ARBITRATION DECISION NO.:
566A

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

EMPLOYER:
Department of Public Safety
Bureau of Motor Vehicles

DATE OF ARBITRATION:
Telephone Conference
November 27, 1995

DATE OF DECISION:
December 11, 1995

GRIEVANT:
Joseph Eichhorn

OCB GRIEVANCE NO.:
15-02-(92-05-11)-0030-01-09

ARBITRATOR:
Anna DuVal Smith

FOR THE UNION:
Anne Light Hoke

FOR THE EMPLOYER:
Wayne P. Mogan, Jr.

KEY WORDS:
Medical Benefits
Interest on Back Pay
Remedy
Make Whole Remedy

ARTICLES:
Article 35 - Benefits

FACTS:

As part of the remedy requested for the grievant, the Union asked that his medical expenses be reimbursed. The grievant's removal was overturned by the arbitrator and because the Union and management could not agree on the appropriate financial remedy, therefore the parties agreed to submit the issue of the proper amount of financial reimbursement for medical expenses to the arbitrator.

UNION'S POSITION:

The Union contended that the grievant was unable to afford the monthly premium for family coverage due to his unjust removal. Therefore, the grievant carried only single coverage rather than family coverage.

While he was in a removed status his daughter became pregnant. The grievant's daughter's condition resulted in net medical expenses of $7,058.35, excluding the grievant's co-pay share, had he been able to afford family coverage on his daughter. Further, the Union argued that the Employer's claim that the grievant forgot to place a phone call to extend insurance coverage for his daughter was based on hearsay.

The Union also requested that this Arbitrator reconsider her decision not to award interest on back pay because the grievant was being dunned through a civil action to pay back monies he had allegedly embezzled. The Union had dropped its request for interest on the grievant's back pay since the State had promised not to attempt to recover the allegedly embezzled money from the grievant. Therefore, the Union contended that the action of the Attorney General's Office in trying to secure money from the grievant constitutes a breaking of the Union's agreement, and therefore the Union was now eligible to receive interest on the grievant's back pay award.

EMPLOYER'S POSITION:

The Employer argued that it ought not be liable for the grievant failing to obtain coverage for his newborn daughter, once he knew she had medical problems. Further, the Employer contended that it should not be obligated to pay the grievant interest on the back pay because the Employer was not pursuing its civil action against the grievant.

ARBITRATOR'S OPINION:

The Arbitrator found that it was more likely than not that the Employer's actions of firing the grievant and bringing a civil action against him resulted in the grievant's personal liability for his daughter's medical expenses. Further, the Arbitrator found that these expenses fell within her February 7, 1995 order directing the Employer "to reimburse the grievant any medical expenses incurred that would have been covered by his employer-paid insurance had he not been removed without just cause." Lastly, the Arbitrator denied the grievant interest on his back pay and legal fees because the state dropped its action to collect other monies from the grievant.

AWARD:

The Employer was directed to reimburse the grievant $7,058.35 for his daughter's medical expenses in addition to the $891.02 in medical expenses incurred by the grievant and his wife. The Union's request for interest and attomey's fees was denied.

TEXT OF THE OPINION:

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration
Between

OHIO CIVIL SERVICE
EMPLOYEES ASSOCIATION
LOCAL 11, AFSCME, AFL-CIO

and

OHIO DEPARTMENT OF
PUBLIC SAFETY,
BUREAU OF MOTOR VEHICLES

SUPPLEMENTAL DECISION

Anna DuVal Smith, Arbitrator

Case No. 15-02-920511-0030-01-09
December 11, 1995

Joseph Eichhom, Grievant
Remedy

Appearances

For the Ohio Civil Service Employees Association:
Anne Light Hoke, Esq.
Associate General Counsel
OCSEA Local 11, AFSCME, AFL-CIO
Columbus, Ohio

For the Ohio Bureau of Motor Vehicles:
Wayne P. Mogan, Jr.
Labor Relations Specialist
Ohio Office of Collective Bargaining
Columbus, Ohio

Hearing

Pursuant to an agreement of the parties and the Arbitrator's retained jurisdiction in the above-captioned case, a conference by telephone was held from 10: 15 a.m. to 11:15 a.m. on November 27, 1995. Anna DuVal Smith, Arbitrator, presided. Participating for the Union in addition to Ms. Light Hoke was John Porter. Participating for the State in addition to Mr. Mogan were Colleen Wise and Kim Brown of the Office of Collective Bargaining and Bessie Smith, Ann VanScoy and Jeanine Moore for the Department of Public Safety. The purpose of this conference was to resolve differences between the parties on the remedy awarded in the decision rendered February 7, 1995. The parties were given a full opportunity to submit documents and to argue their respective positions in the matter. After the close of the conference a number of documents were faxed to the Arbitrator at her request. The Union submitted its agreement to the Bureau of Motor Vehicle's calculation of the COBRA amount due and its own calculation of medical expenses incurred by the Grievant in behalf of his daughter who was born after he was removed but before his case was decided. The Bureau of Motor Vehicles submitted a copy of the Memorandum it received from the Attorney General closing its claim against the Grievant. This decision is based solely on the record as herein described.

Issue

The dispute centers around the amount of the medical expenses to be reimbursed by the Employer and whether the Grievant should be paid interest on back pay awarded. As framed by the Arbitrator, the questions are:

What is the amount of medical expenses incurred to be reimbursed to the Grievant?
Should the Grievant receive interest on back pay awarded?

Positions of the Parties

The Union wants the Employer to reimburse the Grievant for medical expenses incurred following the birth of his daughter after he was unjustly removed. It says that being out of work, he was not able to afford the $400 monthly premium for family coverage he would have had had he not been removed. He therefore

only carried single coverage on his wife because of her pregnancy, at a cost of about $150 per month. The Union says the daughter's condition following her birth resulted in medical expenses of $7058.35, exclusive of what the Grievant's co-pay share would have been had he had family coverage on his daughter. The Union further argues that the Employer's claim that the Grievant merely forgot to place the phone call that would have extended insurance coverage to the daughter should be disregarded as it is based on hearsay.

The Union also asks the Arbitrator to reconsider her decision on interest because it understands the Employer has not dropped its civil action against the Grievant, despite the fact that the Arbitrator found him not guilty based on a preponderance standard. The Employer's relentless persecution of the Grievant continues to distress him and necessitates retention of legal counsel, justifying interest on back pay. The Union again cites the Rivera decision (07-00-891227-0059-01-09).

The Employer argues that obtaining coverage for his newborn daughter would have been the prudent thing for the Grievant to do once he knew she had medical problems. The Grievant merely forgot to place the necessary phone call, and the Employer ought not to be liable for his imprudence.

The Employer resists the Union's request for interest, saying it is not pursuing its civil action against the Grievant. To the best of its knowledge, the claim has been dropped but, in any case, it has no control over the Attorney General's office.

Opinion of the Arbitrator

I agree it would have been the prudent thing for the Grievant to obtain medical coverage for his daughter, particularly in hindsight now that the total costs of the infant's hospitalization are known. However, the quality of one's decision-making is likely to suffer when under stress. I am persuaded that the stress of being fired and facing criminal charges most likely added enough to the normal stress attendant on becoming a new father that the Grievant's judgment was affected. Thus, notwithstanding his duty to mitigate, it is more likely than not that the Employer's actions resulted in the Grievant's personal liability for these bills. These costs fall within my order of February 7, 1995, directing the Employer "to reimburse the Grievant any medical expenses incurred that would have been covered by his employer-paid insurance had he not been removed without just cause."

As to the issue of interest on back pay, I see no reason to overturn my decision of February 7 denying interest and legal fees inasmuch as the Memorandum of November 27, 1995 from Assistant Attorney General Robert J. Byrne to Anne Vanscoy at BMV states that the claim against the Grievant was cancelled on October 17.

Award

The Employer is directed to reimburse the Grievant $7,058.35 for his daughter's medical expenses in addition to the $891.02 incurred by the Grievant and his wife. The Union's request for interest and attorney's fees is denied.

Anna DuVal Smith, Ph.D.
Arbitrator

Cuyahoga County, Ohio
December 11, 1995