

ARBITRATION DECISION NO.:

101

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Retardation
and Developmental Disabilities,
Montgomery Developmental Center

DATE OF ARBITRATION:

February 18, 1988

DATE OF DECISION:

February 22, 1988

GRIEVANT:

Janet Jordan
Patricia Pinson
Jane Crew

OCB GRIEVANCE NO.:

G-86-298
G-86-299
G-86-323

ARBITRATOR:

Henry E. Helling, III

FOR THE UNION:

Michael Muenchen

FOR THE EMPLOYER:

Michael Duco

KEY WORDS:

Neglect of Duty
Suspension
Timeliness of Discipline

ARTICLES:

Article 24 - Discipline
 §24.01-Standard
 §24.02-Progressive
Discipline

FACTS:

Grievants are employees of the Ohio Department of Mental Retardation and Developmental Disabilities at the Montgomery Developmental Center. All were suspended from their duties as Hospital Aide for neglect as a result of an incident on June 21, 1986. One Grievant was suspended for one (1) day and the remaining two Grievants were suspended for five (5) days. The discipline resulted when Grievants endangered the health and safety of a resident by leaving him unsupervised for more than one and one-half (1-1/2) hours while Grievants left the grounds for a community awareness van ride.

EMPLOYER'S OPINION:

Grievants endangered the health and safety of the resident they left behind, alone and unsupervised. Grievants were assigned to the resident's cottage and thereby neglected their duty by leaving him.

UNION'S OPINION:

Although Grievants were responsible for the resident's cottage, they were not at fault for leaving the resident behind due to negligence and confusion caused by the Employer in organizing the field trips for the day.

ARBITRATOR'S OPINION:

Grievants were in fact guilty of neglect of duty in leaving the resident behind and unsupervised in their assigned cottage. The discipline imposed was commensurate with the offense.

AWARD:

The grievances were denied.

TEXT OF THE OPINION:

BEFORE THE ARBITRATOR

In the Matter of:

**STATE OF OHIO, DEPARTMENT
OF MENTAL RETARDATION &
DEVELOPMENTAL DISABILITIES**
THE EMPLOYER

and

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

February 18, 1988

Grievances:

G86-298,
G86-299,
G86-323

Grievants:

Janet Jordan
Patricia Pinson
Jane Crew

Arbitrator:

Henry E. Helling, III

AWARD

This matter came on for expedited arbitration February 18, 1988, in Dayton, Ohio. Present at the proceeding were Grievants Janet Jordan and Jane Crew. Grievant Patricia Pinson did not appear. Appearing for the Union was Michael Muenchen and for the State of Ohio, Michael Duco. Inasmuch as the disciplinary actions taken against the Grievants were all the result of the same incident, the three cases have been consolidated for purposes of this arbitration. The State's preliminary motion to dismiss Grievant Pinson for failing to appear is overruled based on similar fact patterns of the matter.

Grievants are now and were on June 21, 1986, employees of the Montgomery Developmental Center. All were suspended from their duties as Hospital Aide for neglect as a result of an incident on June 21, 1986, at MDC Grievant Jordan was suspended for one (1) day, Grievants Pinson and Crew were suspended for five (5) days. These disciplinary actions were a result of Grievants endangering the health and safety of a resident by leaving him unsupervised in their assigned cottage for a period in excess of one and one-half (1 1/2) hours when they left the grounds for a community awareness van ride. There is no dispute that the resident was left alone in the cottage.

The employer argued that the Grievants in this matter endangered the health and safety of the resident that they left behind, alone and unsupervised. The Union's position was that although Grievants were responsible for the residents in the cottage, they were not at fault for leaving the resident behind due to negligence and confusion caused by the Employer in organizing the field trips for the day. This confusion was allegedly the result of a field trip to Kings Island for some of the residents and a community awareness van ride for the remaining residents.

Based on the testimony of the witnesses and other evidence presented, I hereby find that Grievants were in fact guilty of neglect of duty in leaving the resident alone and unsupervised in their assigned cottage. Grievants should have taken a head count before leaving on the community awareness van ride on which they later noticed that said resident was not present. Further, it is found the discipline imposed was commensurate with the offense and was in fact progressive based on the seriousness of said offense. The grievances are hereby denied accordingly.

Henry E. Helling, III
Arbitrator'

Issued February 22, 1988