

ARBITRATION DECISION NO.:

561

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation and Correction

DATE OF ARBITRATION:

October 6, 1994

DATE OF DECISION:

November 7, 1994

GRIEVANT:

Joseph Skinner

OCB GRIEVANCE NO.:

27-22-(94-02-24)-0235-01-06

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

Brenda Goheen

Terry Hollon

FOR THE EMPLOYER:

Roger Coe

Colleen Wise

KEY WORDS:

Removal

Just Cause

Failure to Follow Proper Procedures

ARTICLES:

Article 24 - Discipline

§ 24.01 - Standard

§ 24.02 - Progressive Discipline

FACTS:

The Grievant, a Correctional Farm Coordinator I, had been employed by the state for slightly less than 5 years. He had no prior discipline in his personnel file.

On November 21, 1993, the Grievant and another employee were working in the milking barn. The fellow employee and an inmate had attached the milking machines to the special cows, the ones that had recently "calved", among which was cow #743. The Grievant proceeded to help the fellow employee remove the machine from the special cows. When the Grievant approached cow #743 to remove the machine, the cow kicked and struck the Grievant a glancing blow somewhere on his body. The Grievant then began striking

the cow on the shins of her legs with a washing hose and nozzle for approximately two minutes. The Grievant then removed the machine from the cow. As the cows were being released from the barn, the Grievant slammed the gate against the head of cow #743 twice. The cow slipped and fell as a consequence of the blows and cut off one of the teats of her udder.

The fellow employee testified that cow #743 was one of the more gentle cows and that she was sensitive from having just given birth the day before.

Because of the acts of the Grievant, cow #743 had to be slaughtered and management charged that the salvage value of the cow was much less than its value as a milk cow.

EMPLOYER'S POSITION:

The Warden characterized the actions of the Grievant as "extreme", and he stated that the Grievant was acting like a person who was "out of control". Violence of any nature is of special significance in a prison where the control of violence is paramount. The Grievant's work entailed not only teaching inmates proper methods of farm work but also the Grievant's work involved the supervision of inmates in situations where no other employees would be available. Brutality of this type is not correctable and termination was appropriate for such an extreme and dangerous behavior.

UNION'S POSITION:

The Union maintained that termination in this case was not commensurate with the violation. The Grievant was a good employee of nearly five years service who admitted that he lost his temper. Termination is the capital punishment of the working world and not appropriate in this case. Discipline should be both commensurate and corrective. The Union stated that termination violated the just cause standard.

ARBITRATOR'S OPINION:

The Grievant's behavior was not a mere loss of temper. The behavior of the Grievant was not immediate, his behavior was not "reactionary", and it was not thoughtless. Instead of returning the blow, he stopped and selected a hose with a brass fitting and deliberately beat the cow on a sensitive part of her anatomy repeatedly. Then, after more time had passed, he deliberately slammed the gate into the cow's head not once but twice. This behavior was premeditated, unnecessary, and cruel. The Grievant was a person trained in animal husbandry who presumably knew the appropriate methods of animal control. Such cruelty directed to the very animals that the Grievant was to care for, has no excuse.

This behavior did not take place in a normal dairy operation. This operation was in a prison. Inmates were present, inmates for whom the Grievant was also responsible. He was supposed to train inmates and be a role model of behavior for inmates. Such a propensity for violence cannot be tolerated in a prison setting in a person hired to train and supervise inmates. The termination was for just cause.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

**In the Matter of the
Arbitration Between**

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

and

Ohio Department of

Rehabilitation and Corrections

Employer.

Grievance No.:

27-22-(2-14-94)-235-01-06

Grievant:

Joseph Skinner

Hearing Date:

October 6, 1994

Award Date:

November 7, 1994

Arbitrator:

Rhonda R. Rivera

For the Union:

Brenda Goheen

Terry Hollon

For the Employer:

Roger Coe

Colleen Wise

Present at the Hearing in addition to the Advocates named above were Randy L. Brooks (ODRC), Corrections Assistant Superintendent, Harold S. Brumfield (ODRC), Corrections Farm Supervisor II, Jerry Follrod (ODRC), Corrections Farm Supervisor, Dr. Gregory Queen, D.V.M., David V. Ratcliff (ODRC), Farm Coordinator I, and Kevin E. Reid (ODRC), Farm Coordinator I.

The Grievant did not attend the Hearing. The participants awaited his arrival for 30 minutes. The Union Advocate placed into the record both documents and testimony to the effect that the Grievant had received notice of the Hearing, its date, and its time.

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
3. Discipline Trail
4. Evaluations of the Grievant for the year 1992

Employer Exhibits

1. Yellow watering hose with brass fittings at nozzle end

2. Eight photographs of the barn (interior) and milking facilities
3. Three photographs of the udder of cow #743
4. Civil Service application of Grievant dated June 13, 1994
5. Report on the disposition of cow #743

Issue

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

Facts

The Grievant began his service with the State of Ohio in May, 1989, and, therefore, at the time of the incident giving rise to this Grievance, he had been employed by the State of slightly less than 5 years. He had no prior discipline of record. The only evaluations submitted, which were for the year 1992, showed that he was rated as a satisfactory employee. (Joint Exhibit 4) His title was Correctional Farm Coordinator I.

On November 21, 1993, Correction Farm Supervisor I, David Ratcliff, was working in the interior of the milking barn together with an inmate. The Grievant was working at the same time; however, his work originally kept him outside the bar. Mr. Ratcliff was engaged in the milking operation. He testified that he and the inmate had finished milking the regular herd and then turned to the milking of a special group of cows, those cows sick and/or "fresh" ("fresh" refers to those cows that have recently calved). The fresh cows, in particular, required special handling because their udders were especially sensitive. Cow #743 was among the "fresh" cows as she had calved the day before. When Mr. Ratcliff went to place the milking machine on her udder, she reacted by kicking out. Using accepted animal husbandry, Mr. Ratcliff had the inmate "tail the cow" a practice that renders the cow amenable to the placement of the milking machine. Cow #743 was successfully attached to the machine and milking proceeded.

At this point the Grievant entered the barn, having apparently finished the outside work. He proceeded to help Mr. Ratcliff. He approached cow #743 to remove the machine. When he tried to remove the machine, the cow again kicked and struck the Grievant a glancing blow somewhere on his body. The Grievant turned from the cow, selected a yellow washing hose with a large brass nozzle, and beat cow #743 on the shins of her legs for approximately two minutes. The blows caused the cow to hold up one of her legs because she could not bear weight on it. The Grievant then removed the machine from the cow. According to Mr. Ratcliff, the cow was now clearly panicked from the blows. All the cows were released to be let outside. The Grievant opened the door for the cows to pass outside. As cow #743 approached the gate, she shied in fear from the Grievant. As she put her head and shoulders through the gate, the Grievant slammed the gate against her head twice. After the second blow, the cow slipped and fell. As a consequence of the fall, the cow cut off one of the teats of her udder.

Mr. Ratcliff said that cow #743 was not an intractable animal and, in fact, was one of the more gentle cows; she was understandably sensitive having just given birth. Mr. Ratcliff admitted that he had failed to report this incident and that, in that failure, had not done his job correctly. He said that in all his years in the dairy industry that he had not seen such abuse previously. He said he was a member of the bargaining unit.

Mr. Randy Brooks, Assistant Correctional Superintendent, testified that he did the investigation of the incident in question. He submitted pictures taken of the barn and pictures taken of the cow. (See Employer Exhibits #2 and #3) He testified that he questioned the Grievant and that the Grievant admitted beating the cow and said that "he had just lost his temper."

Dr. Gregory Queen, Veterinarian, was accepted as an expert witness. He testified that beating an animal was never appropriate to assure compliance. He said that in the case of cows, "tailing" was an accepted method of control. He said that in his opinion the beating around the legs was particularly hurtful because

the cow had little flesh there and the beating was essentially taking place on bone near the surface. He admitted on cross examination that sometimes pain is used to control animals, but that tailing was much more successful and useful. He said that injuries to the teats of milk cows were not unusual and were often caused by the cows themselves.

He testified that, because of the nature of this injury, the wisest course was to send the cow to slaughter. She was, in his estimation, ruined as a milk cow. By having the cow slaughtered, some salvage value would be recouped.

Mr. Follrod, Correctional Farm Supervisor, testified that his responsibility was essentially that of farm manager. He introduced evidence of the production records of cow #743 as well as a record of her slaughter and the value of the meat recovered. (See Employer's Exhibit #5) He said that as a milk cow #743 was worth about \$1,100 and that the salvage value of the meat was \$760. Mr. Follrod said that the Grievant was a fast worker and was very knowledgeable. He stated that the Grievant had been a good employee until the last three or four months of his employment. Mr. Follrod stated that he had counseled the Grievant with regard to loosing his temper, and the Grievant had promised him to control his temper.

The Warden, George Alexander, testified. He said that he recommended to the Appointing Authority that the Grievant be terminated. He characterized the actions of the Grievant as "extreme," as illustrating a person "out of control." He said that violence of any nature was of special significance in a prison where the control of violence was paramount. He said that the Grievant's work entailed not only teaching inmates proper methods of farm work but that the Grievant's work also entailed the supervision of inmates in situations where no other employee would be available. He stated that brutality of this type was not correctable and that termination was appropriate for such an extreme and dangerous behavior.

The Union presented Terry Hollon, the Chief Steward, as their only witness. Mr. Hollon stated that he had requested EAP for the Grievant during the Pre-Disciplinary meeting. On cross examination, he agreed that management's approval was unnecessary for EAP and that the Employee could enter of his own will.

The Employer introduced Employer Exhibit #4 that showed that the Grievant represented himself under oath as having a Bachelor's Degree in Animal Science from The Ohio State University.

Union Position

The Union maintains that termination in this case is not commensurate with the violation. The Grievant was a good employee of nearly five (5) years service who admitted that he lost his temper. Termination is the capital punishment of the working world and not appropriate in this case. Discipline should be both commensurate and corrective. The Union stated that termination violated the just cause standard.

Discussion

The facts of this matter are not in dispute. The only issue before the Arbitrator is the severity of the discipline. The Union claims that termination in this case is not commensurate and that the Arbitrator should set aside the termination as excessive. The Union represents the Grievant as having "a loss of temper." The facts cause the Arbitrator to characterize the Grievant's behavior much differently.

This behavior was not a mere loss of temper. If the Grievant had struck the kicking cow in return with his hand, foot, or an instrument in his hands, immediately upon the kick, this behavior could be called "loosing one's temper," albeit unwisely. However, the behavior of the Grievant was not immediate, his behavior was not "reactionary," and his behavior was not thoughtless. Instead of returning the blow, he stopped and selected a hose with a brass fitting and deliberately beat the cow on a sensitive part of her anatomy repeatedly. Then, after more time had passed, he deliberately slammed the gate into the cow's head not once but twice. This behavior was premeditated, unnecessary, and cruel. The Grievant was a person trained in animal husbandry who presumably knew the appropriate methods of animal control. Such directed cruelty to the very animals that the Grievant was to care for has no excuse.

A second factor must be added into this discussion. This behavior did not take place in a normal dairy operation. This operation was in a prison. Inmates were present, inmates for whom the Grievant was also

responsible. He was supposed to train inmates and be a role model of behavior for inmates. Such a propensity for violence cannot be tolerated in a prison setting in a person hired to train and supervise inmates.

The Arbitrator finds that the termination of the Grievant was for just cause.

Award

The Grievance is denied.

Date: November 7, 1994

RHONDA R. RIVERA, Arbitrator