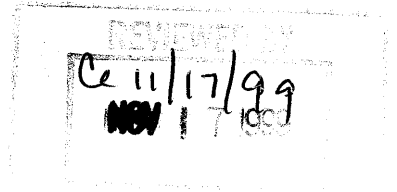


#706



IN THE MATTER OF ARBITRATION
BETWEEN
THE OHIO DEPARTMENT OF CORRECTIONS
AND
THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION/AFSCME-AFL-CIO

Before: Robert G. Stein

PANEL APPOINTMENT

CASE # 27-20(98-09-10)⁸ 3561-01-03
Robert Wuchich, Grievant

Advocate(s) for the UNION:

Mike Hill, Field Staff Representative
OCSEA Local 11, AFSCME, AFL-CIO
1680 Watermark Dr.
Columbus OH 43215

Advocate for the EMPLOYER:

Rhonda Bell, Advocate
Office of Collective Bargaining
107 N. High St., 7th Floor
Columbus OH 43215

INTRODUCTION

A hearing on the above referenced matter was held on September 15 and September 20, 1999, in Mansfield, Ohio. The parties stipulated to the fact that the issue was properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions. The parties submitted written closing arguments in lieu of verbal closing arguments. The hearing was closed on October 6, 1999. The Arbitrator's decision is to be issued within forty-five (45) calendar days or no later than November 21, 1999.

ISSUE

The parties agreed upon the following definition of the issue (See Tr. 8):

Were the Grievants, Carlos Goad and Robert Wuchich, disciplined (terminated) for just cause? If not, what should be the remedy?

RELEVANT CONTRACT LANGUAGE

(Listed for reference, see Agreement for language)

ARTICLE 24 DISCIPLINE

BACKGROUND

The issue in dispute in this matter involves the termination of two Correctional Officers, Carlos Goad and Robert Wuchich, from the Mansfield Correctional facility located in Mansfield, Ohio. At the time of their termination from employment, Officers Goad and Wuchich had eight and seven years of service respectfully with the Department of Corrections (DRC). Neither Grievant had any prior discipline on his record.

Officer Goad was terminated from his position for allegedly violating **Rule 7: Failure to follow post orders, administrative regulations, policies, procedures or directives;** and **Rule 41: Use of excessive force towards any individual under the supervision of the department or a member of the general public.** Officer Wuchich was terminated from his position for allegedly violating **Rule 22: Falsifying, altering or removing any official document;** and **Rule 24: Interfering with or failing to cooperate in an official investigation or injury.**

The incident leading to the termination of the Grievants occurred on April 15, 1998. The Grievants were working in Pod 4-C of the Mansfield Correctional Facility. An inmate, Feemster #319-783, who was in cell 119, had just struck a fellow Officer, Kay Patton. Inmate Feemster struck Officer Patton as she responded to his call. She placed her face near the open food slot in his cell door, and he reached out and struck her in the face. Officer Patton was not seriously injured but reported the incident to Officers Goad, Wuchich, and Blount, who were standing at the desk located in Pod 4-C. The desk is located approximately 50 feet from Cell 119.

Officer Blount went over to Cell 119 and spoke with Inmate Feemster about the incident through his cell door. Inmate Feemster was reportedly calm at this time (See Blount's testimony). Officer Blount returned to the desk, where upon Officers Goad (leading the way) and Wuchich (following) proceeded to Cell 119. Officer Blount trailed closely behind the two officers. Prior to arriving at Cell 119, Officer Goad asked Officer Blount for the keys to Cell 119 (Blount's testimony, Goad and Wuchich disagree).

Officer Goad opened the door of the cell and a confrontation ensued with Inmate Feemster. The parties are in disagreement as to whether Officer Goad first handcuffed Inmate Feemster through the Cell door before entering his cell. Inmate Feemster was identified as Level I inmate. Inmate Feemster is a forensic psychiatric inmate and was considered to be a high risk with the potential to act out in a violent manner, the very reason he was placed in Pod 4-C. Prior to the incident of April 15th, the Grievants had worked in Pod 4-C for at least three (3) years.

According to the single witness for the Employer, Officer Blount, Officer Goad challenged Inmate Feemster to hit him, then struck Inmate Feemster three (3) times. After the striking took place, Officers Wuchich and Goad subdued the inmate and handcuffed him. After Inmate Feemster was handcuffed, Nurse Butcher, who was assigned to the area, attended to the inmate. Shortly thereafter, Lt. Mealy, the Grievant's supervisor, appeared in Cell 119.

The Employer concluded that Officers Goad and Wuchich had unnecessarily used excessive force on Inmate Feemster. The Employer contends that Inmate Feemster was beat up by Officer Goad, and Officer Wuchich was an accomplice. The Grievants claim nothing of the sort occurred. The Grievants claim that Inmate Feemster struck Officer

Goad while handcuffed in the cell. Officer Blount, the Employer's only eyewitness, did not inform the Employer of the Grievant's actions in his incident report. Subsequently, in front of the Use of Force Committee, Officer Blount stated that Officer Goad "*...struck inmate Feemster about the head with his fist about three times while C.O. R. Wuchich watched.*"

After completing an investigation on the matter, the Employer fired Officers Goad and Wuchich. The Grievants filed a grievance in response to the Employer's actions, alleging their discipline was not for just cause.

EMPLOYER'S POSITION

The Employer's position in this matter is straightforward. The Grievants with malice of forethought went into Cell 119 on April 15, 1998 and physically punished Inmate Feemster for his attack upon Officer Patton, asserts the Employer. In the words of the Employer, the Grievants "*...had only one agenda and that was to teach this inmate a lesson.*"

The Employer argues that Officer Goad assaulted the inmate while Officer Wuchich supported his efforts, and in his incident report covered up what had happened. The Employer rejects the Grievants' version of the events as being self-serving. The Grievants did not have a reason to go into Inmate Feemster's cell in light of what he had just done to Officer Patton, contends the Employer. The Employer points out that the Grievants should have followed post order and departmental rules by waiting for a supervisor to provide them direction.

Based upon the above, the Employer concludes that the testimony of Officer Blount and the statement of Inmate Feemster are credible pieces of evidence that prove that the Grievants acted in a manner to justify their termination from employment.

UNION'S POSITION

The Union views things in a very different light. It argues that the Grievants acted properly in their confrontation with the Inmate. Officer Blount's testimony cannot be believed in this case, argues the Union. He changed his story and cannot be considered to be a reliable source of information, contends the Union. The Union also points out that Inmate Feemster is a mental patient and is unlikely to provide an accurate accounting of the facts.

The Union argues the Employer's case lacks sufficient evidence to meet a just cause standard of discipline. At the most, the Grievants may have exercised poor judgment when they entered the inmate's cell, but this error does not support the Employer's action of removal, asserts the Union.

Based upon the above, the Union requests the grievance be granted.

DISCUSSION

The weight of the evidence and testimony in this case supports the Employer's contention that Officer Goad violated Rule 41 by using excessive force on Inmate Feemster. Officer Goad's act of physical violence perpetrated upon the inmate was without mitigation, and in light of the evidence, must be considered a blatant exercise of

brute force. It is certainly true that Inmate Feemster's actions in punching Officer Patton were an uncalled for act of violence that required a swift and appropriate response by the Employer. However, the appropriate response to such behavior is not a vigilante act.

The Employer effectively argued that the probability of Inmate Feemster committing another act of violence was high after he punched Officer Patton in the face. The Employer argued that Inmate Feemster's cell should have remained locked and a supervisor should have been consulted before further action was taken. I concur with this reasoning. In the cell the inmate was secured and could pose no further danger to others. The Grievants' and in particular Officer Goad's aggressive response in entering the inmate's cell was designed to initiate a confrontation.

The testimony of Officer Blount is key in this case. Although Inmate Feemster was able to provide some collaboration of the events of April 15th, his recounting of the incident is undermined by his mental condition. This is an inmate who hears voices and hallucinates, and these factors cannot be overlooked when evaluating the validity of his interview responses. While Inmate Feemster's testimony generally tracks with the events that occurred, such as the presence of specific individuals, it contains details that cannot be substantiated.

The most significant contradiction between Feemster's testimony and Blount's testimony deals with Feemster's detailed description of a physical struggle that took place between the Grievants and himself. Officer Blount, who testified that he had a clear view of the cell from a close distance, did not describe a struggle. Officer Blount said he was no more than 10 or 12 feet away initially and then closed his distance to as close as the door opening to Cell 119. If the inmate and Officer Goad were first taunting one another

and then wrestling, it is reasonable to believe Officer Blount would have witnessed it. Inmate Feemster also testified that Officer Wuchich hit him, yet Officer Blount consistently testified prior to and at the hearing that Officer "...*Wuchich was just standing by. He did not try to stop the incident.*" In his statement to the Use of Force Committee, Officer Blount stated "*C.O. R. Wuchich watched.*"

The evidence convincingly supports the contention that Officer Goad took the lead in this incident. He led the way in going to Cell 119 and asked for the keys from Officer Blount. He was the first to enter the cell and was the one who struck the inmate with his fist at least three times (See Blount's testimony). Officer Goad's testimony in this matter was not credible. He and Officer Wuchich had no good reason to be in Inmate Feemster's cell. The inmate committed a hostile act in striking Officer Patton. When questioned by the Grievants, the inmate indicated the he "would do it again and kill that bitch" (see Goad and Wuchich Incident Reports). Why would anyone put himself in harm's way by entering the inmate's cell while he is in this state of mind? The only logical explanation is that Officer Goad, accompanied by Officer Wuchich, was seeking to do a little harm themselves. It can be reasonably concluded that Officer Goad, with Officer Wuchich in tow, purposely placed himself in Cell 119 and instigated what transpired with Inmate Feemster.

The role played by Officer Wuchich in this incident is distinct from that of Officer Goad. According to the testimony of the Employer's key witness, Officer Blount, Officer Wuchich did not strike the inmate and did not physically assist Officer Goad in his conduct of striking the inmate. Officer Wuchich assisted in subduing the inmate and in handcuffing him. Officer Blount was clear about what role each Grievant played in this

matter. Officer Goad was the aggressor while Officer Wuchich stood by and watched.

The intent of what Officer Goad wanted to do was made clear by his actions in striking the inmate. However, it is not clear what Officer Wuchich's intent was in this incident. Was he an accomplice to Officer Goad's actions or was he accompanying Officer Goad without knowledge of what was going to happen? Officer Wuchich, like Officer Goad, had no prior history of discipline and there is no indication that either Grievant had a propensity for this type of behavior. However, in Goad's case his action speaks for itself. Such is not the case with Officer Wuchich.

Officer Wuchich stood by and did nothing in the face of Officer Goad's behavior. While reprehensible, it is not tantamount to engaging in physical violence. However, the Employer also proved that Officer Wuchich covered up what Officer Goad did to Inmate Feemster. Officer Wuchich did not report what transpired in Cell 119 on April 15th. Officer Wuchich's act of covering up the actions of Officer Goad was in his reporting of the incident. He provided a false accounting of the events of April 15th in his incident report and in his testimony to the Use of Force Committee. As pointed out by the Union, Officer Blount also submitted a false incident report and did not mention that Officer Goad struck Inmate Feemster. However, the difference in the behavior of Officer Blount and Officer Wuchich is that Officer Blount eventually told the truth. Officer Wuchich continued to protect Officer Goad, as well as himself.

Officer Blount's actions need to be placed in context. What he did in this case took courage, the courage to tell the truth. The "Code of Silence" in such matters is well known and difficult for one person to overcome. Officer Wuchich chose to conform to the "Code" and not to testify against his fellow correctional officer. When the basic

human rights of people are involved, this course is a treacherous one, as Officer Wuchich discovered. The question is whether Officer Wuchich's conduct should be career ending in this context. Did his punishment fit his crime of standing by, doing nothing and engaging in a withholding of the truth?

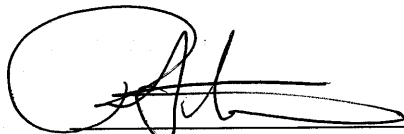
Officer Wuchich has no prior record of discipline, and according to his performance evaluations he was, in the aggregate, a good officer. Officer Wuchich also has 7 years of service with the Department. The Department's disciplinary grid offers a range of discipline for violating rules 22 and 24. The range is from a written warning to removal. The seriousness of the incident in this matter is evident from what happened to Officer Goad and sustaining of the Employer's action by this Arbitrator. The unnecessary use of force on an inmate, particularly a mentally ill inmate, is a serious matter. Fortunately, the inmate was not seriously injured.

I find that the role Officer Wuchich played in this incident warrants a stiff corrective action, but it does not rise to a level that supports removal from his job.

AWARD

The Grievant shall be returned to the position of Corrections Officer, without back pay or benefits. However, his seniority should be bridged for the period of this time served suspension for violation of Rules 22 and 24. The Grievant's return to full time employment shall occur within thirty calendar days from the date of this Award.

Respectfully submitted this 12th day of November, 1999.

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a series of horizontal strokes and a final flourish.

Robert G. Stein, Arbitrator