

ARBITRATION DECISION NO.:

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UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

State Library of Ohio

DATE OF ARBITRATION:

January 23, 1998

DATE OF DECISION:

February 5, 1998

GRIEVANT:

Patrick Gant

OCB GRIEVANCE NO.:

20 00 (97 06 27) 0086 01 06

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ARBITRATOR:

Harry Graham

FOR THE UNION:

Brenda Goheen, Staff Representative

FOR THE EMPLOYER:

Dennis R. Van Sickle

KEY WORDS:

Disparate Treatment

Just Cause

Removal

ARTICLES:

Article 24 – Discipline

§24.01 - Standard

FACTS:

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The grievant (who was not present during the proceedings) worked as a Delivery Worker for the State Library of Ohio. Management removed him effective June 25, 1997, when his driver's license was suspended, and he was unable to perform the duties of his position.

On March 23, 1997, the grievant was stopped and cited for running a stop sign. He failed to provide proof of financial responsibility as required by Ohio law. Consequently, he was informed on April 23, 1997, that his license would be suspended effective May 23, 1997, through August 21, 1997. The grievant did not tell his employer of the suspension until May 19, 1997. The Employer reviewed the situation and decided to remove the grievant.

EMPLOYER'S POSITION:

The Employer argued that there was just cause to remove the grievant because he was the central element of his position. The grievant is classified as a delivery worker, a position which requires driving. If he can not drive, he cannot perform his job duties. Possession of a driver's license is a requirement of the classification specification of a Delivery Worker, a qualification which the grievant does not possess

The Employer argued that this was not an isolated incident. The Employer learned during the course of its investigation that the grievant had a poor driving record prior to being hired as a delivery worker. The grievant had had his license suspended on prior occasions as well.

The Employer also argued that there is no disparate treatment in this case, anticipating the Union comparing this situation to that of Anthony Page. Mr. Page, also a delivery worker, lost his license when he received a DUI charge. Mr. Page, unlike the grievant, was forthright in informing his employer immediately rather than waiting until the eve of the suspension. Furthermore, Mr. Page's license was only suspended for a period of 3 weeks, as opposed to the three months which the grievant's license was suspended. This longer period of time puts a greater burden on the employer.

The Employer further denies that there was any religious discrimination or any other type of improper motive. The record clearly shows that the grievant was removed solely because he lost his license.

UNION'S POSITION:

The Union argued that just cause did not exist to remove the grievant. The situation involving Mr. Page demonstrates that disparate treatment exists in this case. Mr. Page was assigned to other duties within his classification for the duration of his license suspension. The grievant could have been treated in the same fashion.

The Union also argued religious discrimination. The grievant is a member of the Nation, of Islam. On occasion, the grievant uses the telephone in connection with his religious activities. The grievant's supervisor once inquired into the reason he was on the phone. Upon learning the reason, his supervisor noted the grievant's religion explained "it". That exclamation is indicative of the supervisor's deep seated religious prejudice.

Finally, the Union asserts that this case is similar to case no. 15 03 (93 07 2l) 0059 01 07, a case holding that removal is too severe a penalty for a grievant who has lost his/her driver's license when driving is a small part of his/her duties. That case involved a Driver's License Examiner who had lost her driver's license. The Union argues that this case should be treated in the same fashion.

ARBITRATOR'S OPINION:

The Arbitrator held that the grievant was removed for just cause. The assertion of the Union that this case is similar to that of the License Examiner is unfounded because unlike the License Examiner, driving is a central element of the grievant's position.

Based on the grievant's driving record, no reasonable person could conclude that the grievant should be employed to drive on behalf of the State of Ohio. The Arbitrator held that the grievant is a menace to himself and society.

The Arbitrator held that a person in the classification of Delivery Worker must have and maintain a driver's

license. The grievant was unable to do so, and therefore, he was justifiably removed.

There is no disparate treatment in this case, Mr. Page had his license suspended when he was cited for DUI. He telephoned his employer immediately, the grievant did not. Mr. Page received a three week suspension of his driver's license; the grievant's license was suspended for three months. Due to the dissimilarity of the two cases, no disparate treatment is present.

There is no religious discrimination in this case. There is simply a lack of evidence to support this defense. When the grievant's supervisor made a reference to the grievant's religion, it was in the context of the grievant spending time at his house of worship.

AWARD:

The Arbitrator denied the grievance in its entirety

TEXT OF THE OPINION:

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In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

The State of Ohio, State Library of Ohio

Case Number:

20 00(97 06 2.7)0086 01 06

Before: Harry, Graham

Appearances:

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For OCSEA/AFSCME Local 11:

Brenda Goheen Staff Representative
OCSEA/AFSCME Local 11
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For State Library of Ohio:
Dennis R. Van Sickle Labor Relations Administrator
State Library of Ohio

65 South Front St., Room 510
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Introduction: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. As is the custom of the parties it was convened at 9:00 am. This was known to all, including the Grievant, Patrick Gant. At the appointed hour the Grievant was not present. At the direction of the Arbitrator the start of the proceedings was delayed to 9:30 am to await the arrival of the Grievant. He did not appear. Inquiry was directed by the Arbitrator to the parties concerning whether or not the Grievant was aware of

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the time, date and location of the proceeding. In response, Brenda Goheen, Union Staff Representative, provided a chronology of her contacts and attempted contacts with the Grievant concerning scheduling of the hearing. It shows as follows:

January 7, 1998, telephone call, no answer no contact
 January 7, 1998, letter notifying Mr. Gant of hearing
 January 12, 1998, telephone call, no answer, message left on answering machine
 January 15, 1998, telephone call, no answer, message left on answering machine
 January 15, 1998, Return message from Grievant to Ms. Goheen
 January 16, 1998, conversation between Ms. Goheen and Grievant, Mr. Gant reminded of date of hearing
 January 20, 1998, conversation between Ms. Goheen and Grievant, Mr. Gant again reminded of date of hearing
 January 20, 1998, letter from Ms. Goheen to Grievant reminding him of date, time and place of hearing

The letters of January 7 and 20, 1998 were sent certified. Notwithstanding the efforts of the Union to ensure the presence of the Grievant at the hearing he did not arrive at any time during the proceedings. The Union sought a continuance in this case. It was denied by the Arbitrator. The Union and Employer were provided complete opportunity to present evidence and testimony. The record in this case was closed at the conclusion of oral argument on January 23, 1998.

Issue: At the hearing the parties agreed upon the issue in

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dispute between them. That issue is:

Did the Employer violate the 1997-2000 Union Contract when it terminated the Grievant, Patrick Gant on June 25, 1997? If so, what shall the remedy be?

Background: There is a great deal of agreement surrounding the events giving rise to this proceeding. The

Grievant, Patrick Gant, was initially employed by the State Library of Ohio on November 3, 1993. He was classified as an Audio Visual Repair Worker. on January 19, 1997 he assumed the position of Delivery Worker. The central task associated with this position is delivery on behalf of the Library. It is necessary that a person in the Delivery Worker position possess a valid Ohio Driver's License.

On March 23, 1997 the Grievant was stopped and cited for running a stop sign. In Ohio it is a requirement that licensed driver's carry a minimum level of auto insurance or demonstrate financial responsibility. When he was stopped, Mr. Gant could do neither. In due course the Grievant's driver's license was suspended. Notice this was to occur was provided the Grievant, on April 23, 1997. The suspension was effective May 23, 1997 and was to end on August 21, 1997. The Grievant did not promptly tell the Employer about these events. He informed the Library of his situation on May 19, 1997. Upon learning of these developments the Employer directed the Grievant to produce the relevant documentation ****3****

from the Ohio Bureau of Motor Vehicles. This was done on May 30, 1997. Mr. Gant was to produce the materials by June 2, 1997. He did not do so. He produced them on June 6, 1997 after a second request was made by the Employer. Upon reviewing the materials the Employer determined to discharge the Grievant. This was done on June 25, 1997.

A grievance protesting that discharge was filed. It was processed through the procedure of the parties without resolution and the agree it is properly before the Arbitrator for determination on its merits.

Position of the Employer: The State points out that as a Delivery Worker the bulk of Mr. Gant's activities involve driving. As a result of the suspension of his license the Grievant could not drive. He could not perform the central element of his position. Possession of a valid driver's license is a requirement of the Classification Specification for his position. Lacking it, the Grievant rendered himself unable to work. Hence, his discharge was proper the State insists.

In fact, the situation set forth above does not stand as an isolated incident. During the course of investigating this incident the Employer came to discover that the Grievant had a poor driving record prior to be hired as a Delivery Worker. Found in Joint Exhibit 4 is the driving record of the

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Grievant back to June, 1994. It is replete with citations involving speeding and failure to obey traffic signs. The Grievant has had his license repeatedly suspended. On occasion he has not carried proper auto insurance. When hired for the Delivery Worker position he did not inform the State of his driving record. Further, the State came to learn that within two weeks of appointment to the Delivery Worker position Mr. Gant's auto liability insurance lapsed due to his failure to pay the premium. He did not inform the Employer.

There is no disparate treatment involved in this situation. The State is aware the Union will make such an argument, pointing to the situation of Anthony Page, a coworker with the Grievant and like him, a Delivery Worker. Mr. Page was stopped for DUI and lost his license. He immediately telephoned his supervisor, Steven Updegraff. He called Mr. Updegraff at home to inform him of the situation. This is in stark contrast to the actions of Mr. Gant who concealed his driving record throughout his employment with the State. Further,

Mr. Page lost three weeks of work due to his license suspension. The Grievant lost three months. Loss of a driver for that period of time works a hardship on the operations of the Library.

During the course of the Grievance procedure the Grievant

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raised a claim of religious discrimination. That is hotly disputed by the State. The supervisor who allegedly discriminated against the Grievant is the person who offered him the position. No allegation of discrimination was raised at the pre disciplinary conference. None was raised to the Step 3 meeting in the grievance procedure. There is simply no evidence on the record that would prompt any conclusion that the State acted with an improper motive in this situation it insists. Rather, the Grievant lost his driver's license. He could not perform the duties for which he was hired. He concealed considerable evidence of a very poor driving history from the Employer. Under these circumstances the State insists the discharge of Mr. Gant was justified. It urges the grievance be denied in its entirety.

Position of the Union: The Union points to the situation involving Mr. Page and asserts there is an element of disparate treatment in this case. Mr. Page received a DUI. He was assigned to other duties within the classification for the duration of his license suspension. Mr. Gant could have been treated in the same fashion. He was not. To the events under review in this proceeding he had a good record. In the opinion of the Union, the discipline at issue in this proceeding is excessive and an example of disparate treatment.

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When Mr. Gant was offered the Delivery Worker position he had a terrible driving record. The State did not check it. There was no question asked nor formal inquiry made of Mr. Gant's driving record. It must not represent a significant factor in the State's thinking if inquiry is not made according to the Union. Hence, the Grievant should not be disciplined when his bad driving record became known and he was prohibited from driving according to the Union.

The Union asserts the State has engaged in religious discrimination in this situation. The Grievant is a member of the Nation of Islam. From time to time he was on the phone in connection with that denomination house of worship in Columbus, OH. Mr. Updegraff inquired into the reason for Mr. Gant's phone usage. Upon learning the reason he noted the Grievant's religion explained "it." That exclamation is indicative of Mr. Updegraff's deep seated religious prejudice in the Union's opinion.

In 1994 I decided Case No. 15 03 (93 07 21) 0059 01 07 involving this Union and the Department of Highway Safety. In that case a Driver's License Examiner had lost her driver's license. She was discharged. I modified the discharge, finding that actually driving was a small part of the position description for the Driver's License job. That is the case in this situation too the Union asserts.

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Consequently, the Union urges the grievance be sustained and the Grievant restored to employment with a make whole remedy.

Discussion: The assertion of the Union that aspects of this case are similar to those in the Highway Safety case cited above is rejected. Examination of the Position Description (Joint Ex. 4) shows that pick up and delivery of materials is the single most important element of the Delivery Worker classification. This is different from the situation involving the discharge of the Driver's License Examiner where the task of driving was not as significant. In this situation driving is the central element of the Grievant's position.

It cannot be disputed that Mr. Gant's driving record is wretched. The Bureau of Motor Vehicles Abstract, found in Joint Exhibit 4, is replete with one violation after another in different locales within Ohio. Mr. Gant is a menace to himself and society. Based on the record in evidence in this case no reasonable person could conclude he should be employed to drive on behalf of the State of Ohio. It is obvious why the Grievant did not inform the State of his prior citations and license suspensions he never would have been hired. To blame the State for failing to make proper inquiry is the proverbial blaming of the victim. In the circumstances of this dispute the Grievant was cited for

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running a stop sign in March, 1997. It came to light that he was in violation of the Ohio Financial Responsibility Act. He was driving without the minimum required insurance. He did not inform the Employer. On April 23, 1997 his license was suspended, effective May 23, 1997. Again, he informed no one. Only when his license suspension was imminent, on May 19, 1997, did he tell his supervisor, Mr. Updegraff, that he would not be able to legally drive in a few days. A person in the classification of Delivery Worker must have and maintain a driver's license. This is a status that Mr. Gant could not achieve.

There is no disparate treatment in this case. Anthony Page, Mr. Gant's co worker, was cited for DUI. He telephoned Mr. Updegraff at his home to tell him. Mr. Gant concealed his March 23, 1997 citation from the Employer. He concealed his entire terrible driving record. Mr. Page was forthright. Mr. Gant was not. Mr. Page's license was suspended for three weeks. That of Mr. Gant for three months. There is simply no element of disparate treatment between the two people.

The allegation of religious discrimination was initially raised by the Grievant at the third step of the grievance procedure. Now, the Union seeks to make it a central element in its defense of the Grievant. Evidence to support that defense is lacking. When reference was made to Mr. Gant's

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religion it was in the context of his spending time at his house of worship. Further, the account of Gina Hensley, a party to the conversation relied upon by the Union to support the religious discrimination allegation does not do so. She explicitly disclaimed that the Grievant's religious beliefs were an element of the conversation. Merely raising an allegation of religious discrimination does not make it so. There must be some evidence, in some direction, to support the charge. In this situation such evidence is conspicuously lacking.

Award: The grievance is denied.

Signed and dated this 5th day of February, 1998 at Solon, OH.

Harry Graham
Arbitrator

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