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IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO – DEPARTMENT OF YOUTH SERVICES

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION

AFSCME. LOCAL 11

Arbitration Date: March 4, 2009

JCO Brandon Doss: #35-20-20080924-0038-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Melinda Hepper
Ohio Department of Youth Services
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#1022

Advocate for the Union:

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I. HEARING

The hearing was held at the Ohio River Valley Juvenile Correctional Facility on March 4, 2009. The hearing commenced at 9:00 A.M. and concluded at 5:45 P.M. The joint issue before the arbitrator is "Was the discipline for just cause? If not what shall the remedy be?"

Testifying for the Ohio River Valley Juvenile Correctional Facility ("The Employer") were David A. Haynes, Chief Investigator, Ohio Department of Youth Services; Barb Moore, Deputy of Direct Services; Kevin Hamilton, Unit Manager; and Amy Ast, Senior Bureau Chief of Facility Operations for ODYS.

Testifying for the Ohio Civil Service Employees Association, AFSCME Local 11 ("The Union") were Brian Holbrook, JCO; Jason Purcell, Unit Manager; and the Grievant, Brandon Doss.

II. STATEMENT OF THE CASE

On December 2, 2007 an incident occurred at the "Employer's" facility resulting in the Grievant being charged with a violation of the Ohio Department of Youth Services' General Work Rules Policy 103.17, specifically rules 3.6, Failure to follow work assignment, 5.11. Failure to immediately report and/or investigate a violation of any departmental work rule, policy or procedure and 5.12 Actions that could harm or potentially harm an employee, youth, or a member of the general public.

The Grievant was removed from his position September 19, 2008.

The Union timely filed a grievance and the case is properly before the arbitrator.

III. THE EMPLOYER'S CASE

The "Employer's" first witness was David A. Haynes, Chief Investigator. Mr. Haynes testified that the investigation was started by Investigation Supervisor, Don Whipple. Mr. Whipple started the investigation in December 2007 but died January 9, 2008 and Mr Haynes took over the investigation. Mr. Haynes said he has conducted over five hundred (500) investigations, three hundred (300) of which are use of force investigations.

Mr. Haynes testified the investigation started in December 2007 and was concluded by him May 8, 2008.

He said the incident was first viewed as a fight between two Youth and Mr. Martin, the assistant Principal started the investigation. Mr. Martin turned the investigation over to Mr. Blevins. When the "Employer" began to view the case as a Staff Assault on Youth Barber the case was given to Mr. Whipple.

Mr. Haynes said he reviewed the Activity Management System (AMS) Report and then decided to investigate. There is an "AMS" report system for each institution.

Mr. Haynes then reviewed Investigation Exhibit Pages 99 - 100. This is the Question and Answer interview conducted by Assistant Principal, Blevins with Youth Barber. Youth Barber said he was punched and kicked by staff but could only accuse JCO Richards as he couldn't identify any others. Mr. Haynes also reviewed Investigation Exhibit Page 100 which is Youth Barber's grievance. The grievance only identified JCP Richards. There is no other statement from the Youth.

Mr. Haynes then read Investigation Exhibit 103 which is a Question and Answer with Youth Calhoun and Investigation Exhibit Pages 104 & 105 which is Youth Calhoun's grievance statement. These documents show Youth Barber going across the pod to fight another Youth. Youth Calhoun says Youth Barber was hit and kicked by several JCOs he names but did not name the Grievant as one of them. Youth Calhoun said Youth Barber was running toward Youth Jackson.

Mr. Haynes then reviewed Youth Blount's Question and Answer Investigation Exhibit Page 107. Youth Blount testified about a fight in the mini-gym between Youths Jackson and Cunningham. Youth Blount said Youth Jackson called Grievant names and Staff came in and put him on the ground.

Mr. Haynes then read Investigation Exhibit Page 117. This is a statement from Youth Cunningham. The Youth said Youth Barber tried to fight Youth Jackson and Staff beat his ass.

The Question and Answer of Youth Jackson, Investigation Exhibit Page 109 was then read by Mr. Haynes. Youth Jackson testified he had a fight with Youth Cunningham, and then Youth Barber tried to fight him. Youth Jackson said JCO Richards kicked, punched, and kned Youth Barber, and Hawthorn was holding his ankles.

Mr. Haynes then read Investigation Exhibit Page 115 which is Youth Jackson's statement. The Youth says JCO Richards assaulted Youth Barber.

The witness then read Investigation Exhibit Page 110 which is the statement of Youth Johnson. The Youth said Youth Barber was taken to the ground and it looked like he was being punched but no names were given of Staff.

Mr. Haynes then read Investigation Exhibit Page 111, the statement of Youth Ross. The Youth said Youth Barber hit him and then the fight was broken up. The Youth said he saw Youth Barber get restrained and Staff, Richards, Lane, and Slusher started beating him up. Youth Ross also said at Investigation Exhibit 112 that Staff punched and Kicked Youth Barber.

Mr. Haynes then read Investigation Exhibit Page 121, Youth Ceasar's Question and Answer Statement. Youth Ceasar said Youth Barber was assaulted by Staff but could only identify JCO Richards. Youth Ceasar also said he got in a fight with Youth Ross and JCOs Richards and Lane assaulted him.

Mr. Haynes then read Investigation Exhibit Pages 53 - 55, the Grievant's statement. Grievant said Youth Barber came after Youth Jackson. Grievant said he yelled at Youth Barber and tried to put him on the wall. Youth Barber came off the wall putting Grievant and many officers on the ground. Grievant lost his keys and went to retrieve them. Then he helped restrain Youth Barber. Grievant said he continued to tell the Youth to quit resisting and he held the Youth's feet. The Youth was then placed in handcuffs which Operations Manager, Hamilton later removed. Medical checked Youth Barber.

Mr. Haynes then reviewed Investigation Exhibit Pages 235 - 249 which is the Question and Answer statement of the Grievant. The Grievant said in his statement that there were fourteen (14) Youth in the mini-gym. There was a fight among the Youth and Grievant took Youth Johnson to his room. Youth Barber started after Youth Jackson and Grievant went to the incident. Grievant said he lost his keys and left Youth Barber to retrieve the keys. He then returned to help restrain Youth Barber. Grievant took Youth Barber to his room. Grievant did not contact Medical but a JCO did. Youth Barber was then taken to another Unit. Youth Barber was placed on restriction for seven (7) to ten (10) days. Grievant said that because of his position he did not need his Supervisor's permission to place the Youth on restriction. Mr. Haynes then read Investigation Exhibit Page 237 where Grievant said he did not know who was involved at the time. Investigation Exhibit Page 239 Grievant said he was focused on the kid's arm.

Mr. Haynes then read Investigation Exhibit Page 239 where he tells Grievant that his opinion is Grievant should have seen the assault on the Youth. Mr. Haynes then read Investigation

Exhibit Page 241 & 242 where Grievant said there was a little blood on the Youth and he doesn't know if Youth Barber was checked by Medical. Investigation Exhibit Page 247, Grievant indicates he had no conversation with his Supervisor.

Mr. Haynes then turned to Investigation Exhibit Pages 36 - 37. This is the Youth Intervention Report (YIR) of JCO Richards concerning Youth Barber. The report says JCO Holbrook was escorting Youth Jackson when Youth Barber went for him. JCO Richards said he was on Youth Barber's left arm.

Mr. Haynes then reviewed Investigation Exhibit Pages 91 - 92 which is a Question and Answer Interview with JCO Richards. JCO Richards denies seeing anyone punch or kick Youth Barber. He says he cannot explain Youth Barber's injuries. JCO Richards denies hitting the Youth.

Mr. Haynes then read Investigation Exhibit Pages 56 - 58 which is the statement of JCO Avery on a Youth Intervention Report. JCO Avery said there was a Signal 88, Call to Staff, concerning youth Barber. Youth Barber was first on the wall and then to the floor. Youth Barber resisted and JCO Avery secured his right arm.

Mr. Haynes then reviewed Investigation Exhibit Pages 59 - 72 the (YIR) of JCO Hawthorne. JCO Hawthorne was involved in the restraint of Youth Barber and was on his right side. Youth Barber swung at the Youth from "A" Pod. JCO Hawthorne, at Page 68, lists Staff involved but doesn't list Grievant as one of them.

Mr. Haynes then read Investigation Exhibit Pages 256 - 259 which is the recorded interview with JCO Hawthorne. The statement indicates Youth Barber started toward Youth

Jackson and Grievant tried to talk to Youth Barber. He doesn't remember Grievant taking part in the restraint. He also said he didn't see any punches.

Mr. Haynes then turned to Investigation Report Pages 73 - 75 which is JCO Holbrook's (YIR) concerning Youth Jackson. JCO Holbrook said he was taking Youth Jackson to his room when Youth Barber came after him. He put Youth Jackson behind him and Youth Barber was restrained. Mr. Haynes then read Investigation Exhibit Page 87 which is the Question and Answer Statement of JCO Holbrook. The statement indicates he saw Youth Barber restrained but saw no hitting, kicking or punching. He doesn't know why Barber's eye was injured.

Mr. Haynes then read Investigation Exhibit Pages 81 - 82. This is GAT Hankins' (YIR) report. The report shows Youth Barber was trying to attack Youth Jackson. JCO Richards took Youth Barber to his room. GAT Hankins saw no blood from the restraint. GAT Hankins says Ops and Medical notified. Investigation Exhibit Pages 71 - 78 shows JCO Jones arrived and a Signal 88 was called. JCO Price and Grievant were giving verbal commands to the Youth.

Mr. Haynes then turned to Investigation Exhibit Pages 250 - 255 which is the Question and Answer interview with JCO Jones. JCO Jones said he cleaned out the Youth's room and Youth Barber was bleeding pretty badly.

Mr. Haynes then read Investigation Exhibit Page 51 which is JCO Langford's (YIR). There is no statement on Youth Barber. Investigation Exhibit Page 94 is the Question and Answer statement of JCO Langford. JCO Langford says he cannot explain how Youth Barber was injured.

Mr. Haynes then read Investigation Exhibit Page 265, the Youth Injury and Assessment. The assessment is dated December 12, 2007 at 3:05 P.M. It shows "Pain in left eye, shoulders and mandible. The left eye was swollen shut." Investigation Exhibit Pages 266 - 269 are Photos of Youth Barber.

Mr. Haynes said he viewed the Video. The video was shown at the hearing. Mr. Haynes said his conclusion is that Grievant failed to protect Youth Barber. He is also of the opinion that Grievant placed Youth Barber on restriction for seven (7) to ten (10) days without the Supervisor's permission to conceal his injuries.

Mr. Haynes then turned to the Discipline Trial Exhibit Page 1, which showed Grievant was present at the Pre-Disciplinary Conference and Pages 15 - 19 which are Union Documents submitted.

Mr. Haynes was then given Management Exhibit 1, which is the Policy for Suspected Child Abuse and Neglect Reporting. This form is to be used by Staff. Page 2 of 3 of the Exhibit shows child abuse is to be reported to the Superintendent.

Mr. Haynes then was given Management Exhibit 2. This document shows Grievant's training hours track. It also shows Grievant was present for child abuse training and got a 100 on the Course Exam. Mr Haynes said JCOs are to report any child abuse. The Exhibits were introduced into evidence.

Cross-Examination of Mr. Haynes.

Mr. Haynes was referred to Investigation Exhibit Page 1. He indicated the action taken was a "cut and paste" he took from Kevin Hamilton's AMS Report. He was referred to Investigation Exhibit Page 23 and said the summary came from this document. The various reports cover two incidents, one of which was in the mini-gym. The reports are usually done by the Operations Manager. All incidents are to be investigated. Staff were injured and there was a Priority Grievance filed showing a youth was injured and alleging abuse. Mr. Haynes then read Investigation Exhibit Pages 101 - 102. This is Youth Barber's Grievance. He refers to JCO Richards but not Grievant. Mr. Haynes said the Employer would now have knowledge or notice of abuse. Youth Barber was moved out of his unit for a day, then returned to his unit.

Mr. Haynes then said there was an "all page" to Supervisors and Investigations. Exhibit Page 24 shows persons notified within hours of the incident.

Mr. Haynes was then given Union 1 which he said he could not identify. After reading it he said it was a list of pagers at the facility. He also said JCOs are to write YIRS for AMS reports. Mr. Haynes said the Grievant may have needed to take statements or the Operations Manager could have. He said JCO Jones told him he had called Medical. The Nurse did come on the Unit and that any Staff could notify Medical. It did not have to be the Grievant.

Mr. Haynes said Youth Barber was seen by Medical right after the incident. He said the Nurse delivers meds to the Youth but sometimes give them to Staff to give to Youth. Youth can also do a Health Call or ask Staff to go to Medical. Mr. Haynes said he thinks Youth Barber's injuries were sustained when he was on the floor in restraint.

Mr. Haynes was then referred to Investigation Exhibit Pages 38 - 39 which is Grievant's YIR on Youth Jackson in the mini-gym. He then reviewed Investigation Exhibit Pages 53 -55, which is Grievant's YIR on Youth Barber. He then turned to Investigation Exhibit Page 173 which is Grievant's Youth Behavior Incident Report (YBIR). The Report shows Grievant told Youth Barber to get back and he refused. The Report shows JCO Holbrook as a witness. Youth Barber signed off on this report saying "it is true".

Mr. Haynes was then referred to Investigation Exhibit Page 22. This is the last page of his report and it was signed May 8, 2008. The investigation took five (5) months. Investigation Exhibit Pages 20 - 21 are a Summary from Day 1 and Conclusion. It shows no follow up on Youth Grievances. Investigation Exhibit Pages 2 & 3 indicate Youth Barber was seen by Medical after the incident and every day thereafter. Investigation Exhibit Pages 2 & 3 show Superintendent Nelson on grounds prior to vacation.

Mr. Haynes then looked at Investigation Exhibit Page 14, Still Photos from the Video, also Pages 18 & 19. The photos show a Nurse going to Youth Barbers room at 3:20 P.M. Other photos show Grievant taking Youth Barber off the Unit. Youth Barber has made no allegations against Grievant. Investigation Exhibit Page 53 is Grievant's YIR , which shows time of incident as 2:56 P.M. Mr. Haynes then read Investigation Exhibit Page 25 which is a list of the people involved and all turned in incident reports. Investigation Exhibit Page 24 is the Shift Log which shows Kevin Hamilton on duty at 12:50 P.M.

Mr. Haynes then testified that DYS has Critical and Non-Critical cases. The Non-Critical

are handled at the local level. He said on December 13 Youth Barber still had an eye injury.

Mr. Haynes then read Policy and Procedure Tab 5 as to who is to report. He also read the Discipline Trial Pages 37 - 38. This is the Training Report on Response to Resistance. The Grievant was present.

On Re-Cross Mr. Haynes looked at Policy and Procedure Tab 5 Page 3 and said Medical was called and did respond. On Re-Direct he said Grievant did not call Medical.

The next witness was Barb Moore, Deputy Direct Services. She testified she is Grievant's Direct Supervisor. Ms. Moore testified she doesn't remember the "all page". She said she reviewed the packet and watched the videos. The packet had no Youth statements and she became aware of the Youth grievances afterwards.

Ms. Moore was shown Investigation Exhibit Pages 101 - 102 but said she did not review Youth Barber's grievance.

Ms. Moore was shown Investigation Exhibit Page 104, youth Calhoun's grievance and said she did not review it.

Ms. Moore then turned to Investigation Exhibit Page 119, Youth Ceaasar's grievance and said she did not review it, nor did she talk to the Grievant.

Ms. Moore said Larry Alessio, Deputy Superintendent of Direct Services, brought the Youth grievances to her attention ten (10) days after the incident. Ms. Moore said the investigation started with the school and then was turned over to the Chief Inspector's Office.

Ms. Moore then said Grievant had been a TWL Unit Manager for two months. Grievant was interviewed twice. She said Grievant told her in the first interview that he couldn't turn in JCOs. Grievant later changed his mind after talking to his wife. Ms. Moore said training for Unit Manager is all OJT. She said she was available for help.

On Cross-Examination, Ms. Moore was shown Union 1 and said all Pagers were notified. The Page tells where the incident is. She said she works Monday through Friday from 7:30 A.M. to 4:00 P.M.

Ms. Moore was referred to Investigation Exhibit Page 24 the AMS Report. She is related to the Administrator on call and said his Pager never worked. She was then shown Investigation Exhibit Page 23 and said some things are updates. The summary may have been updated. This can be done at anytime. Ms Moore says she can lock reports but there were no statements and she couldn't close it.

Ms. Moore said Grievant was referred to Scott Moore to answer questions and said Unit Armstrong was a problem unit. Ms Moore said the Unit Manager could restrict Youth without permission and there is no rule on this. The Unit Manager is to check with Medical on Youth and a TWL should know this. If Medical comes everyday, Medical is to report. She also said passing meds is not a medical check. Ms. Moore said Grievant was highly recommended.

On Re-Direct Ms. Moore said the Unit Manager oversees the Unit.

On Re-Cross Ms. Moore read Investigation Exhibit Page 242 and said the Grievant said the Youth checked by Medical.

The next witness was Kevin Hamilton, who became a Unit Manager in January 2008. Mr. Hamilton was an Operations Manager on December 2, 2007. Mr. Hamilton said he looked on the monitor at the mini-gym and saw a Youth being escorted. He said he saw a Youth running across the Unit and then the Youth was on the ground. Mr. Hamilton walked the Youth to his cell and the Youth had facial injuries. He looked at Investigation Exhibit Page 266 which is a photo of Youth Barber. Youth Barber did not allege any abuse. Neither Grievant nor any of the Staff said anything.

Mr. Hamilton read his statement at Discipline Trial Page 14 which is his statement. Mr. Hamilton indicated he notified Mr. Nelson and Ms. Moore of the incident and the injuries. He then read Investigation Exhibit Page 23 and said he entered the information into the system.

On Cross-Examination, Mr. Hamilton said he doesn't know who collected the reports. There are two incidents on the reports. One is the mini-gym and the other is Youth Barber. He said there are lots of problems with Unit Armstrong. He doesn't recall a nurse on the Unit and says it is Standard Operating Procedure ("SOP") for JCOs to call medical.

Mr. Hamilton then reviewed Investigation Exhibit Pages 23 - 24. He said the classifications are done by him and he thought it was "Youth on Youth". Mr. Hamilton said he knew JCO Avery was hurt in the incident. He doesn't recall anyone having Pager trouble after he was shown Union 1, the list of persons paged.

Mr. Hamilton said he came around the Podium and saw Youth Barber on the floor.

Mr. Hamilton said the Unit Manager only investigates if instructed to do so. He said Youth Barber knew who he was and would expect him to Complain to him about abuse. Mr. Hamilton then looked at Investigation Exhibit Page 124, the Shift log, and he logged in at 12:50 P.M. He then looked at Discipline Trial Page 15, his statement and said he reported by phone to Mr. Nelson and Ms. Moore.

Mr. Hamilton looked at Investigation Exhibit Page 279 which shows information on Youth Movements. Youth Barber was taken to the Wright Unit and then back to Unit Armstrong.

Mr. Hamilton said Grievant was TWL in the Unit and had only been there a short time. There is no training to be a Unit Manager. There is no manual and no mentor, you learn by observation. The Unit Manager puts in the Log Book a Youth is on restriction and there is no specified time to do so.

Re-Direct - Mr. Hamilton says investigations are rotated. Staff are told to get statements. Unit Managers are to report Child Abuse if a Youth Tells him. A Unit Manager may put youth on restriction and doesn't always have to tell Supervisor.

The next witness was Amy Ast, Bureau Chief Facility Operations. She has over sight of all facilities. Ms. Ast reviews video and Pre-Disciplinary Report and makes recommendations to the Director.

Ms. Ast looked at Policy and Procedure, Tab 1; Work Rules, Tab 2; Infraction Level, Tab 2 Page 4 and Pages 8 of 9 and 9 of 9. She also looked at Practice and Procedure, Tab 3 - Grid for Sanctions. She said the Unit Manager has the responsibility to respond to Youth's injuries.

On Cross-Examination Ms. Ast referred to Tab 3 and said Level 5 is discretionary. She said mitigation is up to the Investigator and Grievant should have reported injuries from Staff.

Ms. Adt said Grievant had worked for her and was a good JCO when she was Unit Manager.

On Re-Direct she said she knew Grievant was TWL when she read the report.

IV. UNION'S CASE

The first witness for the Union was Brian Holbrook. He has been a JCO for four (4) years. JCO Holbrook said he was called to the mini-gym because of a fight between Youth. JCO Holbrook placed the Youth in handcuffs and was escorting him back to Unit Armstrong.

JCO Holbrook said he was taking the Youth across the floor when he heard Yelling. Youth Barber was coming in a combative manner. Youth Barber was given verbal warnings and JCO Holbrook placed his Youth behind him.

JCO Holbrook was referred to Investigation Exhibit Page 73, his YIR. The Report shows the Staff Response was first Verbal and second the Youth was placed on the Wall.

He was then referred to Investigation Exhibit Page 75, his incident statement. He had no contact with Youth Barber. He placed Youth Jackson behind him and faced Youth Barber. Staff arrived but he doesn't recall seeing Grievant there.

JCO Holbrook put Youth Jackson in his cell after Youth Barber removed from area. Operations Manager Hamilton took Youth Jackson's Cuffs off. He said he saw a pile of bodies around Youth Barber but saw no punching, kicking, or any injury.

On Cross Examination JCO Holbrook didn't touch him. He read Investigation Exhibit Page 73 which showed his only physical contact was with Youth Jackson. He never saw the Grievant with Youth Barber. He then reviewed Investigation Exhibit Page 87, his Question and Answer form. He said the Youth struggled with Staff and he never saw any injury to Youth Barber.

The next witness was Jason Purcell. He has been a Unit Manager at Rickenbacher for over two (2) years.

Prior to that he was a GAT 1 and GAT 2. He knows Grievant from work, they were GATs together and from College.

Mr. Purcell said he found out about the incident in the Operations Department.

He was referred to Discipline Trial Exhibit Page 7 which is his Question and Answer statement. He said he was TWL Unit Manager in 1998. He was given no manual and no mentor. You just have to figure it out.

He has put Youth on restriction with no notice to anyone. There is nothing in the policy about restrictions. Medical cares for Youth. Youth can ask for medical.

Mr. Purcell said there is no time limit on Unit restriction. He has had Youth on restriction for two (2) months.

On Cross-Examination he said he tries to notify Supervision but there is no written policy. He doesn't know about Child Abuse Policy.

On Re-Direct he said he could not learn to run a Unit in forty (40) days.

The last witness for the Union was the Grievant, Brandon Doss. Grievant said most of his time at the facility he was a JCO. Grievant said he took extra recreation to the mini-gym. There was a fight. He took a Youth back to the Unit and put him in his room.

Grievant said he saw JCO Holbrook with a Youth and saw Youth Barber running. He tried to subdue Youth Barber and fell to the floor with other JCOs. He lost his keys and went to look for them. This took a while. He then went back and held Barbers legs. Grievant saw the Nurse there and saw Kevin Hamilton take the cuffs off.

Grievant said he tried to talk to Youth Barber. Youth Barber complained about restraint and he told him to put it on paper. He took Youth Barber to Wright Unit but Operations, Linda Mood, put him back in Unit Armstrong.

Grievant said he went to Barb Moore and told her about it. He said 90% of the time the Youth say "You beat my ass". Not true. NO one ever asked if Youth abused.

Grievant was referred to Investigation Exhibit Page 173. This is Youth Barber's YBIR. Youth Barber could have complained on the YBIR but his only comment was "it's" true. Grievant said the Youth was in isolation to get him to calm down. When he took the YBIR to Youth Barber he was not in seclusion.

When Youth Barber came back to Unit Armstrong, Grievant called Hamilton and asked why. Hamilton said Linda Mood put him back.

Grievant said he turned Youth Barber's YBIR in with his YIR. No other paper work was required.

Grievant said Ms. Moore told him once an injury is given to medical it's their responsibility.

The Grievant reviewed Union 2 which shows his appointment as Unit Manager on October 14, 2007. He was placed on Administrative leave January 19, 2008. Union 3 are Grievant's Administrative Leave dates. Grievant read Union 4, the application for Unit Manager. Grievant is an Instructor in R2R and Verbal strategies. He saw no R2R violations with Youth Barber and no abuse.

When Youth Barber charged across the floor he told him several times to stop. He had to intervene and 3-5 Staff were involved. Grievant not sure why all fell to the floor.

Grievant was referred to Investigation Exhibit Pages 96 - 97 which is his Question and Answer statement. Youth Barber was combative resistant. He never saw Richards use force on Youth Barber. Youth Barber said "he got his ass beat". He told him to write it down and there was never another comment. Youth Barber never asked about medical and never wrote a Grievance on him.

Grievant said Fred Nelson was Superintendent when he went TWL. Mr. Nelson told him he did not have high expectations.

He said Barb Moore didn't give many instructions. He was told not to investigate or give discipline as he was still in the Union. He also said he was never mentored by Scott Moore and medical never gave him any instructions on Barber.

On Cross-Examination he said he did not see Youth Barber make contact with another Youth. Anytime you go to the floor anything can happen. The goal is to control the Youth not watch Staff.

Grievant was referred to Investigation Exhibit Page 239. He said he was in a position to see Staff for a few then he left to get his keys. He said a JCO could have punched or kicked.

He was shown Investigations Exhibit Page 266, a Photo of Youth Barber. He said he went in a few times to see Youth Barber but he didn't want to talk. Youth Barber had a chance to complain on the YBIR but never said anything until he talked to Alessio.

Grievant was referred to Investigation Exhibit Page 101 and said he doesn't know what a priority grievance is. Grievances are placed in a locked box and there is no fear of reprisal. Page 102 of the Exhibit shows the only allegations against JCO Russell.

On Re-Cross-Examination he was referred to Investigation Exhibit 202, Dated December 5, 2007 which alleges staff abuse. He was shown Management 1 which is the Policy on Child Abuse and Neglect which requires abuse to be reported. He also looked at Management 2 which shows the Courses he took.

On Re-Direct the Grievant said he had no reason to believe Youth Barber was abused. Other Youth are verbal about abuse. NO other Youth approached him. The hearing was concluded.

V. OPINION OF THE ARBITRATOR

This case has been well presented and tried by both parties.

The Employer has three basic reasons for Grievant's removal. The Employer contends Grievant failed to protect Youth Barber, placed Youth Barber on restriction for seven to ten days without Supervisor's approval in order to conceal his injuries and failed to report Child Abuse.

The Arbitrator finds no evidence that Grievant failed to protect Youth Barber. After Youth Barber ran toward Youth Jackson, he ignored a verbal warning and then Staff were involved in restraining him. The Employer has offered no evidence as to what Grievant should have done at this stage to protect the Youth. Grievant said he had "tunnel vision". The Employer does not like this answer but has no evidence that it is false nor any evidence as to what else Grievant should have done.

The Employer also contends that Grievant failed to see that Youth Barber got medical attention. The evidence does not support this contention.

Grievant's report on December 2, 2007 was written at 2:56 P.M. The medical report shows Youth Barber was seen at 3:05 P.M.

The evidence is undisputed that medical saw Youth Barber every day. The Employer contends that the passing of medicine is not "seeing the Youth". There is also a contention that Medical staff were investigated. Be that as it may, the Youth had an opportunity to seek further medical attention. The evidence is also undisputed that the Youth could have asked any staff for medical help. For the Employer to assert that Grievant should have substituted his Judgment for that of the medical staff on this set of facts is unrealistic.

The Employer's contention that Grievant placed Youth Barber on restriction for seven to ten days without Supervisory permission in order to conceal his injuries is not supported by the evidence. As indicated above Youth Barber received prompt medical attention December 2, 2007.

The Youth was on Unit restriction, not confined to his room. He was therefore visible to other staff, other Youth and the Unit Video Camera. There is ample evidence that numerous staff and Supervision were aware of Youth Barber's injuries.

The evidence is also clear that Unit Managers receive no training and there is no written policy on restrictions. Unit Manager Jason Purcell testified that he has put Youth on restriction for up to two months without Supervisory Authority. The Employer contends that the Grievant had no medical direction to put the Youth on restriction. There is no evidence that he needed it. The testimony is that if the Unit Manager thinks a Youth cannot protect himself, it is enough for a restriction.

Kevin Hamilton, who was Operations Manager in December, 2007 said he notified Supervision of the incident and the Youth's injuries. Mr. Hamilton said Youth Barber knew who he was and would have told him of abuse. He also said a Unit Manager would only do an investigation if ordered to do so.

The Employer also contends that the Grievant failed to report Child Abuse. The Employer asserts that when Youth Barber talked to Grievant after the incident Grievant thought Youth Barber was "just talking". The rest of Grievant's testimony is that he told the Youth to write it down. Youth Barber in fact did this and filed a grievance against JCO Richards. Mr. Haynes

testified concerning Investigation Exhibit Page 101, the Youth Barber grievance put the Employer on Notice of Child Abuse.

The Grievant said he personally discussed this case with Barb Moore, which she disputes. The Employer introduced Management Exhibit 1 which is the Suspected Child Abuse and Neglect Reporting Policy. This policy says on page 2 of 3 IV "Any ODYS employee, contract employee or volunteer that becomes suspicious of or acquires knowledge of child abuse or neglect shall immediately report that knowledge or suspicion to the facility Superintendent, Regional Administrator or appropriate designee".

It further says in B "Upon Notification, the acting site supervisor at a regional office or institution shall provide a Suspected Child Abuse and Neglect Reporting Form 304.05 A for completion by the individual making the report".

Even with the disputed testimony between Grievant and Barb Moore there is evidence that Grievant filed reports and was interviewed. There is also evidence that Kevin Hamilton, who was then Operations Manager reported the incident to all concerned.

The Employers argument here is based solely on Grievant failing to file Form 304.05 A. As there is no evidence that Grievant failed to cooperate or to file other reports as required, and Supervision was aware of the incident the Employer, per it's own policy should have given Grievant Form 304.05 A if it wanted him to complete it.

Based on the facts of this case I grant the grievance. I find the discipline imposed is without Just Cause.

VI. AWARD

The Grievant is to be made whole. The Grievant is to be given his lost pay less applicable deductions and restored to his seniority.

The Grievant is to be restored the loss of vacation, personal leave and sick leave he would have accrued.

Grievant is also to be reimbursed for medical expenses that would ordinarily have been covered and reinstated to his post, shift and days off.

The discipline is to be removed from his record.

Entered at Ironton, Ohio this _____ day of March 2009.

Craig A. Allen