

ARBITRATION DECISION NO.:

520

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Lottery Commission of Ohio

DATE OF ARBITRATION:

November 2, 1993

DATE OF DECISION:

November 3, 1993

GRIEVANT:

Rolaunda Wells

OCB GRIEVANCE NO.:

22-10-(93-04-02)-0009-01-09

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

Steve Lieber

FOR THE EMPLOYER:

Lou Kitchen

KEY WORDS:

Removal

EAP

Last Chance Agreement

ARTICLES:

Article 24 - Discipline

§ 24.01 - Standard

§ 24.09 - Employee Assistance Program

FACTS:

At the time of her removal, the grievant held the position of Public Inquiry Assistant, in the Hot Line Section of the Ohio Lottery Commission. The grievant's initial September 1992 removal was held in abeyance pending successful completion of the Employee Assistance Program. In February 1993, the grievant's physician notified the Commission that the grievant was not in compliance with her treatment recommendation and EAP participation agreement, and the grievant was subsequently removed.

ARBITRATOR'S OPINION:

Essentially, the Arbitrator utilized the arbitration hearing to facilitate a settlement of the grievance. The Arbitrator concluded that the grievant was an 18-year employee with a minimal disciplinary record, that she

was actively seeking treatment for drug dependency, that circumstances related to her drug dependency were responsible for non-compliance with the EAP program and that the grievant was basically very honest in nature. Thus, the removal was neither commensurate nor progressive.

As a result, the grievant was ordered to be reinstated, and the period of time from the removal to the reinstatement was to be treated as a suspension for AWOL and excessive absenteeism. Further, the Arbitrator ordered the grievant to enter into a second EAP/Last Chance agreement.

AWARD:

The grievance was sustained, but the Arbitrator retained jurisdiction to approve the EAP/Last Chance agreement.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

**OCSEA, Local 11
AFSCME, AFL-CIO**
Union

and

**State of Ohio
Lottery Commission of Ohio**
Employer.

Grievance No.:

22-10-(93-04-02)-0009-01-09-T

Grievant:

(Wells, R.)

Hearing Date:

November 2, 1993

Award Date:

November 3, 1993

Arbitrator:

Rhonda R. Rivera

For the Employer:

Lou Kitchen

For the Union:

Steve Lieber

Present at the Hearing in addition to the Grievant and Advocates were Michael Musarro, Personnel Director (witness), Audrey Cole, Manager/Sales Division (witness), Laurie Tall, EEO (witness), Scott Ford, Labor Relations Officer, and James LaRocca, Steward (witness).

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. Witnesses were sequestered. All witnesses were sworn.

Joint Exhibits

1. Contract
2. Grievance Trail
 - a. Arbitration Request
 - b. Step 3 Response
 - c. Grievance
3. Discipline
 - a. Notice of Disciplinary Hearing dated August 24, 1992
 - b. Memorandum of September 21, 1992
 - c. Employee Assistance Program Agreement and Releases for Information
 - d. Notice of Disciplinary Hearing dated February 19, 1993
 - e. Notice of Termination
4. Disciplinary Guidelines and Actions
5. Tardiness Abuse Policy

Stipulated Facts

1. At the time of removal, the Grievant held the position of Public Inquiry Assistant, Hot Line Section.
2. The Grievant's prior discipline history is listed in the notice of termination dated March 26, 1993.

Issue

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

Award

The Arbitrator found that the removal was not commensurate nor progressive. The Grievant is to be reinstated on November 3, 1993. The time period from removal through November 2, 1993 is to be treated as a suspension for AWOL and excessive absenteeism.

The Grievant is to enter into an EAP/last chance agreement. Conditions are 1) continuation of weekly (at least) substance abuse program for the next two (2) years, 2) no AWOL's for the next 6 months (i.e., no late call offs), and 3) no leave to be taken for the next year (1) except for good cause shown (the burden is on Grievant to proof good cause).

The Arbitrator retains jurisdiction to approve the EAP/last chance agreement.

RHONDA R. RIVERA, Arbitrator

Date: November 3, 1993