

ARBITRATION DECISION NO.:

62

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health,
Moritz Forensic Center

DATE OF ARBITRATION:

DATE OF DECISION:

April 1, 1987

GRIEVANT:

James A. Whitehead

OCB GRIEVANCE NO.:

G-86-0609

ARBITRATOR:

FOR THE UNION:

John T. Porter

FOR THE EMPLOYER:

John Rauch

KEY WORDS:

Removal
Tardiness

ARTICLES:

FACTS:

The Grievant is a psychiatric attendant of the Timothy B. Moritz Forensic Center at the Central Ohio Psychiatric Hospital. The Grievant was removed from service with the State on October 6, 1986 for being tardy four (4) times and for using thirty (30) hours of sick leave without providing a doctor's statement.

The Grievant had three (3) prior suspensions of one day, three days and five days for sleeping on duty and absence and tardiness. In addition, Grievant also had been counseled twice for absenteeism and tardiness and had received two letters of reprimand for not remaining with a patient who was in seclusion.

The Department of Mental Health agreed to reduce Grievant's termination to a thirty working day suspension and to give back pay for four and one-half months.

Comments:

There were a number of strong arguments on Grievant's behalf. First, the migraine headaches from which he suffered stemmed from an incident when he was assaulted by a patient. Secondly, Grievant had positive sick leave, personal leave and vacation leave balances when he was terminated. Thirdly, the Department of Mental Health cited Mr. Whitehead for a violation of its pattern sick leave abuse policy; yet only one of the six incidents for which the Grievant was cited met the definition of the Department's pattern for sick leave abuse. Fourthly, the state added additional instances of improper sick leave usage which occurred after the pre-disciplinary hearing was held. Thus, the employee did not have a chance to rebut these allegations at the pre-disciplinary hearing. Finally, the Grievant had received two commendations for service above and beyond the call of duty in handling emergencies. The most important factor in Grievant's favor was that the Department of Mental Health failed to follow its own sick leave and tardiness policy, and thus, violated the notice requirements of the just cause standard. An employee cannot be disciplined if he does not have prior notice of the personnel policy which he is charged with violating.

TEXT OF THE SETTLEMENT:

GRIEVANCE SETTLEMENT AGREEMENT

This agreement made _____, 19__, by and between The Ohio Department of Mental Health (ODMH), OCSEA/Local 11 (UNION), and James Whitehead ("Employee"), parties hereto.

WHEREAS, Employee and Union assert a claim or claims against ODMH, based on the following allegations: That employee, James Whitehead was improperly terminated from employment at Central Ohio Psychiatric Hospital.

WHEREAS, there is now pending, based on said claim, a grievance filed by the above name employee(s) and Union against ODMH pursuant to the Collective Bargaining Agreement, identified as grievance James Whitehead, (No Number).

WHEREAS, ODMH denies any liability in connection with the alleged claim;

WHEREAS, all parties hereto wish to reach a full and final settlement of all matters and causes of action arising out of this claim;

Now therefore, all parties hereto, in consideration of the mutual covenants and agreement to be performed, as hereinafter set forth, agree as follows:

1. ODMH agrees to the following:

1. Reduce the removal of grievant, James Whitehead, Psychiatric Attendant, to a 30 working day suspension which will be considered to have been served from October 18, 1986 through November 27, 1986.
2. Reinstatement grievant, James Whitehead to his position of Psychiatric Attendant on third shift at Timothy B. Moritz Forensic Center of the Central Ohio Psychiatric Hospital, effective March 16, 1987.
3. Award back pay and benefits to the grievant the period November 28, 1986 to March 16,

1987, less any unemployment or any other compensation received during such period.

2. Employee and Union agree to withdraw the aforementioned grievance and waive any and all rights they may currently or subsequently possess to receive any reparation, restitution or redress for the events which formed the basis of the aforementioned grievance or claim, including the right to have the grievance resolved through arbitration, or through resort to any other administrative proceeding or through any judicial proceeding.

3. Union agrees to waive any and all rights it may currently or subsequently possess to obtain any reparation, restitution or redress for its members as a result of the events which formed the basis of the aforementioned grievance or claim, including the right to have the grievance resolved through arbitration, or through any other administrative proceeding or through any judicial proceeding.

4. The employee agrees to withdraw the following charge filed with the Ohio Civil Rights Commission and the Equal Employment Opportunity Commission: Whitehead, James A. v. Central Ohio Psychiatric Hospital, 73101886 (13986) 111986/22A-87-4904

All parties to this Agreement hereby acknowledge and agree that this Agreement is in no other way to be utilized in any subsequent arbitration, litigation or administrative hearing.

Signed at _____, Ohio on _____, 19__.

OHIO DEPARTMENT OF MENTAL HEALTH

Date: 4-1-87
John Rauch
Ohio Department of Mental Health

Date: 3-18-87
Steven B. (Illegible)
The Attorney Generals Office

Date: 3-16-87
James C. Whitehead
Employee

Date: 3-17-87
John T. Porter
Union