

**ARBITRATION DECISION NO.:**

111

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Mental Health,  
Oakwood Forensic Center

**DATE OF ARBITRATION:**

March 4, 1988

**DATE OF DECISION:**

March 14, 1988

**GRIEVANT:**

Robert Bagley

**OCB GRIEVANCE NO.:**

G-87-1576

**ARBITRATOR:**

Harry Graham

**FOR THE UNION:**

Bob Rowland

**FOR THE EMPLOYER:**

Michael Duco

**KEY WORDS:**

Just Cause  
Absenteeism

**ARTICLES:**

Article 24 - Discipline  
    §24.01-Standard  
    §24.02-Progressive  
Discipline  
Article 29 - Sick Leave  
    §29.02-Notification

**FACTS:**

Grievant was a Psychiatric Attendant at Oakwood Forensic Center. On three occasions in a two week period, Grievant (1) called in 55 minutes late and was absent without leave 8 hours, (2)

called in one hour and 55 minutes late and was absent without leave 8 hours, and (3) called in 7.5 hours late and was absent without leave 8 hours. Based on those incidents and a record of poor attendance, Grievant was discharged.

**EMPLOYER'S POSITION:**

Grievant's record of attendance was poor at best. In the three year period preceding discharge, Grievant was disciplined twelve times for tardiness and absenteeism. The discipline included four verbal reprimands, three written reprimands, and suspensions of one, three, five, six and ten days. After the ninth incident, Grievant entered the Employee Assistance Program. Even after this program, Grievant continued to be absent and tardy. The grievant's record indicates there is little or no chance of rehabilitation. Tardiness cannot be tolerated in the environment of Oakwood Center.

**UNION'S POSITION:**

The Grievant has neither a phone nor a car. If he is going to be late, he has to walk to a pay phone. He is dependent upon co-workers for transportation. He has also been under stress from domestic problems. Grievant was given a six day suspension which was not served before discharge. Progressive discipline principles would dictate that Grievant be given the opportunity to mend his ways after serving the suspension. The discharge should be modified to a suspension.

**ARBITRATOR'S OPINION:**

The employer has afforded Grievant numerous opportunities to show that he would and could improve his attendance. He failed to do so. Nothing in the record indicates he will do so if given yet another opportunity. The employer should not bear the consequences of grievant's lack of a phone or car. The employer should not be asked to bear the consequences of grievant's domestic problems.

**AWARD:**

Grievance denied.

**TEXT OF THE OPINION:**

In the Matter of Arbitration  
Between  
**OCSEA/AFSCME Local 11**  
and  
**The State of Ohio,  
Department of Mental Health**  
  
**Case No.:**  
G 87-1576

**Appearances:**

**For OCSEA/AFSCME Local 11:**

Bob Rowland  
Staff Representative  
OCSEA/AFSCME Local 11  
995 Goodale Blvd.  
Columbus, OH. 43402

**For State of Ohio:**

Michael Duco  
Office of Collective Bargaining  
65 East State St.  
Columbus, OH. 43215

**Introduction:**

Pursuant to the procedures of the parties this dispute was heard on March 4, 1988 before Harry Graham of South Russell, OH. At the hearing both parties were provided complete opportunity to present testimony and evidence. No post hearing briefs were filed in this dispute and the record was declared to be closed at the conclusion of oral argument.

**Issue:**

At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Department of Mental Health remove Mr. Robert Bagley, Grievant, from his position of Psychiatric Attendant for just cause under the Collective Bargaining Agreement? If not, what shall the remedy be?

**Background:**

The facts that give rise to this controversy are not in dispute. The Grievant, Robert Bagley, was hired as a Psychiatric Attendant at the Oakwood Forensic Center, located in Lima, OH. on December 9, 1983. That facility is maintained by the State of Ohio to assist those of its prison inmates who have mental difficulties.

The Collective Bargaining Agreement between the parties at Section 29.02 provides that employees must notify the Employer at least 90 minutes prior to the start of a scheduled shift if he is unable to report for work. In instances where there exists a "current practice" requiring less notice, that practice prevails. There exists such a practice at Oakwood. It calls for 60 minutes advance notice of an inability to report for work as scheduled.

On April 2, 1987 the Grievant called in 55 minutes late. He was also absent without leave on that date for 8 hours. On April 15, 1987 he called in one hour and 55 minutes late. He was also absent without leave for 8 hours on that date. On April 16, 1987 he called in approximately 7.5 hours late. As was the case on the prior occasions related above, he was absent without leave on that date for 8 hours as well.

Based upon that history as well as his accumulated record of poor attendance the Employer discharged the Grievant on May 27, 1987. A grievance protesting that discharge was promptly filed. It was processed through the procedure of the parties without resolution. There is agreement that this dispute is properly before the Arbitrator for determination on its merits.

### **Position of the Employer:**

The State points to Mr. Bagley's work history and his poor attendance to support its discharge action. It readily confirms that when at work he was a satisfactory employee. The difficulty with continuing him as an employee that his attendance was at best sporadic. The Grievant commenced his employment with the State on December 9, 1983. On April 20, 1984 he received oral counseling for tardiness. That marked the beginning of continued discipline for attendance problems. The record indicates the following:

May 9, 1984 -- written reprimand, no call-no show  
October 4, 1984 -- oral reprimand, unauthorized departure before the end of the shift.  
November 16, 1984 -- oral reprimand, tardy  
January 18, 1985 -- written reprimand, tardy  
November 8, 1985 -- one day suspension, no call-no show  
March 19, 1986 -- oral reprimand, tardy  
April 28, 1986 -- three day suspension, absenteeism  
June 17, 1986 -- five day suspension, AWOL  
July 21, 1986 -- discharge, converted to 10 day suspension conditioned upon the Grievant entering an Employee Assistance Program, for absenteeism and tardiness.

After the Grievant entered the EAP the Department of Mental Health was willing to wipe the disciplinary slate clean. The Grievant continued to accumulate discipline for attendance problems however. Thus, the record continues to indicate:

October 1, 1986 -- verbal reprimand, tardy  
December 5, 1986 -- written reprimand, tardy  
May 6, 1987 -- six day suspension, absenteeism, tardy, AWOL

When the instances of discipline that constitute this record are added to the late call-ins and AWOL's of April, 1987, the Employer insists it had ample justification to discharge the Grievant. Employees must report to work regularly and on time in order for the facility to function smoothly. When Mr. Bagley called-in late and was AWOL it placed a burden on the staff of the Oakwood Forensic Center to replace him on short notice. On occasion, inmates were not attended to on time due to his absence. Given the population of Oakwood and the difficulties experienced by his colleagues when Bagley failed to call-in or report, his termination is justified the State insists.

Nothing in the Grievant's work history indicates that he will improve his attendance if he is restored to employment. The State has afforded him every opportunity to change his ways. He has not done so. Given these circumstances, the State urges the discharge be sustained.

### **Position of the Union:**

The Union points out that the Grievant lacked both a telephone and a car. When he had to call-in to report off work he had to walk two blocks to a pay phone. He was dependent upon co-workers for transportation to and from work. Given these circumstances his failure to call-in in timely fashion or report to work become understandable according to the Union. They must be considered and weigh in his favor and prompt mitigation of the discharge under scrutiny in this proceeding it urges.

In addition, the Grievant has been experiencing domestic difficulty. He has had a tenuous relationship with his wife and children, culminating in separation. This stressful situation weighs in his favor and against the Employer according to the Union. It should prompt a finding that the discharge penalty is excessive in the opinion of the Union.

The Union points to the chronology of events in this proceeding to support its contention that the Grievant should be restored to employment. The Grievant received a six day suspension on May 6, 1987 for attendance infractions. Before that suspension was served he was discharged. This sequence of events is in violation of the principles of progressive discipline according to the Union. The Grievant was not provided the opportunity envisaged by the suspension to improve his attendance performance prior to being discharged. Under these circumstances, the Union urges that Mr. Bagley be restored to employment with the State. It seeks conversion of the discharge to a suspension.

### **Discussion:**

At best Mr. Bagley's attendance history can be characterized as dismal. Over a relatively short period of time he accumulated a plethora of disciplinary entries for attendance related problems. Only an employee acting with disregard for his future with the employer would fail to change his behavior under these circumstances. Yet, after repeated instances of discipline for attendance infractions, Mr. Bagley did not improve his attendance. He continued to experience instances of tardiness, absenteeism and AWOL. Nothing in his work record can give any expectation that if he is given yet another opportunity his attendance performance will improve. The record indicates that the State has afforded him every chance to alter his behavior. It went so far as to wipe his disciplinary record clean in hope that his attendance would improve. It did not do so.

Mr. Bagley's participation in the Employee Assistance Program did not affect his attendance. The Union errs when it urges that the principles of progressive discipline have not been followed in this case. Only a person heedless of his continued prospects for employment with the State could have continued the reckless course of poor attendance embarked upon by Mr. Bagley after the repeated instances of discipline that mark his record. Almost from the inception of his employment with the State he was on notice that his sporadic attendance could not and would not be tolerated.

Similarly, that the Grievant was without a telephone or car does not serve to excuse his failure to get to work regularly. People are employed with an expectation that they will perform the job for which they are hired. Mr. Bagley failed to do so by his inability to report for work on time and as scheduled. The Employer cannot be expected to bear the costs and consequences of his lack of telephone and car.

That Mr. Bagley was experiencing domestic difficulties cannot serve to excuse his poor attendance. When he chose to call-in late or fail to report at all he exposed himself to the discipline in question in this proceeding. The record in this case indicates that the Employer has provided every opportunity to the Grievant to alter his behavior. He has failed to do so. No reasonable expectation can exist that should he be returned to employment that his attendance will improve. After approximately four years of continuous efforts by the State to correct the Grievant's attendance problems the conclusion is inescapable that he has been afforded every opportunity to mend his ways. He has failed to do so.

### **Award:**

Based upon the preceding discussion the grievance must be DENIED.  
Signed and dated this 14th day of March, 1988 at South Russell, OH.

Harry Graham  
Arbitrator