

**ARBITRATION DECISION NO.:**

171

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Rehabilitation  
and Corrections, London  
Correctional Institution

**DATE OF ARBITRATION:**

February 10, 1989

**DATE OF DECISION:**

February 14, 1989

**GRIEVANT:**

James Williams

**OCB GRIEVANCE NO.:**

27-13-(88-08-08)-0036-01-03

**ARBITRATOR:**

Rhonda R. Rivera

**FOR THE UNION:**

Carol Bowshier

**FOR THE EMPLOYER:**

Thomas E. Durkee

**KEY WORDS:**

Progressive Discipline  
Violation Of Post Orders  
Making False Reports

**ARTICLES:**

Article 24 - Discipline  
§24.02-Progressive  
Discipline

**FACTS:**

The Grievant had been a Correction Officer 2 at London Correctional Institute for one year and three months. On June 28, 1988, the Grievant was assigned to East Perimeter patrol. Grievant made a fake report when he "secured" a fence alarm without visibly checking the site. The

Grievant also violated a post order by wearing headphones while on duty that night. As a result, Grievant was given a fifteen (15) day suspension for his actions. Grievant had no prior discipline.

**EMPLOYER'S POSITION:**

Employer argues that the Grievant's actions constituted a threat to the security of the institution and as such were valid offenses for suspension. Employer contends that the imposition of a fifteen (15) day suspension is commensurate with the offense.

**UNION'S POSITION:**

The Union argues that a fifteen (15) day suspension violated 24.02 of the Contract. The Grievant was an employee of one year three months at the time of the incident and had received no prior discipline, therefore the discipline was not progressive, not corrective, and not commensurate. Furthermore, the Union contends that the employer's allegation that the Grievant's actions constituted a threat to the security of the institution was vague and hence unfair.

**ARBITRATOR'S OPINION:**

The arbitrator found that the employee's actions were in violation of the institution's policy but that they did not constitute a threat to the security of the institution. In determining the appropriateness of the discipline given to the Grievant, the arbitrator considered the following mitigating factors: (1) the Grievant had no prior discipline and, (2) the headphone offense was minor and but for the "alarm" offense, probably would have earned him only a verbal counseling. The arbitrator concluded that in light of the mitigating factors, the severity of the discipline clearly failed to be commensurate with the offense.

**AWARD:**

The grievance is denied in part. Employee's suspension shall be reduced to ten (10) days and the Grievant shall be made whole for the five (5) days.

**TEXT OF THE OPINION:**

In the Matter of the  
Arbitration Between

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

and

**Department of Rehabilitation  
and Corrections**  
Employer

**Grievance No.:**  
27-13-(8-8-88)-36-01-03

**Grievant:**  
(Williams), James

**Hearing Date:**  
February 2, 1989  
postponed to February 10, 1989

**Decision:**  
February 10, 1989

**Written Award:**  
February 14, 1989

**For the Union:**  
Carol Bowshier

**For the Employer:**  
Thomas E. Durkee

In addition to the Grievant James Williams and the advocates named above, the following persons were present at the hearing: Andy Markley, OCSEA-Chapter President LOCI (witness), Troy Pagels, LOCI (witness), Harold Byrd (witness), Mary York, LOCI (observer), Mary Abel, Co-Advocate, H. Wayne Tipton, Lieutenant (witness), Terry L. Tolle, Co-II (witness).

### **Preliminary Matters**

Both parties agreed that the Arbitrator might tape record the proceedings on the condition that the tapes are used solely to refresh her memory and on the condition that the tapes are destroyed when the written opinion is rendered.

Both parties agreed that the Arbitrator could submit any written opinion for publication.

The parties agreed that the matter was properly before the Arbitrator.

Witnesses were sequestered; all witnesses were sworn.

### **Issue:**

Was the 15-day suspension for just cause? If not, what should the remedy be?

### **Stipulated Facts:**

1. James L. Williams was appointed as a Correction Officer 2 at London Correctional Institution May 11, 1987.
2. Grievant had no prior discipline.
3. Grievant received a copy of the Department of Rehabilitation and Correction Standards of Employee Conduct.
4. On June 28, 1988, Grievant was assigned to East side Perimeter Patrol.
5. On June 28, 1988, Zone 14 sounded an alarm on nine occasions between 12:13 p.m. and 1:43 p.m.
6. Grievant acknowledged all alarms on Zone 14 and cleared same as secure.
7. Grievant was on the West side Perimeter Road of the institution at 1:10 p.m. and 1:11 p.m. on

June 28, 1988.

8. Correction Officer Tolle was supervising a crew of inmates on the recreation field the afternoon of June 28, 1988.

9. Officer Williams informed Officer Waddell that inmates going onto the recreation field was the reason for the alarm.

### **Relevant Contract Section:**

#### **§24.02 - Progressive Discipline**

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- A. Verbal reprimand (with appropriate notation in employee's file)
- B. Written reprimand;
- C. Suspension;
- D. Termination.

### **Facts:**

The facts were constituted the behavior of the Grievant which had subjected him to discipline in the amount of a 15 day suspension were not at issue. The basic thrust of the Union's argument was that the 15 day suspension was not progressive, not corrective, and not commensurate. Moreover, the Union argued that #36 the alleged offense (See Joint Exhibit No. 8)

#36. Any act or commission not otherwise set forth herein which constitutes a threat to the security of the institution, its staff, or inmates.

was vague and hence unfair. The facts indicated that the Grievant was an employee of 1 year 3 months at the time of the incident and that he had received no prior discipline.

The Arbitrator found that the Grievant had made a false report when he "secured" a fence alarm without visibly checking the site. This conduct did constitute a threat to the security of the institution. Moreover, the Grievant also violated a post order by wearing radio headphones while on duty. In mitigation, 1) the Grievant had no prior discipline, 2) the headphone offense was minor and but for the "alarm" offense, probably would have earned him only a verbal counseling.

The penalties listed after No. 36 on the grid ranged from a Written Reprimand to termination. The Arbitrator found that the imposition of a 15 day suspension was not commensurate with the offense nor progressive.

One element of the seven tests of just cause involves a look at mitigating circumstances. On one hand, the employee had no prior discipline and some evidence was adduced to indicate that his training was less than rigorous. Moreover, the apparent lack of on site post orders and vagaries of a changing job site presented some level of "explanation" for the Grievant's behavior. On the other hand, the evidence indicated that the Grievant failed to fully comprehend that his behavior constituted a "false" report or to fully comprehend the limited nature of his discretion in a para-military organization.

Weighing the nature of the offense and even considering the Grievant's failures, the severity of the discipline clearly fails to be commensurate with the offense.

**Award** (as rendered from the bench)

Grievance denied in part.

Employee's suspension shall be reduced to ten (10) days, and he shall be made whole for the five (5) days.

February 14, 1989

Date

Rhonda R. Rivera

Arbitrator