

**ARBITRATION DECISION NO.:**

244

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Mental Health  
Oakwood Forensic Center

**DATE OF ARBITRATION:**

February 20, 1990

**DATE OF DECISION:**

March 28, 1990

**GRIEVANT:**

Melvin Ward

**OCB GRIEVANCE NO.:**

23-12-(89-09-25)-0146-01-03

**ARBITRATOR:**

Rhonda Rivera

**FOR THE UNION:**

Bob J. Rowland

**FOR THE EMPLOYER:**

George R. Nash

**KEY WORDS:**

Just Cause  
Removal  
Absenteeism  
Failure to Properly Sign  
In and Out

**ARTICLES:**

Article 13-Work Week,  
Schedules and Overtime  
§13.06-Report-In  
Locations  
Article 24-Discipline  
§24.01-Standard  
§24.02-Progressive  
Discipline  
§24.05-Imposition of  
Discipline  
§24.06-Prior Disciplinary

## Actions

### **FACTS:**

The grievant was a Psychiatric Attendant employed by the Ohio Department of Mental Health. He was removed for absenteeism. The grievant left work stating he was sick, but without receiving authorized leave and failing to sign out. On two other occasions he improperly signed in and out on his time sheet for dinner. The incidents occurred within a two month period. During this period the grievant served a six day suspension for absenteeism. The grievant had received a letter warning him about his failure to sign in and out properly.

### **EMPLOYER'S POSITION:**

There is just cause for removal. The grievant is chronically absent and fails to sign in and out properly. He had notice of the penalty due to the recent imposition of a six day suspension for a similar offense. There was also a letter sent to the grievant by his Superintendent notifying the grievant of the seriousness of his absenteeism. The grievant had many prior disciplines for similar offenses.

### **UNION'S POSITION:**

There is no just cause for removal. Mitigating circumstances are present. On the occasion when he left work he was ill. The other incidents of improper reporting were caused by the time sheet not being in the proper place. The grievant did try to comply with the employer's sign-in requirement therefore the fact that the sheets are not available caused the incidents. Additionally the incidents involve only two or three minutes.

### **ARBITRATOR'S OPINION:**

There is just cause for removal. The grievant had just served a six day suspension for a similar offense. The grievant's explanation concerning the incidents is not credible because he told conflicting stories about what time he arrived back on the ward. Other employees were able to sign in properly when the grievant claims he was unable to. The fact that the time involved is small may have affected another employee's case but this grievant's disciplinary record clearly notified him of his responsibilities.

### **AWARD:**

Grievance denied.

(See arbitration #245 for related six day suspension.)

### **TEXT OF THE OPINION:**

In the Matter of the  
Arbitration Between

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

and

**Ohio Department of Mental  
Health**  
Employer.

**Grievance:**  
23-12-(89-09-25)-0146-01-03  
(Discharge)  
**Grievant:**  
(Melvin Ward)  
**Hearing Date:**  
February 20, 1990  
**Award Date:**  
March 28, 1990

**For the Union:**  
Bob J. Rowland

**For the Employer:**  
George R. Nash

In addition to the advocates and the Grievant, the following persons were present at the hearing: David Slone, Chief Steward (witness), Rick Mawhorr, LRO-ODMH (witness), Hope E. Craig, PNSII (witness), Alice M. Knofla, RN (witness).

### **Preliminary Matters**

The Arbitrator asked permission to record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

### **Joint Exhibits**

1. Union Contract Discipline Trail
  - A) Request for Corrective Action dated 10/20/88.
  - B) Request for Corrective Action dated 11/8/88.
  - C) Notice of Pre-Disciplinary Conference dated 11/28/88.
  - D) Recommendation Notice to the Director dated 12/20/88.
  - E) Director's Order of Removal dated 1/2/89.
  - F) Employee Assistance Program Participation Agreement dated 1/25/89.
  - G) Employee Assistance Contract Compliance dated 5/1/89.
  - H) Recommendation of Modification to Mr. Ward dated 5/5/89.
  - I) Recommendation to Director for Modification dated 5/10/89.

- J) Modification of Removal to Six (6) Day Suspension by Director 5/10/89.
- K) Notification of Dates of Suspension dated 5/22/89.
  
- L) Prior Record of Discipline

### 3. Grievance Trail

- A) Grievance Form dated 5/29/89  
(23-12-890601-0109-01-03)
- B) Step 3 Request dated 6/2/89.
- C) Step 3 Response dated 7/17/89.
- D) Step 4 Response dated 8/1/89.
- E) Request for Arbitration dated 8/8/89.

### 4. Work Rules

- A) Sign In/Sign Out and Call-In dated 10/19/87.
- B) Sign In/Sign Out and Call-In dated 10/18/88.
- C) Employee Absenteeism dated 9/15/87.
- D) Employee Absenteeism dated 10/18/88.
- E) Corrective Action dated 10/19/87.
- F) Corrective Action dated 7/19/88.
- G) Sign In/Sign Out for Lunch dated 2/3/88.

### 5. Time Documents

- A) Call-In Log, dated 10/20/88.
- B) Daily Time Record 10/20/88 (3 pages).
- C) Request for Leave Slip 10/20/88.
- D) Daily Time Record 10/27/88.

### **Relevant Contract Sections**

#### **Section 13.06 - Report-In Locations**

All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances

surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.

#### Section 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse.

#### 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. One or more verbal reprimand(s) (with appropriate notation in employee's file);
- B. One or more written reprimand(s);
- C. One or more suspension(s);
- D. Termination.

Disciplinary action taken may not be referred to in an employee's performance evaluation report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

#### Section 24.05 - Imposition of Discipline (in part)

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

#### Section 24.06 - Prior Disciplinary Actions

All records relating to oral and/or written reprimands will cease to have any force and effect and will be removed from an employee's personnel file twelve (12) months after the date of the oral and/or written reprimand if there has been no other discipline imposed during the past twelve (12) months. Records of other disciplinary action will be removed from an employee's file under the same conditions as oral/written reprimands after twenty-four (24) months if there has been no other discipline imposed during the past twenty-four (24) months. This provision shall be applied to records placed in an employee's file prior to the effective date of this Agreement.

#### **Issue**

Was the discharge of Melvin Ward, the Grievant, for just cause? If not what shall the remedy be?

#### **Facts**

This Arbitration award should be read in sequence with 23-12(89-06-01)0109-01-03 (Suspension of Melvin Ward) issued 3/28/90.

At the time of the incident and discipline which gave rise to this Grievance, the Grievant had a grave and serious history of discipline. He had received numerous clear warnings about his work behavior.

In particular on 10/11/88, the Superintendent wrote directly to the Grievant the following statement (E-2).

"You are warned that continuation of your employment at Oakwood Forensic Center is entirely up to you.

You are instructed to:

- 1) Sign in and sign out on the daily time record.
- 2) Record your time in and time out legibly and accurately.
- 3) If the sign-in/out book is not there, find it. Verify your time in/out with the Security Supervisor or a security officer at the entrance, and call your nurse supervisor if she is not in the office.

Oakwood Forensic Center places a great value on all of its employees, and we do not like to see employees reach this level in the corrective action process. For this reason, it is highly recommended that you investigate the Employee Assistance Program which is available to all State employees. Dr. Alexander Thiry is our E.A.P. Coordinator, and can explain to you what is available through the program; or, you may contact the Ohio E.A.P. directly at 1-800-221-6327.

I, again, warn you that these violations can not continue and will not be tolerated."

On May 24, 1989, the Grievant called in and requested Personal Leave. He was told that he could not be spared. The Grievant said he "would call John Allen the CEO of Oakwood". The Grievant signed in at 2:57 p.m. and never signed out. However, the RN Supervisor noted on the time sheet that the Grievant left at 3:30 because he said he was ill. On the 25th of May, the Grievant requested Comp Time for his illness (no Sick Leave existed). This request was denied because the Grievant failed to bring in a doctor's slip.

On July 31, 1989, the Grievant signed out for dinner at 6:45; however, according to the testimony of the RN Supervisor, at 7:30 p.m. he had not signed back in from supper. However, on 8/1/89, the next day, the time sheet showed a 7:15 return from supper. Edward R. McPheron, R.N. signed a statement which indicated that he saw the Grievant return at 7:21, that R.N. Craig showed the Grievant and McPheron the clock, and that McPheron verified the time by the telephone.

On August 2, 1989, the Grievant signed out for supper at 5:59 and returned at 6:36, 2 minutes late.

The Grievant's explanations for these incidents were as follows:

On the 24th he had called in because he was feeling ill and asked for Personal Leave (Sick Leave was exhausted). When told that he was needed, he called the CEO of the Oakwood Forensic Center who allegedly said "there was nothing he could do. . . come in, and we'll go from there". After 1/2 hour on the job, the Grievant told the nurse supervisor that he was ill and was going to leave. She reminded him of the need for a doctor's slip. He said he told her that he did not have a family doctor. She told him to go to a hospital emergency room.

On the 31st, the Grievant said he was back before 7:15 p.m., but that the time sheet was missing, so he went to the medical unit to drop off someone's dinner.

On the 2nd of August, the Grievant admitted he was late but said he asked for leave after returning but R.N. Alice Knofla did not approve it. He said she often approved leave after the fact for others.

Nurse Alice Knofla testified that when Grievant was not signed in at 7:15, she called security at the metal detector station. On cross-examination, the Grievant said he has just passed through when she called, that then he went to give a medical unit member her food, and then went to sign in and found the time sheet page missing. He also claimed that he did not see Ms. Craig hold up the clock at 7:21. He had said he did not ask the R.N. about the time sheet page because then he would get "an additional charge for asking a question".

## **Discussion**

June 7th, 1989, the Grievant served his last day of a 6 day suspension for incidents similar to the ones described above. That suspension was the modification of a removal; the modification was in light of the Grievant's successful completion of an E.A.P. for repeated and persistent absenteeism.

The first incident in this discipline happened on 5/24/89, after the completion of the E.A.P. The second two incidents occurred after the 6 day suspension. The excuses of the Grievant are not credible. In fact, he contradicted himself with regard to his behavior on July 31, 1989 between his direct examination and the cross examination. He originally said he was back at his post before 7:15 and subsequently testified that at 7:16 approximately he was through the metal detector, then went to the medical unit, and then to sign-in.

One could argue that the actual time involved in this discipline was minimal and the failure to have a doctor's slip was minor. In the case of another employee, that argument might suffice.

Given the previous disciplines, the Grievant was clearly on notice as to expected behavior with regard to absenteeism, tardiness, etc. In that position, the Grievant should have gone to extra lengths to be on time, sign-in and out properly, etc.

The Grievant's behavior indicates that his job was not apparently important enough to him. His dismissal was for just cause.

### **Award**

Grievance denied.

Date: March 28, 1990  
Rhonda R. Rivera, Arbitrator