

ARBITRATION DECISION NO.:

612

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Youth Services - Indian Hills School

DATE OF ARBITRATION:

DATE OF DECISION:

July 31, 1996

GRIEVANT:

Sheridan Crum

OCB GRIEVANCE NO.:

35-04-(95-05-01)-0065-01-09

ARBITRATOR:

Marvin J. Feldman

FOR THE UNION:

Gerald Leb, Attorney

Ronald Snyder, Associate General Counsel, OCSEA

FOR THE EMPLOYER:

Barry Braverman, Labor Relations Officer, OCB

Colleen Wise, Second Chair, OCB

KEY WORDS:

Last Chance Agreement

Neglect of Duty

Past Practice

Removal

Work Rules

ARTICLES:

Article 24 - Discipline

§ 24.01 - Standard

§ 24.02 - Progressive Discipline

FACTS:

The grievant was a storekeeper at the Department of Youth Services. The grievant was responsible for two major tasks, the filling of the dietary requisition and the placement of the U.S. Government shipment into the food freezer and food cooler. Further, the grievant had previously agreed to a last chance agreement at the time of the incident in question and he was terminated for his failure to store the U.S. Government shipment before filling the dietary requisition.

The Employer claimed that the grievant used bad judgment in not placing the delivery of frozen items into

the food cooler and food freezer prior to completing the dietary requisition.

EMPLOYER'S POSITION:

The Employer based its claim on the following evidence: The grievant's supervisor testified in his statement that the frozen food should be put away as soon as possible. The Employer construed this statement to mean that the frozen food should be put away before completing any dietary requisition. Further, evidence revealed that there was no written rule as to prioritizing the storing of the commodity on one hand or the filling of the dietary requisition on the other. Although the grievant's immediate supervisor was not on duty on the date in question, his supervisor's supervisor was and she believed the grievant acted improperly. The deputy superintendent agreed and, as a result, the grievant was terminated for a violation of the grievant's last chance agreement.

UNION'S POSITION:

The grievant and the Union contended that the grievant was not in violation of any work rules nor was he in violation of the last chance agreement. The grievant stated that he completed filling the dietary order because it was given to him earlier than the commodity shipment. He further stated that he did not want to interrupt the dietary requisition to complete the commodity storage stocking. The grievant indicated that he did not want to get the dietary requisition out late because that would mean overtime in the dietary department and that would cause him to be disciplined also.

In addition, the grievant testified that his supervisor trained him to complete the dietary order, including trips to Canton, before putting commodity away. Furthermore, there were no supervisors around on the day in question to tell the grievant what to do. The grievant contended that he paged various supervisors. However, no one responded to his page. Therefore, the grievant decided to complete the dietary requisition which included going to the Canton cold storage rather than putting away the frozen commodities first.

ARBITRATOR'S OPINION:

This Arbitrator concluded that the choice made by the grievant to complete the dietary requisition before putting away the frozen commodities was completely lacking in common sense. The fact that there was no proof of any thawing of the frozen product did not lessen the misguided activity of the grievant. This Arbitrator has also found that the grievant was guilty of the work rules violation for which he was cited in his termination notice. The fact that the grievant was in violation of the work rules formed the basis for the violation of the last chance agreement.

This Arbitrator further reasoned that the grievant had a responsible position and he acted without supervision or obtaining any advice. The grievant indicated that he attempted to obtain assistance from a superior, however he could not find a superior on duty. The Arbitrator found this difficult to believe. In conclusion, it was apparent to the Arbitrator that the grievant acted without care, which resulted in a violation of the work rules and the last chance agreement.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

**VOLUNTARY ARBITRATION PROCEEDINGS
THE TERMINATION OF SHERIDAN CRUM**

STATE OF OHIO
The Employer

-and-

OHIO CIVIL SERVICE EMPLOYEES

**ASSOCIATION, AFSCME LOCAL 11
AFL-CIO
The Union**

OPINION AND AWARD

CASE NO.:

35-04-(95-05-01)-0065-01-09

APPEARANCES

For the Employer:

Barry Braverman, Labor Relations Officer, OCB
Colleen Wise, Second Chair, OCB
Mick W. Musselman, Labor Relations Officer, IHS
Brad Rahr, Labor Relations Officer, IHS
Don Feldkamp, Superintendent, Circleville, DYS
Darlene Dehoff, Fiscal Officer, IHS
Wanda L. Adams, Storekeeper, IHS
Linda Bess, Superintendent, IHS
Conrad Ames, Deputy Superintendent, IHS

For the Union:

Gerald Leb, Attorney
Sheridan Crum, Grievant
Ronald Snyder, Associate General Counsel, OCSEA

MARVIN J. FELDMAN

Attorney-Arbitrator

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I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted at the conference facility of the employer at Indian Hills School, Massillon, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would be filed. It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

II. STATEMENT OF FACTS

At the time of the instant incident the grievant was a fourteen year employee of the facility. He, at the time of the incident, was employed as a storekeeper under position number 33881.0. The vast majority of the duties of the storekeeper as stated in the position description are revealed as follows:

- "28% Is the storekeeper in charge of dry storage, cooler and freezer storage. Responsible for filling requisitions from the food service storage area. Maintains perpetual inventory of food stuffs. Assists with completion of storeroom food cost reconciliation costing out items delivered to Dietary Department, and calculating for fair market value of the ending inventory of foodstuff items. Assists with the completion of monthly physical inventory of foodstuff items.
- 20% Responsible for the Institutional Commissary operation. Completes requisition for outside purchase to order stock and retail extension sheets. Shares responsibility with other procurement line staff for routine departmental operations in the Department Head's absence.
- 35% Runs tapes and copies of Commissary sheets and youth commissary purchase orders and coordinates same through the Business Office. Completes monthly physical inventory of commissary items. Stocks, monitors and recommends prices and rotates goods. Issues invoice extensions and receiving reports to Business Office for vendors payments."

It might be noted that the storekeeper kept the stores of the facility and those stores were freezer stored food items, cooler stored food items and dry stored food items. There was a separate area for each of those stores and the grievant was responsible for keeping those stores and for filling requisitions from the food service storage area for those stores --- all as indicated in the position description which is revealed in pertinent part above. The facility also rented one off-premises frozen food warehouse in Canton, Ohio, for an overload of frozen goods.

The grievant at the time of the instant incident was also the subject of a last chance agreement under date January 5, 1994. That agreement had a two year life and in pertinent part it revealed the following:

"LAST CHANCE AGREEMENT

This agreement made by the Ohio Department of Youth Services (ODYS) and in conjunction with the Office of Collective Bargaining, the Ohio Civil Service Employee Association (OCSEA), Local No. 11, AFSCME, AFL-CIO (OCSEA/AFSCME), and employee Sheridan Crum, parties hereto, recognizing that there is/was just cause for discipline for violation of DYS Departmental Work Rule(s).

Now therefore, all parties hereto, in consideration of the mutual covenants and agreements to be performed, as hereinafter set forth, agree as follows:

1. The removal of Storekeeper 1, Sheridan Crum, shall be mitigated to a removal held in abeyance on a last chance basis; PROVIDED THAT NO FURTHER VIOLATIONS OF DYS RULES: 1a., 1b., 1c., 6a., 6b., 19, or 23 within a two (2)-year period effective of the date of signing by the employee.
2. In the event of a violation of one of the above rules under same or similar circumstances, the employee agrees that the discipline being held under this Last Chance Agreement will go into effect and will not be grievable. Also, that this discipline cannot be overturned for any cause, by any party.
3. Employee agrees to enter and complete an approved Employee Assistance Program which is designed to correct his problems with his work performance and behavior and any other violations of DYS Rules: #1a, 1b, 1c, 6a, 6b, 19, or 23. He further agrees to sign an Employee Assistance Program Agreement that will be developed within one (1) week of the development of his EAP treatment plan. The participation agreement is designed to correct his work performance and behavior and participation in the program. Failure to enter into or complete

an Employee Assistance Program or failure to sign an EAP participation agreement will constitute a breach of the last chance agreement and will result in removal; and will not be grievable, nor overturned for any cause, by any party.

The undersigned parties agree that they enter into this agreement after having had sufficient time to read and understand this document. The undersigned parties further agree that they enter into this agreement of their own free will without any form of coercion. The undersigned parties further stipulate that this action is taken without precedence or prejudice."

That agreement also had an amendment and that amendment revealed the following:

"ADDENDUM/LAST CHANCE AGREEMENT FOR SHERIDAN CRUM

The Department of Youth Services need only prove that the employee violated the above Agreement(s) and/or rule(s). The Arbitrator shall have no authority to modify the discipline."

Also in use at the facility at which the grievant was employed were work rules including the statutory, regulatory, ethical and moral conduct for the efficient operation of the facility. Rule 1 at rule 1a and 1b, revealed the following:

<u>Offenses</u>					
<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>	

Rule 1. Neglect of Duty

- | | | | | | |
|---|--------|------|-----|------|------|
| a. Failure to perform assigned duties in a specified amount of time. | V | S | 1-3 | 5-10 | R |
| b. Failure to perform duties of the position which the employee holds." | V or W | W or | 3 | 5-10 | 15 R |

The steps in progressive discipline for those work rules as are indicated hereinabove revealed the following:

"Steps in Progressive Discipline:

- (V) Verbal
- (W) Written
- (1-3) 1 to 3-day Suspension
- (5-10) 5 to 10-day Suspension
- (15) 15-day Suspension
- (R) Removal"

There is no question but that the grievant had notice of these work rules or standards of employee conduct and there was no evidence raised that there was lack of publication, lack of evenhanded treatment or that the rules were unreasonable. Whether the rules were proper or not therefore was not an issue in this particular matter.

Also placed into evidence were some job expectations of the grievant. They numbered twenty-two in its entirety and the grievant insisted there was lack of publication to him concerning these job expectations. The employer on the other hand indicated and stated that the grievant was also guilty in violation of the job expectations. Those job expectations, as they were entitled, revealed the following:

"JOB EXPECTATIONS

DAN CRUM-STOREKEEPER

1. IN CHARGE OF DRY STORAGE, COOLER AND FREEZER STORAGE.
 - A. RESPONSIBLE FOR ROTATING OF ITEMS IN ALL AREAS.
2. RESPONSIBLE FOR FILLING DIETARY REQUISITIONS.
3. MAINTAINS PERPETUAL INVENTORY OF FOOD.
 - A. INCLUDES POSTING OF INVENTORY CARDS.
4. ASSISTS WITH:
 - A. COMPLETION OF STOREROOM FOOD COST RECONCILIATION.
 - B. COSTING OUT ITEMS DELIVERED TO DIETARY.
 - C. CALCULATING FAIR MARKET VALUE OF ENDING INVENTORY OF FOODSTUFF ITEMS.
5. ASSISTS WITH COMPLETION OF MONTHLY PHYSICAL INVENTORY OF FOOD ITEMS.
6. RESPONSIBLE FOR INSTITUTION COMMISSARY OPERATION.
7. COMPLETES REQUEST TO PURCHASE TO ORDER COMMISSARY STOCK.
 - A. SUBMIT TO BUSINESS MANAGER FOR VERIFICATION OF FUNDS.
8. RUNS TAPES AND COPIES OF COMMISSARY SHEETS.
9. COMPLETES MONTHLY PHYSICAL INVENTORY OF COMMISSARY ITEMS.
10. STOCKS, MONITORS AND ROTATES COMMISSARY GOODS.
11. RECOMMENDS PRICES FOR COMMISSARY ITEMS.
 - A. BASED ON A 20% MARK UP COST.
12. COMPLETES COMMISSARY RETAIL EXTENSION SHEETS.
13. ISSUES EXTENSION SHEETS AND RECEIVING REPORTS TO BUSINESS OFFICE FOR PAYMENT.
14. PREPARE A-2 FORM TO RECORD INVENTORY CHANGES, i.e., SPOILAGE, BREAKAGE, DISCOUNT, MARKUP, MARKDOWN, ETC.
15. SUBMIT A-2's TO BUSINESS MANAGER WEEKLY FOR REVIEW.
16. ROUTINELY PICKS UP COMMISSARY SUPPLIES FROM VENDORS WHEN NECESSARY.
17. SHARES RESPONSIBILITY WITH OTHER PROCUREMENT LINE STAFF FOR ROUTINE DEPARTMENTAL OPERATIONS IN THE DEPARTMENT HEADS ABSENCE.

18. ASSISTS IN UNLOADING OF DELIVERY TRUCKS, STORING AND ROTATING STOREROOM SUPPLIES.

19. ASSISTS IN ANNUAL DEPARTMENTAL EQUIPMENT INVENTORY.

20. MAY ASSIST WITH THE OPERATION AND INVENTORY OF THE OTHER STOREKEEPER'S STOREROOM.

21. MAY SUPERVISE AND TRAIN INSTITUTIONAL YOUTH.

22. MAY BE REQUIRED TO PICK UP OTHER SUPPLIES AND PICK UP AND DELIVER INSTITUTIONAL MAIL."

On April 5, 1995, a removal notice was rendered by the superintendent of the facility directed to the grievant herein. That removal notice revealed the following:

"DATE: APRIL 5, 1995

TO: SHERIDAN I. CRUM, STOREKEEPER

FROM: LINDA F. BESS, SUPERINTENDENT

SUBJECT: REMOVAL

On March 22, 1995 you failed to place the frozen commodities order that was delivered between approximately 9:00 AM and 9:30 AM in the freezer. The order was found to be left inside next to the Storekeeper Supervisor's office at around 1:27 PM.

This is in violation of D.Y.S. Directive B-19, Work Rules #1 a. 'Failure to perform assigned duties in a specified amount of time' and #1 b. 'Failure to perform the duties of the position which the employee holds' and violation of your last chance agreement dated 01-05-94.

You are hereby removed from your position effective April 28, 1995.

A copy of this removal will be placed in your personnel file."

It might be noted that the removal notice rendered an indication of a violation of rule 1a and rule 1b of the rules that were quoted hereinabove. There is no mention of any violation in that letter of termination or removal concerning the job expectation list as placed into the record by the employer.

It might be noted that the grievant filed a protest in a timely fashion and in the statement of facts stated in that protest, revealed the following:

"The disciplinary action of Removal from my position on 4/28/95 was imposed without just cause.(sic) The Employer did not establish proof of just cause.

My Pre-Disciplinary statement of 4/4/95 is to be included as part of my grievance. I acted as I had been trained and directed by my Supervisor, Mr. Terry Johnson, and acted as past practices. I want Cathy Zsiros 3/29 statement included which is also in my pre-disciplinary package, written on my behalf.

The letter of Removal dated 4/5/95 states B-19 #1a 'Failure to perform assigned duties in a specified amount of time.' There is no 'specified' amount of time. Nowhere is it written there is

a 'specified' time to put away deliveries. My supervisor's statement does not indicate there is any 'specified' time to store deliveries, nor has he ever indicated a specified time.

I was performing the duties of my position and also those of my supervisor who was (sic), and extra duties of restocking the freezer and dry goods on 3/22.

I have continuously been in compliance with the Last Chance Agreement and the approved Employee Assistance Program which is designed to correct his problems with work performance and behavior, and any other violation(s) of DYS Rules: #1a, 1b, 1c, etc.

Lastly, a representative of my Union has advised me to include in this grievance the following information. Since my removal of 4/28/95, IRS employees have informed me that a notice was written to department heads that I was supposed to have threatened management (Ms. Bess & Mr. Ames) in the Removal meeting, and that the Highway Patrol was to be patrolling the IRS grounds on the lookout for me and to ban me from entering the facility from even business with the personnel dept."

The grievant had two things occur on the date in question, that date being March 22, 1995. The first thing that occurred was that the grievant stated that he received a storeroom requisition from the dietary department about an hour late. That storeroom requisition was from the dietary department and it had three types of needed food commodities indicated therein, namely food items from the freezer, food items from the cooler and food items from the dry storage area. The grievant filled his order as best he could from the stocks in the various areas of the facility but found that he had to complete the order by traveling to the Canton cold storage warehouse where the facility kept certain frozen foods. Such action was normal and had occurred prior. In order to travel to that warehouse the grievant, needed transportation and obtained a driver from maintenance along with the facility truck and the grievant went to the Canton warehouse and returned sometime around 2:00 p.m. or 2:30 p.m. He delivered the stores requested or requisitioned from the dietary department and that matter was completed for that date.

The grievant stated that that delivery had to be made timely so as not to cause overtime in the dietary department.

Before the grievant left for the Canton cold storage warehouse, however, there was delivered to the facility some frozen foods from the United States Government. Some of those items were frozen and wrapped in heavy plastic. The items were placed on the inside dock and the temperature was approximately 37 or 38 degrees on the outside. The heater was not turned on, on the dock, and the grievant testified that the temperature on the inside dock was probably colder than on the outside because of the frozen items that were on the dock. In the grievant's mind, those products delivered generated a frigid environment. At any rate, the grievant left for the cold storage warehouse and returned and the frozen items were not touched by him for a period of about four hours.

The items were discovered by the grievant's supervisor's supervisor unwrapped and for the most part unstamped and waiting on the inside dock. When the grievant returned and delivered his dietary requisitioned items to the dietary department he also noticed that the U.S. Government shipment had been put away and thanked the supervisor for placing the shipment in the freezer. At that time the grievant was told to write-up a statement as to why he was not present for the work of storing the U.S. Government shipment. That statement, and there were two in number. revealed the following:

"TO: Darlene DeHoff as Requested

FROM: S. Crum

DATE: 3-22-95

SUBJ: COMM GOODS

Commodity came in 10:30 Mid Morning. I was still pulling dietary order. After lunch I went to Canton cold storage to get the rest of the dietary order, as usual.

I have been trained by Terry Johnson my supervisor to complete the dietary order before putting Comm. away.

Terry has almost without fail waited until I return from cold storage to have me put the Commodity away.

I was only doing as past practices & as I was trained to do.

I'm the only one working back here in this area as Terry is off & Wonda has refused to be of any help.

I'm not complaining & just want you to know I'm doing the best that I can with no help and as I was trained. Whomever told you that Commodity came at 9:00 is a liar.

Perhaps it would be helpful if we had another freezer located at I.R.S. I don't mind the trips to Canton but they are time consuming or can we get an interim staff as needed.

I cannot be in two places at once."

The evidence by the union did not contest the arrival of the commodity shipment. The grievant indicated and stated that the commodity arrived and that he accomplished his workload pursuant to the practices of the supervisor who was off on that date and that he did the best he could without any waste of time whatsoever.

It might be noted that the supervisor of the grievant never testified at hearing either but he did write a statement which was placed into the record and that statement revealed the following:

"The usual practice used when receiving frozen food is to store it away as soon as possible. This of course is to keep it from thawing. During times of very large deliveries (such as central warehouse) when it takes at times up to over an hour to put away. But by no means should any smaller deliveries be left to sit over 45 minutes to an hour. Especially during warmer weather."

The evidence further revealed that approximately five people were involved in placing that material into the freezer and they were involved for an half an hour while the grievant was on a trip to the Canton cold storage warehouse.

The grievant testified that he attempted to notify his supervisors on that date before he left for the Canton warehouse that the government shipment had arrived but, according to the grievant, that they were nowhere to be found. The grievant stated that he paged them and dialed them on the phone and could not find them in their offices or elsewhere. Time sheets were placed into the record by the employer and it was found that the people requested by the grievant by page and phone were on duty on that date as usual and they each indicated and stated that they received no page or phone call. It might be further noted that when the product was stored that there was no evidence of any thawing whatsoever.

The business manager wrote a rather lengthy memo concerning this matter on the date of the incident and she is the person who recommended discipline be taken as a violation of work rule 1. Her testimony echoed the memo and it revealed the following:

"MARCH 22, 1995

TO: LINDA BESS, SUPERINTENDENT

FROM: DARLENE DEHOFF, BUSINESS MANAGER

SUBJECT: VIOLATION OF WORK RULE #1 - NEGLIGENCE OF DUTY
DAN CRUM, STOREKEEPER

ON WEDNESDAY, MARCH 22, 1995, I WENT BACK TO TERRY JOHNSON'S OFFICE TO CHECK ON RECEIVING REPORTS. WHEN I ARRIVED, I NOTICED TWO PALLETS OF COMMODITY FOOD SITTING IN THE INSIDE DOCK AREA NEXT TO HIS OFFICE. ONE PALLET WAS FROZEN FOOD CONSISTING OF CHICKEN, PORK, BEEF, FROZEN EGGS, AND VEGETABLES. SINCE DAN CRUM WAS NOT IN THE AREA, I WENT INTO TERRY JOHNSON'S OFFICE TO HAVE MR. CRUM PAGED. THE OPERATOR NOTIFIED ME MR. CRUM HAD GONE TO CANTON COLD STORAGE WITH TERRY NOBLE. AT THIS TIME I CHECKED THE CLOCK IN MR. JOHNSON'S OFFICE, IT WAS 1:27 P.M.

I KNEW THE FROZEN FOODS HAD TO BE PUT AWAY AND COULD NOT WAIT UNTIL MR. CRUM RETURNED. I WENT TO DIETARY TO MAKE MR. BLITZ AWARE OF THE FACT THAT THIS FROZEN FOOD HAD BEEN LEFT OUT ON THE DOCK IN CASE THERE WAS ANY PROBLEM WITH SPOILAGE. MR. BLITZ WAS OFF SICK. I STARTED TO RETURN TO THE DOCK AREA WHEN BARB RAMSEY STOPPED ME. SHE WAS HAVING A PROBLEM WITH WAY DIETARY'S FOOD WAS BEING STORED IN THE FREEZER AND DAN MIXING OUR STOCK WITH DIETARY'S ISSUES. DURING THE COURSE OF CONVERSATION, MS. RAMSEY MENTIONED THAT SHE HAD BEEN IN THE DOCK AREA AT APPROXIMATELY 9:20 A.M. AND THE COMMODITY DELIVERY WAS SITTING OUT AND SHE HAD JUST BEEN BACK THERE AGAIN AND IT WAS STILL SITTING OUT. THIS WAS MY FIRST INDICATION OF THE APPROXIMATE TIME THE DELIVERY HAD ARRIVED.

I WENT TO MR. JOHNSON'S OFFICE AND CALLED JUDY FRY AND ASK HER TO PLEASE BRING THE CAMERA TO THE DOCK. MS. FRY AND TOM JONES ARRIVED AT THE DOCK AREA AND MR. JONES TOOK PICTURES OF THE FROZEN FOODS. PICTURES (SIGNED, DATED, AND TIMED) ARE ATTACHED. WHILE WAITING ON JUDY AND TOM TO ARRIVE, I NOTICED THE RECEIVING REPORT (ATTACHED) FOR THE COMMODITY DELIVERY HAD BEEN COMPLETED BY MR. CRUM. HE TOOK THE TIME TO WRITE THE RECEIVING REPORT INSTEAD OF PUTTING THE FROZEN FOOD IN THE FREEZER.

I THEN CALLED THE DOWNSTAIRS STOREROOM AND ASK WANDA GBUR IF SHE WOULD ASSIST ME IN PUTTING AWAY THE FROZEN ITEMS. ABOUT THE TIME WANDA ARRIVED AT THE DOCK (AROUND 1:40 P.M.), KATHY ZSIROS ARRIVED WITH TWO YOUTH WORKERS TO CLEAN THE RESTROOMS. KATHY OFFERED TO HAVE THE TWO YOUTH, ALONG WITH HERSELF, HELP WANDA AND I PUT THE FROZEN FOOD AWAY. BY 2:16 P.M. ALL COMMODITY FROZEN HAD BEEN PUT IN THE FREEZER.

ATTACHED ARE MR. CRUM'S TWO STATEMENTS. I ASKED MR. CRUM TO PROVIDE ME WITH A STATEMENT AS TO WHY HE WENT TO CANTON COLD STORAGE AND LEFT FROZEN FOOD SITTING ON THE DOCK AT ROOM TEMPERATURE. THE FIRST STATEMENT OF ONE PARAGRAPH WAS WRITTEN BY DAN AT APPROX. 3:45 P.M. IN MY OFFICE. AFTER RETURNING FROM HIS BREAK, HE SAID HE WANTED TO ADD TO HIS STATEMENT. I ASK HIM TO JUST TURN IN AN ADDITIONAL STATEMENT.

ATTACHED ARE STATEMENTS FROM BARB RAMSEY, WANDA GBUR, JUDY FRY, TOM JONES AND KATHY ZSIROS. I HAVE ALSO ATTACHED A COPY OF THE DAILY TRIP PACK COMPLETED BY

INTERSTATE COLD STORAGE'S DRIVER. THE TRIP PACK INDICATES THE DRIVER ARRIVED AT INDIAN RIVER AT 9:02 A.M. AND LEFT AT 9:30 A.M. A COPY OF THE DAILY SHIFT LOG FOR MARCH 22, 1995 IS ATTACHED. THIS SHOWS THAT TERRY NOBLE (HE WENT WITH DAN) GOT THE KEYS TO 53-517 AT 12:22 P.M. TO GO TO CANTON COLD STORAGE AND THE KEYS WERE RETURNED BY DAN CRUM AT 5:08 P.M.

I AM REQUESTING THAT DISCIPLINARY ACTION BE TAKEN CONCERNING THIS INCIDENT."

Thus from all of this it appeared that the grievant was working on the date in question without any assistance; that his foreman or supervisor was off work on that date; that he had two important jobs, namely the dietary requisition and the placement into stock of the delivery from the United States Government and that he chose the completing of the dietary requisition over the storing of the government delivery even though the U.S. Government delivery was frozen and needed to be placed in the freezer. The grievant wrote a narrative concerning his innocence and it might be well to state it in full as follows:

"I am NOT in violation of B-19, General Work Rules #1a NOR #16 NOR the Last Chance Agreement. I have followed the Work Rules and terms of the agreement consistently and completely.

Narrative of the Facts

On 3/22/95 while I was pulling the dietary order the Commodity order arrived. It was approximately 9:35-9:40 in the a.m. (my written statement reads 10:30, however, my wife was able to correct my time schedule - see Mrs. Crum's statement). received the commodity order and caught any other orders that came in that a.m. while pulling the dietary order.

Having been off ill just recently I found that medically it was in my best interest to eat lunch. Upon returning from lunch I began working on the commodity order and received a UPS order while waiting for Mr. Noble of the Maintenance Dept. to be available with the cargo truck. We had to go to Canton Cold Storage, as usual, so that I could complete pulling the dietary order. I had completed the receiving report and completed date stamping all of the top boxes on both pallets when Mr. Noble arrived at approximately 12:35 with the truck for us to depart for Canton Storage.

Within 20 minutes prior to going to Canton Cold Storage I telephoned co-worker Ms. Adams-Gbur twice and had her paged three times. She did not answer the phone and did not answer my pages despite the fact that she was not out to lunch and was aware that commodity had been delivered, and that I could not complete filling the dietary order without a trip to Cold Storage. I tried to phone Ms. Dehoff once and had her paged twice prior to my departure. She refused to answer my pages yet she knew full well that I depart for Cold Storage at approx. the same time of day three times a week. Since Mr. Johnson had always instructed me to go to Cold Storage before putting commodity or any other deliveries away, I then went with Mr. Noble, who was waiting on me, to Cold Storage.

I was subject to two other departments: dietary would have to work overtime if I couldn't get to Cold Storage & back shortly, and my having to be available when maintenance is ready with the cargo truck. Ms. Adams and Ms. Dehoff herself had stopped their practice of reporting to the dock area at that time of day on days of dietary order (M-W-F) while Mr. Johnson was off ill - knowing that I had to go to Canton Cold Storage to complete the dietary order.

I returned to the institution at around 2:30-2:45 and found the commodity had been set just inside the freezer/cooler areas. I unloaded the cargo truck, finished delivering the dietary order, stocked the

commodity items in their proper places, and then took my break. Just prior to my break I stopped by Ms. Dehoff's office and thanked her for helping out and getting the commodity put away. Her reaction to me was to point her finger at me and state, 'I want a statement from you and I want it now!' I asked what the statement was to be about and she stated that I should have put the frozen food away before I went to Canton Cold Storage. She never notified my Union to be present when she ordered me to write a statement. I wrote a brief statement. After my break I asked her if I could write another statement because she rushed me to write the first statement telling me she wanted the first statement 'now'.

I informed Ms. Dehoff at that time that dietary was late again in providing me with their order. Their order was made available to me on 3/22 at approx. 9:20 a.m. Ms. Dehoff stated that she would take care of that, that she would send out a memo.

I was trained by my supervisor, Mr. Terry Johnson, to complete the dietary order, including trips to Canton Cold Storage, before putting commodity away. Mr. Johnson has almost without fail waited until I return from Cold Storage to have me put the commodity and other deliveries away."

From all of this it appeared that the grievant's choice of filling the dietary commodity requisition was not proper in light of the fact that a large order of U.S. Government surplus needed to be placed into the frozen food bins on the premises. It was because of the choice the grievant made that he was deemed in violation of rule 1b and therefore in violation of the last chance agreement. That activity needs to be reviewed before a final decision in this matter may be rendered.

III. OPINION AND AWARD

A multitude of facts in this matter are not in conflict. The parties agreed that they were two major tasks on the day in question, namely the filling of the dietary requisition and the placement of the U.S. Government shipment into the food freezer and food cooler. The parties further agreed that the grievant was the subject of a last chance agreement at the time of the instant incident and that the grievant was terminated for failure to store the U.S. Government shipment before filling the dietary requisition or order.

A review of the facts revealed that the grievant had been working during the course of the day and that he kept moving during the entire shift doing his job. There is no claim by the employer that the grievant was loafing or that he was wasting time. Simply put, from all of the facts in the case, the only thought is that the grievant used bad judgment in not placing the delivery of frozen items into the food cooler and food freezer prior to completing the dietary requisition. The grievant testified, and it was in his statement, that he was trained by his supervisor, Mr. Terry Johnson, to complete the dietary order including trips to Canton cold storage before putting commodity away. Mr. Johnson in his statement which is reviewed hereinabove and who was not present for examination or cross-examination stated that the frozen food should be put away as soon as possible. The employer used that statement to mean that it should be worked on prior in time to any dietary requisition.

Evidence further revealed that there was no written rule as to prioritizing, the storing of the commodity on one hand or the filling of the dietary requisition on the other. There was no immediate supervisor on duty. The grievant's supervisor's supervisor was on duty and she believed that the grievant acted improperly. The deputy superintendent believed likewise and that was the reason for the discipline in this particular matter in the form of a termination as a result of a violation of the last chance agreement.

There is no doubt that the grievant knew that the shipment of frozen goods were present on the dock at the time that he was filling the dietary order and at the time he left for the Canton warehouse. He stated that he completed filling the dietary order because that was given to him prior in time (although late) rather than placing the commodity shipment into the freezer or cooler. He further stated that he did not want to disturb his involvement with the dietary requisition by putting it aside and then going to the commodity storage stocking.

The fact is that common sense would tell you to store frozen items prior in time than filling a requisition for

stores for the dietary requisition. The grievant on the other hand indicated and stated that he did not want to get the dietary requisition out late because that would mean overtime in the dietary department and that would cause him to be disciplined also. At least he believed that.

So the grievant found himself in a difficult position. No supervisor to tell him what to do, no superiors to tell him what to do because he said he paged them and couldn't find them and so he chose to continue the dietary requisition completion which included going to Canton cold storage rather than put away the frozen commodities on the incoming shipment.

The fact of the matter is the grievant did not cause loss of product but made a choice that was completely lacking in common sense. There is no doubt that the grievant should have completed the unpacking of the frozen product prior to going to Canton cold storage. That was essential. The fact that there was no proof of any thawing of frozen product does not lessen the misguided activity of the grievant. There is a theory that since there was "no harm there is no foul." I must say that that thought should remain a theory and should not be used as a practical method of determining right and wrong in disciplinary matters.

It is apparent from the grievant's act that the grievant who has been a storekeeper for ten years simply has no feel for his job activity. He chose to complete filling an order rather than store frozen product and that improper activity went on for a period of four or five hours. That commodity shipment was not in a cooler or freezer and could easily have softened. It is apparent that the grievant did not do first things first. The grievant could have stopped his work on the dietary requisition, gone to the commodity order and then found someone to report the fact that he might be somewhat late with the dietary requisition. There is no question that the grievant was guilty of the rules violation for which he was cited in his termination notice. There is no question that the rules were published, evenhandedly applied and reasonable. Certainly there was no evidence in the record to show otherwise.

The grievant had a responsible position. The grievant was experienced. The grievant acted without supervision. The grievant acted without obtaining any advice. The grievant's act could have caused serious loss of product. In other words, the grievant acted like a novice when in fact his choice should have been to store the frozen commodities.

It is apparent from that act that the grievant was in violation of rule 1a and 1b. That being the case the fact is that the grievant was in violation of the last chance agreement and therefore a proper candidate for termination of seniority.

In this particular matter the grievant was responsible for a vast amount of food stores at the facility. He was not a novice, yet, he acted without advice. He had to act with reasonable caution and he did not. He also knew he had to act with care because he was on a last chance agreement. He did not! He did not seek advice or did not inform anyone.

He indicated and stated that he attempted to obtain assistance or advice from a superior but could find none. I find that difficult to believe especially in light of the time cards that were placed into the record and especially in light of the vastness of the facility caring for some three hundred youths at a facility of the Ohio Department of Youth Services. Simply put, it is apparent that the grievant acted without care and that is disturbing and violative of the rules placed into the record in this particular case.

For all of these reasons the grievance must be denied.

IV. AWARD

Grievance denied.

MARVIN J. FELDMAN., Arbitrator

Made and entered
this 31st day
of July, 1996.