

ARBITRATION DECISION NO.:

222

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Transportation
District 4, Ravenna, Ohio

DATE OF ARBITRATION:

December 8, 1989

DATE OF DECISION:

December 21, 1989

GRIEVANT:

Tony Accordino

OCB GRIEVANCE NO.:

31-04-(89-06-15)-0032-01-06

ARBITRATOR:

Harry Graham

FOR THE UNION:

Gerald Burlingame

FOR THE EMPLOYER:

Tim Wagner

KEY WORDS:

Removal
Spitting
Outbursts of Behavior

ARTICLES:

Article 24-Discipline

FACTS:

The grievant, a Delivery Driver 1, had worked for the Ohio Department of Transportation for five years. The grievant was given a ten day suspension for running his delivery route backwards and for leaving his headquarters at high speed and spitting at his supervisor after being told he had run his route the wrong way. As a consequence of grievant running his route backwards, an extra run had to be made to pick up critical materials on the grievant's route. Prior to the pre-disciplinary meeting for the first incident, the grievant spit on, and threatened to slap the face of a co-worker.

As a result of this second incident the grievant's proposed ten day suspension was converted to a discharge and a second pre-disciplinary hearing was held.

EMPLOYER'S POSITION:

The employer argued that the grievant's work record contains discipline for similar incidents and demonstrates the grievant's hot temper.

The employer asserted that the grievant was aware of his proper route. The grievant's failure to follow this route caused the employer to have to send out another dispatch to pick up a critical part and this cost the state extra money.

The employer claims that it should not be required to employ a person who repeatedly acts in a threatening manner towards his co-workers.

UNION'S POSITION:

Union maintained that employer was "stacking the deck" against the grievant by increasing the discipline from a 10 day suspension to a removal.

Union claimed that grievant's actions with regard to the spitting had not been as extreme as alleged.

Union argued that grievant's prior discipline had been a one day suspension, hence discharge was excessive and not progressive.

ARBITRATOR'S OPINION:

The grievant's behavior following his being told he took the wrong route and at his pre-disciplinary meeting "is not the sort of behavior that employees should have to put up with on the job."

The grievant's work record contained two prior instances of discipline for abusive language. The grievant "clearly has demonstrated a pattern of impetuosity and a hot temper." Such behavior is "completely unacceptable" in a work site requiring cooperation.

AWARD:

The grievance was denied and the removal was upheld.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

OCSEA/AFSCME Local 11

and

**The State of Ohio, Department of
Transportation**

Case No.:

31-04-(89-06-15)-0032-01-06

Before:
Harry Graham

Appearances:

For OCSEA/AFSCME Local 11:

Gerald Burlingame
Staff Representative
OCSEA/AFSCME Local 11
77 North Miller Rd., Suite 204
Fairlawn, OH. 44313

For The State of Ohio:

Tim Wagner
Office of Collective Bargaining
65 East State St., 16th Floor
Columbus, OH. 43215

Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter on December 8, 1989 before Harry Graham. At that hearing the parties were provided complete opportunity to present evidence and testimony. The record was closed at the conclusion of oral argument.

Issue:

At the hearing the parties were able to agree upon the issue in dispute between them. That issue is:

Was the Grievant, Tony Accordino, removed for just cause?
If not, what shall the remedy be?

Background:

Many of the facts that give rise to this proceeding are not in dispute. The Grievant, Tony Accordino, has been employed by the Ohio Department of Transportation for approximately five years. He worked at the Headquarters of ODOT District 4 in Ravenna, OH. At the time of his discharge he was classified as a Delivery Driver 1. His duties involved the running of a route in northeastern Ohio in the territory covered by District 4. For many years prior to the events which prompted his discharge Mr. Accordino drove his route in a clockwise fashion. He proceeded north from Ravenna to Geneva, OH. and thence east to Ashtabula, OH. From Ashtabula he drove south through Trumbull and Mahoning Counties, and then west back to Ravenna. His route took him to ODOT facilities in those communities and counties. He delivered parts for ODOT equipment and vehicles needing repair and picked up and delivered mail. In the course of his route he routinely stopped at Cerni Motors in Trumbull County. Cerni Motors had a contract with the State to furnish parts for ODOT vehicles. In due course Cerni lost its contract with the State. It was replaced by

Tony LaRiche Chevrolet. Tony LaRiche is located in Willoughby Hills, OH. which is in the Cleveland, OH. metropolitan area, on the east side. Willoughby Hills is well to the north and west of Trumbull County, site of Cerni Motors. In order to accommodate the change in vendors from Cerni to LaRiche Mr. Accordino's route was changed. From its clockwise pattern, it was reversed to run counterclockwise. Thus, upon leaving Ravenna the Grievant was expected to proceed east to Canfield, OH. in Mahoning County, thence north to ODOT facilities in Trumbull and Ashtabula Counties. Then, he would go west, stopping at Tony LaRiche Chevrolet in Lake County and return to Ravenna in Portage County.

On March 30, 1989 officials at the Ravenna facility became aware that Mr. Accordino had run his route backwards. That is, he had run it in clockwise fashion as he had done in prior years. In the course of his route that day he had stopped at Tony LaRiche Chevrolet in the morning, rather than in the afternoon. In the course of the day the staff in Ravenna had become aware of the requirement to get a new master cylinder for a bucket truck. Such trucks are used to repair traffic lights and signs and have a high priority to keep on the road. As Mr. Accordino had already been to Tony LaRiche before need for the master cylinder had become known another employee was dispatched to get it. Had Mr. Accordino run his prescribed route he would have stopped at Tony LaRiche in the afternoon and been able to pick up the necessary part for the bucket truck.

Discipline was imposed upon Mr. Accordino as a consequence of his running the route backwards. A ten day suspension was proposed to be administered. Pursuant to the Agreement the State scheduled a pre-disciplinary conference. That conference was to be held on April 14, 1989. While on the premises of the Ravenna Headquarters but before the meeting was actually held an incident occurred between the Grievant and a co-worker, Judy Sexton. Mr. Accordino made facial motions that led Ms. Sexton to believe that he had spit at her. Later, according to her testimony at the arbitration hearing, he actually spit on her and threatened to slap her face. As a result of those actions, the Employer canceled the pre-disciplinary hearing of April 14, 1989. Another hearing was scheduled and held on April 26, 1989. At that hearing the ten day suspension was converted to a discharge.

A grievance protesting that discharge was promptly filed. It was processed without resolution in the machinery of the parties. They agree that the grievance is properly before the Arbitrator for resolution on its merits.

Position of the Employer:

The State points out that Mr. Accordino has compiled an indifferent record. He had received a written reprimand and a one day suspension for use of abusive and insulting language and insubordination. Those offenses are similar to the offenses at issue in this proceeding and demonstrate the hot temper possessed by Mr. Accordino according to the State.

Mr. Accordino was well aware of the manner in which he was to run his route. In the middle of January, 1989 he had received explicit instructions concerning the new method of delivering parts and mail to ODOT facilities in District 4. While he had expressed unhappiness with the change, he had followed instructions. He knew what to do and had done it. His failure to run the route as prescribed on March 30, 1989 necessitated the dispatch of a co-worker to Tony LaRiche Chevrolet for the necessary parts. Those parts had a high priority to ensure the safety of the traveling public. Mr. Accordino's actions cost the State extra money. Furthermore, when confronted with the fact that the State knew he had run his route clockwise, rather than counterclockwise as he had been instructed to do, Mr. Accordino made a rapid turn and spun the wheels of his ODOT vehicle while leaving the Ravenna facility at a high rate of speed. As he did so he spit at his supervisor, Dennis Frangos. These circumstances should prompt a finding that just

cause existed for discipline in the opinion of the State.

On April 14, 1989 Mr. Accordino spit at a colleague, Judy Sexton. He missed his aim according to the State. Subsequently, as they waited in the hallway outside the room where the pre-disciplinary meeting was to occur he actually spit on Mrs. Sexton, getting spittle on her arm which she wiped off. He threatened to slap her face. As a result Mrs. Sexton and some co-workers wrote and signed a petition refusing to work with Mr. Accordino out of fear for their personal safety. The Employer should not be required to keep in its employ a person who acts in such a fashion it insists.

From time to time the Grievant has indicated he has friends in the "mob" who would exact retribution for real or imagined insults according to the State. He has threatened co-workers with use of a 357 magnum gun. While such a weapon has not been seen on State premises, the State insists that threats of retribution by outsiders or by violent death are not the sort of shop talk employees should be required to put up with. Given these facts, the State insists the discharge was for just cause and that it must be sustained.

Position of the Union:

The Union points out that the charges against the Grievant that were to be considered at the April 14, 1989 meeting were refusal to carry out an assignment. They were subsequently changed to willful disobedience of a direct order. These changes represent an attempt by the State to "stack the deck" against the Grievant by lodging a plethora of charges in the hope that one will stick. This is inappropriate in the Union's view.

In fact, on April 14, 1989 Mr. Accordino neither spit at nor on Ms. Sexton according to the Union. Rather, he made a "pfft, pfft, pfft" sound. That sound is an ancient Sicilian incantation against evil. If any spitting occurred, it was over his shoulder, not on Mrs. Sexton. The Grievant acknowledges offering to slap Mrs. Sexton's face on April 14, 1989 but in fact did not do so. Nothing happened, consequently discharge is inappropriate in the opinion of the Union.

As the prior discipline on Mr. Accordino's record is a one day suspension, the Union argues that discharge is excessive. In the circumstances of this case, the Union urges that a major suspension is appropriate.

Discussion:

There is no doubt but that the events of March 30, 1989 occurred as related by the Employer. The Grievant drove his route as he desired, not as directed by the State. Consequently he was not in a position to pick up the necessary part for the bucket truck from Tony LaRiche Chevrolet in Willoughby Hills as the State had every reason to expect him to be. Given the importance of the bucket truck in ensuring safety to the motoring public as evidenced by the dispatch of another employee from Ravenna to Willoughby Hills, this is a substantial infraction. Reasonable people might dispute whether the ten day suspension administered for that infraction was excessive or not. In this situation that dispute is moot as another infraction was committed by Mr. Accordino. Mrs. Sexton is a union steward. Her testimony was corroborated by that of a co-worker who witnessed the event. The Arbitrator believes that Mr. Accordino spit on Mrs. Sexton as they waited in the hallway for the pre-disciplinary meeting on April 14, 1989 to begin. In addition, there is no denial by the Grievant that he spat during the course of the conversation with his supervisor, Dennis Frangos, on March 31, 1989. This is not the sort of behavior that employees should be expected to put up with on the job.

This situation does not represent the sort of "stacking of the charges" that the Union asserts

occurred. Rather, while waiting for the disciplinary process put in motion by the events of March 31, 1989 to take its course, the Grievant committed another serious infraction of the expected standards of behavior at the worksite. Employees do not have to accept being spit at by their co-workers and the State should not be expected to retain in its employ those who act in such a fashion. The State did not stack the deck against Mr. Accordino. To the contrary, by his activity on April 14, 1989 he invited the State to act as it did in this instance.

The Grievant's work history indicates that he has received two prior instances of discipline for abusive language. He clearly has demonstrated a pattern of impetuosity and a hot temper. In a structured work site such as the Ravenna facility where employees must work together and where the operations of ODOT in the District depend on drivers making their rounds in the appointed manner Mr. Accordino has evidenced behavior that is completely unacceptable.

Award:

The grievance is DENIED.

Signed and dated this 21st day of December, 1989 at South Russell, OH.

Harry Graham, Arbitrator