ARBITRATION DECISION NO.:
201

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Transportation
Central Garage Facility

DATE OF ARBITRATION:
August 29, 1989

DATE OF DECISION:
September 15, 1989

GRIEVANT:
Waldren Saunders

OCB GRIEVANCE NO.:
31-13-(88-08-30)-0045-01-06

ARBITRATOR:
Harry Graham

FOR THE UNION:
Robert Steele

FOR THE EMPLOYER:
Mike Duco

KEY WORDS:
Suspension
Just Cause
Progressive Discipline
Mitigating Circumstances
Tardiness

ARTICLES:
Article 13-Work Week,
Schedules and Overtime
    §13.06-Report-In Locations
Article 24-Discipline
    §24.02-Progressive
Discipline

FACTS:

The grievant is employed by the Ohio Department of Transportation, as a Body Repair Worker II. He reported to work fifty minutes late on June 26, 1988. He did not call in to report that he would be late but explained upon arrival that he had run out of gasoline. The grievant has two prior two day suspension for attendance problems on his record. He received a ten day suspension for tardiness.

EMPLOYER'S POSITION:

The employer argues there was just cause for a ten day suspension. The grievant was not at his work station at the starting time. He did not call to report his expected tardiness as required by ODOT policy. The grievant has two, two day suspensions on his record for attendance problems. Progressive discipline is not violated by a ten day suspension for this third offense.

UNION'S POSITION:

There was no just cause for a ten day suspension. The suspension occurred forty days after the incident, violating Article 24.02 which requires timely imposition of discipline. A ten day suspension is beyond what ODOT guidelines require for the third incident in a 24 month period. Mitigating circumstances are the presence of mechanical problems with the grievant's car and his inability to call in. The grievance should be sustained or the penalty reduced.

ARBITRATOR'S OPINION:

ODOT's guidelines are not required to be strictly followed. A ten day suspension may be proper when two prior two day suspensions for attendance problems have not been effective. Discipline here does not violate progressive discipline. The grievant's mechanical trouble was found to have been that he ran out of gasoline. This is not a valid mitigating circumstance.

AWARD:

Grievance denied.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

OCSEA/AFSCME Local 11

and

The State of Ohio,
Department of Transportation

Case No.:
31-13-8808-0045-01-06

Before:
Harry Graham

Appearances:

For OCSEA/AFSCME Local 11:
Robert Steele
Staff Representative
OCSEA/AFSCME Local 11
1680 Watermark Dr.
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For The State of Ohio:
Mike Duco
Labor Relations Specialist
Office of Collective Bargaining
65 East State St., 16th Floor
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Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter on August 29, 1989 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. By agreement of the parties the Union was permitted to file a post-hearing statement of its position. Receipt of that submission was acknowledged by the Arbitrator on September 6, 1989 and the record was closed on that date.

Issue:

At the hearing the parties agreed upon the issue in dispute between them. That issue is:
Did the Employer suspend Waldren Saunders from his position as an Automobile Body Repair Worker 2 with the Department of Transportation for just cause? If not, what shall the remedy be?

Background:

There is some controversy concerning the events that give rise to this proceeding but the basic outline of the circumstances provoking the suspension at issue is agreed upon by the parties. The Grievant, Waldren Saunders, is an employee of the Ohio Department of Transportation with 16 years of service. He works in the Body Shop at the Central Garage facility in Columbus, OH. On May 26, 1988 he reported to work at about 8:20 AM. He was late as the work day at the garage commences at 7:30 AM. When Mr. Saunders reported to work he contacted his supervisor, John Daniels, and told him that he had experienced car trouble. As a result, he had been delayed in arriving.

The Employer regarded Mr. Saunders failure to call-in and his tardiness on May 26, 1988 to be serious failings in light of his previous record. Mr. Saunders had received two previous disciplinary entries, both two day suspensions, for attendance problems. Given this instance of tardiness, coupled with his failure to call-in, the State was of the view that a more substantial suspension was in order, hence it imposed the ten day suspension at issue in this proceeding.

A grievance protesting that action was promptly filed and processed through the procedure of the parties without resolution. The Employer and the Union agree that the grievance is properly

before the Arbitrator for determination on its merits.

Position of the Employer:

The State points out that the Grievant has received two prior suspensions for attendance problems. They were not grieved. Those suspensions occurred recently, in June, 1987 and March, 1988. They are indicative of an attendance problem being experienced by Mr. Saunders. As the two day suspensions did not serve to correct the problem, a more substantial suspension is in order for his tardiness and failure to call-in on May 26, 1988 in the opinion of the State. Section 24.02 of the Collective Bargaining Agreement permits the Employer to impose progressive discipline. That is what it did in this situation insists the State.

On May 26, 1988 Mr. Saunders supervisor, John Daniels, noted in the Attendance Record maintained by the Body Shop that Saunders had neither appeared for work nor called-in at 8:15 AM. Subsequently, at 8:30 AM Saunders had arrived and indicated to Daniels that he had run out of gas while on the freeway. He had borrowed money from the nearby Clark gas station to fuel his car. He did not call-in from the station. During the Grievance procedure meetings the Grievant indicated his car broke down. No evidence was presented to substantiate that fact. On May 26, 1988 Saunders told Daniels he ran out of gas, which Daniels noted on the record. That version of events is the most credible according to the State. Department policy clearly requires that employees call-in when they are to be late or absent. Mr. Saunders did not do so. Given his prior discipline for attendance problems, it was incumbent upon him to do so. As he did not, the suspension should stand according to the State.

At Section 13.6 the Agreement specifies that employees must be at their work site at the specified starting time. Mr. Saunders did not meet that contractual requirement. Given his prior attendance problems, the ten day suspension at issue in this proceeding is appropriate and meets the test of just cause the Employer insists. Consequently, it urges the grievance be denied.

Position of the Union:

The Union agrees that the Grievant reported for work late on May 26, 1988. As it understands the events of that day, there were extenuating circumstances which the Employer has failed to consider when administering the suspension at issue in this proceeding. Section 13.06 of the Agreement mandates that the Employer take into consideration "extenuating and mitigating circumstances" when disciplining for tardiness. That did not occur in this situation according to the Union. As the Union relates the events on the morning of May 26, 1988 the Grievant experienced mechanical difficulty with his car while on his way to work. When this occurred he was not near a telephone. He could not call-in. Furthermore, similar events involving Mr. Saunders have occurred in the past and tardiness was excused. Given that history Saunders had no reason to expect discipline for his tardiness on May 26, 1988.

Section 24.02 of the Agreement provides that discipline must be administered "as soon as reasonably possible. . .." That did not occur. The State took over 40 days to administer the discipline in question in this proceeding. As the action was not administered in timely fashion, it should be overturned the Union urges.

In the event it is determined that discipline is appropriate, the Union is of the view that ten days is excessive. The State's own guidelines for imposition of discipline found in its Directive 301 indicate that for the third offense within a 24 month period the most appropriate penalty is a five day suspension. The Grievant received a ten day suspension, in excess of the State's guidelines. As he was unable to call-in, extenuating circumstances existed which should be considered. This

is especially true as the ten day suspension exceeded the guidelines established by the State. The Union urges that the Grievance be sustained in its entirety. Failing that, it seeks a reduction in the ten day penalty, regarding it as being excessive.

Discussion:

Employer Exhibit 1 is a contemporaneous attendance record reflecting John Daniels notes of the Grievant's tardiness and the excuse offered on May 26, 1988. There is no showing by the Union that the material on that Exhibit, Mr. Saunders claim he ran out of gas and had to borrow money from the Clark gas station to pay for it, is false. It was not shown that the log was made subsequent to May 26, 1988 or that it was altered in any way. Only after May 26, 1988 did the Grievant advance the claim that his car broke down on that day, preventing him from getting to work on time. These circumstances prompt the Arbitrator to believe that the Grievant initially claimed he ran out of gas and relied upon that story to excuse his tardiness.

If the Grievant indeed ran out of gas as he initially indicated to the State, that does not serve to excuse his tardiness on May 26, 1988. The fundamental obligation owed an employer by an employee is regular and punctual attendance. Millions of people get to work each day without running out of gas. It should be recognized that the responsibility for arriving at work lies with the employee. If, for whatever reason, an employee neglects to have sufficient gas in his car to enable him to arrive at work that does not provide the sort of "extenuating and mitigating circumstances" contemplated by the Agreement. Filling the gas tank is the sort of activity prompted by an indication of low fuel provided by the appropriate indicator on the dashboard of the car. The employee in uniquely qualified to read the fuel gauge and act upon the indication he is running low on gas. That Mr. Saunders failed to do so does not mitigate his failure to arrive at work on time on May 26, 1988. To the contrary, it serves to place responsibility squarely upon him for his tardiness.

Joint Exhibit 3, Directive No. A-301, indicates at 15, "Unexcused tardiness" that a suspension is appropriate for the second or third unexcused tardiness in a 24 month period. No guidelines are provided for the length of the suspension No. 15. Entry No. 16 deals with unauthorized absence and indicates a five (5) day suspension to be appropriate for the third offense. Item 16 was cited by the Department of Transportation in its notice of discipline to the Grievant. (Joint Exhibit 8). Directive A 301 indicates on the last page that the entries on the disciplinary matrix are to be regarded as "guidelines." There remains to the Employer a degree of flexibility to tailor discipline to the circumstances as it sees them. The Grievant had incurred discipline for similar infractions shortly before the incident under review in this proceeding. Two two day suspensions apparently did not bring home to him the necessity for regular and punctual attendance. It is a big increase from the two day penalties previously imposed upon the Grievant for attendance problems to the ten day suspension under consideration here. However, a neutral should be circumspect in modifying discipline when discipline is clearly warranted, as it is in this case. If the discipline is progressive, as this is, and if it is supported by the circumstances giving rise to it, as is the case in this instance, a neutral should hesitate to modify a penalty. In this situation the Grievant was responsible for getting to work in timely fashion. He failed to do so and initially proffered an excuse which in reality is no excuse at all. It must be concluded that the Employer met the contractual standard of just cause for discipline in this situation.

Award:

Based upon the preceding discussion the grievance is denied.

Signed and dated this 15th day of September, 1989 at South Russell, OH.

Harry Graham
Arbitrator