

ARBITRATION DECISION NO.:

150

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Bureau of Employment Services

DATE OF ARBITRATION:

October 13, 1988

DATE OF DECISION:

October 19, 1988

GRIEVANT:

John Polston

OCB GRIEVANCE NO.:

G-87-1545

ARBITRATOR:

Rhonda R. Rivera

FOR THE UNION:

Patrick A. Mayer, Advocate

FOR THE EMPLOYER:

Felicia Bernardine, Advocate

KEY WORDS:

Just Cause

AWOL

Notice Of Leave

ARTICLES:

Article 24 - Discipline

§24.01-Standard

§24.02-Progressive

Discipline

Article 31 - Leaves

of Absence

§31.03-Authorization

For Leave

FACTS:

Grievant is employed by the Dayton Office of OBES as an Account Executive. Beginning in July, 1985, Grievant was absent from the work place for an ongoing period of twenty-two (22) months. Upon returning to work, Grievant was charged with failing to follow proper call off procedures on at least twelve (12) separate occasions and neglecting to maintain proper contact with his supervisor relative to his absence and was given a thirty-day suspension.

During his absence Grievant filed most, if not all, of the required leave forms, indicating on various occasions specific dates for return to work. The record showed and the Grievant admitted that on those days listed for return, he failed to either return to work or call off and that on numerous occasions some days passed before he notified his supervisor of a new leave request by submitting a new leave request form.

The Grievant maintained on his own behalf that he had no obligation to either return or call off on those stipulated days. He maintained that because he was simultaneously applying for disability that he need only notify his supervisor as a "matter of courtesy."

EMPLOYER'S POSITION:

Grievant was suspended for just cause. Leave Policy Rule 3025(2)(C) requires that "an employee notify his/her supervisor within one-half hour following the time he/she is scheduled to report to work or the first day of absence." Grievant failed to follow the provisions of this rule.

UNION'S POSITION:

The Employer had no just cause for the discipline imposed. Grievant's immediate supervisor made no attempt to notify Grievant that he was in an AWOL status as required by Section 31.03 of the Contract. Grievant tried to keep the Employer aware of changes in his physical condition, believing that he was following the proper procedures. Grievant was never advised that he was in an AWOL status, ordered back to work, or given notice of possible discipline which could be imposed for failure to report back to work. The thirty (30) day suspension was not progressive or commensurate with the offense. In addition, two pre-disciplinary hearings were held previously but no discipline was imposed. Therefore, the Employer waived the right to retroactively impose discipline.

ARBITRATOR'S OPINION:

The Employee has a duty to observe the leave policy in effect and failure to do so is grounds for discipline. The arbitrator concluded that the Grievant failed to either properly report or properly call off on some days. However, management also has a duty under Section 31.03 of the Contract to promptly advise the employee in those circumstances where leave is denied and therefore violated the Contract by failing to follow up on some of these lapses in a timely fashion. Thus, the thirty (30) day suspension is reduced by fifteen (15) days.

AWARD:

Grievance is denied in part; the 30 day suspension is reduced to 15 days.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

**Ohio Bureau of
Employment Services**

Employer

and

**OCSEA, Local 11,
AFSCME, AFL-CIO**
Union

Grievance No.:
G87-1545

Grievant:
Polston

Hearing Date:
October 13, 1988

Award Date:
October 19, 1988

For the Employer:
Felicia Bernardine,
Advocate

For the Union:
Patrick A. Mayer,
Advocate

Present in addition to the advocates named above and the Grievant, John Polston, were Rodney Sampson (OCB), Joan Plosky, Sr. Acct. Exec. (OBES), James R. Keith, Legal Counsel (OBES).

Preliminary Matters:

The parties agreed that the Arbitrator could tape record the proceedings for the sole purpose of refreshing her recollection and on the condition that the tapes would be destroyed upon the rendering of the award. Moreover, the parties agreed that the award could be submitted by the Arbitrator for publication. All witnesses were sworn. The parties stipulated that the matter was property before the Arbitrator.

Issue:

Was the discipline of a 30 day suspension levied against the Grievant for just cause? If not, what shall the remedy be?

Brief Facts:

The Grievant is an employee in the Dayton Office of OBES. He was suspended for being AWOL and for neglect of duty. During a twenty-two month period, the Grievant was absent from work. During that time he filed most, if not all, of the required 728L leave forms. On these forms, on various occasions, he indicated specific dates for return to work. The record showed and the Grievant admitted that on those days listed for return he did not either return to work or call off on those days and that on numerous occasions some days passed before he notified his supervisor of a new leave request by submitting a new 728L. The record also showed that during some parts of this twenty-two month period, changes in personnel within OBES itself impeded a speedy resolution of these AWOL issues with regard to the Grievant. The Grievant maintained on his own behalf that he had no obligation to either return or call off on those stipulated days. He maintained that because he was simultaneously applying for disability that he need only notify his supervisor as a "matter of courtesy". OBES maintained that notice was required under Leave Policy Rule 3025(2) at C. 3025(c) reads:

Notification of supervisor; compliance with regulations. When an employee is unable to report to work for a reason specified in "A" above and such absence was not approved in advance, the employee shall notify his/her immediate supervisor, or other designated person, within one-half hour following the time he/she is scheduled to report for work on his/her first day of absence, unless emergency conditions make it impossible. Notification may be made by telephone or other reliable means of communication. If such notification is not made (depending on circumstances), the department head may recommend that the absence be charged to unexcused absence, and a pay deduction will be made (see item 3080).

Stipulated Award:

After 6-1/2 hours of testimony, the Arbitrator offered the parties a stipulated award based upon her preliminary judgment. The Arbitrator indicated that if the award were objected to by either party, testimony and closings would be completed, briefs taken if requested, and the Arbitrator would completely review the material and render her opinion in 30 days.

The parties accepted the Award.

Award:

Grievance is denied in part; the 30 day suspension is reduced by 15 days. The Arbitrator finds that the Grievant did fail to either properly report or properly call off on some days but that the Department also failed to follow up on some occasions these lapses in a timely fashion.

October 18, 1988
Date

Rhonda R. Rivera
Arbitrator