

ARBITRATION DECISION NO.:

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UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction, State Reformatory
at Mansfield

DATE OF ARBITRATION:

DATE OF DECISION:

September 25, 1987

GRIEVANT:

Henry G. Carter

OCB GRIEVANCE NO.:

G-86-0578

ARBITRATOR:

Nicholas Duda, Jr.

FOR THE UNION:

Brenda Persinger

FOR THE EMPLOYER:

Nicholas G. Menedis

KEY WORDS:

Just Cause
Sleeping On Duty
Sufficiency Of Evidence
Effect Of Prior Discipline

ARTICLES:

Article 24 - Discipline
§24.01-Standard

FACTS:

Grievant was a Correction Officer for Rehabilitation and Corrections. One night, Grievant failed to make his 11:30 p.m. phone check-in from the West Tower. The Captain flashed a beam of light at the tower for about five minutes. There was no response. The Captain called on the phone, waking Grievant. Grievant was suspended for five days.

EMPLOYER'S POSITION:

Grievant had been given oral and written reprimands and a three day suspension for sleeping on duty and other neglects of duty.

UNION'S POSITION:

Employer violated general principles of progressive discipline and the discipline was excessive.

ARBITRATOR'S OPINION:

Grievant admitted the prior violations and disciplines and therefore the suspension was justified as progressive discipline.

AWARD:

Grievance denied.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION
UNDER THE 1986 CONTRACT

Between:

State of Ohio
Department of Rehabilitation
and Correction
THE EMPLOYER

-and-

The Ohio Civil Service
Employees Association,
Local No. 11, AFSCME,
AFL-CIO
THE UNION

Union Grievance No.:
OSR-M-242

OCB Grievance No.:
G-86-0578

ND 541

Grievant:
Henry G. Carter

Before:
NICHOLAS DUDA, JR.,
ARBITRATOR

OPINION AND AWARD:
September 25, 1987

CASE DATA

SUBJECT

Five day suspension for "sleeping on duty".

APPEARANCES

FOR THE UNION

Brenda Persinger, Staff Representative, OCSEA, Presenting the Case
John Porter, Attorney, Assisting
Henry G. Carter, Correction Officer 2, Grievant
Dennis J. Cowell, Local Union Steward

FOR THE EMPLOYER

Nicholas G. Menedis, Department Chief of Labor Relations, Presenting the Case
Richard Hall, OSR Labor Relations Representative, Assisting
Felicia Bernardini, Labor Relations Specialist, DRC
Dean Millhone, MCI Labor Relations Representative
Jack Burgess, Chief, Arbitration Services, Ohio Office of Collective Bargaining
Jerry Wentz, Deputy Superintendent - Programs, Ohio State Reformatory at Mansfield

THE FACTS

Grievant had been employed as a Correction Officer for less than three years before August 13, 1986. On the latter day he was assigned to work in the West Tower on the third shift beginning at 10:00 P.M. He failed to make his scheduled report-in call at 11:30 P.M. About ten minutes later his captain attempted to attract his attention by flashing a beam of light up into the tower. Despite the captain's efforts, which lasted about five minutes, Grievant did not reply. Finally the Captain radioed to have a telephone call made to Grievant. The ringing telephone woke the Grievant.

The Employer issued Grievant a five day suspension for sleeping on duty.

In his grievance, Grievant asked that he "be paid for five day suspension and records expunged". At arbitration Union argued that the Employer had not followed the principles of progressive discipline, particularly because prior discipline had been issued without cause.

THE ISSUES

Whether suspending Grievant for five days for sleeping on duty on August 13, 1986, violated principles of progressive discipline or was excessive and/or unreasonable.

EVALUATION

Grievant admits that sleeping on duty is neglect of duty and that he was sleeping on duty on August 13, 1986.

According to the Employer sleeping on duty by the employee is especially serious where the employee is directly responsible for the security of inmates, Grievant's assignment on August 13, 1986. The Union asserts a general principle that a five day suspension for sleeping on duty violates the principle of progressive discipline or is excessive. Even if that position had merit as a general proposition, the argument cannot apply to the facts in this case. The Arbitrator finds that prior to August 13, 1986 Grievant received oral and written reprimands and a three day suspension specifically for sleeping on duty as well as for other neglects of duty. (Even Grievant admits the sleeping for which he had received the three day suspension.) Thus the Employer has applied the principles of progressive discipline set forth in Section 24.02 of the Labor Agreement, whether the Employer was required to do so or not.

Despite the history of prior discipline for neglect of duty and specifically for sleeping the Grievant repeated the misconduct on August 13, 1986. Under these circumstances there is no basis whatsoever for finding that a five day suspension is unreasonable or excessive.

AWARD

There was just cause for the five day suspension. The grievance is denied.

Nicholas Duda, Jr., Arbitrator