

ARBITRATION DECISION NO.:

350

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Agriculture

DATE OF ARBITRATION:

April 17, 1991

DATE OF DECISION:

May 27, 1991

GRIEVANT:

Roy M. Camp

OCB GRIEVANCE NO.:

04-00-(90-08-22)-0022-01-07

04-00-(90-10-12)-0029-01-07

04-00-(90-12-28)-0044-01-07

ARBITRATOR:

Hyman Cohen

FOR THE UNION:

Steve Lieber

FOR THE EMPLOYER:

Barbara Valentine

KEY WORDS:

3 Day Suspension

Neglect of Duty

10 Day Suspension

Failure to Follow Call-In

Procedures

Removal

Absenteeism

ARTICLES:

Article 24-Discipline

§24.01-Standard

§24.02-Progressive

Discipline

FACTS:

The grievant had been employed as a Meat Inspector by the Department of Agriculture since 1986. On May 10, 1990, he was assigned to pre-operational inspection of the Blue Ribbon Meats processing plant.

The grievant's supervisor conducted a walk through inspection after the grievant and identified several deficiencies which the grievant had not identified on his report.

On May 11, the grievant requested leave for May 16 to have his rifle repaired out of state. His request was denied but as there was an intervening weekend, his supervisor suggested that the grievant go over the weekend. The grievant was told that no leave would be approved, but he called off anyway prior to the start of his shift on May 16, 1990. For these two incidents, the grievant received a three day suspension.

The grievant failed to begin work at 7:00 a.m. on July 31, 1990 inspecting the Lauerhaus facility, nor did he call in until 9:46 a.m. Because no inspector was at the facility, its start up was delayed until an inspector arrived. His explanation was that he had experienced leg cramps caused by a stress test taken the day before. He awoke at 4:30 a.m. that day, but was tired, he did not set his alarm and overslept. The grievant received a ten day suspension for absenteeism and failure to follow call-in procedure.

The grievant again failed to properly call in on August 16 and 17, 1990. The grievant was then removed for absenteeism and failing to properly call in on August 16, 17, and November 1, 1990.

EMPLOYER'S POSITION:

There was just cause for the grievant's three day suspension. The grievant failed to properly conduct a pre-operation inspection of the Blue Ribbon Meats facility on May 10, 1990. His supervisor conducted a walk through inspection and found several deficiencies, of which the grievant was notified. The grievant also failed to fill out a Sanitation Report for the facility and he failed to document whether the deficiencies were corrected.

Additionally, the grievant was absent on May 16, 1990 without approved leave. The grievant had been denied leave for that day, in spite of the employer's knowledge of his reasons for wanting the day off, because the district was shorthanded. His supervisor suggested that he use the intervening weekend to get the rifle repaired and told him that no leave would be approved. Regardless, the grievant called off before the start of the shift on May 16, 1990.

There was also just cause for his ten day suspension for absenteeism and failure to call in. The grievant was assigned to perform inspection at the Lauerhaus facility at 7:00 on July 31, 1990. He failed to show up, or call in until 9:46 that day. The facility could not operate without the inspector present. His absence thus caused lost wages to the facility and additional overtime costs because the inspection had to be performed by another inspector.

Lastly, there was just cause for the grievant's removal. He was absent and failed to call in properly on August 16, and 17, 1990. Removal was contemplated but negotiations for discipline less than removal were under way when the grievant again absented himself and failed to call in properly on November 1, 1990. He was removed for absenteeism and failure to follow call-in procedure.

UNION'S POSITION:

There was no just cause for the grievant's three day suspension. It was not possible to complete a proper pre-operational inspection (which takes 30 minutes to check the 500 surfaces which contact the meat products) before the plant starts up. He limited his inspection to direct contact areas which could cause immediate public health hazards. The deficiencies which his supervisor identified were on-going and not from direct contact areas and can be corrected over time.

The grievant's leave request for May 16, 1990 was improperly denied. His supervisor knew the importance of the grievant's situation. He could not compete in a yearly rifle competition unless his rifle was repaired, and he had to go out of state for the repairs. Additionally, his supervisor refused his request because he did not like the grievant's work performance.

There was no just cause for the grievant's ten day suspension as his absence on July 31 was excusable. He had taken a stress test the day before, had experienced leg cramps and had not slept well that night. He did not set his alarm clock and overslept but called in when he awoke.

Lastly, there was no just cause for the grievant's removal. While he was absent and failed to call in properly on August 16, 17, and November 1, 1990, mitigating circumstances existed which warrant a reduced penalty. His supervisor did not like him, harassed him, and wanted to remove him. The grievant had a

drinking problem which was caused by his supervisor's harassment, and he had entered an EAP in 1989 for that problem. Therefore, the grievant's penalty of removal should be reduced.

ARBITRATOR'S OPINION:

The employer proved that the grievant failed to conduct a proper pre-operational inspection by not recording sanitation deficiencies on his Sanitation Report for the Blue Ribbon Meat plant. This is true despite the union's argument that the grievant was not allowed sufficient time to complete the inspection and that the supervisor conducted his walk-through inspection after the plant had started. The grievant did not assert initially that he did not have enough time and the deficiencies are on-going and the grievant should have reported them. The union presented no evidence that other inspectors failed to identify on-going deficiencies, thus no disparate treatment was proven.

It was also proven that the grievant was absent without leave on May 16, 1990. The grievant had asked for leave for that day and was refused. The solution would have been to comply now, grieve later, and not call off that day. Therefore, the three day suspension was proper, as neglect of duty and absenteeism was proven.

There was also just cause for the grievant's ten day suspension. He overslept and did not call in prior to the start of his shift. His failure to call until 9:46 a.m. caused lost wages for the facility and caused another inspector to be assigned. The fact that the grievant took a stress test the day before was not relevant to his offense of failing to follow call-in procedures.

There was also just cause for the grievant's removal. He was absent on August 16, 17 1990 and failed to call in. He admitted that alcohol problems were the reason. The union argued that the grievant's alcohol problems were caused by supervisory harassment, however harassment was not proven. Additionally, his alcohol problems date back to 1986, therefore it was not proven that supervisory harassment caused the grievant's alcohol problem.

The November 1, 1990 absence was not improperly added to the disciplinary action. Removal for the prior offenses was contemplated but a lesser penalty was being negotiated at the time and because the union was aware of the November 1 incident the grievant was not prejudiced by its addition. The grievant claimed that his wife called in on November 1st for him, however, as no message was received, his story is not credible. Thus, it was proven that he committed an additional offense that day.

In light of the grievant's disciplinary record, with nine prior occasions of discipline for offenses such as neglect of duty, AWOL, and insubordination, no reduction in the penalty is warranted.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

VOLUNTARY LABOR ARBITRATION

In the Matter of the Arbitration
-between-

**OHIO DEPARTMENT OF AGRICULTURE
MEAT INSPECTION DIVISION
DISTRICT 2**

-and-

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11
AFSCME, AFL-CIO**

ARBITRATOR'S OPINION

GRIEVANT:
ROY M. CAMP

FOR THE STATE:
BARBARA VALENTINE
Labor Relations Coordinator
Ohio Department of
Administrative Services
Office of Collective
Bargaining
65 East State Street, 16th Fl.
Columbus, Ohio 43215

FOR THE UNION:
STEVE LIEBER
Staff Representative
Ohio Civil Service Employees
Association, Local 11,
AFSCME, AFL-CIO
1680 Watermark Drive
Columbus, Ohio 43215

DATE OF THE HEARING:
April 17, 1991

PLACE OF THE HEARING:
State of Ohio, Office of
Collective Bargaining
Columbus, Ohio

ARBITRATOR:
HYMAN COHEN, Esq.
Impartial Arbitrator
Office and P. O. Address:
Post Office Box 22360
Beachwood, Ohio 44122
Telephone: 216-442-9295

* * * *

The hearing was held on April 17, 1991 at the State of Ohio, Office of Collective Bargaining, Columbus, Ohio before HYMAN COHEN, Esq., the Impartial Arbitrator selected by the parties.

The hearing began at 9:30 a.m. and was concluded at 5:05 p.m.

* * * *

The instant arbitration involves three (3) separate grievances filed by **ROY CAMP** with **STATE OF OHIO, DEPARTMENT OF AGRICULTURAL DIVISION OF MEAT INSPECTION**, the "**State**". The grievances were carried to arbitration under an Agreement with the State and **OHIO CIVIL SERVICE EMPLOYEES**

ASSOCIATION, LOCAL 11, AFSCME, AFL-CIO, the "Union".

I.

The parties stipulated that the issue to be resolved
by this arbitration is as follows:

Was the Grievant suspended for just cause?
If not, what shall the remedy be?

FACTUAL DISCUSSION

As a result of committing the offense of "neglect of duty" during the "preoperational inspection" of Blue Ribbon which the Grievant performed on May 10, 1990 and for committing AWOL on May 16, 1990, the Grievant was suspended for three (3) days.

Before considering the events which give rise to the instant grievance, it would be useful to discuss the "preoperational inspection". A "preoperational inspection" is performed at a facility by a Meat Inspector who "inspects a facility to determine, for example, if areas in the plant and the equipment are "thoroughly cleaned"; "ingredients are in proper order"; "products are in a wholesome condition" and that overall the plant is ready to operate.

A preoperational inspection is not performed every day because a number of plants begin their production at the same time. Thus, inspectors cannot be at all of the plants at the same time. Preoperational inspections are performed based upon the historical performance of the plant. For example, an increase in preoperational inspections may occur at a plant because of an increase in the frequency of problems at the plant.

All Meat Inspectors are required to conduct preoperational inspections. Such inspections are included within forty-five percent (45%) of the job duties set forth in the job description of Meat Inspector.

The corrective actions that a Meat Inspector may take as a result of a preoperational inspection are as follows: if equipment is found to be unclean and cannot be used, the equipment is rejected until the problem is corrected, an entire processing room, area or department may be rejected; if there is a question as to whether a product is spoiled or there is uncertainty over the product, its use is prohibited; and an inspection may be withheld which prevents the plant from conducting its operations until the deficiencies are corrected.

The difference between a preoperational inspection and operational inspection is that the preoperational inspection is conducted before the plant begins to operate. With this type of inspection the Meat Inspector may determine, for example if all product contact areas between shifts or before start up are "thoroughly cleaned"; rodent infestation may be detected; "roach problems" may be ascertained; whether lights are operating and boxes of product are properly labeled.

If "conditions" are left unchecked, it results in adulterated product. For example, rodent droppings on the bottom of a grinder will end up in the product, residue on the surface of equipment may cause bacteria to develop in the product, openings in the ceiling and walls might result in the product containing dirt, dust and other debris.

Sam Waltz, Chief of the Division of Meat Inspection said that his Division encourages supervisors to get out into the plants as frequently as they are able to do so. The supervisors go into the plant after the preoperational inspection has been conducted in order "to identify the critical areas and note the corrective action to be taken".

The Division suggests that a supervisor accompany inspectors "at least once a week". According to Waltz, the Division requires a "formal documented review" with a State Inspector based upon a random inspection.

PREOPERATIONAL INSPECTION OF BLUE RIBBON MEATS

THE STATE'S CASE:

William Choate, is Supervisor of the Division of Meat Inspection for the Cleveland area. On behalf of the State, Choate provided testimony on the events giving rise to the instant grievance. He indicated that on May 10, 1990, the Grievant was assigned to inspect the Blue Ribbon Meats facility. Choate elaborated by stating that the Grievant was instructed to accomplish a preoperational inspection at the Blue Ribbon facility at least once of week because of the manner in which the plant had operated. Choate monitored the Grievant's preoperational inspection by conducting a walk-through of the plant when he arrived at 6:10 a.m. Choate indicated that he observed a number of deficiencies including the ceiling panels in the sausage kitchen that were not in the proper places; the spice room needed cleaning; the welfare room which is the room in the plant that the employees use as a break room to hang up their clothes and eat lunch, was dirty; there was an "ice buildup" in the freezer ceiling and the refrigeration unit, and there were many products in the ready-to-eat coolers that were not identified (federal regulations require all products to be identified in all phases of processing). On May 14, 1990 Choate submitted an interoffice memorandum to Waltz outlining the deficiencies in the Grievant's preoperational inspection of the Blue Ribbon plant.

At the time of Choate's walk-through the Blue Ribbon plant, the Grievant accompanied him. According to Choate, he discussed the deficiencies with the Grievant and instructed him to take care of the deficiencies at the end of the walk-through.

The Grievant submitted a Sanitation Report consisting of two (2) pages on his preoperational inspection of Blue Ribbon. He recorded various deficiencies before Choate arrived at the Blue Ribbon facility. However, he failed to observe the deficiencies that Choate had identified during his walk-through which took place after the Grievant's preoperational inspection had been conducted. As a result of failing to correct various plant deficiencies at the Blue Ribbon plant on May 10 during his preoperational inspection, the State charged the Grievant with negligence in the performance of his duties as a Meat Inspector. Furthermore, the Grievant's Sanitation Report covering the preoperational inspection which was filled out on May 10 was "incomplete" according to Choate and the deficiencies identified by Choate, were not identified by the Grievant in his Sanitation Report. In addition, Choate indicated that an operational inspection report was not performed by the Grievant with regard to deficiencies which should have been documented and corrected. In the Grievant's Sanitation Report of his inspection of the Blue Ribbon Plant there was no evidence that the deficiencies were corrected. The State indicates that "the operational report portion of this form was lined through".

ABSENCE ON MAY 16, 1990

I turn to the evidence concerning the Grievant's absence on May 16, 1990. It is undisputed that Choate had approved a request for leave for May 17, 18 and 21, 1990. As Choate indicated, the Grievant submits an annual request for such leave because of his membership in the Black Powder Gun Club which meets in Virginia. Among the purposes of the annual request by the Grievant is to compete in a shooting match which is held by the Gun Club.

According to Choate, sometime after the Grievant's initial request for leave for May 17, 18 and 21 was approved, he requested leave for May 16 which Choate denied. The reason that the Grievant requested leave for May 16 was because the Grievant indicated that he had a rifle that "was not working" and he wanted to travel to Pennsylvania to have it repaired. Since the Grievant requested leave on May 11 for May 16, Choate suggested that he take the rifle to Pennsylvania over the weekend. Since the person repairing the rifle would be attending the shooting match sponsored by the Black Powder Gun Club, he could drop it off with the Grievant in Virginia.

Choate denied the Grievant's request because he said that "we were short handed in the district and needed him on patrol". He added that without the Grievant, he had no one else to cover patrol.

After the Grievant concluded his shift on May 15, he called the District Office during the evening and left a message on the answering machine that he would not be in on May 16. Choate checked the messages on May 16 on the answering machine and found out that the Grievant would not be at work.

THE UNION'S CASE

PRE-INSPECTION OF BLUE RIBBON MEATS

The Grievant indicated that the normal starting time for work for production at the Blue Ribbon facility is 4:00 a.m. He received a memorandum from Choate to conduct a preoperational inspection at the Blue Ribbon facility at least once a week at 4:00 a.m. The Grievant indicated that normally the Inspector should be at the facility at least thirty (30) minutes before starting time in order to properly conduct a preoperational inspection. By reporting at 4:00 a.m. the Grievant said that he could only charge Blue Ribbon two (2) hours of overtime.

The Grievant provided testimony concerning the preoperational inspection that he conducted at the Blue Ribbon facility on May 10. After signing in at 3:50 a.m. he took a quick look in the sausage room and ground beef area. In doing so, he looked for direct contamination and possible problems that required correction. The Grievant said that direct contamination of a piece of equipment or product can cause immediate hazards to the consumer and needs immediate correction. On the other hand, deficiencies are not an immediate health hazard. Such deficiencies might be in the plant equipment, or with the structure of the building such as the ceiling and the floor of the facility. The Grievant added that such deficiencies can be programmed. In other words, the facility is given time to make corrections.

The Grievant said that there were on-going deficiencies at Blue Ribbon Meat Plant, but he did not receive a written list of such deficiencies from Choate. The Grievant added that he has received a written list of deficiencies from Choate for other plants. The Grievant indicated that in order to do a preoperational inspection at Blue Ribbon, it would require a minimum of thirty (30) minutes. In order to do a thorough job, the Grievant said that he would have to look at every contact surface that the product touches at Blue Ribbon. He estimated that there are close to 500 contact points at Blue Ribbon. His priority in conducting the preoperational inspection at Blue Ribbon was direct contamination which might cause direct hazards to the public health.

ABSENCE ON MAY 16, 1990

The Grievant acknowledged that his request for leave for May 17, 18 and 21, 1990 for the annual Black Powder Shoot was approved by Choate. On the Wednesday or Thursday of the week before May 16, the Grievant said that he was preparing his pack to go on the shooting match. He checked his gun and noticed a scratch on the breech of the musket. He explained that there was "actually a hair line crack". The musket in question was a Civil War reproduction and a rare piece. The Grievant said that there are a few select gunsmiths that can adequately repair such a musket. The Grievant indicated that he had already paid his entry fees for the Black Powder Shoot. He called some of the members of the Club and located a gunsmith in Pennsylvania who was able to get the musket back to him by May 16. As a result, the Grievant called Choate and explained his problem. Choate denied his request for leave for May 16 even though the Grievant said it was important. According to the Grievant, Choate told him that "if his job performance was better, he would consider his request for leave for May 16". According to the Grievant, he asked Choate if he could call Dr. Charles Woodford, the District Veterinarian for the Ohio Department of Agriculture and request leave for May 16 from him. The Grievant said that Choate responded by indicating that he did not care who he called because he "was not approving anything." On May 11, the Grievant contacted Dr. Woodford and explained the situation to him and told him what Choate had said. The Grievant went on to state that Dr. Woodford told him that he understood the problem but since Choate was his [the Grievants] supervisor he would not reverse his decision.

The Grievant said that he "spent the weekend making other arrangements" but "the bottom line" was that he "had to be in Pennsylvania on May 16" to have his weapon repaired. On Monday, May 14 the Grievant said that he called Choate and asked him to reconsider his decision. According to the Grievant, Choate told him "I do not want to discuss it any further. If you want to take the day off, call the machine and I am not approving anything."

DISCUSSION

I.

PREOPERATIONAL INSPECTION OF BLUE RIBBON MEATS--MAY 10, 1990

Based upon the evidentiary record, I have concluded that the Grievant failed to identify various deficiencies at the Blue Ribbon facility during his preoperational inspection on May 10, 1990. Among the deficiencies which the Grievant failed to identify are the following: ceiling panels were not properly in place in the sausage kitchen; the spice room and welfare room were dirty; the ready to eat (RTE) coolers contained product which was not identified; and the freezer had frozen condensation on the ceiling and refrigeration unit. These deficiencies were not recorded on the Grievant's "Sanitation Report" prepared and signed on May 10, 1990.

It is true that Choate arrived at the Blue Ribbon plant at 6:10 a.m., two (2) hours after operations began at the facility. Thus, the Union indicates that the plant could not have been completely clean. The Grievant indicated that he should have been instructed to report at 3:30 rather than 4:00 am. to conduct the inspection. It takes at least thirty (30) minutes before the starting time at a facility to properly conduct the preoperational inspection, according to the Grievant.

Edgardo L. Bermudez, Union Steward who is also a Meat Inspector in the Cleveland area had worked as a Meat Inspector at Blue Ribbon for a period of six (6) months. In this connection, it should be pointed out that the inspectors within the Cleveland District are assigned to rotating meat inspection patrols. Each Inspector is assigned a specific number of plants. The plant rotation changes every six (6) months.

Bermudez testified in support of the Union's claim that the preoperational inspection at Blue Ribbon should have been performed at least thirty (30) minutes before the starting time of operations. If an inspector reports to the Blue Ribbon plant at 4:00 am, Bermudez said that the inspection has to be "rushed" in ten (10) or fifteen (15) minutes so that the employees can begin working. He added that "unless something is bad", the Inspector normally checks on the equipment which the plant employees must use immediately in order to begin production.

Bermudez indicated that at the Blue Ribbon plant, the first shift begins work in the spice and sausage room at 4:00 a.m. which ends at noon or 12:30 pm. The second shift which performs the operations begins at 1:00 p.m. If nothing is done on the second shift, the employees clean the sausage room.

I have concluded that consistent with Choate's testimony the deficiencies could not have occurred between the Grievant's preoperational inspection and the arrival of Choate at the Blue Ribbon facility. I am inclined to believe that the loose ceiling panels are a constant problem at the plant. The sausage products in the ready to eat cooler takes at least two (2) hours to smoke. Thus the products could not have been placed in the cooler during the morning of May 10. The dirty "welfare room" was in that condition during the previous day. Moreover the "ice build up" in the freezer, according to Choate has been a "constant ongoing problem--it is not an overnight problem".

It is not as if the Grievant was unfamiliar with the deficiencies at the Blue Ribbon plant. The Grievant had been assigned to the facility for approximately one (1) month before May 10. Thus, I have inferred that the Grievant was familiar with the ongoing deficiencies at the plant. It is of great weight that when Choate did the "walk through" the Blue Ribbon plant on May 10, the Grievant acknowledged that he did not indicate to Choate that he did not have enough time to perform his inspection and identify the deficiencies which were observed by Choate.

It is undisputed that Blue Ribbon "passed its review". However, as Choate explained, a plant can "pass its review or inspection" but nevertheless be subjected to deficiencies. Indeed, Choate acknowledged that the Blue Ribbon plant "cannot be completely clean", he added that there is "always something wrong". Nevertheless, a plant "can still have problems".

Choate acknowledged that no other Inspectors have been disciplined for failing to identify "on-going

deficiencies at the Blue Ribbon facility". However, it must be pointed out that if the discipline imposed against the Grievant is to be considered arbitrary, discriminatory or unreasonable, it is incumbent upon the Union to demonstrate that another employee or employees have similarly neglected to identify deficiencies and have a disciplinary record comparable to the Grievant and were not disciplined. Such a showing has not been made by the Union.

Based upon the evidentiary record, I have concluded that the Grievant committed the offense of "neglect of duty" in failing to correct various plant deficiencies during the preoperational inspection of the Blue Ribbon plant on May 10.

ABSENCE ON MAY 16

Based upon the evidentiary record, I have concluded that the Grievant was absent without leave on May 16, 1990. The Grievant acknowledged that, on May 14, 1990 he telephoned Choate and requested him to reconsider his decision not to approve his request for leave on May 16. According to the Grievant, Choate told him "I do not want to discuss it any further--if you want to take the day off, call the machine and I am not approving anything". Thus despite Choate's decision "not to approve anything" the Grievant called off on May 16. Thus, contrary to Choate's refusal to approve the Grievant's request for leave on May 16, 1990, the Grievant nevertheless took the day off. The absence by the Grievant on May 16 was unauthorized, and thus, he was absent without leave.

Even assuming that when the Grievant first asked Choate to approve his request for leave on May 16, Choate said that if his job performance was better, he would consider it. Moreover, Bermudez said that he could not recall a time when a request for leave was not approved. If the Grievant believed that Choate's denial of his request was arbitrary, he nevertheless, failed to follow the arbitral maxim of "comply now, grieve later". It should also be noted that Choate suggested that the Grievant take his musket to Pennsylvania and drop it off with the gunsmith who in turn would deliver it to the Grievant at the shooting match. I find Choate's suggestion reasonable.

Furthermore, Choate said that the Cleveland District was shorthanded and that he needed the Grievant to cover patrol on May 16. Bermudez was at work on May 16 and said that none of the staff was off that day. The Union did not refer to any provision in the Agreement that requires a request for leave to be approved. Furthermore, it should be noted that the Grievant was given leave on May 17, 16 and 21, 1990. In any event, the Grievant defied Choate and was absent on May 16, 1990. I have concluded that the Grievant was absent without leave.

The Union indicated that, in effect, Choate has carried out a personal vendetta against the Grievant since his probationary period soon after he was first employed by the State. In the final probationary evaluation of the Grievant on November 22, 1986, Choate and another District Supervisor gave the Grievant an unsatisfactory evaluation and concluded that the Grievant was not suited for the job of Meat Inspector.

It is sufficient to state that the evidentiary record supports the State's case that the Grievant committed the offenses of "neglect of duty" and being "absent without leave" on May 10 and 16, 1990 respectively.

The Grievant was hired by the State in 1986 as a Meat Inspector for the Cleveland area. Since May 27, 1989, the Grievant has received four (4) written reprimands for "neglect of duty", "falsification" and "failure to report AWOL". He "has also received three (3) verbal reprimands for "neglect of duty" and "failure to report AWOL". In light of the evidentiary record, including the Grievant's past record, I have concluded that the State proved by clear and convincing evidence that the Grievant was suspended for just cause for three (3) days for neglect of duty and for committing the offense of being "absent without leave (AWOL)".

AWARD

In light of the aforementioned considerations, the State proved by clear and convincing evidence that the Grievant was suspended for just cause for three (3) days for neglect of duty and for committing the offense of being "absent without leave (AWOL)."

II.

July 31, 1990 was a scheduled "kill day" at Lauerhaus Custom Butchering. The Inspector's Ante Mortem and Sanitation Inspections are required to be performed before the Lauerhaus employees begin their work. As Waltz explained, under Ohio law, the Director of the Meat Division of the Ohio Department of Agriculture, or his representative is required to provide inspection in any plant slaughtering animals. There is an ad mortem inspection to determine if the animal is sound and healthy and there is also a post mortem inspection to determine abnormal conditions. With regard to the ad mortem inspection if an abnormal condition is ascertained, the Inspector uses a "retain tag" to retain the live animal and a veterinarian, is assigned to the plant to conduct a final examination on the animal. A plant cannot begin its slaughter of the animals unless an Inspector conducts the appropriate inspections. If a plant does so in the absence of the required inspections, the plant may face criminal charges. If an inspection does not take place as scheduled, and employees have reported to work, they "are on the clock even though they are unable to begin work". This type of situation results in lost wages and the plant might very well be responsible for overtime which is required to be paid for the inspection which eventually takes places.

The Grievant was scheduled to report for duty at 7:00 am. on Tuesday, July 31, 1990 at Lauerhaus Custom Butchering. He failed to show up at Lauerhaus at 7:00 a.m. Inspection service was not performed at Lauerhaus until 9:30 a.m. The Grievant did not call the Division until 9:46 a.m. to indicate that he would not report to work at Lauerhaus.

The Grievant's reason for failing to report to work at Lauerhaus at 7:00 a.m. is that he had leg and muscle cramps which developed during the evening of July 30 from undergoing a stress test earlier that day. He indicated that the State approved the Grievant's request to take the day off and undergo the stress test, which was ordered by his doctor. The Grievant related that he had a history of heart problems. He had suffered a heart attack in the past and earlier in 1990, he had been off on stress related leave.

The Grievant testified that his wife usually awakens him in the morning. He said that he awakened at 4:30 a.m. but that he was tired. He did not set his alarm clock, and he overslept. When he awakened he called the District office and left a message on the telephone recorder that he would not be in to work. The Grievant's failure to show up at 7:00 a.m. and his failure to give sufficient notice to the State that he would not report to work at 7:00 a.m. resulted in two and one-half (2 1/2) hours of downtime at Lauerhaus, during which time four (4) butchers were unable to begin operations until 9:30 a.m., when inspection services were provided. As a result of the Grievant's absence on July 31, 1990 without approved leave and his failure to follow the proper call in procedure, he was suspended for ten (10) days.

DISCUSSION

The issue to be resolved is whether the Grievant was suspended for just cause and if not, what should the remedy be?

Article 29.03 of the Agreement between the parties, in relevant part, provides:

"* * In agencies where staffing requires advance notice the call must be made at least ninety (90) minutes prior to the start of the shift or in accordance with current practice * *."

These contractual terms are incorporated in Policy Memo 4-1 which in relevant part, provides that "Meat Inspection employees are required to call in to report sick leave at least ninety (90) minutes prior to the start of their shift". To emphasize the importance of calling off by giving advance notice, Dr. Woodford issued an Inter-Office Communication, dated July 5, 1989 to "All District 2 Inspectors" which stated the following: "When it is necessary to take time off work because of illness or other emergencies, please try to reach your supervisor directly, if possible, instead of leaving a message on the recorder. This applies especially to those on kill floor assignments where the company may suffer the financial loss of down time if an inspector does not show up for work. Inspectors assigned to Kiene's may call Dr. Woodford if Mr. Choate cannot be reached. Leave a message on the recorder only as a last resort.

Bill Choate: 255-8497

6:00 to 10:00 pm. or 4:45 to 5:30 am.

Dr. Woodford: 925-1466

7:00 to 11:00 p.m. or 5:30 to 6:30 a.m.'

The evidence warrants the conclusion that the Grievant violated the call in procedure provided in Article 29.03, Policy memo 4-1 and Dr. Woodford's Inter-Office Communication dated July 15, 1989. As I have indicated, the Grievant's failure to call in pursuant to the required procedure led to downtime for Lauerhaus of two and one-half (2 1/2) hours and lost wages for four (4) butchers. I have concluded that the Grievant was aware that his failure to call in on July 31, 1990, when he was scheduled for a kill floor assignment at Lauerhaus would lead to downtime and lost wages which are set forth in Dr. Woodford's July 5, 1989 Inter-Office Communication. Had the Grievant followed the proper call in procedure, the State would have had sufficient advance notice to assign an Inspector to perform the inspection services at the time that such services were scheduled to be performed.

That the Grievant has had heart problems and took a stress test on July 30, does not excuse the gesture of calling in at least ninety (90) minutes prior to the start of the shift. The Grievant's medical problem and stress test of July 30, have no relevance to his failure to call the District as he was required to do so under Article 29.03 and the applicable policy of the Division. The Grievant's record, which includes both a verbal and written reprimand and a three (3) day suspension for being absent without approved leave, leads me to conclude that the State proved by clear and convincing evidence, that the Grievant was suspended for just cause for ten (10) days for failing to follow the proper call in procedure and for being absent without approved leave.

AWARD

In light of the aforementioned considerations, the State proved by clear and convincing evidence, that the Grievant was suspended for just cause for ten (10) days for failing to follow the proper call in procedure and for being absent without approved leave.

III.

The Grievant was removed from employment by the State as a Meat Inspector effective December 30, 1990. The events which led to his removal began when he failed to properly report off on August 16 and 17, 1990. At a pre-disciplinary meeting held on October 18, 1990 the Grievant admitted to failing to properly report off. As Waltz related, the State was considering his removal from employment. According to Waltz, the Grievant requested settlement, which would amount to "something short of removal". At that point Hearing Officer Albert Matthews recommended that the State meet with the Grievant and work out a resolution of their dispute. Waltz said that since the Labor Relations representative was not at the pre-disciplinary hearing, the State agreed to follow Matthews' recommendation. It was agreed that if the parties were unable to resolve their dispute, another hearing would be reconvened.

By the first or second week of November, the parties were unable to agree to settlement terms. Meanwhile the Grievant was charged with yet another incident of failing to properly report off on November 1, 1990. This additional offense was added to the charges that on August 16 and 17, 1990, the Grievant had failed to properly report off.

The pre-disciplinary hearing on the offenses alleged to have been committed by the Grievant on August 16, 17 and November 1, 1990 was held on November 29, 1990. As a result of the evidence presented at the hearing, the Grievant was removed from employment. The instant grievance protests the State's decision of removal.

DISCUSSION

The issue stipulated by the parties is as follows: "Was the Grievant, Roy Camp, removed from his position as a Meat Inspector with the Ohio Department of Agriculture for just cause? If not, what shall the remedy be?"

It is undisputed that the Grievant failed to properly report off on August 16 and 17, 1990. He acknowledged that he "got fed up with the pressure and fell off the wagon". In other words, the Grievant said that he "went off and got drunk".

Dr. Woodford said that the Grievant called in at 4:15 a.m. on August 16 and left his name and a message which was "non-intelligible". The Grievant did not report for work on August 17 or telephone in advance that he would not be at work.

In a memorandum dated August 24, 1990 to Waltz, Dr. Woodford indicated that on August 17, the Grievant called him and said that he wanted to resign and that he was tired of fighting with Choate. Dr. Woodford told him to hang on and wait until he had something lined up. Dr. Woodford told him that he should do so for his benefit and the benefit of his family.

At the Grievant's suggestion, Dr. Woodford met the Grievant at a Union meeting on August 20. In his August 24, 1990 memorandum to Waltz, Dr. Woodford set forth what occurred at the meeting:

"At the meeting, Roy said he went out drinking Wednesday night, after Bill overruled him on a decision at Blue Ribbon (made him look bad in front of Management). he stayed out all night and got drunk. He called in at 3:00 (4:15) to resign. Evidently his message was cut off by the machine because he spoke too slowly.

He is still blaming all his problems on Bill, although he said nothing when Bill claimed he had not even raised his voice to Roy since he came back to work.

Roy then stated he did not come to work Thursday, August 16, because he was hung over. He said he did not report for work Friday, August 17, for the same reason. He blamed both absences on harrassment [sic] by Bill Choate. He said he did not call in because at that time he intended to resign".

The Union contends that Choate "was out to get" the Grievant and attributes the Grievant's drinking problems to Choate's harassment of him. It is true that Choate was "counseled" by Dr. Woodford for engaging in a "disagreement" or an argument with the Grievant in February, 1990. Moreover, in his final of evaluation of the Grievant at the conclusion of his probationary period, Choate and another supervisor concluded that the Grievant "is not suited for this job" [the job of Meat Inspector]. Furthermore, the Grievant said that "around March 1989", when he entered the hospital pursuant to the EAP [Employee Assistance Program] a meeting took place at which the Grievant's counselor and Choate were present. According to the Grievant, Choate did not want to hear about his problems with alcoholism.

I cannot attribute much, if any, weight to the Union's claim that Choate harassed the Grievant and "was out to get him". Between March, 1989 and August 16, 1990, during a period of roughly sixteen (16) months the Grievant was disciplined on nine (9) different occasions for committing various offenses including neglect of duty (five [5] times), and being AWOL (four [4] times). On August 8, 1990 the Grievant was suspended for three (3) days for "AWOL/Neglect of Duty" and on September 29, 1990, he committed the offense of being AWOL again and was suspended for ten (10) days. In light of the Grievant's record, I do not find any substantive merit in the Union's claim that Choate harassed the Grievant and was out to get him. Had the Grievant a satisfactory record, the claim of harassment might have arguable merit. Or, if evidence had been presented that other employees under Choate's supervision were treated differently than the Grievant, and they had committed the same offenses as the Grievant, a claim of discriminatory treatment would be given serious consideration. No such evidence was presented.

Furthermore, the Union cannot seriously contend that an adverse evaluation by a supervisor of an employee's work during a probationary period, constitutes harassment. Nor can I conclude that the "disagreement" or "argument" with the Grievant and Dr. Woodford's counseling of Choate over the episode

constitutes harassment. I cannot infer that Dr. Woodford's discipline of Choate with regard to the episode provided a motive for Choate "to get" the Grievant. Indeed, the Grievant's record since March 1989, is unsatisfactory. There is no evidence in the record that Choate, as a supervisor was unreasonable, arbitrary, or discriminated against the Grievant in the manner in which he treated the Grievant.

Moreover, that Choate did not want to hear about the Grievant's problems with alcohol, in 1989 does not warrant the conclusion that Choate harassed the Grievant and "was out to get him". The Grievant had participated in the EAP during three (3) different periods between the date of his hire in 1986 and March 1989. It may very well be that Choate was not sympathetic to the Grievant's problems but Choate's responsibilities as a supervisor is to make sure that the various jobs of the Division is performed consistent with its statutory mandate. In reviewing the evidence, I cannot conclude that Choate carried out a personal vendetta against the Grievant. In light of the Grievant's record, I have concluded that Choate has exercised forbearance, restraint and patience in dealing with the Grievant and his personal problems.

There is the Grievant's admission that he was "fed up with the pressure and fell off the wagon". He added that he "was tired" with the way Choate treated him and he wanted to quit". I cannot infer that Choate's treatment of the Grievant was the cause of the Grievant's resumption of his problems with alcohol. I cannot conclude that Choate's discharge of his supervisory responsibilities caused the Grievant to fail to follow the proper call off procedure. In any event, the evidence is undisputed that the Grievant failed to follow the proper call off procedure on August 16 and 17, 1990 and failed to report to work on both days during which time he said that he was "inebriated".

The parties were unable to agree to a settlement of their dispute after the predisciplinary hearing that was held on October 18, 1990. Before the predisciplinary hearing was convened, the Grievant committed another offense, in that he was AWOL on November 1, 1990 when he failed to utilize the proper report off procedure.

Choate was familiar with the events surrounding the offense that was committed on November 1. While engaged in a "conversation" with the Grievant, Choate said that the Grievant asked him if he knew that he "was not at work the day before". Choate replied that he "did not know that". Choate asked the Grievant "why he did not call and leave a message on the machine" in the District Office. According to Choate, the Grievant said that he was very sick and he had his wife call in. When Choate reminded the Grievant that there was no message from his wife, he said that the machine cut her off. Choate indicated that he checked the machine and found no messages from the Grievant or his wife that was left on the recorder.

It should be noted that the Grievant was assigned to "processing patrol" on November 1, 1990. If an Inspector does not show up at a plant, the plant is nevertheless able to conduct operations.. It is only when an Inspector fails to perform a preoperational inspection, that a plant cannot begin its operations. Unless the Grievant called in, Choate said that he would not know that the Grievant failed to report for work. Had Choate checked the sign in sheets, he would have discovered that the Grievant was absent from work on November 1. However, the Grievant disclosed to Choate that he was absent from work on November 1. After finding out that the Grievant did not work on November 1, Choate sent a report to Waltz who initiated the instant disciplinary action against the Grievant.

A question which must be addressed is whether the Grievant or his wife called the District on November 1 to report off. Choate indicated that the Grievant told him on November 2 that his wife called the District "but the machine cut her off". The Grievant testified that his wife called off while he was sick in bed. He said that he believed that he had been drinking and "did not remember the exact day". On cross-examination the Grievant acknowledged that at the step 3 hearing, he did not know that his wife was cut off by the machine until November 2, 1990. Waltz testified that at the November 29, 1990 pre-disciplinary hearing the Grievant said that he was standing by or near his wife when she made the call. Thus, the Grievant was not in bed at the time his wife called. Barbara Valentine, the Hearing Officer at the Step 3 hearing testified that the Grievant said that he was too ill to make the call. Moreover, Valentine said that the Grievant said that he did not find out until the end of the next working day about his wife being cut off.

The evidentiary record warrants the conclusion that the Grievant failed to call off on November 1, 1990. In light of the Grievant's testimony on direct and cross-examination, and the testimony Of Waltz and Valentine, I am inclined to believe that given the different versions of the alleged call made by the Grievant's

wife, no call was made by his wife on November 1.

The Union contends that the State "stacked" the charged against the Grievant by adding the November 1 offense of failing to utilize the proper call off procedure and being AWOL. I do not find that the addition of the November 1 offense to the August 16 and 17 offense is prejudicial to the Grievant. The Union was aware of the State's charge against the Grievant for the November 1 offense and was prepared to respond to it at the Step 3 hearing, the predisciplinary hearing and the instant arbitration. The November 1 offense of being AWOL was consistent with the offense he committed on August 16 and 17, 1990 and which he had committed on four (4) previous occasions since March, 1989. I cannot conclude that there was a stacking of the charges against the Grievant by adding the November 1 offense so as to prejudice the Grievant's rights.

The Grievant's record consists of nine (9) prior occasions since March, 1989 when he has been disciplined for such offenses as neglect of duty; AWOL and Insubordination. On August 8 and September 26, 1990 the Grievant was suspended for three (3) days and ten (10) days for being AWOL and neglect of duty. The August 16, 17 and November 1 episodes of AWOL indicate that the Grievant is unable or unwilling to comply with the proper call off procedures. Based upon the evidentiary record, I have concluded that the State proved by clear and convincing evidence that the Grievant was discharged for just cause.

AWARD

In light of the aforementioned considerations, the State has proved by clear and convincing evidence that the Grievant was discharged for just cause as required pursuant to Article 24.01 of the Agreement.

The grievance is denied.

Dated: May 27, 1991

Cuyahoga County

Cleveland, Ohio

HYMAN COHEN, Esq.

Impartial Arbitrator

Office and P.O. Address:

Post Office Box 22360

Beachwood, Ohio 44122

Telephone: 216-442-9295