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GRIEVANCE COORDINATOR

VOLUNTARY LABOR ARBITRATION TRIBUNAL

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In the Matter of Arbitration	*	
Between	*	
	*	OPINION AND AWARD
OHIO CIVIL SERVICE	*	
EMPLOYEES ASSOCIATION	*	Anna DuVal Smith, Arbitrator
LOCAL 11, AFSCME, AFL/CIO	*	
	*	Case No. 31-01-00309-08-01-06
and	*	
	*	
OHIO DEPARTMENT OF	*	Michael Smith, Grievant
TRANSPORTATION	*	Removal
	*	

* *

APPEARANCES

For the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO:

Butch Wylie, Staff Representative
Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

For the Ohio Department of Transportation:

Edward A. Flynn, Assistant Administrator, Labor Relations
Ohio Department of Transportation

Neni Valentine, Labor Relations Specialist
Ohio Office of Collective Bargaining

I. HEARING

A hearing on this matter was held at 9:15 a.m. on October 12, 2000, and continued on November 20 at the Ohio Department of Transportation District 1 Headquarters in Lima, Ohio, before Anna DuVal Smith, Arbitrator, who was mutually selected by the parties, pursuant to the procedures of their collective bargaining agreement. The parties stipulated the matter is properly before the Arbitrator and presented one issue on the merits, which is set forth below. They were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn or affirmed and excluded, and to argue their respective positions. Testifying for the Ohio Department of Transportation ("ODOT" or the "Employer") were Henry L. Horne, Labor Relations Officer; Ronald R. Shaffer, Hardin County Manager; Robert Dillhoff, Highway Maintenance Administrator; Norman Redick, Deputy District Director, ODOT District 1; Anthony J. Wobler, Personnel Administrator; and Paul M. Zimmerman, Bailiff and Probation Officer, Hardin County. Testifying for the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO (the "Union") were Alan Schneiberg, Ph.D.; Deborah K. Dible, the Grievant's aunt; Jack Draper, the Grievant's grandfather; Elizabeth Hauenstein, District Steward; Jerry Dicus, Hardin County Steward; and the Grievant, Michael D. Smith. A number of documents were entered into evidence: Joint Exhibits 1-31, Employer Exhibits 1-8 and Union Exhibits 1-2. The oral hearing was concluded at 2:15 p.m. on November 20. Written closing statements were timely filed and exchanged by the Arbitrator on December 15, 2000, whereupon the record was closed. This opinion and award is based solely on the record as described herein.

II. STATEMENT OF THE CASE

Before his removal on March 3, 2000, for unauthorized absence of three or more days and failure to maintain a valid driver's license and/or occupational driving privileges, the Grievant was a Highway Maintenance Worker 2 for the Ohio Department of Transportation. He had been so-employed since July 16, 1984. His job duties included operation of motorized vehicles such as dump trucks and tractors, and this required him to maintain a Class B Commercial Driver's License.

Since December 6, 1991, ODOT has had in place a policy (known as the "Melanie Lackland Policy") governing the treatment of workers who fail to maintain required driver's licenses and/or insurability because of off-the-job conduct. This policy states, in pertinent part,

> An employee may elect to use personal leave to cover periods of a suspended license with no occupational driving privileges or any possible incarceration. He or she may also use compensatory time or vacation unless there is an operational reason to deny it. An employee may not use sick leave to cover this period and leave without pay is not to be authorized. An employee without the necessary leave to cover his or her absence is in violation of ODOT Directive A-601, items 23 - Unauthorized absence in excess of thirty (30) minutes or 24 - Unauthorized absence for three (3) or more consecutive days. (Joint Ex. 20)

ODOT administrators testified that this policy has been consistently applied in District 1, the Grievant's district, since implementation.

The Grievant was, in fact, aware of the driver's license requirement and familiar with the consequences for failure to maintain it because in 1998 he took a 10-day suspension after an arrest and loss of license prevented him from coming to work, placing him in an unauthorized absence status for 13½ days. Successful completion of an EAP participation

agreement, however, commuted the 10-day suspension to one of five days, which he served in August of 1999. Under the EAP, the Grievant began seeing Alan Schneiberg, Ph.D., a clinical psychologist, who diagnosed him as suffering from chronic depression (300.4 DSM-IV), an episodic illness often triggered by stress, resulting in depressed mood, low energy and self-esteem, poor concentration, abnormal eating and sleeping patterns, etc.; and alcohol abuse (305.00 DSM-IV), which involves maladaptive use of alcohol, distinguishing it from alcohol dependency which involves physiological dependency. Dr. Schneiberg testified that the Grievant's depression in 1998 had probably lasted for more than two years. He further testified that one way people with depression try to cope is by self-medicating with alcohol, but that this is a maladaptive strategy. In any event, by the end of the ten sessions required by and provided for under the EAP, the Grievant was functioning better, so he left counseling with the advice to return should he need help in the future.

During the summer of 1999, the Grievant was working as a project inspector under ODOT's 1000-hour transfer program. The Grievant liked this assignment, but his grandfather (with whom he lived at the time) testified that he seemed withdrawn and uptight, so he advised the Grievant to return to his doctor for counseling and medication. The Grievant did not heed this advice. In mid-November, the Grievant was informed that he was to return to his regular duties at the Hardin County garage. He was unhappy about this, so he took vacation time the week of Thanksgiving. It was at the end of this week that the incident leading to his removal occurred.

On November 27, the Grievant was stopped by a trooper after leaving a bar where he had consumed a beer or two following a day of working on his farm. As before, he was asked

to submit to a breath alcohol test and refused. He was again arrested, incarcerated and later convicted, this time in Hardin County Municipal Court, for operating a motor vehicle under the influence of alcohol (DUI). Because this was his second refusal to submit to a breathalyzer, the Grievant was ineligible for occupational driving privileges for 90 days, or until February 26, 2000. Moreover, since he had been driving under suspension outside the limited privileges granted him by the Logan County court in the 1998 case, those privileges were revoked. Thus, even if Hardin County restored his privileges, he would have to deal with the court in Logan County, which had him under suspension until May 30, 2000.

The Grievant's plight first came to the attention of his supervisor, Ronald Shaffer, after the Grievant called off sick from the Hardin County Jail on November 29, 1999. When he called in ten minutes before the start of his shift the next day, Shaffer spoke to him. This time the Grievant reported that he had a problem with his license and needed to take vacation time. Shaffer explained that he could not authorize vacation on such short notice, but that there were other kinds of leave. Since the Grievant could not drive, Shaffer took Request-for-Leave forms to him on December 2. Shaffer testified that the Grievant appeared all right to him at the time, and that neither the Grievant nor his grandfather, with whom he lived, mentioned anything about a mental or other illness. In any event, the sick leave request for November 29 was disapproved since the Grievant was in jail; and the vacation request for November 30 was disapproved because of inadequate notice. But requests for vacation, compensatory time and personal leave through January 6 and part of January 7 were approved.[1] At this point the

[1]A request for leave without pay for January 3, however, was disapproved.

Grievant had exhausted his leave balances with the exception of sick leave, so he requested leave without pay through February 25, giving "no license till Feb. 26th" as the reason. Pursuant to the Melanie Lackland Policy, this leave was denied on January 11. Shaffer testified that he informed the Grievant when the unpaid leave was disapproved and ODOT also sent him a letter dated January 12 giving him notice that if he was without a valid driver's license or occupational driving privileges for an excess of 30 calendar days beginning January 7, he was subject to discipline up to and including removal. The Grievant's aunt, who was caring for him at the time, testified that the Grievant did not get this notice.

Some time in January, Henry Horne, Labor Relations Officer, asked Shaffer to call the Hardin County Municipal Court to find out what the Grievant's status was. By January 25, the Grievant had been convicted and the Logan County court had revoked his occupational driving privileges. The Grievant was therefore unable to drive legally at least until May 30 and so was unable to perform his job for the rest of the winter season, a critical time for ODOT because of its responsibility to clear highways of ice and snow. ODOT therefore instituted disciplinary action against the Grievant, sending him a pre-disciplinary conference notice on January 31 citing Rule 17A, unauthorized absence for three or more consecutive days, and Rule 27, failure to maintain a valid driver's license and/or occupational driving privileges, and stating the contemplated action to be removal.

Meanwhile, the Grievant's family was becoming more concerned about his condition. His grandfather and aunt testified that after his DUI the Grievant slept all the time, never left the house, was uncommunicative and inattentive to his personal hygiene. His grandfather kept after him to see his doctor until the Grievant finally lied and said he had an appointment for

January 14 to get his family off his back. The Grievant thought he had requested disability papers during this period but could not remember exactly when or whom he had asked, although he believed it was his former girlfriend, who also works for ODOT. Believing the Grievant had a doctor's appointment, his grandparents felt reassured, and so left for Florida in early January. His aunt offered to take him to his January 14 appointment, but the Grievant said it had been cancelled. Suspicious and concerned, his aunt saw to it that he did make an actual appointment, but the earliest he could get in was February 4. When his aunt took him to Dr. Schneiberg, the Grievant was monosyllabic and slow, had to be led by the arm, and was having thoughts of suicide. Dr. Schneiberg diagnosed him as now suffering from Major Depression (296.32 DSM-IV), which is characterized by significant emotional distress or interference in social, occupational or other areas of functioning. Dr. Schneiberg testified that the Grievant had a biochemical imbalance that impaired a number of his bodily functions, such as his ability to sleep effectively and to think well enough to take necessary actions. In Schneiberg's opinion, the Grievant had probably been in a major depression for a month or more and, because of the suicidal ideation, was not safe and needed immediate emergency hospitalization. He therefore referred the Grievant to a hospital and faxed a note to the Hardin Garage at the request of the Grievant's aunt. The Grievant was hospitalized from February 4 to February 7. Following his discharge, he was evaluated by United Behavioral Health, continued on antidepressants prescribed by Young Rhee, M.D., and returned to Dr. Schneiberg for counseling. He also applied for disability benefits.

When Union Steward Elizabeth Hauenstein received the pre-disciplinary hearing notice, she requested an extension based on the Grievant's confinement at St. Rita's Hospital. After a

second continuance for "unspecified medical reasons," the hearing was held on February 17. The Grievant attended, but does not remember much about it. His aunt also attended and was permitted to testify. By this time she still had not seen much improvement. According to the Hearing Officer's report, he was still very depressed and staying confined to his house. ODOT presented a return to work slip from the Grievant's psychiatrist for February 28 and the Grievant's aunt said that he was eligible to apply for occupational driving privileges on February 26. However, since the Grievant did not have a valid driver's license by the date of the hearing, the Hearing Officer found just cause for discipline. Termination followed on March 3, 2000. This action was grieved on March 7, but the grievance was denied at Step III. Being unresolved, the case came to arbitration where it presently resides, free of procedural defect, for final and binding decision.

While the grievance was pending, the Grievant's application for disability, which had initially been denied as untimely, was reconsidered. Although his claim was held to be timely filed, it was denied because he had not been on approved leave when he became disabled on February 4. On appeal, the Hearing Officer found that although the Grievant may have been treated for a year prior to his hospitalization, there was no medical evidence that he was disabled prior to February 4 nor any evidence that he was on a leave of absence for medical reasons during the period from January 8 through February 4. The Hearing Officer therefore recommended denial of benefits, which was affirmed by the Director of the Ohio Department of Administrative Services on August 18, 2000.

Meanwhile, the Grievant had improved enough to work again, so he sought and found other employment on June 26. On July 13, the Hardin County Municipal Court granted him

limited driving privileges. As of the date the grievance came to hearing, the Grievant was still taking his medication, seeing Dr. Schneiberg, and maintaining his sobriety.

III. STIPULATED ISSUE

Was the Grievant removed for just cause?
If not, what shall the remedy be?

IV. PERTINENT PROVISIONS OF THE CONTRACT

ARTICLE 24 - DISCIPLINE

24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause....

ARTICLE 29 - SICK LEAVE

29.04 - Sick Leave Policy

It is the policy of the State of Ohio to not unreasonably deny sick leave to employees when requested.

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I. Purpose

The purpose of this policy is to establish a consistent method of authorizing employee sick leave, defining inappropriate use of sick leave and outlining the discipline and corrective action for inappropriate use. The policy provides for the equitable treatment of employees without being arbitrary and capricious, while allowing management the ability to exercise its administrative discretion fairly and consistently.

II. Definition

A. Sick Leave: Absence granted per negotiated contract for medical reasons.

ARTICLE 31 - LEAVES OF ABSENCE

31.01 - Unpaid Leaves

The Employer shall grant unpaid leaves of absence to employees upon request for the following reasons:

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C. Extended Illness

For an extended illness up to one (1) year, if an employee has exhausted all other paid leave. The employee shall provide periodic, written verification by a medical doctor showing the diagnosis, prognosis and expected duration of the illness. Prior to requesting an extended illness leave, the employee shall inform the Employer in writing of the nature of the illness and estimated length of time needed for leave, with written verification by a medical doctor. If the Employer questions the employee's ability to perform his/her regularly assigned duties, the Employer may require a decision from an impartial medical doctor paid by the Employer as to determine the employee's ability to return to work. If the employee is determined to be physically capable to return to work, the employee may be terminated if he/she refused to return to work. In the event of conflicting medical opinion in Worker's Compensation Cases, the order of the Industrial Commission District Hearing Officer shall be controlling with regard to the employee's ability to return to work.

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31.05 - Application of the Family and Medical Leave Act

The Employer will comply with all provisions of the Family and Medical Leave Act. For any leave which qualifies under the FMLA, the employee may be required to exhaust all applicable paid leave prior to the approval of unpaid leave.

V. ARGUMENTS OF THE PARTIES

Argument of the Employer

The Employer submits that it had just cause for terminating the Grievant's employment. The Grievant did, in fact, have his license suspended and occupational driving privileges revoked at least until May 30, 2000. The Employer permitted him to use vacation, personal leave and compensatory time to cover his absence, but the consistently applied policy does not permit the use of sick leave. Moreover, when leave papers were delivered to him, he appeared normal and stated that he expected to have his license back soon. Also, his grandfather said nothing about his mental state. When the Grievant exhausted his leave in early January, he began to request leave without pay, indicating he would not be able to drive until February 26. Not until it investigated this matter did the Employer initiate the disciplinary process, and not until the Union requested that the pre-disciplinary hearing be postponed did the Employer learn that the Grievant was in the hospital.

The Grievant was well-aware of ODOT's policy regarding failure to maintain a valid driver's license or occupational driving privileges and the disciplinary consequences set forth in the grid because in 1998 he received a suspension when he lost his license for refusing a breath alcohol test.

In making its decision to proceed this time, the Employer considered the policy, the length of time the Grievant was without driving privileges, and the Grievant's position of

responsibility. It also considered the fact that he was unavailable during the snow and ice season, the most important time of the year for highway maintenance workers. In addition, it took into consideration the Grievant's past record which includes two EAP participations and two disciplinary actions including a last chance in 1991 and a 10-day suspension in 1998 which was later reduced to five days. This, the Employer points out, was for the exact same behavior as in 1999. When the Employer learned that the Grievant was in the hospital suffering from depression, Management again met to discuss its course of action. It considered that the actions resulting in the Grievant's absence were predicated on his failure to maintain a valid driver's license, that pursuant to policy his absence could not be approved and that even if he were on FMLA from the date of his hospitalization onward, he would still be subject to removal. It therefore proceeded with the continued disciplinary hearing and termination followed.

Regarding anticipated Union arguments, the Employer submits that even if the Grievant had been granted the leave under FMLA, he would have been in an unapproved leave status for more than 30 days no matter what date FMLA commenced. Had FMLA started February 4, the leave would have expired the last week of April, leaving most of January and all of May as unapproved leave. Had the Grievant qualified for FMLA earlier, that would have only added to the amount of unpaid leave.

Regarding extended illness leave under Section 31.01C, the Employer argues that since the Union presented no evidence on this point, its argument should not be considered. If, however, the Arbitrator chooses to consider it, the Union presented no evidence that the Grievant requested this leave, and Section 31.01 clearly requires that the employee request

such leave. Third, even if the Grievant had requested and obtained extended illness leave, or if he had been granted FMLA leave, he would still not have been shielded from disciplinary action for administrative misconduct. The same holds true for disability leave. The only evidence presented was the steward's request for information on February 11 to which ODOT responded. However, the Grievant's claim was denied as untimely. The Employer contends that the Grievant knew how to apply and file for an extension from his previous successful claims. In any event, disability benefits are interrupted by administrative disciplinary action, so his benefits would have stopped once he was terminated.

With respect to the Union's disparate treatment argument, the Employer says that both cases involved employees suffering from seizures who were provided reasonable accommodation under ADA. Neither employee was required to operate an ODOT vehicle or maintain a valid driver's license.

The Employer submits that the Union never argued that the policy was unreasonable and that there is no evidence it is so. Therefore, if the Arbitrator finds that the Grievant violated the policy and is subject to removal, she must find his termination reasonable. The Employer concludes that it made every reasonable effort to assist the Grievant. It acknowledges that he has worked hard to get his life together since his removal, but suggests that being terminated may have helped him do so. For all of these reasons, the Employer asks the Arbitrator to deny the grievance in its entirety.

Argument of the Union

The Union argues that it proved mental depression is an illness and that the Grievant was suffering from it for a long time, going back to 1998. He also had an episode of major

depression at the end of 1999. From the beginning, ODOT only focused on the Grievant's license problem, never asking if the Grievant was ill or if his absence might be an FMLA qualifying event. By ODOT's own document (Employer Ex. 8), the employee does not have to expressly assert his rights under FMLA or even mention FMLA leave. Even after ODOT knew that the Grievant was hospitalized, it failed to investigate the illness, focusing only on the license issue.

The Union contends that not only was the Grievant denied sick leave, but he should have been covered by Section 31.01C's extended illness provision. Therefore, he was denied this right as well. What is more, his November 30 vacation request should have been granted because both the Grievant and Union Steward Jerry Dicus testified that the practice at the time was to grant vacation, personal leave and compensatory time even when the employee called off after the start of the morning shift. In addition, ODOT erred in not providing disability papers when the Grievant requested them in early January.

The Union also argues a theory of disparate treatment. As testified by Steward Liz Hauenstein, ODOT allowed two other highway maintenance workers to be on disability for seizures even though both were medically barred from driving for more than 30 days. The Union asks why would ODOT suspend the Grievant's rights under the Contract if it knew disability could be interrupted at any time by discipline?

The Union asks that the grievance be granted and the Grievant made whole. For a remedy, it requests reinstatement with no loss of seniority, back pay and benefits from November 29, 1999, payment of medical expenses, removal of this disciplinary action from his

personnel file and any other contractual benefit he is entitled to. Further, it asks that the Arbitrator retain jurisdiction until the remedy is implemented.

VI. OPINION OF THE ARBITRATOR

It is undisputed that the Grievant was temporarily unqualified for his position by virtue of being without a valid driver's license or occupational driving privileges from November 29 until the summer of 2000. It is also evident that he was incapacitated by a major depression from sometime in the winter of 1999-2000 (February 4 at the latest) until mid-June. This case, therefore, requires me to determine which takes precedence when both lack of a driver's license and illness prevent the employee from performing his duties. If the first, the employee may be disciplined for loss of qualification, even though he was too ill to work for all or part of the period in which he was unqualified. If the second, he may be shielded from discipline by virtue of the illness that would prevent him from working even if he were not temporarily disqualified. In making this determination, it is necessary for me to reconcile employer policy (in particular the "Melanie Lackland Policy"), employee rights under the Collective Bargaining Agreement (including the right to just cause for discipline and the right to various forms of leave), and the Family and Medical Leave Act ("FMLA") as expressly incorporated into the Collective Bargaining Agreement at Section 31.05.

The Employer observes that the Union has not challenged the reasonableness of the policy concerning employees who lose their required driver's license or insurability. I would agree, but only up to a point. The problem with the policy is not in its application to employees who, but for the loss of their license, would be at work performing their usual

duties. These employees are generally permitted to use a variety of paid leaves to cover their absences during the period they are not able to drive, with the caveat that at least some forms of leave may be denied for operational reasons. In other words, an employee may be shielded from discipline even though it was his own behavior that lost him his driving privileges, as long as he reported the loss, he had leave balances to cover the absence and the absences does not put an undue burden on the employer. Under the policy, sick leave is excepted and unpaid leave is not to be authorized. The problem with this policy is that if, in addition to being without a license, the employee is also legitimately ill, the employer's refusal to grant sick leave denies the employee a contractual right. In other words, the employer's literal reading of its policy ("An employee may not use sick leave to cover this period") overlooks the fact that the employee's absence may have a medical basis *in addition* to a legal one. When both conditions are present simultaneously, the employer may not deny contractual sick leave benefits to an employee solely because the employee has no driver's license or occupational driving privilege. Doing so violates Article 29. What is more, if the Employer does not take disciplinary action against healthy employees for violating Rule 27 when their absence is covered by some form of approved leave, it may not take disciplinary action against legitimately ill employees for the same offense when their absence should be covered by approved sick or extended illness leave. Doing so would impermissibly discriminate against ill employees exercising their contractual rights. The facts as presented, including the treatment of the Grievant when he lost his license in 1998, are that ODOT does not, in fact, discipline employees for Rule 27 violations unless the employee is absent without approved leave because of it. In this sense, Rule 27 violators are treated differently from violators of other rules. For

example, there is no policy on record which gives refuge through approved leave to employees who traffic in drugs on ODOT property or, to use the Employer's example, shoot a co-worker. The Family and Medical Leave Act does permit non-discriminatory termination for substance abuse under certain conditions, but the Grievant was terminated for having his license under suspension (because he refused a breath alcohol test), not substance abuse, and the illness that incapacitated him was major depression with a history of substance abuse secondary.

Applying the principle of the primacy of contractual sick leave benefits to the instant case, the first time ODOT should have known of the Grievant's condition was when Dr. Schneiberg faxed the Hardin County garage on February 4 stating that the Grievant had severe depression requiring hospitalization and an inability to return to work for a month (Joint Ex. 24T). If this did not raise the issue of a FMLA-qualifying event (which it should have), then surely the Union steward's request for a pre-disciplinary hearing continuance which also mentioned hospitalization should have. ODOT had a third chance at the pre-disciplinary hearing. Having received this information, it was incumbent upon the Employer to make a determination as to whether the Grievant's illness qualified for FMLA or to inquire further. The Grievant may be excused from applying for FMLA or sick leave through the usual administrative procedure because, for one, he had been told in November that sick leave was not allowed under the policy for loss of license. Secondly, when he did become too ill to work, his condition was such that he was too sick to care for himself. Third, other responsible parties (his doctor, his aunt and his Union representative) provided notice.

There is no question in my mind that the major depression suffered by the Grievant was a "serious health condition" under FMLA. On February 4, he was hospitalized for it for three

days and was continually treated for it by both Dr. Schneiberg and Dr. Rhee thereafter throughout this incapacity to work. The Grievant did not just have "the blues." He was seriously, life-threateningly ill. The Employer argues that the Grievant became depressed only because he knew he was about to lose his job through his own misdeeds. This is certainly a possibility. But even if this were a relevant consideration, an alternate plausible precipitating stressor could have been loss of the project inspector's job and imminent return to the garage. Not only is it difficult for the Arbitrator to determine the precipitating factor in the Grievant's illness, it is also difficult to pinpoint the date on which he became ill. Surely he was sick enough by early January to cause his aunt to insist he see his doctor and Dr. Schneiberg thought he had been in the major depressive episode for a month or more prior to February 4. From this I conclude that the Grievant was eligible for sick leave when he ran out of his other leave on January 7. Twelve weeks of FMLA leave, against which the Grievant's sick leave balance of 53.8 hours would apply, should have been granted retroactively to that date. Unpaid FMLA leave would thus not have been exhausted until the end of March, well after the Employer took action to remove him. The Grievant may have also qualified for extended illness leave for up to a year under Section 31.01 had he applied for it.[2] However, since the Grievant was laboring under the misinformation that loss of driving privileges per se disqualified him from sick leave and since his requests for unpaid leave were already denied, ODOT had preemptively closed the door on that option for him as well.

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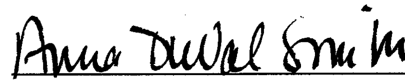
[2]Although the Contract makes granting of unpaid extended illness leave mandatory, the Employer is permitted to challenge the employee's claim of unfitness for duty.

In summary, because the Employer ignored the Grievant's legitimate illness when it came to its attention, it denied the Grievant contractual rights to approved medical leave and thus removed him without just cause.

VII. AWARD

The grievance is granted. The Grievant is to be reinstated to his former position forthwith. The Employer may require him to supply proof that he possesses a valid driver's license or occupational driving privileges and proof that he is medically fit for duty. The period of January 7 through June 25, 2000, will be designated approved unpaid extended illness leave except for 3.7 hours of January 7 previously approved as personal leave and vacation. The Grievant is awarded back pay from June 26 forward less normal deductions including earnings he may have had in the interim on account of his unjust dismissal, and made whole for lost seniority and benefits. The Employer may require reasonable proof of interim earnings. The Arbitrator retains jurisdiction for a period of sixty (60) days on the sole issue of remedy.



Anna DuVal Smith, Ph.D.
Arbitrator

Cuyahoga County, Ohio
February 10, 2001

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