

ARBITRATION DECISION NO.:

342

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Youth Services
Cuyahoga Hills Boys School

DATE OF ARBITRATION:

April 30, 1991

DATE OF DECISION:

May 6, 1991

GRIEVANT:

Ricardo Vargas

OCB GRIEVANCE NO.:

35-03-(90-10-12)-0075-01-03

ARBITRATOR:

Jonathan Dworkin

FOR THE UNION:

Tim Miller

FOR THE EMPLOYER:

Donald E. Elder
Tim Wagner

KEY WORDS:

Removal
Abuse
Burden of Proof
Bench Decision

ARTICLES:

Article 24-Discipline
 §24.01-Standard
 §24.02-Progressive Discipline
 §24.05-Imposition of
Discipline

FACTS:

The grievant was a Youth Leader employed by the Department of Youth Services. The facility in which the grievant works houses dangerous and violent youth felons. On the date covered by this grievance he was in charge of forty-five youths in F-dorm by himself. He allowed himself to be locked into a room with a youth, by another youth. The grievant was accused of innate abuse and dereliction of duty and was

removed.

EMPLOYER'S POSITION:

There is just cause for removal. The grievant had himself locked into a room with an unruly youth. He then disciplined the youth by beating him with a belt. After exiting the room, the grievant chased the youth to his bunk and threatened to smash his head into the bed rail. Additionally, the grievant gave his key to another youth who locked the door, causing a serious security risk. The grievant was the only Youth Leader in charge of the dormitory housing youthful felons.

UNION'S POSITION:

There was no just cause for removal of the grievant. The employer has failed to meet its burden of proof in this case. The employer must prove the charges against the grievant. The grievant is a nine year employee with a good work record. Removal in this case was therefore not in accordance with progressive discipline.

ARBITRATOR'S OPINION:

The grievant has engaged in misconduct. The employer has failed to meet its burden of proof regarding the charge of youth abuse. However, it has been proven that the grievant is guilty of dereliction of duty for having another youth lock him in a room with no means of escape unless the other youth unlocked the door. The grievant was solely responsible for the security of the dormitory. Therefore, there is just cause for some discipline.

AWARD:

The grievance is sustained in part. The grievant was reinstated with no break in seniority. No award of back pay or lost benefits was made. Grievant was reinstated to a different dormitory than the one he had previously worked.

TEXT OF THE OPINION:

**OCB-OCSEA VOLUNTARY GRIEVANCE PROCEEDING
SUMMARY ARBITRATION OPINION AND AWARD**

In The Matter of Arbitration
Between:

THE STATE OF OHIO
Department of Youth Services
Cuyahoga Hills Boys School

-and-

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, OSCEA/AFSCME**
Local Union 11, State Unit 3

Case No.:

35-03(90-10-12)0075-01-03

Decision Issued:

May 6, 1991

APPEARANCES

FOR THE STATE

Donald E. Elder, Employer Advocate
Tim Wagner, OCB Arbitration Chief
Deneen D. Donough, Labor Relations Officer
Robert Jackson, Deputy Superintendent
Zachry Thompson, Unit Administrator
Three (3) Juvenile Witnesses

FOR THE UNION

Tim Miller, OCSEA Staff Representative
Dorothy O. Brown, President, Chapter 1830
Ricardo Vargas, Grievant
Russell Adams, Witness

SUMMARY OF "BENCH" DECISION

Jonathan Dworkin, Arbitrator
9461 Vermillion Road
Amherst, Ohio 44001

SUMMARY OF DISPUTE

This was a discharge dispute. As such, it was controlled by Article 24 of the Agreement, particularly the following provisions:

ARTICLE 24 - DISCIPLINE

§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.* [Emphasis added.]

§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.

§24.05 - Imposition of Discipline

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

Grievant was a Youth Worker at Cuyahoga Hills Boys School in Highland Hills, Ohio. The School is a facility of the Ohio Department of Youth Services. It is, in effect, a medium-maximum security juvenile prison for delinquents ages twelve to twenty-one. Designed as a two-hundred-bed institution, it houses approximately three hundred fifty boys, all of whom have been adjudged felons by Ohio Juvenile Courts.

As a Youth Worker, Grievant's job was to maintain discipline and security in F Dorm, an intake residence for approximately forty-five youths new to Cuyahoga Hills. The State alleges that, on May 13, 1990, while working alone in the dorm, he took an unruly boy into the isolation room and beat him with a belt. It is charged that he accentuated his misconduct by giving his keys to a "cadre" (trustee) inmate with instructions to lock him and his victim inside the room until he signaled for the door to be opened. The Employer further maintains that when the door was unlocked ten minutes later, Grievant responded to the boy's continuing impudence by chasing him to his bunk, grabbing him around the neck, and threatening to smash his head against the bed rail.

Grievant was charged with several violations, including (but by no means limited to) abuse of an inmate and dereliction of duty. The latter charge related to turning his keys over to an inmate and permitting himself to be locked into the isolation room. After the requisite investigation of charges and pre-disciplinary hearing, he was discharged. The discipline was grieved, appealed to arbitration, and heard at Cuyahoga Hills on April 30, 1991.

THE "BENCH" DECISION

Although the dispute was uncomplicated, pertinent aspects of it were in hopeless conflict, and the hearing was prolonged. When all testimony and documentary evidence had been entered, the Arbitrator met with the Representatives of the parties and disclosed his findings:

1. While the State's presentation forcefully suggested that Grievant committed abuse and the Arbitrator suspected that he was "guilty as charged," the evidence fell short of proving the misconduct. Article 24, §24.01 burdens the Employer with a strict obligation to prove allegations in support of discipline or termination; while that does not mean the evidence must be absolute and unqualified, it must at least convince an arbitrator of a probability (as contrasted with a possibility) if the State is to prevail. The Employer's evidence of abuse did not meet this standard and, therefore, the charge should be dismissed.
2. The evidence that Grievant relinquished his keys to a juvenile inmate and permitted himself to be locked into the isolation room was markedly more persuasive. The Employee's denials were not credible; the Arbitrator did not believe them. He was firmly convinced that Grievant did not tell the truth about the incident even though he testified under oath. [This was a tactical error on Grievant's part. Had he been candid and remorseful concerning his misconduct, his attitude would have been relevant on the question of whether or not the contractual goal of discipline -- correction -- could have been accomplished through the progressive policy outlined in §24.02. Remorse might have impelled greater moderation of the disciplinary penalty than will be awarded.]
3. As will be discussed in the next section of the decision, Grievant's action when he handed his keys to a cadre inmate was a glaring violation responsibilities. It was so perverse that, standing alone, it could well have supported discharge. (It is only because of his strong record of long and valuable service that just cause requires granting the Employee a second chance.)

After these findings were reviewed, the Representatives agreed that the bench decision should be finalized in a brief, summary award.

DECISION

It is hard to imagine a stronger condemnation of Grievant's misconduct than the facts themselves. It was between 9:00 and 10:00 O'clock at night on May 13, 1990. Grievant was alone on F Dorm -- the only adult in charge of roughly forty-five juvenile felons, some potentially violent. He was a nine-year Youth Worker who knew his job and presumably understood the seriousness of his obligations. He gave his keys to one of the inmates, and purposely disabled himself by instructing the youth to lock him in the isolation room -- a room that could be unlocked only from outside. There is literally nothing more to say about the action. Any attempt to describe or characterize it would detract from its stark reality. It was truly unthinkable that even a novice Youth Worker would act with such cavalier irresponsibility.

As the Arbitrator informed the Representatives of the parties at the close of the hearing, the discipline will be modified to the extent necessary to give Grievant a second chance. The Employee will be reinstated, but without lost wages or benefits; and his reinstatement will be postponed until the start of the first pay period in June to accommodate the Employer's record-keeping needs.

AWARD

The grievance is partially sustained. The discharge is modified to a disciplinary suspension covering the entire period of time from Grievant's removal to June 2, 1991. The Employer is directed to correct its records to reflect the modification.

Grievant shall be reinstated to his classification, with unbroken seniority, on his first scheduled workday of the pay period beginning June 2, 1991. His reinstatement shall be to the 3:00 to 11:00 p.m. shift, at a location other than F Dorm.

The Employer's obligations under this Award shall be fulfilled upon its compliance with the foregoing directives. It shall not be liable to Grievant for lost wages or benefits resulting from his removal.

Decision Issued at Lorain County, Ohio, May 6, 1991.

Jonathan Dworkin, Arbitrator