

ARBITRATION DECISION NO.:

115

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:

Daryl Styer

OCB GRIEVANCE NO.:

G-87-1421

ARBITRATOR:

Nicholas Duda, Jr.

FOR THE UNION:

Bob J. Rowland

FOR THE EMPLOYER:

Freddie Sharp

KEY WORDS:

Just Cause
Insubordination, Refused
To Work Overtime
Suspension

ARTICLES:

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

FACTS:

Grievant was hired as a Corrections Officer by the State Department of Rehabilitation and Correction on November 5, 1983. For years his regular duty position had been in the Control

Room working second shift. CO's are frequently called in on overtime. They have the option to accept or refuse. If an Employee accepts, the normal procedure is for the officer to come to the institution, punch his/her time card and get the specific assignment from the CO in the Control Room. Grievant was often called to work overtime. He always refused unless the overtime was in the Control Room.

On January 20, 1987, Grievant was contacted and asked to work overtime. Grievant specifically asked where he would work and the Sergeant answered "in here." Grievant agreed to work. He came to the institution at 10:55 a.m., went to the Control Room where he was told to work in 6 Dorm. Grievant said he would not work at 6 Dorm and left the institution without ever having "punched-in" on the time clock.

EMPLOYER'S POSITION:

Grievant's suspension was for just cause. Grievant was called and accepted an overtime turn. When he reported for duty, he was notified to work in 6 Dorm. He refused to carry out the work assignment and left, thereby violating rule 3a of Employer's guidelines.

UNION'S POSITION:

Although Grievant accepted the overtime assignment, it was on the understanding that he was to work in the Control Room. When he discovered the true assignment, he did refuse to work overtime. However, he left the institution without ever punching his time card, so he did not report for the overtime work. Therefore there was no just cause for the discipline.

ARBITRATOR'S OPINION:

The issue is whether Grievant was justified in his refusal to work.

Under the circumstances, and from the Grievant's frame of reference, the Sergeant answered that the overtime was in the control Room; at the very least the Sergeant's answer was ambiguous and non-specific. Grievant's refusal when told the assignment was the same as it would have been had he been given the information when requested over the telephone. Grievant's actions did not, therefore, constitute insubordination.

AWARD:

Grievance is sustained. Grievant shall receive one day's back-pay.

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-3-1-87

OCB GRIEVANCE NO.:
G-87-1421

ND 599

GRIEVANT:
DARYL STYER

Before:
NICHOLAS DUDA, JR.
ARBITRATOR

OPINION AND AWARD:
March 26, 1988

CASE DATA

SUBJECT

One day suspension for alleged "Insubordination: refusal to carry out a work assignment."

APPEARANCES

FOR THE UNION

Bob J. Rowland, Staff Representative, Presenting the Case
Daryl Styer, 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
Mark Newland, Correction Supervisor I

BACKGROUND

Grievant was hired as a Correction Officer on November 5, 1983. His normal assignment for some time has been to work in the Control Room on the 3 to 11 turn.

POSITIONS OF THE PARTIES

THE EMPLOYER'S POSITION

Grievant was called and accepted an overtime turn. When he reported for duty, he was notified to work in 6 Dorm. He refused to carry out the work assignment and left, thereby violating rule 3a and providing just cause for a one day suspension.

THE UNION'S POSITION

Although Grievant accepted the overtime assignment it was on the understanding that he was to work in the Control Room. When he discovered the true assignment he did refuse to work overtime, but he left the institution without ever punching his time card so he did not report for the overtime work. The penalty is to credit him with double the amount of overtime accepted; it does not include suspension. In this case discipline would constitute double jeopardy. Therefore there was no just cause for discipline.

FINDINGS OF FACT

Grievant was hired as a Correction Officer on November 5, 1983. For years his regular duty position has been in the Control Room working the 3 to 11 shift. For years he knew Sergeant Newland, who was promoted to Sergeant shortly prior to the incident in question, because Sergeant Newland had also worked in the Control Room.

Correction Officers are frequently called in regard to overtime. They have the option to accept or to refuse. If an employee accepts, the normal procedure is for the officer to come to the institution, punch his/her time card and get the specific assignment from the Correction Officer in the Control Room unless the Employee is told to get the assignment from someone else.

Grievant is often called to work overtime. He always refuses unless the overtime is in the Control Room.

On January 20, 1987 a Captain told Sergeant Newland to call a list of employees to obtain two volunteers to work overtime. Newland understood that if an employee asked what the assignment was, the Sergeant was not to give the information. The Sergeant called 18 officers without success, before Grievant. When offered the overtime, Grievant specifically asked where he would work. The Sergeant answered "in here". Grievant said he would come in. He came to the institution about 10:55 A.M. He walked down the hall toward the time clock which was just beyond the Control Room window but stopped at the Control Room window when the Correction Officer on duty said that he was to work at 6 Dorm. Grievant said he would not work at 6 Dorm and left the institution.

EVALUATION

Under the circumstances of this case the Arbitrator believes that Grievant did in fact report even though he had not yet punched in when he received the assignment. Furthermore the Arbitrator accepts Grievant's admission that he refused to carry out the work assignment. The only question is whether Grievant was justified in that refusal. In other words did he commit insubordination within the meaning of Rule No. 3A.

The Employer has the burden of showing the insubordination. The Sergeant knew Grievant and

probably knew that he never accepted overtime assignments other than in the Control Room. Under the circumstances, and from Grievant's frame of reference, the Sergeant answered that the overtime was in Control; at the very least the Sergeant's answer was ambiguous and non-specific. Grievant's refusal when told the assignment was the same as it would have been had he been given the information when requested during the telephone conversation.

Perhaps Grievant was not entitled to be informed of the assignment before he decided whether to accept, but at least he was entitled to be told clearly that Supervision would not give the information before he reported.

AWARD

The grievance is sustained. The State is directed to make Grievant whole.

Nicholas Duda, Jr., Arbitrator