

ARBITRATION DECISION NO.:

112

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Administrative Services

DATE OF ARBITRATION:

March 22, 1988

DATE OF DECISION:

GRIEVANT:

Jodelle E. Mixon

OCB GRIEVANCE NO.:

G-87-2484

ARBITRATOR:

Harry B. Crewson

FOR THE UNION:

Allyne Beach, Advocate

FOR THE EMPLOYER:

Marlaina Eblin, Advocate

KEY WORDS:

Just Cause

Commensurate With Offense

Mitigating Circumstances

ARTICLES:

Article 24 - Discipline

§24.01-Standard

§24.02-Progressive

Discipline

FACTS:

Grievant was suspended for two (2) days for neglect of duty. Grievant reported late on eleven (11) days, ranging from one hour to one and nine-tenths of an hour late, for a total of five point three hours tardiness in a ninety (90) day period. Grievant testified that the tardiness was due to family illness and transportation difficulties, and that she had asked a supervisor about flextime. (There was nothing written in the opinion concerning arguments by the Employer or the Union.)

ARBITRATOR'S OPINION:

Flextime should have been pursued more actively. There was no evidence of a written request for flextime. There were no mitigating or extenuating circumstances as all the occurrences were based on the same problem. The discipline was progressively administered and was commensurate with the offense.

AWARD:

Grievance is denied.

TEXT OF THE OPINION:

ARBITRATION HEARINGS

March 22, 1988

Columbus, Ohio

**OHIO DEPARTMENT OF
ADMINISTRATIVE SERVICES**

AND

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION/AFSCME**

Grievant:

Jodelle E. Mixon

OCB Grievance No.:

G 87-2484

Appearances:

For the Employer

Marlaina Eblin, Advocate

Shirley Terrel, DAS

Carolyn L. Nellon, Witness

Tim Wagner, OCB. Observer

For the Union

Allyne Beach, Advocate

Linda Feily, OCSEA/AFSCME

Jodelle E. Mixon, Grievant

Issue:

Was the grievant, Jodelle E. Mixon, disciplined for just cause?

Position of the Employer

The grievant, Jodelle E. Mixon, was given a written reprimand for excessive absenteeism on October 13, 1987. Documents and oral statements were presented to indicate (1) that the discipline was for just cause and (2) that the written reprimand followed a previous verbal reprimand and was consistent with progressive discipline. The advocate stated that the employer was aware of the physical problems of the grievant and did exercise leniency in consideration of her record of absenteeism. But grievant, in spite of counseling and verbal warnings, continued to abuse unapproved leave time. Also, she did not explore or take advantage of the State's disability program.

The advocate concluded that the grievance should be denied.

Position of the Union

Documentation and oral testimony explained the unique features of the disease inherited by the grievant. Sudden and unanticipated swelling of the joints could lead to complete immobility. This condition, together with dental surgery and unexpected reactions, contributed to the exhaustion of leave time early in 1987. Also, the Advocate contended that the supervisor, Ms. Nellon, instituted new work rules in early 1987 and that she did not adequately counsel the grievant and clarify standards concerning absences, doctor certificates, etc.

Further, the grievant had shown improvement during the period between the verbal (June 9) and written (October 13) reprimands.

The advocate concluded that the written reprimand was without just cause; that it was not commensurate with the offense and that it should be expunged from the record of the grievant.

AWARD

The position of the employer is sustained.

The grievance is denied in its entirety.

Harry B. Crewson
Arbitrator