

#1161

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

Arbitration Dates: June 21, 2017

Grievant Sonya Williams: DRC-2016-04087-3

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

James Adkins
Labor Relations Officer 2
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040
james,adkins@ODRC.State.oh.us

Advocate for the Union:

Derek Urban
Staff Representative
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082
Durban@ocsea.org

RECEIVED / REVIEWED

SEP 14 2017

OCSEA - OFFICE OF
GENERAL COUNSEL

I. HEARING

The hearing was held June 21, 2017 at the Ohio Reformatory for Women. The hearing commenced at 9:00 A.M.

The stipulated issue before the arbitrator is "Was the Grievant, Sonya Williams, removed from her position as a Correction Officer for Just Cause? If not, what shall the remedy be?"

II. STATEMENT OF THE CASE

The Grievant was removed October 3, 2016 for violations of the following work rules:

Rule 7: Failure to follow post orders, administrative regulations, policies, or written or verbal directives.

Rule 8: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment.

The Grievant has a 2 DWS and a 5DWS on the performance track on record prior to her removal.

On October 4, 2016 the Union filed a Grievance and the matter is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Employer's witness was Clara Golding-Kent. Ms. Golding is the Warden's Administrative Assistant. Ms. Golding has twenty-five (25) years with DR&C. She served as an Officer at Madison. Ms. Golding then came to ORW. She progressed through the ranks becoming a Captain in 2012 and Operations Compliance Manager in 2014. On May 1, 2017 Ms. Golding became the Warden's Assistant. At one time she was the Transportation Lieutenant.

On May 9, 2016 Ms. Golding was the Operations Compliance Manager. The American Correctional Auditors (ACA) were here for Re-Certification.

Ms. Golding testified that the ACA audit team was on a tour along with ORW representatives, about fifteen (15) to twenty (20) people.

Ms. Golding said the audit team entered the transportation area and there were a bunch of officers in the area. She asked the officers to talk to the team.

Ms. Golding testified that Lieutenant Shaw approached her and told her about the restraints.

On Cross-Examination Ms. Golding was referred to Joint Exhibit (JX) 20 which is her Incident Report. She testified that Lieutenant Shaw was in the area before transportation left.

Ms. Golding then read JX 20 which is Lieutenant Shaw's statement. Lieutenant Shaw came in the area when the audit team was leaving but some were still there. Lieutenant Shaw tells Ms. Golding of the restraints issue. Lieutenant Shaw told Ms. Golding the restraints were the Grievant's.

Ms. Golding testified that she did not know how Lieutenant Shaw knew the restraints were the Grievant's. Ms. Golding said she had been a transportation Lieutenant for about nine (9) months.

On Re-Direct Examination Ms. Golding read JX 32 which is Lieutenant Shaw's statement. She then read JX 20 and reported Lieutenant Shaw made reference to the restraints. Ms. Kent testified she never authorized the restraints to be left out.

On Re-Cross Examination Ms. Golding read JX 32 and said Lieutenant Shaw said Ms. Golding told him about the restraints.

The Employer's next witness was Scott Batson, who is the current Chief of Security. Scott Batson is a Major. Major Batson said JX 21 is the Grievant's Investigatory Interview.

Major Batson then read JX 23 and testified that the Grievant said it is not standard practice to leave restraints on the filing cabinet. He testified the ACA Auditor reported that the restraints were left out. Major Batson testified the restraints were always to be secured. They can be a weapon or used to take a hostage.

Major Batson testified that the assault procedure was to set off the man down alarm and notify supervision.

Major Batson was referred to JX 80 which are the suicide watch rules. These rules are all staff rules. Major Batson testified that he has kept the suicide watch. He also testified that failure to keep watch could result in injury or death.

Major Batson read JX 91 and said officers shall be provided periodic rotation. He read Management Exhibit 1 which is the Pick A Post. He then read JX 91 testified that rotation is a pull and move.

Cross-Examination Major Batson testified that he had called Lieutenant Shaw to go but he did not witness the conversation between Shaw and Golding.

Major Batson testified there were ORW representatives with the audit team, the Warden and Deputies. He then testified that he was not involved with Grievant's investigation. He said the CO is responsible for restraints and the officer is to keep them on their person. This has been the policy since 2015.

Major Batson testified, after reading JX 81, Officers on Suicide Watch are to keep a constant watch and keep a Log Book. Major Batson said there is a cooler and a waste basket in

the area but this is no excuse to look away.

Major Batson reviewed JX 80 and testified the situation may change the response to a violation. If there is a threat of assault hit the man down. He also testified "Don't rely on IPC skills". "Feel threatened" call for assistance. Any Doubt, call for help."

On Re-Direct Examination Major Batson testified hit the man down.

The next witness was Elvin Shaw. He is a Captain now but on May 9, 2016 he was a Lieutenant. He was in charge of transportation. He said Major Batson sent him to the area.

Lieutenant Shaw read JX 32 which is his Investigatory Interview. He testified he saw restraints on file cabinet in the office. Lieutenant Shaw testified that Auditors were there and the officers were to assist the Auditors. He said the Grievant was disrespectful to the Auditors.

Lieutenant Shaw read JX 33 and testified the restraints were there without supervision. He said the Log says the restraints were the Grievant's. He read JX 28 the Restraint sign out sheet and Grievant had signed out restraints. He said there were other sign outs that were not the Grievant.

Lieutenant Shaw read JX 29 which show Log Book entries for 5/9/16. On 5/9/2016 at 8:33 A.M. CMC out with three (3) Inmates. He read JX 27 and was asked why three (3) restraints and only one (1) Inmate. At 8:33 McLaughlin was already gone and the Grievant was the only one left.

Lieutenant Shaw read JX 20 which was for May 9, 2016. He said the incident occurred at 10 A.M. and the Grievant was the only one left.

On Cross Examination Lieutenant Shaw was referred to JX 29 and said McLaughlin signed out restraints. He said there is no date on JX 29 but it is the correct report. He then read

JX 26 and 27 and said it refers to Jones and Williams on the equipment log. Lieutenant Shaw testified there is another Log when you leave the institution. Lieutenant Shaw says JX 27 shows different times for COs leaving. He said the Post Orders don't refer to extra restraints. Lieutenant Shaw further testified you do an Incident Report (IR) of employee misconduct. He read JX 20 and said he told Ms. Golding Grievant had taken out restraints.

Lieutenant Shaw saw the restraints, checked the restraint room and determined these were Grievant's restraints. He said restraints have to be secured and they were unsecured in his office. Lieutenant Shaw says he does an IR if told to do so.

He testified that there were no officers there when he got there. Lieutenant Shaw said restraints have numbers which are put in the Log Book. There are no photographs.

On Re Direct Lieutenant Shaw was asked about the Staging Process. He testified: "You get the Inmates, check with records and call the Medical Scheduler. Then the COs put on restraints which are kept behind a secured door. Then the COs dress out the Inmate and put the restraints on when it is time to go."

Lieutenant Shaw read JX30 which is the Transport Authorization. JX 26 is Log Book Entry and JX 30 is the time they leave the prison.

On Re-Cross Examination Lieutenant Shaw said JX 30 is the Pre Set Time 7 A.M. McLaughlin and Gates leave at 10:36 A.M. per JX 26.

The Employer's next witness is Captain Anthony Haynes. Captain Haynes is shown a video and testifies during the video. He said the Grievant moves around to get a better view of the Inmate on suicide watch. Captain Haynes testified the cart incident is not an assault.

Captain Haynes read JX 61 which is the Investigator's Summary Report. He testified that the Grievant's claim of assault is not substantiated. The Grievant also did not keep a continuous watch.

Captain Haynes then read JX 64 which is Grievant's Investigatory Interview. He testified that Grievant said "Inmate Daniels rolled the cart past my desk brazing my knees."

Captain Haynes read JX 70 which is Grievant's Incident Report concerning Inmate Daniels and the cart and he then testified "there was no assault on the video." He then read JX 64 where the Grievant said the Inmate brazed her knees and claimed to be assaulted. Captain Haynes testified that the Grievant should have hit her Man Down and summoned assistance.

On Cross-Examination Captain Haynes said the incident with the Inmate was not an assault. The Inmate was careless but assault requires clear intent. He said he watched the entire video before making his report.

Captain Haynes testified after reading JX 61 that the Grievant broke the "Continuous Watch" one time. He said he has worked "Continuous Watch" prior to 2002. He wasn't the watch officer. Captain Haynes testified the Constant Watch Officer gives toilet paper to the Inmate. Captain Haynes was asked: "Was there discipline for that?" He answered: "I don't know."

Captain Haynes further testified that COs maintain a Log Book and Observation Form. He said they may or may not "break" constant watch. Captain Haynes said there is a cooler there for lunch but you must be relieved first.

On Re-Direct Examination Captain Haynes said the Grievant never gave the Inmate toilet paper. He said policy allows use of the Log Book.

Captain Haynes then read JX 81 which is part of the Post Orders. This refers to Inmate personal hygiene. He said this could be a number of things.

The Employer's next witness was Lieutenant Courtney Katafias. She is a shift supervisor at ORW. Lieutenant Katafias read JX 69 which is an Incident Report dated July 15, 2016. She said the Grievant called about the incident with the Inmate but it doesn't look like an assault. Lieutenant Katafias testified she saw Grievant walk away and she wasn't watching. She said if Grievant was assaulted, send for help.

Lieutenant Katafias read JX 80 (g) and testified that the Grievant did not call for help immediately. She also read JX 82 (k) and said Cos on Constant Watch must be relieved to go to the bathroom. It is the same for lunch.

Lieutenant Katafias read JX 9 (3a) (v) which refers to constant watch, periodic rotation and she read Exhibit Management 1 which is the Pick a Post agreement that removes pull and move posts.

On Cross-Examination Lieutenant Katafias testified that Grievant got up from her watch several times. Lieutenant Katafias then viewed the video at 1951.09 she was talking to the Grievant then at 1952 she walked away. Lieutenant Katafias said she doesn't recall the content of the conversation. She said the Grievant was looking in her direction.

Lieutenant Katafias testified she reviewed the video with the Grievant and counseled her on assault. She doesn't recall counseling the Grievant about Constant Watch. Lieutenant Katafias read JX 69 which is her Incident Report and testified there was no assault.

Lieutenant Katafias testified that Cos can bring lunch to RTU but have to be relieved to get lunch or things from the cooler.

On Re-Direct Examination Lieutenant Katafias testified that the Grievant referred at all times to an assault. She read JX 64 and said Grievant says it was an assault. The alleged assault is on the video 1933.10 to 1933.58.

III. UNION'S CASE

The Union's first witness was Sonya Williams, the Grievant. The Grievant has been a transportation officer for the last three years. Her performance evaluations are all "Meets" or "Above".

The Grievant testified that on May 9, 2016 she pulled restraints. She read JX 28 and said it is the Restraint Sign-Out Sheet. The Grievant said the chits don't match up. Also, others sign out restraints. The Grievant testified she put restraints on the lock box in the restraint room.

The Grievant is familiar with Ms. Golding. She said Ms. Golding singles her out because of personal issues. The Grievant read JX20 and said it doesn't show whose these were.

The Grievant read JX 31 and said it is Lieutenant Shaw's interview. She said she has problems with Lieutenant Shaw. The Grievant read JX 33 and said the Restraint Log shows restraints belong to the Grievant. Lieutenant Shaw says one (1) set of restraints.

The Grievant testified that the Procedure was to determine how many are going. Others taught her to Pre-Trip. She said restraints are in the lock box until ready to go. After the Audit Team left Lieutenant Shaw gave new rules.

The Grievant read JX 23 which is part of her Investigatory Interview and said the first answer was not hers. The Grievant said: "No restraints on filing cabinet."

The Grievant then read JX 16 which is the Hearing Officer Report where she said the restraints were on lock box in the restraint room. The Grievant read JX 46 which is Mike Jones

Investigatory Interview. Mike Jones is a fellow Transportation Officer. Mike Jones saw the restraint on top of the filing cabinet.

The Grievant then read JX 51 which is Ms. Travis' Investigatory Interview. Ms. Travis says the restraints were in a black bag on the cabinet.

The Grievant then testified JX 18 is the Pre-Disciplinary Conference Notice. The Notice alleges three Rule Violations; Rules 7, 8, and 28A. The Grievant testified the Hearing Officer found no Just Cause for Rule 28 (a).

The Grievant read JX 5 July 15, 2016 she was working Constant Watch. She also read JX 69 which is Lieutenant Katafias' Incident Report. Lieutenant Katafias said Grievant broke watch.

The Grievant then read JX 65 of her Investigatory Interview and testified the Log Entry is longer than moving the fan.

The Grievant read JX 81 which is suicide watch procedure. She testified there are several interruptions. Inmates going to laundry, nurses passing out medications, and Log Books. The Grievant testified she can't watch two Inmates constantly.

The Grievant then read JX 70 and said the Inmate ran the cart into her knees. She tried to determine if case would be an assault. Lieutenant Shaw reviewed the Video with the Grievant. The Grievant read JX 80 and testified no one at ORW disciplined for breaking Constant Watch.

On Cross-Examination the Grievant testified the Pre-Disciplinary Conference says stacking charges and some charges were dismissed. She read JX 70 where it says the Inmate hit her with the cart. She read JX 64 which says the Inmate hit my knee and said those are not my exact words. The Grievant testified "I feel I was assaulted. The others are lying." She said she asked the Inmate to apologize. The Grievant testified "I can't do a Constant Watch."

The Grievant said she never reported accountability of restraints to supervision.

The Grievant testified about Prior Discipline that she never lost any equipment. She was asked if she was disciplined for losing pepper spray. The Grievant answered "Yes".

The Grievant said she was working on May 9, 2016. She read JX 23 which said it is not standard practice to leave restraints on filing cabinet. The Grievant then read JX 16 and testified her restraints were on top of the lock box.

On Re-Direct Examination the Grievant read JX 15 and was asked; "Which charge most resembles the allegations?" She answered; "Rule 28A but I was not charged with 28A."

The Grievant testified the Inmate ran a cart into my leg. It is common knowledge - No constant watch. The Grievant testified that she reported verbally to the Lieutenant.

The Union's next witness was Mike Mikols. Mr. Mikols works the Control Center 3rd Shift. He has been at ORW twenty (20) years. Mr. Mikols testified he has worked Constant Watch until November of last year. He said you keep an eye on the Inmate to keep them from harm.

Mr. Mikols read JX 81 (h) and testified it is not possible to keep an uninterrupted watch on two (2) Inmates. If you look at one you can't see the other. He also testified there is keeping Logs and traffic to the Laundry Room. He said supervisors come and break line of sight. There is lunch in the cooler you go and get. Mr. Mikols testified you never get relief to go to cooler. He testified he told supervision of the common practice.

On Cross-Examination Mr. Mikols testified he held a constant watch post for five (5) years. He said it is not right to read a novel on Constant Watch.

The next witness was Michael A. Jones. CO Jones is a regular Transport Officer.

He has been at ORW nineteen (19) years.

CO Jones was assigned to a trip May 9, 2016. He read JX 45 which is his Investigatory Interview. CO Jones said he met with the Auditors and got key to open the restraint door.

CO Jones read JX 46 and testified there were restraints on the filing cabinet in the restraint room. He said they were pre-staged for a big trip. CO Jones testified that for a big trip he pulled restraints and put in a milk crate. If it was a small trip he put the restraints in a lock box or on a filing cabinet. CO Jones testified that supervision knew this and never said to stop. After this incident notes and restraints are to go in milk crates.

CO Jones testified he knows the Grievant and has worked with her. He likes her.

On Cross-Examination CO Jones testified there is a new practice the last few months. He read JX 46 which says there was a restraint on the file cabinet. CO Jones testified supervision never said anything about Pre-Staged. He said he was across from the door when the Auditors came in.

On Re-Direct CO Jones said there are OSU restraints and FMC restraints. The chits are on the restraints themselves. CO Jones testified that more restraints are taken than may be used.

On Re-Cross Examination CO Jones testified restraints are sometimes taken without being signed out.

The Union's next witness was Brett Gaines. He is 1ST Shift Relief Officer. He has been at ORW twenty-three (23) years. CO Gaines testified he was a transportation officer for about five (5) years. CO Gaines testified that on outgoing trips the Inmates are called over, you get restraints and sign out where you are going. CO Gaines testified you keep the restraints in the restraint room. He learned this procedure from others.

CO Gaines has worked with Grievant and she is a great partner.

CO Gaines testified he has worked Constant Watch. It is not possible to keep constant watch on two (2) Inmates at the same time. You have to get ice, toilet paper and meet with Mental Health.

CO Gaines is the Chief Steward. He testified only two (2) employees have been disciplined over Constant Watch, the Grievant and Aubrey Allen. Allen was after the Grievant.

On Cross-Examination CO Gaines testified he filed a grievance for another employee and one quit so there are four (4) disciplines, not two (2).

On Re Direct CO Gaines testified he was never disciplined for getting toilet paper.

The Union's next witness was Gina Corbett. CO Corbett is Escort Special Duty and worked with transportation twelve (12) years. She has worked with Grievant and she is a great co-worker and does a good job. CO Corbett testified Ms. Golding had issues with the Grievant and was always picking on her.

CO Corbett testified that on a trip there is paper work, Inmates and restraints. The restraints are kept in the restraint room and supervision knew this.

On Cross-Examination CO Corbett testified there is no permission to leave restraints out of the restraint room unsecured.

The next Union witness was Rick Conway. CO Conway has been at ORW for thirteen (13) years. He is a Transportation Officer. CO Conway says he was on duty May 9, 2016 and remembers the Audit Team and testified that he was never interviewed.

CO Conway testified that restraints are placed on the Lock Box and it has always been done that way. He said he saw CO Jones lead the Auditors around and all the Auditors were

leaving when Lieutenant Shaw came in. CO Conway testified he never saw restraints in the office. He said there are chits on restraints. CO Conway testified they sign out more restraints than needed to bring prisoners back.

CO Conway also testified that he has worked Constant Watch. There are prisoners out in the area because of the laundry room, ice machine, and broom closet. He said the Grievant is a good co-worker and knows her job.

On Cross-Examination CO Conway testified that you cannot discipline an employee in front of others. CO Conway testified that he had been there five (5) years under three (3) different supervisors and it had always been that way.

On Re-Direct Examination CO Conway testified that Pre-Stage changed when Lieutenant Shaw said use milk crates with notes about destination.

The Union's last witness was Aubrey Allen. CO Allen has been at ORW three (3) years. This year he is a Constant Watch Officer. CO Allen testified that you have to document every fifteen (15) minutes and read about the last seventy-two (72) hours in the Log Book.

CO Allen read Exhibit Union 1 and said he got a two (2) day working suspension for sleeping on duty and use of ice machine.

The parties agreed to file written Closing Arguments no later than 5 P.M. close of business July 21, 2017.

IV. OPINION OF THE ARBITRATOR

The Arbitrator has reviewed all the testimony and Exhibits. The Advocates for both parties have done an excellent job presenting their cases.

The Employer says that at the time of her removal the Grievant had a 2 day working

suspension and a 5 day working suspension on record.

The Employer says that the Union argued that the Grievant didn't have a single unsatisfactory performance evaluation but offered no evidence to substantiate their claim.

The first incident happened on May 9, 2016. The Grievant was a transportation officer and had signed out 3 sets of restraints. The Employer argues that Grievant left one set of restraints on top of a filing cabinet in the Lieutenant's office that was unlocked and had the door left open resulting in a breach of security.

The Employer says Ms. Golding, then Operations Compliance Manager, led the Auditors, Warden, Deputy Warden and Major on May 9, 2016, to the transportation area. The Employer then argued that Ms. Golding spoke to Lieutenant Shaw about a set of restraints left unsecured on top of a filing cabinet. She confirmed that one of the Auditors had expressed concern about the set of restraints being left unsecured. The Employer points out Ms. Golding has been a Captain and a Lieutenant and never authorized anyone to leave restraints unsecured or unattended.

The Employer argues that Major Batson testified he has never given any authorization for restraints to be left unsecured or unattended. Major Batson also identified the safety and security issues with leaving any security devices unsecured.

The Employer then cites Lieutenant Shaw's testimony that he found the set of restraints on top of a filing cabinet in the Lieutenant's office with the door wide open and unlocked.

The Employer says that both the Grievant and Lieutenant Shaw testified that on May 9, 2016 eight (8) sets of restraints were signed out. The Grievant signed out three (3) sets and five (5) sets were signed out by CO Dorothy McLaughlin. CO McLaughlin and CO Gates left the

institution at 8:33 A.M. with five (5) restraints signed out to CO McLaughlin. The Employer argues that Lieutenant Shaw looked at the restraint log and confirmed the Grievant had signed out the unsecured restraints. Lieutenant Shaw did confirm that transportation officers did stage restraints within the locked restraint room but the Employer argues this set of restraints was not in the restraint room but was left on top of a cabinet in an unsecured, open office.

The Employer says the Grievant testified she did not see a set of restraints on the filing cabinet. She said that she left a set of restraints in the restraint room on top of lock boxes. The Employer argues that these restraints were not the restraints that led to her discipline. The Grievant admitted to past discipline of losing security instruments in the post by losing her pepper spray at Dayton Correctional Institution. The Employer argues that the rule violations were properly applied as the Grievant had already received discipline on the same rule violations but failed to correct her behavior.

The Employer cites the testimony of CO Michael Jones as being in direct conflict with the Grievant's testimony. CO Jones testified that he saw a set of restraints on the filing cabinet in the restraint room. The Employer argues that Grievant said that "no restraints on the filing cabinet were seen".

CO Jones said in his investigatory interview that he saw a restraint laying on top of the filing cabinet unsecured. CO Jones also testified that on the date in question the office was not a Lieutenant's office.

The Employer also argues that on cross-examination he had never been authorized to leave restraints unsecured.

The Employer refers to the testimony of CO Gaines. CO Gaines has been a CO for 25

years and worked transportation for about 5 years and staging restraints was a common practice. The Employer argues this is inconsistent with the Grievant's testimony she placed them on the lock boxes.

The Employer says CO Corbett testified that transportation officers staged restraints prior to a trip and she testified she was never authorized to leave restraints unsecured.

The Employer cites the testimony of CO Richard Conaway. CO Conaway testified he did see a set of restraints on the filing cabinet in the dress out room. The Employer argues these were not the set of restraints the Grievant left in the Lieutenant's Office.

The Employer says both CO Gaines and CO Jones testified they saw a set of restraints on top of the filing cabinet in the restraint room. CO Conaway testified he saw a set of restraints on the filing cabinet in the dress out room. The Employer argues the Grievant testified she never saw any restraints on any filing cabinet.

The Employer argues that both the Employer's witnesses and the Union's witnesses saw a set of restraints in 3 different locations. The Employer says with 3 sets of restraints signed out by the Grievant, 1 on top of the filing cabinet in the Lieutenant's office, 1 on top of the lock boxes in the restraint room and 1 on the filing cabinet in the dress out room, this would account for all three sets signed out by the Grievant. The Employer argues the Grievant had no idea where her restraints were.

The Employer then moved its argument to the second incident on July 15, 2016. The Grievant had accepted overtime on 2nd shift and was assigned to Constant Watch or better known as Suicide Watch in the Residential Treatment Unit (RTU) at ORW. The RTU is where the most mentally ill offenders are housed. Suicide Watch is a post that requires Constant Watch on the

offenders due to either a threat that the offenders have made to harm themselves or a determination made by mental health professionals that the offender may cause themselves harm.

The Employer points out that at approximately 7:35 P.M. Lieutenant Katifias received a call from the Grievant stating she thinks she was just assaulted. Lieutenant Katifias responded to the RTU, had the Grievant checked by the nurse and had Grievant relieved by another officer. When Lieutenant Katifias reviewed the camera footage of the incident she discovered Grievant did not keep constant watch on the two offenders she was assigned to watch.

The Employer argues that the Grievant did not follow proper procedure by activating her man down alarm or calling on her radio for immediate assistance.

The Employer refers to the testimony of Major Batson, Chief of Security at ORW. Major Batson testified that when any staff member is assaulted they are to hit their man down alarm or notify their supervisor by radio immediately. This procedure is the proper procedure as stated in post orders. This is expected of all staff. Major Batson testified it is not acceptable to wait for an apology from an Inmate. Major Batson testified that we don't normally have problems with officers being able to watch Inmates on suicide watch.

The Employer next reviewed the testimony of Captain Haynes who was the Investigator for this incident. A video was played for the Arbitrator, Advocates and Grievant. The video shows the Grievant sit up and stretch her head forward. Captain Haynes testified, in his opinion, "She had to sit up to be able to see the inmate". The Employer argues that the Inmate was not visible to the Grievant and neither the Union nor the Grievant disputed this.

The video progressed and showed the Grievant walking away and turning the fan on herself. Captain Haynes testified that the Grievant should have someone to either help her with

the fan or relieve her while she moved the fan.

The video shows the Grievant pull out a pocket calender or small book. Captain Haynes testified that this was not appropriate.

The video next shows an Inmate with a cart and a cooler which knocks a clip board off the table the Grievant has in front of her. Captain Haynes testified that this is when the alleged assault happened to the Grievant. The Grievant goes to the trash can next to the fan, comes back, and swivels back and forth in her chair until the Inmate comes back. The Employer argues that one minute has passed and no call for assistance. The Grievant has a brief conversation with the Inmate and during this time the Grievant doesn't look at either of the Inmates she has on suicide watch. The Grievant then calls Lieutenant Katifias to report she thinks she was just assaulted.

The Employer argues that Captain Haynes testified the Grievant did not follow the policy as it requires continuous uninterrupted watch of the Inmates. The Employer also argues that the evidence does not support the Grievant's claim of being assaulted.

Captain Haynes testified that the video did not support the Grievant's claim.

The Employer cites the testimony of Lieutenant Katifias reading the Post Orders, "Acts of violence shall be addressed immediately, if feasible". Lieutenant Katifias said Grievant did not follow policy. The Employer argues that Lieutenant Katifias testified she did observe the Grievant walk away from her suicide watch in violation of policy and post orders.

The Employer says CO Mike Mikols was called as a Union witness. CO Mikols testified that it wasn't possible to watch Inmate on continuous uninterrupted watch. The Employer argues that CO Mikols testified that he never reported any problems of not being able to watch Inmates on continuous uninterrupted watch. CO Mikols testified it is not appropriate to read a book while

on suicide watch.

The Employer argues that the testimony of CO Allen and Chief Steward, Brett Gaines, is incorrect as the evidence is that four officers have been disciplined for constant watch violations, not two.

The Employer contends that Lieutenant Shaw gave a direct account that he found the restraints in the Lieutenant's office and this was not disputed once by the Union.

The Employer also argues that there is prior enforcement of this Rule. The Rule was enforced on Grievant in her prior discipline. The Employer says the Union failed to show that other similarly situated employees have left restraints in an unsecured area without consequence.

The Employer says the Grievant has shown she cannot correct her behavior and the discipline is progressive. The Grievant either does not recognize the threat her lackadaisical attitude toward policy adherence poses or does not care. Either is not conducive to being corrected or prevented.

The Union argues that the Grievant can only be disciplined for just cause and the Employer had neither adequate proof of guilt nor established just cause to remove the Grievant.

The Union says during the evaluation of this area an auditor, unnamed by the Employer, expressed concern to someone, also unnamed by the Employer, that a set of restraints was outside of the locked restraint cage.

The Union says in Lieutenant Shaw's investigatory interview he reports Major Batson called him down to the transportation area. He was asked in the same interview, "Upon your arrival to the Transportation Area, what was reported to you"? He said, "PREA Coordinator Golding reported that there was a set or restraints that was left out unattended". The Union

argues this contradicts his testimony at the Arbitration. Lieutenant Shaw stated in this hearing that Major Batson called him about restraints and then says he found the restraints on his own and informed Ms. Golding.

The Union argues that Ms. Golding testified she was unaware of the restraints until Lieutenant Shaw reported to her and this is a major inconsistency. The Union argues that if Major Batson called Lieutenant Shaw about the restraints what reason would he have to report to Ms. Golding.

The Union then argues there is a major inconsistency in where the restraints were found. Lieutenant Shaw says the restraints were in the Lieutenant's office. However, Major Batson, the Grievant, CO Jones, CO Conaway, all testified the restraints were in the restraint room. Three people deny seeing any set of restraints in the Lieutenant's office. Only Lieutenant Shaw reports finding a set of restraints in that space.

The Union argues the placement of restraints is paramount to the case. The Union said it proved the door to the restraint room was locked and all items were secure. The Union points out CO Jones testified that he had to unlock the door to get into the restraint room and found the restraints on top of a filing cabinet. CO Conaway and the Grievant testified the door to the restraint room was unlocked.

The Union says taking restraints out of the restraint box and placing them in the restraint room, called pre-staging, is a long established past practice.

The Union says Elvin Shaw, the transportation supervisor at the time of this incident, testified that he knew about pre-staging as well. He reported that it was his instruction to relief officers who worked transportation to pull the restraints ahead of time and put them in a milk

crate in the restraint room.

The Union argues another inconsistency with Shaw as he testified he did not review the pre-staging procedure with the permanent transportation officers after the audit incident when Conaway, Jones and Williams testified that he did.

The Union argues that what Shaw explained as pre-staging was in contradiction with Major Batson's testimony. Major Batson said officers should carry with them at all times the sets of restraints pulled.

The Union contends the Employer failed to produce any policy describing what to do with restraints or where these items should be kept.

The Union asserts the Grievant did not commit a SE07 Rule 7 violation as there was no policy or post order to follow.

The Union also argues that there is no SOEC Rule 8 violation as the Grievant used proper judgment in carrying out a past practice.

The Union also argues the Employer did not produce adequate proof of who signed out the found restraints.

The Union says according to the evidence and Employer's witnesses Shaw told Clara Golding the restraints belonged to the Grievant. This is supported by Ms. Golding's Incident Report and testimony. It is also supported by Elvin Shaw's Investigatory Interview and testimony.

The Union says this cannot be true since no one saw him check it

The Union says there are various logs used in providing proof that the restraints found belonged to the Grievant. The restraint log shows the Grievant signed out 3 sets of restraints on

May 9, 2016. Lieutenant Shaw only found one set of restraints in the Lieutenant's Office. The Union argues the Employer was unable to identify which set of restraints was found. Lieutenant Shaw testified that he used the second page of the restraint log for May 6, 2016. The Union argues the date cannot be verified as there is no date and a date cannot be inferred by the other Officer's name. The Union says this fact leaves wide open the possibility that other officers could have pulled restraints that day.

The Union says the Employer tried to show McLaughlin's trip left before the auditors came. The reports all give different times. Clara Golding reports the incident happened at 10 A.M. so McLaughlin could still have been in the area. The Union argues the restraint could have belonged to McLaughlin. The Employer did not note the number on the chit of the restraint.

Officers Jones, Conaway, and Williams attested that sets of restraints would often have mis-matched chit numbers and sets would be hung on the wrong hooks. Officers would sometimes sign out the wrong restraints.

The Union says the Grievant is charged with poor judgment. The Union argues her restraints were in a locked room according to past practice. This is not poor judgment.

The Union next turned its attention to Constant Watch. This concerns a Rule 7 violation for breaking her constant watch on July 15, 2016.

The Union argues that until the day of arbitration the only issue was the Grievant getting up to move her fan. The Union says the only issue in Captain Haynes' Investigatory Interview was moving the fan. This was also true in Jill Elson's Pre-Disciplinary Conference Hearing Officer's Report. The Union says the Employer's case at arbitration is largely outside what the Grievant previously had the opportunity to rebut. The blatant example was the questioning in

regards to “reading a book”.

The Union says the Employer “substantiated” this claim through testimony by Captain Haynes in arbitration. The video shows the Grievant pull out a pocket calendar. Captain Haynes said “It looks like she is reading a book”. The Union argues this is speculation on the Captain’s part due to the camera angle and the poor quality of the video.

The Union claims the Employer has ignored the use of peripheral vision. Major Batson, Captain Haynes and Lieutenant Katafias all testified this was an acceptable form of constant watch. The Union claims there is no evidence that the Grievant did not have the Inmates being observed by peripheral vision.

The Union also argues that the Employer did not ask the Grievant a single question about the video. The Employer did not ask the Grievant if she was reading a book or about the use of peripheral vision. The Union says the video does not establish what the Grievant sees or where her eyes are directed.

The Union says Lieutenant Katafias did not counsel the Grievant about breaking her constant watch. Lieutenant Katafias testified the video showed the Grievant getting up. Lieutenant Katafias noted the video showed the Grievant looking in her direction and not her Inmates for over a minute. The Union argues that Lieutenant Katafias did not counsel the Grievant because the Employer knows there are many instances where staff cannot keep a constant watch of Inmates.

The Grievant and Officers Gaines, Mikols, Conaway and Allen all testified there are a multitude of instances where staff breaks Constant Watch. The Union argues the Suicide Watch Policy contradicts itself in that it tells employees to read log books and make entries in log

books.

The Union says testimony shows officers assigned to the post are responsible for giving toilet paper and other hygiene items to Inmates which takes your vision for one or two minutes. The Union contends it is not possible to have Constant Watch on two Inmates with the Inmates being in separate rooms and with the design of the doors having blind spots.

The Union also says there are other interruptions such as Inmates and staff going to the laundry room and broom closet, mental health visiting, etc. The Union also argues there are waste baskets, coolers and tables in the area and use of these items breaks Constant Watch.

The Union argues that the Employer's witnesses denied distractions for an Officer to break Constant Watch and that is unreasonable. The Employer asserts employees should call for relief prior to using the cooler but did not know of an instance where that actually happened. Every Union witness testified they do not call for relief prior to using the cooler, eat their lunch, get toilet paper, write a log, etc. The Union argues only Aubrey Allen has been disciplined for breaking Constant Watch and it was overturned in arbitration.

The Union points out that Mikols, Gaines, and the Grievant, testified Management was aware of the distraction issues.

The Union argues that the Employer's evidence that Grievant violated Rule 7 by not keeping a continuous watch on Inmates is a video that shows her looking away from her charges momentarily. The Employer cannot prove that she did not have peripheral vision during these times.

The Union argues the time the Grievant looked away from her charges is nothing compared to the time Lieutenant Katafias took. The expectation laid out in the policy are

unreasonable and impossible to achieve.

The Grievant conducted herself the same as any other officer on Constant Watch.

The Union says the allegation of assault upon an officer is an after thought. The Union contends that the Grievant did not report this incident as an assault because she was not certain during or after that it was an assault. The Grievant testified in her 16 years at ORW she had never been involved in or the subject of an Inmate assault. Both Major Batson and Captain Haynes said intent is a key component of assault.

The Grievant tried to establish the Inmates state of mind. Verbal redirection and commands is the least severe action the Officer can take. The judgment of what level of reaction to use has always been at the Officer's discretion.

Inmate Daniels became belligerent with Grievant once she engaged her in conversation. The Inmate began to swear at Grievant and would not apologize to her for hitting her with the cart. The Grievant then called for back up. Once the Inmate was secure the Grievant used the phone to contact her supervisor. The Union says the Grievant found out later that Inmate Daniels had a history of assault and was incarcerated for assault. The Grievant made one mistake by thinking this incident could have qualified as an assault and telling her supervisor about it. The Union argues the Employer's position is that the Grievant mis-characterized the incident as an assault.

The Union further argues that the Employer did not bring an assault policy to the table. There was no assault policy referred to in any of the preliminary steps. The only policy they referred to was the Suicide Watch/Utility Post Orders and the only language referenced was an Officer must respond in the safest way possible. The Union argues that the Employer did not

produce documentation that stated what the appropriate response should have been.

In conclusion the Union reviews its arguments and says the Employer has not proved its case.

The Union asks the Grievant be reinstated with back pay and the customary order concerning such matters as wages for lost overtime, leave balances, seniority and medical expense.

There is no dispute that restraints were to be secured at all times, and that pre-staging was a common practice.

The evidence is clear and concerning that Lieutenant Shaw found unsecured restraints on a file cabinet in the Lieutenant's Office which had been signed out by the Grievant. The Union's argument that the testimony concerning Lieutenant Shaw's finding of the restraints is inconsistent does not negate Lieutenant Shaw's testimony. The Union also argues that no one saw Lieutenant Shaw check the log is not evidence that he did not check it. There is no apparent reason why a witness to Lieutenant Shaw's checking of the Log was necessary.

The video shows the Grievant did not keep Constant Watch over the two Inmates assigned to her.

The Union argues with some merit that to maintain a Constant Watch is impossible. There is some testimony to this effect. The Employer says Constant Watch has gone on at ORW for about ten (10) years and four (4) employees have been disciplined for failure to maintain Constant Watch. The facts are the Grievant left Watch to adjust the fan, go to the trash can and swiveling in her chair awaiting the Inmate's return to the ice machine. Major Batson testified the Grievant should have asked for relief or assistance. The video also shows the Grievant pull out a book or

pocket calender and read it. All the testimony says this is improper.

The Union argues there are breaks in the Constant Watch caused by staff, mental health workers, etc. and so the Grievant should have been able to look at her calender. This is not the case. The Official breaks in the Constant Watch such as staff and mental health workers are part of the process, while reading your calender is not.

The Grievant's position that Lieutenant Shaw, Ms. Golding, Mr. Holland and Lieutenant Katafias all lied is not credible.

The next issue is the Grievant's incident with the Inmate. The Union argues that the Grievant had never been assaulted before and had no experience with this Inmate. The Union's point is that this was excusable neglect.


The Employer, however, cites the testimony of Lieutenant Katafias who confirmed the post orders state "acts of violence should be addressed immediately, if feasible". The Grievant is a sixteen (16) year employee who cannot claim an ignorance of the post orders. The Union's argument that intent is an element of violence is correct. However, to delay reporting until after conversing with the Inmate is not correct.

The Grievant has a two (2) day working suspension and a five (5) day working suspension on her record. The discipline is progressive.

The discipline is progressive.

The grievance is denied.

Issued at Ironton, Ohio this 14, day of August, 2017.


Craig A. Allen
Arbitrator