

ARBITRATION DECISION NO.:

103

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Retardation
and Developmental Disabilities,
Columbus Developmental Center

DATE OF ARBITRATION:

January 27, 1988

DATE OF DECISION:

January 28, 1988

GRIEVANT:

Leadell Dawkins

OCB GRIEVANCE NO.:

G-87-0928

ARBITRATOR:

Henry E. Helling, III

FOR THE UNION:

FOR THE EMPLOYER:

KEY WORDS:

Just Cause
Neglect of Duty (Client Care)
Suspension

ARTICLES:

Article 24 - Discipline
§24.01-Standard

FACTS:

Grievant, a Hospital Aide at the Columbus Developmental Center, was suspended for five (5) days when he was observed sitting with co-workers rather than interacting with his client.

EMPLOYER'S POSITION:

Grievant was suspended for just cause. He was neglecting his job duties when he was sitting at the table with co-workers.

UNION'S POSITION:

Grievant was not disciplined for just cause. No evidence is available to prove that Grievant was not tending the needs of his clients while seated at the table.

ARBITRATOR'S OPINION:

Testimony and evidence show that it is not unusual for staff to be seated at this particular table and no discipline for doing so had been utilized in the past. Although grievant's client may not have been at arm's length from Grievant, he was not far enough away that Grievant could not take care of him if necessary.

AWARD:

Grievant's suspension is rescinded, Grievant is to be paid for the five (5) days he was unable to work, and the incident is to be expunged from his record.

TEXT OF THE OPINION:

BEFORE THE ARBITRATOR

In the Matter of:

**STATE OF OHIO, DEPARTMENT
OF MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES
THE EMPLOYER**

and

**OHIO CIVIL SERVICE
EMPLOYEES ASSOCIATION,
LOCAL 11, AFSCME, AFL-CIO
THE UNION**

January 27, 1988

Grievance:
G87-0928

Grievant:
Leadell Dawkins

Arbitrator:
Henry E. Helling, III

AWARD

Grievant Leadell Dawkins, a Hospital Aide at Columbus Developmental Center was

suspended for five days for sitting at a table in the Living Area of Doren Hall and failing to interact with his 1:1 client on January 21, 1987. Testimony and evidence presented showed that it was not unusual for staff to be seated at this particular table and nobody had been disciplined for doing so prior to this incident. There was no evidence presented that he was not tending to the hand-washing or toileting duties of his 1:1 client as required at that time by the master schedule. Evidence showed that although his 1:1 client may not have been at arms length from Grievant, he was not far enough away that Grievant could not take care of him should something occur that would require the immediate attention of Grievant. There was evidence of a written policy stating how close a Hospital Aide must remain to his client on a 1:1 assignment.

Based on the evidence presented in this matter along with the fact that no employees have been previously disciplined for sitting at the table, the punishment in this case would not be commensurate with the offense. The arbitrator finds that the employer did not establish just cause for the disciplinary action in this matter, the suspension of Grievant should be rescinded, the Grievant paid for the five days that he was unable to work, and that this incident be expunged from his record.

Henry E. Helling, III
Arbitrator

Issued January 28, 1988