

ARBITRATION DECISION NO.:

79

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction, Ohio
State Reformatory

DATE OF ARBITRATION:

December 21, 1987

DATE OF DECISION:

December 23, 1987

GRIEVANT:

William Richie

OCB GRIEVANCE NO.:

OSR-M-261

ARBITRATOR:

Nicholas Duda, Jr.

FOR THE UNION:

Barbara Persinger

FOR THE EMPLOYER:

Richard Hall

KEY WORDS:

Suspension
Just Cause
Progressive Discipline
Sexual Harassment

ARTICLES:

Article 24 - Discipline
 §24.01-Standard
 §24.02-Progressive
Discipline

FACTS:

Grievant had been employed as a Correction Farm Supervisor at the Ohio State Reformatory

prior to the five-day suspension for alleged sexual harassment of a co-worker.

ARBITRATOR'S OPINION:

The Arbitrator held that the Grievant's verbal and physical actions clearly fell within the realm of sexual harassment and that even without formal, written, published rules, the Grievant knew or should have known that Grievant's conduct was improper in the absence of permission. The Arbitrator discounted the several excuses raised by the Grievant as reasons for the behavior noting that the co-worker very quickly "disabused" the Grievant of any ambiguity by firmly and clearly rebuffing Grievant's flirtations. The Arbitrator found there was just cause for the discipline imposed in view of the seriousness and number of separate incidents of which the Grievant was found to be guilty.

AWARD:

The grievance is denied.

TEXT OF THE OPINION:

**IN THE MATTER OF ARBITRATION
UNDER THE 1986 CONTRACT**

Between:

**State of Ohio
Department of Rehabilitation
and Correction
THE EMPLOYER**

-and-

**The Ohio Civil Service
Employees Association,
Local No. 11, AFSCME,
AFL-CIO
THE UNION**

**Union Grievance No.
OSR-M-261**

ND 566

**Grievant:
William Richie**

**Hearing Date:
December 21, 1987**

Before:

NICHOLAS DUDA, JR.,
ARBITRATOR

OPINION AND AWARD:
December 23, 1987

CASE DATA

SUBJECT

Five day suspension for alleged "sexual harassment".

APPEARANCES

FOR THE UNION

Barbara Persinger, Staff Representative, Presenting the Case
Dennis J. Cowell, Local 7010, Chief Steward
William C. Richie, Correction Farm Supervisor, Grievant

FOR THE EMPLOYER

Richard Hall, Labor Relations Specialist, Presenting the Case
Felicia Bernardini, Labor Relations Specialist, Co-Counsel
Delores Taylor, Correction Officer
Lonnie Atichson, Assistant to the Superintendent

THE ISSUE

Whether there was just cause to discipline Grievant for sexual harassment and if so, whether the five day suspension violated principles of progressive discipline or was excessive/unreasonable.

THE FACTS

Grievant had been employed as a Correction Farm Supervisor for about thirteen years prior to his suspension in November, 1986 for alleged sexual harassment of Ms. T_.

For several months their duties brought them into proximity with each other. According to Grievant, Ms. T_ was "friendly" initially. Grievant regarded her friendliness as indicating a receptivity to amorous activity and pursued it by various verbal and physical action. Over a period of time his verbal and physical actions toward Ms. T_ were clearly sexual and threatening to Ms. T_ who did not desire and attempted to discourage them. Grievant persisted and went even further.

EVALUATION

Grievant's verbal and physical actions on August 18, 1986 and on several other days clearly fell within the area of sexual harassment. The specifics need not be discussed any further.

Even without formal, written, published rules Grievant knew or should have known that his

conduct was improper in the absence of permission. Actually he and all other employees had been notified of the Employer's rules prohibiting acts of sexual harassment.

Grievant admits having committed some, although not all of the improper acts reported by Ms. T_. However he asks to be excused for several reasons which will be considered below.

First Grievant says that Ms. T_ "encouraged" him by talking "sweet", that she was friendly so he decided to pursue the possibilities. Construing his claims in the light most favorable to Grievant, Ms. T's "friendliness" was ambiguous. Possibly she was encouraging greater intimacy but maybe she was "friendly" and nothing more. To engage on the job in intimacy efforts was immediately a violation of his duties to the Employer. Even more, if his efforts proved to be unwelcome, he was guilty of a greater offense -- sexual harassment. Making his "moves" put him at risk.

Ms. T_ very quickly disabused Grievant of any ambiguity by firmly and clearly rebuffing his flirtations. Despite the rejection he continued and intensified his misconduct; it was inexcused.

Grievant says that an officer to whom Ms. T_ reported Grievant's misconduct told Ms. T_, "Honey, I don't blame him". It's not clear that the Grievant was aware of the officer's comment before the suspension. That conduct by another person was a separate and distinct act of sexual harassment, although of a much lesser degree than those committed by Grievant and certainly could not mislead Grievant to believe his conduct was permissible. (It's noteworthy that this same officer was later discharged for sexual harassment).

The Arbitrator finds that there was just cause for discipline as required by Section 24.01. Furthermore in view of the seriousness and number of separate incidents of which Grievant was guilty the issuance of a five day suspension was not a violation of Section 24.02 nor was it arbitrary or unreasonable.

AWARD

The grievance is denied.

Nicholas Duda, Jr., Arbitrator
December 23, 1987