

**ARBITRATION DECISION NO.:**

206

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Transportation

**DATE OF ARBITRATION:**

April 27, 1989

**DATE OF DECISION:**

Settlement Award

**GRIEVANT:**

Richard Morris

**OCB GRIEVANCE NO.:**

G-87-1493

**ARBITRATOR:**

Frank Keenan

**FOR THE UNION:**

Lois Haynes

**FOR THE EMPLOYER:**

Rebecca Ferguson

**KEY WORDS:**

Stipulated Award

Settlement

Theft of State Property

**ARTICLES:**

Article 24-Discipline

**FACTS:**

The Grievant was employed as an Equipment Operator I with ODOT. He and a co-worker had been cutting wood and loading it in a truck before they left the site for lunch. Once they had left, the co-worker informed the Grievant that he was going to stop at his home and unload the wood. The Grievant helped him unload the wood so they could return to work on time. Subsequently, the Grievant was suspended for ten days for the following violations: minor neglect of duty; insubordination; theft of State property; leaving the work area without permission of the Supervisor; and violation of Section 124.34 of the Ohio Revised Code.

**EMPLOYER'S POSITION:**

The Employer argued that the suspension was for just cause. The Grievant acquiesced to the violation of the ODOT directive prohibiting personal use of State property by helping his co-worker unload the wood. In addition, the Grievant failed to report the violation to the Supervisor, and he failed to question the co-worker about his improper action. The Employer is not bound to follow each step of progressive discipline. Rather, discipline must be commensurate to the violation. It was in this case.

**UNION'S POSITION:**

The Union argued that the Grievant was not guilty of any of the violations with which he was charged. He did not steal State property, since theft would require that he plan or execute the action, which he did not do in this case, since he was not an intentional participant. Theft would also require that the Grievant converted the property to his use or received personal benefit from it, which he did not in this case. The Grievant did not have authority to stop his co-worker from taking the wood. By the time he knew about his co-worker's intentions, they were away from the worksite, and the Grievant had no choice but to accompany his co-worker. Also, the Grievant was not guilty of insubordination, since he did not refuse to obey a supervisor's order. In addition, the Grievant did not leave his work area without permission. He and his co-worker were on lunch break and were permitted to leave the work area during this time. Finally, Section 124.34 of the Ohio Revised Code is not an appropriate basis upon which discipline can be imposed, since the just cause standard in the Agreement supercedes the Revised Code.

**ARBITRATOR'S OPINION:**

The parties agreed on a settlement and instructed the Arbitrator to formalize the results of their negotiations as a binding award.

**AWARD:**

Grievance is sustained in part and denied in part. The award provides that the Grievant receive eight days of back pay at his regular rate at the time of suspension and that he be suspended for two days for minor neglect of duty. However, effective April 27, 1989, the two-day suspension is expunged from the Grievant's personnel files. Therefore, as of the hearing, the suspension ceases to have any effect and is expunged from the Grievant's record.

**TEXT OF THE OPINION:****CONTRACTUAL GRIEVANCE PROCEEDINGS  
STIPULATED ARBITRAL AWARD**

In the Matter of Arbitration Between

**OHIO DEPARTMENT OF TRANSPORTATION**

and

**OHIO CIVIL SERVICE EMPLOYEES  
ASSOCIATION, LOCAL 11, A.F.S.C.M.E.,**

AFL-CIO

Grievance No. G-87-1493

**Appearances:**

**For the Agency:**

Rebecca Ferguson, Labor Relations Officer  
Bowling Green, Ohio

**For the Union:**

Lois Haynes, Staff Representative  
Fairlawn, Ohio

Frank A. Keenan  
Arbitrator

The grievance protests the suspension without pay of employee Richard Morris of the Department of Transportation. The disciplinary action was premised upon allegations of: neglect of duty (minor); insubordination "Failure to follow written policies of the Director . . ."; theft of State property; leaving the work area without permission of the Supervisor; and violation of Section 124.34 of the Ohio Revised Code.

The grievance was processed, and being denied, was appealed to arbitration. An arbitration hearing was convened in Columbus, Ohio on April 27, 1989. At the outset the parties stipulated that "this grievance is properly before the Arbitrator for a determination." The issue stipulated was "did the Department of Transportation suspend Mr. Richard Morris for ten days for just cause in accordance with Article 24 of the contract? If not, what shall the remedy be?"

Following the entrance of appearances, the receipt of Joint Exhibits, and the presentation of opening statements, the parties recessed to reconsider their respective positions. It was evident to both Representatives and to the Grievant that room for a negotiated resolution to the dispute existed and ought to be explored.

The parties were successful in their resolution efforts; they agreed upon a settlement and instructed the Arbitrator to formalize the results of their negotiations as a binding award.

The following award is submitted in compliance with the parties' instructions. It shall become final and binding in accordance with the terms of the Contract upon execution by the authorized representatives of the Parties, the Grievant, and the Arbitrator. Grievant's execution of the Award shall signify that the contents have been fully explained to him, that he is in agreement with the results, and desires to withdraw his grievance in exchange for the modifications to his discipline.

**STIPULATED AWARD**

The grievance is sustained in part and denied in part. Grievant shall be made whole for eight days and the record shall reflect a two day suspension for the charge of minor Neglect of Duty. All other charges shall be expunged. The eight days of back pay shall be at the Grievant's regular rate of pay at the time of the suspension.

The Grievant's two day suspension shall be expunged from his record effective April 27, 1989. As of this date the suspension shall cease to have any effect and shall be expunged from his personnel files.

This Stipulated Award shall not be precedential. It applies solely to this grievance and shall not be cited or referred to in any similar dispute between the parties.

Richard Morris, Grievant

Date: 6-14-89

Rebecca D. Ferguson, For the Agency

Date: 6-13-89

Lois Haynes, For the Union

Date: 6-13-89

Frank A. Keenan, Arbitrator

Date: 6-19-89