

**ARBITRATION DECISION NO.:**

87

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Mental Health,  
Dayton Mental Health Center

**DATE OF ARBITRATION:**

January 6, 1988

**DATE OF DECISION:**

January 8, 1988

**GRIEVANT:**

Dion Dortch

**OCB GRIEVANCE NO.:**

G-87-1128

**ARBITRATOR:**

Henry E. Helling, III

**FOR THE UNION:**

**FOR THE EMPLOYER:**

**KEY WORDS:**

Just Cause  
Adequacy Of Notice  
Lax Enforcement  
Of Work Rule

**ARTICLES:**

Article 24 - Discipline  
§24.01-Standard

**FACTS:**

Grievant was a Correction Officer II at the Dayton Mental Health Center. Grievant was found in a room deemed to be off limits to all Correction Staff. Grievant was suspended for two (2) days for neglect of duty.

**MANAGEMENT POSITION:**

An Inter Office Communication placed the room off-limits and Grievant had seen the IOC. He

was on notice that he was in violation of the IOC, and there was just cause for the suspension.

**UNION'S POSITION:**

Employees generally disregarded the IOC and often used the room for breaks. Grievant was merely checking his foot and was not aware that he could or would be punished.

**ARBITRATOR'S OPINION:**

Grievant was on an authorized requested break in a room regularly used by fellow employees for that purpose.

**AWARD:**

Grievance upheld, two (2) days backpay.

**TEXT OF THE OPINION:**

**BEFORE THE ARBITRATOR**

In the Matter of:

**STATE OF OHIO, DEPARTMENT  
OF MENTAL HEALTH  
THE EMPLOYER**

and

**OHIO CIVIL SERVICE  
EMPLOYEES ASSOCIATION,  
LOCAL 11 AFSCME, AFL-CIO  
THE UNION**

**January 6, 1988**

**Grievance:**  
G87-1128

**Grievant:**  
Dion Dortch

**Arbitrator:**  
Henry E. Helling, III

**AWARD**

The grievance in this matter is upheld. Grievant Dion Dortch, a Correction Officer II at the Dayton Mental Health Center, was suspended for two days for neglect of duty. Said neglect of duty charge was the result of Grievant being found in a room which was deemed off limits to all Corrections Staff. The Inter-office Communication dated September 10, 1986, which placed the

room in which employee Dortch was found off limits to all Correction Staff seems to be the controlling evidence of the Employer. There was no dispute that the IOC did exist and that the employees saw it at one time or another. This Inter-office Communication, however, appeared to carry no weight as far as any of the employees of the Control Center were concerned. The Grievant testified that he used the room off the visitation area regularly as did other correction staff. The Union called two witnesses, both in the same classification as the Grievant who testified that they used the room in question regularly for breaks and have never had disciplinary problems as a result. In addition to the witnesses, another control center employee, Miriam Works, submitted a notarized statement that she often used the room in question for breaks and was never restricted therefrom. There is no question that Grievant Dion Dortch was in the room in question. Whether he was tending to his injured foot as he stated, laying down as Lt. Osborne stated, or whether his shoe was off or on are irrelevant facts to the charge in this case.

Entirely too much weight was placed on a memorandum issued some five months previous to the date of the offense and obviously ignored by the Control Center personnel. Witnesses testified that they as employees used the room for breaks, that there was no regular break schedule, and that Grievant advised control center that he was going to the room to tend to his injured foot and was in fact told to do so by his co-workers.

The arbitrator finds that Grievant was on an authorized requested break in the room that was used regularly by both Grievant and his fellow workers for these purposes.

The suspension should be rescinded and the Grievant paid for these two days which he was unable to work.

Henry E. Helling, III  
Arbitrator

Issued January 8, 1988