

ARBITRATION DECISION NO.:

94

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation and
Correction, Marion Correctional
Institute

DATE OF ARBITRATION:

December 30, 1987

DATE OF DECISION:

GRIEVANT:

Dacey Lamb
Patricia Howell

OCB GRIEVANCE NO.:

G-87-1435

ARBITRATOR:

Andrew J. Love

FOR THE UNION:

Brenda Persinger

FOR THE EMPLOYER:

Nicholas Menedis

KEY WORDS:

Just Cause
Sleeping On Duty
Disparate Treatment

ARTICLES:

Article 2 - Non-Discrimination
 §2.01-Non-Discrimination
Article 24 - Discipline
 §24.01-Standard

FACTS:

Grievants were black, female Correction Officers at Marion Correctional Institute. In two (2) separate incidents, both were cited for sleeping on duty or inattentive to duty. Grievant A was on

duty and seated when a sergeant asked her to open the gate. Grievant did so and returned to her seat. She closed her eyes. About a minute later the sergeant returned through the gate and warned Grievant about sleeping. Grievant said she was only easing tension and not sleeping. Grievant B was seated at a desk with her head down. The Captain hit the side of the desk. Grievant stood up and let several officers through the gate. Both Grievants were suspended for five (5) days.

MANAGEMENT'S POSITION:

Grievants were sleeping on duty in violation of work rules. Given the nature of the site of employment, sleeping is serious and warrants the suspension allotted. The Ohio Civil Rights Commission stated in their report that there was insufficient evidence to prove discriminatory practices.

UNION'S POSITION:

Neither Grievant was sleeping. Both had reasons for their behavior. Grievant A was trying to relax because the sergeant does not like women working the facility. Grievant B had a headache and was merely trying to ease the pain. Other workers have been caught actually sleeping and have received nothing more than a reprimand.

ARBITRATOR'S OPINION:

The evidence tends to show that while both Grievants were inattentive they were not asleep. Because others found asleep have not been suspended, the punishment is not commensurate with the offense.

AWARD:

Grievance denied. Discipline modified to one (1) day suspension and four (4) days backpay.

TEXT OF THE OPINION:

ARBITRATION

**MARION CORRECTIONAL
INSTITUTION**

AND

**OCSEA LOCAL 11 AFSCME,
AFL-CIO**

**(Grievances of:
Dacey Lamb and
Patricia Howell)**

ARBITRATOR:
Andrew J. Love

CASE NUMBER:
G87-1435

**FOR MARION CORRECTIONAL
INSTITUTION:
Nicholas Menedis**

**FOR GRIEVANTS:
Brenda Persinger**

DECISION AND AWARD

The issues presented in this proceeding on December 30, 1987, are whether the five (5) day suspensions of the Grievants by the Marion Correctional Institution (hereinafter "MCI") on October 2-6, 1986 and on October 3-7, 1986 were without "just cause" and therefore in violation of Section 24.01 of the parties' Collective Bargaining Agreement; whether the disciplinary action taken was commensurate with the offenses; and whether MCI engaged in discriminatory practices, pursuant to Section 2.01 of the Collective Bargaining Agreement.

The following joint exhibits were admitted into evidence:

1. Contract between the State of Ohio and OCSEA Local 11 AFSCME.
2. The Grievance trail of Grievant Lamb.
3. The Grievance trail of Grievant Howell.
4. The Discrimination Grievance Form.

In addition, the following exhibits were also admitted into evidence:

1. Union Exhibit A - disciplinary action against John Soper.
2. Union Exhibit B - disciplinary action against Sergeant Wirt Robinson.
3. Union Exhibit C - disciplinary action against Emory Jones.
4. Union Exhibit D - employee performance evaluation appeals of Grievants Lamb and Howell.
5. Union Exhibit E - written statement of Grievant Lamb.
6. Employer Exhibit 1 - standards of employee conducted dated August 12, 1986.
7. Employer Exhibit 2 - disciplinary action roster.
8. Employer Exhibit 3 - Ohio Civil Rights Commission Findings
RE: Complaint of Grievant Howell.
9. Employer Exhibit 4 - disciplinary action against Sergeant Wirt Robinson
10. Employer Exhibit 5 - Grievant Howell's signed acknowledgment of understanding of rules of employee conduct and responsibility and receipt of a copy of the Ohio Department of Rehabilitation and Correction's Standard of Employee Conduct.
11. Employer Exhibit 6 - Post order outlining duties regarding the security of the two security blocks at MCI.

The facts are as follows:

Grievants Lamb and Howell, two black female correction officers, were suspended for five (5) days each on charges of neglect of duty and/or failure of good behavior and/or insubordination arising from incidents occurring on August 1, 1986 and August 2, 1986, respectively. In substance, both Grievants were cited for being asleep while on duty or inattentive to duty. These incidents

were separate and independent of each other. The respective grievances were filed and a disciplinary hearing was timely held. Recommendations by MCI were timely made.

Grievant Howell

On August 2, 1986, Grievant Howell was sitting at her post in a hallway facing O Block and behind R Block, a strict security portion of MCI, when Sergeant Wirt Robinson, making his routine check, called for Grievant Howell to open the gate. This Grievant then returned to her seat and sat back in her chair and closed her eyes. It should be noted that Sergeant Robinson was inside conversing with other officers in R Block. It should also be noted that ample testimony had been established that Sergeant Robinson had had problems accepting women working in the capacity in which Grievant Howell was working because of her gender. Sergeant Robinson never referred to Grievant Howell by her title or name; rather, he always referred to her as "hey", "sister", and other types of references other than her name.

After approximately one minute, Sergeant Robinson called to Grievant Howell, who in turn opened her eyes. Grievant Howell then unlocked the door leading to R Block and allowed Sergeant Robinson to return to Grievant Howell's work area.

Sergeant Robinson then stated to Grievant Howell "If you close your eyes for long you could get written up." Grievant Howell responded, "There's a difference between sleeping and closing your eyes." Grievant Howell acknowledged that she was aware of administrative regulations regarding sleeping on the job. This Grievant acknowledged that she was not in the best possible position to perform her duties, such as prisoner escape, as long as her eyes were closed. However, she stated that she was not asleep but was relieving herself of some tension by closing her eyes due to the continuous problem that she had with Sergeant Robinson and his apparent inability to overcome certain biases against women working in MCI. As was previously stated, Sergeant Robinson and other officers were in R Block, while O Block was not as visible to this Grievant even if her eyes were open.

Dacey Lamb

On August 1, 1986, Grievant Lamb was observed by a supervisor of MCI with her head down on a desk in the visiting room entrance area. Captain Ronald Aller hit the side of the desk and Grievant Lamb sat up, picked up her keys off of the desk and let him and several other officers through the crash gate. When the Captain attempted to get back through the crash gate from the institution to the A Building, he observed Grievant Lamb standing at the door of the front entrance way. When the phone rang, the Grievant turned around, saw the Captain and then let him through the gates. This Grievant denied that she was asleep. She stated that she was trying to overcome a migraine headache at the time, which was why she had her head on the desk and her eyes closed at the time. She also stated at her pre-disciplinary hearing that she observed officers approaching the crash gate.

Both Grievants were cited for sleeping while on duty and/or inattentiveness to duty and/or insubordination.

Both Grievants were given five (5) day suspensions respectively.

Taking the issue as to whether the Grievants were discriminated against because of gender, this Arbitrator finds that there is not sufficient evidence to support that contention with respect to the imposition of discipline. Moreover, in a report supplied by the Ohio Civil Rights Commission, the Commission stated, in respect to the complaint of Grievant Howell, "It is not probable that unlawful discriminatory practices have been or are being engaged in by (MCI)..."

This Arbitrator is satisfied that the evidence presented by MCI shows that, as a policy matter, acts of racial, gender, or otherwise discrimination will not be tolerated. In addition, it should be noted that one of the Grievants' witnesses, Frances Reisinger, testified that she was given a written reprimand only while having been asleep while on duty. Hence, it is this Arbitrator's view that the disciplinary action imposed against the two Grievants were not based on discrimination because of their gender.

This Arbitrator finds that the two Grievants were not sleeping while on duty. They were without question inattentive to their duties, even if only for a brief period of time. This Arbitrator believes that Grievant Howell was truthful in her testimony that she has been under a great deal of stress from her dealings with Sergeant Robinson, who, at that time, certainly had difficulty accepting women in employment at MCI. Likewise, this Arbitrator finds that Grievant Lamb was inattentive to her duties, due to her efforts to control her headache. In both cases, neither Grievant was asleep on duty.

From the physical evidence contained in the exhibits and from the testimony, it is clear that there is, however, disparate treatment of these two Grievants, who have no prior history of disciplinary problems, and the treatment received by individuals such as Officer Soper, who was found to be "inattentive to duty", even though the findings in his case tended to establish that he was sound asleep. Similar reasons hold true for Officer Jones (Union Exhibit C). These individuals received a written reprimand and an oral reprimand, respectively in 1986.

Accordingly, though both Grievants were inattentive to their duties, their punishment was not commensurate with the offense. A more appropriate disciplinary action is one day's suspension for each Grievant.

The grievances are, therefore, denied; however, back pay is awarded in the amount of four (4) days pay for each Grievant.

ANDREW J. LOVE, Arbitrator