ARBITRATION DECISION NO.:
521

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Rehabilitation and Correction
Warren Correctional Institute

DATE OF ARBITRATION:
September 9, 1993

DATE OF DECISION:
November 2, 1993

GRIEVANT:
Timothy Fawley

OCB GRIEVANCE NO.:
27-26-(01-19-93)-0368-01-03

ARBITRATOR:
Lawrence R. Loeb

FOR THE UNION:
Patrick Mayer

FOR THE EMPLOYER:
T. Austin Stout
Brian Eastman

KEY WORDS:
EAP
Just Cause
Removal
Progressive Discipline

ARTICLES:
Article 9 - Employee Assistance Program
§ 9.04 - Employee Participation in EAP
Article 13 - Work Week, Schedules and Overtime
§ 13.06 - Report-In Locations
Article 24 - Discipline
§ 24.01 - Standard
§ 24.02 - Progressive Discipline

FACTS:

The grievant, a Correction Officer 2, was assigned to the first shift (6:00 A.M. to 2:00 P.M.) at the Warren Correctional Institute. The employer requires that officers be present for roll call ten minutes before their shift

begins and that if they will be tardy or ill, that they call at least ninety minutes before the start of the shift.

On August 2, 1992, the grievant overslept, arriving at work at 6:02 a.m. This was, by management's count, the twentieth time the grievant had been late. On most of those occasions, management disciplined the grievant, with each successive tardiness resulting in a more severe action. For the incident immediately prior to the August 2 tardiness (June 29, 1992), the grievant was suspended for 20 days.

On June 29, the grievant signed an Employee Assistance Program Participation Agreement, which provided for a ninety day period for the employee to deal with his problem of tardiness and failure to follow call-in procedures. On that very day, the grievant was late for work again and management went ahead and imposed a ten-day suspension for his failure to call in as required on May 21.

The grievant explained his tardiness by claiming to be an alcoholic and, after signing the EAP Agreement, he was examined by a nurse practitioner who felt he needed to enter a three-day detoxification program. The grievant declined to do so. Management then issued the 20-day suspension for his June 29th violation.

When the grievant was late again on August 2, management began the process which led to the grievant's discharge on December 21. A pre-disciplinary hearing was scheduled on October 28, the report was issued on October 30, the Notice of Disciplinary Action was dated November 23 and was not signed by the Director until December 11.

The union filed a grievance protesting the discharge.

EMPLOYER'S POSITION:

The state argued that it is imperative for every position to be covered in a medium security prison and that they must be notified ahead of time if an employee will not be at work. The grievant's problem was not only that he was late, but also that he failed to call ahead.

The state contended that management made every effort to work with the grievant by counseling, warning him and even changing his shift at his request. Despite the fact that the grievant filed an EAP agreement, his behavior did not change. He was late again and he did not enroll in the detoxification program. Management had just cause to discharge the grievant.

UNION'S POSITION:

The union argued that the employer's rush to discharge the grievant negated any corrective value the prior discipline could have had. The contract called for the grievant to participate in the EAP program for ninety days, acknowledging there would be no miracle cures. Furthermore, after signing the EAP agreement, the grievant consistently reported to work on time, except for the August 2 incident.

The union further argued that waiting five months between the event which gave rise to the discipline and the imposition of that discipline clearly violates Section 24.02 of the contract.

ARBITRATOR'S OPINION:

The only issue for determination is whether the state had just cause to terminate the grievant. Just cause requires that the employer establish that the penalty which it imposed was appropriate taking into consideration both the employee's past record and the offense he was charged with committing.

The Arbitrator held that there is no violation of Section 24.02 of the contract because the investigation into the August 2 violation began on August 10. Management notified the grievant that a pre-disciplinary hearing would be held on October 28, the delay being caused by the fact that the grievant was suspended during part of the interim because of previous violations. Although the Notice of Disciplinary Action was not signed until December 11, it was within forty-five days provided in the contract under Section 24.05.

The Arbitrator then held that there was just cause for the termination. The Arbitrator was not persuaded by the union's argument that the state failed to give the grievant time to come to grips with his drinking problem and that it failed to consider his record over the five-month period it took to discharge him. The Arbitrator held that the important part of the record is that the grievant failed to call in twice after he signed the EAP agreement and he failed to enter the detoxification treatment program. The grievant must bear some responsibility for his actions, even though he was chemically dependent.

Furthermore, the problem with the grievant's conduct is not just that he was late to work, but that he failed

to notify the state that he would be late. The grievant failed to explain how his alcoholism kept him from calling. The choice was his and he must bear the consequences of that choice.

AWARD:

The grievance is denied. Management had just cause to terminate the grievant's employment.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION
BETWEEN

Ohio Department of Rehabilitation and Corrections

and

OCSEA/AFSCME Local 11

CASE NO.:
27-26-(1/19/93)-368-01-03
GRIEVANT:
TIMOTHY FAWLEY

OPINION AND AWARD

APPEARANCES:

On Behalf of the Employer
T. Austin Stout, Staff Representative, Ohio Department of Rehabilitation and Corrections
Brian Eastman, Office of Collective Bargaining, Second Chair
Anthony Brigano , Warden, Warren Correctional Institute
Kenney Sexton, Lieutenant, Warren Correctional Institute
Richard A. Jasko, Labor Relations Officer, Warren Correctional Institute

On Behalf of the Union
Patrick Mayor, Field Representative
Timothy Fawley, Grievant
Richard L. Sixt, Chief Steward

LAWRENCE R. LOEB, Arbitrator
55 Public Square, Suite 1640
Cleveland, Ohio 44113
(216) 771-3360

I. STATEMENT OF FACTS

The facts in this matter really are not at issue. The Grievant, who had been hired by the Ohio Department of Rehabilitation and Correction (ODRC) on July 10, 1989, was classified as a Correction Officer 2 and assigned to the Warren Correctional Institute throughout his tenure with the Department. The Institute, a medium security facility located in southern Ohio, is staffed by three shifts of Correction Officers. The Grievant was assigned to the first shift which works from 6:00 a.m. until 2:00 p.m. In order to insure that all Officers assigned to the first shift will be present and ready to work at the start of the shift, the Employer requires that they be present at a roll call which takes place at 5:50 a.m. The ODRC further requires that if an officer who has been scheduled to work cannot do so because of illness or emergency, he or she must notify the Warren Correctional Institute at least ninety (90) minutes before the start of his or her shift in order to provide Management with the opportunity to find a replacement. If an employee does not call in within the prescribed time period and fails to appear at roll call, then Management must take immediate steps to fill the vacancy by holding over a third shift employee.

On August 2, 1992 the Grievant overslept, arriving for work at 6:02 a.m., two minutes after the start of his shift and twelve minutes after he was supposed to be present for roll call. This was not the first time the Grievant had been tardy or had failed to notify Management that he would be late for work. By Management's count it was the twentieth time. In a few of those instances, Management had accepted the Grievant's explanation for his tardiness and done nothing. Those situations were the exception, though, and not the rule. Thus, the Grievant's record reveals that between March 25, 1991 and July 12, 1992 the Grievant had been disciplined nine times for either being tardy or failing to follow call-in procedures. Specifically, his record reveals the following disciplinary history:

Date of Violation	Hearing Date	Rule Violated	Discipline Imposed	Date Discipline Approved	Date Suspension/ Discipline Effective
3/25/91	4/5/91	3 (a) and (b)	Oral Reprimand	4/5/91	4/5/91
4/9/91 4/10/91 5/14/91 5/27/91	5/28/91	2 (b) and (3d)	Oral Reprimand	5/28/91	5/28/91
9/9/91 9/11/91 9/15/91	9/18/91	3 (a) and (d)	Written Reprimand	9/18/91	9/18/91
10/13/91 10/16/91	10/23/91	2 (b) and 3 (d)	1 Day Susp.	11/20/91	12/4/91
10/23/91	11/18/91	2 (b) and 3 (d)	3 Days Susp.	12/18/91	1/7/92-1/10/92
1/5/92	1/17/92	2 (b) and 3 (d)	3 Days	2/18/92	3/3/92-3/15/92
2/4/92	2/18/92	2 (b) and 3 (d)	5 Days	3/25/92	3/29/92-4/2/92
5/21/92	6/23/92	3 (d)	10 Days	7/31/92	8/16/92-8/27/92

6/29/91	7/13/92	2 (b) and 3 (d)	20 Days	8/26/92	9/20/92-
7/12/92	7/21/92	2 (b) and 3 (d)			10/15/92

Although the record indicates that the Grievant worked from the period between August 27 and September 20, 1992, he was on vacation for ten days from August 31 through September 10, 1992.

On June 29, 1992, just six days after the Grievant was involved in the pre-disciplinary hearing which eventually resulted in his ten-day suspension, he signed an Employee Assistance Program Participation Agreement. The contract, which the Warden signed a week later, called for the Grievant to participate in a ninety day program to deal with his problem of tardiness and failure to follow call-in procedures pursuant to the Standards of Conduct governing employees of the ODRC. After detailing the Grievant's obligations, the Agreement went on to provide:

"Rehab and corr Warren Correction Institute agrees that, so long as this contract is complied with in its entirety, the discipline recommended for this employee pursuant to a letter dated June 29, 1992 shall be held in abeyance. Should the employee violate this contract, in any part, the recommended disciplinary procedure will be implemented.

The employee understands and agrees that further occurrences of the problem described in paragraph 1, may result in the immediate implementation of the proposed discipline.

Warren Rehab and Corr Warren Correction Institute further agrees that if the employee successfully completes the agreed to plan as certified by the Ohio EAP or its designee (it) will review the proposed discipline and seriously consider modification of the discipline imposed."

The Grievant was late for work and failed to follow call-in procedures the date he signed the EAP agreement, June 29, 1992. As a result, Management went ahead and imposed the ten-day suspension arising out of his May 21, 1992 failure to call in as required.

When pressed by Management for an explanation of his tardiness, the Grievant indicated that he was alcoholic. After signing the EAP agreement, he was interviewed by a psychologist through his health plan and was then seen by a nurse practitioner at Christ Hospital who felt that the Grievant needed to immediately go into a three-day detoxification program. The Grievant declined to do so, though, on the basis that he was scheduled to work the following Sunday. However, he could have taken the day off by calling in sick, but chose not to do so. That Sunday, the Grievant was again late for work and failed to call in as required. Those infractions were combined with his tardiness and failure to call in the previous June 29, 1992 resulting in Management imposing a twenty-day suspension on the Grievant.

When he was late again on August 2, 1992 Management began the process which ultimately led to the Grievant's discharge on December 21, 1992. As part of that process, the Grievant was notified on August 13, 1992 that the Employer would conduct a pre-disciplinary hearing on October 28, 1992, thirteen days after he was scheduled to return to work from his twenty-day suspension. The hearing officer issued his report on October 30, 1992 finding there was just cause for discipline. The Notice of Disciplinary Action was dated November 23, 1992, but was not signed by the Director until December 11, 1992.

The Union filed a timely protest to the discharge. When the parties could not resolve the matter, it proceeded to arbitration at which time the parties relied upon the following provisions of the Labor Agreement to support their respective positions:

ARTICLE 9 -- EMPLOYER ASSISTANT PROGRAM

9.04 -- Employee Participation in EAP

. . . In cases where the employee and the Employer have entered into a voluntary EAP participation agreement in which the Employer agrees to defer discipline as a result of employee participation in the EAP treatment program, the employee shall be required to waive confidentiality to the extent required to provide the Employer with reports regarding compliance or non-compliance with the EAP treatment program.

ARTICLE 13 -- WORKWEEK, SCHEDULES AND OVERTIME

13.06 -- Report-In Locations

All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.

ARTICLE 24 -- DISCIPLINE

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. . . .

24.02 -- Progressive Discipline

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

. . .

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.

It was upon these facts that the matter rose to arbitration and award.

II. POSITION OF THE EMPLOYER

Management admits that if the Arbitrator were to focus solely on the Grievant's crime, it would appear that not only does the Employer not have just cause to discharge the Grievant, but that it is acting in an outrageous manner, terminating the Grievant for being just two minutes late. This case is not just about those two minutes, though. Nor is it about the Grievant's ability to perform his job, which Management acknowledges was above average when he was there. Rather, the issue is the Grievant's failure to follow the rules by reporting for work late and failing to call in as he was required to do. Obviously, every employee has an obligation to report for work on time. In the Grievant's case, it was especially imperative that he do so as he was the Corrections Officer employed at a medium security institution. Every position in the facility has to be covered for the safety of the guards and other personnel as well as for the safety of the inmates. It is to ensure that a full complement of men are present that the Employer requires that all Corrections Officers must report for roll call ten minutes before the start of their shifts and must call off ninety minutes before the start of the shift if they will not appear on time. Those two simple rules are designed to insure that Management has adequate time to fill any vacancies which may arise.

The Grievant was a long-term employee who knew the rules, yet he flagrantly ignored them, failing to report for duty on time on at least twenty separate occasions. Worse, on a significant number of those occasions he failed to call and notify Management that he would not appear for the start of his shift. His actions obviously caused significant problems at the institution. Management made every effort to work with the Grievant, counseling him, warning him and even going so far as to change his shift at his request. Nothing worked. The Grievant continued to report for work late and failed to report off as he was required to do. The result was that Management was forced to discipline him, imposing ever increasing penalties when

the Grievant's behavior didn't change.

Finally, at the end of June, 1992 the Grievant admitted that he had a drinking problem and signed an EAP Agreement in which he pledged to deal with the problem. In what was an unfortunate harbinger for the future, the Grievant was late for work the day that he signed the EAP Agreement. He was late and failed to call in three more times after that. The only reason he was not late more often was that he did not have the opportunity to do so since he was off work, either under suspension or on vacation a significant period of time after mid-August, 1992. What is clear is that in spite of the Grievant's pledge to stop drinking and to change his behavior his behavior didn't change. He continued to be late after June 29, 1992, just as he had been before that date, and he failed to call in when he was late, just as he had in the past.

The choice of what to do lay with the Grievant. He could have stayed on third shift, which, by his own admission, would have taken care of his tardiness problem, but he chose not to do so. By the same token, he could have gone into a three-day inpatient detoxification program as the hospital wanted him to do, but he chose not to. Instead, he was late and failed to call in on the date the hospital wanted him to go into the program.

There was little else the Employer could do in this case. It gave the Grievant every opportunity to change his behavior. Management went as far as it could, but at some point it had to draw the line. That finally happened after the Grievant was late on August 2, 1992. It doesn't matter that he was only two minutes late. What matters is that he was late and failed to call in yet again. As a result, Management had just cause to discharge him.

III. POSITION OF THE UNION

The Union doesn't deny that the Grievant was tardy on August 2, 1992. Those two minutes, though, are not the issue. What is at issue is the Employer's failure to follow the Contract by rushing to remove the Grievant as a result of that offense. The Contract, though, specifically talks of discipline being imposed in a corrective, not a punitive, manner. To be corrective, the discipline must be given an opportunity to work. In this case, the Employer's precipitous rush to discharge the Grievant totally negated any corrective value the prior discipline could have had.

What makes the Employer's conduct especially egregious is that Management knew the Grievant suffered from a treatable condition which could not be altered overnight. It knew it not only from the Grievant's declarations, but from the EAP Agreement both he and Management signed. That contract called for the Grievant to participate in the EAP program for ninety days, acknowledging that there would be no miracle cures. Instead, the agreement recognized that it would take a lot of hard work for the Grievant to overcome the alcoholism which was at the root of his attendance problem. Yet, Management, in spite of being aware of the exact nature of the Grievant's problem, acted as if it would disappear with the mere snap of the fingers. Nothing could be more ludicrous nor more unfair.

Not only didn't the Employer take the nature of the Grievant's underlying problem into account, it also did not take into account his record over the five-month period. Between the time he was tardy in August, 1992 and the date he was removed in December, 1992, the Grievant consistently reported for work on time. That he did so indicates that the treatment program he began in June was finally bearing fruit as it was intended to. For the Employer to discharge the Grievant after he did what Management wanted him to do is both morally repugnant and contractually prohibited. This is especially so as Management waited the five months, thereby violating another provision of the Contract which calls for discipline to be imposed in a timely manner. Waiting five months between the event which gave rise to the discipline and the imposition of that discipline clearly violates that section of the Contract. By itself, that should be enough to overturn Management's action. Coupled with the Employer's other failures, it makes that decision imperative.

IV. OPINION

Since the Union didn't challenge the underlying facts which led Management to discharge the Grievant, the only issue for determination is whether or not the Employer had just cause to terminate the Grievant. As the Union correctly points out, the concept of just cause encompasses more than the just the simple issue of

whether or not the employee violated some rule. At a minimum, the concept demands that Management have a valid, articulable reason for moving against an employee. In practical terms, this means that the employer must be able to show that the employee violated a rule which management had a right to implement and which not only was reasonably calculated to achieve a valid purpose, but was evenhandedly applied. The concept doesn't stop there, though. Instead, it goes further, requiring the employer to establish that the penalty which it imposed was appropriate taking into consideration both the employee's past record and the offense he was charged with committing. It is on this latter point that the Union hangs its defense of the Grievant.

The centerpiece of its argument is its claim that in terminating the Grievant the Employer failed to accord him reasonable time to deal with the problem which underlay his tardiness. Specifically, the Union maintains that Management knew that the Grievant was chemically dependent and that he had finally taken the first steps to deal with his dependency on June 29, 1992. The Employer was also aware that while the Grievant suffered from a treatable condition it was not one that would change overnight. Rather, it was one which would take the Grievant a significant period of time to control. Yet, in spite of that knowledge, the Union asserts that Management never gave the Grievant the chance to deal with his dependency. Instead, it discharged him as soon as he committed another infraction of the rules, one which the Union asserts even Management recognized was relatively insignificant, just two minutes. All this, according to the Union, was bad enough. It was compounded in the Union's view, by Management's failure to consider the improvement in the Grievant's record over the five-month period which elapsed between August 2, 1992 when the Grievant was last late for work and December when he was terminated.

Management is not heedless of the Union's arguments, it is simply unpersuaded by them. It maintains that the Grievant went too far, squandering enumerable chances, refusing to altering his behavior and take the steps necessary to deal with the problems which caused his tardiness until it was too late. Thus, where the Union focuses on the Grievant's record after August 2, 1992, Management focuses on his record before that date. To the Employer, the essential lesson to be gleaned from a review of the Grievant's record is his total failure to ameliorate his behavior in spite of repeatedly counselings, warnings and ever increasing punishments.

There is no question that the Grievant's record wasn't good. By the time he signed the EAP Agreement on June 29, 1992 he had already been disciplined on seven previously occasions, all for the same two offenses, tardiness and failing to follow proper call-in procedures. Ironically, the day the Grievant signed the EAP Agreement, June 29, 1992, he was late for work and had failed to call in and notify Management in advance that he would not report for work on time. It was that event which, along with another incident on July 12, 1992, that led Management to suspend the Grievant for twenty working days from September 20 through October 15, 1992. The Grievant had been suspended for ten working days in mid to late August, 1992 and had been off on vacation earlier in August. Together, those three events account for approximately one quarter of the time which elapsed between August 2, 1992 and the date Management terminated the Grievant on December 21, 1992.

The Union, relying upon Article 24.02 of the Contract, argues that the Grievant's discharge should be set aside because Management waited too long to discipline him. Specifically, the Union, pointing to the five-month period which elapsed between the time of the Grievant's August, 1992 tardiness and the date the Employer discharged him, concludes that too great a period of time elapsed. Therefore, it argues the Grievant should be reinstated.

If, as the Union claims, Management ignored the Grievant's August 2nd tardiness until well into December when it suddenly decided to discharge him, the Union's argument would have merit as the Employer would be hard pressed to explain how it could have turned a blind eye for so long to what it now asserts was such a serious problem. The argument is only valid, though, if the facts are as the Union says they are. A review of the record indicates they are not.

Specifically, the "disciplinary trail" reveals that the Grievant's Supervisor conducted a pre-disciplinary investigatory interview with the Grievant on August 10, 1992. The Grievant had a Union representative present when he was interviewed and both he and the Grievant signed the completed investigatory form at the conclusion of the interview. After reviewing the report, Management decided to proceed against the

Grievant, notifying him on August 13, 1992 that a pre-disciplinary hearing would be held on October 28, 1992. Apparently the delay was caused by the Grievant's impending ten and twenty-day suspensions and his vacation. Two days after the meeting the hearing officer found that Management had just cause to act. Thereafter, the Employer prepared the Notice of Disciplinary Action which was dated and signed by the appointing authority on November 23, 1992. It wasn't signed by the Director until December 11, 1992 which was within the forty five days provided in the Contract.

While the process was slow, it did begin immediately after August 2, 1992 and proceeded deliberately through the process until the Grievant was terminated. More importantly, the record establishes that far from ignoring the Grievant, Management began the disciplinary process in a timely manner. The problem is the seventy six day delay between the date of the notice of the pre-disciplinary hearing and the hearing itself. Most of that delay was taken up by the Grievant's two suspensions and his vacation. Given the reasons for the delay, the undersigned cannot say it was unreasonable or that it should effect the outcome of this matter.

Although the Union argued the timeliness issue with great emotion, its primary defense of the Grievant lay in its claims that the Employer failed to give the Grievant time to come to grips with his drinking problem and that it failed to consider his record over the five-month period it took to discharge him. Neither argument is persuasive.

While it is true that alcoholism cannot be "cured" overnight, it is equally true that the Employer has a right to expect that its employees will follow the rules. That principle applies to every employee, even those who, like the Grievant, are enrolled in the EAP. Neither common sense nor the Contract permits such individuals to ignore the rules while they are in treatment. Essentially, though, that is what the Union is claiming, that until the Grievant was "cured" Management had to tolerate his continued tardiness. Taking the argument that Management had to give the Grievant time to change to its logical conclusion, the Union maintains that the Employer should have considered the Grievant's record over the five-month period from August to December, 1992, which demonstrated that the Grievant was making substantial progress. Therefore, it concludes Management lacked just cause to discharge the Grievant.

The primary flaw with the Union's argument is that it seeks to have it both ways. By asserting that Management should have moved quicker, the Union undercuts its own claim that the Employer was obligated to give the Grievant a greater period of time within which to change his behavior and that it should have considered the change which took place between August 2, 1992 and the time of the Grievant's termination. Obviously, if Management had moved quicker. there would have been no such time lapse and there would have been nothing for the Employer to consider. Thus, the fact that the Grievant may have changed his behavior while he was enjoying the benefit of Management's less than precipitous rush to discharge him, doesn't negate the fact that on August 2, 1992 the Grievant was late for work and failed to call in for the seventeenth time in as many months.

Further, in arguing that the Employer should have considered the Grievant's efforts, the Union is essentially overlooking two things. The first was the Grievant's behavior over the thirty days which elapsed after he signed the EAP Agreement. The record reveals that he was late for work and failed to call in twice during that period of time. The first event occurred July 12, 1992, while the second was the August 2nd date which led to the Grievant's termination. What makes the August 2nd date especially important is that by the Grievant's own admission he should have entered an in-patient treatment program at Christ Hospital on that date. Instead, even though he had sick leave available to him, the Grievant chose not to enter the program. Since he was late for work on Sunday, August 2, 1992 and since he maintained that his tardiness was due to his alcoholism, it can only be assumed that the Grievant was drinking the previous evening and overslept due to the alcohol. Whatever it was that caused him to be late for work on August 2, 1992, the fact remains that he did not come to work on time although he knew that he had to do so and he knew that his job was in jeopardy if he did not do so. As the Employer points out, the Grievant must bear some responsibility for his actions even though he was chemically dependent.

The second factor which the Union overlooks is that there are two components to almost every one of the Grievant's incidents. It is not just that he failed to come to work on time, but he also failed to call and notify Management he would not be at work on time. The Grievant acknowledges that he was aware of the call in requirement, but offered no explanation for his failure to follow it. Whatever his reasons may have been, the

important point is that he did not call in when he was going to be late, thereby putting additional stress on the Employer who wasn't sure when or even if the Grievant would come to work. While the alcoholism which was the source of the Grievant's problem could not disappear overnight, the Grievant failed to explain how his alcoholism kept him from calling in or why he could not do so on the two occasions he was late after June 29, 1992.

The Grievant doesn't deny that up to the time of his discharge Management attempted to work with him, repeatedly counseling him and even going so far as to grant his request to change from first to third shift. While the time change did not directly deal with the Grievant's alcoholism, it did take care of the immediate problem of his tardiness. Unfortunately, the Grievant did not like being on third shift because he could not drink with his friends. As a result, he voluntarily transferred back onto the first shift in spite of the fact that he understood at the time he made the decision to do so that his drinking was liable to cause him to be late for work in the future. By the same token, the Grievant had an opportunity to go into a detoxification program, but chose not to do so. Again, his motivation is not in issue. What is important is that the choice in each case was his. He must, therefore, bear the subsequent repercussions from those decisions.

It is never easy to sustain a discharge, especially not in this day and age when jobs are difficult to come by. However, the undersigned is obligated to put aside his personal feelings and decide the matter before him on the facts and the Contract. Doing so leaves the undersigned to conclude that the Employer had just cause to terminate the Grievant. While it is true, as the Union argues, that the condition the Grievant suffered from would not go away overnight, it is equally true that the Grievant had an obligation in spite of his condition to change his behavior and to follow the rules. He not only had that obligation. but he had an opportunity to take the steps which would have enabled him to do so. He chose not to do so. Having taken that choice he must bear the consequences of his actions which, considering the Grievant's record, warranted the Employer taking the final step of terminating his employment. The undersigned cannot, after reviewing all of the evidence, conclude that Management did not have just cause to do so.

V. DECISION

For the foregoing reasons, the grievance is denied.

LAWRENCE R. LOEB, Arbitrator
Date: 11/2/93