

ARBITRATION DECISION NO.:

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UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Industrial Relations

DATE OF ARBITRATION:

November 23, 1987

DATE OF DECISION:

November 30, 1987

GRIEVANT:

William Strahl

OCB GRIEVANCE NO.:

G-87-0940

ARBITRATOR:

Harry Graham

FOR THE UNION:

John Porter

FOR THE EMPLOYER:

David Norris

KEY WORDS:

Suspension

Just Cause

Call-in Procedure

Pursuant To 2902

ARTICLES:

Article 24 - Discipline

§24.01-Standard

Article 29 - Sick Leave

§29.02-Notification

FACTS:

Grievant was employed by the Department of Industrial Relations for over six years. He has a well-documented history of mental illness due to biological causes. One of the characteristics of this disease is depression, accompanied by a tendency to sleep a great deal. During a

seventeen-day period Grievant was ill with a severe upper respiratory condition characterized as borderline pneumonia. Each day, with only one exception, the Grievant telephoned his office to report that he would not be at work. On every occasion but one, the telephone call was made before 8:30 a.m. One day during this period the Grievant did not call-in until 9:30 a.m. As a result of this late call-in, the Employer administered a two (2) day suspension without pay. A grievance protesting the suspension was filed.

EMPLOYER'S POSITION:

The Employer contended that Grievant was well aware of the requirement that if he wanted to use a sick day he must call-in within one-half hour of his scheduled starting time. No reason existed to make an exception to this call-in procedure.

UNION'S POSITION:

The Union contended that Article 29, Section 29.02 of the Agreement provided that employees must call-in no later than one-half hour from their starting time "unless unusual circumstances preclude this notification." Those "unusual circumstances" were present in this case due to the Grievant's physical and mental condition. The Grievant exhibited a conscientious attitude toward his work by the consistent manner in which he notified his Employer of his intended absence, with the exception of the day in question.

ARBITRATOR'S OPINION:

The Arbitrator sustained the grievance, holding that a two (2) day suspension seemed overly severe under the circumstances of this case. No doubt existed that the Grievant had a biologically induced mental illness or that he had a severe upper respiratory infection during the seventeen day period.

Appended to the call-in requirement of Section 29.02 is the modification "unless circumstances preclude this notification." This modification indicated the parties to the Agreement were aware that circumstances could arise where exceptions to the call-in rule might be necessary. That was the situation in this case. The circumstances of this case and the Grievant's physical and mental condition served to excuse the Grievant's failure to call-in in a timely fashion. The levying of a two (2) day suspension was of such magnitude as to be impermissible.

AWARD:

The Arbitrator sustained the grievance, awarded the Grievant two days back pay, and required all record of this incident to be removed from his personnel record.

TEXT OF THE OPINION:

In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

**The State of Ohio,
Department of Industrial Relations**

Case No.:

G87-0940

Grievant:

William Strahl

Appearances:

For OCSEA/AFSCME Local 11:

John Porter

Associate General Counsel

OCSEA/AFSCME Local 11

995 Goodale Blvd.

Columbus, OH. 43212

For The State of Ohio:

David Norris

Office of Collective Bargaining

65 East State St.

Columbus, OH. 43215

Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter on November 23, 1987 before Harry Graham under the expedited arbitration procedure of the parties. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of oral argument.

Issue:

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

Was the Grievant suspended for just cause and if not, what shall the remedy be?

Facts:

There is no controversy concerning the facts that give rise to this proceeding. The Grievant, William Strahl, was hired as a Mine Safety Inspector on January 11, 1981. During the first six years of his employment with the State he compiled a good work record.

Commencing July 14, 1986 Warren Ellis became Director of the Ohio Bureau of Mines. As Director, he is responsible for supervision of Mine Safety Inspectors, including the Grievant.

The Grievant has a well documented history of mental illness. His illness is biological and is known as Bipolar Disease. That condition is characterized by wide fluctuations in mood. These range from extreme depression to euphoria. He has been undergoing treatment for this condition. While Bipolar Disease cannot be cured, it can be controlled with medication.

In the period February 2, 1987 through February 18, 1987 the Grievant was ill with a severe upper respiratory condition characterized as borderline pneumonia. Each day with one exception he telephoned the Columbus office of the Division of Mines to report he would not be at work. On every occasion but one the telephone call was made before 8:30AM. The Agreement of the parties at Article 29, Section 29.02, provides that when an employee is sick he must notify the relevant authority no later than one-half (1/2) hour after his starting time. That requirement was also communicated to employees of the Division of Mines by inter-office communication on August 25, 1986 and November 25, 1986. The Grievant was aware of the call-in requirement.

On February 11, 1987, during the course of his illness, the Grievant did not call-in until 9:30AM. As a result of this late call-in the Employer administered a two day suspension without pay.

A grievance protesting the two day suspension was filed. It was processed through the procedures of the parties. As no resolution was had it is before the Arbitrator for determination on its merits.

Position of the Employer:

The State points out that both the Agreement and the various directives issued to employees of the Division of Mines specify that employees who intend to use a sick day must call-in within one-half hour of their scheduled starting time. The Grievant was aware of this rule. He managed to comply with it regularly with the one exception under scrutiny in this proceeding. No reason exists to make an exception to the call-in procedure for his failure to call-in on February 11, 1987.

The Employer does not question the medical basis for the absence in February, 1987. No discipline was imposed for his time off. The record indicates that the Grievant could have called in properly. His failure to do so subjects him to discipline in the State's opinion.

This is especially true in Strahl's case according to the Employer. The Grievant had accumulated both oral and written reprimands for his failure to call-in properly. He was well aware of the call-in requirement and the record indicates he had made efforts to comply with it. As it is essential for operation of the Division of Mines that it be aware of those Inspectors who will not be at work the discipline under scrutiny in this proceeding is proper according to the State. Consequently, it urges that the two day suspension administered to William Strahl be upheld.

Position of the Union:

The Union points out that the Grievant's mental condition involves periods of depression and exhilaration. When depressed, people with Bipolar Disease tend to sleep a great deal. This must be considered when evaluating the Grievant's failure to call-in on February 11, 1987.

No question exists concerning Strahl's mental illness or his respiratory condition. Recognizing the existence of those physical infirmities attention must be directed to the full text of Article 29, Section 29.02 of the Agreement. That section of the Agreement provides that employees must call-in no later than one-half (1/2) hour from their starting time "unless unusual circumstances preclude this notification." Those "unusual circumstances" are present in this case. They are Strahl's physical and mental condition. Given those physical and mental illnesses and the fact that the Grievant properly called in from February 2 through February 18, 1987, the two day suspension is improper the Union insists.

The Grievant recognized his obligation to call-in promptly. Upon awakening on February 11, 1987 he immediately telephoned the office to report he would not be in to work. His conscientious attitude towards his work is demonstrated by the consistent record of calling in he compiled during

February, 1987 in the Union's view. His one failure to do so falls within the exception provided for in the Agreement given his physical and mental condition at the time. As this is the case, the Union seeks removal of the two day suspension from Strahl's work record and payment of two day's back pay.

Discussion:

A two day suspension seems overly severe given the circumstances of this case. No doubt exists but that the Grievant has a biologically induced mental illness. Similarly, no doubt exists that he had a severe upper respiratory infection in February, 1987. He called-in each day of his absence in timely fashion with the exception of February 11, 1987. Given the depression associated with Bipolar Disease and the sleeping attendant upon such depression, administration of a two day suspension is of such magnitude as to be considered impermissible.

The parties contemplated that exceptions could occur in the call-in obligation. This is indicated in the Agreement at Article 29, Section 29.02. Appended to the call-in requirement is the modification "unless circumstances preclude this notification." That phrase indicates that the parties were aware that in some situations exceptions to the call-in rule were necessary. This is such a situation. The circumstances of this case serve to excuse the Grievant's failure to call-in in timely fashion. William Strahl's mental illness and respiratory infection in February, 1987 require implementation of the flexibility in the call-in procedure negotiated by the parties in their Agreement.

Award:

Based upon the preceding discussion the grievance must be SUSTAINED. The Grievant is to be awarded two days back pay. All record of this incident is to be expunged from his personnel record.

Signed and dated this 30th day of November, 1987 at Chagrin Falls, OH.

Harry Graham
Arbitrator