

ARBITRATION DECISION NO.:

148

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Transportation

DATE OF ARBITRATION:

September 22, 1988

DATE OF DECISION:

October 4, 1988

GRIEVANT:

James Boyce

OCB GRIEVANCE NO.:

G-87-1023

ARBITRATOR:

Harry Graham

FOR THE UNION:

Lois Haynes

FOR THE EMPLOYER:

Rebecca Ferguson

KEY WORDS:

Request For Sick Leave

Suspension

Just Cause

ARTICLES:

Article 24 - Discipline

§24.01-Standard

§24.02-Progressive

Discipline

FACTS:

The Grievant has been employed as a Highway Worker in the Lucas County garage of ODOT since March, 1971. On February 5, 1987, Grievant reported to work as scheduled. As the morning progressed, Grievant began to feel ill and as such, asked his crew leader for permission to go home. The ODOT crew leader told Grievant to fill out the proper leave request forms and

take them to his supervisor for approval.

Grievant did in fact secure and complete the necessary form and took it to the office of his supervisor. Upon entering the Supervisor's office, Grievant did not speak to either of the men present in the office. Rather, he placed his request for leave on the supervisor's desk and went home for the day.

Upon discovering that the Grievant had gone home for the day, the State imposed the ten (10) day suspension at issue in this proceeding.

EMPLOYER'S OPINION:

At the time of this incident, Grievant had been employed by ODOT for sixteen (16) years. He is well aware of the proper procedure to be followed when requesting leave. Permission must be secured from the appropriate supervisor. The Grievant's crew leader did not have the authority to permit Grievant to take the day off and Grievant failed to get permission to leave from a supervisor.

Furthermore, Grievant's record is replete with disciplinary entries of one sort or another. However, no similar incident has occurred since February 1987 leading to the conclusion that the suspension had its intended effect and should therefore be upheld.

UNION'S OPINION:

It is the position of the Union that the State did not have "just cause" to suspend Grievant for ten (10) days. Grievant went to his supervisor's offices as required. The supervisor was occupied on the telephone and Grievant felt sick so he placed the leave form on the supervisor's desk and went home.

Grievant had a balance in his leave account and knew the request would therefore be approved. Given the circumstances of this case and the magnitude of the disciplinary the Union urges that it is not commensurate with the offense and that it should be overturned.

ARBITRATOR'S OPINION:

The Grievant is a sixteen (16) year veteran of the Department. He is aware of Departmental policies when requesting leave yet he failed to follow these procedures. The Union has argued that there are extenuating circumstances. However, those circumstances do not serve to excuse an unauthorized absence.

An employer must be permitted a range of reasonableness in fashioning disciplinary penalties. The Grievant's record is indifferent. Prior to this suspension, he had received a three day suspension, which occurred six months prior to this incident. Given that history it is not possible to determine that the Employer overreacted to the absence without permission on February 5, 1987. The Grievant had leave available to him on February 5, 1987 and presumably had proper application been made, which includes securing permission from supervision, leave would have been made available.

Therefore, the State had just cause to administer the ten day suspension.

AWARD:

The grievance is denied.

TEXT OF THE OPINION:

In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

**The State of Ohio,
Department of Transportation**

Case No.:
G-87-1023

Appearances:

For OCSEA/AFSCME Local 11

Lois Haynes
Staff Representative
OCSEA/AFSCME Local 11
77 North Miller Rd., Suite 204
Fairlawn, OH. 44313

**For Ohio Department
of Transportation**

Rebecca Ferguson
Labor Relations Officer
Ohio Department of
Transportation
317 East Poe Rd.
Bowling Green, OH. 43402

Introduction:

On September 22, 1988 a hearing was held in this matter before Harry Graham of South Russell, OH. At that hearing the parties were provided complete opportunity to present testimony and evidence. No post-hearing briefs were filed in this dispute and the record was declared 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 Transportation suspend Mr. James Boyce for a period of ten (10) days for just cause? If not, what shall the remedy be?

Background:

There is no controversy surrounding the facts that give rise to this proceeding. The Grievant, James Boyce, has been employed as a Highway Worker in various classifications since March 29,

1971. He has consistently been based in the Lucas County garage operated by the Ohio Department of Transportation. (ODOT). On February 5, 1987 Mr. Boyce reported for work as scheduled. As is his custom he arrived before his scheduled starting time of 8:00AM. On that date the Grievant was part of a crew led by Eugene Esterline. Mr. Esterline was classified as a Highway Worker 4 at the time of this incident. As such, he functioned as a lead man or crew leader. He made the work assignments for crew members. In the hierarchy of ODOT he lacked the authority of a supervisor. That is, he did not have as part of his responsibilities discipline of crew members.

Mr. Esterline assigned Mr. Boyce to guard rail repair at about 7:45AM. A few minutes later Boyce told Esterline that he felt ill. He told Esterline he should go home on sick leave. Esterline told Boyce to fill out the proper request for leave forms and return them to his supervisors for approval. Mr. Boyce did in fact secure and complete the necessary form. He took it to the office of his supervisor, John Earl who is a Highway Maintenance Superintendent 2. At the time Boyce entered Earl's office Earl was on the telephone. Another supervisor, Williamson, was also in the office. The Grievant did not speak to either Earl or Williamson. He placed his request for leave form on Earl's desk and went home for the day. The Supervisors were unaware of Boyce's absence until discussion of the day's events with Esterline. Boyce's leave request form was subsequently found on Earl's desk. Upon discovering that the Grievant had gone home for the day the State imposed the ten (10) day suspension at issue in this proceeding.

That suspension was properly grieved. No resolution of the dispute was reached in the procedure of the parties and they agree that it is properly before the Arbitrator for determination on its merits.

Position of the Employer:

The State points out that at the time of this incident the Grievant had been in its employ for sixteen (16) years. He is well aware of the proper procedure to be followed when requesting leave. Permission must be secured from the appropriate supervisor. In this case, that was Earl or Williamson. Permission was not secured from either. Esterline as a Highway Worker 4 functioned as a crew leader. He lacked authority to permit Boyce to take the day off. In fact, he did not permit Boyce to go home. He merely directed him to secure permission prior to leaving work. Boyce did not secure such permission from proper authority. Hence, the suspension is justified.

In this case, consideration must be given to the Grievant's work history. That record is replete with disciplinary entries of one sort or another. In August, 1986 he served a three day suspension for insubordination and unauthorized absence. Reprimands were administered in 1987 as well as this ten day suspension. When the degree of discipline is weighed against this work history the suspension should be upheld the State urges.

By leaving work without securing permission from the appropriate authority Boyce was in violation of various Directives issued by the Department. Directive A-301, 2c, 13, and 16 deals with insubordination and the need for permission to leave work. The Agreement permits discipline for just cause to correct employee's behavior. No similar incident involving Mr. Boyce has occurred since February, 1987. Obviously, the suspension has had its intended effect as the Grievant has ceased being absent without permission according to the State. Consequently, it urges that the discipline be upheld.

Position of the Union:

In the opinion of the Union the State did not have the "just cause" contemplated by the Agreement when it administered the ten day suspension at issue here. Boyce went to his supervisor's office as required. As Earl was occupied on the telephone and he (Boyce) felt sick he placed the leave form on Earl's desk and went home. There is no dispute that Boyce was sick. He was vomiting. If Earl had been given the form directly he would have approved Boyce's request for leave. Boyce had a balance in his leave account. Given the circumstances of this case it is necessary to put aside the technical failure of Earl to sign the form and look to the substance of the event. Boyce was sick. He sought permission to leave work. He knew he would receive it so he went home. This sequence of events does not merit a ten day suspension in the Union's view.

According to the Union the State has "stacked the deck" to support its action. Boyce was charged with insubordination, unauthorized absence and leaving the work site without permission. He was not insubordinate in that he did not refuse to obey a specific order. He was guilty of unauthorized absence in that he had a leave balance available to him on February 5, 1987. Given the magnitude of the discipline, the Union urges that it is not commensurate with the offense and that it be overturned.

Discussion:

The Grievant in this case is a veteran of sixteen years of service with the Department. He is aware of Departmental policies. He knew the procedure for application for and approval of leave. He applied properly. He did not secure approval. It may be argued that there were extenuating circumstances. Boyce was sick on the morning of February 5, 1987. Earl was occupied on the telephone. Those circumstances do not serve to excuse an unauthorized absence. Another supervisor, Williamson, was in the office. Boyce did not speak with him to secure permission to leave work or to inform him that he was sick and ask for sick leave for the day. To the contrary, he placed his request for leave on Earl's desk and left, presuming that permission had been granted. In the absence of any affirmative indication to Boyce that he could leave for the day, that presumption was premature at best.

An Employer must be permitted a range of reasonableness in fashioning disciplinary penalties. Boyce's record is indifferent. Considering the amount of time he has been with the Department he has accumulated a fair number of disciplinary entries. Prior to this suspension, he had received a three day suspension. That suspension occurred six months prior to this incident. Given that history it is not possible to determine that the Employer overreacted to the absence without permission on February 5, 1987.

That the Grievant had leave available to him on February 5, 1987 is not material. The record indicates that he properly applied for leave for February 6, 1987. He was granted the leave. Presumably had proper application been made, which includes securing permission from supervision, leave would have been made available for February 5, 1987 as well. Given the Grievant's length of service with the Department and his prior record of discipline the conclusion is inescapable that the State had just cause to administer the ten day suspension at issue in this proceeding.

Award:

The grievance is DENIED.

Signed and dated this 4th day of October, 1988 at South Russell, OH.

Harry Graham
Arbitrator