

ARBITRATION DECISION NO.:

592

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Retardation and
Developmental Disabilities,
Warrensville Developmental Center

DATE OF ARBITRATION:

October 13, 1995

DATE OF DECISION:

November 13, 1995

GRIEVANT:

Leopold Osborne

OCB GRIEVANCE NO.:

24-14-(95-01-31)-1214-01-04

ARBITRATOR:

James M. Mancini

FOR THE UNION:

Robert Robinson

FOR THE EMPLOYER:

Jill Dible
Carolyn Borden-Collins

KEY WORDS:

Credibility
Failure to Follow Orders
Insubordination
Polygraph Testing
Theft
Removal

ARTICLES:

Article 24 - Discipline
§24.01 - Standard

FACTS:

The grievant was employed by the Warrensville Developmental Center as a Laborer. The grievant and a co-worker were charged with stealing two snowblowers from the center. Allegedly, the grievant drove the snowblowers in a state vehicle to his home. As a result, he was also charged with failing to comply with an order not to drive a state vehicle during the time that he did not have prescription glasses.

On October 31, 1994 the grievant was placed on Administrative Leave pending an investigation of the snowblower incident. A pre-disciplinary hearing was held on December 23, 1994. Based upon statements made by a co-worker of the grievant's, the grievant was subsequently terminated in January of 1995 for the theft of the two snowblowers.

EMPLOYERS POSITION:

The Employer contended that the grievant was properly terminated for theft and insubordination based on the following evidence. The Employer maintained that the co-worker, who implicated the grievant, was a credible witness. Further, the Employer pointed to the testimony of a State Trooper who believed that the grievant played a role in the theft of the snowblowers. This State Trooper's testimony was based upon the co-worker's confession implicating the grievant and the fact that the grievant had previously been a suspect in six prior investigations regarding various thefts and other incidents at the Warrensville Developmental Center. Lastly, the Employer argued that the testimony of a Union chief steward, which corroborated the grievant's denial of the theft and insubordination charges, was simply a phony alibi for the grievant.

THE UNION'S POSITION:

The Union contended that the grievant was removed without just cause and that the evidence showed that the grievant did not steal the snowblowers nor did he drive a vehicle off the premises on the day in question. The Union based this contention on the credibility of the grievant's testimony and the testimony of a Union chief steward who stated that he was with the grievant all day on October 26, 1994.

The Union questioned the reliability of the testimony of the grievant's co-worker who allegedly participated in the theft of the snowblowers. The Union contended that the co-worker lied about the grievant's participation in the theft and argued that the thefts were committed solely by the grievant's co-worker. Furthermore, the Union requested that this Arbitrator ignore the results of the co-worker's polygraph testing results due to the inaccuracy of such tests.

Further, the Union pointed to evidence of two anonymous calls about the thefts which referred to the co-worker ONLY as having knowledge about the thefts. The Union claimed that these calls indicated that the co-worker was the sole perpetrator of the thefts.

ARBITRATOR'S OPINION:

The Union and the State based their cases on conflicting witnesses' testimony. In order to resolve the question of whether the grievant was guilty of theft the Arbitrator determined the credibility of the witnesses (the grievant and the grievant's co-worker). This Arbitrator found that the State's primary witness, the grievant's co-worker, was forthright, consistent, had a good demeanor on the witness stand, and had other reliable evidence supporting his testimony. The Arbitrator also found that this witness' polygraph test results provided further supporting and corroborating evidence that he was being truthful regarding the grievant's involvement in the theft. The Arbitrator based this finding on his opinion that polygraph test results should only be used as further corroborating evidence in cases where there are reliable indicators of the witness' truthfulness.

In determining the credibility of the grievant and the grievant's co-worker, the Arbitrator also reviewed their respective employment records. The grievant's co-worker is a thirteen year employee and has had no prior disciplinary problems. On the other hand, the grievant, as an eight and a half year employee, has been a suspect in several other theft investigations and other incidents since 1991 according to a state trooper.

In further support of the Arbitrator finding that the co-worker was more credible than the grievant, the Arbitrator relied upon the well settled rule that an accused employee is presumed to have an incentive for not telling the truth and that when his testimony is contradicted by that of another who has nothing to gain or lose, as did the co-worker in this case, the latter is to be believed.

With regard to the testimony of the Union Chief Steward, this Arbitrator found that his testimony was unreliable due to this witness' failure to come forward to provide corroborating testimony for the grievant until approximately a year after the incident. Such a delay casts a serious doubt on the reliability of the witness' claim. Further, this witness' testimony did not contradict the co-worker's testimony with respect to the

important aspects of the case.

In conclusion this Arbitrator found that there was clear and convincing evidence that the grievant was involved in the theft of the two snowblowers. The value of the snowblowers involved in this case clearly made the theft a dischargeable offense.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION
BETWEEN

STATE OF OHIO, DEPARTMENT OF
MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES

AND

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

CASE NO. 24-14-950131-1214-01-04

OPINION AND AWARD

GRIEVANT LEOPOLD OSBORNE

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE UNION

Robert Robinson
Leopold Osborne

FOR THE EMPLOYER

Jill Dible
Carolyn Borden-Collins
Ruby L. Holman
Michael Duco

SUBMISSION

This matter concerns a grievance filed on January 27, 1995 by Leopold Osborne. The grievant alleged

that he had been improperly discharged in violation of the Collective Bargaining Agreement between the State of Ohio (hereinafter referred to as the Employer) and the Ohio Civil Service Employees Association, AFSCME Local 11 (hereinafter referred to as the Union). The arbitration hearing was held on October 13, 1995 at the Warrensville Developmental Center in Highland Hills, Ohio. The parties submitted closing arguments at the hearing and waived their right to submit post-hearing briefs.

B A C K G R O U N D

The grievant, Leopold Osborne, was employed by the Warrensville Developmental Center from June, 1986 to the date of his discharge on January 27, 1995. The grievant worked as a laborer performing various tasks around the Warrensville Developmental Center.

The events which led to the grievant's discharge include the following. On October 26, 1994 at approximately 6:00 p.m., Mr. Paul Workman, Operations Director, stated that he received an anonymous call from a female informing him that the snowblowers stored in the maintenance building had been stolen and that Monty Helsel knew who was responsible. On the following morning of October 27, 1994, Mr. Workman notified Mr. Roman Karas, Maintenance Superintendent, about the call that he had received the previous evening. Mr. Karas went to check the area where the snowblowers were stored and discovered that they were missing. The snowblowers had been stored in the generator room of the maintenance building following their use on about three occasions during the prior winter. They were valued at about \$870 each. At that point, the State Highway Patrol was called into the investigation by Mr. Karas.

Monty Helsel, mechanic at the Warrensville Developmental Center, was initially questioned about the snowblowers by Mr. Karas. At that time, Mr. Helsel denied any knowledge of the snowblowers being stolen. On October 28th, Mr. Karas received a second anonymous phone call regarding the stolen snowblowers. The caller told Mr. Karas that Monty Helsel had gone home to remove the snowblowers from his garage before they could be detected. Mr. Karas then called the State Highway Patrol to notify them of the telephone call which he had received regarding Mr. Helsel's actions.

State Trooper David Mailer stated that after Mr. Karas called him, he and another trooper went over to Mr. Helsel's home. Upon their arrival they saw a snowblower being pushed across Mr. Helsel's front yard apparently by a neighbor. They determined that this was one of the snowblowers which had been stolen from the Warrensville Developmental Center.

Mr. Helsel was arrested by the state troopers on October 28th. When he was questioned about the stolen snowblower, Mr. Helsel implicated the grievant. The state troopers then proceeded to the grievant's home at about 5:00 p.m. on October 28th after obtaining a search warrant. However according to Mr. Mailer, their search of the grievant's home and garage did not turn up any stolen snowblower. He also stated that he did not see any other items which may have belonged to the Warrensville Developmental Center. After the grievant arrived home, he denied any knowledge of any stolen snowblowers.

During a second interview by the State Highway Patrol, Mr. Helsel gave a detailed statement as to how the snowblowers had been stolen by the grievant. According to State Trooper Mailer, Mr. Helsel stated that it was Mr. Osborne who removed the two snowblowers in a state vehicle from the Warrensville Developmental Center. Later, Mr. Helsel indicated that he went to Mr. Osborne's home after he had been offered one of the snowblowers by the grievant. Mr. Helsel further told Mr. Mailer that the grievant had also stolen an air compressor from the center. Mr. Mailer indicated that criminal charges are currently pending against Mr. Helsel for his involvement in the stolen snowblowers.

Mr. Helsel testified at the arbitration hearing indicating that he had been employed for thirteen years as an auto mechanic by the Warrensville Developmental Center. Mr. Helsel has since been terminated for being involved in the theft of the two snowblowers. Mr. Helsel stated that the grievant told him approximately one week before the actual thefts that he was intending to steal the snowblowers. On the day before the theft, Mr. Helsel stated that he assisted the grievant in removing a back seat from a van so that the snowblowers could fit into the state vehicle. He also helped the grievant remove the snowblowers from the generator room and place them into the van on the morning of October 27th. Mr. Helsel stated that he then watched as the grievant drove away with the two snowblowers inside the van. The grievant told him that if he

wanted one of the snowblowers he could come to his house to pick it up later that day. Mr. Helsel acknowledged that he did proceed to the grievant's home following work on October 27th and proceeded to pick up one of the snowblowers. According to Mr. Helsel, the snowblower was in the grievant's garage.

Mr. Helsel further stated that he had assisted the grievant on a prior occasion in removing an air compressor belonging to the Warrensville Developmental Center. He did this by leaving a cage open where it had been stored. The air compressor was stolen approximately one month prior to the snowblowers. According to Mr. Helsel, he saw the stolen air compressor in the grievant's garage when he went to pick up the snowblower.

Mr. Helsel further stated that on the morning of October 28th at about 7:10 a.m., the grievant told him that he had better get home to remove the snowblower because he had heard that their homes would be searched by the State Highway Patrol that night. The grievant also indicated that if Mr. Helsel got caught, he would help him out. Mr. Helsel acknowledged that he attempted to have a neighbor to remove the snowblower after he was warned by the grievant. He also stated that initially when questioned by the State Highway Patrol, he denied any knowledge about the stolen snowblowers. However subsequently he admitted that he had been involved in the theft.

Mr. Helsel further stated that he had warned the grievant not to take the air compressor because it was useful to the mechanics in the maintenance section. However, the grievant explained to him that he wanted to get back at the center regarding a dispute over his glasses. The grievant's glasses apparently had been broken while at work and as a result he was given a directive on October 19, 1994 to not drive any state vehicle until he supplied proof of corrective lenses. Mr. Helsel also testified that the grievant bragged to him at one time that he had slashed the tires of supervisors in order to get back at them for various incidents which occurred at the center.

The State produced the polygraph examiner, Richard Graber, who administered a lie detector test to Mr. Helsel. According to Mr. Graber, Mr. Helsel answered truthfully to the question as to whether he and the grievant were involved in stealing the snowblowers together. He also answered truthfully the question as to whether he saw the snowblowers in the grievant's garage.

The grievant denies any involvement in the theft of the snowblowers. The grievant testified that on the morning of October 26th, Monty Helsel asked him for assistance in putting two snowblowers in a van for servicing. The grievant stated that as a laborer he has on occasion helped Mr. Helsel when he requested assistance. After helping Mr. Helsel put the snowblowers in a van, the grievant stated that he returned to his normal duties as laborer. Shortly after 8:00 a.m., he joined co-worker, Gerald Harris, in a truck which they used to perform various tasks around the center. The grievant denied that he ever drove a van or truck on the morning in question. The grievant also stated that Mr. Helsel has never been to his home at any time. The grievant indicated that he had no knowledge of the whereabouts of the snowblowers and had no idea why Mr. Helsel would implicate him in the theft.

The grievant further indicated that he fully complied with the order not to drive a state vehicle during the time that he did not have prescription glasses. He stated that he would have gotten written-up if he had driven the van as Mr. Helsel claimed on the morning in question. The grievant further indicated that he has always been blamed by management for incidents which have occurred at the center. The grievant also stated that he has no knowledge of any stolen air compressor. The grievant indicated that he was upset with the State Highway Patrol for having broken down his front door in order to search his premises.

Mr. Gerald Harris, a former laborer as well as Chief Union Steward, testified that he worked along side the grievant for most of the summer up through October, 1994, when the incident regarding the snowblowers occurred. Mr. Harris states that he was in the maintenance building on the morning of October 16th and met the grievant on the back dock. He states that he did not observe the grievant moving any snowblowers. He indicated that about 8:00 a.m. both he and the grievant got into their truck and performed their normal duties throughout the day. Mr. Harris indicated that he had never seen the grievant driving a vehicle during the time he was ordered not to do so because he did not have prescription lenses. Mr. Harris further stated that it seemed that the grievant had been blamed unfairly for every incident which occurred around the center. Mr. Harris acknowledged that he has represented the grievant before when he had gotten written-up by management.

Mr. Joseph Henry, a plumber for seventeen years at the center, testified that on the morning of October 26, 1994, he saw the grievant on the back of the dock of the maintenance building. He spoke to him about two or three minutes and then left to go to his job site. Mr. Henry stated that he never saw the grievant drive a state vehicle during the time when he was prohibited from doing so because he did not have prescription lenses.

On October 31, 1994, the grievant was placed on administrative leave pending an investigation of the snowblower incident. Subsequently, Superintendent Alaric Sawyer, determined that the grievant was to be charged with the theft of the snowblowers. The basis of Mr. Sawyer's decision was that Monty Helsel had witnessed the grievant driving off the grounds in a state vehicle with the two snowblowers inside. It was also determined that Mr. Helsel had observed the snowblowers as well as a previously stolen air compressor in the grievant's garage. The grievant was also charged with driving a state van in direct violation of his supervisor's order not to do so. A predisciplinary hearing was held on December 23, 1994. The grievant was given an opportunity to state that he denied taking anything from the Warrensville Developmental Center. However based upon Mr. Helsel's statements implicating the grievant, the Employer determined that there was just cause to impose discipline. The Superintendent subsequently advised the grievant that he was being terminated effective January 22, 1995 for the theft of two snowblowers belonging to the Warrensville Developmental Center. In the termination notice, it was noted that Mr. Helsel had indicated that he witnessed the grievant drive off the grounds in a state van with the two snowblowers. Mr. Helsel also stated that in addition to the two snowblowers, he saw a stolen air compressor in the grievant's garage. The Superintendent further indicated that the grievant was being charged with insubordination for failing to follow his supervisor's orders not to drive any state vehicle until he supplied proof of corrective lenses.

POSITIONS OF THE PARTIES

POSITION OF THE EMPLOYER

The Employer contends that the grievant was properly terminated for theft and insubordination. The Employer maintains that the evidence clearly shows that the grievant and a co-worker, Monty Helsel, loaded two snowblowers belonging to the Warrensville Developmental Center onto a state van which the grievant then drove to his home. The grievant not only committed an act of theft but also violated a directive from his supervisor not to drive any center vehicle until he provided proof that he had corrective lenses.

The Employer maintains that Monty Helsel, who implicated the grievant, is a credible witness. Mr. Helsel, for example, described in detail the grievant's house which is where he picked up one of the snowblowers for his own use. Mr. Helsel also passed a polygraph examination. There was no reason given by the Union as to why Mr. Helsel would have cause to lie about the theft of the snowblowers by the grievant.

The Employer further points to the testimony of State Trooper David Mailer who stated that he believed that the grievant played a role in the theft of the snowblowers. This was based in part on Mr. Helsel's confession implicating the grievant. Moreover, Mr. Mailer stated that the grievant had previously been a suspect in six prior investigations regarding various thefts and other incidents at the center since 1991. Mr. Workman testified that there were a history of thefts and acts of vandalism towards the supervisors following reprimands which had been given to the grievant. However since the grievant's termination, the thefts and acts of vandalism have no longer occurred at the center.

The Employer further argues that the Union's chief steward, Gerald Harris, is merely covering for the grievant in this case. It is well known that Mr. Harris has had his own problems in dealing with management. Also, the Employer points out that this arbitrator should not give any weight to the fact that the grievant's unemployment claim was granted in that there is a different standard of proof involved with the Bureau of Unemployment Compensation. Finally, the Employer maintains that the grievant had plenty of time to remove the snowblowers from his garage prior to the search taking place by the State Highway Patrol. The grievant's denial in this case simply lacks credibility.

POSITION OF THE UNION

The Union contends that it is clear in this case that the grievant was removed without just cause. The

grievant testified credibly that on the morning of October 26, 1994, he helped Mr. Hesel load snowblowers on a van and that he then returned to perform his normal work duties as laborer at the center. The evidence shows that the grievant never drove a van off the premises on the day in question and had nothing to do with the theft of the snowblowers. Rather, the thefts of the snowblowers were committed solely by the grievant's co-worker, Monty Hesel.

The Union relies on the testimony of Gerald Harris who stated that he was with the grievant all day on October 26, 1994. Mr. Harris indicated that it was like any other workday where he and the grievant performed their work together at the center. Mr. Harris did not see the grievant remove snowblowers in a van on the day in question. There was no showing made that Mr. Harris in any way had a reason to lie to support the grievant.

The Union questions the reliability of Monty Hesel whose testimony has served as a basis for the Employer's case against the grievant. The Union suggests that Mr. Hesel lied when he implicated the grievant in the theft of the snowblowers so that no criminal charges would be brought against him. Moreover, the record shows that a snowblower was found at Mr. Hesel's house. However after a thorough search by the State Highway Patrol, there was nothing found in the grievant's home or garage. The Employer's reliance on Mr. Hesel passing a polygraph test is clearly misplaced in that it has been shown that such tests are not free from error. The Union asks that this arbitrator completely ignore the results of Mr. Hesel's lie detector test due to their unreliability.

The Union further points out that there is clear evidence pointing to Mr. Hesel as being the sole perpetrator of the theft involved. For example, the two anonymous calls which were made to management only referred to Mr. Hesel as having knowledge of the theft of the snowblowers. It was also undisputed that it was Mr. Hesel who left work on October 28th to attempt to remove the snowblower from his home. There is absolutely no evidence showing that the grievant was aware that his home was about to be searched by the State Highway Patrol.

The Union maintains that the Employer's reference to other thefts and acts of vandalism which have occurred at the center are not relevant to this proceeding. There was absolutely no showing made that the grievant had been involved in any other thefts or acts of vandalism at the center. The Employer has improperly in the past attempted to blame the grievant for numerous prior incidents but has clearly failed to do so.

Finally, the Union points out that the charges against the grievant are so weak that he was able to receive unemployment compensation. Management appealed and lost on four consecutive times the grievant's entitlement to unemployment compensation. For all the reasons indicated, the Union submits that the Employer has failed to show here by clear and convincing evidence that the grievant was guilty of theft and insubordination. For this reason, the Union requests that the grievant be reinstated with all lost wages and benefits.

OPINION

The basic issue presented herein is whether the Employer had just cause to discharge the grievant. Discharge is recognized to be the extreme industrial penalty since the employee's job, contractual benefits, as well as reputation are at stake. Because of the seriousness of the discharge penalty, the burden in this case was on the Employer to establish by clear and convincing evidence that there was proper cause for the grievant's termination. Such a burden is especially appropriate in a termination case such as this which involves an allegation that the grievant engaged in an act of theft. Thus the burden in this case was on the Employer to establish by clear and convincing evidence that the grievant had committed an act of theft which warranted his termination.

At the outset, it is clear that the evidence in this case is in conflict. The Employer bases its case on the testimony offered by Monty Hesel who stated that he observed the grievant removing two snowblowers from the Warrensville Developmental Center. The Union contends that the grievant's general denial of wrongdoing is supported by the testimony of his co-worker, Mr. Harris, who attested to his whereabouts during the time period in question. Thus it is evident that this arbitrator must determine the credibility of the

witnesses involved in order to resolve the question of whether the grievant was guilty of theft.

In the instant case, this arbitrator finds that the Employer's primary witness, Monty Helsel, was forthright, consistent, and had a good demeanor on the witness stand. Mr. Helsel presented a clear and credible account of the events surrounding the stealing of the two snowblowers in question from the Warrensville Developmental Center. From every indication, this arbitrator has determined that Mr. Helsel was being truthful when he testified that the grievant was involved in the theft of the snowblowers.

First, this arbitrator finds that Mr. Helsel has provided consistent statements implicating the grievant in the theft of the snowblowers during his interviews with both the Warrensville Developmental Center police as well as the State Highway Patrol. Once Mr. Helsel confessed regarding his involvement in the theft of the snowblowers, he immediately implicated the grievant. This is shown by the statements provided to security on October 31st and November 2, 1994. In both of those statements, Mr. Helsel explained in detail how he and the grievant on the morning of October 26, 1994 loaded two snowblowers onto a state van. He stated that the grievant then drove away in the van with the snowblowers inside. Mr. Helsel provided a similar detailed statement to the State Highway Patrol according to the testimony of State Trooper David Mailer. Mr. Helsel's testimony at the hearing wherein he restated that the grievant was involved in the stealing of the snowblowers was entirely consistent with the prior statements which he furnished to management and the State Highway Patrol.

This arbitrator was impressed with the fact that Mr. Helsel provided a detailed and not just a superficial recollection of the events surrounding the stealing of the two snowblowers. Mr. Helsel explained how he and the grievant lifted the snowblowers over a retaining wall in the back of the maintenance building and placed them inside of a state van. Mr. Helsel then explained how on the next day he went to the grievant's house to obtain a snowblower for himself. He stated that he had a doctor's appointment in the general area where the grievant resided. Significantly, Mr. Helsel was able to describe the grievant's residence as having a driveway on the left side with a two car detached garage in the back. These facts concerning the grievant's residence were confirmed by State Trooper Mailer who conducted a search of the grievant's home and garage. There was no explanation provided as to how Mr. Helsel would have been aware of the layout of the grievant's residence if indeed he had not actually visited the grievant as he indicated on Thursday, October 27th in order to pick up one of the stolen snowblowers. The detailed account which Mr. Helsel provided in his statements certainly lends credence to his testimony that the grievant was involved in the stealing of the two snowblowers.

There is absolutely no reason to believe that Mr. Helsel was not telling the truth or that he fabricated a story to implicate the grievant in the theft of the snowblowers. Mr. Helsel's confession of guilt eventually led to his termination. Thus it cannot be said here that he testified against the grievant solely to retain his job at the Warrensville Developmental Center. Moreover, this arbitrator finds no merit to the Union's contention that management coerced Mr. Helsel into implicating the grievant. There was absolutely no evidence produced which showed that Mr. Helsel had been coerced in any way by management into giving statements which implicated the grievant in the theft of the snowblowers. Indeed, there is every indication that Mr. Helsel voluntarily provided the statements implicating the grievant completely on his own volition without any outside influence from management. The fact that Mr. Helsel may yet face criminal charges for his involvement in the theft of the snowblowers also has no bearing on his testimony in this case. It is not the Employer but rather the State of Ohio who could bring criminal charges against Mr. Helsel. Therefore, it cannot be said here that Mr. Helsel has his freedom to gain by testifying against the grievant in this labor arbitration proceeding. This arbitrator simply does not find that Mr. Helsel had any personal bias or animosity towards the grievant that could have adversely affected his statements or testimony.

This arbitrator further finds that Mr. Helsel's testimony was forthright and candid. In his statements, Mr. Helsel not only acknowledged that he had stolen a snowblower but also that he had taken other smaller items from the center in the past. For example, he admitted that he had taken a canister vacuum cleaner several years prior to the incident herein. He also confessed to taking a little soap which he commonly used at the center. Mr. Helsel's frankness exhibited throughout his statements further shows that he has been truthful in implicating the grievant in the theft of the snowblowers.

The Employer produced results of Mr. Helsel's polygraph test to buttress his testimony. According to the

polygraph results, Mr. Helsel testified truthfully that he saw the grievant take the snowblowers belonging to the Warrensville Developmental Center. The Union objected to the polygraph evidence presented. This arbitrator has refused to rely on polygraph test results as the sole evidence in determining whether or not a witness is being truthful. This arbitrator is of the opinion that polygraph test results should only be used as further corroborating evidence in cases where there are more reliable indicators of a witness' truthfulness. As indicated, Mr. Helsel here has provided consistent and forthright statements regarding the grievant's involvement in the theft of the snowblowers. Considering the consistent nature of Mr. Helsel's statements and testimony, this arbitrator finds that his lie detector test results provide further supporting and corroborating evidence that he is being truthful regarding the grievant's involvement in the theft of the two snowblowers.

There was also other evidence produced which tends to support Mr. Helsel's version of the events concerning the stolen snowblowers. The search of Mr. Helsel's residence by the State Highway Patrol only turned up one of the stolen snowblowers. The search also did not produce an air compressor which had been stolen from the center approximately one week earlier. It was shown here that Mr. Helsel did not have time to remove any of the stolen property from his residence prior to the State Highway Patrol's search. Indeed, Mr. Helsel's neighbor was caught moving a stolen snowblower across his property by the State Highway Patrol. It would be reasonable to presume therefore that if Mr. Helsel was the only employee involved in the theft, another snowblower and perhaps the stolen air compressor would have been located at his residence by the State Highway Patrol when they conducted their search on October 28, 1994. The fact that only one snowblower was located points to another individual being involved with the stealing of the snowblowers as Mr. Helsel has stated. Moreover, it should be noted that although a search of the grievant's property failed to turn up any of the other stolen items, it is apparent that he may have had sufficient time to remove any stolen property prior to the search. According to the credible testimony offered by Mr. Helsel, the grievant had been warned on the evening of October 27th that a search was to take place the next day. In any case, the fact that one stolen snowblower and an air compressor are still missing indicates to this arbitrator that Mr. Helsel's version of the events is correct.

In resolving the credibility of Mr. Helsel versus the grievant, this arbitrator has also reviewed their respective employment records. Mr. Helsel is a thirteen year employee with no prior disciplinary problems. On the other hand, the grievant during his eight and one-half years of employment had received a reprimand and was involved as a suspect in investigations of other incidents which have occurred at the center. According to State Trooper Mailer, the grievant had been a suspect in about six other investigations of thefts and other incidents since 1991. Although the grievant was never charged with being involved in any of thefts at the center, it is apparent that management had reason to believe that there was sufficient grounds against him to make him a real suspect in those other matters. Moreover, Mr. Workman testified that acts of vandalism have occurred at the center including the slashing of supervisor's tires. Mr. Workman stated that one of these incidents followed a reprimand given to the grievant. Again, the grievant was never charged with being involved in such vandalism. However, it should be noted that Mr. Helsel stated that the grievant told him that he slashed his supervisor's tires in retaliation for being reprimanded. Considering the background evidence provided in this case, this arbitrator has determined that Mr. Helsel is clearly the more believable of the two employees.

It is also evident that the grievant's general denial was merely self-serving here. The grievant, of course, had considerable incentive not to tell the truth. His employment as well as livelihood are at stake. In making credibility determinations, it is well settled that an accused employee is presumed to have an incentive for not telling the truth and that when his testimony is contradicted by that of another who has nothing to gain or lose such as Mr. Helsel here, the latter is to be believed.

The Union here argues that the discharge should be overturned because Mr. Harris, the grievant's co-worker, has attested to the grievant's whereabouts during the time when the snowblowers were allegedly stolen. Mr. Harris did testify that on the morning of October 26th, he met up with the grievant at approximately 8:00 a.m. and they then proceeded to perform their various duties around the center. However for several reasons this arbitrator finds that Mr. Harris' testimony does not serve as a reliable indicator in this case that the grievant had absolutely nothing to do with the stealing of the snowblowers.

First, it appears from Mr. Harris' own admission that he did not provide a statement to management during their investigation of the incident. It also appears that it was not until approximately one year later at the arbitration hearing itself that Mr. Harris finally stepped forward to provide detailed corroborating testimony for the grievant. Considering that Mr. Harris was the grievant's union representative throughout the proceedings, this arbitrator finds that his almost one year delay in providing supporting evidence for the grievant casts a serious doubt on the reliability of his claim that he could now recall the grievant being with him throughout the morning in question. Moreover as the Employer pointed out, Mr. Harris may have had the incentive of protecting his fellow worker. This, plus his delay in providing supporting testimony for the grievant, raises serious questions about the reliability of his testimony.

This arbitrator would like to emphasize that he has determined that Mr. Harris' testimony on behalf of the Union simply lacked the reliability needed to impeach Mr. Hesel's testimony implicating the grievant in the theft of the snowblowers. As indicated previously, Mr. Hesel provided consistent and forthright testimony regarding the incident and he had good demeanor on the witness stand. On the other hand, Mr. Harris' testimony proved not only to be unreliable for the reasons indicated, but also failed to contradict Mr. Hesel's testimony with respect to important aspects of the case. It is evident that Mr. Harris was not present prior to 8:00 a.m. at the maintenance building when conversations took place between the grievant and Mr. Hesel regarding the loading of the snowblowers onto a state van. Moreover, Mr. Harris's testimony also did not in anyway contradict Mr. Hesel's statement that he saw the stolen snowblowers in the grievant's garage. It should also be pointed out that Mr. Harris did not offer any explanation as to why Mr. Hesel would have fabricated a case against the grievant. Considering the various weaknesses in Mr. Harris' testimony, this arbitrator must find that it did not provide reliable corroboration for grievant's claim that he had nothing to do with the stealing of the snowblowers.

This arbitrator further finds that there is no merit to the Union's contention that the findings of the Ohio Bureau of Employment Services should be given considerable weight in this case. The grievant was successful in obtaining unemployment compensation benefits. However, it is evident that the criteria for determining whether or not an individual is eligible for unemployment insurance before the state agency is quite different than the standard used as arbitral guides in determining whether or not there is just cause for discharge. It should also be noted that not all of the facts presented herein were presented to the Bureau of Unemployment Compensation including the testimony of Mr. Hesel. Accordingly, the Union's reliance upon the unemployment compensation findings is clearly misplaced.

It is clear that the theft of the snowblowers was a dischargeable offense. Each of the snowblowers involved cost approximately \$870. As attested to by Mr. Workman, the value of the snowblowers involved in this case clearly made the theft a dischargeable offense.

In conclusion, this arbitrator finds that there is clear and convincing evidence showing that the grievant was involved in the theft of two snowblowers from the Warrensville Developmental Center on October 26, 1994. The credible testimony of Monty Hesel clearly shows that on the morning in question, the grievant loaded two snowblowers into a state van and drove away. It was also established through the testimony of Mr. Hesel that the grievant took the snowblowers home and placed them in his garage. Mr. Hesel's consistent testimony was corroborated by other evidence on record including the results of his lie detector test. Contrary to the Union's claim, there was no showing made by any evidence produced that Mr. Hesel was not telling the truth when he implicated the grievant in the theft of the snowblowers. Considering the background evidence provided by the State Highway Patrol in this case, this arbitrator has determined that Mr. Hesel is clearly more believable than the grievant. The testimony offered by the grievant's co-worker proved to be unreliable and in several important respects failed to contradict the credible testimony offered by Mr. Hesel. Considering the value of the snowblowers involved, this arbitrator must find that the grievant's misconduct here was a dischargeable offense. Therefore, this arbitrator has determined that the Employer had just cause to terminate the grievant for stealing the two snowblowers. This arbitrator also does not find that there are any mitigating factors present in the instant case which would call for the lessening of the discharge penalty imposed. As such, the grievance presented by Leopold Osborne is denied.

A W A R D

The grievance is denied.

JAMES M. MANCINI, ARBITRATOR