

**ARBITRATION DECISION NO.:**

495

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Rehabilitation and Correction,  
Grafton Correctional Institution

**DATE OF ARBITRATION:**

April 1, 1993

**DATE OF DECISION:**

April 20, 1993

**GRIEVANT:**

Karen McClendon

**OCB GRIEVANCE NO.:**

27-09-(92-06-17)-0091-01-03

**ARBITRATOR:**

Harry Graham

**FOR THE UNION:**

James Pagani, Staff Representative

**FOR THE EMPLOYER:**

Roger Coe, Labor Relations Officer,  
Department of Rehabilitation and Correction

**KEY WORDS:**

Personal Telephone Calls  
Between Officer and Inmate  
Removal  
Just Cause

**ARTICLES:**

Article 24 - Discipline  
§24.01 - Standard

**FACTS:**

The grievant was employed by the State of Ohio, Department of Rehabilitation and Correction, at the Grafton Correctional Institution. Prior to her discharge the grievant had received favorable job evaluations.

The employer felt that the grievant violated two sections of the Standards of Employee Conduct; she exercised poor judgment, and engaged in personal telephone calls with an inmate without permission. The employer, as part of an investigation at the Grafton facility, discovered that the grievant encouraged an inmate to engage in improper conversation with another officer. The employer also alleged that the grievant was involved in a relationship with an inmate and received numerous collect calls on a second phone line at

her personal residence.

The state removed the grievant, citing as the reason that the grievant directed an inmate to act in a manner prohibited by Departmental rules, and engaged in an improper relationship with an inmate.

**EMPLOYER'S POSITION:**

Allegations that the grievant directed the inmate to engage in improper conversation with another officer is supported by the investigators who worked on the drug investigation at the Grafton facility. Furthermore, unusual circumstances involving a different listing name, a billing address different from the residence address, and records of collect calls from the inmate's housing unit to the newly installed line at the grievant's residence, indicate that the grievant was engaged in an improper relationship with an inmate. Based on this evidence, the termination was for just cause and should be sustained.

**UNION'S POSITION:**

The state has not proved just cause for the removal of the grievant. There is no reason to believe that the grievant engaged in improper telephone conversations with an inmate because the proper analysis procedures for voice identification were not followed by the state, therefore certainty of the grievant's alleged violation is lacking. Given the grievant's good performance evaluations and prospects for job advancement, the accusation that the grievant was involved in a relationship with an inmate is incomprehensible. The grievance should be sustained and the grievant restored to employment with a make whole remedy.

**ARBITRATOR'S OPINION:**

It was strangely coincidental that the grievant's sister was living with her during the time in question, and that the telephone service ordered by her sister received phone calls from the Grafton facility. Further, it was also strangely coincidental that the telephone service involved in this dispute was disconnected immediately after the grievant was interviewed by the investigators regarding this matter.

The investigators' testimony which indicated that the grievant encouraged the inmate to engage in improper conversation with another officer is un rebutted. Nevertheless, the arbitrator placed little emphasis on this issue in upholding the grievant's removal.

The improper telephone relationship between the grievant and the inmate placed the grievant, as a Correction Officer, in a compromising position. The consistent telephone contact between the grievant and the inmate coupled with a scheme to avoid detection is a serious offense. Activities of this nature create potential problems for the facility and appropriate discipline must be imposed. Removal of the grievant did not exceed the range of reasonableness for an offense of this type.

**AWARD:**

The grievance is denied.

**TEXT OF THE OPINION:**

In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

The State of Ohio, Department  
of Rehabilitation and Correction

Case Number:

27-09(6-17-92)091-01-03

Before: Harry Graham

Appearances:

For OCSEA/AFSCME Local 11:

James Pagani  
Staff Representative  
OCSEA/AFSCME Local 11  
1680 Watermark Dr.  
Columbus, OH. 43215

For Department of Rehabilitation and Correction:

Roger Coe  
Labor Relations Officer  
Department of Rehabilitation and Correction  
1050 Freeway Drive, North  
Columbus, OH. 43229

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on April 1, 1993 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this case was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

“Was the Grievant removed for just cause? If not, what shall the remedy be?”

Background: The parties do not agree upon a great deal in connection with the dispute. What little is agreed upon may be succinctly presented. The Grievant, Karen McClendon, was employed at the Grafton Correctional Institution for about one year prior to her discharge. During that time she had received good evaluations. In June, 1992 Ms. McClendon was removed from employment. The Employer was of the view that she had violated two sections of the Standards of Conduct. These were Rule 9 which provides for discipline when an employee exercises poor judgment and Rule 46A establishing discipline for instances when an employee engages in personal telephone calls with an inmate without permission.

In November, 1991 the Employer was conducting a covert investigation concerning the sale of drugs in the Grafton facility. As part of the investigation an undercover agent had been wired for sound. The listeners allegedly overheard the Grievant directing an inmate to go to another housing unit and "talk sexy" to a female correction officer stationed there. This action constitutes an impropriety. In the course of investigating this allegation against the Grievant the Employer stumbled upon further actions it considered to be serious breaches of its disciplinary policy. It came to believe that Ms. McClendon was involved in a relationship with an inmate, John Barfield. According to the State Ms. McClendon had come to have installed in her residence a second telephone line. She was in receipt of numerous collect calls from Mr. Barfield's living area. These calls were made at times when she was not on duty. As the investigation proceeded the telephone line was removed from her residence. The State views this as an attempt by the Grievant to cover up her involvement with an inmate.

During the course of the investigation the State recorded several phone calls to the McClendon residence that were allegedly made by Inmate Barfield. In the course of the investigation he admitted to telephoning the Grievant at her home. Based upon these events the Employer discharged Ms. McClendon. A grievance protesting that discharge was filed and the parties agree that it is properly before the Arbitrator for

determination on its merits.

Position of the Employer: According to the State there occurred in this situation a very complicated and confusing sequence of events. These events involve the use of false names and witnesses who do not appear to corroborate the testimony of the grievant. The State insists that Officer McClendon directed Inmate Barfield to go to a housing unit other than his own with some papers. When there, he was to speak with Officer Page, a female, and "talk sexy." This account was given by the State's principal witness in this case, Investigator Eddie Young, and corroborated by an Investigator from the Ohio Highway Patrol who was working on a drug investigation at the Grafton facility. There can simply be no reasonable doubt that the Grievant directed an inmate, John Barfield, to act in a manner prohibited by Departmental rules. Ms. McClendon had seniority. She knew the appropriate manner in which to behave. Hence, her directive to Barfield that he engage in appropriate conversation with another officer is highly improper. Discipline is warranted in these circumstances according to the State.

Careful attention must be given to a highly unusual series of events involving the Grievant and the telephone service provided to her residence in the State's opinion. On February 20, 1992 there was placed into service in Ms. McClendon's residence a second telephone line. (This is a distinct line as differentiated from the addition of extension telephones to an existing line of service). Additional service was ordered at the residence from the local provider, Alltel. The service order was taken by a long time employee of Alltel, Jeanette Morris. The phone was in the name of Janice Morgan who is Ms. McClendon's sister. Ms. Morgan did not use the residence address as the billing address. Rather, she used a post office box number at the Elyria, OH. post office. The number she provided to Alltel does not exist. Records maintained by the telephone company indicate numerous collect telephone calls to the newly installed line at the McClendon residence. Telephone records also indicate that they were made from the housing unit where inmate Barfield resides at Grafton. The State asserts this is indicative of the fact that he made the calls. In fact, he did not make them to Janice Morgan according to the State. He made them to Ms. McClendon. This is evidenced by a tape recording (Employer Exhibit 1) which the State insists represents a recording of Barfield speaking with McClendon. He testified at the hearing that this was the case. The caller identified himself as "Bar." The female voice on the tape is identified by the State as Ms. McClendon's. This was done by both Inmate Barfield and another Correction Officer. When Ms. McClendon answered the phone she referred to herself as Jeannette Morris. This is an unbelievable coincidence in the State's view. It should not be expected that Ms. Morris was receiving phone calls at Ms. McClendon's residence from Inmate Barfield. He testified that this was not so.

When Ms. McClendon was initially interviewed about the possibility she was receiving telephone calls from an inmate she never mentioned that there was a second telephone line at her residence. Nor did she inform the State's investigator, Mr. Young, that her sister had been living with her and had initiated her own phone service. This omission strikes the State as indicative of the fact that Ms. McClendon was unaware of the evidence against her. Only when confronted by the State with its knowledge of the second telephone line did Ms. McClendon indicate it was her sister's. It was not coincidental that as soon as Ms. McClendon was made aware that the State knew of the second telephone line and collect calls being made to that number service was discontinued. The bill remains outstanding. The Union and the Grievant had an opportunity to have Ms. Morgan testify on behalf of her sister. She did not do so. This omission signifies that the central elements of the defense proffered by the Grievant are false the State insists.

The role of Jeannette Morris in this proceeding is peculiar. She was the person who took the order for service on behalf of Alltel. It was her name that was used by the Grievant in an effort to confuse any outsiders who might become aware of the phone calls placed by Inmate Barfield. Moreover, Inmate Barfield received money from outside of the prison. Ms. Morris testified that she saw his name in a Christian magazine. Barfield is not Christian. Moreover, correspondence between Barfield and Morris is a ruse. When he wrote to Morris, he was really writing to the Grievant. It was she who sent him money using the name of Morris. This scheme was concocted to protect both Ms. McClendon and Inmate Barfield from discovery. When interviewed and at the arbitration hearing Barfield testified that he and McClendon had a relationship. He wrote to her, telephoned her and received money from her. The use of Jeanette Morris'

name was a subterfuge. He does not know the real Jeanette Morris. In this connection Barfield has nothing to gain. He was not promised anything. At the time of this incident he was under consideration for parole. He did not get it. Given the convoluted events under review in this proceeding and their inherent implausibility, the State urges the Grievance be denied in its entirety.

Position of the Union: The Union points to the disciplinary grid used in the Department. Discharge for the offenses at issue in this proceeding is not mandatory. A lesser penalty might be levied under the circumstances by the Department's own procedures. The Union urges that should be done.

In this situation the test of just cause is not satisfied according to the Union. While the State has a tape of telephone conversations involving a person who is assuredly the Grievant it cannot be completely assured that this is so. The State's own investigators and witnesses cannot be certain it was Ms. McClendon on the phone was Inmate Barfield. The Union urged that the tape be analyzed, using the services of an expert voice analyst and sophisticated equipment. This was not done by the State. In the absence of such analysis the requisite certainty is lacking. Ms. McClendon has consistently denied that it is her on the tape. No reason exists to disbelieve her according to the Union. In fact, the Grievant never had a telephone conversation with Inmate Barfield. She does not know either the male or female voices on the tape, Employer Exhibit 1.

Jeanette Morris, not Ms. McClendon, sent funds to Inmate Barfield. Except for seeing Ms. Morris in the J.C. Penney store over the years the Grievant is unacquainted with her. She does not know why Ms. Morris would correspond with Inmate Barfield but asserts that she did not.

The Union calls attention to Barfield's testimony and asserts it is a fabric of lies. He is a convicted felon serving a lengthy term. He has spent much of his life in prison. No reason exists to believe his testimony. Conversely, Ms. McClendon has had good performance evaluations. She knows she had a secure position with prospects for advancement. Why she should jeopardize her position with the State in order to strike up and continue a relationship with an inmate is incomprehensible according to the Union. It urges the grievance be sustained and Ms. McClendon restored to employment with a make whole remedy.

Discussion: The case of the Union is essentially one of denial. The Grievant did not have any sort of relationship with Inmate Barfield. Nor did she have any manifestations of a relationship such as telephone calls received at a second telephone line installed at her residence. It was coincidence that her sister was residing with her during the time in question and that the telephone service ordered by her sister, Ms. Morgan, received phone calls from the Grafton facility. It was a further coincidence that the telephone service involved in this dispute was disconnected immediately after Investigator Young interviewed the Grievant. That these events were entirely coincidental must prompt great skepticism on the part of any reviewer of fact.

Additionally, that Ms. McClendon was in receipt of a telephone call in which the caller identified himself as "Bar" and sought to speak with Jeanette Morris casts doubt upon the Grievant's protestations of innocence in this situation. The account of Inmate Barfield proffered at the arbitration hearing is credible. He acknowledged telephoning the Grievant on numerous occasions, including the taped conversation offered into evidence. In essence, the Union is asking that the Arbitrator disbelieve the testimony of Investigator Young and Inmate Barfield concerning that particular telephone call. Credence is added to the State's version of events by the records of telephone calls made to Ms. McClendon's residence and their originating source. The evidence indicates that calls were made to Ms. McClendon's residence from the Grafton facility. Specifically, some of them originated from the residence unit that housed Inmate Barfield. No explanation exists concerning the originator of those calls but that they were placed by Inmate Barfield.

When the Union protested that the voice on Employer Exhibit 1, the tape recorded telephone call, might not be that of Ms. McClendon, it was engaging in speculation. No evidence is on the record to indicate that the voice on the tape is anyone other than that of the Grievant. While it is not possible to know with 100% certainty that it is Ms. McClendon on the tape all testimony on the record points to that to be the fact. In arbitration proceedings as in the judicial system probabilities are evaluated in an effort to determine the outcome of a particular dispute. In this instance it is more probable than not that the events concerning the

telephone calls between Inmate Barfield and the Grievant occurred as related by the Employer.

No serious dispute exists concerning the direction to Inmate Barfield to "talk sexy" to a female correction officer. Testimony from the Highway Patrol Investigator as well as Investigator Young is unrebutted on this point. It is not doubted by the Arbitrator that Inmate Barfield was directed by Officer McClendon to talk sexy to a fellow officer.

Given that the events surrounding Ms. McClendon's discharge occurred as related by the State the question continues to remain, do they meet the test of just cause for discharge specified in the Agreement? It requires little imagination to believe that engaging in numerous telephone calls of a personal nature with an inmate can place a Correction Officer in a compromising position. Of less significance is the directive to Inmate Barfield to talk sexy to a Correction Officer. It is given little weight in this proceeding. That notwithstanding, the consistent telephone contact between the Grievant and the Inmate coupled with the elaborate scheme to foil detection that accompanied it is a very serious offense. Obviously a prison is a place where those found to imperil society have been incarcerated. Those who are charged with the custody of such persons must not be placed in a compromising position. If that occurs the potential for serious problems within, and perhaps without, of the facility exists. In this situation the testimony and evidence produced by the State is convincing. As that is the case, given the gravity of the offense committed by the Grievant there is but one outcome to this dispute.

Award: The grievance is denied.

Signed and dated this 20th day of April, 1993 at South Russell, OH.

Harry Graham  
Arbitrator