

Disclaimer: Please note that this “arbitration decision” was a settlement. As a settlement, it does not have value as precedent. This decision was inadvertently given a number, and is included for the sake of continuity, and for informational purposes only.

ARBITRATION DECISION NO.:

2

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Adjutant General

DATE OF ARBITRATION:

January 30, 1987

DATE OF DECISION:

January 31, 1987

GRIEVANT:

Jeanne Favand

OCB GRIEVANCE NO.:

G-86-0371

ARBITRATOR:

Nicholas Duda, Jr.

FOR THE UNION:

Daniel S. Smith

FOR THE EMPLOYER:

Rachel L. Belenker

KEY WORDS:

Double Jeopardy

ARTICLES:

CASE SYNOPSIS:

Grievant was employed as a Clerical Specialist in the Offices of the Adjutant General of the State of Ohio. Grievant was dismissed in August of 1986 as a result of excessive tardiness.

Management based her dismissal upon a consideration of her attendance record in the prior

two years and its attempt to encourage improvement by progressive discipline. The Union grieved the removal, citing a number of grounds.

The Arbitration of this dispute was the first arbitration between the department and the Union under the new labor agreement. After the State's direct presentation the arbitrator mediated with the concurrence of the parties. An agreement was drawn up by the parties, which was approved by the arbitrator as the decision and award of the Arbitrator, and is final and binding on all parties.

The agreement provides that:

1. Grievant's removal was converted into an extended suspension.
2. Grievant shall return to work on February 15 1987.
3. Grievant shall be paid a gross amount of \$3,179.00; and
4. Grievant's continuous service shall be reinstated without any break for the period of absence.

Comments: This case was won due to the principal of double jeopardy. Grievant had a history of habitual tardiness. Based upon this problem Grievant was issued a three day suspension. Prior to the imposition of the suspension Grievant was tardy on two occasions. Due to the two instances of pre-disciplinary tardiness Grievant was dismissed. The principal of double jeopardy dictates that management may only discipline for acts which have occurred after the last instance of discipline. Double jeopardy is applicable to allow for the effectiveness of the disciplinary process. An employee must have the right to have discipline take effect before being disciplined a second time.

TEXT OF THE SETTLEMENT:

**IN THE MATTER OF ARBITRATION
UNDER THE LABOR AGREEMENT
EFFECTIVE JULY 1, 1986**

Between:

**State of Ohio
THE STATE**

-and

**Ohio Civil Service
Employees Association,
Local 11, A.F.S.C.M.E.,
AFL-CIO
THE UNION**

OCB G-86-371

ND 475

Grievant:
Jeanne Favand

Before:
NICHOLAS DUDA JR.,
ARBITRATOR

OPINION AND AWARD

January 30, 1987

CASE DATA

SUBJECT:

Removal.

APPEARANCES

FOR THE UNION

Daniel S. Smith, General Counsel
Jeanne Favand, Grievant

FOR THE STATE

Rachel L. Belenker, Assistant Attorney General, Presenting the Case
Lieutenant Colonel Neil J. Moore, Labor Relations Officer, Co-Counsel
Colonel Robert Green, Division Chief, Military Personnel Office
Lieutenant Colonel James M. Chubb, Military Personnel Management Officer

July 1, 1986 was the effective date of the first Labor Agreement between the Union and the State of Ohio for a number of state units, including the Adjutant General Department. Grievant, an employee of that department, was tardy on August 18, 1986. After considering her attendance record in the prior two years and the results of its attempts to encourage improvement by progressive discipline, the Department discharged her. The Union grieved the removal, citing a number of grounds.

The arbitration of this dispute, held on January 29, 1987, five months after her discharge, was the first arbitration between the Department and the Union under the new Labor Agreement. After the State's direct presentation the Arbitrator mediated with the concurrence of the parties. The dispute was resolved by the parties. A copy of the Memorandum of Understanding stating the terms of the resolution is attached.

All of the signatories to that agreement requested that the Agreement be approved by the Arbitrator as the decision and award of the Arbitrator and therefore final and binding on the parties. The Arbitrator grants those requests. Accordingly the signed Memorandum of Understanding is the decision and award for this case.

Nicholas Duda, Jr. Arbitrator

**MEMORANDUM OF UNDERSTANDING
TO RESOLVE GRIEVANCE NUMBER G-86-371**

Adjutant General (04-86); Arbitrator Number ND 475

The Parties and Grievant agree to settle the subject grievance and to give grievant a last opportunity to fulfill her attendance obligations without precedent or prejudice to any situation involving other employees, solely on the following basis:

1. Grievant's removal is converted into an extended suspension;
2. She will be returned to work on February 15, 1987;
3. She will be paid a gross amount of \$3,179.00 dollars;
4. Effective immediately her continuous service is reinstated without any break for the period of absence.

Agreed:

For the Union

/s/ D. S. Smith

For Adjutant General and Ohio:

/s/ Neil J. Moore

/s/ Rachel L. Belenker

/s/ Jeanne M. Favand

Grievant

Approved by the Arbitrator as final and binding arbitration award for the subject of arbitration.

/s/ Nicholas Duda, Jr.

Arbitrator

Date: 31 January 1987