

ARBITRATION DECISION NO.:

119

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Natural Resources

DATE OF ARBITRATION:

March 30, 1988

DATE OF DECISION:

April 13, 1988

GRIEVANT:

Blythe Lampkins

OCB GRIEVANCE NO.:

G-87-2245

ARBITRATOR:

Andrew J. Love

FOR THE UNION:

Allyne Beach

FOR THE EMPLOYER:

John Weiser

KEY WORDS:

Just Cause
Suspension
Insubordination
Refusal To Follow Orders
Progressive Discipline

ARTICLES:

Article 24 - Discipline
§24.05-Imposition
of Discipline

FACTS:

At issue is whether the one (1) day suspension of the Grievant was for "just cause". Grievant was suspended for one day after he refused to follow a direct order from an Administrative Assistant. The Grievant was instructed to return car keys to the personnel office, but choose to go

to lunch just before carrying out his orders. The order was given at 11:30 A.M. and was not carried out until 1:30 P.M. The Administrative Assistant testified that she had stated to the Grievant that his refusal was an act of insubordination. She also testified that the Grievant's lunch period was not assigned to a specific time of day. The Grievant had received written reprimands for excessive absenteeism and abuse of State property. The Administrative Assistant also testified that on other occasions she had verbally reprimanded the Grievant for telling her "no" but had not placed these incidents in the Grievant's personnel file.

MANAGEMENT'S POSITION:

It is management's contention that they were justified for placing Grievant on one (1) day suspension for Grievant's refusal to carry out director orders. Management also contends that Grievant was placed on notice that conduct, which was inconsistent with his duties could result in further disciplinary action.

UNION'S POSITION:

Progressive discipline was not followed in that Grievant had not received any written reprimands for refusing to follow orders. It is also the Union's contention that the Grievant's discipline was solely for punishment and that the discipline was not commensurate with the offense since the Grievant ultimately carried out the order within two (2) hours of the time it was given.

ARBITRATOR'S OPINION:

The Arbitrator held that the disciplinary action taken was commensurate with the offense, as required by Section 24.05 of the Contract. The Grievant had sustained two (2) prior written reprimands, and was placed on notice that subsequent conduct that is inconsistent with his duties could result in further disciplinary action. There is nothing in the Contract which states that prior disciplines must be related to one arising out of the latest offense, hence the disciplinary action taken against the Grievant in this instant case was progressive. Also, evidence shows that the action taken here was not solely for the purpose of punishment, but rather, to compel the Grievant to recognize his duties in respect to his supervisor as well as for punishment.

AWARD:

The grievance is denied.

TEXT OF THE OPINION:

ARBITRATION

**OHIO DEPARTMENT OF
NATURAL RESOURCES**

AND

**OCSEA LOCAL NO. 11
AFSCME, AFL-CIO**

(Grievance of Blythe Lampkins)

ARBITRATOR:

Andrew J. Love

CASE NO.:

G-87-2245

**FOR OHIO DEPARTMENT
OF NATURAL RESOURCES:**

John Weiser

FOR GRIEVANT:

Allyne Beach

DECISION AND AWARD

The issues presented in this proceeding on March 30, 1988, are whether the one day suspension of the Grievant was for "just cause" and, if not, what should the remedy be.

The Grievant is a Storekeeper II for the Ohio Department of Natural Resources (DNR). His job duties include, among other things, maintaining vehicles for DNR and making deliveries on behalf of that department.

On August 6, 1987, Donna Wahl, Administrative Assistant with DNR, received a telephone call from Mark Kowalskie in Personnel to deliver litter bags to the Ohio State Fair located at the fairgrounds in Columbus, Ohio. It should be noted that the duties of DNR with the Ohio State Fair include cleaning up litter on the fairgrounds premises.

Ms. Wahl testified that she instructed the Grievant to make the deliveries of the litter bags at a specific site at the fairgrounds. While the Grievant was away, Mr. Kowalskie called back to Ms. Wahl and advised her that he could not get the keys out of the automobile assigned to him. When the Grievant returned with the litter bags (because he could not find the location to drop said litter bags off), Ms. Wahl, who is the Grievant's supervisor, asked him to get the keys out of the car driven by Mr. Kowalskie. The Grievant complied. The car was not in neutral gear, which caused the keys to be locked in the ignition. The Grievant placed the car in neutral gear and removed the keys.

At that time, Ms. Wahl instructed the Grievant to return to keys to the Personnel Office to Mr. Kowalskie. The Grievant stated, "No, let him pick them up himself." Ms. Wahl then called Mr. Kowalskie. She then stated to the Grievant, "Blythe, go to Mark and find out where the bags go, and take the keys to him." She testified that this was a direct order to the Grievant. However, the Grievant responded, "No, I'm going to lunch." Ms. Wahl stated to the Grievant that his conduct was an act of insubordination. She elaborated during her testimony that the Grievant's lunch period was not assigned to a specific time of day. She stated that the reason for this was because of the Grievant's duties, which may require him to be unavailable for a normal lunch hour; and because he might be on a job assignment, the Grievant was allowed to take his lunch at different times of the day. In fact, according to Ms. Wahl, if the Grievant completed certain assignments at a relatively late time of the day, he was allowed to go home an hour earlier in lieu of lunch.

Although the Grievant stated that he was not going to take the keys to Mr. Kowalskie and was not going to deliver the bags per Ms. Wahl's request, he nevertheless delivered the bags at a later time during the day.

Ms. Wahl, who had subsequently recommended disciplinary action of one day's suspension, further testified that she had promoted the Grievant from Storekeeper I to Storekeeper II because

of his abilities and his cooperation with her. However, during the year that he has been in the newer classification, the Grievant has demonstrated an inability to get along with other staff. Moreover, the Grievant received written reprimands for excessive absenteeism and abuse of State property (See Management Exhibits 5 and 6). Furthermore, although Ms. Wahl did not add to the Grievant's personnel file previous verbal reprimands for the Grievant's telling her "no" on other occasions, the Grievant had not been very cooperative with her when she instructed him to do certain jobs consistent with his job description as Storekeeper II.

The Grievant testified that, although he got the keys out of the car driven by Mr. Kowalskie per instruction of Ms. Wahl, he stated to her that he would not take the keys to Mr. Kowalskie; rather, Mr. Kowalskie could pick the keys up himself. He stated that he was going to lunch. Grievant later took the keys to the building receptionist and delivered the bags to the fairgrounds at approximately 1:30 P.M. It should be noted that the Grievant was asked by Ms. Wahl to perform these tasks at approximately 11:30 A.M. The Grievant stated that, the first time he attempted to deliver the bags, he could not find the location in the fairgrounds to deliver them.

First, this Arbitrator finds that "just cause" existed for the imposition of disciplinary action by DNR. This Arbitrator is satisfied that DNR has met its burden of proof to establish just cause for disciplinary action, pursuant to Section 24.01 of the contract between the State of Ohio and OCSEA Local 11, AFSCME AFL-CIO. The Grievant did not deny that he stated his refusal to carry out orders from Ms. Wahl. Even though this Arbitrator is of the opinion that the Grievant would ultimately carry out the directives of his supervisor, and further recognizing that the Grievant was somewhat frustrated by his not receiving a specific enough location to deliver the litter bags to the fairgrounds during his initial attempt, he clearly had to have recognized his obligation, pursuant to his job description, to carry out those orders at the time they were given to him. The Grievant would have not been disciplined for complaining about both the inexactness of the location for the litter bags to be delivered and Mr. Kowalskie's inability to remove the keys from the car; however, his response to Ms. Wahl's directives was entirely inappropriate and amounted to insubordination.

Furthermore, this Arbitrator finds that the disciplinary action taken was commensurate with the offense, as required by Section 24.05 of the contract. The Grievant had sustained two prior written reprimands, albeit on the same day in June, 1987. It is this arbitrator's view that the Grievant was placed on notice that subsequent conduct that is inconsistent with his duties could result in further disciplinary action. Even though the Grievant received written reprimands for events unrelated to the instant cause, there is nothing in the contract that states that prior disciplines must be related to one arising out of the latest offense. "Progressive discipline is for the purpose of forewarning the employee that any substandard conduct violative of . . . the contract is protected against by further and greater discipline." See In re Carletta Brown, Grievance No. G87-0874. Hence, the disciplinary action taken against the Grievant in the instant cause was progressive. In addition, the Grievant's argument that the discipline was solely for punishment is without merit here. Section 24.05 of the contract states:

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment. (emphasis added)

The evidence shows that the action taken by DNR was not solely for the purpose of punishment, but, rather, for compelling the Grievant to recognize his duties in respect to his supervisor as well as for punishment.

Accordingly, the Grievance is therefore DENIED.

