

ARBITRATION DECISION NO.:

95

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correctional, Lima
Correctional Institute

DATE OF ARBITRATION:

DATE OF DECISION:

GRIEVANT:

Rolando Gonzales

OCB GRIEVANCE NO.:

G-87-1800

ARBITRATOR:

Andrew J. Love

FOR THE UNION:

Bob Rowland

FOR THE EMPLOYER:

Ed Morales

KEY WORDS:

Just Cause
Absent Without Leave
Mitigating Circumstances

ARTICLES:

Article 24 - Discipline
§24.01-Standard

FACTS:

Grievant was a Correction Officer at Lima Correctional Institute. Grievant was granted leave without pay to visit his sister who was ill in Peru. While in Peru, Grievant became ill with Typhoid Fever. Due to illness and subsequent delays caused by flight availability, Grievant was three (3) days late returning to work. Grievant was subsequently suspended for ten (10) days, but the suspension was then reduced to five (5) days.

MANAGEMENT’S POSITION:

Grievant failed to report for work for at least three consecutive days, a clear violation of work rules.

UNION’S POSITION:

The Employer should have considered all the circumstances involved; namely, the illness, the long distance involved, and the difficulty of international air travel.

ARBITRATOR’S OPINION:

Grievant did fail to report to work for at least three (3) consecutive days. Grievant rested in Peru in accordance with a Physician's instructions. Grievant attempted to return on time but was unable to do so. Had Grievant not recuperated fully, he would not have been able to function properly. Grievant's actions were not unreasonable. The Employer did not have just cause to suspend Grievant for five (5) days.

AWARD:

Grievance granted. Suspension expunged. Five (5) days backpay.

TEXT OF THE OPINION:

ARBITRATION

**RE: Rolando Gonzales
Grievance**

GRIEVANCE NO.:
G87-1800

FOR EMPLOYER:
Ed Morales

FOR GRIEVANT:
Bob Rowland

DECISION AND AWARD

The issues presented in this hearing are whether the Grievant was suspended for just cause, and, if not, what the remedy should be.

Exhibits admitted into evidence are as follows:

Joint Exhibit 1 - the Collective Bargaining Agreement between the State of Ohio and OCSEA-AFSCME.

Joint Exhibit 2 - Grievance trail.

Joint Exhibit 3 - Disciplinary trail.

Joint Exhibit 4 - Discipline Policy.

Joint Exhibit 5 - Grievant's doctor's statement with translation.

Employer Exhibit 1 - Call-In Log.

Employer Exhibit 2 - Grievant's original request for leave.

Employer Exhibit 3 - Grievant's request for leave dated January 30, 1987.

Employer Exhibit 4 - Grievant's attendance record for January, 1987.

Union Exhibit 1 - Certificate showing illness of Grievant.

Union Exhibit 2 - Letter from Air Panama.

Union Exhibit 3 - Affidavit from Officer Lewis Hiller dated October 5, 1987.

Union Exhibit 4 - Affidavit.

Union Exhibit 5 - Affidavit.

This matter comes on for hearing in respect to action taken by Lima Correctional Institution (LCI) alleging that the Grievant was absent without leave for eight (8) consecutive working days in January, 1987. On January 27, 1987, the Grievant was found to be in violation of DR and C Administrative Rule 1C - being absent for a period of three (3) consecutive working days without notification. The Grievant was subsequently suspended for a period of five (5) days.

The facts are as follows:

The Grievant, a Correction Officer at LCI, requested sick leave to visit his sister who was ill and residing in Grievant's native country of Peru. Because sick leave is not available for an employee unless the employee is ill or unless an immediate member of his family is ill, such leave was denied. However, the Grievant was granted leave without pay and any other leave, such as vacation time, available to him. The Grievant was required to return on January 6, 1987 (see Employer Exhibit 2).

Prior to his return date, the Grievant became ill with what was later to be determined as Typhoid Fever. He then called his wife in Lima, Ohio, who advised Glenda Harris, a Personnel Officer at LCI, that the Grievant was ill and would not be able to return from Peru until January 15, 1987.

The Grievant did not return to work on January 15, 1987. This was due to the recommendation of the Grievant's physician in Peru (Joint Exhibit 5) who, on January 5, 1987, recommended physical rest for two (2) weeks from that date. The Grievant did not notify his wife of the recommendation for additional rest, because he did not want her to fear for his health. He did not advise his wife that he had Typhoid Fever.

The Grievant subsequently attempted to return to Lima, Ohio in order to return to work. However, because his flight from Peru was based on stand-by status, he could not return until there was an available seat. See Union Exhibit 2.

When the Grievant returned on January 25, his wife handed him a notice from LCI of a pre-disciplinary hearing on January 27, 1987. On the morning of January 26, 1987, the Grievant called Elaine Mayberry as to the nature of the notice he received from her. On January 27, 1987, the Grievant was suspended for ten (10) days for failure to notify LCI of his extended absence. This suspension was subsequently reduced to a five (5) day suspension.

It should be noted that the Grievant arrived in Lima, Peru on November 29, 1986. He then went to his hometown two weeks later. The Grievant's hometown is a very small village. It is there that he contracted Typhoid Fever on or about December 20, 1986. He was treated in Lima, Peru on or about December 24, 1986, where he received medication. He then had a relapse and saw a doctor again. He attempted to fly from Peru on January 18, after following his physician's advice of two weeks rest, but could not travel as a result of lack of flight availability.

It is true that the Grievant failed to report to work for at least three consecutive days without

notifying LCI. However, as Elaine Mayberry stated during the hearing, the accuracy of dates of return depends on the severity of illness. In other words, circumstances, such as extended illness, can militate against strict adherence to return to work days.

This Arbitrator must take into account the circumstances involved in the Grievant's situation with illness and inability to return from Peru to Ohio. This Arbitrator also recognizes that the Grievant should have provided proper notification as to when he would return, if possible. The totality of the circumstances in which the Grievant was involved, however, satisfies this Arbitrator that the Grievant did act reasonably in attempting to return to work as soon as possible and at the same time protecting his health so that he would be able to work when he returned. The Grievant was credible in his presentation of his scenario of events that occurred from his arrival date in Peru to his departure date and return to Lima, Ohio.

Although the management at LCI properly charged the Grievant with the violation which brought this matter to arbitration, this Arbitrator is persuaded by the evidence presented by the Grievant and his witnesses that "just cause" did not exist for the disciplinary action taken in this case.

Accordingly, the Grievance is affirmed, with five (5) days back pay awarded to the Grievant.

ANDREW J. LOVE

Arbitrator