

ARBITRATION DECISION NO.:

374

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction, Dayton
Correctional Institution

DATE OF ARBITRATION:

July 31, 1991

DATE OF DECISION:

September 6, 1991

GRIEVANT:

Julie Simpson

OCB GRIEVANCE NO.:

27-07-(91-01-29)-0060-01-03

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

Pat Mayer

FOR THE EMPLOYER:

Brenda Shelly
Tim Wagner, OCB

KEY WORDS:

Removal
Relationship With an Inmate

ARTICLES:

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

FACTS:

The Grievant was a corrections officer hired on May 7, 1990. Prior to her hire, Grievant had participated in Pre-Ohio, a program designed to help disadvantaged workers to seek jobs in state prisons. After her hire the Grievant attended the Corrections Training Academy for 3 weeks. On May 8, 1990, she signed a receipt for the ODRC Revised Standards of Employee Conduct, and a receipt stating that she would read the

Revised Standards. Within the Revised Standards appears a statement outlining several types of behavior which "cannot be tolerated within a correctional environment." Among these "behaviors" are relationships of various types between inmates and corrections officers, which include, among other things, the provision of any services to inmates or persons associated with inmates, the acceptance of gifts from inmates, and visits between inmates and corrections officers without prior authorization by the Appointing Authority. If the employee becomes involved in such a set of circumstances the employee must advise his supervisor. Rule 46 describes "unauthorized relationships" as those including, among other things, the exchange of personal letters, pictures, phone calls or information with an inmate, furlougee, parolee, or probationer without the express authorization of DR&C, visiting an inmate, etc., committing any sexual act with an inmate, etc., and/or engaging in any other unauthorized personal or business relationship with inmates, furlougees, parolees, probationers, or family or friends of the same.

The Warden testified that the Grievant reported that an inmate had refused a direct order. The Warden testified that Grievant had said that she and the inmate in question had been colleagues during previous employment 5 years earlier and had sexual relations, but that the inmate would be unlikely to remember because he was intoxicated. The inmate testified that he and the Grievant had a relationship for several years until a few days prior to the incident when they had a "falling out." The inmate testified that the Grievant had written him extensively, and had accepted collect calls, had supplied the inmate with cash by giving it to his sister to be placed in his account.

When asked about phone calls, the Grievant testified that she had accepted the calls from the inmate only because she was scared because the inmate was threatening her. She testified that she was currently having a relationship with a fellow correctional officer.

Phone records revealed that between March, 1990 and August 16, 1990, the Grievant had accepted 197 calls from the inmate and that they had talked 134 hours and 13 minutes.

The Grievant was called to a Pre Disciplinary Conference and subsequently removed. The removal was upheld at Step 3.

EMPLOYER'S POSITION:

The Grievant had an ongoing relationship with an inmate. She failed to either sever the relationship or inform her superiors. She was aware of the rules and chose to disregard them. The Grievant's offense was serious and continuing, and removal was just and commensurate.

UNION'S POSITION:

The removal was neither progressive not commensurate. A discipline short of removal would have been corrective. No evidence exists that Grievant extended any favoritism to the inmate. The employee was a good employee without any prior discipline.

AWARD:

Grievance denied. Discipline was both just and commensurate.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

OCSEA, Local 11
AFSCME, AFL-CIO
Union

and

Office of Collective Bargaining
for the Department of

Rehabilitation and Correction
Employer.

Grievance No.:

2-7-07-(910129) 60-01-03

Grievant:

(Simpson, J.)

Hearing Date:

July 31, 1991

Closing Date:

August 19, 1991

Award Date:

September 4, 1991

Arbitrator:

Rivera

For the Union:

Pat Mayer

For the Employer:

Brenda Shelly

Tim Wagner, OCB

Present at the Hearing were the Advocates named above and the following witnesses Larry Hunt, Chapter President (Witness), Ronald Edwards, Warden, Dayton Correctional Institution (Witness), A. Hasani Stone, Labor Relations Officer, Robin Knab, Labor Relations Officer (observer), Lt. T. Gerrish (Witness), Major J. Eichenlaub (Witness). The Grievant, Julie Simpson, was not present.

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. All witnesses were sworn.

Joint Exhibits

1. Contract
2. Discipline Trail
 - a. Investigatory interview
 - b. Notice of Pre Disciplinary Meeting
 - c. Notice of Discipline
3. Grievance Trail
 - a. Grievance
 - b. Step 3 Response
 - c. Notice to Arbitrate

4. Standards of Employee Conduct Revised Standards of Employee Conduct
 - a. Acknowledgments by Grievant of receipt of
 - 1) Standards of Employee Conduct
 - 2) Revised Standards of Employee Conduct
 - 3) Training on Standards of Employee Conduct
5. Telephone Computer Readouts
6. Letters from Grievant to Inmate

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Stipulated Fact

1. Grievant was a Correction Officer at Dayton Correctional Institution from May 7, 1990 to January 18, 1991.

Issue

“Was the Grievant removed for just cause, and if not, what should the remedy be?”

Relevant Contract Sections

Article 24 - Discipline

Section 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse.

Section 24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- A. 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.

Disciplinary action taken may not be referred to in an employee's performance evaluation report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

Section 24.05 - Imposition of Discipline (in part)

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

An employee may be placed on administrative leave or reassigned while an investigation is being conducted, except in cases of alleged abuse of patients or others in the care or custody of the State of Ohio the employee may be reassigned only if he/she agrees to reassignment.

Facts

The major facts of this grievance are not at issue. The Grievant was a correctional officer hired May 7, 1990. Prior to her hire, Grievant had participated in Pre-Ohio, a program designed to help disadvantaged workers to seek jobs in state prisons. After her hire at ODRC on May 7, 1990, the Grievant attended the Training Academy for three (3) weeks. On May 8, 1990, she signed a receipt for The ODRC Revised Standards of Employee Conduct. On May 29, 1990, she signed a receipt wherein she stated that she would read the Revised Standards. She also signed at Dayton Correctional Institution a statement saying "I understand that I am responsible for knowing and understanding these subjects, even those not covered during class lecture." This list included both Standards of Employee Conduct and the Revised Standards.

On page 3 of the Revised Standards effective June 1, 1990, the following statement occurs which is underlined: "Below are several types of behavior that cannot be tolerated within a correctional environment."

Number 2 on that list (pp. 4-5 of the Standards) reads as follows:

2. Employees shall not, without authorization from Appointing Authority, allow themselves to show partiality toward or become emotionally, physically, or financially involved with inmates, parolees, probationers, furloughees or their families, or establish a pattern of social fraternization with same.

a. An employee shall not offer or give to an inmate, parolee, probationer, furlougee, or a member of his/her family, or to any person known to be associated with him/her any article, favor, or service which is not authorized in the performance of the employee's duties and which conflicts or appears to conflict with the employee's duties. Neither shall an employee accept any gift, personal service or favor from an inmate, parolee, probationer, furlougee, or his/her family, or person known to be associated with him/her which is not authorized in the performance of the employee's duties and which conflicts or appears to conflict with the employee's duties.

b. An employee shall not visit an inmate, parolee, probationer, or furlougee while such an individual is under the custody and control of the Department, unless such a visit is given prior authorization by the employee's Appointing Authority, or the visit is part of the employee's job duties. Employees must indicate on the visitor's application that they are employed or have been employed by the Department of Rehabilitation and Correction.

c. An employee who becomes involved in a set of circumstances as described above must advise his supervisor, who is responsible for informing the Appointing Authority or personnel officer.

On the Disciplinary Grid attached to the Revised Standards on p. 7 is Rule 46 which follows:

*46. Unauthorized Relationships

a. The exchange of personal letters, pictures, phone calls or information with an inmate, furlougee, parolee, or probationer without the express authorization of DR&C

First Offense - WR/R

Second Offense - 5-10/R

Third Offense - R

Fourth Offense

Fifth Offense

b. Visiting an inmate, parolee, furlougee, or probationer without express authorization of DR&C

First Offense - 1-5/R

Second Offense - R

- c. Residing with a furlougee, parolee, probationer, or ex-inmate without express authorization of DR&C

First Offense - 5-10/R

Second Offense - R

- d. Committing any sexual act with an inmate, furlougee, parolee, or probationer

First Offense - R

- e. Engaging in any other unauthorized personal or business relationship(s) with inmates, ex-inmates, furlougees, parolees, probationers, or family or friends of same (nexus required)

First Offense - 5-10/R

Second Offense - R

*Denotes rule violation for "on" or "off" duty conduct.

On November 13, 1990, Warden Edwards was informed by Lt. T. Gerrish that the Grievant had informed him (Gerrish) that an inmate "DF" was giving the Grievant trouble. The Warden testified that on November 14, 1990 he directed the Grievant to see him. At that conference, according to the Warden, the Grievant said that inmate DF refused a direct order. The Warden asked if she had known the inmate prior to her employment. According to the Warden, the Grievant said that they had been colleagues during previous employment five (5) years earlier and that they had had sexual relations but that "DF" was unlikely to remember the incident because he was intoxicated. The Warden ordered "DF" placed in solitary confinement. On November 15, 1990, the Warden spoke to the inmate who said that

- “1. The Grievant had been his girlfriend for several years until a few days earlier when they had a "falling out".
2. The Grievant had written him extensively, and he could produce the letters.
3. The Grievant had accepted his collect calls from the prison and they talked often and at length.
4. The Grievant's children were taken care of by his sister while the Grievant was at work.
5. The Grievant supplied him with money by giving cash to his sister who paid it to his account.
6. The Grievant and he had a "falling out" because of her new and current relationship(s) with fellow COs.”

At that time, the inmate gave the Warden letters allegedly from the Grievant. (Joint Exhibit 6) These letters indicated a committed, sexual relationship. Most, however, were undated, and the contents did not allow them to be chronologically fixed. One letter was dated April 18, 1990.

On November 15, 1990, the Warden met with the Grievant and her union representative. At that meeting, the Grievant said she had written the letters but they were written prior to his incarceration at Dayton. She said that at Pre-Ohio she was informed that she could not have a relationship with an inmate and that she had severed the relationship then. When asked about phone calls, the Grievant allegedly stated that she had only accepted the calls because she was scared because the inmate was threatening her.

The Grievant said that she was currently having a relationship with a fellow correctional officer.

The Warden then assigned the Grievant to perimeter duty where she had no inmate contact. He then had a subpoena issued for telephone records which were not received until January 18, 1991.

Those records revealed that between March, 1990 and August 16, 1990, the Grievant had accepted 197 calls from the inmate and they had talked 134 hours and 13 minutes. In May, 1990, her first month as a CO, the Grievant had accepted 41 calls, in June, 1990, 49 calls, and July, 1990, 47 calls. In the first 16 days of August, she had accepted 13 calls. The average length of the call in June was 43 minutes, July, 36 minutes, and July, 29 minutes. The August average was 23 minutes.

The Grievant was called to a Pre Disciplinary Conference on January 13, 1991 and subsequently removed on January 18, 1991 (Joint Exhibit 2). On April 4, 1991, the removal was upheld on Step 3 and the

Notice to Arbitrate was filed on April 10, 1991. At the arbitration hearing, only the Warden testified; the Grievant chose not to appear. Evidence was adduced that the Union properly and repeatedly notified her of the hearing.

Employer's Position

The Grievant had an ongoing relationship with an inmate. She failed to either sever the relationship or inform her superiors. She was well aware of the rules and chose to disregard them. When forced to confront the issue, she lied as to the nature of the relationship and to its continuing nature. The Grievant's offense was serious and continuing. Removal was just and commiserate.

Union's Position

The removal was neither progressive nor commensurate. A discipline short of removal would have been corrective. No evidence exists that she extended any favoritism to the inmate. The employee was a good employee without any prior discipline.

Discussion

The Grievant was on clear notice both at Prep-Ohio, at Academy Training, and through ODRC rules and regulations that relationships with prisoners were not only prohibited but dangerous for herself, her co-workers, and inevitably the public. The evidence is overwhelming that this relationship in some significant form continued while she was at the Training Academy and at her job at ODRC. She did not notify anyone of this relationship voluntarily, rather she only gave sketchy and incomplete information when forced to by circumstances. The Grievant knowingly and intentionally violated Rule 46(a) and (e). By both the text of the Standards and the Rules and by the training, the Grievant was on notice that such a violation could cause removal.

The Union argues that the discipline was not progressive and was not commensurate. The arbitrator fails to see that a lesser penalty was appropriate. During the period of her preparation, training, and early employment when the Grievant was being constantly reminded of the impropriety of a relationship with an inmate, she continued in such a relationship. Moreover, if she truly wished to free herself, she failed to warn the employer. The offense is incredibly serious. If a prisoner can take advantage of a guard, he or she can use that advantage to escape, to cause harm to the other guards and the public, and to benefit himself or herself. A guard that fools himself or herself into believing they can manage such a relationship puts all persons, as well as himself or herself, in serious danger.

The Grievant's short-term tenure with the department was almost totally congruent with her continuing security breach.

The discipline is both just and commensurate.

Award

Grievance is denied.

Rhonda R. Rivera
Arbitrator

9/6/91
Date