ARBITRATION DECISION NO.:
214

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

EMPLOYER:
Department of Mental Health
Oakwood Facility

DATE OF ARBITRATION:
November 27, 1989

DATE OF DECISION:
December 6, 1989

GRIEVANT:
Melvin Ward

OCB GRIEVANCE NO.:
G-87-2611

ARBITRATOR:
Harry Graham

FOR THE UNION:
Bob Rowland

FOR THE EMPLOYER:
George Nash

KEY WORDS:
Tardiness
Arbitrator's Authority
Suspension

ARTICLES:
Article 24-Discipline
§24.02-Progressive
Discipline

FACTS:

The Grievant was employed as a Psychiatric Attendant at an ODMH facility within a one-month period, he experienced four incidents of tardiness, which totaled eight minutes of missed work. As a result, the Grievant was given a six-day suspension. Accordingly, this Grievance was filed.

EMPLOYER'S POSITION:

The Employer argued that the suspension was for just cause, since the Grievant had a long history of tardiness. Prior to the four incidents at issue, the Grievant received five oral reprimands for tardiness. He also had two written reprimands and a two-day suspension. Given this pattern of tardiness, the Employer argued that something more substantial than the prior disciplines is called for. Although the eight minutes is minimal, the Grievant has been late for work with such frequency that the amount of time is immaterial.

The Grievant repeatedly called in to inform the Employer that he expected to be late. However, to secure leave that would excuse tardiness, the Grievant had to complete the required Request for Leave form within 24 hours of a return to work. That did not occur. The leave forms for the four incidents of tardiness were filed well beyond this 24-hour period.

UNION'S POSITION:

The Union argued that during the time the four incidents of tardiness occurred, there was a construction project underway at the facility. As a result, employees were required to make heir way to work through the adjacent state prison's security systems. The complex route meant that it took the Grievant longer to reach his work sign-in location. Accordingly, the tardiness cannot be attributed to the Grievant, whose work day should be regarded as starting at the adjacent prison. He was on time there.

The Grievant testified at the hearing that he had properly filed the leave forms. The Employer misplaced them and instructed him to resubmit them. This explains why they were filed later than 24 hours after the Grievant's return to work.

The Union also argued that the Grievant's work record was not as bleak as the Employer indicated. He had four "counselings" on his record: three were for tardiness, and one was for an improper extension of lunch. They were strictly "counsellings," not disciplinary actions.

ARBITRATOR'S OPINION:

The Arbitrator found that it is immaterial that it took the Grievant longer to reach his work sign-in location due to the construction. It was incumbent upon the Grievant to adjust his travel schedule so that he arrived at his sign-in location on time. His colleagues did so. Similarly, the Grievant was not employed at the prison, so his work day should not be considered as starting upon his arrival there. His tasks did not occur there, and his time was not kept there.

Also, the Grievant's past record cannot be viewed as benignly as the Union asserted. Only a few months after the Grievant began State service, he received an oral reprimand for tardiness. That the Grievant failed to view the punctuality problem with the seriousness given it by the Employer is evident from the fact that he continued to be tardy after the counsellings and received two written reprimands and a two-day suspension. While the eight minutes of tardiness at issue, is minimal, it takes on significance when viewed in the context of the Grievant's extensive tardiness record. Accordingly, the six-day suspension, although severe, is reasonable and warranted, and cannot be upset by the Arbitrator since it reflects proper use of managerial authority.

AWARD:

Grievance is denied.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

OCSEA/AFSCME Local 11

and

The State of Ohio,
Department of Mental Health

Case No.:
G87-2611

Before:
Harry Graham

Appearances:

For OCSEA/AFSCME Local 11:
Bob Rowland
Staff Representative
OCSEA/AFSCME Local 11
1680 Watermark Dr.
Columbus, OH. 43215

For Department of Mental Health:
George Nash
Labor Relations Officer
Department of Mental Health
30 East Broad St.
Columbus, OH. 43215

Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter on November 27, 1989 before Harry Graham. At that hearing both parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of oral argument.

Issue:

At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the six day suspension of
Melvin Ward for just cause?

If not, what shall the remedy be?

Facts:

There is no disagreement between the parties concerning the facts that give rise to this proceeding. The Grievant, Melvin Ward, has been employed at the Oakwood Forensic Center as a Psychiatric Attendant since September 4, 1984. The Oakwood facility has as its clientele prisoners in the custody of the State who are mentally ill. In July, 1987 Mr. Ward experienced several incidents of tardiness. On July 1, 1987 he was one (1) minute late for work. He was also one (1) minute late for work on July 7 and July 28, 1987. On July 23, 1987 he was five (5) minutes late for work. This record prompted the State to administer a six (6) day suspension in order to correct Mr. Ward's tardiness problem.

A grievance protesting that suspension was filed. It was processed through the procedures of the parties without resolution. The parties agree that the grievance is properly before the Arbitrator for determination on its merits.

Position of the Employer:

The State proffers the employment history of Mr. Ward to support its contention that it had the requisite "just cause" to impose the suspension at issue in this proceeding. The Grievant has a long history of tardiness. Prior to receipt of this six day suspension Mr. Ward received five oral reprimands for tardiness. He had two written reprimands and a two day suspension. In essence, the State says "enough is enough." Given the unremitting pattern of tardiness evidenced by the Grievant something more substantial than the prior disciplines must be administered in order to call to his attention the seriousness with which the State views tardiness.

The Employer readily acknowledges that the amount of time at issue in this proceeding is minimal. Eight minutes of tardiness over four days can scarcely be considered to be of great magnitude. That time must be viewed in the context of Mr. Ward's record. He has been late for work with such frequency that the amount of time is immaterial. What must be considered is the tardiness itself and its repeated occurrence on Mr. Ward's work history according to the State. When that is done, the tardiness in July, 1987 is seen in its proper context and supports the suspension at issue in this proceeding in the State's opinion.

The State also points out that the Grievant repeatedly called-in to inform the Employer that he expected to be late for work. This occurred in addition to the tardinesses at issue in this proceeding. Mr. Ward sought leave for these expected tardinesses. He was using, or more accurately abusing, the system. His tardiness was of such recurring nature as to justify the suspension at issue in this proceeding.

In order to secure leave which might excuse tardiness the required Request for Leave form must be filed within 24 hours of a return to work. That did not occur in this instance. The Request for Leave forms were filed with the Employer on September 5, 1987, well after the dates of tardiness in question. As Mr. Ward has a lengthy history of tardiness, has abused the system for securing leave and filed his leave requests after the prescribed time, the State urges that the grievance be denied.

Position of the Union:

The Union points out that during July, 1987 there was an extensive construction project underway at the Oakwood facility. As a result, employees were required to make their way to work through the adjacent Mansfield prison. This entailed passage through a sallyport at Mansfield and inspection by a metal detector. Then employees' crossed a space of about 250 feet and were admitted to Oakwood. They then went up a flight of stairs to the second floor where they signed in

for work. This complex route to work must be considered when evaluating the timeless with which employees reached their jobs according to the Union. It also advances the proposition that Mr. Ward's work day should not properly be regarded as commencing at sign-in at Oakwood. Rather, the proper conception of the work day is its commencement at Mr. Ward's arrival at the Mansfield prison. Obviously he was on time when he arrived at Mansfield. Given the onerous journey from Mansfield to Oakwood, the tardiness in question may not be correctly attributed to the Grievant in the Union's view.

At the hearing Mr. Ward testified that he had properly filed the Request for Leave forms. The Employer misplaced them and he was directed by his supervisor to resubmit them. That is why all such requests on the record are dated September 5, 1987 according to the Grievant.

In the opinion of the Union Mr. Ward's tardiness record is not as bleak as indicated by the State. He has four “counselings" on his record. Three are for tardiness, one for an improper extension of his lunch break. These are not properly to be regarded as disciplinary entries according to the Union. They are just what they are termed, counseling. Counseling is not discipline. As that is the case, the Union asserts that Mr. Ward's record is substantially better than it is portrayed by the State. This must prompt a decision upholding the grievance according to the Union.

Discussion:

Much of the Grievant's defense advanced by the Union must be rejected. That the Oakwood facility was experiencing construction during July, 1987 is immaterial. The record shows that Mr. Ward's colleagues arrived at work on time. If the journey to work was to be extended by virtue of the construction project it was incumbent upon Mr. Ward to adjust his travel schedule accordingly. His colleagues did so. Clearly the additional time required to traverse the security systems at Mansfield and Oakwood should have been considered when evaluating the time required to arrive at work at the start of the shift.

Similarly, nothing on the record supports the contention of the Union that Mr. Ward's work day should be considered as properly commencing upon arrival at Mansfield, not Oakwood. He was employed at Oakwood. His tasks occurred there. His time was kept at Oakwood. While he may have arrived at Mansfield on time, he was late for his job at Oakwood. That undisputed fact cannot be disregarded in making a determination of this dispute.

Of greatest concern is the fact that the time at issue in this dispute is minimal. A six day suspension for a total of eight minutes tardiness over four days is unusual, to say the least. If that suspension were to be considered in isolation it would most certainly be determined to be excessive. The suspension does not stand alone. Rather, it is the culmination of a record replete with tardiness, stretching over the entire course of Mr. Ward's tenure with the State. Commencing in December, 1984, only a few months after initiation of his service with the State, Mr. Ward received an oral reprimand for tardiness. Subsequently, three “counselings" for tardiness were given to him. These cannot be viewed as benignly as the Union asserts they might be in the context of this dispute. Only a person oblivious to the continuing concern manifested by the State with punctuality could have failed to understand that the counselings should be viewed with the utmost seriousness. That Mr. Ward failed to give them their proper weight is shown by the fact that he continued to be tardy and was administered two written reprimands and a two day suspension for tardiness prior to this six day suspension. While the cumulative time at issue in this proceeding is small, it takes on significance when viewed in the context of Mr. Ward's extensive record of tardiness which extends over his entire employment history with the State. The State is correct when it asserts that the true issue here is not the amount of time Mr. Ward was late for work but

rather his continued pattern of tardiness.

It is a large increase from the two day suspension imposed on Mr. Ward in February, 1987 to the six day suspension at issue in this proceeding. Reasonable people may differ over the propriety of the six days off given to the Grievant. Arbitrators should be careful not to usurp managerial authority when it has been correctly utilized. In this situation, the discipline administered to the Grievant was warranted by his record. When viewed in the context of the repeated unsuccessful attempts by the State to call his attendance problems to his attention the six day suspension under review here is justified, severe though it is.

Award:

The grievance is DENIED.

Signed and dated this 6th day of December, 1989 at South Russell, OH.

Harry Graham
Arbitrator