

Arb Decision # 1127

IN THE MATTER OF ARBITRATION

BETWEEN

**STATE OF OHIO
DEPARTMENT OF REHABILITATION & CORRECTIONS
TOLEDO CORRECTIONAL INSTITUTION**

AND

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
LOCAL 11
AFSCME. AFL-CIO**

Arbitration Date: January 14, 2014

Grievant Matthew Dandino: # 27-35-2012205-0312-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Richard B. Shutek
Labor Relations Officer
770 W. Broad Street
Columbus, Ohio 43222

Advocate for the Union:

Derek Urban
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082

RECEIVED / REVIEWED

FEB 18 2014

OCSEA OFFICE OF
GENERAL COUNSEL

I. HEARING

The hearing was held at Toledo Correctional Institution January 14, 2014. The hearing commenced at 9:18 A.M.

The stipulated issue before the arbitrator is “Did Management have Just Cause to remove Matthew Dandino? If not, what should the remedy be?”

II. STATEMENT OF THE CASE

On November 30, 2012 Matthew Dandino, the Grievant, was removed for violation of Rule 46A- “The exchange of personal letters, pictures, phone calls or information with any individual currently under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, or friends or family of same, without express authorization of the Department.”

On December 4, 2012 Matthew Dandino filed a grievance and the matter is properly before the Arbitrator.

III. THE EMPLOYER’S CASE

The Employer’s witness was Sean T. Bowerman. Mr. Bowerman is an Acting Major and was the Investigator on this case. Major Bowerman has been with the Department twenty-one (21) years. He has been a CO, an Investigator and now a Major. Major Bowerman testified that he has investigated twenty (20) or thirty (30) Unauthorized Relationship cases.

Major Bowerman testified that there are two types of employees. One group files their reports immediately. The other group delays, usually for personal gain.

Major Bowerman testified that Staff have Pre-Service training on Unauthorized Relationships and regular training after that on Unauthorized Relationships.

Major Bowerman was asked: "What does this mean?" He said, "It takes away their authority and they can't properly supervise." Major Bowerman was referred to Section 4 Pages 15 and 16 and said it was his Investigative Report with supporting documents. The Grievant also submitted an incident report.

Major Bowerman said he talked to the Inmate involved. The Inmate said he was best friends with the Grievant. The Inmate said he dated a girl the Grievant knew. Major Bowerman then testified that the Grievant had told him the same thing. He said the Inmate confirmed the notes and said the Grievant never told him "No." The Major said the Inmate told him the Grievant never wrote him up so he kept asking.

Major Bowerman was referred to Section 4 Pages 19, 20 & 21 and said these are the Notes written by the Inmate to the Grievant. The first Note was written the first part of June. The Note was given to the Grievant his first shift on the block. Major Bowerman testified that the Grievant had the Notes for over three (3) months.

Major Bowerman then read Exhibit Management 1. This is the history of the Grievant working C-1-2 South. He said when the Grievant was a Relief Officer he bid for this block and then bid it for a full time job.

Major Bowerman testified that the Inmate came to the Institution on February 23 and the Grievant goes to C-2 South on March 30, 2012. He said the Grievant went from March to July

without reporting the relationship.

Major Bowerman was referred to Section 4 Pages 25 and 26 and said it is the Department Policy on Unauthorized Relationships. The Policy says this is a serious breach of the Standards of Employee Conduct and can result in termination. The Procedure is, there is to be no personal or business relationship.

Major Bowerman also read B of the Procedure and testified there is training at the Corrections Academy and D which says new hires are to make full disclosure. He said the Grievant knew the Policy because he followed it exactly when he made his report.

Major Bowerman was then referred to Section 4 Page 58 and said it is his interview with Inmate Bowser. The Inmate said he had known the Grievant for ten (10) years. He said the Inmate said there was contact the first or second week in April and there was no contact report. The Inmate said he had conversations with the Grievant about dating and family matters.

Major Bowerman testified that he interviewed the Grievant who told him he didn't report it because he considered the Inmate family. He read Section 4 Page 54 which is his interview with the Grievant and said the Grievant says family. He said the Grievant didn't file a Nexus Report because the Inmate was close to family and he didn't want the Inmate moved. The Major said this was definitely an Unauthorized Relationship.

On Cross-Examination Major Bowerman was asked if he saw any evidence of personal gain to the Grievant. He said "No". He said the Grievant did it for the Inmate.

Major Bowerman was given Exhibit Management 1 and testified there were other positions open for which the Grievant could have bid. He said this was a serious charge.

- 3 -

Major Bowerman read Section 4 Page 58 and said the Interview date was July 18. He then read Section 4 Page 15 and said it was his Report dated November 30 when his Investigation was closed. He said he had plenty of time to do this. Major Bowerman did not interview other Inmates, co-workers or Supervision. The Grievant did not give the Inmate a Conduct Report.

The Major was referred to Section 4 Page 26 which is the Department Policy. He said it is normal to discuss family but not normal to have this type of relationship. The Grievant should have reported this right away. He read Section 4 Page 16 which is the Conclusion of the Investigative Report and said the Inmate was moved.

On Re-Direct Major Bowerman testified that there was no evidence of the Grievant bringing drugs. He said he couldn't prove that he did. Major Bowerman testified that both the Inmate and the Grievant admitted.

On Re-Cross Examination Major Bowerman was asked if there was any suspicion that the Grievant brought drugs in. He said: "Yes. The Grievant was close to the Inmate and didn't report it".

On Re-Direct Examination the Major said the Warden puts employees on Administrative Leave.

IV. UNION'S CASE

The Union's first witness was Matthew Dandino, the Grievant. He has been a CO for 4 3/4 years. The Grievant said he also works at Shower Door Co. and had a fractured toe.

- 4 -

The Grievant said he was a second shift Relief Officer and then bid Charlie 1-2 South the first of May.

The Grievant then read Exhibit Union 1. This is the bid award to his post. He started April 29 at Charlie 1-2. The Grievant said he became aware of the Inmate about a month after the bid. He testified that at first he didn't recognize him because he is a drug addict and has changed a lot. The Grievant said he met the Inmate in January 2004. The Grievant knew a girl and the Inmate was dating her little sister. It was a casual relationship and the Sterris family was involved. The Grievant read Section 4 Page 54 and said the Sterris family became close to him.

The Grievant read Section 4 Page 18 which is the Nexus Report. It shows the Inmate as a close friend because he had personal information about the Grievant. The Grievant said the Inmate was not a threat. The Grievant said the Inmate was not a close friend.

The Grievant read Section 4 Page 19 which is the first Note about the first of June. The Inmate walked up to the desk after recreation and threw the Note on the Desk. The Grievant thought it might be a suicide Note and asked the Inmate if he was O.K. He read the Note when he got home. The Grievant said he did not give the Grievant anything. He said Management told

them to run the block and he told the Inmate "No". The second Note was two days later and he told him "No". The Inmate said "Good for now". He gave him nothing. The Grievant told the Inmate, "If you do it again I will write you up and you'll go to segregation." He didn't report it as there was no threat.

The third note was six (6) weeks later. The Grievant said he thought the Grievant had the message. He reported it now as he needed help from higher authority.

- 5 -

The Grievant testified he thought they would move the Inmate or send him to another institution.

The Grievant was given a joint Exhibit which is the Log Book Page 3 13:36 shows a shakedown of Charlie 1. The Grievant says he doesn't know whom he shook down. He said he does two (2) a day. The Grievant said he did do a shake down of the Inmate's room. He gave him nothing. The Grievant got his Removal Notice in November.

The Grievant sought Mental Health help. The Doctor told him to take stress leave. He read Exhibit Union 2 which is the Psychologist Report and Exhibit Union 3 which is his release to go back to work.

On Cross-Examination the Grievant testified he was discharged November 30. The Doctor's statements are dated in December a month after discharge.

The Grievant read Section 4 Page 54 and testified that he knew the Inmate. The Grievant worked with the Inmate's wife's sister. He then read Section 4 Page 18 which is his Nexus Report. The Grievant testified that he entered the information and put close friend. The Inmate

knew about the Grievant's personal life. The Grievant testified it was end of shift and he was rushed.

The Grievant testified that when he got the first note he told the Inmate "No". He said he treated everyone the same. The Grievant read Section 4 Page 56 and said he didn't file the Nexus report as the Inmate was close to home.

On Re-Direct the Grievant was asked if he knew what the Investigation was for. The Grievant testified that he had turned in a report and the Investigation was to see if the report was filed on time. Also, to see if there was an actual Nexus.

- 6 -

The Grievant read Section 4 Page 56 and said he didn't file a report. He testified that he would have done the same for other Inmates. The Grievant testified he had gotten a note of a sexual nature from an Inmate in Alpha and he reported it the next day.

The Union's next witness was Angela Brandel. She is a CO and the Chapter President. CO Brandel has been with the Department for ten (10) years. She has worked Rover, Control Room, and Perimeter. CO Brandel has worked in C Block. She testified the Cos in C Block have about forty-eight (48) Inmates to supervise.

CO Brandel testified that Inmates make all kinds of requests. They ask about Case Managers, Shift, and sexual favors. She gets them every day.

CO Brandel testified that Inmates make requests every day that should be written up. She doesn't have time to do it. She says Management says take care of your area. They don't want to

know everything. CO Brandel testified she has gotten written requests, usually of a sexual nature and she throws them away.

On Cross-Examination CO Brandel was asked: "If I gave you a note to bring in drugs what would you do?" She answered: "I would turn it in. COs take this request seriously."

On Re-Direct CO Brandel testified that she gets sexual notes and throws them away. She testified there was a meeting with the Director. The Director said Inmates should be close to their family. Violence goes down.

On Re-Cross Examination CO Brandel testified that if Inmates are passing notes to bring drugs in, security takes precedence. She said she gets sexual comments every day.

- 7 -

CO Brandel said she had one incident where she knew an Inmate and she filed a Nexus Report.

The hearing adjourned at 11:12 A.M.

The parties agreed to file written Closing Arguments by the close of business January 28, 2014. The Parties are to serve each other.

V. OPINION OF THE ARBITRATOR

The Employer says the Grievant, Matthew Dandino, was removed on November 30, 2012 for a violation of the Standards of Employee Conduct Rule 46A-Unauthorized Relationships, the exchange of personal letters, pictures, phone calls or information by any means with any

individual currently under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, or friends or family of same, without express authorization of the Department.

The charge resulted from the Grievant's conduct between March 30, 2012 and July 15, 2012. During this time the Grievant began to supervise a former friend of his that he referenced as "family".

The Employer says the evidence is that Inmate Bowser began to pass the Grievant notes asking him to convey drugs and tobacco into the prison, promising \$300 for a quarter ounce.

A couple of weeks later a second note is passed with a plea of being in desperate need of the Grievant's help because the inmate has debts to pay to other inmates.

A couple of weeks later, a third note is passed to the Grievant with Instructions to put drugs in Inmate Bowser's pillowcase when Grievant shakes down the Inmates cell.

- 8 -

The Employer argues that the Unauthorized Relationship is proven by the testimony of personal conversations Grievant provided during his investigatory interview. The Employer further argues the Inmate also provided corroborative testimony during the investigation of personal conversations about the sisters they were involved with and the Grievant conveying drugs into the institution.

The Employer then argues that proof of misconduct is proven by the Grievant's testimony upon Cross-Examination. The Grievant testified that he performed a cell shake-down on Inmate Bowser on June 30, 2012 as requested by the Inmate.

The Employer claims this request is evidenced by the three (3) notes.

The Employer points out the Union contends there is no just cause for removal because the Grievant never engaged in a relationship with Inmate Bowser.

The Employer argues that the evidence of the three (3) notes, the Grievant referencing personal conversations, and the Inmate's testimony refutes this.

The Employer says that the Nexus form filled out by the Grievant on July 15, 2012 admits a relationship with Inmate Bowser. The Nexus Report states: The Grievant says :”Close friend and friend of current friends of many years.”

The Employer points out that during the investigation the Grievant was asked: “How did you know this Inmate?” The Grievant replied “2004, about, I worked at Bar Global with his wife's sister, we all just hung out, they became family to me.” Under direct testimony, the Grievant was asked the question: “Would you consider Bowser a friend?” The Grievant answered: “Casual, yes.” The Employer contends this is conflicting testimony.

- 9 -

The Employer contends that the discrepancy in how he reported the relationship in writing to the employer and his testimony in the arbitration shows a lack of credibility.

The Employer also argues that the Grievant's reason for failure to report can only be viewed as favoritism. The Grievant said "He did not want the Inmate to be moved out of Toledo Correctional Institution placing him further away from his family." The Employer says that if the Grievant did not have a relationship with the Inmate why would he make a decision based on personal knowledge of the Inmate that provides a direct benefit to the Inmate on a personal matter. The Employer says this is a direct violation of the Rules.

The Employer argues that the Union failed to offer any evidence that showed a like or similar incident resulted in less disciplinary action nor was any credible mitigation offered.

The Employer says that the Union argument that the Grievant did his job the way Management expected is not well taken. The Grievant said he didn't write the Inmate up for notes "because he didn't bother shift with every little thing."

The Employer cites the testimony of Angela Brandel, CO and Local Union President, CO Brandel testified that she supervises cell blocks with 48 to 200 Inmates and receives ten to twenty inappropriate comments a day and does not write them up because she doesn't have time. Upon cross examination CO Brandel said if she had received a written note like the Grievant she would have turned it in the next day. She also said such notes were serious and turning them in the next day was common practice at Toledo Correctional Institution.

The Employer argues that the Grievant's actions were outside the policy, training and common practice at the Institution. This is clearly shown when the Grievant waited 3 ½ months

to file the Nexus form.

The Employer says verbal and/or sexual comments by Inmates are normal business but a proposition in writing is to be reported the next day. This common practice complies with the rules. Also, the Joint Stipulations show Grievant's Training.

The employer also argues that the Grievant's contention that multiple drug solicitations in writing are a normal course of running his block is an attempt to feign ignorance of policy.

The Employer says that the Grievant's testimony shows favoritism. It was not a "little thing" or how "Shift expects him to run his block".

The Employer contends that the Grievant's reasons in the investigative report, his official reports and his sworn testimony at the arbitration show each excuse conflicts with or undermines the other.

The Employer argues that the evidence is clear and convincing that the Grievant deserves to be removed. The Employer says the Grievant made multiple conscious decisions to violate policy in a high security prison. The Grievant is a high security risk and a risk to the safety and security of other staff and/or inmates.

The Employer contends that the Grievant has a willful disregard and neglect of policy or lacks the ability to understand his obligation to policy.

The Union argues that the Grievant is an honest officer who tried to run his block the way he believed Management had directed him to do. The Union says there was no Unauthorized

Relationship or exchange with the Inmate. The Union says it objected at step 3 to the length of time it took for the Grievant to be disciplined.

- 11 -

The Union says the Grievant's testimony has proven that at one time he was well acquainted with Inmate Bowser. In 2004 Grievant worked at Bar Global and befriended a female co-worker, Ms. Steriff. He also became acquainted with her sister and her sister's boyfriend Seth Bowser.

The Union asserts that the Grievant testified that the Steriffs became like family to him during the time he worked at Bar Global. The Grievant left his job at Bar Global, saw less and less of the Steriffs and cut his ties with Seth Bowser because Bowser was getting into hard drugs.

The Union says the Grievant had nothing to do with Seth Bowser for eight years and Bowser appears at TOCI in February 2012. Grievant had been employed there since 2008. The Grievant testified that he did not know of Inmate Bowser's arrival at TOCI until his arrival at C-Block in late May. The Grievant testified he did not recognize Inmate Bowser at first because of a change in his appearance.

The Union argues that the Grievant was not close to Inmate Bowser as he didn't recognize him and hadn't seen or spoken to him in about eight years.

The Union cites the Inmates Investigatory statement where he says "we were tight for awhile," saying this indicates their relationship was a thing of the past.

The Union also cites the Inmates second letter to the Grievant where he says “I don’t think that us reuniting is coincidence bro. I’m hoping that we can keep in contact enough to kick it when I get out, as friends, man.” The Union argues that this implies the two had not been in touch and were perhaps not friends. The Union says the evidence is that the Inmate and the Grievant were not close prior to the Inmates incarceration.

- 12 -

The Union argues that Investigator Bowerman would have you believe that the relationship was close and inappropriate but the only evidence comes from the Grievant.

The Grievant repeatedly asserts he continued to treat him “just like any other inmate”. The Grievant testified that he spoke to the Inmate as little as possible just as he does the other Inmates under his supervision.

The Union also argues that the Grievant testified these conversations were not inappropriate or out of the ordinary. The Union says it proved through Cross-Examination of Sean Bowerman that it is not uncommon or against policy to speak with Inmates. It is also not uncommon for inmates to speak to Corrections Officers about familiar things such as their personal lives and families.

The Union points out that the sole charge against the Grievant is a violation of Rule 36A of the Standards of Employee Conduct, Unauthorized Relationships.

The Union contends that Management must prove an exchange took place in order for the charge to stick. The rule carries a 2 Day Suspension to Removal for a first offense which in the Grievant's case it would have been.

The Union argues that while Inmate Bowser gave personal letters to the Grievant he never reciprocated and therefore there was no exchange. The Union says the Grievant made it clear he would not make an exchange and each request got an unequivocal denial.

The Union says after the second request it was six weeks until the third request and then the Grievant reported it.

The Union says it has shown there was no exchange and the Grievant made it clear there

- 13 -

would not be one. The Union argues that Management tried to use the Block Log to show the Grievant brought in contraband for the Inmate. The Union says the Block Log is not evidence as it was the Grievant's duty to do two shakedowns per shift on random cells. The Block Log Management presented for June 29, 2012 does not match up with either the Inmate's nor the Grievant's time lines. The Union argues that Management is padding the case with their Log Book.

The Union asserts that the investigation by Sean Bowerman is inadequate as he did not search for contraband nor question any other witnesses than the Inmate and the Grievant. The Union says it seems as if Management is charging the officer with one rule violation but supplying evidence for a completely different one.

The Union says that while the Grievant was not charged with failure to report, it seems the issue Management was most concerned about. The Union says Management's case is nearly exclusively focused on proving this violation. The Investigator's questions to the Grievant were; "Did you issue a conduct report?" "Did you file a Nexus?" The Investigator concludes "This close, unreported relationship prevented the officer from reporting the interactions."

The Union speculates that Management did not charge Grievant with Failure to Report as discipline would be a Written Reprimand to a 1 Day Fine. With Rule 46A Management can justify a removal.

The Union argues that there would be no arbitration, grievance, or removal if the Grievant had not reported all three notes and his bygone relationship. The Grievant testified he kept all three notes for evidence if the Inmate should not take "no" for an answer. The Union argues this

- 14 -

is the only explanation that makes sense, especially since Management could not offer an alternative explanation. The Union points out this is against the wishes of the Inmate who wanted the notes destroyed. The Union says why would Grievant not follow the instructions if they were friends and both would benefit.

The Union contends that the testimony of Grievant and CO Brandel shows that the Prison Management created an environment where much is left to the discretion of the individual officer.

The Union points out that both the Grievant and Brandel testified they received orders to “run their block” which gave them the impression that issues with Inmates were to be handled at the lowest level possible.

The Union says CO Brandel testified about daily inappropriate requests but Management never accused her of an Inappropriate Relationship or charged her with a violation of Rule 46A.

The Union argues that it is important that CO Brandel testified that she had received written inappropriate request that she chose not to report. The Union says CO Brandel felt Management gave her discretion to make such a decision.

The Union also argues that Management has no physical evidence and no credible testimony. The Union also points out that Investigator Bowerman did not recommend to the Warden that the Grievant be placed on Administrative Leave.

The Union also says the Grievant was honest and forthright, first trying to handle the situation himself as he believed Management wanted him to and then reporting everything, fully to Management when he realized that he could not handle the situation.

The Arbitrator notes that the Union objects to the length of time it took to discipline the

- 15 -

Grievant. At the arbitration no clause was cited in the Collective Bargaining Agreement in support of this objection; nor was any evidence offered to support this argument. The objection was raised in the Union’s Closing Argument and is over ruled.

The Grievant's testimony concerning his relationship is inconsistent. In the Grievant's Nexus Report he says Inmate Bowser was a "close friend and friend of current friends of many years". During the hearing the Grievant said his relationship with Inmate Bowser was "Casual, Yes".

The Union argues that since the Grievant didn't recognize the Inmate at first, it shows there was no real relationship. However, the Grievant testified that Inmate Bowser's physical appearance had changed considerably. The Grievant says he always told Inmate Bowser "No". Inmate Bowser says the Grievant never told him "No" and that is why he kept sending him notes. The evidence also is that the Grievant didn't report the notes originally because Inmate Bowser wanted to stay close to his family and the Grievant wasn't sure what would happen if he reported the notes.

The Arbitrator notes that the Grievant testified that when he received a note of a sexual nature from another Inmate he reported that right away.

The Union cites part of CO Brandel's testimony as supportive of its case. However, when CO Brandel was asked what she would do if she got a note requesting drugs and she said "I would turn it in. Cos take this request seriously." She also said that when she knew an Inmate she filed a report right away.

The majority of the comments and notes that CO Brandel doesn't report are of a sexual

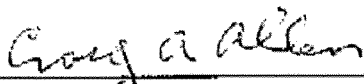
nature which she receives as a female CO in a men's prison. These are the ones she doesn't report.

There is no real evidence that the COs have a virtual free hand in "running their Block". The evidence is clear that notes concerning drugs are to be reported right away. It is also clear that any personal connection to an Inmate is also to be reported right away.

This is a difficult case. The parties have done an outstanding job presenting their respective positions.

The Grievance is denied.

Issued at Ironton, Ohio this 14TH day of February, 2014.



Craig A. Allen
Arbitrator