre-Disciplinary Exhibit Page 16 and said that after he signed in one (1) hour and nineteen (19) minutes elapsed before the Grievant made the next security check at 8:59.

On Cross-Examination Mr. Sheldon testified he did not stay in the Unit to watch the Grievant. He told the Captain to look at the Log Book. Mr. Sheldon said he reviews incident reports every morning. He doesn't remember if there is a clock in the Unit. He also said he doesn't know what the Grievant was doing. Mr. Sheldon said the Grievant talked to him and he signed in.

Mr. Sheldon read Pre-Disciplinary Exhibit Page 16 and testified there was no notation in Log Book of problem except he put correct time. He made a mental note of problem and told the Captain.

Mr. Sheldon then read the Disciplinary Packet Page 15, 2200 CO Streeter off Duty. No 3rd shift officers in block. The Grievant is in North Block. He reads SOEC Exhibit Page 40 Rule 38. Threat to Security 1st 2 day to R, 2nd 5 day or R, 3rd R. He signed off on this discipline. This is one of the incidents the testified to Rule 36, 1st Written Reprimand 1 day or R. 2nd 2 day

or R, 3rd 5 day to R, 4th R. Mr. Sheldon testified that the Discipline track in Rule 36 is not less severe than Rule 38. He said he did not deviate from the Grid. The Control Room is a secured area.

On Re-Direct Examination, Mr. Sheldon testified he talked to the Grievant about inconsistencies in the Log. He says he signs in the Log Books when he sees deficiencies. Mr. Sheldon said he called the Captain to review the Log. Book.

Mr. Sheldon was asked about the 5 day being reduced to a 2 day and testified he still would have removed her. The entire body of Grievant's Discipline justifies this.

Mr. Sheldon read Pre Disciplinary Exhibit Page 17 Rule 22, 1st offense can be Removal, 2nd offense R, 3rd R.

On Re-Cross Examination Mr. Sheldon testified that the Date of Incident was March 8, 2012. He was asked if Grievant got her 5 day suspension Notice before and replied he didn't recall.

Mr. Sheldon then read the stipulations and testified the charge was reduced April 13, 2012. February 29, 2012 Grievant gets Notice of 1st day suspension. She got Discipline after March 8.

Mr. Sheldon was referred to Page 94 of the Collective Bargaining Agreement Article 24.01, Just Cause, and Article 24.02, Progressive Discipline Standard.

Mr. Sheldon was asked "If the Employee did not have the 5 day prior to Removal, how was it Progressive?" He responded "See Dates".

On Re-Direct Examination Mr. Sheldon read Pre-Discipline Exhibit Page 15 and said the

Grievant signed in of 1st Shift at 0600 and he signed in at 7:40 A.M.

IV. UNION'S CASE

The Union's first witness was Augustus Randy Deeble, the Chapter President. Mr. Deeble became a Steward in 1994. In 2001 he was Chapter President in Marion and has been Chapter President here almost three (3) years.

Mr. Deeble was shown Exhibit Union 2 Page 1 which is an E-mail to him from the Union Vice President Dawn Schaber. Ms. Schaber was investigating Disparate Treatment. The E-mail says CO Garrett made no entries in the Log Book for 7.5 hours. The Lieutenant called CO Garrett to come in and fix it.

Mr. Deeble then read Exhibit Union 2 Page 2 which is an incident report by CO Krukowski. The report says "On the above date and time [July 25, 2012, 2:10 P.M.] I officer Krukowski relieved the officer who was keeping the south/west logbook. When I went to sign in the last entry was at 6:10 A.M. I relieved this officer at 2:10 P.M."

Mr. Deeble then read Exhibit Union 2 Page 3 and testified it showed CO Garret comes in to fix log book. Major Parker to handle per Warden.

Mr. Deeble then was referred to Exhibit Union 2 Pages 4 & 5. This is the Employee Visitor Log Book. CO Garrett came in off duty to fix log book. Mr. Deeble then read the Discipline Log which shows CO Garrett received a two (2) day working suspension.

Mr. Deeble then read Exhibit Union 2 Page 7 and said it was the Segregation Log Book for 6/16/12 to 8/5/12. On Page 8 the last entry is 0609 Garrett area counted Security Check. He

then read Exhibit Union 2 Page 9 which shows the Log Book defaced by Garrett. He testified you are not supposed to do this. Mr. Deeble testified the Log Book shows twenty-five (25) late entries by Garrett. He said Garrett got no discipline for this.

Mr. Deeble testified that Garrett has a two (2) day active suspension for lying and a history of deception.

Mr. Deeble then read Exhibit Union 5 which shows overtime paid. He said there was a lot of mandated overtime. The Exhibit shows shift differential as well. He said the Exhibit shows about forty (40) percent of time was overtime.

On Cross-Examination Mr. Deeble was referred to Exhibit Union 2 Page 30 which is Garrett's Incident Report. He testified it said Garrett calls in and then comes in to fix the log book. Mr. Deeble then read Exhibit Union 2 Page 9 six (6) lines down and said it showed a late entry with a line to the bottom of the page. Garrett tells management about log book problem.

Mr. Deeble testified that Garrett did not complete log book in advance and there was no cover up. He looked at Garrett's Incident Report and said the Log was incorrect.

Mr. Deeble was then referred to Exhibit Union 2 Page 6 and said it shows CO Garrett with a five (5) day suspension for tardiness not performance. He then read Exhibit SOEC Page 33 which is the Absentee Track 2 (a) Failure to Report.

Mr. Deeble then read Exhibit Union 2 Page 6 which shows CO Garrett with a five (5) day suspension for Rule 24. Mr. Deeble read Exhibit SEOC Page 36 which shows Performance Track and then Page 27 which has Rule 24 "Interfering with, failure to cooperate in, or lying in an official investigation or inquiry".

Mr. Deeble then read Exhibit Union 2 Page 6 and testified it shows CO Garrett with one (1) Discipline for Performance and one (1) Discipline for Absentee.

On Re-Direct Examination Mr. Deeble never testified that Garrett's discipline was wrong. He read Exhibit SOEC 2 Page 37 which is Rule 22 and said it has Removal in all steps. He said he was not involved in Garrett's case.

Mr. Deeble also testified the Union caught the mistake with the Incident 2:10 P.M.

On Re-Cross Examination Mr. Deeble said the Incident Report does not show who found Garrett's error.

The next witness for the Union was the Grievant Shawna Giddens. The Grievant has been a CO for seven (7) years at Lima and eight (8) years at Toledo. On March 8, 2012 her post was B14 North.

The Grievant read Pre-Disciplinary Exhibit Page 7 and testified this is her regular Post. This is a one (1) person post with ninety-six (96) Inmates.

She then read Pre-Disciplinary Exhibit Page 7 which showed she arrived at 0600. She logged in equipment. The Inmates were locked down when she got there. Count cleared at 6:30. The Grievant said she mingles with the Inmates and there are ninety-six (96) in the Day Room. From 6 - 6:30 she goes door to door and the Inmates are released at 6:30.

The Grievant read Pre-Disciplinary Exhibit Page 19 #3 which says to secure log book. It is to be placed in drawer. She was asked if anything interfered with Rounds and she answered "Fights". She logs those in after the incident.

The Grievant testified she looks for the smell of Dope, does shake downs, Inmates need

in and out and all this interferes with entries in the log. She logs rounds after doing them ASAP.

The Grievant testified she remembers the Warden arriving and she was on the top range making Rounds.

She testified she went to the Warden and gave him the log book. The Warden asked the time and she gave him the time she thought it was. She was given Exhibit Union 6 and said it was a photograph of her watch from the Dollar Store. She testified she showed the Warden her watch.

The Grievant was shown Pre-Disciplinary Exhibit Page 11 and said it was her Investigatory Interview. She testified that the Warden gave her no instructions and if he told her to do something she would.

She read Question 9 and said you can't change a log book. She testified that she followed Policy and there was no clock in the room. This is the reason she bought a watch. The Grievant testified that the Original Pre-Disciplinary Packet has her note on the bottom.

The Grievant was then shown Exhibit Union 8 which is her Incident Report of February 25, 2012. The Grievant reports that 1st shift had made no entries in log book. She testified she doesn't recall if she submitted this at the Pre-Disciplinary Conference.

The Grievant testified the reports are electronic by computer and don't print. She was shown Exhibit Union 8 and was asked if there was any discipline to 1st shift and said she didn't know.

The Grievant was shown the Joint Stipulations and testified it shows her receiving a two (2) day February 29, 2012 ten (10) days prior to March 8, 2012. This was because she had

sprayed an Inmate. She testified she had received her five (5) day suspension after March 8, 2012. She was removed May 15, 2012.

The Grievant testified her first discipline was February 29. It was a month and a half from first discipline to Removal. She was shown Pre-Disciplinary Exhibit Page 15 and testified she had written all entries and thought they were correct.

The Grievant was shown Pre-Disciplinary Exhibit Page 11 and said she never said they were not her log entries. She said she never said her watch had stopped. She testified at the 3rd Step she had changed the batteries in her watch. She testified she admitted to Warden the log was in error.

The Grievant testified there was no benefit to logging ahead and that it was a simple mistake.

On Cross-Examination the Grievant was asked "At the Step 3 hearing, did you say your watch had stopped?" She said "No".

The Grievant was referred to the Union's contention in the Step 3 response and said she doesn't recall what she said. She testified she had worked the Post for a couple of months.

The Grievant was referred to Pre-Disciplinary Exhibit Pages 14 and 15. She testified the log book shows daily activity. The Grievant said she does Rounds every thirty (30) minutes at scattered intervals. She said she looked at watch 0605, 0609, 0611 shows Security Rounds Check Cells.

The Grievant said she talks to Inmates, Porters are cleaning, etc. There is no exact time to do range checks as there are too many variables on 1st shift. She read Pre-Disciplinary Exhibit

Page 15 which shows six (6) Rounds from 6:30 to 7:40 and said there is no minimum time to do rounds, just maximum. The Unit has forty eight (48) cells. There is one (1) Range up and one (1) Range down on each floor.

The Grievant then read Pre-Disciplinary Exhibit Page 16 which is the Post Orders. She says she made entries in the log after 7:40 A.M. The Grievant reads Pre-Disciplinary Exhibit Page 18, the Post Orders and testified she reads the Post Orders once a week.

The Grievant was referred to Pre-Disciplinary Exhibit 19 #3 & 4(b) and said she did not do an Incident Report. She testified she talked to the Warden.

The Grievant read Pre-Disciplinary Exhibit Page 11 and said she was to keep an accurate Log Book. She said she told the Warden it was 8:30 when he arrived. She also testified it was an oversight error.

The Grievant testified her Date of Hire was August 25, 1997. She also said she was reinstated after a prior removal.

On Re-Direct the Grievant testified that when the Inmates are out of the cell there is constant activity. Security never stops. The Grievant read Pre-Disciplinary Exhibit Page 15 and said she doesn't recall writing LE on it. She then read Page 16 and testified she did not make arrows or numbers.

The Grievant said she made Rounds between 0600 and 0859. She also made Rounds at 7:50. The Rounds were already logged in so she didn't re-log them. The Grievant said she had never pre logged before so she didn't know how to fix it.

On Re- Cross Examination she said the entries were made before the Warden came.

The parties elected to have oral closing arguments and the hearing concluded at 4:15 P.M.

V. OPINION OF THE ARBITRATOR

The Grievant was Removed for a violation of Rule 22 "Falsifying a Log Book". Mr. Sheldon, the Warden enters the Unit and signs in at 7:40. The Warden points out to the Grievant the incorrect entries in the Log and the Grievant says she misread her watch. The Warden says he doesn't recall what she said. The Warden tells the Captain but neither of them tell the Grievant what to do about it.

The Grievant testifies you cannot alter or deface a log book according to Institution Policy. This is supported by Mr. Deeble's testimony when he said it was wrong for CO Garrett to deface and alter the log book.

The Grievant said that since she couldn't correct the Log Book she made Rounds until time elapsed and then made entries. The Warden said he didn't believe her. The Employer argues this point as being decisive. The Arbitrator does not agree that this is decisive. The Warden has considerable experience and the Grievant is a fifteen year employee. Neither has any supporting evidence to support their testimony.

The Grievant is consistent in her testimony from her Investigatory Interview through the hearing that she had problems with her watch and that she had told the Warden of this fact. The Union asserts that the problem with the Log Book is an oversight error.

The Employer however, has a real problem with disparate treatment. The Employer argues that CO Garrett and the Grievant were not similarly situated primarily because it claims

CO Garrett reported his mistake.

The Union has evidence to the contrary. Dawn Schober says Lieutenant Cowell called CO Garrett and told him of the problem and to fix it. The evidence is that CO Krukowski on her Incident Report at 2:10 P.M. reported no entries in the log book for 7.5 hours. CO Garrett does an Incident Report at 3:35 P.M. stating he discovered his mistake and called in. He says he made entries in the book from memory and recopied CO Krukowski's entries. The Employee sign in log shows him coming in at 4:50 P.M.

The Arbitrator finds that the Grievant and CO Garrett are similarly situated. They are both Cos. Both had problems with entries in the Log Book. Both had prior discipline. The evidence however is that CO Garrett received no discipline while the Grievant was Removed.

The Employer argues that there was gain to the Grievant because of avoiding discipline. This same argument would apply to CO Garrett as he also had prior discipline. This is clearly disparate treatment.

The Union also raises the argument that the discipline is not Progressive. The evidence is that the Grievant received her first discipline ten (10) days prior to March 8 and the notice of the second discipline after that. One discipline was a two (2) day and one a five (5) day which was later reduced to a two (2) day. The Employer attempts to counter this with the Discipline grid that shows Removal is possible for a first offense.

The Grievant is a fifteen (15) year employee. Based upon the evidence in this case, particularly with regard to CO Garrett, I find the Discipline was not Progressive.

The grievance is granted.

VI. AWARD

The Grievant is to be reinstated to her post, shift and days off.

Paid her lost pay less applicable deductions. This does not include overtime.

Restore lost vacation.

Restore personal and sick leave she would have been entitled to.

Reimbursement for medical expenses normally covered.

Restored to her seniority.


Payment of back Union dues.

Payment of retirement.

The discipline removed from her record.

The Arbitrator retains jurisdiction for 60 days.

Entered at Ironton, Ohio this 31st day of December, 2012



Craig A. Allen
Arbitrator