

ARBITRATION DECISION NO.:

248

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Health

DATE OF ARBITRATION:

March 8, 1990

DATE OF DECISION:

April 11, 1990

GRIEVANT:

David Phillips

OCB GRIEVANCE NO.:

14-00-(89-08-31)-0057-01-09

ARBITRATOR:

Linda Klein

FOR THE UNION:

Dane Braddy

FOR THE EMPLOYER:

Michael J. D'Arcy

KEY WORDS:

Just Cause

Removal

Absenteeism

Improper Job Performance

Job Abandonment

ARTICLES:

Article 24-Discipline

FACTS:

The grievant was an Account Clerk 1 employed by the Ohio Department of Health. He was on disability leave but did not return or request an extension of his leave by his scheduled return date. The Grievant was given a letter ordering him to return to work or show cause why he could not. The grievant did neither. He reported to work for one day two weeks later and was asked to turn in a doctor's excuse. He returned ten days later with an unacceptable excuse. The grievant used the employer's billing system for personal business. Additionally, he failed to issue checks for the employer's bills in a timely manner. The grievant was removed for excessive absenteeism and poor job performance.

EMPLOYER'S POSITION:

There is just cause for removal. The grievant's absences were not properly documented by doctor's excuses and therefore not authorized. He was warned that his continued absence without an excuse would result in discipline. He failed to follow required call-in procedures during his extended absence. The grievant's job performance is also inadequate. He has used the employer's billing system for personal business. His job performance is poor because bills of the employer must be paid on time. Late payment reflects badly on the employer.

UNION'S POSITION:

There is no just cause for removal. The grievant was removed under the strict Ohio Revised Code section 124.34 instead of the just cause standard of the agreement. The grievant was also subject to disparate treatment when compared to the discipline imposed on other employees for similar incidents.

ARBITRATOR'S OPINION:

The grievant's absenteeism was excessive and he did not follow the required call in procedures. He had essentially abandoned his job. The employer did reference the Article 24 just cause standard in the removal cases. No disparate treatment was proven. Therefore there is just cause for removal.

AWARD:

Grievance denied.

TEXT OF THE OPINION:

Arbitration Proceedings

Before

Linda DiLeone Klein

In The Matter of Arbitration
Between

**State of Ohio
Department of Health**

And

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

Grievance of:

David Phillips

Grievance No.:

14-00-890831-057-01-09

Heard:

March 8 1990

APPEARANCES

For the Employer:

Michael J. D'Arcy

For the Union:
Dane Braddy

ISSUE

Was the grievant discharged for just cause?
If not, what shall the remedy be?

OPINION

On August 21, 1989, the following termination notice was issued to the grievant:

“Dear Mr. Phillips:

In accordance with Article 24 of our Collective Bargaining Agreement you are herewith notified you are being terminated from your position as an account clerk with the Ohio Department of Health. This termination will be effective August 21, 1989 at 4:30 p.m.

As outlined in the letter you received August 8, 1989 from Mr. White, the agency's position is that you have abandoned your job, failed to return from disability leave, failed to follow call-in procedures, failed to provide medical documentation, taken excessive unauthorized leave, misused agency mails, misused agency billing system for personal reasons, failed to perform duties as required and have been dishonest to management staff on several occasions. These many and serious infractions have led the agency to lose all faith and trust in your work, and are chargeable violations under 124.32 of the Ohio Revised Code.”

On August 31, 1989, the instant grievance was initiated by the Union on behalf of the grievant. The Union claimed that:

"Disharmony has been caused by the agency by: Imposing discipline without just cause, not following progressive discipline principles, not keeping the discipline commensurate with and reasonable for the "alleged" offense(s), showing disparate treatment between employees."

At the hearing, the Union reiterated its position that the Department of Health did not have just cause to remove the grievant, and the Union asked that the discipline be rescinded.

In May of 1989, the grievant was classified as an Account Clerk 1. His primary duties involved processing checks, or warrants, for distribution to vendors; he was also responsible for opening and distributing mail within his office.

On May 22, 1989, he consulted a Chiropractic Physician because he was suffering from back pain. The examination confirmed that the grievant had back problems, and he was placed on a "conservative chiropractic program". The grievant then applied for disability benefits on May 23, 1989 and he served a "waiting period" until June 5, 1989, at which time his disability leave benefits became effective; the grievant's disability leave was approved from June 6 through June 19, 1989.

In a letter dated May 24, 1989, the grievant was notified of his responsibilities concerning disability leave. Included in the letter was the requirement to request an extension of disability benefits in writing five days prior to the ending date of the approved disability period. He was further advised to contact his Supervisor if he wanted to extend his leave beyond the date granted under the disability program.

When the grievant's disability leave ended on June 19, 1989, he did not return to work, he did not initiate a written request for an extension beyond June 19, and he did not call his Supervisor to report that he was still unable to resume his duties.

There was no contact with the Employer until June 30, 1989 when the grievant spoke on the telephone to Ruth Manuel, the Chief of the Personnel Unit, about his check. Ms. Manuel told the grievant that he had been expected to return on June 20 or to advise Management of his status. The grievant then asked if he could come in to pick up his check; Ms. Manuel said that he could do so, but she also stated that his absence would be discussed further when he arrived. According to Management, while Ms. Manuel was waiting for the grievant, she contacted the disability program to inquire as to whether the grievant had requested an extension of his leave, and she learned that no such request had been received. According to Management, during the discussion with Ms. Manuel, the grievant acknowledged that he had not yet applied for an extension of disability benefits and he stated that he was waiting for medical documents prior to seeking said extension; he also told Ms. Manuel that he would provide medical documentation to her. At this same meeting, Ms. Manuel gave the grievant a letter ordering him to return to work no later than July 6, 1989, or to show cause why he was unable to do so; he was advised that failure to respond would result in the imposition of discipline.

The grievant did not report as ordered, nor did he respond in any way until July 17, 1989. It should be noted that by this time, the Employer and the grievant had been notified that his disability leave would not be extended. Furthermore, the conclusion to be drawn from the denial letter was that the grievant had asked for benefits from May 9 to May 22, not after June 19, 1989. When the grievant reported on July 17, 1989, he did not bring in any medical documentation. Ms. Manuel again discussed the situation with the grievant, and according to Management, the grievant claimed that he had the required substantiation for his absence at home. Ms. Manuel allowed the grievant to remain at work that day if he agreed to bring the documents in the following morning. However, the grievant did not call his Employer or report to work again until July 27, 1989, at which time he provided a document dated July 26; the medical statement did not explain why the grievant had been absent since June 20, 1989, and it was considered unacceptable by Management.

According to the Union, the grievant was experiencing difficulty in obtaining medical documentation due to financial problems and the doctor's unwillingness to provide statements until he was paid. The Union referred the grievant to EAP for assistance in securing documentation; as a result, the grievant was able to provide the July 26 statement.

After considering the above-cited fact situation, the Arbitrator finds that the Department of Health had just cause to impose discipline.

The evidence establishes that the grievant, in essence, abandoned his job.

His absences after June 19, 1989 were not substantiated by medical documentation and must, therefore, be considered unauthorized. When he was told on two specific occasions to submit medical statements, he informed Management that the required evidence was at home; however, he did not provide the information which he claimed was in his possession. No plausible explanation was offered for his misleading statements regarding medical documentation.

Nor was there a plausible or reasonable explanation given for his failure to return from disability leave or advise Management of his status. He had been informed of his responsibilities while on leave, but he nevertheless failed to follow the required call-in procedures. There was no evidence to suggest that there was a physical or mental incapacity which prevented a call-in.

Management did not act hastily or unreasonably here. The grievant was given every opportunity to provide the required documentation, but he did not comply with Management's requests and he did not report or follow call-in procedures. When the grievant received the letter of July 11, 1989 denying any extension of benefits, he was again put on notice that all absences subsequent to June 19 were unauthorized. The grievant failed to act on this notice.

Failure to return from disability leave, failure to follow call-in procedures and failure to provide medical documentation are offenses which constitute just cause for termination in this case.

The Union stated that Management discharged the grievant for violations under 124.32 of the Ohio Revised Code rather than applying the just cause standard set forth in the contract; the Union argued that the revised code standard is easier to meet than the just cause standard and therefore not properly applicable here. The Arbitrator has considered this argument and must disagree with the Union's statement regarding the standard actually used for Management's action. The termination letter refers to violations of

the Ohio Revised Code, however, the first sentence of the notice clearly states that the discharge is "in accordance with Article 24" of the Labor Agreement. The evidence establishes that the just cause standard was applied and met here. The grievant's offenses pertaining to failure to return from disability leave, failure to advise Management of his status through the call-in procedure and failure to provide medical documentation are serious in nature and warrant the penalty administered even without prior formal discipline.

Furthermore, the above-referenced violations are not the entire basis of the action taken.

On March 23, 1989 and May 1, 1989, the grievant was put on notice about his unacceptable work performance as it pertained to the handling of checks (warrants). He was warned that he had been holding the checks too long and that he was not distributing mail in a timely manner. On May 19, 1989., his Supervisors initiated a request for disciplinary action for his violations of office procedure. This action was not made official due to the grievant's subsequent absences.

In addition, while he was absent, Management found a letter from LTD Commodities addressed to the "Department of Health: Attention D. Phillips". The letter referenced a delinquent balance of \$41.52 for teddy bears ordered and shipped to the grievant's account. According to Management, the grievant had asked several employees if they wanted to buy the teddy bears and he took orders from at least three co-workers. The employees gave him cash and when the bears arrived, the grievant delivered them. But, according to the letter from LTD, no payment was made. When this was first brought to the grievant's attention by Management in May 1989, he claimed that he had paid the bill and he agreed to provide a copy of the canceled check. He never did. It was not until the pre-disciplinary meeting in August 1989 that he finally admitted that the bill had not been paid; the grievant paid for the items on August 11, 1989. Although the Union claimed that the grievant truly believed that his wife had sent a check, the Arbitrator finds that the grievant must still assume responsibility for what transpired. In May, he said that he would provide the canceled check, but he made no effort to advise Management that he had been mistaken regarding the payment; he made no effort to pay the bill until the pre-disciplinary meeting when he was forced to admit that payment had not been made. The facts of this matter support the charge of misuse of the agency's billing system for personal reasons. The grievant jeopardized the Department of Health by failing to pay the bill in a timely manner. His dishonesty in handling his responsibilities here then jeopardized the employee/employer relationship.

After considering all the factors involved in this case, the Arbitrator finds that just cause exists for terminating the grievant's employment. Furthermore, there was no evidence to support the claim of disparate treatment, as set forth by the Union in the grievance.

AWARD

The grievance is denied.

LINDA DILEONE KLEIN

Dated this 11th day of April 1990
Cleveland, Ohio.