

ARBITRATION DECISION NO.:

274

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction (OCB), Ohio
State Reformatory

DATE OF ARBITRATION:

May 31, 1990

DATE OF DECISION:

July 5, 1990

GRIEVANT:

Paul Holt

OCB GRIEVANCE NO.:

27-20-(88-08-30)-0173-01-03

27-20-(88-12-30)-0406-01-03

27-20-(89-02-02)-0043-01-03

ARBITRATOR:

Rhonda R. Rivera

FOR THE UNION:

Brenda Goheen

FOR THE EMPLOYER:

Richard Hall

KEY WORDS:

Five and Ten Day Suspension

Removal

Tardiness

Falsification of Official Records

Progressive Discipline

Mitigating Circumstances

Double Jeopardy

ARTICLES:

Article 13 - Workweek, Schedules
and Overtime

§13.06-Report-In

Locations

Article 24 - Discipline

§24.01-Standard

§24.02-Progressive
Discipline
§24.06-Prior
Disciplinary Actions

FACTS:

The grievant was a Corrections Officer employed at the Ohio State Reformatory since January 1984. He had received a prior suspension for tardiness in October 1987. The first incident covered by these grievances occurred on July 30, 1988. The grievant called in five minutes after the start of his shift and reported in late because he overslept. He then called back fifteen minutes later and reported off for the day because he had hurt his back. A request for vacation for the day was refused because no physician's excuse was provided by the grievant. The grievant later produced a physician's excuse for the day. A ten day suspension was later imposed for unauthorized absence.

The second incident occurred in November 1988. The grievant called in twelve minutes after the start of his shift stating that he would be late due to car trouble. He arrived at work twenty-four minutes late. A five day suspension was imposed for this incident.

The third basis for discipline arose out of the second incident in November 1988. The grievant was requested to produce verification of the alleged car trouble. He then allegedly acquired from a local garage a false sales slip for a car battery and changed the date to reflect repairs made prior to the date of the tardiness. An investigation into the sales slip revealed its false nature and the grievant was removed for falsification of official documents in February 1989.

EMPLOYER' POSITION:

There was just cause for all discipline imposed. Attendance at a correction facility is crucial to its operation. Security posts must be occupied twenty-four hours a day and when an officer fails to report another employee must be found to cover the post. The employer requires one hour prior notice of an absence to allow time to locate an employee to relieve the officer. Inefficiency and hardship results when an employee calls in less than one hour before the start of the shift.

The grievant in this case was chronically late or absent and was on notice of proper call off procedures through the publication of work rules and the receipt of prior discipline. Additionally, the grievant's behavior deteriorated to the point where he falsified documents to excuse his absenteeism. Therefore, removal is justified.

UNION'S POSITION:

The employer did not follow progressive discipline or the disciplinary grid when a ten day suspension was imposed for the first incident covered by this grievance. This is because the grievant's only prior discipline was a written warning.

The five day suspension for the second incident is improper because over six months had passed since the grievant's most recent prior discipline. Lastly, the basis for the grievant's removal, producing a false sales slip to authorize his tardiness, is part of the second incident which led to a five day suspension. This is double jeopardy due to two penalties being imposed for the same incident.

ARBITRATOR'S OPINION:

The ten day suspension imposed for the first incident covered by these grievances is not clearly unjust. The grievant did call in tardy, less than one hour before the start of his shift. The grievant was clearly on notice from the previously imposed discipline for tardiness less than four months earlier. The employer was justified in giving little credence to the grievant's doctor's excuses. There was no mention of re-injury of the grievant's back on the day in question. Later notes imply treatment but still indicate no re-injury.

The second incident covered is the sixth violation of the employer's absenteeism rule. The excuse given, oversleeping or car trouble, is irrelevant. It is the grievant's responsibility to arrive at work on time and to give timely notice to the employer so that his post can be filled. Based on his record of discipline for tardiness the grievant had clear notice of his responsibilities. Therefore, imposition of a five day suspension

is obviously justified.

The removal of the grievant for falsification is not double jeopardy as the union claims. The production of false documents is separate and distinct from the tardiness which the grievant was trying to excuse. The grievant, by maintaining that the employer compelled him to falsify an excuse, has demonstrated no understanding of the truthfulness required of an employee, much less a corrections officer. If the grievant's supervisor had ordered him to falsify documents he should have reported the incident, not complied with the request. Therefore, the grievant has shown no indication that he could be relied upon in the future.

AWARD:

The grievances are denied in their entirety.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

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

and

**Ohio Department of
Rehabilitation & Correction
(OCB)**
Employer.

Grievance(s):

No. 27-20-(8/30/88)-173-01-03
(incident 7/30/88)

No. 27-20-(12/30/88)-406-01-03
(incident 11/20/88)

No. 27-20-(02/02/89)-043-01-03
(incident 11/21/88)

Grievant:

Paul Holt

Hearing Date:

May 31, 1990

Award Date:

July 5, 1990

For the Union:

Brenda Goheen

For the Employer:

Richard Hall

Present in addition to the Grievant and the Advocates were the following persons: Eric Dahlberg, ODRC (witness), Donny LeClair, ODRC (witness), Thomas Sheets, ODRC (witness), Joe Clark, OCSEA Chief

Steward, Julie Holt (Grievant's spouse).

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

- J-1 Contract 1986-89
- J-2 Record of Discipline (reproduced below)
- J-3 Grievance Trail 27-20(8-30-85)-173-01-03
- J-4 Grievance Trail 27-20(12-30-88)-406-01-03
- J-5 Grievance Trail 27-20(2-2-89)-043-01-03

Record of Discipline

Date of Incident/Offense Charged/Result/Comment

8-10-84/Unexcused Absence/Written Reprimand/Pre-Contract - Non-Grievable
(43 days intervening)

1-03-84/Unexcused Absence/1 Day/Pre-Contract - Non-Grievable
(10 months, 25 days intervening)

08-28-85/Unexcused Absence/5 Day/Pre-Contract - Non-Grievable
(7 months, 12 days intervening)

4-10-86/Unexcused Absence/Written Reprimand/Pre-Contract - Non-Grievable
(6 months, 10 days intervening)

Date of Incident/Offense Charged/Result/Comment (Cont.)

Under the Contract

10-20-86/Preferential Treatment/40 Days/No Comment

5-09-87/Tardiness (Rule 1A)/Counseled/Not Grievable
(2 months, 16 days)

7-25-87/Tardiness (Rule 1A)/Verbal/No Comment
(1 month, 5 days)

8-30-87/Tardiness (Rule 1A)/Written Reprimand/No Comment
(1 month, 18 days)

10-18-87/Tardiness (Rule 1A)/3 day/Not Grieved
(8 months, 20 days)

The Grievant was on disability leave from 11/15/87 to 5/1/88.

7-8-88/Pattern Setting (1A)/Verbal/No Comment
(22 days)

7-30-88/Late Call in Potential Tardy Unexcused Absence (inadequate doctor's excuse)
(3 months, 20 days)

11-20-88/Late Call in Tardy

11-21-88/Falsification

Other Exhibits

Union - 4 DRC Tardiness Policy (attached)

Joint Issue

Was the Grievant disciplined for just cause; if not, what shall the remedy be?

Relevant Contract Terms

§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.

§24.01 - Discipline Standard (in part)

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.

§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.

§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.

Facts

The Grievant is a Correctional Officer at the Ohio State Reformatory. His hire date is January 9, 1984. The incident which gave rise to the first grievance happened on July 30, 1988, a Saturday. The Grievant's scheduled report-in time was 5:50 a.m. At 5:55 a.m., the Grievant called in and reported that he had overslept and that he would be late. At 6:10 a.m., the Grievant called again. He indicated that he "had slipped on the stairs -- hurt my back, will not be in." (See Employer Exhibit 2 attached). The Grievant did not work Saturday, July 30, 1988.

On July 31, 1988 (Sunday), the Grievant returned to work. On that same day, he turned in a "request for vacation leave" for July 30, 1988. No physician's statement was submitted, and the vacation leave request was disapproved; the Grievant was charged with Unauthorized Absence (8 hours AWOL) (Rule 1A). (See Employer's Exhibit E-6 attached.) The Grievant sought to substantiate the illness claim and thereby acquire an approval of his vacation request. (See Tardiness Policy IV A(6), Union Exhibit 4 attached.) On August 2, 1988 (Tuesday), the Grievant brought a note from David B. Fox, D.C. which read as follows:

"The above named patient is being treated in my office for a work-related injury.

It is my determination that this patient should be excused from his job duties for Saturday, July 30, 1988.

Please do not hesitate to contact my office should you require any additional information or clarification concerning my patient, Paul Holt."

Subsequently, the doctor sent a statement dated August 8, 1988 which read as follows:

"This is to make record of the fact that the patient named above was treated in my office concerning a work-related back problem on Saturday, July 30, 1988.

Please do not hesitate to contact my office should you require additional information concerning my patient, Paul Holt."

(See Union Exhibit 7 attached)

The doctor wrote a third statement dated August 15, 1989 which stated that:

"[t]he above named patient is being treated in my office concerning a work-related injury. Mr. Holt was treated in my office on July 30, 1988 for his allowed condition, which is: Acute lower cervical subluxation complex syndrome complicated by strain/sprain and trauma induced myositis with associated myospasms; L-4 discopathy complicated with associated paresthesia and myospasms. Enclosed please find copies of two excuses excusing Mr. Holt from work on that date.

Please feel free to contact my office if you have any questions concerning my patient, Paul Holt."
(See Union Exhibit 8 attached)

The Grievant stated on direct examination that the doctor had come into the office Saturday, July 30, 1988, to treat the Grievant, but that he (the doctor) refused to give the physician's excuse until August 1, 1988 when he had secretarial assistance because he (the doctor) felt "no one could read his writing." The Grievant obtained the August 10th note when management deemed the August 1st note inadequate. When, and if, the second note was presented to the Employer is unclear. The Grievant indicated that he obtained the 3rd note (8/15/89) for the Step 3 hearing. The Grievant said he came to work on July 31st because he

"felt better" and that he had called the doctor on Sunday. As a result of this incident, the Grievant was given a pre-disciplinary conference on August 9, 1988. On August 9, 1988, the Hearing Officer found just cause to discipline the Grievant for a violation of Rule 1A (Absent without Authorization). The discipline imposed was a ten (10) day suspension (8/29 through 9/11/88). The Employer, through Superintendent Dahlberg, stated that the 10 day suspension was correct under the grid, a fourth offense of Rule 1A, and that the Grievant was given a break because pre-contract discipline was not counted. (See Exhibit E-9, Standards of Employee Conduct.) The Grid is reproduced below:

Offenses - First/Second/Third/Fourth/Fifth

1. Unauthorized Employee Absence -

a. Unauthorized absence including habitual absenteeism, pattern abuse, tardiness, and early departure. First Offense OR/WR; Second Offense 1-3; Third Offense 3; Fourth Offense 5-10; Fifth Offense R.

b. Being absent for one full shift without proper notice. First Offense OR/WR; Second Offense 1-3; Third Offense 3; Fourth Offense 5-10; Fifth Offense R.

c. Leaving the work area without permission of the supervisor. First Offense OR/WR; Second Offense WR/1; Third Offense 1-3; Fourth Offense 5-10; Fifth Offense R.

d. Failure to work specific hours or shifts when required (mandatory overtime). First Offense OR/WR; Second Offense WR/1; Third Offense 1-3; Fourth Offense 5-10; Fifth Offense R.

The second incident which caused the second grievance to be filed occurred on November 20, 1988.

The Grievant's report time was 5:50 a.m. (Therefore, call-in time was 4:50 a.m.) The Grievant called at 6:02 a.m. He said he had a car problem and would be late. He arrived at 6:14 a.m. (See Exhibit E-11 attached.) Some time that day, the Grievant filed a request for leave -- "Comp" time for 24 minutes involved (10 roll call lateness, 14 shift lateness). (See Exhibit E-10 attached). (Note that the Union and the Employer settled a grievance over roll-call tardiness. As a result, roll call tardinesses were expunged. The settlement occurred July, 1989.) The leave was denied.

The Grievant testified to the following events of November 20, 1988. He awoke late but left his home at 5:48 a.m. which he admittedly knew would make him late for roll call but he was "sure" he would be on time for his shift. At the end of King Street, approximately three-tenths (.3) of a mile from his home, the car went dead and would not restart. He ran back to his home to obtain his wife's car. While home, he "called-in" at 6:02 a.m. and notified ORC that he would be late. He drove his wife's car back to his car, jumped his car, left it running, drove his wife's car home, parked it, and started running back to his car. When he was half way down his block, a stranger stopped and gave him a lift to his car. The Grievant drove to work arriving at 6:14 a.m. (See Exhibit E-11 attached.)

Testimony of Lt. Johnson contradicted the Grievant in one aspect. Johnson said that on the day in question the Grievant said he awoke at 5:48 a.m. rather than left at 5:48. In the Supervisor's notes, which Johnson used to refresh his memory, still a third timing even less consistent was stated. (See Exhibit E-5.)

The distances and times involved were remembered differently by all concerned. Richard Hall, the hearing officer, drove the route accompanied by the Grievant and concluded that the actual distance was 2.5 miles which took 4 minutes and 10 seconds to drive at a legal speed with no traffic tie-ups. The Grievant said that he ran between all cars and drove illegally to accomplish all he did in 12 minutes. The Union offered a video tape which allegedly supported the Grievant's statement that such a course of action could occur in 12 minutes.

A pre-disciplinary hearing was held on December 7, 1988 and the hearing officer found just cause to discipline for a violation of Rule 1A. The hearing office found no mitigating circumstances. A 5 day suspension was recommended and was imposed January 1-7, 1989.

The third incident arose out of the second. The Grievant alleged that Captain LeClair told him that in

order to have his Request for Leave approved, he (the Grievant) would need verification of his car trouble to show a mitigating circumstance. Beyond this general statement, the testimony of the Grievant and Captain LeClair diverge. Captain LeClair said that "of course," he told the Grievant that verification would help. The Captain said that on previous occasions such verification was helpful. The Grievant maintained that the Captain told him "get me a slip" and "it will all be ok." The Grievant said that the Captain meant that "any sort" of slip would do. According to the Grievant, "the slip would never have come into existence if they had not demanded evidence." "I never falsified a document; I only turned it in."

The actual facts of the document are not disputed. The Grievant went to Hollingsworth Tire on November 21, 1988 and asked for a dummy receipt for a battery which the salesman Kershner stated that the Grievant did not purchase. The owner gave the Grievant the document. The original date was crossed out and November 7, 1988 inserted. No testimony was adduced as to who or why a date was scratched out. Because of the 11/7 date and the scratch out, Lt. Johnson was sent to the tire company to investigate. He was told that the slip could not be verified until one month because all the slips were at the Accountant's. On that date, Lt. Johnson noticed that an invoice of 11/21/88 was numbered 27790 and an invoice of 11/22/88 was numbered 27820; the invoice submitted by the Grievant was numbered 27822. After the month had passed, Lt. Johnson returned to the tire company on December 28, 1988 and spoke to Mr. Hollingsworth, the owner, who at the point admitted the receipt was false. Hollingsworth refused to make that same statement in writing. However, the salesman, Mr. Kershner, agreed to sign such a statement and did so on 12/28/88 (Exhibit E-15). On January 9, 1989, Captain Sheets notified Richard Hall that the receipt was false and on the same day, the Grievant was notified of a pre-disciplinary hearing on January 11, 1989 for an alleged violation of Rule 21. Rule 21 on the Grid is as follows:

Offenses - First/Second/Third/Fourth/Fifth

21. Willfully falsifying, altering, or removing any official document, arising out of employment with DR&C. First Offense 5-10/R; Second Offense R.

According to the hearing officer's report, the Grievant denied at the hearing submitting a false receipt. At the Arbitration hearing, the Grievant testified that at his Step 3 he had admitted the falsification. At the Arbitration hearing when asked if he was "dishonest" when he submitted the slip, the Grievant stated "I was doing what I was told by my captain; I did what he requested." The Grievant was asked numerous questions about the nature of the car failure on 11/20/88, when he discovered it, what was the basic problem, who fixed the problem, and when was it fixed. No clear answer emerged.

On January 11, 1989, a pre-disciplinary conference was held and the hearing officer found just cause to discipline for a violation of Rule 21. The Superintendent recommended Removal and the Grievant was removed on 2/8/89.

Superintendent Dahlberg testified extensively at the Arbitration hearing about how the various penalties were chosen. With regard to the third problem, Dahlberg said he recommended removal for falsification because the Grievant's behavior was so serious that he could no longer trust him to perform his duties and because credibility was absolutely necessary in a Correction's Officer. Dahlberg maintained that he had given the Grievant numerous chances and breaks and that the Grievant repeatedly "promised" to reform his long pattern of tardiness and absenteeism. The Superintendent said he (the Superintendent) was "probably negligent for allowing the problem to go on for years." The Union Advocate cross-examined the Superintendent and specifically challenged the testimony that the Grievant had a long record of second chances. The Employer introduced Exhibits E-16, E-17, and E-22 to substantiate the Superintendent's testimony. Exhibit E-16 indicated that on at least one prior occasion the Employer had accepted a car repair receipt to prove mitigating circumstances for an absence on 8/16/87; Exhibit E-16 was a complete record of all previous discipline, and Exhibit E-22 was a series of Request for Leave forms from 7/13/86 through 11/6/88 which indicated numerous times when sick leave and other leave was approved when the Grievant was late. Exhibit E-14 was introduced which indicated that on 6/29/88 the Grievant was notified in writing that all subsequent sick leave requests required medical verification.

The Superintendent was strongly cross-examined about the application of the Grid. The Union asked

why the discipline for 7/30/88 was not mitigated when more than a year existed between that incident and the 4th tardiness of 10/18/87. The Employer, through Superintendent Dahlberg, showed that the Grievant was not at work from November 15, 1987 through May 1, 1988.

Union's Position

1. The 10 day suspension was not progressive or commensurate based on prior discipline. Moreover, the Employer unfairly considered pre-contract discipline. The Employer violated its own grid. Moreover, the Union maintains that the Employer improperly ignored the doctor's verification and should have allowed the Grievant to substitute vacation leave.
2. The 5 day suspension for tardiness was improper because under the tardiness policy, the Grievant had gone more than 6 months without tardiness discipline.
3. The Union maintains that no third offense existed and that the falsification issue (Rule 21) was part and parcel of the 11/20/88 incident for which the Grievant was already disciplined; thus, the removal was in essence double jeopardy.

Employer's Position

The underlying premise is stated in the Employer's opening statement (Exhibit E-1) as follows:

"The Ohio State Reformatory is a maximum security prison that employs a number of Correction's Officers who provide security for the institution. Correction's Officers staff security posts that are covered twenty four hours a day. When a Correction's Officer fails to report for duty usually another Correction's Officer is frozen on post (mandatory overtime) until relief can be called in to relieve the Officer who is frozen. The institution requires that employees call off one hour prior to shift so that relief can be secured in advance to prevent the unnecessary freezing of officers on their post. When an Officer fails to report or call off as did the grievant, a hardship is created for the Officer who is frozen on post, and the supervisor must waste valuable time using the overtime roster to secure a replacement for the Officer who fails to report as scheduled.

Absenteeism is a very serious problem in this work place and the employer is dedicated to minimizing such behavior. The penalties for absenteeism are stiff in comparison to some private sector jobs, but the consequences of absenteeism are far more severe in the penal work setting.

...

During this hearing the employer will present concrete, objective evidence to show that the grievant was chronically absent without authorization. The employer will show that the grievant was put on proper notice, both through specific, published written rules and a long history of progressive discipline that unauthorized absences would not be tolerated. The employer will show, despite repeated discipline, the grievant was unable or unwilling to change his unacceptable pattern of behavior. The employer will further show that the grievant precluded himself from further employment when he degenerated to the point that he was willing to falsify documents in an attempt to excuse his absenteeism behavior."

Discussion

On Saturday, July 30, 1988, the Grievant was late to call in and was clearly going to be tardy, when he called in and reported off for a fall. This clear infraction of Rule 1A happened only 31 days after a Notice requiring a doctor's verification of illness and 22 days after a Verbal Warning for a Saturday/Sunday/Monday pattern abuse. Moreover, this action occurred after 117 days (under 4 months) of work since his last tardiness violation (removing the days not worked while on disability leave). Under the Tardiness Grid, no "watch period" occurred and an occurrence after the 4th was clearly stated to involve "more severe forms of discipline up to and including removal" (Exhibit U-4). The last discipline was for 3 days. The Arbitrator cannot hold that a 10 day suspension in that case was clearly unfair or lacked progressiveness. (Although

the Arbitrator might have chosen a 5 day suspension as more progressive.) The Employer chose to put little credence in the doctor's notes supplied. Given the contents of the notes, this judgment was not unjust. Note #1 does not mention a July 30th re-injury nor does it support the Grievant's claim that he was seen on July 30th. The second note presumably obtained at the Grievant's own initiative, did say the Grievant was treated on July 30th but implies the treatment was for an old injury not for a new re-injury on the same day. Lastly, the August 15, 1989 note, again obtained by the Grievant, is similarly evasive. The Arbitrator finds no mitigating circumstances.

The incident of November 20, 1988 then becomes the sixth violation of Rule 1A following 3 months and 20 days from the last incidence. Regardless of the truth or falsity of the Grievant's story about cars, etc., the Grievant called off late and reported late. His excuse was that he "overslept." The responsibility of an employee is to be on time and the responsibility of a Correction's Officer on whom other person's work and safety depends is to give the Employer sufficient notice to meet emergencies. With 5 previous disciplines in this area, the Grievant-should have been acutely sensitive to his responsibilities. His responsibility included provision of an adequate mechanism to ensure that he awoke from sleep with sufficient time to get to work. Moreover, if he expected to use his car to go to work, his responsibility was to maintain its reliability or arrange alternative transportation or awake in time to walk. The Grievant was repeatedly and chronically unable or unwilling to meet these work responsibilities. The Arbitrator finds a clear violation of Rule 1A. The discipline of a 5 day suspension is clearly not as harsh as progressivity would have allowed. In retrospect, the Arbitrator would have imposed a 5 day and then a 10 day, reversing the actual discipline. However, this arbitral disposition does not invalidate the discipline chosen.

The Union maintains that the imposition of discipline for falsification of a document was in effect a double punishment for the November 20th tardiness. The Employer presented reasonable and plausible justification for not charging the Grievant for violation of rule 21 until after December 28, 1988. The falsification behavior was separate and distinct from the tardiness even though it arose from the same incident.

The Arbitrator found the Grievant's own testimony the best support for his removal. To claim that he did not participate in the falsification and that he was only "following orders" is incredulous. His tenacious reiteration of this position indicates no understanding of the truthfulness and the reliability required to be employed anywhere, no less in a paramilitary prison situation where other people's lives depend on one. To imply that a request or even demand for documentation is a request or demand for a false document is incredulous. To attempt to blame another for his deception indicates a total lack of the type of character which induces trust and reliance. If the superior had ordered him directly to obtain a false document, rather than complying he should have reported the incident and grieved it. An employee so lacking in a basic concept of honesty certainly cannot be relied upon in the future. Removal was just, commensurate, and progressive.

Award

The Grievances are denied.

July 5, 1990

Date

Rhonda R. Rivera

Arbitrator

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

1050 Freeway Drive, North, Suite 403

Columbus, Ohio 43229

RICHARD F. CELESTE

GOVERNOR

January 29, 1988

DEPARTMENT OF REHABILITATION AND CORRECTION
TARDINESS POLICY

I. PURPOSE

This policy directive is promulgated for the purpose of:

- A. defining and clarifying tardiness;
- B. identifying and clarifying call-off procedures; and
- C. establishing consistent method of dealing with tardiness and violations of the call-off procedures.

II. POLICY

It is the policy of the Department of Rehabilitation and Correction:

- A. to expect employees to arrive to work at the designated time and to leave work at the designated time;
- B. to provide fair and consistent treatment without being arbitrary and capricious while at the same time exercising its administrative discretion; and
- C. to discipline those employees who violate the call-off procedure; are excessively tardy, and who are absent without authorization.

III. DEFINITIONS

A. Tardy-

Any failure of an employee to report to work by his/her established reporting time up to 60/90 minutes beyond (depending upon the past practice of the administrative facility).

B. Unauthorized Absence-

Any period of time beyond 60/90 minutes (based upon the past practice of the administrative facility) after which an employee is not present at his/her place of work during established working hours for which the employee has not secured authorization from his/her supervisor using the established leave request forms and procedures.

January 29, 1988

C. Call-off-

The notification of the designated institutional control office or person, the designated regional office or person, or any other administrative office or person that an employee will not be present for work at the established reporting time.

IV. PROCEDURES

A. Call-off-

It is expected that all employees will report to their work station at a designated time. However, if the

employee is unable to report at that time, he/she should immediately notify the designated person in their facility that they will be late or absent. Departmental facilities and offices must be able to plan their operations and can only do so effectively if they know an employee will be on the job or not.

1. In institutions and offices where staffing requires advance notice the employee is required to call off at least ninety (90) minutes prior to the established shift that they cannot report to work. The only exception to the 90-minute rules will be where "established local practices" were in effect prior to the commencement of the negotiated agreement.

2. In non-institution staffing requirement, employees are required to call off no later than one-half (1/2) hour after their established shift when they are unable to report to work.

3. When the notification is made by someone other than the employee, it still remains the affected employee's responsibility to ensure that the telephone call is made in a timely manner.

4. When an employee has secured approved leave (personal leave, vacation, or compensatory time) in advance of the call-off time by using the established leave request system, the affected employee does not have to call off for that absence.

5. When an employee fails to properly notify the administrative facility of an absence, the employee shall be considered to have violated at least Rule #6c of the Standards of Employee Conduct. The principles of progressive discipline will apply.

January 29, 1988

6. It is understood that it is possible that an employee may be tardy or absent for reasons that are reasonably beyond the control of the affected employee. Supervisors are permitted to consider these extenuating circumstances when dealing with such absences, and are also permitted to approve the use of accrued leave (personal leave, vacation, compensatory time) when such mitigating circumstances warrant this consideration. It should be clearly understood that if a supervisor approves leave to cover an instance of tardiness or unauthorized absence, then that will not be considered as an occurrence of tardiness or unauthorized absence as defined in this policy.

B. Unauthorized Absence-

1. Employees shall use the appropriate leave forms and time frames for absences, as directed.

2. When an employee is absent without authorization, the employee is considered to have violated at least Rule #1a of the Standards of Employee Conduct. The principles of progressive discipline will apply.

C. Tardy-

1. The -standard for determining tardiness shall be the time as stamped on an employee's time card by the official institutional time clocks. Facilities without time clocks will use as the standard, the supervisor's notation followed by the employee completing a leave form which the supervisor may approve or disapprove.

2. The following progression of corrective action would be the ordinary method of dealing with repeated instances of tardiness assuming there were no other disciplinary considerations. Therefore, corrective action will not be limited to the progression specified below. Any decision to impose corrective action will take into consideration the employee's disciplinary history. The final decision to impose discipline will be arrived at by the Appointing Authority or his designee, after considering the totality of the employee's work record and work history.

First Occurrence of Tardiness - The corrective action imposed for the first occurrence of tardiness will in most cases involve corrective counseling which will not be entered into the employee's official personnel file. The supervisor or administrator who conducts the corrective counseling will document the session on the proper form and retain the document for six (6) months.

January 29, 1988

Second Occurrence of Tardiness - The corrective action for the second occurrence of tardiness will in most cases involve a verbal reprimand which will be noted in the employee's official personnel file. However, if the second occurrence of tardiness occurs more than six (6) months (watch period) after the first occurrence then that tardiness will be treated as if it is the first occurrence of tardiness and will result in corrective counseling only.

Third Occurrence of Tardiness - The corrective action imposed for the third occurrence of tardiness will in most cases involve a written reprimand which will be placed in the employee's official personnel file. However, if the third occurrence of tardiness occurs more than six (6) months (watch period) after the second occurrence then that tardiness will be treated as if it is the second occurrence of tardiness and will result in a verbal reprimand only.

Fourth Occurrence of Tardiness - The corrective action imposed for the fourth occurrence of tardiness will in most cases involve a suspension of one day. However, if the fourth occurrence of tardiness occurs more than six (6) months (watch period) after the third occurrence then that tardiness will be treated as if it is the third occurrence of tardiness and will result in a written reprimand only.

Further Occurrences of Tardiness - The corrective action that will be imposed for repeated occurrences of tardiness beyond the fourth incident will involve increasingly more severe forms of discipline up to and including removal. There shall be no watch period for discipline imposed under these circumstances.

The fair, equitable, and consistent application of this policy shall serve to enhance Departmental goals.

APPROVED:

Richard P. Seiter, Director

Date: July 30, 1988 Time: 5:55 A.M.

Guard: C/O Paul Holt Relief: N/A

Reports: OWP: N/A Off: N/A

Reason: Stated "tell the Captain I'm on my way in." 5:55 A.M. At 6:10 A.M. C/O Holt called back stated "I slipped on the stairs - hurt my back will not be in." 6:10 A.M. Captain LeClair was notified.....

Will Return: Unknown

Name of Caller: First Time C/O P. Holt - Second Time C/O P. Holt

Signed: C/O D. Taylor (Officer)

REQUEST FOR LEAVE

Name (Print) Last: Holt First: Paul Middle Initial: -- Date: 7/31/88

Employing Unit: OSR

I request leave beginning 6:00 A.M., 7/30/88 and ending 2:00 P.M., 7/30/88, for the following reason:

CHECK ONE:

- Medical, Dental, or Optical Examination or Treatment
- Personal Illness or Injury_____
- Serious Illness or Injury in Immediate Family_____
- Death of Name:_____Relationship:_____on_____
- Vacation
- Court:___ Court Duty___ Jury Duty. Subpoena issued by___ Court,_____,19___.
- Military:___ With Pay___ Without Pay
- Leave Without Pay_____
- Other (Explain)_____

HOURS	Vacation	Sickness	
Personal Leave		Old	New
_____	_____	_____	_____ Balance Pay Ending
_____	_____	_____	_____ Total This Request
_____	_____	_____	_____ New Balance
_____	_____	_____	_____ Total Used This Year

Was this absence due to a work-related injury or illness? Yes___ No___
 Is claim to be made to any insurance company(s) Yes___ No___

Signature of Employee: Paul Holt

PHYSICIAN'S STATEMENT

As a duly qualified practitioner of medicine I certify that the use of sick leave described above is justified, in my opinion. The person involved was under my professional care for the above stated period, and is medically capable to return to work.

Date:_____

Signature of Physician:_____

Address:_____

City:_____

State:_____

Zip Code:_____

ADMINISTRATIVE ACTION

- Recommended
- Not Recommended
- Approved
- Disapproved

Supervisor: Illegible Appointing Authority: Major Morrison

REMARKS: Violation 1A - call off procedure and pattern abuse form.

PAYROLL CLERK: If "YES" work-related, or "YES" insurance claim is checked, send copy of this form to
Depart. of Administrative Services, Attn: BIRM, 30 E. Broad St., 29th Floor, Columbus, Ohio 43215.

TOTAL HOURS APPROVED _____

ADM 4258 (Rev. 2/84)

DAVID B. FOX, D. C.
429 PARK AVENUE
MANSFIELD, OHIO 44906
Telephone: 524-2255
Office Hours By Appointment

Name: Paul Holt
Address:
Date: 8/9/88

This is to make record of the fact that the patient named above was treated in my office concerning a work-related back problem on Saturday, July 30, 1988.

Please do not hesitate to contact my office should you require additional information concerning my patient, Paul Holt.

Signature of David B. Fox, D.C.

DAVID B. FOX, D.C.
420 PARK AVENUE, WEST
MANSFIELD, OHIO 44906
PHONE: 524-2255

August 15, 1989

Ohio Department of Rehabilitation
1050 Freeway Drive, North
Columbus, Ohio 43229

Attn: Thomas E. Durkee
Labor Relations Officer

RE: Paul Holt
PEL 57728

Dear Mr. Durkee:

The above named patient is being treated in my office concerning a work-related injury. Mr. Holt was treated in my office on July 30, 1988 for his allowed condition, which is: Acute lower cervical subluxation complex syndrome complicated by strain/sprain and trauma induced myositis with associated myospasms; L-4 discopathy complicated with associated paresthesia and myospasms. Enclosed please find copies of two excuses excusing Mr. Holt from work on that date.

Please feel free to contact my office if you have any questions concerning my patient, Paul Holt.

Dr. David B. Fox, D.C.

DBF:arr
Enclosure
cc:patient file

Date: November 20, 1988 Time: 6:02 A.M.
Guard: C/O P. Holt Relief: --
Reports: OWP: -- Off: --

Reason: States, "Car problems on my way." Time arrived 6:14 A.M.

Will Return:
Name of Caller: Self

Signed: C/O D. Taylor (Officer)

REQUEST FOR LEAVE

Name (Print) Last: Holt First: Paul Middle Initial: -- Date: 11/20/88

Employing Unit: OSR

I request leave beginning 6:50 A.M. , 11/20/88 and ending 6:14 A.M., 11/20/88, for the following reason:

CHECK ONE:

- Medical, Dental, or Optical Examination or Treatment
 Personal Illness or Injury _____
 Serious Illness or Injury in Immediate Family _____
 Death of Name: _____ Relationship: _____ on _____
 Vacation
 Court: ___ Court Duty ___ Jury Duty. Subpoena issued by _____ Court, ___ 19__.
 Military: ___ With Pay ___ Without Pay
 Leave Without Pay _____
 Other (Explain) Car Stop On Way Into Work, Request Comp. Time.

HOURS	Vacation	Sickness		
Personal Leave		Old	New	
_____	_____	_____	_____	Balance Pay Ending
_____	_____	_____	_____	Total This Request
_____	_____	_____	_____	New Balance
_____	_____	_____	_____	Total Used This Year

Was this absence due to a work-related injury or illness? Yes ___ No ___
 Is claim to be made to any insurance company(s) Yes ___ No ___

Signature of Employee: Paul Holt

PHYSICIAN'S STATEMENT

As a duly qualified practitioner of medicine I certify that the use of sick leave described above is justified, in my opinion. The person involved was under my professional care for the above stated period, and is medically capable to return to work.

Date: _____

Signature of Physician: _____

Address: _____

City: _____

State: _____

Zip Code: _____

ADMINISTRATIVE ACTION

Recommended

Not Recommended

Approved

Disapproved

Supervisor: Illegible Appointing Authority: Major Morrison

REMARKS: _____

PAYROLL CLERK: If "YES" work-related, or "YES" insurance claim is checked, send copy of this form to
Depart. of Administrative Services, Attn: BIRM, 30 E. Broad St., 29th Floor, Columbus, Ohio 43215.

TOTAL HOURS APPROVED _____

ADM 4258 (Rev. 2/84)