

Arb Decision
#1010

IN THE MATTER OF ARBITRATION
BETWEEN
STATE OF OHIO – OHIO DEPARTMENT OF REHABILITATION & CORRECTION
AND
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME. LOCAL 11

Arbitration Date: August 28, 2008
Jorge Ruiz: 27-09-20080227-0017-01-03

BEFORE: Craig A. Allen

Advocate for the Employer:
Buffy Andrews, Labor Relations Specialist
Office of Collective Bargaining
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Advocate for the Union:
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GENERAL COUNSEL

I. HEARING

The hearing was held at the Grafton Correctional Institution on August 28, 2008. The hearing commenced at 9:00 A.M. The joint issue before the arbitrator is "Was the Grievant, Jorge Ruiz's termination from his position as a Corrections Officer for just cause? If not, what shall the remedy be?"

Testifying for the Employer were Major Stephen Reynolds, Maggie Bradshaw, Warden, Karen Maschmeier, CRO, Captain Brian Puster, Jeff Youngberg, CO, Captain James Hawkins and Lieutenant Timothy Glowacki.

Testifying for the Ohio Civil Service Employees Association, Local 11 AFSCME (the "Union") were Brian Gribble, Co, Jeff Youngberg, CO, Ted Snyder, CO, Vance Edwards, Inmate, Lara Goldman, Psych Asst., Janice Rager, CO and Jorge Ruiz, the Grievant

II. STATEMENT OF THE CASE

On February 29, 2008 a grievance was filed by Jorge Ruiz. In the grievance Jorge Ruiz claimed "this removal is unfair". The Grievant also claimed "there were many facts that were not considered". The Grievance request reinstatement, all pay and benefits, and removal of discipline from his record. The Arbitrator, the Advocates and the Grievant toured the Special Management Unit prior to opening statements.

III EMPLOYER'S CASE

The first witness was Major Stephen Reynolds. Major Reynolds has had this rank for three years and is Chief of Security. The major was referred to J3, Pg. 15, which was his investigation report. The report shows that on December 30, 2007, inmate Elswick hung himself. The Major testified that Warden Carl Anderson had employees educated and briefed at Roll Call on progressive discipline. He reviewed Management 1, which put employees on notice five consecutive days at roll call. The Major said there were cases where rounds were logged, but not done, so videos are to be reviewed each week. He further said only the Grievant did not follow the directions of Management 1.

Major Reynolds then said Warden Bradshaw came in November, 2007 and tightened discipline. Both the employees and the Union were notified. He said he did the investigation of the Grievant and that he had recommended discipline on the Lieutenant and the Captain involved. The Major then reviewed J3, Pg.22. He said Grievant's answers to his questions were unacceptable. The Grievant said he was on the range to see Inmate Elswick at 9:14 and did not go back until 11:00.

This two hour gap is against the rules. The Grievant was to see each Inmate at each round he was supposed to make. At J3, Pg. 23, the Grievant admits he knew what to do, but said he made no proper count. The video shows the Grievant did not check as he was supposed to do as he failed to make a count and didn't make rounds. He also testified that the log books were falsified. Major Reynolds said failure to make rounds is a threat to institutional security as accidents, medical emergencies and inmate fights go unnoticed. The Major read J3, Pg. 55, the General Post Orders and J3, Pg. 87 which shows Grievant knew the policy. Special Management Inmates have committed serious infractions and some of these inmates have mental health issues.

Major Reynolds further testified as to J3, Pg. 108, The Logbook rules and JE3, Pg. 109, #5, which says rounds are to be made on the entire range every thirty minutes. Major Reynolds read JE3, Pg. 110, #17 - Always count living, breathing bodies; #18 - Correction Officers responsible and accountable for being aware of inmates whereabouts. J3, Pg. 118 are the Special Management Units specific orders.

Major Reynolds further testified Grievant was a Pod Officer and had to comply with Post Orders, Paragraph (a), see Exhibit JE3, Pg. 119. He also said Grievant admitted to falsified log books in violation of J3, Pg. 120, #10. He also said the Desk Officer is to stay at the desk and watch the Pod Officer. Finally, Major Reynolds says J3, Pg. 43 is Grievant's false log book. Grievant recorded rounds he failed to make. The video at 9:13 shows top rounds only. At 9:40 it shows bottom rounds only.

On cross-examination Major Reynolds testified that shake downs are to take place once per shift.

He said things happen that keep rounds from being made every thirty minutes, but the log book must reflect why. Major Reynolds said anything can happen in thirty minutes also. For example inmates can plan suicide. He reviewed Union 1, which shows supervisors contact with employees.

The camera audit is to check on the officers and is to be reviewed once a week and the Major given a report. Union 2 was then introduced which is the log book for the entire month of December 2007. Major Reynolds reviewed J11, Pg. 75. This is a report of a video review which shows all in order December 5, 2007. Union 2, Pg. 83 shows more than thirty minutes between rounds once on that page. Union 2, Pg. 84 shows two entries in the log book of more than thirty minutes between rounds. Union 2, Pg. 85 shows a fifty-five minute spread. Union 2, Pg. 96 shows a security check at 1200 and the next at 1340. These are dates that the Captain said all was correct when they were not. The Major said the post orders do not say how to "log".

The Major said the Grievant was upset in the investigatory interview and a recess was necessary. He said he interviewed Grievant January 3rd and 15th. Major Reynolds was shown Union 2, Pg. 107, which showed Inmates can be injured even in thirty minutes.

On re-direct Major Reynolds said an Inmate had cut himself so rounds were delayed. He said Grievant made no rounds for two hours. Major Reynolds read Union 2, Pg. 96 and said the CO logged reasons for delaying rounds. Grievant logged nothing to show why he didn't make rounds. Margaret Bradshaw, Warden testified next. She said she had served at several institutions and is Warden here. She came to Grafton in November 2007. Management 2, The

Mission Statement was introduced.

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Management 3, the meeting sign in sheets were introduced. The new discipline system was explained and the Union sent a copy. She received a phone call from the Shift Superintendent about the incident on December 30, 2008 and then the Major's report.

Ms. Bradshaw says she removed the Grievant for not making rounds, falsified log book and admitting to ten years of improper rounds. She said rounds have to be made in a prison. Counts are important. If rounds are not made Inmates make weapons, escape, break into fights, etc... This threatens institutional security. She is not sure Grievant can be trusted. On Cross-examination she said she did not investigate Grievant's statement of not having made proper rounds for ten years.

Karen Machmeter, CRO then testified. She says the Warden told her of the incident. Ms. Machmeter says she tracks investigations and makes sure of documentation. She said the disciplinary committee makes the decision.

Captain Brian Puster was the next witness. He was the Shift Captain. He said he went to the Special Management Unit and then went back. Captain Puster said Grievant failed to do rounds and the log book was false and the video showed it.. On Cross-examination he said he was disciplined for failure to log in on his first visit to the Special Management Unit. Captain James Hawkins was the next witness. He is the Special Management Unit Captain and runs the Inmate Count. He said he had found out Grievant was not doing rounds and that he counseled him. Captain Hawkins thought the problem was corrected and did not write him up. He said he takes one day and watches videos of all shifts. On Cross-examination he said he couldn't

remember date he counseled Grievant.

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Captain Hawkins said he doesn't check video time against log books. He was referred to J11, Pg. 75 and Union 2, Pg. 84. Captain Hawkins said if other duties log start and finish time. He was shown Union 3, his sign in and sign out sheet. The sheet shows he was off sick November 7, 2007 and could not have viewed the video. He said it was a typo.

On re-direct he was referred to J11, Pg. 71 (A). He said all information on camera scans is correct. The Grievant did not make rounds and falsified records.

Lieutenant Timothy Glowacki was the next witness. He testified he would have to remind Grievant to make rounds. He did not document this as he assumed Grievant would do it. Grievant told him "he would do as little as possible."

Lieutenant Glowacki said it is not acceptable to wait two hours between rounds and to falsify log books. He said Grievant had a blatant disregard for policy. On cross-examination he said he coaches all employees, but not on making false log books or not making rounds.

IV. UNION'S CASE

The Union's first witness was Jeff Youngberg, CO. CO Youngberg testified that he has known Grievant for 12 - 13 years and that Grievant doesn't get along well with other CO's. CO Youngberg said he was subpoenaed to the hearing. He said he was working the Special Management Unit desk on December 30, 2007. He said the 3rd shift reported no incidents with Inmate Elswick. Co Youngberg said Ms. Mosely from Mental Health had gone to see Inmate Elswick, but said nothing about him. Grievant asked Ms. Mosely if they wanted to go to the Weight and Conference room, but Mosely said no.

Co Youngberg indicated Grievant never said he was making false entries in the log book. He said Inmates know when rounds are made as they can hear doors and other noises. He said rounds are not always made in 30 minutes and Inmates can commit suicide in 30 minutes. All Co's do not make rounds the same way and supervisors make rounds. Co Youngberg said he got a written reprimand for failure to follow Post Orders. He said Grievant went to take chow and yelled for him to throw the cut down tool. He then phoned for assistance. On cross-examination he said he didn't report people who didn't do rounds. CO's are to do rounds and check every single cell with an Inmate in them. CO's have to do all ranges in the same 30 minute span. He said Inmate Elswick had been in the institution before and the Grievant had known him then. He said Grievant would leave all the cuff ports open contrary to J3, Pg. 119 Special Management Unit Post Order. The Post Order says cuff ports are to be closed at all times. He reviewed J3, Pg. 31 and said the Mental Health worker's statement was not reported.

On re-direct CO Youngberg said lots of people are complacent. Lots of people slack off. He said some one could be written up everyday day on Post Orders.

On re-cross he said Pick-a-Post leaves management no control so some are complacent. CO Brion Gribble testified that on December 26, 2007, he had an incident with Inmate Elswick at Medical. Inmate Elswick was irate and had to be cuffed. Inmate Elswick was aggressive towards staff. He said he thought Inmate Elswick should be placed on close watch, but did not tell management. He said he never knew anyone to be disciplined for not making rounds. On

cross-examination he said December 26, 2007, he took Inmate Elswick to the Captain's office, but did not tell the Captain to put him on watch.

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CO Janice Rager said she was a member of the Critical Incident Support Team (CIST). CIST tries to help employees with their problems and CIST was activated 4 days after the incident. She was given a list by the Lieutenant and Grievant was not on the list.

On cross-examination she was shown Union 5, Pg. 4 and said the Warden does not have to activate CIST. Inmate Vance Edwards testified. He said he had 52 days to go and had not been coerced or promised anything to testify. One December 30, 2007, he was a line porter in the Special Management Unit. He said Grievant gave the Inmates what they were supposed to have. He said Inmates know when CO's are coming.

On cross-examination he said he did not know policies and procedures. He knows the cuff ports are not to left open. Grievant opened all the cuff ports at one time to make it easier to serve chow.

Laura Joy Goldman, Psych Asst. testified she does segregation rounds. She talks to every Inmate and gets a verbal or physical response. She watches for suicide triggers such as a death in the family, a divorce or a Dear John letter. On cross-examination she said she did not tell Grievant not to make rounds or falsify log books. The last witness was the Grievant Jorge Ruiz. The Grievant had been a CO 10 ½ years. On December 30, 2007 he was at the Special Management Unit. The Grievant read J3, Pg. 118, #8. The Pod officer is to stagger rounds. J3, Pg. 118, #12 concerns log books. The Grievant also read J3, Pg. 121, #2 about shakedown and said he always did shakedowns. He said at shift change there was no briefing on Elswick. He

said Ms. Mosely had been there and he spoke to her.

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After her rounds, CO Youngberg said to her "that was quick". Ms. Mosely said "like to catch them when they're groggy". He was then questioned about his responses in the investigatory interview J3, Pg. 17 & 18. The Grievant was then shown Union 2, Pg. 75 concerning rounds. Grievant went from one side of the Pod to the other. Grievant denied being counseled and said he had never been disciplined for not making rounds. In his investigatory interview he admitted not signing per Post Orders. He said the suicide took up time and he never got to it. When asked why he admitted to falsifying log books he said he was upset. He now denies falsifying log books. He said he was convinced it was his fault. He said he was not contacted by CIST. Grievant said he had mental health training and Inmate Elswick had no signs. He said all rounds are not made in 30 minutes. He said there are no specific rules on logging times.

On cross-examination he was referred to J3, Pg. 43, which shows no shake down on December 30, 2007 in the log book. He said when he first saw Inmate Elswick hanging he thought it was a prank. He said he had cut Inmate Elswick down 8 years ago. He was referred to J3, Pg. 17 at Q-3 and said he did elaborate. In Q-4, he admitted he did not sign Post Assignment Sheet. In J3, Pg. 17, he admitted to not making rounds. Grievant read J3, Pg. 18, where he said he made security rounds. He then admitted he did not do rounds on the top range from 9:13 to 11:11. He further admitted he knew he was to do a visual on all inmates.

The Grievant then read J3, Pg. 22 and said he had initialed and signed off on the

investigatory interview. He made no count on the top range for two hours.

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He also said he logged rounds to keep Management from knowing he didn't make them. During the investigatory interview he never said he was upset. He was shown J3, Pg. 43, which was the log showing his round times. The video shows he didn't make any.

V. OPINION AND AWARD

The grievance is denied. The Arbitrator has reviewed the Exhibits and Testimony and finds Management had just cause for removal. The evidence is clear that when Warden Bradshaw became Warden at Grafton Correctional Institution, she took great pains to make the employees aware of a tightening of discipline. The Union has made a valiant effort on the Grievants behalf. However, the Union's clam that complacency by Management is the cause is not supported by persuasive evidence. True there is testimony as to complacency and that "employees could be written up everyday". There is also evidence that Management took steps to correct this and employees were given plenty of notice.

The Unions argument that Inmates can commit suicide in thirty minutes has merit. It is also true that the Post Orders required rounds on a staggered basis every thirty minutes and on December 30, 2007, Grievant did not check on Inmate Elswick for two hours.

The Union argues that the rules on the log book entries were vague. However, the other witnesses seemed to have a clear understanding of how to put entries in a log book. The Union cites arbitrator David Pincus' decision in the Freda Cunningham Discharge Case. The Arbitrator has read this Decision. In the Cunningham case Arbitrator Pincus found intent based on the facts as does this Arbitrator. The discipline in Cunningham was modified because of procedural errors. In this case the Grievant admits to false entries in the log book. He also admits to not making rounds properly for ten years.

The Union attempted to show other officers did not make rounds in thirty minutes.

However, the log books show reasons for this variance per Post Orders.

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The Grievant claims he was under stress during the investigatory interview and wants to recant. Grievant had been a corrections officer for 10 ½ years. He also had discipline on the absentee track. He knew, or should have known how this all worked. The fact that he wasn't offered CIST is unfortunate, but this happened after the fact. The Arbitrator has reviewed The Seven Steps of Just Cause and finds the discipline appropriate.

Issued at Ironton, Ohio this the 14th day of October, 2008.

Craig A. Allen, Arbitrator