

ARBITRATION DECISION NO.:

682

UNION:

OCSEA, Local11, AFSCME, AFL-CIO

EMPLOYER:

Ohio Department of Rehabilitation and Corrections

DATE OF ARBITRATION:

DATE OF DECISION:

August 20, 1999

GRIEVANT:

Richard Parks

OCB GRIEVANCE NO.:

27 26 (97 01 17) 0762 01 03

ARBITRATOR:

Harry Graham

FOR THE UNION:

Bob Jones, Staff Rep.

FOR THE EMPLOYER:

Rhonda Bell, OCB

KEY WORDS:

Just Cause

Suspension

ARTICLES:

Article 24 – Discipline

§24.04 – Pre-Discipline

FACTS:

The grievant has been employed by the Department of Rehabilitation and Correction at the Warren Correctional Institution since 1983. On December 31, 1996, Management suspended him for ten days for failing to provide required documentation for leave of absence and for using profane language. Several events prompted the Employer to issue this discipline, and the facts surrounding the events are disputed by the parties.

On September 28, 1996, the grievant requested several hours of emergency leave due to the flooding of his residence. This leave was granted. A subsequent request for additional leave was made, but the disputed events surrounding the second request gave rise to the suspension.

On September 30, 1996, the grievant and his warden had a discussion. It is alleged that the grievant was agitated, and he used profanity towards the warden.

On October 1, 1996, the grievant called the institution indicating he would be late for the start of shift. His call-in was late. Upon arrival, a fellow officer informed him that he was to report to a work location other than his customary post. He initially refused, but eventually reported.

On October 7, 1996, the grievant called the institution to report that he could not work that day because he had to take his mother to the hospital. The Employer argued that it did not receive proper documentation of this event. This is denied by the grievant.

POSITION OF THE EMPLOYER:

The Employer argued that it had just cause to discipline the grievant. On September 28, 1996, the Employer requested documentation for the additional leave request. No documentation was provided. This is a violation of Rule 3E, failure to provide documentation of leave of absence when required.

On September 30, 1996, the grievant and his warden had a confrontation. The grievant was upset that an inmate had obtained his social security number. When informed by the warden that there was nothing he could do to rectify the situation, the grievant raised his voice, used profanity and knocked papers off the warden's desk. This is a violation of Rule 12 which prohibits making obscene statements.

On October 1, 1996, the grievant called in to inform the institution that his arrival would be tardy. This call in was itself tardy. When he arrived at the institution, he was instructed to report to a location other than his customary work location. He objected in a loud and profane manner. Furthermore, he did not comply with the directive until later in the day.

On October 7, 1996, the grievant telephoned the institution to inform it he would not report for work due to his mother's illness. No record of a request for leave is on file.

POSITION OF THE UNION:

The Union argued that just cause did not exist to discipline the grievant. Regarding the September 28, 1996 incident, the grievant attempted to obtain documentation from the Fire Department, but was unsuccessful. However, it was common knowledge that flooding was widespread in the area of his residence. Therefore, imposing discipline under these circumstances is unreasonable.

The conversation between the warden and the grievant did not transpire as the employer contends. Although a heated conversation did transpire, the grievant did not use profanity, and did not knock papers off the warden's desk.

The grievant did not use profanity on October 1, 1996 when he was instructed to report to the alternative work location. The directive was not given by a supervisor, and it was, therefore, improper. When the grievant reported to his customary work location, he telephoned his supervisor who instructed him to report to the alternative location. Upon receiving proper instruction, the grievant complied with the directive. Considering the circumstances, this incident should not constitute grounds for discipline.

On October 7, 1996, the grievant took his ill mother to the hospital where he remained for the duration of the day. He was taking care of his ill mother, and therefore, he was not acting improperly.

ARBITRATOR'S OPINION:

The Arbitrator held that the Employer had just cause to discipline the grievant. The grievant's behavior on October 1, 1996 was inappropriate and disproportionate. He used profane language toward a co worker and initially refused to comply with a directive to report to a different location. The Union's contentions regarding the authority of the employee who conveyed the directive are without merit.

The Employer's account of the September 30, 1996 conversation between the grievant and his warden were supported by two credible witnesses. This insubordinate behavior is inappropriate and grounds for discipline. The grievant's behavior on this date and October 1, 1996 constituted grounds for discipline. The grievant also had an active discipline (a three day suspension) in his file.

The Arbitrator ruled that the September 28 and October 7, 1996 incidents cannot be added to the list of offences against the grievant. This is because the employer had knowledge of the events giving rise to both absences, and did not dispute them.

AWARD:

The grievance is denied in its entirety.

TEXT OF THE OPINION:

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In the Matter of Arbitration	*	
	*	
Between	*	Case Number:
	*	
OCSEA/AFSCME Local 11	*	27-26-970117-0762-01-03-S
	*	
and	*	Before: Harry Graham
	*	
The State of Ohio, Department of	*	
Rehabilitation and Correction	*	

Appearances: For OCSEA/AFSCME Local 11:

Bob Jones
Field Representative
OCSEA/AFSCME Local 11
2269 Sunny Land Blvd.
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For State of Ohio:

Rhonda Bell

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106 North High St., 7th Floor
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Introduction: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. Post hearing statements were filed in this dispute. They were exchanged by the Arbitrator on August 9, 1998 and the record in this case was closed.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant, Richard Parks, disciplined for just cause? If not, what shall the remedy be?
1

Background: The parties do not agree upon the events prompting this proceeding. The areas of their disagreement will be set out more fully below. The little they agree upon may be succinctly presented. The Grievant, Richard Parks, has been employed by the Department since 1993. He is stationed at Warren Correctional Institution near Lebanon, OH. On December 31, 1996 he was issued a ten day suspension. There had occurred in the Fall, 1996 several incidents which prompted the Employer to issue this discipline. On September 28, 1996 the Grievant had called the institution to request several hours of emergency personal leave. His residence was being flooded. The leave was granted. A subsequent request was made for additional leave on that date. As is set forth below, a dispute exists over the circumstances of that leave request.

On September 30, 1996 the Grievant and the Deputy Warden of Operations at Warren, Lawrence Mack, had a discussion. The circumstances of that discussion are disputed. The Employer asserts the Grievant was agitated and used profanity towards the Deputy Warden. This is disputed by the Union.

On October 1, 1996 the Grievant again called in. He called at 6:15 am indicating he would be late for the start of his shift. His call in was late. Further, there was allegedly an incident involving the Grievant at the entrance

2

to the facility when he arrived. Upon his report to work, Officer Parks was directed to vehicle patrol. This was not his customary post. He initially refused to report to vehicle patrol. He reported to his normal work station. He subsequently reported to the patrol vehicle.

On October 7, 1996 the Grievant called in to notify the Employer he would not report to work that day. He was taking his Mother to the hospital with chest pain. The Employer claims it did not receive proper documentation of this event. This is denied by the Grievant. For these reasons the Employer issued the ten day suspension under review in this proceeding. That suspension was protested by the Grievant in the procedure of the parties. They agree it is properly before the Arbitrator for determination on its merits.
Position of the Employer: According to the State when Officer Parks initially requested emergency personal leave on September 28, 1998 it was granted without precondition. When he requested additional leave on that date his shift Captain directed the request be supported by documentation. No documentation was ever received. Hence, the leave was ultimately denied. For failing to document the leave as directed, the Grievant

was charged with violating Rule 3E, failure to provide documentation of leave of absence when required. ****3****

On September 30, 1996 the Grievant and Deputy Warden Lawrence Mack had a confrontation. The Grievant came to speak to the Deputy Warden about an inmate who had allegedly come into possession of his social security number. Deputy Warden Mack indicated there was nothing he could do about the situation. Thereupon the Grievant threw papers off the Deputy Warden's desk, raised his voice and punctuated his conversation with obscenities. This sort of behavior opens the Grievant to discipline and is a violation of Rule 12 dealing with making obscene statements the State contends.

The Grievant called in late on October 1, 1996. When he reported to the institution he was directed to the patrol vehicle, rather than his normal post. That directive was conveyed to him by a co worker, Officer Elmer Brewer. Upon receiving the directive from Officer Brewer the Grievant refused to report to the patrol vehicle. When he did so, he was loud and profane. Present in the area were women staff of the Department and contractor's personnel. The behavior manifested by the Grievant was inappropriate the State insists. Further, the Grievant did not report to the vehicle. He reported to his normal post. Only later in the workday did he carry out the directions given to him. These actions provide ample grounds for discipline and constitute violation of various rules. ****4****

At 4:56 am on the morning of October 7, 1996 the Grievant telephoned the institution to inform it he would not report. He was taking his Mother to the hospital. She was experiencing chest pain. No record of a request for leave is on file. No proper leave request was ever made. This too provides grounds for discipline in the State's view.

At the time of this discipline the Grievant had a live three day suspension. As the infractions in early Fall, 1996 were serious and occurred in proximity to one another the State urges the ten day suspension was appropriate. It seeks denial of the grievance in its entirety.

Position of the Union: The Union points out that when the Grievant called to request emergency personal leave on September 28, 1996 it was because his home was flooding. There is no question about that. The local Fire Department was on the scene. When the Grievant called in later in the day there was no mention by supervision of a need to supply documentation to support a request for additional time off on that date. When the Employer sought supporting documentation for the second request for leave made on September 28, 1996 the Grievant sought documentation from the Fire Department. It declined to provide him with anything. Even so, it was common knowledge in the area that flooding was widespread. Officer Parks' residence had flooded on several previous ****5****

occasions. To impose discipline under these circumstances is unreasonable the Union contends.

The Grievant met with Deputy Warden Mack on September 30, 1996 to discuss a Freedom of Information Act request made by an inmate. He had been unaware of it. He was upset to learn of it, the more so because the institution could do nothing to prevent the inmate from gaining information about him. Officer Parks

acknowledges that he and Deputy Warden Mack had a heated conversation. He denies central elements of the State's contentions about this incident. He did not use profanity towards the Deputy Warden. To the contrary, the Deputy Warden used profanity towards him. He did not throw papers off the Deputy Warden's desk.

When, on October 1, 1996 the Grievant called in he did so late. That is acknowledged by the Union. It is not acknowledged that he used profanity at the entryway. He was upset with Officer Brewer for relaying a changed assignment, to the patrol vehicle. In the Union's view, it is not the task of one co worker to provide direction to a co worker of equal rank. Brewer is not a supervisor. He had no authority to give an order or directive to the Grievant. If the Grievant was to be reassigned, it would have been proper for a supervisor to do so. Had that occurred, no problem would have developed. Upon his arrival at his regular post, 1A, the

6

Grievant contacted his supervisor. When told to report to the patrol vehicle by his supervisor the Grievant did so. No grounds for discipline exist in this scenario according to the Union.

When, on October 7, 1996 the Grievant was contacted by his sister to tell him of chest pain being experienced by their Mother he called in. He took his Mother to the hospital. He remained there all day. There is no question about that. To impose discipline for such a situation is simply unreasonable in the Union's view. The Grievant did not act improperly on October 7, 1996. He was taking care of his ill Mother. As that is the case, this incident should not be held against the Grievant. Viewed in their entirety, the Union contends the allegations used against the Grievant are either unfounded or unreasonable. As that is the case, it urges the Grievance be sustained in its entirety.

Discussion: Some of the incidents which prompted the State to administer discipline in this situation are minor in nature. This is the case for the incident of September 28, 1996. There is no question that the Grievant's home was flooded on that date. Testimony on the record is contradictory concerning whether or not Officer Parks was asked on September 28, 1996 to bring in evidence to support his request for additional leave on that date. Subsequently, when

7

put on notice that documentation was required, the Grievant contacted the Fire Department. It declined to provide documentation to him. No question has been raised concerning the bona fide nature of Officer Parks' absence on September 28, 1996. The State does not doubt that his residence was flooded. To add this event to the litany of charges used to support serious discipline against the Grievant when the State knew of, and does not doubt, the reason for Officer Parks' leave request is insupportable.

The same conclusion is reached with respect to the events of October 7, 1996. Mr. Parks contacted the institution and informed it he would not report as he was taking his Mother to the hospital. This occurred shortly before 5:00 am. He spent the day at the hospital with his Mother. Again, this is not doubted by the Employer. There is a troubling discrepancy between the Grievant's assertion he filed a request for leave form and the absence of any such form in the record. Nonetheless, there is no contest that the Grievant was tending to his Mother who was ill. Under these circumstances including this event among those used to support serious discipline is improper.

More significant is the incident of October 1, 1996. It is the case that the Grievant became loud and profane when he was informed by Officer Brewer to report to the patrol

8

vehicle rather than his normal post. The defense raised by the Union, that Officer Brewer was in no position to give directives to the Grievant, is unworthy of serious consideration. People who work in organizations receive information and directives from co-workers on a daily basis. Officer Brewer was merely passing on a directive to the Grievant from supervision. Officer Parks' reaction to the message received from Officer Brewer was inappropriate and disproportionate. In addition, his language was uttered in front of supervision and outside visitors to Warren. Upon his arrival at 1A the Grievant was directed again to report to the patrol vehicle. He initially refused to report, punctuating his refusal with obscenities. That he ultimately reported as directed does not exculpate his behavior on that day.

Substantial differences exist between the accounts provided concerning the events of September 30, 1996. On the one hand, Deputy Warden Mack testified that the Grievant was agitated and belligerent in conversation with him on that date. He also indicated that Officer Parks threw papers from Deputy Warden Mack's desk and used profanity towards administrative staff. This account is largely confirmed by Officers Sheets and Bost. It is denied by the Grievant. He is the sole person to differ with the accounts provided by

9

Deputy Warden Mack and Officers Sheets and Bost. The Union did not show that Messrs. Mack, Sheets or Bost harbored animosity towards the Grievant. It provided no reason to disbelieve their testimony.

The event of September 30, 1996 is very serious. The concerns raised by the Grievant with Deputy Warden Mack were bona fide. That does not serve to excuse his unprofessional and insubordinate behavior towards Deputy Warden Mack on that date. The behavior was well beyond anything that should be accepted or tolerated by this or any other employer. At the time of these incidents the Grievant had active discipline in his file. Even discounting the failure of the Grievant to provide evidence to support his leave requests, his behavior on September 30 and October 1, 1996 was of such significance as to support the action of the Employer in this situation.

Award: The grievance is denied.

Signed and dated this, 20th day of August, 1998 at Solon, OH.

Harry Graham
Arbitrator

10