

ARBITRATION DECISION NO.:

098

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Ohio Department of Mental Health

DATE OF ARBITRATION:

February 11, 1988

DATE OF DECISION:

February 11, 1988

GRIEVANT:

Marvin Strickland

OCB GRIEVANCE NO.

G-87-1526

ARBITRATOR:

Thomas P. Michael

FOR THE UNION:

Daniel Smith

FOR THE EMPLOYER:

Michael Duco

KEY WORDS:

ARTICLES:

Article 25 – Grievance Procedure
 §25.03 – Arbitration Procedures
 §25.04 – Arbitration/Mediation Panels

FACTS: No summary provided.

AWARD: See below.

TEXT OF THE OPINION: Not provided. * * *

BETWEEN

OHIO DEPARTMENT OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITIES

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION

LOCAL NO. 11, AFSCME AFL-CIO

MARVIN STRICKLAND, GRIEVANT

THOMAS P. MICHAEL, ARBITRATOR
COLUMBUS, OHIO

* * *

Grievance No. G-87-1526, Marvin Strickland

Grievance Re: 5-day Suspension of 1/2/87-1/8/87,
Marvin Strickland

This is a proceeding pursuant to Article 25, Sections 25.03 and 25.04, Arbitration Procedures and Arbitration Panel, of the Contract between the State of Ohio, Department of Mental Retardation and Developmental Disabilities, (hereinafter "Employer") and the Ohio Civil Service Employees Association, Local 11, AFSCME/AFL-CIO, (hereinafter "Union").

Pursuant to the Contract, the parties selected Thomas P. Michael as the Arbitrator. The hearing was commenced at the Office of Collective Bargaining on February 11, 1988.

The parties thereupon presented to the Arbitrator an oral stipulation setting forth the terms of a settlement of this proceeding. At the request of the parties, this Arbitrator has reduced that agreement to the form of this Award. Upon questioning by the Arbitrator the Grievant, Marvin Strickland, acknowledged that he understood and concurred with the terms of this Award.

APPEARANCES:

For the Employer:

Michael Duco
Office of Collective Bargaining

For the Union:

Daniel S. Smith, General Counsel
Steven Lieber, Staff Representative
OCSEA/AFSCME Local 11

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FACTUAL BACKGROUND

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The Grievant, Marvin Strickland was employed by the Department of Mental Retardation and Developmental Disabilities ("Employer") as a Hospital Aide assigned to Broadview Developmental Center, Cleveland, Ohio. This employee began work in that capacity effective October 3, 1982 and was removed effective March 15, 1987. Prior to his dismissal the Grievant had received a five-day suspension without pay in January, 1987. Both the removal order and five-day suspension are subjects of this Award.

AWARD

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- I. The grievance relating to Grievant's five-day suspension of January 2, 5, 6, 7 and 8, 1987, is withdrawn.
 - II. Grievant is reinstated to the position of Hospital Aide at Broadview Developmental Center effective with the work week commencing on February 21, 1988. Grievant's job assignment will be subject to the work area agreement between the parties.
 - III. Grievant is granted full seniority credit from the date of his termination until his reinstatement as though he had been continuously in the employ of Employer.
 - IV. The removal of Grievant is hereby modified to a thirty-day suspension without pay. The personnel records of Grievant will be modified to reflect that during the remainder of his time lost he was in an approved leave without pay status.
 - V. Employer will make a lump sum payment to Grievant in the gross sum of Five Hundred Dollars (\$500.00), as reduced by ^{**3**}
- appropriate withholding for taxes.
- VI. The Grievant is not subject to disciplinary actions arising out of incidents allegedly occurring on January 27, 1987, through and including February 1, 1987. Nor is Grievant subject to any disciplinary actions as a result of any application for any benefits whatever related to the aforesaid dates.
 - VII. This Award is for purposes of this matter only and is in no way to be considered precedent setting. This Award is not to be introduced, referred to or in any way utilized in any subsequent arbitration, litigation or administrative hearing.

Thomas P. Michael, Arbitrator

Rendered this Eleventh day
of February, 1987, at
Columbus, Franklin County, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the original Opinion and Award was mailed to Eugene Brundige, Deputy Director, Ohio Department of Administrative Services, 65 East State Street, 16th Floor, Columbus, Ohio 43215, with copies of the foregoing Opinion being served by United States Mail, postage prepaid, this 11th day of February, 1988, upon: Michael Duco, Office of Collective Bargaining, 65 East State Street, Columbus, Ohio 43215; and Daniel S. Smith, General Counsel, OCSEA/AFSCME Local 11, 995 Goodale Boulevard, Columbus, Ohio 43212.

Thomas P. Michael, Arbitrator
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BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO, OHIO
STATE HIGHWAY PATROL

February 3, 1988
Dayton, Ohio

THE EMPLOYER

Grievance: 87-1140

and

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

THE UNION

Arbitrator: Henry E. Helling, III

AWARD

Grievant, Ronald E. Vincent, Jr., a Maintenance Repair Worker II at the Springfield Post of the Highway Patrol, was suspended for one day for failing to report an accident in which he was involved while backing up a Highway Patrol Cruiser on December 12, 1986. Said suspension for neglect of duty, was ordered March 30, 1987, and served March 31, 1987. It is noted that Grievant was issued a written reprimand on January 22, 1987, for inefficiency for being involved in the chargeable patrol car accident. Said accident consisted of Grievant backing patrol car #626 into

an exposed well-head pipe and causing minor damage to the left rear panel.

Evidence was presented by the employer to show that Grievant was In fact guilty of backing into the well-head pipe and causing the damage to the cruiser. Evidence further showed that Grievant did not report said accident on the day that it occurred. This Arbitrator can understand the employer's position that although the accident was minor it should have been reported at once. - However, Grievant was in fact disciplined-for his action on January 22, 1987, by written reprimand. Article 24.02 of the

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collective bargaining agreement between the parties states that any arbitrator deciding a discipline grievance must consider the timeliness of the employer's decision to begin the disciplinary process. I find no reason for the employer to Issue a written reprimand on January 22, 1987, and follow-with a one day. suspension on March 30, 1987. Evidence presented showed that Grievant was guilty of the offense as charged, but there was nothing presented to show that he could not have been suspended January 22, 1987, at the time he was issued the written reprimand. A suspension issued over three months from the date of the offense clearly does not fall within the spirit of Article 24.02 of the contract between the parties.

The Arbitrator finds that the written reprimand issued to Grievant January 22, 1987, was not unreasonable based on the investigatory process required by the facts presented in this case. I do find however that the period of time elapsed for Grievant to be suspended was in fact unreasonable.

I hereby find that the written reprimand issued Grievant was commensurate with the offense based on the evidence submitted and shall stand. I further find that the one day suspension was untimely and should be rescinded accordingly. Grievant should be paid for the one day he was unable to work and the suspension should be expunged from his record.

Henry E. Helling, III

Issued February 8, 1988