

**ARBITRATION DECISION NO.:**

245

**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-(89-06-01)-0109-01-03

**ARBITRATOR:**

Rhonda Rivera

**FOR THE UNION:**

Bob J. Rowland

**FOR THE EMPLOYER:**

George R. Nash

**KEY WORDS:**

Just Cause  
Suspension  
Absenteeism  
Mitigation

**ARTICLES:**

Article 9-Employee Assistance  
Program  
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

§24.08-Employee  
Assistance Program

**FACTS:**

The grievant was a Psychiatric Attendant employed by the Ohio Department of Mental Health. The grievant called in expecting to be late to work ten minutes after the call-in deadline. He was late to work that day. On another occasion the grievant signed in on time but was seen coming in late. He signed the time sheet incorrectly leaving and coming back from lunch the same day. The grievant was disciplined for absenteeism and improper signing of his time sheet. The original penalty was removal but due to the employee's participation in the Employee Assistance Program, (EAP), it was reduced to a six day suspension.

**EMPLOYER'S POSITION:**

There is just cause for discipline. The grievant has an extensive discipline record. It contains, 1) three oral counselings; 2) one verbal reprimand; 3) three written warnings; and 4) a two (2) and a six (6) day suspension, all for absenteeism. There are no mitigating circumstances and the employer has already reduced the penalty because of the grievant's participation in the EAP.

**UNION'S POSITION:**

There is no just cause for discipline. There are mitigating circumstances present. When the grievant tried to call in, the employer's phones were busy. The grievant was unable to complete the call until fifty minutes before his starting time. He was late to work due to car trouble. The grievant tried to sign the time sheets in and out from lunch but the sheets were missing.

**ARBITRATOR'S OPINION:**

There is just cause for discipline. The grievant's prior discipline put him on notice of his duty to report in and out on time, (see arbitration #244). There were no valid mitigating circumstances proven. The causes of the grievant's tardiness were within his control; car trouble is not a mitigating circumstance. The employer was more than fair in reducing the penalty from removal to a six day suspension.

**AWARD:**

Grievance denied.

(see arbitration #244 for related removal)

**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-(89-06-01) 0109-01-03  
(6 day suspension)  
**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
2. 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.

### **Issue**

Was the removal of the Grievant which was held in abeyance and modified to a six (6) day suspension for just cause? If not, what shall the remedy be?

## **Relevant Contract Sections (1986-1989)**

### **Article 9 - Employee Assistance Program** (in part)

The Employer and the Union recognize the value of counseling and assistance programs to those employees who have personal problems which interfere with their job duties and responsibilities. The Union and the Employer, therefore, agree to continue the existing E.A.P. and to work jointly to promote the program.

The Employer or its representative shall not direct an employee to participate in the E.A.P. Such participation shall be strictly voluntary.

Seeking and/or accepting assistance to alleviate an alcohol, other drug, behavioral or emotional problem will not in and of itself jeopardize an employee's job security or consideration for advancement.

### **Section 13.06 - Report-In Locations** (in part)

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. Verbal reprimand (with appropriate notation in employee's file)
- B. Written reprimand;
- C. Suspension;
- 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 24.08 - Employee Assistance Program**

In cases where disciplinary action is contemplated and the affected employee elects to participate in an Employee Assistance Program, the disciplinary action may be delayed until completion of the program. Upon successful completion of the program, the Employer will give serious consideration to modifying the contemplated disciplinary action.

## **Relevant Work Rules**

### Sign-In/Sign-Out and Call-in Policy

All employees are expected to be on duty from the beginning to the conclusion of their eight hour work shift, and are required daily to sign in at the start of the shift, sign out at the end of the shift, sign out and sign in for lunch break, and record hours worked in hazard/secure area. If unable to report for duty as scheduled, employees are to call in as specified in this policy.

### Procedure

#### A) Daily Time Record

1) Each employee will record and total his/her hours worked and other time used or accumulated on the Daily Time Record (DTR), and initial this date at the end of the work shift. Each employee shall record time of arrival and departure from work; time out and in from lunch, and hours worked in hazard/secure duty area.

4) Recording false time in any manner shall be cause for corrective action. The department head will be required to enter the correct time beside the falsified time on the DTR and initial it.

#### B) Call-In

1) Employees in a 24-hour operation shall call in at least one hour in advance of their scheduled starting time to request approved leave. Requests for leave will not be approved by the supervisor if the call is not made as required.

D) All related attendance and timekeeping paperwork, such as Request for Leave (ADM-4258) and Authorization for Overtime (DMH-P-15) must be initiated and processed on a timely basis through the current channels of employee-supervisor-Superintendent for all necessary approvals. All unscheduled requests for leave must be submitted upon employee's return to work. It shall be the employee's responsibility to initiate a Request for Leave form for any leave taken or the request will be disapproved and logged as absent without leave.

### Employee Absenteeism

### Definitions

A. Absent without Leave: Absence from duty during scheduled working hours without approval from your supervisor, and subject to corrective action. This includes:

- 1) Failure to report for work at the scheduled starting time.
- 2) Leaving work without supervisory authorization prior to the end of your scheduled work shift.
- 3) Out of work area without supervisory authorization.
- 4) Extending work breaks or lunch breaks without supervisory authorization.
- 5) Calling in to request the use of leave time which you do not have accumulated (even though request may be approved initially by the supervisor). It is the employee's responsibility to know his accumulated leave balances.

### Procedure

A. Employees in a 24-hour operation shall call in at least one hour in advance of their scheduled starting time to request approved leave.

E. Incidents of Absent without Leave Subject to Corrective Action:

- 1) Three (3) absences of less than 5 minutes each in a 60-day period.
- 2) Two (2) absences of 5 minutes each or more but less than sixty (60) minutes each in a 60 day period.
- 3) One (1) absence sixty (60) minutes or more.
- 4) Unauthorized departure prior to completion of shift.

## **Facts**

The Grievant was a Psychiatric Attendant at Oakwood Forensic Center. Oakwood Center houses mentally ill prisoners who cannot be placed in regular prisons. The Grievant was appointed September 4, 1984. His disciplinary record at the time of the incident, which is the subject of this Grievance, was as follows:

<b>DATE</b>	<b>CORRECTIVE ACTION TAKEN</b>	<b>CHARGE</b>
12/13/84	Verbal Reprimand	Tardiness (AWOL)
03/25/85	Oral Counseling	Tardiness (AWOL)
10/02/85	Oral Counseling	Extending Lunch Break Without Prior Approval (AWOL)
04/23/86	Oral Counseling	Tardiness (AWOL)
08/06/86	Oral Counseling	Tardiness (AWOL)
08/25/86	Written Reprimand	Tardiness (AWOL)
09/16/86	Written Reprimand	Tardiness (AWOL)
02/19/87	Two (2) Day Suspension	Tardiness (AWOL)
11/27/87	Six (6) Day Suspension	Tardiness (AWOL)
10/11/88	Written Warning Regarding Sign-In/Sign-Out Procedures	

At the time in question, the Grievant was assigned to the second shift (3 p.m. to 11 p.m.). Under the call-in rules (J-4), any call-in of lateness, tardiness, or absence had to be made by 2 p.m. for the second shift. The Grievant's assigned sign-in spot was on a table in front of the glass window of the nurse's station in his ward.

On October 20, 1988, the Grievant called in late (2:10 p.m.) and was 5 minutes late to sign-in (3:05 p.m.). He claimed car trouble. On October 27, 1988, the Grievant signed in at 3:00. His Supervisor claimed he really signed in at 3:02. That same day, the Grievant signed out for dinner at 6:06; the Supervisor claimed the time was 6:04. Then the Grievant signed in from supper at 6:39, either 5 minutes or 3 minutes late. The Employer treated these events as three (3) charges.

10/20/88 AWOL 5 minutes  
late call-in  
10/27/88 False sign-ins (2)  
10/17/88 AWOL 5 minutes

On January 2, 1989, the Director of Mental Health notified the Grievant that he was removed from his position. On January 2, 1989, the Grievant entered into a contract for EAP participation for the "problem of

absenteeism without leave". As part of that agreement the Employer held the removal in abeyance.

On May 1, 1989, the EAP administrator notified the Oakwood Personnel Director that the Grievant had completed the EAP. On May 10, 1989, the Director of Mental Health lowered the removal to a 6 day suspension to run May 31 through June 7, 1989. On May 29, 1989, the Grievant grieved the 6 day suspension.

At the Arbitration hearing, the Grievant admitted his late call-in and his late arrival on October 20, 1989. As the Grievant explained the situation, he had a faulty battery in his car so he called off "in anticipation" of being late. He said he attempted to call in "earlier", but the line was busy. To assure arriving on time, the Grievant maintained that he started the car before he had to leave but that when he was leaving, the car did not start back up immediately.

With regard to the incidents of the 27th, the Grievant said that he was not "late" because he was standing in line at the metal detector. With regard to the 6:06 sign out, he guessed he had mis-read the clock. He was late returning because he was held up by the basketball team. With regard to the 3:02 sign in, the Grievant was observed by Nurse Craig who testified that she held up the clock to the Grievant and pointed out the correct time. With regard to the 6:06 sign out, Nurse Knofla testified that she was at the book at 6:04 and noticed that the Grievant had already signed out at 6:00.

The Employer introduced into evidence various documents which clearly indicated that the Grievant was on notice as to the various policies and procedures. The Grievant did not dispute this knowledge. The Employer also introduced Arbitration G87-2611 by Arbitrator Graham wherein this same Grievant had grieved his suspension of 11/27/87. That decision clearly spells out to the Grievant his work responsibilities and also should have left no doubt in the Grievant's mind about the seriousness of his situation.

David Slone, the Chief Steward, admitted on cross-examination that 90 persons used the same sign in spot as Grievant, including Slone himself. Slone acquiesced that he managed to reach the sign in table by 3:00 p.m.

## **Discussion**

The Arbitrator finds little substance in the Grievant's testimony. His explanation of the 10/29/89 incident simply makes no sense. Moreover, the duty of Grievant is to get to work on time and to do whatever is necessary to be there on time. If a car has a faulty battery, the Grievant has a number of options: 1) get a new battery, 2) call a cab, 3) call a friend, 4) start walking in sufficient time. Moreover, the "call-in" in "suspicion" of lateness is absurd. This excuse is not mitigating because the situation was not unexpected nor beyond the Grievant's control.

The incidents of 10/27/89 are similarly unexplained. If the Grievant had been held up previously, as he testified, at the metal detector or by the basketball team, his responsibility was to adjust his time to allow for such problems and be on time. The two falsifications were witnessed by credible witnesses.

Given the Grievant's past record, the removal was progressive and commensurate. However in honoring the EAP, the Employer reduced a removal to a 6 day suspension. This modification was more than fair and equitable.

## **Award**

Grievance Denied.

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