

ARBITRATION DECISION NO.:

539

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health
Dayton Mental Health Center

DATE OF ARBITRATION:

March 17, 1994

DATE OF DECISION:

March 17, 1994

GRIEVANT:

Anna Wagoner

OCB GRIEVANCE NO.:

23-08-(93-08-20)-1018-01-03

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

Penny Lewis

FOR THE EMPLOYER:

Jeff Fogt, ODMH
Cindy Sovell, OCB

KEY WORDS:

Removal
Just Cause
Patient Abuse
Discipline

ARTICLES:

Article 24 - Discipline
 § 24.01 - Standard
 § 24.02 - Progressive Discipline

FACTS:

The grievant was a Psychiatric Attendant Coordinator I at the Dayton Mental Health Center. The grievant allegedly engaged in patient abuse from March, 1993 until May 6, 1993 which resulted in physical and psychological injury to clients. Based on these allegations the grievant was removed on August 18, 1993 and subsequently filed this grievance.

EMPLOYER'S POSITION:

The grievant has engaged in patient abuse on more than one occasion. Specifically, a nurse and a patient witnessed the grievant hit a patient in the face without any provocation. In addition, the grievant used patients known for their violent behavior to escort other patients to their rooms when she should have used available staff. These actions constituted menacing or threatening behavior and are considered to be patient abuse. Her removal was in accordance with Hospital Policy AD:P-90-16, Corrective Action, and Article 24, Discipline. Therefore the grievant was removed for just cause and the grievance should be denied in its entirety.

UNION'S POSITION:

The grievant was a ten year employee with good evaluations and no prior discipline. She did not abuse clients. The nurse who allegedly "witnessed" the grievant slapping the patient admitted she did not actually "see" the grievant slap the patient but rather just heard a slapping sound. Additionally the patient witness was mentally retarded and was later found to be the person who slapped the injured patient. Neither witness was credible for the above reasons.

Given the state's lack of evidence and the grievant's clean record, this grievance should be granted and the grievant should be reinstated with full back pay and benefits.

ARBITRATOR'S OPINION:

Upon hearing the evidence, the arbitrator issued a bench decision stating that there was insufficient evidence to support a charge of patient abuse. The grievance was sustained. The grievant is to be returned to work and made whole.

AWARD:

The grievance is sustained. The grievant is reinstated with full back pay and benefits.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

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

and

**State of Ohio
Department of Mental Health
Employer.**

Grievance No.:
23-08-(93-08-20)-1018-01-03

Grievant:
Wagoner, A.
Hearing Date:
March 17, 1994
Award Date:
March 17, 1994

Arbitrator:

R. Rivera

For the Employer:

Jeff Fogt, ODMH
Cindy Sovell, OCB

For the Union:

Penny Lewis, OCSEA

Present at the Hearing in addition to the Grievant and Advocates were Patricia Torvik, CEO-DMNC (witness), Dora Moore (witness), Kay Schoening, Psy. Attendant (witness), and Sherl Miller, Steward.

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 removed for Just Cause? If not, what shall the remedy be?

Joint Exhibits

1. Contract
2. Grievance Trail
3. Discipline Trail

Union Exhibits

1. ODMH Incident Reporting System
2. ODMH Corrective Action Procedure
3. Grievant's Evaluations 1986-1993

Employer's Exhibits

1. ODMH Patient Abuse Standards
2. Hearing Officer's notes

Relevant Contract Sections

ARTICLE 24 - DISCIPLINE

§ 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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02.

§ 24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.

Disciplinary action shall include:

- A. One or more oral reprimand(s) (with appropriate notation in employee's file);
- B. One or more written reprimand(s);
- C. One or more suspension(s);
- D. Termination.

Disciplinary action taken may not be referred to in an employee's performance evaluation report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

BENCH DECISION

Upon hearing the evidence, the Arbitrator finds that the evidence is insufficient to support the charge of patient abuse. The Grievance is sustained. The Grievant is to be returned to work and made whole in all employment aspects.

RHONDA R. RIVERA, Arbitrator

Date: March 17, 1994