

#1165

**IN THE MATTER OF ARBITRATION**  
**BETWEEN**  
**STATE OF OHIO**  
**DEPARTMENT OF DEVELOPMENTAL DISABILITIES**  
**AND**  
**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION**  
**LOCAL 11**  
**AFSCME. AFL-CIO**

---

---

Arbitration Dates: October 3, 2017

Grievant Jennifer Simmons: #DMR-2016-04825-4

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Andy Bower  
Labor Relations Officer 3  
Ohio Department of Developmental Disabilities  
30 East Broad Street, Floor #18  
Columbus, Ohio 43215  
[David.Bower@dodd.ohio.gov](mailto:David.Bower@dodd.ohio.gov)

Advocate for the Union:

Monty Blanton  
Staff Representative  
OCSEA, AFSCME Local 11  
390 Worthington Rd., Suite A  
Westerville, OH 43082  
[mblanton@ocsea.org](mailto:mblanton@ocsea.org)

RECEIVED / REVIEWED  
NOV 15 2017  
OCSEA - OFFICE OF  
GENERAL COUNSEL

## I. HEARING

The hearing was held October 3, 2017 at the Columbus Developmental Center. The hearing commenced at 9 A.M.

The stipulated issue before the Arbitrator is: "Did the Grievant, Jennifer Simmons, violate her Last Chance Agreement (LCA) signed on September 1, 2016? If not, what shall the remedy be?"

## II. STATEMENT OF THE CASE

The Grievant was removed from her position as a Therapeutic Program Worker (TPW) on November 25, 2016.

The Grievant was removed for a violation of the Ohio Department of Developmental Disabilities Standards of Conduct Policy, specifically rule: Failure to Report for Duty, B-5, Not in approved leave status for more than one hour but less than one scheduled shift. Which is a Violation of her Last Chance Agreement signed on September 1, 2016.

At the time of the removal the Grievant was serving under the terms and conditions of a Last Chance Agreement for attendance-related infractions.

## III. THE EMPLOYER'S CASE

The Employer's first witness was Mitchell Prusinski, who is a Residential Care Supervisor 2 (RCS2). Mr. Prusinski was hired in September 2003 and was given his current position in June 2008.

Mr. Prusinski does the Schedule. Mr. Prusinski testified that in early September the Grievant advised him that she was not in school and her schedule was changed to a regular

schedule.

Mr. Prusinski testified that on September 30<sup>th</sup> he called the Grievant and she said she had misread the schedule. He said the Grievant had been given a copy of her schedule and she came in two hours and seventeen minutes late. Mr. Prusinski testified he advised HR of her lateness.

Mr. Prusinski further testified that the Grievant presented a Standard Schedule and another schedule. He reviewed Joint Exhibit (JX) 7 page 2 and said it was Grievant's school schedule which showed Mondays and Thursdays off. Mr. Prusinski then read JX7 page 3 which is Grievant's Standard Schedule. On this Schedule the Grievant gets every third weekend off. The Schedule stays the same.

Mr. Prusinski testified that the Grievant requested this schedule. He read JX7 page 4 and identified it as Grievant's schedule proposed by her.

Mr. Prusinski read JX7 page 5 and testified he had never seen that schedule until the arbitration. He doesn't follow the school schedule and the Grievant never said she doesn't understand the schedule. Mr. Prusinski also testified the Grievant never asked for clarification.

On Cross-Examination Mr. Prusinski testified that he had never seen the schedule in JX7 page 5 and it was not generated by him or his office. He said it looks like our schedule but is not ours.

The Employer's next witness was Joseph Fanell. Mr. Fanell is the HR Administrator hired February 9, 2014. He was a Department of Youth Services Coordinator 2005-2014 and in 1994 was HR at Civil Rights Commission.

Mr. Fanell testified he got an E-Mail from Mr. Prusinski that the Grievant had arrived two hours and seventeen minutes late. He was appointed fact finder. Mr. Fanell was the

Pre-Disciplinary Hearing Officer.

Mr. Fanell read JX3 pages 1-26 and said Grievant signed an acknowledgment of hearing. He read JX3 page 18 and said it is Grievant's Last Chance Agreement.

Mr. Fanell testified the Grievant said she was two hours and seventeen minutes late but she came into work when she was notified. He testified the Grievant approached Mr. Prusinski for a regular schedule. Mr. Fanell testified JXZ7 page 2 is Grievant's school schedule which shows she was to work September 30 and JX7 page 3 which is the Grievant's regular schedule. Mr. Fanell testified that both schedules showed the Grievant was to work September 30.

Mr. Fanell then read JX3 page 4 and testified it was Grievant's schedule which showed Thursday scratched off and Friday put in. He read JX3 page 7 which is the time record showing the Grievant was two hours and seventeen minutes late. Mr. Fanell then testified that ODC puts leave balances to make up time short to give employees made up time to give them 80 hours.

Mr. Fanell said JX4 page 1 is the Last Chance Agreement and this was an attendance issue. He read JX7 pages 6 & 7 and testified that if an employee has less than 80 hours in a pay period leave is applied to make up the short fall. This is for payroll purposes and the employee is still responsible. Mr. Fanell said JX7 page 5 is the schedule on the Grievant's phone presented at the Step 2 hearing.

On Cross-Examination Mr. Fanell testified if the Grievant did not report on September 30 she was given leave to give her 80 hours but she is still accountable. He also said you have to have vacation in order to take it.

On Re-Direct Examination Mr. Fanell testified that this has been the practice ever since he came here.

The Employer's last witness was Rob Capaldi. He is the Superintendent of the Columbus Developmental Center. Mr. Capaldi came here as a Program Director and then Superintendent. He testified that HR told him of the violation of the Last Chance Agreement.

Mr. Capaldi read JX3 pages 2-26 and testified that it is the packet used by him in discipline.

Mr. Capaldi testified that he is the Appointing Authority and the evidence showed a violation of the Last Chance Agreement. He said JX3 page 1 is the removal notice.

Mr. Capaldi read JX6 pages 1-14 and said it is the Department Standards of Conduct and Discipline Outline. He read JX6 page 14 B-6 and said this was the standard use and JX4 page 7 is the Last Chance Agreement.

On Cross-Examination Mr. Capaldi testified that JX6 page 14 B-6 is "not in approved status one hour or less". The charge is B-5. He said if it was an emergency he might give approval.

On Re-Direct Examination Mr. Capaldi testified that full time employees work 40 hours per week, If an employee is short they can use leave to get 40 hours. There are 80 hours in a pay period.

### **III. THE UNION'S CASE**

The Union's first witness was Mary Nelson. Ms. Nelson testified that September 30 was a payday Friday. The Grievant told her she had Friday off which distressed Ms. Nelson. Ms. Nelson testified the Grievant told her she was going shopping at Macy's.

Ms. Nelson testified that on September 30 she clocked in. She knew Grievant and one other off. Ms. Nelson testified she called Mitch and asked who was coming to work. Mitch called

and said Sylvia coming to work and shortly after Sylvia and the Grievant showed up.

On Cross-Examination she was asked: "Did you see Grievant's standard work schedule?" She said: "No".

The Union's next witness was Robert Willoughby. He was a witness at the Pre-Disciplinary Hearing.

Mr. Willoughby testified that at the hearing the Grievant explained she got various schedules and the last schedule showed off on September 30. There was no discussion of misreading the schedule in the Pre-Disciplinary Hearing.

On Cross-Examination Mr. Willoughby testified JX7 pages 2,3&4 were the schedules presented at the Pre-D. The Grievant presented schedules on pages 2,3&4.

Mr. Willoughby then testified that JX7 page 5 was the schedule presented after the Pre-D as the Grievant couldn't find it before. He said the Grievant was following the schedule on page 5.

Mr. Willoughby testified that Mr. Fanell said at the Pre-D that Grievant misread the schedule.

The Union's next witness was the Grievant. The Grievant testified that on August 8<sup>th</sup> she got the September schedule. She further testified that around the 15<sup>th</sup> of September she told Mitch she was not in school the rest of the year. She said she never expected Mitch to re-do the schedule.

The Grievant testified she saw the September schedule on the board. She went to Mitch and was advised it was now her schedule. The Grievant asked Mitch about the October schedule and was advised he was still working on it.

The Grievant then testified she saw another schedule on the board the last week of the month. She said two of her co-workers knew she was off on Friday.

The Grievant testified that Mitch called her and she told him she was "off today". Mitch told her to come in and when she arrived Mitch was not there. She said Gary was there and told her Mitch wanted her to take two hours.

The Grievant then testified that Mitch has a letter about school. She said she told co-workers about the schedule.

The Grievant testified that at the Pre-D she did not have the schedule.

The Grievant read JX3 page 9 which is her interview with the fact finder. She says "mess up on schedule". The Grievant testified she did not say "mis read schedule at the Pre-D". The Grievant wants her phone conversation with Mitch played.

The Grievant then testified she was going to school and got Friday and Saturday. Then she went to a different school and was off on different days.

The Grievant also testified the schedule she says is correct is JX7 page 5. She said on January 5<sup>th</sup> she could not find the last schedule Mitch gave but she found it January 6<sup>th</sup>. This schedule is JX7 page 5. The Grievant testified Mitch has made mistakes on her schedule.

On Cross-Examination the Grievant testified that JX7 pages 4 and 5 are schedules she followed. The Grievant was asked: "Is JX7 page 5 what you presented January 6?" She answered: "Yes". The Grievant then testified that JX7 page 5 is the schedule she followed the last week of September. She said JX7 page 2 is the schedule she got after September 14.

The Grievant testified that when she told Mitch she wasn't in school he gave her the schedule in JX7 page 2. She said JX7 page 3 is the schedule she got when Mitch had to change

the October schedule.

The Grievant testified she got the schedule in JX7 page 4 in August and modified this herself. She does it all the time to change with co-worker. Mitch has to approve the change. The Grievant testified Mitch did not give her the schedule she changed.

The Grievant then testified that she did not bring the schedule on JX7 page 5 to the Pre-D because she couldn't find it. She said Mitch gave her the schedule on JX7 page 5.

The Union re-called Mitchell Prusinski who was their last witness.

Mr. Prusinski testified that he knew Grievant wasn't there when he was deploying the 2<sup>nd</sup> shift. He doesn't recall anyone from the living area calling him.

Mr. Prusinski testified that he usually sees employees when they come in. When he found out Grievant wasn't there he called her.

The hearing adjourned at 11:30 A.M.

The parties agreed to file written closing arguments by close of business October 24.

#### V. OPINION AND AWARD

The Employer says on September 30, 2016 the Grievant was scheduled to work from 1:30 P.M. to 10 P.M. The Grievant did not report to work nor did she call the Employer to advise that she would not arrive as scheduled nor that she was calling off for the day. As a courtesy the Employer tried to contact the Grievant by telephone without success.

The Grievant called about 3:21 P.M. and informed the Employer she had mis-read her schedule. The Grievant arrived two (2) hours and 17 minutes after her start time.

The Employer says RCS2, Mitchell Prusinski testified he has managed the scheduling office for approximately the last nine (9) years. Mr. Prusinski explained CDC has a practice of



accommodating employee school schedules and has done so at least as long as he has managed scheduling.

The Employer says Mr. Prusinski testified the Grievant approached him in early September and advised she was no longer in school and wanted a standard schedule. Mr. Prusinski issued Grievant a copy of the standard schedule. The Employer argues Mr. Prusinski testified he had revised schedules in the past and the Grievant was familiar with the process.

The Employer points out that Mr. Prusinski worked in the scheduling office and noticed the Grievant did not arrive at 1:30 P.M. for her scheduled shift. Mr. Prusinski called the Grievant and left a message.

The Employer argues the Grievant called at approximately 3:21 P.M. and said she had mis-read the schedule. The Grievant asked him what to do and he advised her to come to work. The Grievant arrived two (2) hours and 17 minutes after the start of her shift. Mr. Prusinski testified he sent an E-Mail to Human Resource Administrator, Joseph Fanell advising him of the incident.

Mr. Prusinski testified that JX7 page 2 was the Grievant's school schedule. The "R" on the schedule meant a regularly scheduled day off. Mr. Prusinski recognized this as the Grievant's school schedule because classes were on Monday and Thursday. Mr. Prusinski testified this schedule had the Grievant working on September 30, 2016.

Mr. Prusinski then testified that JX7 page 3 was the Grievant's standard schedule which she requested. The standard schedule had the Grievant working on September 30, 2016.

The Employer argues that the Grievant's handwritten schedule JX7 page 4 was identical to her standard schedule, however the Grievant self-servingly scheduled herself off September

30, 2016, the day she did not arrive to work as scheduled.

The Employer says Mr. Fanell testified when he received Mr. Prusinski E-Mail about the Grievant's attendance infraction, he had the Grievant's supervisor initiate a fact finding investigation, JX3 page 9.

The Employer argues at fact finding the Grievant said she had three (3) different schedules but was only aware of two (2). The Employer argues that if the Grievant was only aware of two (2) schedules how did she know there were (3). The Grievant also admitted the first schedule was changed due to her not being in school and the second schedule had her scheduled on Friday, September 30, 2016.

The Employer argues the Grievant has continued to fail to provide a schedule from CDC with September 30, 2016 as a day off.

The Employer says Mr. Fanell then scheduled the Grievant for a Pre-Disciplinary Meeting. Mr. Fanell testified he was the hearing officer for this meeting. Present were Mr. Fanell, Mr. Prusinski as a management representative, Union Steward, Robert Willoughby and the Grievant.

The Employer argues that Mr. Fanell testified the Grievant acknowledged she did not arrive for work on September 30, 2016 at her scheduled start time of 1:30 P.M. Mr. Fanell stated the Grievant explained how she was not taking classes anymore and requested Mr. Prusinski place her back on her standard schedule. Mr. Prusinski changed her schedule. The Grievant then stated she was confused about her days off. At this meeting, the Grievant presented her school schedule JX7 page 2 and her requested standard schedule JX7 page 3.

The Employer argues she testified at this hearing and admitted during the pre-disciplinary

meeting both of these schedules had her scheduled to work on September 30, 2016.

The Employer argues the Grievant produced a hand written schedule JX7 page 4 that she had manipulated herself. She stated she had used this and determined her day off as September 30, 2016. The Grievant stated at this Pre-Disciplinary meeting, and Mr. Prusinski testified at this hearing the Grievant never approached Mr. Prusinski about her confusion with her days off. The Employer argues at the October 3, 2017 arbitration hearing the Grievant admitted only management issues schedules.

Mr. Fanell then identified JX7 pages 6 - 7 as the Grievant's KRONOS timesheet. KRONOS is the State of Ohio's timekeeping system.

Mr. Fanell pointed out that on September 30, 2016 the Grievant clocked in at 3:47 P.M. JX7 page 7. Mr. Fanell then explained the Grievant was coded as 2.4 hours of vacation for this unapproved absence and this was strictly for "payroll purposes only". Mr. Fanell stated this is a benefit to full time employees because if they were not coded this way it would affect their health insurance, benefits, retirement and most importantly their pay. Mr. Fanell testified coding "for payroll purposes only" when employees have attendance infractions has been the practice since before he was hired in February of 2014. Mr. Fanell explained the employees who are coded "for payroll purposes only", are still held accountable for attendance rule violations and receive discipline.

The Employer next cites the testimony of Dr. Robert Capaldi, CDC Superintendent. Dr. Capaldi testified he became aware of the incident when he was advised by Mr. Fanell.

Dr. Capaldi testified he reviewed the investigation/disciplinary packet JX3 pages 2 - 26 and confirmed there was enough evidence to substantiate that the Grievant did arrive two (2)

hours and 17 minutes after the start of her shift on September 30, 2016. The Employer argues this violated the LCA.

The Employer says Dr. Capaldi on Cross-Examination explained the Grievant was in an unapproved leave status, or non-paid status, however, as a benefit to the Grievant, she was allowed to supplement vacation time "for payroll purposes only". The Employer argues that Dr. Capaldi testified employees are still held accountable and disciplined for attendance infractions. Supplementing leave time for "payroll purposes" is a practice at CDC and it protects full time employees from being financially harmed.

TPW Nelson stated the Grievant told her earlier in the week she would be off on Friday, September 30, 2016. TPW Nelson described how she was upset and stressed when she found out the Grievant would not be there because she would have to take clients out by herself. TPW Nelson testified that at 3 P.M. no one arrived to work the house with her and she called scheduling.

The Employer argues that it is hard to believe that as upset and stressed as TPW Nelson states she was about the Grievant not being there to work with her, that she would wait until 3 P.M. to advise scheduling. TPW Nelson admitted she never saw the standard schedule the Grievant received from Mr. Prusinski. Additionally, the Grievant testified all staff check each other's schedules together so they know who is working. The Employer argues that if this was the case TPW Nelson should have known who would work with her on September 30, 2016.

Union Steward, Robert Willoughby, stated he was present during Grievant's Pre-Disciplinary Meeting. He said the Grievant explained her various schedules.

The Employer argues Mr. Willoughby conveniently stated the correct schedule was the

one that had the Grievant off on September 30, 2016. Mr. Willoughby testified the Grievant did not say she was confused about or misread her schedule during this meeting.

The Employer argues that Mr. Willoughby was evasive while being Cross-Examined. The Employer says it is interesting to note he can recall precisely what the Grievant did not say, but could not recall something as basic as who attended the meeting. The Employer argues this is especially interesting as there were only four (4) attendees.

The Employer says at the hearing the Grievant admitted she had modified school schedule and that she requested Mr. Prusinski to place her back on standard schedule. The Grievant stated she was working the handwritten schedule, JX7 page 4 that was not approved by the Employer and the schedule she received in a text message from a co-worker on January 6, 2017, JX7 page 5.

The Employer argues Mr. Prusinski testified he would never give an employee a handwritten schedule, JX7 page 4 and has never seen the schedule the Grievant received from her co-worker, JX7 page 5 in a text message, nor were either generated from his office. The Grievant did not produce a copy of the schedule received from her co-worker at the fact finding or the Pre-Disciplinary Meeting.

The Employer argues the first time the Employer was made aware of this schedule was at the step two (2) grievance meeting, JX2 page 4 on January 6, 2017, 42 days after the Grievant was removed. Both these schedules conveniently had the Grievant scheduled off on September 30, 2016.

The Grievant testified she followed two (2) separate schedules, The handwritten schedule, JX7 page 4 and the schedule she received in a text from her co-worker JX7 page 5, and the two

schedules were not different.

The Employer argues that if you look at these two (2) schedules they are very different. The handwritten schedule JX7 page 4 mirrors the standard schedule to which the Grievant requested to be returned, JX7 page 3, except for September 30, 2016 the day the Grievant failed to arrive as scheduled. The schedule the Grievant received in a text from her co-worker JX7 page 5 is identical to the school schedule JX7 page 2 which the Grievant stated she no longer needed, except for September 30, 2016 the day the Grievant failed to arrive as scheduled.

The Grievant then admitted she followed the schedule she received from her co-worker JX7 page 5 but only followed the last week of it.

The Employer argues it is unclear how the Grievant would follow this schedule as she testified she did not receive it until January 6, 2017 in a text from a co-worker.

The Employer also argues that it is equally puzzling how the Grievant was working a schedule that the manager of the Scheduling Office, Mr. Prusinski, testified he had never seen nor was it generated from his office.

The Employer says that at the October 3, 2016 hearing, the Grievant stated none of the schedules JX7 pages 2 - 5 were a school schedule and now claimed she went to school on different days, even though she presented and identified her school schedule JX7 page 2 at the Pre-Disciplinary Meeting.

The Employer further argues that the Grievant's testimony was very evasive as she scrolled through her cell phone and fumbled through stacks of papers that were not stipulated nor admitted as Union Exhibits.

The Employer contends the Grievant undoubtedly followed the standard schedule JX7 page 3 she requested until September 30, 2016,

The Employer argues that further proof the Grievant followed the standard work schedule is that she was scheduled off on September 16, 2016 and worked voluntary overtime. This is confirmed by KRONOS, JX7 pages 6 - 7 and second shift staffing sheet JX7 pages 18 - 19.

The Employer argues the evidence is clear that the Grievant violated her LCA.

On the standard work schedule the Grievant testified she was scheduled to work on September 30, 2016. Mr. Prusinski testified the Grievant was not given any other schedules. The Grievant admitted she had ample time to receive clarification.

The Employer argues the Grievant chose not to seek clarification and determined herself what her days off would be. The Grievant determined her day off as the day she failed to show up. The Grievant also admitted the Employer issues schedules.

The Employer argues that the facility operates twenty-four hours a day seven days a week and it is a requirement that TPWs report to work as scheduled.

The Employer argues the Grievant violated her LCA by reporting two (2) hours and 17 minutes after start of shift on September 30, 2016.

The Grievant's LCA says any attendance violation shall result in the imposition of the removal being held in abeyance by her LCA. The Employer asks the Grievance be denied in its entirety.

The Union argues that on September 30, 2016 the Grievant was on a scheduled day off.

The Union says that the Grievant was shopping at the Tuttle Mall and saw that about 3 P.M. she had received a call from Columbus Developmental Center. About 3:15 P.M. the Grievant called the Scheduling Supervisor, Mitchell Prusinski, back. Mr. Prusinski advised the Grievant that she was supposed to be at work. The Grievant told Mr. Prusinski she was in fact on a regular day off according to her schedule, but she would come in to work. The Grievant arrived

at CDC at about 3:47 P.M. and clocked in.

The Union argues that the Grievant testified that multiple schedules had been posted during the month of September and that the last schedule posted showed her as being off on September 30, 2016. The Grievant further testified she had gone to Mr. Prusinski in the middle of September to inform him she would not need a school schedule and she would continue working her regular schedule. A second schedule was then posted.

The Union argues later that month another schedule was posted on the living area with changes that reflected her being off on September 30, making it the third schedule posted. The Grievant testified that JX7 page 5 is the last schedule posted and the one she followed as the most up-to-date schedule since it was the third revision to the schedule.

The Union says Mr. Prusinski testified he had never seen the third schedule. The Union argues that it is a management created document and is a Joint Exhibit. The schedule is a computer generated document and is identical to the general characteristics to the others brought forward by management in this case.

The Union contends that the authenticity of the document is clear and management has never stated otherwise. The document is generated from a scheduling program specific to CDC.

The Union cites the testimony of TPW Nelson. TPW Nelson testified that she was working on the day in question and that earlier during the week of September 30, 2016 she and her co-workers had been planning their week, which was to include a shopping trip with individuals from the center on September 30, 2016. At that time, the Grievant told TPW Nelson and her co-workers she would be off on September 30, 2016 and wouldn't be able to go. The fact that the Grievant would be off was common knowledge to her co-workers. The Union argues that the Grievant also testified the conversations took place.



The Union also argues that TPW Nelson testified on September 30, 2016 she called Mr. Prusinski about 3 P.M. and asked whom she was to be working with. The Union says Mr. Prusinski seemed confused and hesitated but then said Jennifer Simmons. TPW Nelson told Mr. Prusinski that Ms. Simmons was on a regular day off.

The Union further argues that Mr. Prusinski stated he knows who is scheduled to work because he sees them clock in. If he did not see the Grievant why did he not call her until 3 P.M.

The Union argues that when TPW Nelson called him he seemed unsure. The Union asserts the answer is clear: Mr. Prusinski was also operating under the third schedule but had just failed to get relief staff for the Grievant.

The Union argues that during rebuttal testimony Mr. Prusinski was asked by the Union what time he called Ms. Simmons and he said he didn't remember. The Grievant testified she didn't receive a call from Mr. Prusinski until around 3 P.M. The Union says if Mr. Prusinski believed the Grievant was to be at work by 1:30 P.M. why didn't he call her at 1:30? The Union argues the Grievant as reflected in the third and final schedule was off on September 30, 2016 and Mr. Prusinski forgot to schedule a relief person. Mr. Prusinski did not call her until about 3 P.M. Mr. Prusinski denied receiving a call from TPW Nelson but the sequence of events does not make sense if there was no call at 3 P.M.

The Union further argues Mr. Prusinski did receive the call from TPW Nelson, otherwise he wouldn't have called the Grievant because he didn't realize he had messed up the schedule. The documents do not lie and they are all management documents.

The Union says Management also alleged that the Grievant admitted she mis-read her schedule at the Pre-Disciplinary hearing. However, TPW Robert Willoughby, her Union Representative present at the hearing testified that the Grievant never stated she Mis-read her

schedule.

Management would like you to believe the Grievant violated her Last Chance Agreement. The Union argues that her co-workers knew she was off and so did Mr. Prusinski. Mr. Prusinski's confusion about the relief staff and not calling the Grievant until after TPW Nelson called him indicates he knew the Grievant was off.

The Union's final argument is that the Grievant was in approved status according to management's own payroll report JX7 page 7 for the 2.4 hours between 1:30 P.M. and 3:47 P.M. which further indicates management knew the Grievant was off for the day.

The Union argues you cannot charge an employee for not being in an approved leave status for more than one hour or less than one scheduled shift if there is no documentation reflecting that the employee was in this status. The Union contends there is no policy that indicates that when management approves time off for an employee that they can charge them with not being in an approved leave status for more than one hour or less than one scheduled shift, and provide a statement at a later date stating "for payroll purposes only". This agency is not an agency that has a policy that reflects this type of scenario as management would like for you to believe.

The Union says if the Grievant was truly in violation of the attendance track JX5 page 4 Rule b5 - not being in an approved leave status for more than one hour or less than one scheduled shift, then there would not be a schedule showing that she was off and management would not have approved her time off for the time she missed on the day in question. The Grievant would have a document stating that she was in no pay status for the amount of time in question, and her paycheck would show she was negative 24 hours. The Grievant did not receive a document showing she was negative 2.4 hours and she was paid as she normally is paid on her pay check.

The Union argues the Grievant cannot be in this type of unapproved status when she is on a scheduled day off.

The Union also argues the Grievant was well aware she was under a strict Last Chance Agreement and that she couldn't be late or have any attendance related issues or she would be removed.

The Union closes by arguing that the Grievant's willingness to come in to work when she was called shows she took very seriously the Last Chance Agreement.

The Advocates for both parties have done an outstanding job in this case.

The Arbitrator has reviewed the evidence and the written Closing Arguments

The Grievant testified she used a handwritten schedule made by herself and a schedule sent to her by a co-worker to determine she was off on September 30.

The schedule made by the Grievant shows September 29 as her day off was scratched off and Sept. 30 inserted.

The schedule the Grievant received from her co-worker was identical to the Standard Schedule except for September 30.

The Union argues that management never disputed the authenticity of these documents. In fact Mr. Prusinski said he had never seen the schedule sent by the co-worker before and it was not generated by his office.

It is no defense for the Grievant to claim she relied on a schedule revised by herself nor on a schedule sent by a co-worker. The Grievant admitted only management can issue a schedule.

The Union argues there is no dispute about TPW Nelson's call but Mr. Prusinski denies receiving it. Mr. Prusinski says he tried to call the Grievant but to no avail. There is no testimony about the time of Mr. Prusinski's call. Based upon this dispute there is no evidence to show that


Mr. Prusinski was dilatory about calling the Grievant.

The Union contends there is no policy for marking the Grievant's time card "For Payroll Purposes Only". The evidence, however, is this was a long term practice at CDC. The Union bases this argument upon its premise that the Grievant was on a scheduled day off.

The evidence is clear that the Grievant was supposed to be working on September 30, 2016. The fact that her co-workers thought she was off on September 30, 2016 is not persuasive.

The grievance is denied. The Grievant is guilty of an attendance violation and is removed pursuant to her Last Chance Agreement.

Issued at Ironton, Ohio this 10<sup>th</sup> day of November, 2017.

  
Craig A. Allen  
Arbitrator