

ARBITRATION DECISION NO.:

519A

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health
Pauline Warfield Lewis Center

DATE OF ARBITRATION:

September 8, 1993

DATE OF DECISION:

January 31, 1994

GRIEVANT:

Betty Evans

OCB GRIEVANCE NO.:

23-13-(93-05-04)-0704-01-04

ARBITRATOR:

Nels Nelson

FOR THE UNION:

Michael Temple
Penny Lewis

FOR THE EMPLOYER:

Rita Surber
Rachel Livengood

KEY WORDS:

Removal
Progressive Discipline
Just Cause
Neglect of Duty

ARTICLES:

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

FACTS:

The arbitration of this case was conducted on September 8, 1993. At that time the grievant was unable to work due to an on-the-job injury and it was uncertain whether the grievant would be able to return to work if she was reinstated by the arbitrator. The state requested, and the arbitrator subsequently determined, that he would retain jurisdiction to determine a remedy when the grievant was able to return to work.

The parties presented their arguments on January 28, 1994 on this issue.

ARBITRATOR'S OPINION:

The grievant's offense and poor record dictate a severe penalty. It warrants a 30 day suspension. Any further problems with this grievant are likely to result in termination.

AWARD:

The grievant's termination is to be converted to a 30 day suspension.

TEXT OF THE OPINION:

ARBITRATION DECISION

January 31, 1994

In the Matter of:

State of Ohio, Department of Mental Health

and

Ohio Civil Service Employees Association,
AFSCME Local 11

Case No.: 23-13-(93-05-04)-0704-01-04
Betty Evans, Grievant

APPEARANCES

For the State:

Rita Surber, Human Resources Administrator, Pauline Warfield Lewis Center
Rachel Livengood, Second Chair OCB
Alice Gray, Director of Quality Management, PWLC
Jean Harris, Director of Housekeeping, PWLC
Gary McCall, Supervisor, Cincinnati Restoration, Inc.

For the Union:

Michael Temple, Staff Representative
Penny Lewis, Staff Representative
Betty L. Evans, Grievant

Arbitrator:

Nels E. Nelson

BACKGROUND

The hearing in the instant case was conducted on September 8, 1993. At that time the grievant was unable to work due to an on-the-job injury and it was uncertain when the grievant would be able to return to work should she be reinstated by the Arbitrator. Consequently, the state requested the Arbitrator to retain jurisdiction to fashion a proper remedy should he reinstate the grievant. The union did not oppose the state's request. Therefore, when the Arbitrator reinstated the grievant on October 27, 1993, he retained jurisdiction to determine any further remedy at the time the grievant was able to return to work.

A conference call was conducted on January 28, 1994. At that time the parties stated their positions regarding the proper remedy. The Arbitrator agreed to issue a final award in the case setting forth the appropriate discipline in the case.

The Arbitrator does not believe that it is necessary to provide a detailed rationale for this final award. He would note, however, that his decision indicates that the grievant's offense and poor record dictate a severe penalty. In view of this fact, he will impose a 30-working-day disciplinary suspension. In addition, the Arbitrator must warn the grievant that any further problems are likely to result in her termination and that such a termination would likely be upheld in arbitration.

FINAL AWARD

The grievant's termination is to be converted to a 30-working-day suspension.

NELS E. NELSON
Arbitrator

January 31, 1994
Russell Township
Geauga County, Ohio