

ARBITRATION DECISION NO.:

114

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction, Lima
Correctional Institution

DATE OF ARBITRATION:

DATE OF DECISION:

March 26, 1988

GRIEVANT:

Ricky L. Lones

OCB GRIEVANCE NO.:

G-87-0018

FOR THE UNION:

Bob J. Rowland

FOR THE EMPLOYER:

Freddie Sharp

KEY WORDS:

Suspension
Sleeping On Duty

ARTICLES:

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

FACTS:

Grievant was hired as a Corrections Officer by the Ohio Department of Rehabilitation and Correction (Lima) on May 12, 1986. Approximately a month later, as a result of an investigation of Grievant's failure to phone in his scheduled lock count, the supervisor discovered Grievant sleeping. For that violation he was suspended for three (3) days.

During third shift on April 16, 1987, Grievant was the only Correction Officer on duty in 8 Dorm, which had 70 inmates, some of whom were serious offenders including murderers. At about 4:30 a.m. he awoke an inmate who was scheduled for cafe duty. The inmate got up and went into the

bathroom. Later, at 4:53 a.m. the Captain was advised that 8 Dorm had not called in its block count. The Captain went to 8 Dorm where he walked up to Grievant's desk, watched him sleep and ultimately woke him up by knocking on the desk and shouting. When Grievant awoke the Captain instructed him to take and phone in his lock count, which Grievant did.

EMPLOYER'S POSITION:

On April 16, 1987, Grievant was sleeping on duty, a violation of rule 5. Only ten (10) months earlier Grievant had been suspended three days for the same violation. Accordingly, there was just cause for the discipline and a five (5) day suspension was not excessive or unreasonable.

UNION'S POSITION:

Grievant was not sleeping. He had merely lowered his head because his neck hurt due to an injury he had received at home. Furthermore he performed all of his duties, which consisted of waking a cafeteria worker and taking the count and calling it in. There was no just cause for discipline.

ARBITRATOR'S OPINION:

There is very clear and convincing evidence that Grievant was sleeping on duty. Furthermore, it is not true that he performed all his duties; when he called in the count he was already late; that is why the Captain went to investigate.

At the time Grievant was sleeping there were approximately 70 inmates who were free to enter the hallway from the dormitory rooms. Grievant had his keys on his possession. Sleeping under the conditions present in this dormitory was extremely unsafe for Grievant, inmates, and others.

In view of the seriousness of the offense and the prior three day suspension, there was just cause for the five (5) day suspension.

AWARD:

Grievance is denied.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION
UNDER THE 1986 CONTRACT

Between:

**STATE OF OHIO
DEPARTMENT OF REHABILITATION
AND CORRECTION (LIMA
CORRECTIONAL INSTITUTION)
THE EMPLOYER**

-and-

**THE OHIO CIVIL SERVICE
EMPLOYEES ASSOCIATION
LOCAL NO. 11, AFSCME,
AFL-CIO**

THE UNION

UNION GRIEVANCE NO.:

LCI-87-D-011

OCB GRIEVANCE NO.:

G-87-18

ND 585

GRIEVANT:

RICKY L. LONES

Before:

NICHOLAS DUDA, JR.
ARBITRATOR

OPINION AND AWARD:

March 26, 1988

CASE DATA

SUBJECT

Five day suspension for allegedly "sleeping on duty".

APPEARANCES

FOR THE UNION

Bob J. Rowland, Staff Representative, Presenting the Case
Ricky L. Lones, Correction Officer II, Grievant

FOR THE EMPLOYER

Freddie Sharp, Labor Relations Specialist, Presenting the Case
Edward Flynn, Labor Relations Officer
Jerry Dunnigan, Labor Relations Officer, Lima Correctional Institution
Jim Baldauf, Retired Former Captain

POSITIONS OF THE PARTIES

THE EMPLOYER'S POSITION

On April 16, 1987 Grievant was sleeping on duty, a violation of Rule 5. Only ten months earlier Grievant had been suspended three days for the same violation. Accordingly there was just cause for the discipline and a five day suspension was not excessive or unreasonable.

THE UNION'S POSITIONS

Grievant was not sleeping. He had merely lowered his head because his neck hurt due to an injury he had received at home. Furthermore he performed all his duties, which consisted of waking a cafeteria worker and taking the count and calling it in. There was no just cause for discipline.

THE ISSUE

Whether there was just cause for suspending Grievant five days for sleeping on duty on April 16, 1987?

ANALYSIS

FINDINGS OF FACT

Grievant was hired as a Correction Officer on May 12, 1986. Approximately a month later, as a result of an investigation of Grievant's failure to phone his scheduled lock count, supervision discovered Grievant sleeping. For that violation he was suspended three days.

On the 11:00 to 7:00 A.M. shift on April 16, 1987 Grievant was the only Correction Officer on duty in 8 Dorm, which had 70 inmates, some of whom were serious offenders including murderers. At about 4:30 A.M. he awoke an inmate who was scheduled for cafe duty. The inmate got up and went into the bathroom. Later, at 4:53 A.M. Captain Baldauf was advised that 8 Dorm had not called in its block count. Captain Baldauf went to 8 Dorm where he walked up to Grievant's desk, watched him sleep and ultimately woke him up by knocking on the desk and shouting. When Grievant awoke the Captain instructed him to take and phone in his lock count, which Grievant did.

Mr. Baldauf's testimony was detailed, logical, unbiased and very persuasive.

Grievant admitted that his head was down on his arms on the desk and that he didn't raise his head for a time after the captain walked to his desk and stood for a time before shouting. According to Grievant he thought the person who walked up to him and stood silently was one of the inmates -- so he did not raise his head or open his eyes until he heard the Captain talk. Under the circumstances that explanation is incredible and does not approach overcoming the supervisor's testimony.

EVALUATION

As indicated above there is very clear and convincing evidence that Grievant was sleeping on duty. Furthermore, it is not true that he performed all his duties; when he called in the count he was already late; that is why Captain Baldauf had come to investigate.

At the time Grievant was sleeping there were approximately seventy inmates who were free to enter the hallway from the dormitory rooms. Grievant had his keys on his possession. Sleeping under the conditions present in 8 Dorm was extremely unsafe for Grievant, for the inmates, and for others.

In view of the seriousness of the offense and the prior three day suspension there was just cause for a five day suspension.

AWARD

The grievance is denied.

Nicholas Duda, Jr.
Arbitrator