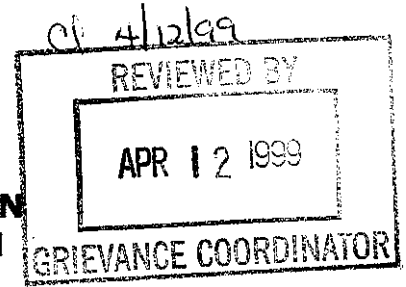


#699



**STATE OF OHIO AND OHIO CIVIL
SERVICE EMPLOYEES' ASSOCIATION
VOLUNTARY LABOR ARBITRATION
PROCEEDING**

In The Matter of Arbitration Between:

The State of Ohio, Department of Corrections

Employer,

and

The Ohio Civil Service Employees' Association,
Local 11, OCSCA/AFSCME, AFL-CIO,

Union.

Grievant: Beulah Crabtree (Removal)

Case No.: 27-05-971022-0755-01-03

Arbitrator's Opinion and Award
Arbitrator: Dr. David M. Pincus
Date: April 5, 1999

Appearances

For the Employer

Cynthia Sovell-Klein
Meredith Lobritz
John Branham
Virgil Clenoweth
Corrections Officer F. McRay

Position

Operations Team Leader
Labor Relations Specialist
Investigator/Witness
Witness
Witness

For the Union

Dave Justice

Staff Representative

Rick McElwee
Beulah Crabtree
William Clouser
Daniel Crabtree

Chief Steward
Grievant
Corrections Officer
Witness

I. Joint Issue

Was the Grievant Beulah Crabtree removed for just cause, if not what shall the remedy be?

II. Joint Stipulations

1. Neither party has any procedural objections, and the parties agree that the instant grievance is properly before the Arbitrator for a final and binding resolution on the merits.
2. The parties agree that Beulah Crabtree's hire date was 10/13/87.
3. The parties agree that Ms. Crabtree had no discipline of record.

III. Introduction

This is a proceeding pursuant to a collective bargaining agreement between the State of Ohio, Department of Corrections (the "Employer"), and the Ohio Civil Service Employees' Association, AFSCME, Local 11 (the "Union"). The parties had selected Dr. David M. Pincus as the Arbitrator.

At the hearing, the parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and to cross-examine witnesses. At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit

post-hearing briefs. The parties submitted briefs in accordance with the guidelines agreed to at the hearing.

IV. Pertinent Contract Provisions

A. Contract Language

Article 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.

Article 24.02 - Progressive Discipline

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

Article 24.05 - Imposition of Discipline

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

B. Work Rules

	Offenses				
	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>
38. Actions that could compromise or impair the ability of the employee to effectively carry out his/her duties as a public employee	WR/R	1-3/R	3-5/R	5-10/R	R

Offenses				
1st	2nd	3rd	4th	5th

46. Unauthorized relationships

- a.. The exchange of personal letters, pictures, phone calls, or information with any individual under the supervision of the Department or friends of family of same without express authorization of the Department

1-5/R 5-10/R R

V. Case History

The grievant, Beulah Crabtree (Ms. Crabtree), was a ten year employee with the State of Ohio, Department of Corrections (the Employer). She started her career as a corrections officer at the Picaway Corrections Institution in October, 1987 and transferred to the Chillicothe Corrections Institution in January, 1993. At the time of Ms. Crabtree's removal, she had no disciplinary record.

The Employer's work rules strictly prohibited relationships between a corrections officer and an inmate as conduct that would compromise or impair the ability of an employee to carry out his or her duty:

B. Work Rules

- 38. Actions that could compromise or impair the ability of the employee to effectively carry out his/her duties as a public employee
- 46. Unauthorized relationships
 - a. The exchange of personal letters, pictures, phone calls, or

information with any individual under the supervision of the Department or friends of family of same without express authorization of the Department

In the late summer of 1997, the Employer began receiving "kites" (anonymous notes from inmates) alleging that Ms. Crabtree was having an inappropriate relationship with inmate James R. Lawrence, Jr. Among the allegations was that Ms. Crabtree and Lawrence were seen kissing and petting each other in the supply room. The kites also claimed that Ms. Crabtree exchanged numerous notes with Lawrence and handled various items of prohibited contraband. Another allegation in the kites was that Ms. Crabtree allowed free interchange of inmates between Dorms A and B, contrary to the Employer's policies.

On July 28, 1997, Correctional Officer, F. McCray, wrote an incident report stating that Ms. Crabtree called in from outside the Employer's premises at approximately 5:15 p.m. asking to talk to Lawrence. Officer McCray informed Ms. Crabtree that Lawrence was not in the unit. Ms. Crabtree then told Officer McCray that she had to talk to Lawrence and to have Lawrence call her at her home. The purpose of Ms. Crabtree's call to Lawrence allegedly was about his participation in one of the clubs she supervised for inmates. Officer McCray informed Ms. Crabtree if Lawrence called her at home, she would be fired and the inmate would be in trouble.

Following the submission of Officer McCray's incident report, the Employer began an investigation. The investigation was conducted by Institution Investigator, John R. Branham, who began by monitoring Lawrence's telephone calls. On August 14, 1997, while Ms. Crabtree was on disability leave, Lawrence called her at her residence. When Officer Crabtree answered the telephone, Lawrence called her "goldie." The

telephone call was made to (614) 775-0271, which is Officer Crabtree's home telephone number listed with the Employer's personnel department. Branham immediately identified Ms. Crabtree's voice, having had numerous conversations with her in the past.

During her conversation with Lawrence, she told Lawrence that she loved him and missed him. Lawrence also told Crabtree that he loved her. Lawrence asked Ms. Crabtree to drive by the Employer so that he could see her. Ms. Crabtree told Lawrence that she could not drive because of her disabled leg. She described her burns on her legs and told Lawrence that she had two skin grafts done to her leg. She had been off work because of leg burns.

Also as part of the investigation, the Employer found an entry in Mr. Lawrence's personal calendar for June 8, stating "Goldie Lady's birthday 6/8/46." Ms. Crabtree's birthday is June 8, 1946. In addition, a note was found in Lawrence's calendar indicating, "Beulah 934." 934 is the number of the Ms. Crabtree's home address.

Ms. Crabtree's conversation with Lawrence was taped and transcribed verbatim:

Branham: (Playing tape recorded message). Phone ringing once.
Below is conversation that followed.

Crabtree: Hello.

Lawrence: Yeah, Goldie.

Crabtree: Yeah.

Lawrence: How ya doin'?

Crabtree: I'm doin' fine.

Lawrence: All right, what's been happen'n witch ya?

Crabtree: Ah, not much. Just pulled in on the tractor. What are you doing?

Lawrence: Okay, al right. Been tryin to call.

Crabtree: (Not audible).

Lawrence: (Not audible). Baby girl in J dorm, tell you that?

Crabtree: No.

Lawrence: Okay. I'll call back at a later time. Do you want me to call back at a later time, do you want me to call back later tonight or tomorrow or somethin?

Crabtree: No it would have to be tomorrow hon.

Lawrence: Okay.

Crabtree: Are you okay?

Lawrence: Yes I am. I'm just fine.

Crabtree: Bobby, you know I love you.

Lawrence: Okay, I love you to babe. (not audible) it was there or something.

Crabtree: What?

Lawrence: (Not audible) I thought the (not audible) was there or somethin.

Crabtree: No he just came in on the tractor.

Lawrence: Okay, all right, (not audible) concerned with what ya doin? Why don't you drive by or something about 6:00 tomorrow (not audible).

Crabtree: Well with this leg I can't really drive.

Lawrence: Oh, you can't. Okay.

Crabtree: I had a couple skin graphs done on it.

Lawrence: That bad baby?

Crabtree: Yeah, I told you.

Lawrence: Do you know when you'll be goin back to work?

Crabtree: Ah, next week (not audible).

Lawrence: Okay, I miss you. You know I love you. That's my baby girl (not audible). Like I'm playing, playin you or somethin. I'm not playin you. Don't you know?

Crabtree: Well, I hope not.

Lawrence: Don't you know by now? You really don't know uh?

Crabtree: No.

Lawrence: I get you a card when you get back.

Crabtree: Okay.

Lawrence: Okay. I going to make you (not audible) it don't look bad okay?

Crabtree: Okay, I love you.

Lawrence: I love you too sugar. God Bless you. Okay, you're in my thoughts always. All right, ciao. (End of conversation).

As a result of this information, Branham decided to interview Ms. Crabtree personally about her relationship with Lawrence. On August 19, 1997, Branham and Ms. Crabtree, together with a few other Employer officials, met with Ms. Crabtree in a tape recorded and transcribed

conversation and confronted her with the information in the kites and with the tape recorded telephone conversation between Lawrence and her. Ms. Crabtree did not know about the investigation and had not previously mentioned her telephone call with Lawrence to any of her supervisors upon her return from leave.

At the beginning of the investigation, Ms. Crabtree was unaware that her telephone conversation with Lawrence had been tape recorded. When asked about the allegations of her alleged inappropriate relationship with Lawrence, she vigorously denied any relationship. She also vigorously denied any telephone conversations with him or any other meaningful personal contact.

But upon being confronted with the taped telephone conversation, Ms. Crabtree recanted and admitted that she had talked with Lawrence on the telephone. She alleged that she had engaged in the conversation with Lawrence to set him up for a policy violation. When asked why she was not forthcoming with the relationship prior to being informed that her conversation with Lawrence had been tape recorded and transcribed, Ms. Crabtree indicated she was unsure as to what the Employer knew and was going to tell them about it as things unfolded.

Ms. Crabtree's description about her relationship with Lawrence and her conversation with him was documented verbatim as a part of this interview:

Crabtree: That's not me John. That inmate never called me, I'm sorry.

Branham: That's not you on the telephone?

Crabtree: No.

Branham: Called your phone number, the inmate called your phone number.

Crabtree: It's not me John. Nobody, no inmate, fuckin inmate has called me.

Branham: Beulah? You want to tell me why he did this?

Crabtree: Steve?

Park: Unless they've got proof of the numbers, what he called.

Crabtree: Have you?

Branham: Huh uh.

Lansing: Yes.

Branham: Yeah, you want to tell us why?

Crabtree: Well, why don't you go ask him why?

Branham: What do you mean, why don't I ask him.

Crabtree: Ask him why, because I'm not doing anything wrong.

Branham: He's not our employee, you're our employee.

Crabtree: Yeah and I'm not doing anything wrong.

Branham: You're not? Why would you tell the inmate you loved him? Why would he have your birthday on his calendar?

Crabtree: My birthday!

Branham: What is your birthday? Is it June the 8th?

Crabtree: 6/8/46.

Branham: 6/8/46? Goldie ladies birthday. 6/8/46.

Crabtree: Well I'm not the goldie lady. Mine is 6/8/46.

Branham: Why did he call you?

Lansing: Beulah, that phone that he called was your phone number. He asked for Goldie, you told him about you being off, you told him about your two burns on your leg, your two skin graphs, you told him that you loved him.

Crabtree: Huh um.

Lansing: I mean, it's all right there Beulah.

Crabtree: Yeah and that morning, we got four or five phone calls.

Lansing: But it tells you it's from the Chillicothe Correctional.

Crabtree: No it doesn't.

Lansing: It tells you it's from an inmate.

Crabtree: No, no I thought it did.

Lansing: You knew who was calling you, didn't you, talking about coming back to work, you knew who he was.

Crabtree: Yeah, I knew, but after I talked to him last time and I was going to turn in my Captain when I came in today, and I hollered for you back there but you weren't there.

Lansing: You knew it was him, you told him you loved him. Isn't that inappropriate?

Crabtree: Yes it is, yes it is inappropriate but that was til I got back to work to let you guys know what was going on.

* * * * *

Branham: Why would you tell an inmate you loved him on the telephone?

Crabtree: To keep it going til I got back. Now that call, there was three or four calls that morning. It was somebody wanting goldie Brown and I talked to them and my husband talked to them and he told me he wanted Goldie Brown. I didn't know who in the hell it was. Then later on he called back.

* * * * *

Lansing: When you came in here a while ago, why didn't you say something then?

Crabtree: I wanted to know what it was all about.

Lansing: Why didn't you tell us what it was about?

Crabtree: I wanted to know what it was all about, what you had to say first and now I know what you've got to say. You got me guilty before you even find out what I'm doing.

Branham: No, we're asking you why. We got, we got you guilty of that phone call. We're asking you why. I mean, there is no doubt in my mind that he called you at the house and there's no doubt in my mind that he told you that he loved you and you told him that you loved him.

Crabtree: That was to keep this shit going til I came back.

* * * * *

Branham: A guy called you at home and you just tell him you love him and all that stuff, you don't pay attention to it?

Crabtree: No, not to what he said because I knew I was going to burn him when I came back to work.

Lansing: But you knew it was him on the phone?

Crabtree: Pretty sure.

Lansing: Cause he never mentioned him name.

Crabtree: Pretty sure who it was but stills sounds like Barry Kellough.

Lansing: So when you was listening to that tape why did you say that was Barry Kellough if you already knew who it was and was going to report it.

Crabtree: I said that sounded like Barry Kellough.

Lansing: I mean you didn't say you was going to report it til after we said we had the phone. . . .

Branham: When you first (not audible) nobody even called you. The inmate didn't even call you.

Crabtree: Well I wanted to wait and see what you guys knew before I brought it up.

* * * * *

Crabtree: Cause absolutely nobody, nobody asked to accept charges.

Branham: But you knew it was him, you knew it was Lawrence?

Crabtree: I was pretty sure. I did not know.

Branham: At what point did you decide it was him?

Crabtree: Well, after I hung up really.

As a result of her admitted misconduct, and her mendacious cover up of her transgressions, the Employer terminated her, notwithstanding her ten years of service with a clean disciplinary record.

At the Step 3 grievance hearing, Ms. Crabtree alleged she was set up by Mr. Jeff Lovely, Unit Manager of A and B Dorms, who she alleged had made numerous derogatory comments to inmates about her. She claimed the call to her house came from an outside line in his office. This is why, according to Ms. Crabtree, the telephone call did not contain the normal Shan-Tech announcement that it was from the correctional facility.

Later, at the arbitration hearing, in addition to her explanations of her conduct during Branham's investigation and at Step 3 of the grievance process, Ms. Crabtree alleged that she was heavily medicated because of her leg burns and that she thought she had been talking to her brother-in-law during her conversation with Lawrence.

VI. Positions of the Parties

A. The Union's Position

The Union believes that progressive discipline was not imposed here. The Grievant has an excellent, unblemished record over ten years and she should not be terminated for her first violation of the Employer's work rules. This is especially true because Ms. Crabtree was under heavy medication when she answered the telephone on August 14 and she thought that she was talking to her brother-in-law.

The Union also challenges the methods of the Employer's investigation. Alleging bias, the Union finds deficient the Employer's failure to determine if the kites were valid and to interview Officer McCray about his incident report.

The Union also criticizes the Employer's failure to do a voice print of the telephone conversation between Ms. Crabtree and Lawrence to confirm it was Lawrence. The Union believes that the Employer was predisposed to find Ms. Crabtree guilty and structured a case to prove a predetermined result.

The Union also believes that Ms. Crabtree could have been set up by Unit Manager, Jeff Lovely, who allegedly had made numerous derogatory comments to inmates about her. Ms. Crabtree believes the telephone call came from an outside line in Lovely's office because it lacked the customary announcement that it was from the correctional institution. The Union discounts any of the entries made in Lawrence's calendar about Ms. Crabtree because he is housed in an open area where numerous other inmates or staff could have access to the calendar as part of a set up.

B. The Employer's Position

Ms. Crabtree was caught red-handed engaging in an intimate personal conversation with Lawrence. She admitted to doing so only when it became obvious that she had been caught and could not deny this conversation. During the whole course of the investigation process, as well as at the arbitration hearing, Ms. Crabtree changed her story in a futile attempt to finesse her misconduct. Her individual stories are incredible and her vacillations in the face of convincing evidence further undermine her credibility. Termination is warranted because Ms. Crabtree violated the Employer's work rules and attempted to lie about it.

Arbitrator's Opinion and Award

From the evidence and the testimony introduced at the hearing, a complete and impartial review of the record, including pertinent contract provisions, it is this Arbitrator's opinion that the Union's grievance should be denied. Ms. Crabtree clearly engaged in an inappropriate relationship with an inmate contrary to the Employer's work rules and exacerbated that infraction with a feeble attempt to conceal and manipulate the truth about her misconduct. The Employer therefore met its burden of proof to demonstrate that Ms. Crabtree was terminated for just cause.

The Union does not dispute the existence or fairness of the Employer's work rules, 38 and 46, prohibiting personal relationships or telephone calls between its employees and inmates. This Arbitrator therefore conducts his analysis finding that work rules 38 and 46 are fair and reasonable.

The Union contests the Employer's failure to apply progressive discipline under the work rules as a violation of the just cause provision under Article 24 of the contract. But the Employer's work rules, under Standards of Employee Conduct, clearly state that rigid progressive discipline steps need not always be applied in all circumstances:

Progressive discipline also recognizes that some violations of the Standards of Employee Conduct are so heinous that the level of discipline imposed may exceed the level recommended on the disciplinary grid... . . . the ranges on the disciplinary grid provide a great deal of discretion. When the facts of a case are different and distinguishable, the disciplinary action may vary.. . . The penalty imposed for violating a rule must take into consideration all relevant circumstances. An employee may be disciplined for violating more than one (1) rule arising out of the same incident. In all cases, the mitigating and aggravating circumstances along with the relationship of multiple offenses must be considered. (Standards of Conduct, p 5)

Based on the express language of the Standards of Employee Conduct, this Arbitrator holds that the Employer is not locked in to the first level of discipline on the grid for any given work rule violation if aggravating circumstances exist or the facts and circumstances warrant it. This Arbitrator thus dismisses the Union's argument that no progressive discipline exists here because the Employer was obligated to impose less than a termination for Ms. Crabtree's initial violation of work rules 38 and 46.

Given that no dispute exists over the fairness of work rules 38 and 46, and this Arbitrator's reading that the work rules do not require a strict first level discipline for the first offense, the only remaining question to resolve the Union's grievance is whether work rules 38 and 46 were violated, and whether the circumstances or other aggravating factors warranted Ms. Crabtree's dismissal for her first offense.

Based on the facts in the record, this Arbitrator believes the facts support termination for Ms. Crabtree's first violation of work rules 38 and 46. The record establishes that Ms. Crabtree engaged in personal communications and a personal relationship with inmate Lawrence and that she attempted to cover it up. Those facts violate the work rule and Ms. Crabtree's attempts to lie and cover up her conduct are aggravating circumstances warranting her immediate dismissal.

In a tape recorded, transcribed investigatory hearing, Ms. Crabtree admitted she had a personal telephone conversation with inmate Lawrence.

Lansing: You knew who was calling you, didn't you, talking about coming back to work, you knew who he (Lawrence) was.

Crabtree: Yeah, I knew . . .

Crabtree also admitted that the tenor of the conversation with Lawrence was personal and intimate:

Lansing: You knew it was him, you told him you loved him. Isn't that inappropriate?

Crabtree: Yes it is, yes it is inappropriate but that was till I got back to work to let you guys know what was going on.

Ms. Crabtree's admissions establish her violations of the work rule. They also corroborate the Employer's other evidence that Ms. Crabtree's birthday was written in Lawrence's calendar as well as Ms. Crabtree's personal address. The Union's argument that no just cause exists because the Employer failed to do a voice graph on Lawrence's voice or because any inmate in Lawrence's unrestricted dormitory could have placed those personal entries in Lawrence's calendar become moot in light of Ms. Crabtree's credible admission about her conversation with Lawrence. Ms. Crabtree's admission established a violation of the Employer's work rule and must be given significant and controlling weight. *Diebold, Inc.*, 42 LA 893,900 (Bradley, 1967).

Ms. Crabtree's vacillations in her recollections of her conversation with Lawrence and her other incredible explanations for her conduct are additional aggravating circumstances that undermine her credibility and warrant her immediate termination. In this sense, this Arbitrator must determine the truth based on a full and fair consideration of the evidence and draw the necessary conclusions from the record. *Andrew Williams Meat Co.*, 8 LA 518,519 (Cheney, 1947).

During her initial investigation with Investigator Branham, Crabtree initially vigorously denied having a telephone conversation with Lawrence.

When she was confronted with a taped telephone conversation between Lawrence and her, she recanted and admitted her misconduct.

Significantly, for purposes of reviewing the aggravated circumstances, Ms. Crabtree also implicitly admitted she knew that she was lying but she was going to play the investigation by ear until she learned just how much the Employer knew:

Lansing: I mean you didn't say you was going to report it until after we said we had the phone tape

Branham: When you first (not audible) nobody even called you. The inmate didn't even call you.

Crabtree: Well, I wanted to wait and see what you guys knew before I brought it up.

This Arbitrator believes Ms. Crabtree's comments establish that she knew she was having an inappropriate relationship with Lawrence and was making every attempt to finesse the facts to avoid potential discipline.

Ms. Crabtree's attempt to finesse the facts, moreover, did not stop with Branham's initial investigation wherein she claimed her intimate conversation with Lawrence was to set him up for a department violation.

At Step 3 of the grievance procedure, she came up with her own version of the "grassy knoll" conspiracy theory, by alleging the telephone conversation with Lawrence was a result of a conspiracy set up by Jeff Lovely, Unit Manager of the A and B Dorms, who she alleged had made numerous derogatory comments to inmates about her.

Under Crabtree's conspiracy theory, someone from Lovely's office made the telephone call to her house on an outside line because she does not recall ever receiving the standard notification on the telephone that the call was being directed from the correctional facility.

At the arbitration hearing, apparently deciding that her conspiracy theory would not play well in Peoria, Ms. Crabtree changed her story again, alleging that she had been severely medicated on the day of the telephone call and that she thought she had been talking to her brother-in-law. If this Arbitrator bought this story, given Ms. Crabtree's numerous expressions of love during her August 14 telephone conversation, he would have to come to the conclusion that Ms. Crabtree was having an amorous affair with her brother-in-law.

This Arbitrator frankly does not buy any of Ms. Crabtree's stories. Her "play along" excuse is incredible because she never reported Lawrence to her supervisors upon her return from leave. Her conspiracy theory is simply unsupported by the record and Ms. Crabtree's claims of medication and confusion is a hail Mary attempt to save her job.

The most persuasive evidence here were Ms. Crabtree's admissions that she had an intimate personal conversation with Lawrence contrary to the Employer's work rules. Her unsuccessful attempts to cover up her misconduct, together with her work rules violations, are adequate grounds for her removal for this first offense, despite her prior clean work record and her ten years of seniority.

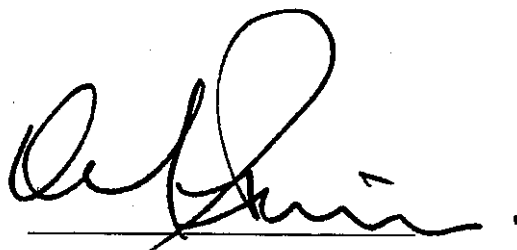
Stated simply, Ms. Crabtree's deceitful attempt to cover up her personal conversation with Lawrence and, potentially, her personal relationship with him, is the kind of "action that could compromise or impair the ability of the employee to carry out her duties as a public employee" under rule 38. Ms. Crabtree's termination for her first violations of rules 38 and 46 therefore was for just cause.

The Award

The grievance is denied.

Dated : ~~April~~ 5, 1999

Cleveland, Ohio

A handwritten signature in black ink, appearing to read "D. Pincus", written over a horizontal line.

Dr. David M. Pincus