ARBITRATION DECISION NO.:
151

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Mental Health,
Oakwood Forensic Center

DATE OF ARBITRATION:
September 28, 1988

DATE OF DECISION:
October 20, 1988

GRIEVANT:
Ronald White

OCB GRIEVANCE NO.:
G-87-1020
G-87-2813

ARBITRATOR:
John E. Drotning

FOR THE UNION:
Linda K. Fiely
Robert Rowland

FOR THE EMPLOYER:
John Rauch
Jennifer Dworkin

KEY WORDS:
Just Cause
Employee Assistance
Program

ARTICLES:
Article 24 - Discipline
§24.01-Standard
§24.08-Employee
Assistance Program
Article 13 - Workweek,
Schedules and Overtime

§13.06-Report-In Locations

FACTS:

Grievant is employed by Oakwood Forensic Center as a Psychiatric Attendant. Grievant received a six-day suspension following six incidents of tardiness and failure to call in properly in early 1987. Grievant's prior disciplinary record consisted of four oral counselings, two letters of reprimand, and a two-day suspension for tardiness and absenteeism. Before Grievant's six-day suspension had been served, Grievant was again AWOL on March 21, 1987 and a removal order was entered. However the removal was held in abeyance so that Grievant could participate in an EAP program. Before Grievant could begin the EAP program he suffered a heart attack and was on disability for three months. Upon release for work, Grievant continued to violate the attendance and call-in policy and the employer reinstated the removal order.

EMPLOYER'S POSITION:

Employees are expected to be at work on time and, therefore, since other employees arrived on time the six-day suspension should be sustained. In addition, following his initial discharge in June, 1987, Grievant was given a second chance through participation in an EAP program. Grievant failed to comply with the EAP agreement which required his participation and acceptance of the attendance standards and, upon his return from disability, he continued to violate the call-in procedures. Article 13.06 requires employees to start work on time. Grievant was not treated in a disparate fashion. Grievant was given a second chance and failed, therefore, his discharge is based on just cause.

UNION'S POSITION:

Employee failed to show just cause for the suspension. The discipline imposed was not corrective and the employer failed to consider mitigating circumstances as required under Section 13.06 which included the fact that Grievant's daughter died in December of 1986, Grievant had no phone in his home and the co-worker that drove him to work was late himself. In the past, discipline issued by the employer had been less severe. Therefore, the penalty should be modified.

Employer has also not shown just cause for Grievant's removal. Due to his heart attack, Grievant was not given a chance to complete the EAP. The incidents of tardiness in October, 1987, were related to medication problems and, when Grievant was disciplined, he was not counseled properly. The grievance should be upheld and the Grievant reinstated with back pay.

ARBITRATOR'S OPINION:

The facts regarding the basis for the six-day suspension are not in dispute. The question is whether the reasons for Grievant's late report-ins constitute extenuating circumstances that should mitigate the imposition of the six-day suspension. That the Grievant has no phone or car and relies on another employee who is often late are not mitigating factors even though true. Even in these circumstances, the employee has an obligation to follow attendance rules and procedures for calling in. Grievant's alleged problems getting through the sally port would perhaps have some mitigating merit if it had been shown that other employees had also been late by a few minutes because of similar problems. Had discipline been based solely on three occasions of being late less than five minutes, the incidents might be considered minor with no real consequence to efficiency. However, there were three other violations during the three month period. Grievant's attendance problem had not been corrected by progressive discipline. The employer had just

cause to discipline Grievant and a six-day suspension was the natural next step in progressive discipline.

Grievant's removal was based on an AWOL which occurred only a few days after the last violation for which the six-day suspension was imposed and served. While the corrective nature of discipline may not have had a chance to take effect, this does not fully support a claim that the employer does not have just cause to terminate an employee for continual offenses. The employee held the removal order in abeyance however, to allow Grievant to participate in an EAP program, recognizing that Grievant's problems might have been exacerbated by the death of his daughter and that outside help might be necessary for him to correct his attendance problems. Grievant did not have full opportunity to show whether he was going to fulfill his agreement to participate in and complete the EAP. Grievant's heart attack and disability leave may have given participation in the EAP somewhat lower priority. Had Grievant not been on medication he may have been able to fulfill his obligation of signing in or calling in on time. Grievant is no longer on the medication and the circumstances inhibiting him from taking full advantage of the EAP no longer exist. Therefore, Grievant should have the opportunity to complete the EAP and modify his behavior.

AWARD:

The six-day suspension is appropriate.

The employer did not have just cause to terminate Grievant and Grievant shall be reinstated without back pay.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION

BETWEEN

OHIO DEPARTMENT OF MENTAL HEALTH

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION LOCAL 11, AFSCME, AFL-CIO

ARBITRATION AWARD

GRIEVANT:
Ronald White

HEARING DATE:
September 28, 1988

ARBITRATOR:
John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on September 28, 1988 at the Central Ohio Psychiatric Hospital, Columbus, Ohio. Appearing for the Union were: Linda K. Fiely, Associate General Counsel; Mr. Robert Rowland, Staff Representative; Mr. James Ladden; and the grievant, Mr. Ron White. Appearing for the Employer were: John Rauch, Labor Relations Manager; Ms. Jennifer Dworkin; Mr. Robert Wegesin; and Mr. Rick Mawhorr.

The parties were given full opportunity to examine and to cross examine witnesses and to submit written documents and evidence supporting their respective positions. No post hearing briefs were filed and the case was closed on 9/28/88. The discussion and award are based solely on the record described above.

II. ISSUES

The parties jointly agreed to the following issues:

1. Was the six day suspension for just cause? If not, what shall be the remedy?
2. Was the removal for just cause? If not, what shall be the remedy?

III. STIPULATIONS

For the first issue, the parties jointly submitted the exhibits marked Joint Exhibits #1-1, #2-1, #3-1, #4-1, #5-1, #6-1, and #7-1.

For the second issue the parties jointly submitted exhibits marked Joint Exhibits #1-2, #2-2, #3-2, #5-2, and re-submitted Joint Exhibits #4-1 and #5-1.

The parties also stipulated that White was on approved disability leave between 7/25/87 and 10/11/87 as a result of heart disease.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

The parties deduced testimony and evidence and provided argument on each issue separately.

A. ISSUE #1 - Six day suspension

1. EMPLOYER

a. TESTIMONY AND EVIDENCE

Mr. Rick Mawhorr testified that he worked at the Oakwood Forensic Center in Lima, Ohio and was the Labor Relations Officer. He noted that the Oakwood Center had 67 resident prisoners with mental problems and they had 240 employees.

Mawhorr testified that Joint Exhibit #3 was the six day suspension and it noted the dates. White's disciplinary record is noted by Employer Exhibits #1-1 through #7-1, noted Mawhorr, and it involves four oral counselings on 4/18/85, 8/14/85, 1/2/86, and 4/10/86. In addition, continued Mawhorr, there were two letters of reprimand on 10/3/86 and 11/10/86 identified as Employer Exhibits #5-1 and #6-1 and a two day suspension on 1/21/87 as a result of absenteeism from work. He noted that the pre-disciplinary conference for the two day suspension was held on

1/6/87.

Mawhorr said that the two day suspension on 1/21/87 was sent out prior to 1/16/87.

Mr. Robert Wegesin testified that he is the Director of Nursing at the Oakwood Center. Wegesin said that a psychiatric attendant provides safety and security for employees and staff and he observes and supervises and documents patient behavior. Wegesin said that if an employee does not show up for work, the unit can be in trouble because of inadequate staffing and it might have to ask other employees to work overtime.

Wegesin said that White, the grievant, had acknowledged that he had read both Joint Exhibits #4-1 and #5-1. He went on to say that an employee must call in one hour before start time.

Leave request, said Wegesin, must be issued on a timely basis.

Wegesin testified that Joint Exhibit #6 was the daily time record for White and it showed time in and time out and that White was thirty-two minutes late arriving on 1/16/87 and he did not call in; fourteen minutes late on 1/31/87 and he did not call in; three minutes late on 2/3/87 without a call-in; five minutes late on 2/10/87 without a call in; and on 3/12/87, he was late one hour and forty-five minutes and was viewed as absent.

Joint Exhibit #7-1, said Wegesin is the call in log and it reflects the call-ins from the employee. He noted that White was late thirty minutes on 1/16/87 without a call in and he repeated the dates that he had discussed above.

The Employer did not cross examine Union witnesses on Issue #1.

b. ARGUMENT

The Employer notes that White was tardy as noted in the documents. Moreover, the merge and bar language was not violated and the six day suspension did not include those in the two day suspension.

The Union, notes the Employer, seems to be talking about Contract date and the new Contract did not abrogate one's prior record.

The Employer noted that the grievants excuses for tardiness were based on the fact that he had no telephone and that since he did not have car, he was driven to work by another employee who was always late. In addition, the Employer noted that White testified that there were problems entering the facility through the gates. However, the Employer argues that employees are expected to be at work on time and therefore, since other employees arrived on time, the six day suspension should be sustained.

2. UNION

a. TESTIMONY AND EVIDENCE

Mr. James Ladden testified he was a Psychiatric Attendant Warden at Oakwood and he noted that in the last two years, the units had changed and that they were now somewhat autonomous and that some patients live together. He went on to say that the units are more confined now than they were in the past and there has been some construction over the last two years and that the report-in locations have been changed over time.

Ladden said that the check point location is seventy-five to one hundred yards away and that the sally port was hard to get through smoothly.

Ladden said that there were few reprimands before the Collective Bargaining Agreement but now the Management is taking a harder line.

Ladden said that in the past, the supervisor used to approve leave forms but now there is a log to sign in to request leave.

Ladden said he was not aware of any back to back suspensions.

Mr. Ronald K. White, the grievant, testified he had seven children and that he was a Position Attendant who supervised patients and filled out daily documents. He said he worked in the Medical Unit.

White said he rode to work with another employee and that employee was late. White said he has no phone and so to call in, he had to walk two blocks to a filling station.

White said the dates on Joint Exhibit #3-1 are correct and that he called in late on 1/16/87 because his driver was late. He went on to say that on most of the dates, the five minute and three minute tardinesses were a result of difficulties in getting through the sally port.

On 3/12/87 when he was late one hour and forty-five minutes, said White, he thought his co-driver had car trouble.

On December 12, 1986, White said his fifteen year old daughter died while in the Columbus Hospital.

White testified that he turned in some leave papers to Alice K. and she said that she would put in the out-going mail box.

White said that when he arrived at Oakwood, the car would be parked and he would walk to the sally port and take off his buckles, watches, and put those in a bucket. Then he would go through the door and wait for the security guard and make sure that the door beeped or didn't beep. Then he would go to the door and get keys and that would take some time and then he would sign in and go to work. White said that the processing through the sally port could take ten to fifteen minutes if there were no trouble but longer if there were some problems.

White said that he subsequently has found another employee to ride with and this driver is dependable.

White also testified that outside food vendors, external security guards, and some truckers bringing in supplies used the sally port at the same time that he had to go through it and that was what caused the three minute and five minute infractions.

The Union cross examined Management witnesses. Mr. Rick Mawhorr, on cross, testified that Employer Exhibits #1-1 and #2-1 were failing to call in and no report off on 7/20/85 and he also identified Employer Exhibits #3-1, #4-1. #5-1, and #6-1.

Employer Exhibit #7-1, reiterated Mawhorr, was a two day suspension for being AWOL on 11/29/87.

Mr. Robert Wegesin, on cross, testified that the sign-in book is at the Nursing Supervisor's office which was located in the old entrance way on the second floor at the building next to the key control area. The employees, said Wegesin, had to come through a sally port which was forty yards from the building, walk upstairs, pick up keys, and sign in.

Wegesin testified that the parking lots were not particularly close to the building.

b. ARGUMENT

The Union argues that the Employer failed to show just cause for the suspension and it identifies Article 24.01 of the Contract. The Employer's action was incorrect, argues the Union, in that it imposed discipline and did not carry out corrective discipline which is designed to protect the employee from punishment.

Moreover, Article 13.06 of the Contract talks about mitigating circumstances and that was not considered, asserts the Union.

The Employer's standard for corrective action for tardiness, claims the Union, does not incorporate the appropriate factors.

Moreover, the Union argues that in the past, the discipline issued by the Employer was less

severe than currently.

The Union goes on to argue that there was a whole set of mitigating circumstances in this case; specifically, was the fact that the grievant's daughter died in December of 1986, he had no phone in his home, and the co-worker that drove him to work was late himself. Therefore, the Union asserts that his job should be restored and the penalty should be modified.

B. ISSUE #2 - Removal

1. EMPLOYER

b. TESTIMONY AND EVIDENCE

Mr. Rick Mawhorr testified that White was removed on 3/21/87 because he failed to call in and was absent or AWOL. That order of removal, identified as Joint Exhibit #3-2 was not served on the employee, said Mawhorr, but was held in abeyance pending the employee's participation in an Employee Assistance Program (EAP). White, said Mawhorr, agreed to participate in the EAP. That document, identified as Joint Exhibit #3-2, said Mawhorr, shows that Ron White entered on 6/23/87 and the referral date was 7/22/87.

Employer Exhibit #9-2, said Mawhorr, shows no action for the AWOL on 6/23/87 and the position of Management was that if White went into the Employee Assistance Program and if he failed, the discipline issued on 6/1/87 which was a removal would be implemented.

Mawhorr said that there was another pre-disciplinary hearing on 6/23/87 and was to give him time to comply with the agreement.

Employer Exhibit #11-2, said Mawhorr, showed that White returned to work on 10/27/87 and there was a pre-disciplinary hearing on 11/18/87 which was really held on 11/23/87. Mawhorr said that the Superintendent fired White on 12/22/87.

Mawhorr said there is no data to show that White ever participated in the Employee Assistance Program.

Mr. Robert Wegesin testified that Joint Exhibit #5-2 was a document indicating that White called in at 9:42 a.m. saying that he was sick and had overslept. He went on to say that employees who call in late are considered AWOL.

Wegesin identified Joint Exhibits #4-2(a), (b), (c) and (d). Joint Exhibit #4-2(a), said Wegesin shows a time sheet in which White was marked absent on 10/13/87 and there was no call-in and he did not show up for work and White had no leave time available. On 10/22/87, said Wegesin, there was no sign-in and out and White was eight hours absent and the call-in log showed that he called in at 8:36 a.m. and said he was ill [see Joint Exhibit #4-2(b)].

Joint Exhibit #4-2(c) dated 11/7/87 shows that White was eight hours absent and he called in at 3:20 a.m. in a timely fashion, but said he was sick but he had no sick time available.

Joint Exhibit #4-2(d) dated 11/10/87 indicated that White was eight hours absent and that he called in at 6:36 a.m. which was a late call in.

The Employer also cross examined Union witnesses. Mr. James Ladden, on cross, testified that an employee can call-in late, have no leave time available, and still get approval of leave time and he identified three individuals; namely, Melvin Ward, Mr. Pearl, and Dan Park.

Mr. Ronald White, on cross, testified that when he returned to work on October 13, 1987, the only document he had was Employer Exhibit #11-2. He said he did not ask his doctor for additional medical help; rather, he just received an anti-depressant drug.

White said that Doctor Farley worked for the EAP program and that he answered a questionnaire and he did not know anything about the August 11th letter identified as Union Exhibit

#2.

White said that his understanding of the Employee Assistance Program was that if he went to the program and completed it, his removal would be eliminated but no one said how long he had to go through the program. White acknowledged that he signed the EAP agreement identified as Joint Exhibit #3-2 and it does say that he should be in the program ninety days. White testified that he realized that if he screwed up, he would be out of work.

b. ARGUMENT

The Employer asserts that the documents speak for themselves; that White called in late and didn't show up for work and didn't follow proper procedures.

White, noted the Employer, was initially discharged on 6/1/87 but was given a second chance by letting him enter into an EAP program, but he did not comply with the EAP agreement and even upon his return from disability leave, he continued to violate the call-in procedures on his first day back.

The EAP agreement is clear. He was to participate and accept the attendance standards but he did not comply with either and he called in late or either didn't show up.

The Employer argues that White's allegation that some of the answering service tape was erased is not persuasive because if he had called in once, why would he have called in a second time.

The burden is on the grievant to pursue the EAP program. The Employer notes that White did not ask the doctor for an additional statement to justify medication problems.

Moreover, Article 13.06 requires the employees to start work at the appropriate time. This employee has not been treated in disparate fashion at all. White was given a chance and he failed and therefore, his discharge is based on just cause.

2. UNION

a. TESTIMONY AND EVIDENCE

Mr. James Ladden said that the call-in policy depends on the Superintendent who sometimes approves even if people are late.

Ladden said that employees can sometimes take leave even if they have no leave, but it becomes out-of-pay status.

Ronald White testified that he suffered a heart attack on 7/10/87 and nine days later, he was put in the Good Samaritan program and that they ran a catheter into his artery to open the seventh blockage and that some kind of medicine dissolved the other six blockages. White went on to say that he was put on five types of medication and he now uses aspirin, Prsantin, Procardia, Mexitil, and a anti-low depressant which he is now off.

White said that he can work now, but that as of October 11, 1987, he really had some problems over adjusting as a result of the prior heart disease.

Union Exhibit #1, said White, indicates that he was in the hospital in Dayton and Union Exhibit #2 is a letter indicating that he had seen a Dr. Faery.

White testified that his understanding of the removal letter was that he had to attend the EAP program and he entered it but the heart attack meant that he could not continue.

White testified that he called in on 10/13, 10/22, and 11/10 but the tape was erased.

White was asked whether the EAP helped him and he said he liked it and wanted to complete it. He said he was in the program as a result of his daughter's death and that it was good program.

White said that his state of mind was poor at the time in that he felt he was being harassed as a function of the two day suspension and he was quite anxious as a result of these problems.

White said that he tried to change shifts and Ladden suggested that he ask the Superintendent if he could go on second shift.

White testified that the low depressant medication made him drowsy and he has been off that for three months.

The Union cross examined Mr. Rick Mawhorr who testified that Joint Exhibit #3-2 was initiated because of the incident on 3/21/87 when White did not call in properly and the first page is a request to implement removal.

Mr. Robert Wegesin, on cross, testified that if an employee can fill out a slip, even without leave, some leave might be granted.

Wegesin said that even though an employee makes an untimely call-in, he would probably not remove the individual for that sort of a call.

b. ARGUMENT

The Union argues that the State has not proved just cause. It asserts that there are a number of problems for White which the Employer has not considered; namely, the death of White's daughter in December of 1986, the fact that he had a major heart attack, and the impact of medication.

White, said the Union, was not given a chance to complete the EAP. It goes on to say that upon his return to work after the heart disease on 10/11/87, he had medication problems and on 11/11/87, when he was disciplined, he was not counseled properly. The tardinesses in October of 1987 were related to the medication.

Moreover, the Union asserts that if the six day suspension is inappropriate, then a removal is not an appropriate form of discipline.

Therefore, the grievance should be upheld and the grievant should be reinstated with back pay.

V. DISCUSSION AND AWARD

The question is whether the six (6) day suspension and subsequent removal of Ron White conforms to the just cause principles articulated in the Collective Bargaining Agreement?

Article 24.01 indicates that disciplinary actions shall not be imposed except for just cause and section 13.06 of the Contract also notes that for tardiness, extenuating and mitigating circumstances shall be taken into consideration by the Employer in dispensing discipline.

Article 24 - Discipline

24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. . . .

Article 13.06 - Report-In Locations

All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.

Joint Exhibit #3-1 indicates and the testimony corroborates that White had received four oral counselings on 4/18/85, 8/14/85, 1/2/86 and 4/10/86. In addition, White received letters of reprimand on 10/3/86 and 11/10/86 and received a two day suspension dated 1/21/87 when absences and tardinesses were recorded after 11/10/86. This two day suspension was based on violations which occurred prior to 1/6/87 and resulted primarily because of White's absence from

duty on 11/29/86.

Subsequently, White was issued a six day suspension for further infractions; namely, that he was late for work and failed to call-in properly on the following dates in early 1987: 1/16/87 (32 min.); 1/31/87 (14 min.); 2/3/87 (3 min.); 2/10/87 (5 min.); 2/19/87 (1 min.); and 3/12/87 (1 hour and 45 min.). Just cause for discipline is clear, argues the Employer, because there are more than three incidents of tardiness in a ninety (90) calendar day period which according to the Standard Guide for Corrective Action constitutes basis for discipline.

The facts regarding the basis for the six day suspension are not in dispute. The disagreement is whether the reasons for White's late report-ins are such as to be more than mere excuses. Do they rise to the level of being extenuating circumstances which mitigate against the Employer having just cause for imposing a six day suspension?

That White had neither a telephone nor car and relied on a fellow employee who was frequently late to pick him up are excuses which cannot be considered as mitigating. While these circumstances are no doubt true and the reason for White being tardy and unable to call in in timely fashion, the fact that an employee has no phone or car does not lessen his obligation to follow attendance rules and procedures for calling in. White had been issued oral and written warnings as well as a previous two-day suspension and thus, had ample opportunity to correct car and phone causes for his tardinesses and late call-ins.

White alleged that problems getting through the sally port caused him to be late by one to five minutes on some days. This problem would perhaps have some mitigating merit if it had been shown that other employees had also been late by a few minutes because of similar problems. Certainly, it makes sense that employees coming to work be given priority in being processed through the sally port over vendors, etc., but the testimony and evidence is just not sufficient to conclude that this was a general problem causing employees to be frequently late to sign in. Thus, this excuse cannot be considered as a mitigating factor in assessing White's attendance record.

Moreover, if the discipline was based solely on three occasions of being late less than five minutes, one might view the incidents as being minor with no real consequence to efficiency and question the just cause of imposing such severe discipline. However, there were three other violations during the three month period. Furthermore, there has been an attendance problem in the past which the Employer has attempted to correct through progressive discipline. Having found that the reasons for White being late in early 1987 are not extenuating or mitigating circumstances, it must be concluded that the Employer had just cause to discipline White and that a six-day suspension was the natural next step in progressive discipline.

The second issue is whether or not the Employer had just cause for the subsequent removal order and final termination of White on December 22, 1987.

The initial removal order, which was finalized on 6/1/87 by the Director of Mental Health, was based on White being AWOL on March 21, 1987. This was only a few days after his last violation of being late one hour and forty-five minutes on 3/12/87 and before the six day suspension had been imposed and served. While it might be said that the corrective nature of imposing discipline did not have a very good chance to take effect, this is not the total basis to say that the Employer does not have just cause to terminate an employee for continual offenses.

The Employer, in fact, did not act on the removal order but placed it in abeyance after White signed an agreement on 6/16/87 to participate in an Employee Assistance Program. The Employer's reasoning for requiring EAP participation is not clear from the testimony and evidence, but the requirement recognizes that some of White's problems might have been exacerbated by the death of his daughter in December of 1986 and that outside help might be necessary for him to correct his attendance problems. White was to have participated in the program for three months and it was understood that continued absenteeism and tardiness problems would implement the

proposed discipline.

The probable referral date for White into the EAP program was expected to be around 7/22/87 but on 7/11/87, White had a heart attack and he was on disability from 7/25/87 through 10/11/87. White was to report to work on 10/13/87 and he was absent and did not call in until 9:16 a.m.. He was absent again on 10/22/87, 11/7/87, and 11/10/87. Mr. White's testimony was that he was sick as a result of some kind of drug he was taking on 10/13 and 10/22/87 but he did not remember what happened on either 11/7/87 or 11/10/87.

The Employer reinstated the removal order in December of 1987 because White continued to violate the attendance and call-in policy and had not followed through with his EAP participation agreement which he signed on 6/16/87. Did the Employer have just cause to terminate Mr. White?

The circumstances in the latter part of 1987 differ than in the first three months and there are mitigating factors. The fact that White had been offered a second chance by the Employer to seek help and to shape up cannot be disregarded. It seems that White did not have full opportunity to show that he was or was not going to fulfill his agreement to participate in and complete the EAP. His heart attack on July 11th and disability leave from 7/25/87 to 10/11/87 may have given participation in the EAP a somewhat lower priority than if he had not had a heart attack. Perhaps if he were not taking medications, he would have been able to fulfill his obligation of signing in or calling in on time. It was not obvious from the testimony and evidence that when White began to violate the call-in time after returning from disability that the Employer counseled and insisted that he take advantage of the EAP.

At the hearing, White testified that he thought the EAP would be helpful and that he wanted to complete it. He said that he had been off the medication that made him drowsy for three months. The circumstances that inhibited him from taking full advantage of the agreement he signed with his Employer on 6/19/87 presumedly no longer exist and, therefore, there is no reason why he should not be given a chance to prove that he can or cannot fulfill the bargain.

For the above reasons, it is ruled that the Employer at the time it implemented the removal order did not have just cause to terminate Mr. White and he shall be reinstated without back pay.

John E. Drotning
Arbitrator

October 20, 1988