

ARBITRATION DECISION NO.:

104

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Retardation
and Developmental Disabilities,
Columbus Developmental Center

DATE OF ARBITRATION:

January 27, 1988

DATE OF DECISION:

January 28, 1988

GRIEVANT:

Kathy Frye

OCB GRIEVANCE NO.:

G-87-1533

ARBITRATOR:

Henry E. Helling, III

FOR THE UNION:

FOR THE EMPLOYER:

KEY WORDS:

Just Cause
Profanity

ARTICLES:

Article 24 - Discipline
§24.01-Standard

FACTS:

Grievant, a Hospital Aide at Columbus Developmental Center, was suspended for one day for using profanity in front of two clients. The incident took place on January 6, 1987, in the Carlson Developmental Center.

EMPLOYER'S POSITION:

Grievant's suspension was for just cause. Unit Manager not only heard Grievant use the profanity, he actually observed her doing so.

UNION'S POSITION:

Grievant was not suspended for just cause. The client that Grievant was with cursed frequently and it could have been the client and not Grievant who used the profanity.

ARBITRATOR'S OPINION:

Grievant was actually observed making the profane statement. Thus, the one (1) day suspension was not excessive punishment for the offense committed by the Grievant.

AWARD:

Grievance denied.

TEXT OF THE OPINION:

BEFORE THE ARBITRATOR

In the Matter of:

**STATE OF OHIO, DEPARTMENT
OF MENTAL RETARDATION AND
DEVELOPMENT DISABILITIES
THE EMPLOYER**

and

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

January 27, 1988

Grievance:
G87-1533

Grievant:
Kathy Frye

Arbitrator:
Henry E. Helling, III

AWARD

Grievant Kathy Frye a Hospital Aide at Columbus Developmental Center was suspended for one day for using profanity in front of two clients. Said incident took place on January 6, 1987, in the Carlson Building located at the Columbus Developmental Center. Said profanity consisted of Grievant shouting "Kiss my ass" to one of her clients.

Unit Manager Robert Basinger testified that he not only heard Grievant use the profanity, he actually observed her doing so. Mr. Basinger testified that prior to his observation of this, he heard Grievant say "shit" two times. He did not observe anyone saying this but assumed that it was Grievant.

The Union presented evidence that the client that Grievant was with cursed frequently and that it possibly could have been him and not Grievant that used said profanity. Giving the benefit of the doubt to Grievant, even if it was in fact the client who used the initial profanity. Grievant was observed making the latter statement to wit: "Kiss my ass".

Based on the evidence presented, the arbitrator finds that the Grievance is denied. The one day suspension was not excessive punishment for the offense committed by Grievant.

Henry E. Helling, III
Arbitrator

Issued January 28, 1988