

**ARBITRATION DECISION NO.:**

239

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Bureau of Workers' Compensation

**DATE OF ARBITRATION:**

February 27, 1990

**DATE OF DECISION:**

March 6, 1990

**GRIEVANT:**

Carl Eichelberger

**OCB GRIEVANCE NO.:**

34-03-(88-12-06)-0071-01-09

**ARBITRATOR:**

Rhonda Rivera

**FOR THE UNION:**

Joe Ealey

John Porter

**FOR THE EMPLOYER:**

Donald F. Wilson

Meril Price

**KEY WORDS:**

Issue Properly Before

Arbitrator

Timeliness

Suspension

**ARTICLES:**

Article 25-Grievance Procedure

§25.07-Advance Grievance

Step Filing

**FACTS:**

The grievant is a Claims Examiner 2 at the Bureau of Worker's Compensation. He received a ten day suspension which was moved to arbitration, but the employer stated that the grievance was procedurally defective since it was filed two days late. Under Section 25.07, the grievance must be initiated at Step 3 within fourteen days of notification of the discipline. While the grievant was serving his suspension he returned to the employment site and was forced to leave by the employer. There are two issues: whether the grievant was notified of the suspension on the date the employer states and whether the grievant by

being forced off the employment site was denied an opportunity to file a grievance in a timely manner.

**EMPLOYER'S POSITION:**

The grievance is not timely. The removal of the grievant from State property was proper and reasonable. It did not interfere with the grievant's ability to file a grievance in a timely fashion.

**UNION'S POSITION:**

The employer misstated the date of the Step Three proceeding and the union did file the grievance in a timely manner. Even if this argument fails the second argument should still prevail; the employer prevented the grievant from filing in a timely manner. It was improper to force the grievant off State property and deny him adequate representation.

**ARBITRATOR'S OPINION:**

The arbitrator concluded that the grievance was not properly before the arbitrator because of untimeliness. Although the arbitrator did find that the grievant was improperly removed from State property, she concluded that lack of access on this date did not prejudice the grievant's ability to file a timely grievance. Since the grievance is untimely, the grievance cannot be heard on its merits.

**AWARD:**

The grievance is untimely filed and cannot be heard.

**TEXT OF THE OPINION:**

**In the Matter of the  
Arbitration Between**

**Ohio Bureau of Worker's  
Compensation**  
Employer,

and

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

**Grievance:**

34-03(12-06-88)-71-01-09

**Grievant:**

(Carl Eichelberger)

**Hearing Date:**

February 27, 1990

**For the Employer:**

Donald F. Wilson and Meril Price

**For the Union:**

Joe Ealey and John Porter

### **Bench Opinion**

1. The Grievance was not properly before the Arbitrator as the Grievance was filed in an untimely manner.
2. The Employer should not have removed the Grievant from the property while the Grievant was on suspension, as the Grievant had no notice that he was forbidden to come on State property.
3. The lack of access on that day did not prejudice the Grievant's ability to file the Grievance in a timely manner.

Grievance Denied.

Date: March 6, 1990

Rhonda R. Rivera  
Arbitrator