

ARBITRATION DECISION NO.:

449

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Corrections and
Rehabilitation, Corrections
Reception Center

DATE OF ARBITRATION:

June 17, 1992

DATE OF DECISION:

June 18, 1992

GRIEVANT:

Bert Carter

OCB GRIEVANCE NO.:

27-05-(91-12-30)-0188-01-06

ARBITRATOR:

Mollie H. Bowers

FOR THE UNION:

Dennis Williams

FOR THE EMPLOYER:

Roger A. Coe

KEY WORDS:

Removal
Timely Discipline

ARTICLES:

Article 24 - Discipline
§24.02-Progressive
Discipline

FACTS:

The grievant was a Corrections Officer at the Corrections Reception Center. He was removed from employment on December 23, 1991 for allegedly stealing an institution check.

In August 1990, the grievant allegedly stole an institution check for \$26.40. The check was cashed at a local retail store but there was no endorsement and the grievant's fingerprints were not found on the check. The clerk in the retail store testified that she saw the grievant cash the check. Investigation of the stolen check was not pursued until more than a year after it was cashed. The Union has continuously raised the timeliness issue throughout the grievance procedure.

UNION'S POSITION:

The Union raised an initial arbitrability issue of timeliness. Under Article 24.02 the employer's decision to pursue discipline must be timely. In the instant case, waiting an entire year before instituting disciplinary action was not reasonable.

There was no evidence to prove that the grievant misappropriated the state issued check. The check was neither endorsed by the grievant nor were his finger prints found on it. The state's only witness provided conflicting written and taped testimony. Without evidence and considering the unreasonable length of time that the state waited to pursue disciplinary action, the grievant should be reinstated with back pay and seniority.

EMPLOYER'S POSITION:

The investigation into the stolen check was properly conducted. The discipline procedure was timely as soon as the new warden became involved. A store clerk, who cashed the check positively identified the grievant. Stealing state property was a serious offense which warranted circumventing the progressive discipline outlined in Article 24.02 and immediately terminating the grievant.

ARBITRATOR'S OPINION:

The state did not comply with section 24.02 of the Agreement when it failed to timely take disciplinary action against the grievant.

AWARD:

The grievant shall be reinstated with full back pay and benefits.

TEXT OF THE OPINION:

IN THE MATTER OF THE
ARBITRATION BETWEEN:

THE STATE OF OHIO

-AND-

**THE CIVIL SERVICE
EMPLOYEES' ASSOCIATION**

ARBITRATOR:

Dr. Mollie H. Bowers

CASE NO.:

27-05-(91-12-30)-0188-01-06

HEARING HELD:

June 17, 1992

APPEARANCES:**For the State:**

Roger A. Coe, Advocate
Ronald K Buford, then Investigator

For the Association:

Dennis Williams, Advocate
Bert Carter, Grievant

STATEMENT OF CASE

At the outset of the Hearing, the advocate for the Ohio Civil Service Employees Association (the OCSEA) stated that it challenged arbitrability of this grievance based upon timeliness regarding the issuance of discipline. Specifically, the OCSEA cited Article 24, Section 24.02 (last paragraph) of the collective bargaining agreement in support of its claim. Both parties agreed that this provision applied to the instant case.

Each party then presented such evidence and testimony (examination and cross-examination of Mr. Ronald Buford) as it deemed appropriate to substantiate its position on the arbitrability issue. The State of Ohio (the State) acknowledged that the OCSEA had timely and continuously raised the timeliness issue throughout the grievance procedure. Both parties requested that, if possible, the Arbitrator provide a bench decision on the matter of the arbitrability. She acceded to this request and was granted time to study the record before rendering her decision.

DECISION

Based upon the record, the Arbitrator determined that the OCSEA prevailed in its assertion that the State did not comply with the last paragraph of Article 24, Section 24.02 of the collective bargaining agreement when it failed to timely take disciplinary action against Mr. Bert Carter (the Grievant). She also noted, however, that the investigation was properly and timely pursued as soon as Warden Melody Turner was brought on board. Nevertheless, the Arbitrator determined that the OCSEA has prevailed in this case.

AWARD

The Grievant shall be reinstated with full back pay (minus any interim earnings) and with full seniority and benefit rights for the period of his termination.

Mollie H. Bowers
Arbitrator

June 18, 1992