

ARBITRATION DECISION NO.:

204

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Transportation
District 8

DATE OF ARBITRATION:

October 13, 1989

DATE OF DECISION:

Bench Decision
Written - October 23, 1989

GRIEVANT:

Morris Alexander

OCB GRIEVANCE NO.:

G-87-1650

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

Patrick Mayer

FOR THE EMPLOYER:

Rodney Sampson
Wiatt McDowell

KEY WORDS:

Burden of Proof
Suspension
45 Day Time Limit

ARTICLES:

Article 24-Discipline
 §24.01-Standard
 §24.05-Imposition of
 Discipline

FACTS:

The Grievant was employed as a Maintenance Repair Worker 2 with ODOT. While employed

in this capacity, the Grievant regularly interacted with personnel from Production Services Unlimited, a subcontractor with ODOT. PSU employees are functionally handicapped employable people. The Grievant was suspended for 10 days as a result of an event related to his contact with PSU employees. Thereafter, this grievance was filed.

EMPLOYER'S POSITION:

The Employer argued that the discipline was for just cause, given that the Grievant's behavior toward PSU employees defeated the purpose of the Employer's program to provide job opportunities for handicapped workers.

UNION'S POSITION:

The Union argued that there was a procedural defect because the Employee violated Section 24.05 of the Agreement by failing to discipline the Grievant within 45 days after the pre-discipline meeting. Also, the Employer failed to establish just cause for the suspension. No evidence was presented at the hearing which indicated that progressive discipline had been used. Thus, the Grievant's 10-day suspension was unjustified.

ARBITRATOR'S OPINION:

After hearing only the Employer's case, the Arbitrator ruled for the Union on the following grounds: (1) the Employer violated Section 24.05 of the Agreement by failing to discipline the Grievant within 45 days after the pre-discipline meeting; and (2) the Employer failed to meet the burden the Agreement places on it to establish just cause for disciplinary action. The Arbitrator noted that because a long period had passed between the event that led to the suspension and the hearing, the memories of the witnesses and the Grievant were shaky. Thus, it is impossible to determine the truth regarding the event that led to the Grievant's suspension.

AWARD:

Grievance is sustained.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

**OCSEA, Local 11
AFSCME, AFL-CIO
Union**

and

**Ohio Department of
Transportation
Employer.**

Grievance:

60-87-D8 ODOT

Grievant:

(Morris Alexander)

Hearing Date:

October 13, 1989

Opinion:

Bench (Written 10/23/89)

For the Union:

Patrick Mayer,

OCSEA Staff Representative

For the Employer:

Rodney Sampson OCB

Wiatt McDowell, OCB

Present in addition to the above named advocates and the Grievant Morris Alexander, were Jonathan Lee Jones, witness, George L. Miller, ODOT-Dist. 8, witness, Charles W. Hatfield, PSU.

Preliminary Matters

The Arbitrator asked permission to record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

Issue

Was the Grievant, Morris Alexander's,

10-Day Suspension for just cause?

If not, what should be the remedy?

Joint Exhibits

1. The Contract between The State of Ohio and The Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, 1986-1989.
2. The Grievance Trail (7 pages).
3. The Discipline Trail (5 pages).
4. ODOT Directive No. A-301 dated May 28, 1986.
5. PSU Formal Complaint dated October 16, 1986 is stipulated to and made evidence for any

value determined by Arbitrator Rivera.

6. Employee Performance Evaluation dated 8-17-87.
7. Roadside Rest Inspection Form by Douglas Ziemer
8. IOC from R.L. Zook to N.H. Wailzee and W.H. Feir
9. Position description - in effect at time of Grievance.

Stipulated Facts

The Grievant, Morris Alexander was hired by The Ohio Department of Transportation, District 8, on July 2, 1984.

At the time the Employer disciplined the Grievant, he was classified as a Maintenance Repair Worker 2.

During the period of time encompassing the events which resulted in discipline, the Grievant was regularly assigned to work at the rest area on Interstate Route 75 near Lebanon, Ohio.

The Grievant, in performing his regular work tasks, regularly interfaces with contract personnel from an agency known as Production Services Unlimited (PSU).

The employees from PSU are functionally handicapped employable persons.

The services from PSU resulted from a contract between ODOT and The Ohio Industries for the Handicapped, with PSU being a sub-contractor, for approximately eight years.

Relevant Contract Provisions

§24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The **Employer has the burden of proof to establish just cause for any disciplinary action.**

§24.05 - Imposition of Discipline

The Agency Head or, in the absence of the Agency Head, the Acting Agency Head **shall make a final decision on the recommended disciplinary action as soon as reasonably possible but no more than forty-five (45) days after the conclusion of the pre-discipline meeting.**

Bench Opinion

At the close of the Employer's case, the Arbitrator found for the Union and sustained the Grievance on two grounds:

1. §24.05 of the contract was violated when discipline was not rendered with the contractually mandated 45 days.
2. §24.01 places the burden on the employer to show "just cause." The Employer failed to meet

that burden.^[1]

Grievance Sustained.^[2]

Date: October 25, 1989

RHONDA R. RIVERA
Arbitrator

[1] The Arbitrator notes that the long period of time between the event in question and the hearing caused considerable difficulties for both Union and Employer. The main Employer witness had died and two other witnesses were out of state. The memory of the other two witnesses were shaky at best. Even the Grievant had difficulty recalling facts. The Arbitrator found both the Employer's main witness and the Grievant truthful and forthright. Whatever may be the truth of these alleged events, remains the secret of a higher authority.

[2] The Arbitrator commands ODOT for the PSU program; however, a concomitant responsibility is human relations training for all affected ODOT employees, including the Grievant.