

**ARBITRATION DECISION NO.:**

113

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Administrative  
Services, Central Office Supply

**DATE OF ARBITRATION:**

**DATE OF DECISION:**

**GRIEVANT:**

Jack A. Smith

**OCB GRIEVANCE NO.:**

G-87-2348

**ARBITRATOR:**

Harry B. Crewson

**FOR THE UNION:**

Allyne Beach, Advocate

**FOR THE EMPLOYER:**

Marlaina Eblin, Advocate

**KEY WORDS:**

Just Cause  
Suspension  
Commensurate With Offense

**ARTICLES:**

Article 24 - Discipline  
    §24.01-Standard  
    §24.02-Progressive  
Discipline

**FACTS:**

Grievant received a five (5) day suspension, effective October 12, 1987, for unauthorized use of a State vehicle, dishonesty, and failure of good behavior. On July 7, 1987, Grievant, a back-up driver for Central Office Supply of DAS was dispatched with goods to be delivered to the Environmental Protection Agency and the Department of Liquor Control. At about one o'clock, the State owned vehicle was involved in an accident at a location that was not near either of the above

listed agencies.

**EMPLOYER'S POSITION:**

Although Grievant was warned that he should not use the truck for personal purposes, the accident in question occurred near his home during lunch hour leading to the inference that the Grievant had stopped at home for lunch while using the State vehicle.

**UNION'S POSITION:**

The Grievant, a three year employee of COS, was never given instructions as to specific routes to be used for deliveries. Drivers have some flexibility in selecting routes; maneuverability of truck, conditions of highway, time of day, etc. are relevant factors.

On July 7, 1987, the Grievant worked through the lunch hour; he did not eat lunch on that day, either at the workplace or at his home. At about 1:00 p.m. he stopped at the Highway Patrol office to see if there were any "skids" to be picked up. This stop was not listed on the daily log but Grievant, acting under general request from the storekeeper at the Highway Patrol, would stop when convenient to pick up "skids". On this day, July 7, 1987, there were none. The accident occurred shortly after leaving the Highway Patrol.

Also, the five (5) day suspension was not compatible with the practice of progressive discipline since the only previous discipline had been a verbal reprimand to the Grievant. The suspension was not for just cause.

**ARBITRATOR'S OPINION:**

The suspension was imposed for just cause. Grievant used poor judgment in taking his loaded truck to the Highway Patrol for "skids". This action did place him in an unauthorized location. However, employer's position with regard to the charges of dishonesty and failure of good behavior is not convincing.

**AWARD:**

The five (5) day suspension imposed on the Grievant shall be reduced to a three (3) day suspension. Grievant shall be reimbursed for two (2) days of lost wages; the three (3) day suspension shall be part of his record.

**TEXT OF THE OPINION:**

**OHIO DEPARTMENT OF  
ADMINISTRATIVE SERVICES**

AND

**OHIO CIVIL SERVICE EMPLOYEES  
ASSOCIATION/AFSCME**

**Grievant:**  
Jack A. Smith

**OCB Grievance No.:**  
G 87-2348

**Appearances:**

### **For the Employer**

Marlaina Eblin, Advocate  
Shirley Terrell, DAS  
James R. Harness, COS, Witness  
Raymond H. Lacy, Jr.,  
COS, Witness

### **For the Union**

Allyne Beach, Advocate  
Linda Feily, OCSEA/AFSCME  
Jack A. Smith, Grievant

### **Issue:**

Was the Five (5) days suspension of the grievant, Jack A. Smith, for just cause?

### **Position of the Employer**

The grievant, Jack A. Smith, received a five (5) days suspension, effective October 12, 1987, for unauthorized use of a state vehicle, dishonesty, and failure of good behavior. On July 7, 1987, Mr. Smith, as a back-up driver for Central Office Supply, was dispatched with goods to be delivered to the Environmental Protection Agency and the Department of Liquor Control. At about 1 o'clock the state-owned vehicle was involved in an accident at a location that was not near either of the above-listed agencies.

Although proof was not offered, the employer surmised that Mr. Smith was planning to use the truck to stop at his residence for lunch. Previously, he had been warned that he should not use the truck for personal business.

The Advocate concluded that the five (5) days suspension should be upheld and the grievance denied in its entirety.

### **Position of the Union**

The grievant, a three year employee of COS, was never given instructions as to specific routes to be used for deliveries. Drivers have some flexibility in selecting routes; maneuverability of truck, condition of highway, time of day, etc. are relevant factors.

On July 7, 1987, Mr. Smith worked through the lunch hour; he did not eat lunch on that day, either at the workplace or at his home. At about 1 o'clock he stopped at the Highway Patrol office to see if there were any 'skids' to be picked up. This stop was not listed on the daily log but Mr. Smith, acting under a general request from Jim Milligan, storekeeper at the Highway Patrol, would stop when convenient to pick up 'skids'. On this day, July 7, there were none. The accident occurred shortly after leaving the Highway Patrol.

The Advocate also contended that dishonesty was a very serious charge and the employer did not offer any solid proof. She also maintained that the five (5) days suspension was not compatible with the practice of progressive discipline since the only previous discipline had been a verbal reprimand to the grievant.

The advocate concluded that the suspension should be expunged from the record of the grievant.

## **AWARD**

The five (5) days suspension imposed on the grievant, Jack A. Smith, shall be reduced to a three (3) days suspension. Mr. Smith shall be reimbursed for two (2) days of lost wages; the three (3) days suspension shall be part of his record.

The suspension was imposed for just cause. The grievant used poor judgment in taking his loaded truck to the Highway Patrol for 'skids', especially since he had no space for them. This action did place him in an unauthorized location. However, the employer's position with regard to the charges of dishonesty and failure of good behavior is not convincing. Also, a three (3) days suspension is more consistent with progressive discipline than a five (5) days suspension.

Harry B. Crewson  
Arbitrator