

725

REVIEWED BY
Closed 8/8/00
AUG - 8 2000

GRIEVANCE COORDINATOR

OPINION AND AWARD

IN THE MATTER OF THE ARBITRATION BETWEEN
Department of Youth Services— Maumee Youth Center
-AND-
OCSEA, Local 11

Appearing for the Maumee Youth Center

Nan Hoff - Superintendent
Pat Morgan - OCB 2nd Chair
James Ray Jr. - DYS -LRO - Maumee
Pam Robbins - Health Services Administrator
Jeffery L. Rollins - Operations Administrator D.Y.S.
Colleen Ryan - Labor Relations Office - DYS

Appearing for OCSEA, Local 11

Augustus R. Deeble I - Grievant
Velvet Goodwin-Brown - AFSCME Chapter President
Patricia Howell - Advocate
John Porter - Second Chair for OCSEA

CASE-SPECIFIC DATA

GRIEVANCE #
35-05(1-28-99)228-01-03

HEARING HELD
JUNE 26, 2000

CASE DECIDED
JULY 24, 2000

SUBJECT: FIFTEEN-DAY SUSPENSION—INSUBORDINATION/ABUSIVE LANGUAGE

ARBITRATOR: ROBERT BROOKINS, PROFESSOR OF LAW, J.D., PH.D.

Table of Contents

I.	The Facts	3
II.	The Issue	5
III.	Relevant Contract Language and Work Rules	6
IV.	Summaries of Parties' Arguments	5
	A. Employer's Arguments	5
	B. Union's Arguments	6
V.	Discussion	6
	A. Insubordination	6
	1. When Mr. Rollins Issued the Clear and Direct Order	7
	2. Deliberate Disobedience	7
	3. Legitimacy of the Order	8
	4. Locale of Displayed Disobedience	9
	5. Health/Safety Defense	9
	6. Provocation	10
	7. Role of the Grievant's Violence Training	11
	B. Abusive Language	12
	C. Penalty Assessment	12
VI.	The Award	13
VII.	Appendices and Charts	14

I. The Facts

The Maumee Youth Center (MYC or the Employer) is a branch of the Ohio Department of Youth Services (DYS) and operates under a Collective-Bargaining Agreement with the Ohio County State Employees Association (OCSEA or the Union). MYC is charged with caring for and rehabilitating troubled youths (youth offenders or offenders). MYC has employed Mr. Augustus R. Deeble, the Grievant, for approximately six years. When the instant dispute arose, the Grievant was classified as a Juvenile Corrections Officer (JCO). During his tenure with MYC, the Grievant has developed a checkered history of overreacting to confrontational (win/lose) situations with offenders in various ways including the use of physical force.¹ In other words, his success in harnessing his temper and in avoiding win/lose situations has been sporadic at best.² To their credit, both the Grievant and Employer have worked together to afford the Grievant violence training which teaches him to handle win/lose situations constructively by either relaxing and taking deep breaths or distancing himself from confrontational stimuli. Still the Grievant's progress has wavered.

The Grievant's performance evaluation (evaluation or evaluations) reflect this vacillation. During the evaluation ending on June 10, 1993, the Grievant began losing his self-control and the ability to control others when he was subjected to stressful win/lose situations. This shortcoming is also reflected in the August 9, 1993 evaluation.³ In contrast, the April 12, 1994 evaluation indicates that the Grievant neither met nor fell below the behavioral standard in this respect.⁴ For a while after that evaluation, the Grievant seemed to have regained his self-control but subsequently turned in another subpar performance for the evaluation period ending on May 12, 1998. On January 27, 1999, DYS imposed a 15-day suspension on the Grievant for insubordination and verbal abuse of others, in violation of Directive B-19 as well as Work Rule 6b–Insubordination, and Work rule 16–Verbal abuse of others.⁵

The events that led to this dispute began on November 11, 1998. First, on that same day the Grievant was to undergo an investigatory interview, hardly a tranquilizing prospect. Second, as if this was not enough, at approximately 3:25 p.m., before he had "punched in" to begin his shift, the Grievant was called to his

¹ Joint Exhibit No. 6E.

² Joint Exhibit No. 6F, P. 2A.

³ Joint Exhibit No. 6C

⁴ *Id.*

⁵ Joint Exhibit No. 3.

supervisor's (Mr. Jeffery L. Rollins) office (the office).⁶ When the Grievant arrived, both men sat down, and Mr. Rollins began discussing the Grievant's failure to complete a transportation package, containing transportation slips (the slips) for two offenders.⁷⁸ As Mr. Rollins discussed the slips, the Grievant became annoyed after correctly deducing that a coworker (Ms. Felisha Strode) had apprised Mr. Rollins of the incomplete slips. In the Grievant's view, but for Ms. Strode's whistle-blowing he would not have been in Mr. Rollins office discussing the slips. The Grievant viewed the entire matter as Ms. Strode's thinly veiled maneuver ("power play") to run his shift. These thoughts so angered the Grievant that he raised his voice to Mr. Rollins who responded in kind, thereby converting their discussion into a heated confrontation. The Grievant yelled that Ms. Strode would not run his shift. Mr. Rollins repeatedly but vainly sought to calm the Grievant by "speaking over" him in a loud voice. Still the Grievant became increasingly agitated and attempted to apply his violence training by stating that to calm down he needed time and distance away from this situation. He then declared that he would take care of the matter himself and walked out of Mr. Rollins' office toward the control center where Ms. Strode was working.

Fearing that the Grievant would immediately confront Ms. Strode about having reported the incomplete slips, Mr. Rollins immediately asked the Grievant to remain in the office.⁹ The Grievant refused to remain in the office and Mr. Rollins followed him. With Mr. Rollins in tow and vainly urging him to

⁶ The record reveals the following facts about the time in which the Grievant punched in on November 11, 1998:

1. In his written statement, Mr. Rollins stated that he called the Grievant into his office at approximately 3:25 p.m. (Joint Exhibit No. 5A.) However, during the arbitral hearing before the undersigned, Mr. Rollins testified that he called the Grievant into the office at 3:45 p.m.
2. In a statement dated September 5, 1998, Ms. Pamela Robbins says she observed Mr. Rollins walk into the dining room behind the Grievant at about 3:30 p.m. (Joint Exhibit No. 5B).
3. In his written statement, the Grievant does not state the time that he was called into Mr. Rollins' office.
4. Reverend Gail Wright issued a written statement, on November 4, that, on November 4, 1998, at 3:40 p.m., he observed the Grievant and Mr. Rollins walking through the parking lot. (Joint Exhibit No. 5E.)
5. On November 6, 1998, Ms. Lora Koepp issued a statement that, on November 5, 1998, at 3:45-4:00 p.m., she saw the Grievant and Mr. Rollins having a heated disagreement at a table in the dining room. (Joint Exhibit No. 5G).
6. Mr. Richard Bowman's written statement says that, on November 5, 1999, between 3:35 and 3:40 p.m., he observed Mr. Rollins trying to keep the Grievant from entering the control center. (Joint Exhibit No. 5H)
7. Mr. Odell Brown's statement says that, on November 5, 1998, at 3:30 p.m., he saw Mr. Rollins and the Grievant verbally interacting before the Grievant the Grievant entered the control center. (Joint Exhibit No. 5K)

⁷ Transportation slips notify the proper authorities that offenders are being transported from one site to another.

⁸ Nothing in the record suggests that the slips were overdue. In fact, on November 11, 1998, the Grievant still had substantial time to complete the slips. However, it appears that the Grievant should have noted in a log that the slips either would be completed or had yet to be completed.

⁹ In fact, the Grievant was scheduled to relieve Ms. Strode at work later that day.

return to the office, the Grievant crossed the parking lot in route to the control center. As the Grievant approached the entrance to the control center, Mr. Rollins rushed past him and made the hollow gesture of spread-eagling in front of the door to block the Grievant's entrance. Without physically touching Mr. Rollins, the Grievant (a rather large man) simply opened the door with Mr. Rollins leaning against it—sliding him aside with the door—entered the control center, walked passed Ms. Strode's work area, and sat at a table in the cafeteria.

Mr. Rollins rushed in, stood approximately three feet directly in front of the Grievant, and both men resumed their shouting match. At one point in their wrangle the Grievant said something to the effect that he was not a punk and that he would not be Mr. Rollins' and Ms. Strode's whore. However, he never called Ms. Strode or anyone else a whore. Also, when Mr. Rollins warned the Grievant not to force him to give the Grievant a direct order to return to the office, the Grievant replied "do what you got to do," or words to that effect. Finally, Mr. Rollins instructed the Grievant either to leave the cafeteria or to risk discipline. After the Grievant again refused to leave, Mr. Rollins asked an employee (Ms. Pamela Robbins) standing nearby to witness that he was about to give the Grievant a direct order. Then, placing his face no further than eight inches from the Grievant's and holding his finger approximately five inches away from the Grievant's face, Mr. Rollins specifically ordered the Grievant to return to the office. Nevertheless, the Grievant disobeyed.

However, shortly thereafter another employee (Ms. Neely) persuaded the Grievant to leave the cafeteria. Later that same day, the Grievant and Chapter President (Ms. Velvet Brown) did return to Mr. Rollins' office but he had left for the day. During this entire episode with Mr. Rollins, the Grievant never swore at or threatened either Mr. Rollins or Ms. Strode.

A Health Services Administrator (Ms. Pamela Robbins) who is apparently quite knowledgeable about and supportive of violence training testified that during his confrontation with Mr. Rollins the Grievant should not have left the office in reliance on his violence training. In Ms. Robbins' view the Grievant should have remained in the confrontational situation with Mr. Rollins and somehow summoned the inner strength to handle that stressful situation the same as other employees with normal control of their temper and emotions.

II. The Issue

Was the Grievant's 15-day suspension for just cause? If not, what shall the remedy be?

III. Relevant Contract Language and Work Rules

Rule	Description	Penalty 1st	Penalty 2 nd	Penalty 3 rd
6-B	Willful disobedience of a direct order by a Supervisor	15 or R	R	
16	Using insulting, malicious, threatening, intimidating language	W to 5 or Fines	10 to 15	R

Article 24 — Discipline

Disciplinary action shall not be imposed upon an employee except for just cause.

IV. Summaries of Parties' Arguments

A. Employer's Arguments

1. In the presence of other employees, the Grievant disobeyed a direct order to return to his supervisor's office.
2. The Grievant used abusive language toward a supervisor in the presence of other employees.
3. The Grievant should not have become upset at the prospect of Ms. Strode's having blown the whistle on him.

B. Union's Arguments

1. The Grievant had just cause—a health/safety condition—to disobey his supervisor's direct order.
2. The Grievant did not use abusive language toward anyone.

V. Discussion

The Arbitrator has carefully considered the parties' testimony, other evidence, and arguments and holds that under the particular circumstances of this case the Employer lacked just cause to suspend the Grievant for 15 days. The reasons and rationale in support of this holding are set forth below.

A. Insubordination

Although insubordination has at least two working definitions, for purposes of this dispute insubordination occurs where: (1) an employee's *supervisor* gives the employee a *clear, direct, and legitimate* order (reasonably related to the job), (2) the employee *understands* the order, (3) the employee *deliberately refuses* to obey the order, and (4) the supervisor *forewarns* the employee that *disciplinary consequences* might result from continued disobedience.¹⁰ The employer must prove each of the foregoing italicized elements by a preponderance of the evidence in the record as a whole. As an opening word of caution, in virtually every instance where a charge of insubordination hangs in the balance, employees are

¹⁰ ROBERTS' DICTIONARY OF INDUSTRIAL RELATIONS, 349 (1994). Observe that insubordination also occurs where an employees display disrespect for supervision—abusive language, physical confrontations, etc.

well advised to “obey first and grieve later.” Employees who reject this fundamental principle in both arbitral and industrial jurisprudence thereby place themselves beneath the Damoclean sword of discipline.

On the other hand, employees who face proven charges of insubordination may, nonetheless, survive unscathed, provided that their cases fall into one of the few exceptions or affirmative defenses to demonstrated insubordination. Observe, however, that these exceptions are not established by demonstrating that employers failed to prove any one or all the foregoing elements of an insubordination charge. Under those circumstances, insubordination is never established in the first instance, affirmative defenses are irrelevant, and the Employer loses. Instead, these exceptions are affirmative defenses that employees must raise and prove by a preponderance of the evidence in the record as a whole. If established, these affirmative defenses will exonerate insubordinate employees from what is often severe disciplinary consequences. The most common—if not the only—affirmative defenses to insubordination are the health/safety exception, and the immoral or illegal act exception.¹¹ Beyond these affirmative defenses are other considerations that could under certain circumstances warrant a reduction in the measure of discipline rather than elimination of all discipline. With these principles in mind, the Arbitrator now turns to an analysis of the facts in the instant case to discuss evidence in the record that establishes insubordination and, that addresses a recognized exception as well as other facts or circumstances that warrant some adjustment in the 15-day suspension.

One need not tarry with the threshold issue whether Mr. Rollins was the Grievant’s supervisor; the record clearly demonstrates that he was. Nor must one long ponder whether Mr. Rollins gave the Grievant a clear, direct order; he did.

1. When Mr. Rollins Issued the Clear and Direct Order

The task is to assess when Mr. Rollins gave the Grievant a clear, direct order. Evidence in the record does not establish that Mr. Rollins issued such an order while he and the Grievant were in the office. There, Mr. Rollins simply requested the Grievant to remain in the office, a request which, in the arbitrator’s view, was not an order and, thus, hardly mandated the Grievant’s obedience. When the Grievant left the office in route to the control center with Mr. Rollins in tow, the record still does not demonstrate that Mr. Rollins gave the Grievant a clear, direct order to return to the office. Instead, Mr. Rollins followed closely behind the Grievant beseeching him to return to the office. Nor does Mr. Rollins’ throwing his body in front of the door to the control center to block the Grievant’s entrance suffice as an order. However one views Mr. Rollins’ conduct, it falls short of being a clear, direct order. Indeed the Arbitrator views it as an instance of beseeching conduct rather than speech, which merely communicated Mr. Rollins’ sincere desire that the

¹¹

ADOLPH M. KOVEN AND SUSAN L. SMITH, JUST CAUSE THE SEVEN TESTS 151 (2nd ed. 1992) (REVISED BY DONALD F. FARWELL)[hereinafter Seven Tests].

Grievant not enter the control center.

Once Mr. Rollins and the Grievant entered the cafeteria, however, circumstances changed. Mr. Rollins warned the Grievant that if necessary he would give him a direct order to return to the office and that refusal to obey that order could result in disciplinary action. Mr. Rollins then requested Ms. Robbins to witness his giving the Grievant the direct order to leave the cafeteria and return to the office. At this point, there is no doubt that Mr. Rollins clearly warned the Grievant that a direct order was forthcoming and that further disobedience would draw disciplinary consequences. Nor does the record even suggest that the Grievant did not clearly understand that he was beneath the Damoclean sword. That is he was in danger of immediately becoming the subject of Mr. Rollins' order, as evidenced by the Grievant's earlier statement that Mr. Rollins should do what he must.

2. Deliberate Disobedience

Also, there is an issue whether the Grievant deliberately disobeyed Mr. Rollins' order. The record shows that shortly after Mr. Rollins gave the Grievant the direct order to calm down and stop yelling, Ms. Neely persuaded the Grievant to leave the cafeteria. Moreover, on the day of the incident, the Grievant and Ms. Velvet Brown subsequently returned to Mr. Rollins' office to find that he had left for the day.

Unfortunately, these facts do not exculpate the Grievant regarding the issue of deliberate disobedience. Before Ms. Neely ushered his departure from the cafeteria, the Grievant had ample time to obey Mr. Rollins' order to leave the cafeteria, to calm down, and to stop yelling. Therefore, when the Grievant finally left the cafeteria his disobedience was complete, whether or not he later followed Ms. Neely's advice to leave and whether or not he subsequently returned to Mr. Rollins' office.

Nor is there any evidence suggesting that the Grievant's disobedience was anything but deliberate. He heard and understood the order and had the opportunity to obey by leaving the cafeteria. That he did not leave immediately after receiving Mr. Rollins' clear, direct order establishes a definite element of deliberateness.

3. Legitimacy of the Order

Here the issue is whether Mr. Rollins had the authority to order the Grievant to leave the cafeteria and return to the office. In the Arbitrator's considered judgement the order was legitimate. In route to this holding, however, one must grapple with the fact that more likely than not, during most—if not all—of his altercation with Mr. Rollins, the Grievant still had not clocked in and was not yet required to do so. Therefore, the specific issue is whether Mr. Rollins was authorized to give the Grievant direct orders before the Grievant punched in. Stated differently, whether the Grievant was obliged to obey Mr. Rollins' direct,

non-job-related orders before the Grievant punched in for work. Several witnesses offered testimony that placed the Grievant and Mr. Rollins either outside the control center or inside the cafeteria between 3:30 and 4:00 p.m. Yet, the Grievant was not due to punch in until 3:45 p.m. Because the Employer has the burden of persuasion regarding the legitimacy of Mr. Rollins' order, doubts are resolved in favor of the Grievant and against the Employer on this point. Consequently, the Arbitrator concludes that the Grievant was not (and was not required to be) officially on duty when Mr. Rollins clearly and directly ordered him to leave the cafeteria and return to the office.¹²

Under some circumstances, this conclusion might very well end the inquiry into the legitimacy of Mr. Rollins' order with a determination that the order was illegitimate, since—barring extraordinary circumstances—supervisory authority to issue legitimate orders seldom extends to an employees' off-duty time. Furthermore, Mr. Rollins' order to leave the cafeteria was not directly work-related. Yet the work-relatedness of a supervisory order is often a cornerstone of its legitimacy.

Nevertheless, in this case, at least two circumstances combine to establish Mr. Rollins' authority to order the Grievant out of the cafeteria and back to the office. First, the Grievant's history of violence and his struggles to control his temper factor are prominent considerations here. Recall that the Grievant left Mr. Rollins' office in an emotional, agitated state of mind, saying that he would "take care" of the situation.¹³ Given the Grievant's violent history, Mr. Rollins was rightly concerned that the Grievant might forcefully confront Ms. Strode about the incident, thereby igniting a disturbance in the work place. Second, Mr. Rollins' following the Grievant to the entrance of the control center, standing in front of the door, and then following him into the cafeteria tend to corroborate the sincerity of his concerns for Ms. Strode's well being. Because Mr. Rollins ordered the Grievant back to his office in a sincere effort to avoid a confrontation between two employees on the Employer's premises, it matters not whether the Grievant was on or off duty when he received the direct order. Nor does it matter whether the order pertained to the Grievant's job performance or was otherwise work-related. Momentary reflection reveals that Mr. Rollins' or any supervisor has undoubted authority to issue orders intended to avoid employee confrontations *on the*

¹² Nor is it clear that Mr. Rollins was authorized to summon the Grievant to his office before 3:45 p.m. when the Grievant was scheduled to punch in.

¹³ The Grievant denied making this statement, however. Furthermore, Mr. Rollins' credibility is not unassailable, given his prior inconsistent statements as to when he summoned the Grievant to his office. In his written statement—issued November 6, 1998, Mr. Rollins stated that he called the Grievant into his office at approximately 3:25 p.m. (Joint Exhibit No. 5A.) However, during the arbitral hearing before the Undersigned, Mr. Rollins testified that he called the Grievant into the office at 3:45 p.m. Under the circumstances, that testimony has a distinct, self-serving taint because it directly contradicts Mr. Rollins' earlier, written statement, which should be more accurate, since it was offered when Mr. Rollins' recollection of the time in question was fresher.

Employer's premises. Consequently, the order to leave the cafeteria and return to the office was legitimate, under the circumstances of this case.

4. Locale of the Disobedience

Another difficulty for the Grievant is that his insubordinate conduct occurred in the presence of other employees. Insubordination in the presence of fellow workers is especially problematic for management and, hence, for the insubordinate employee. Such insubordination is likely to be especially corrosive to supervisory authority in the eyes of on-looking coworkers. No employer should have to (and few will) tolerate even the risk of such debilitating consequences to their supervisory authority.

5. Health/Safety Defense

As mentioned above an established claim of health/safety constitutes an absolute (affirmative) defense even to proven insubordination. Simply stated, the health/safety exception states that employees need not follow the "obey first and grieve later" rule where to obey a supervisor's orders "would involve an *unusual and abnormal* safety or health hazard."¹⁴

However, arbitrators narrowly construe this exception, lest it "swallows" the rule against insubordination. For example, the exception is inapplicable if "the hazard is *inherent* in the employee's job. Moreover. . . the Union must show that a safety or health hazard was the *real reason* for the employee's refusal."¹⁵ "The employee must obey the order unless there is a 'real and imminent' danger to life and limb."¹⁶ Finally, the Union must establish that the employee had a "reasonable belief" that following the order would create the abnormal or unusual threat mentioned above.¹⁷

Over the Employer's objections, the Union, in the instant case, introduced a statement by Eugene J. Mehl, M.D., stating that the Grievant "has a history of tightness in his chest and anxiety reaction causing him to walk away from his supervisor. . . ."¹⁸ The Union argues that this statement brings the Grievant's disobedience squarely within the health/safety exception.

Several reasons prompt the Arbitrator to disagree. First, the statement does not reflect a medical opinion based on an examination of the Grievant before, during, or shortly after he walked out of Mr. Rollins' office, or when the Grievant walked to the control center with Mr. Rollins in hot pursuit. Instead,

¹⁴ FRANK ELKOURI AND EDNA ASPER ELKOURI, *HOW ARBITRATION WORKS*, 977 (5th ed. 1997) (emphasis added).

¹⁵ *Id.* (emphasis added) (citations omitted).

¹⁶ *Id.* at 978.

¹⁷ *Id.* (emphasis added).

¹⁸ Union Exhibit No. 3.

Dr. Mehl's statement is obviously based on what the Grievant related to him sometime after the incident. Even assuming arguendo that the Grievant generally suffers from the enumerated problems in Dr. Mehl's statement, that fact, standing alone, does not establish either that the Grievant suffered those maladies when he left Mr. Rollins' office, or that those maladies caused him to do so. Finally, as discussed above, the Arbitrator is not convinced that Mr. Rollins gave the Grievant a direct order to remain in his office either before the Grievant walked out of that office or while the Grievant was in route to the control center. When the Grievant disobeyed the direct order in the cafeteria the issue was not whether he could walk away from Mr. Rollins with impunity but whether he could refuse Mr. Rollins' order to calm down and leave the cafeteria. Consequently, Dr. Mehl's statement does not address the source of the Grievant's difficulties in this dispute. Furthermore, if indeed the Grievant suffers tightness in his chest and anxiety reaction, it would have physiologically behooved him to heed Mr. Rollins' advice to calm down and leave the cafeteria. In sum, Dr. Mehl's statement fails to exonerate the Grievant under the health/safety exception.

6. Provocation

Although not an affirmative defense, supervisory provocation can mitigate the severity of insubordinate behavior and justify a reduction in the quantum of discipline imposed therefor. Issues of provocation are not usually linked to refusals to obey orders. Few cases arise where a supervisor's provocative conduct (verbal or otherwise) causes an employee to refuse a direct order. Instead, the affirmative defense of provocation arises where a supervisor's conduct triggers clearly disrespectful, abusive, or degrading verbal or physical reactions from an employee.

Accordingly, although the instant case involves a provocative act by Mr. Rollins, that behavior cannot entirely shield the Grievant from the consequences of his insubordinate conduct. Evidence in the record establishes that as the Grievant sat on a bench in the cafeteria Mr. Rollins placed his face and finger approximately eight and five inches respectively from the Grievant's face. This conduct was wholly unnecessary and, in this Arbitrator's view, clearly exceeded any supervisory authority Mr. Rollins had. Nothing in the record remotely justifies this provocative conduct, especially where, as here, the Grievant was already angry. Such conduct from Mr. Rollins was highly unlikely to achieve his asserted purpose of calming the Grievant and indeed was likely to precipitate exactly the opposite effect. Nevertheless, Mr. Rollins conduct did not elicit a physical or verbally abusive response for the Grievant, though it might well have. Although the Arbitrator commends the Grievant for the composure he displayed under these conditions, the fact remains that the Grievant did disobey a direct verbal order that in the final analysis was separate and apart from Mr. Rollins' physical conduct.

7. Role of the Grievant's Violence Training

In an effort to regain control of his temper, the Grievant—with the Employer's assistance—underwent violence training where he was taught to walk away from confrontations until he could compose himself and interact in a functional manner with the other party in the confrontation. The Union introduced un rebutted testimony that the Grievant was following his violence training when he left Mr. Rollins' office.

There is some persuasive force in this rationale. The record clearly documents the Grievant's historical struggles to control his temper, and the Employer's efforts to assist him in this respect. Therefore, the Employer—including Mr. Rollins—must have been aware of these facts. During her testimony, Ms. Robbins, who has been involved with teaching violence training, opined that the techniques in violence training were intended for confrontations with youthful offenders in MYC and not with supervisors.

The Arbitrator disagrees. Although the need for the Grievant to distance himself from the heated discussion with Mr. Rollins does not wholly justify his insubordination, it is, nonetheless, a factor. It is unreasonable for the Employer to assist the Grievant in dealing with confrontations with youthful offenders and yet expect him to abandon those very same techniques when he finds himself in a confrontation with his supervisor. Both types of confrontations are highly stressful and equally likely to cause a trainee to resort to his violence training. In a sense, then, one can understand—though not wholly condone—the Grievant's refusal to return to Mr. Rollins' office when instructed to do so in the cafeteria.

The Employer argues that the Grievant could have avoided this dispute simply by sitting quietly in Mr. Rollins' office and listening to his concerns about the slips. This is true but only to a point. The record documents the Grievant's historic struggle to control his emotions and temper, that he had elicited the Employer's help in that respect, and that he was progressing, albeit haltingly. Under these circumstances, it is not entirely unpredictable that the Grievant might encounter difficulties controlling his temper, given his views—rightly or wrongly—of Ms. Strode's behavior. Equally predictable (and to the Grievant's credit) is that the Grievant might rely on his violence training to get through confrontations with his supervisor.

In light of the foregoing discussion, the Arbitrator holds as follows: the Grievant's relying on his violence training was a significant factor in his refusal to return to Mr. Rollins' office. Furthermore, Mr. Rollins' conduct—standing well within the Grievant's personal space, raising his voice, and wagging his finger in the Grievant's face—undoubtedly played some role in the Grievant's yelling at Mr. Rollins in the cafeteria. In support of this conclusion. The Arbitrator points to the fact that Ms. Neely was able to control the Grievant without yelling or wagging her finger in his face. In confrontational situations, such as that in the instant case, employees as well as supervisors have manifest duties to control both their conduct and

language. Neither party here fully observed that duty.

B. Abusive Language

The Employer's charge that the Grievant subjected Mr. Rollins and others to abusive language is not unsupported by preponderant evidence in the record. Mr. Rollins testified that during the entire incident the Grievant never used the term "whore." The Grievant did invite Mr. Rollins to do whatever he had to do, or words to that effect, when Mr. Rollins linked disciplinary consequences to his direct order. Finally, the Grievant told Mr. Rollins, "I ain't no punk." However, the Arbitrator finds no actionable abuse or intimidation in these statements. Consequently, the "use of abusive language charge" is not sustained.

C. Penalty Assessment

Nevertheless, because the Grievant was insubordinate, some discipline is warranted. Moreover, the Arbitrator is loathed to modify the Employer's selected measure of discipline unless the record reveals that the Employer abused its discretion in the penalty selection process by acting arbitrarily, capriciously, or unreasonably. In making this assessment, the Arbitrator balances factors of mitigation against factors of aggravation. The largest aggravating factor is the Grievant's extensive disciplinary record. The Employer has shown great patience with the Grievant. Another aggravating factor is the nature of the offense in this dispute. Insubordination frequently draws termination on the first occurrence.

Still, several mitigating factors do exist. Most prominent here is that the Employer failed to establish one of its charges in this dispute. The Grievant's commendation as employee of the month is another salient mitigating factor. Then there is the Grievant's partially successful efforts to control his temper and, thereby, improve his job performance. The Grievant's efforts to rely on his violence training to avoid escalating a confrontation with Mr. Rollins is another mitigating factor. Finally, as mentioned earlier, Mr. Rollins is not without fault in this dispute. Although it is a close decision, under these particular circumstances, the Arbitrator holds that a 15-day suspension is unreasonable, if not arbitrary and capricious.

VI. The Award

For all the foregoing reasons, the Grievant's 15-day suspension is hereby reduced to a 10-day suspension. Accordingly, the Employer shall make the Grievant whole for the five-day difference between the 15-day and 10-day suspensions. Nor shall the Grievant lose any seniority whatsoever. In conclusion, the Arbitrator is compelled to strongly exhort the Grievant to exert an even greater effort to reign in his temper and emotions, lest they prove to be the source of his undoing. The grievance is hereby **SUSTAINED IN PART AND DENIED IN PART.**

Grievant's Disciplinary Chart

Disciplinary Date	Nature of Misconduct	Disciplinary Measure	Ultimate Outcome	Joint Exhibit Nos.
11/9/95	"Putting Hands on youth"	Oral Reprimand	Enforced	7A
1/26/96	Failure to Correlate Movement Sheets	Oral reprimand	Enforced	7B
3/12/96	Used Excessive Force Against Youth—"Grabbing and tossing Youth on the Floor and Pushing Garbage can into the Youth." Failed to Follow Procedures	10-Day Suspension	Grieved and Negotiated to 4-Day Suspension	7C
4/25/96	Omitted Youth's Name On Movement Sheet	Written Reprimand	Enforced	7D
5/6/96	Used Excessive Force Against Youth; Failed to Follow Procedures	10-Day Suspension	Grieved and Negotiated to 6-Day Suspension	7E
6/27/96	Took Institutional Keys and PPP Home	Written Reprimand	Enforced	7F
6/17/97	Took Institutional Keys Off Premises	One-Day Suspension	Enforced	7G
8/11/97	Failed to Leave Log Entry for Shift	Written Reprimand	Enforced	7H
9/18/97	Used Excessive Force Against Youth; Failed to Follow Procedures	15-Day Suspension	Grieved and negotiated to five-Day suspension	7I
5/7/98	10-Day Suspension	Took Institutional Keys Off Premises	Enforced, But the Grievant paid for Five Days of the Suspension	7J

Figure 1

Appendix A

DEPARTMENT OF YOUTH SERVICES



RECLAIMING OHIO

Street
Ohio 43266-0582
4314

INSTITUTIONS
Circleville Youth Center
640 Island Road
Circleville, Ohio 43113
(614) 477-2500

Cuyahoga Hills Boys School
4321 Green Road
Highland Hills, Ohio 44128-4898
(216) 464-8200

Indian River School
2775 Indian River Road, P.O. Box 564
Mason, Ohio 45447-0564
(216) 837-4211

Maumee Youth Center
U-669 County Rd. 1D, Route 2
Liberty Center, Ohio 43532-9598
(419) 875-0965

Mohican Youth Center
P.O. Box 150
Loudonville, Ohio 44842-0150
(419) 994-4127

Scioto/Everview Juvenile
Correctional Complex
5993 Home Road
Delaware, Ohio 43015-9476
RV (614) 881-3250
SC (614) 881-3550

Training Institution Central Ohio
2130 West Broad Street
Columbus, Ohio 43266-0531
(614) 466-8350

RESIDENTIAL TREATMENT PROGRAMS
Freedom Center
P.O. Box 18133
584 West Broad Street
Columbus, Ohio 43218-0183
(614) 752-8600

Independence Hall
5993 Home Road
Delaware, Ohio 43015-9476
(614) 881-3337

REGIONAL OFFICES
Cleveland Regional Office
615 West Superior Ave., #860
Cleveland, Ohio 44113-1886
(216) 787-3350

Northeast Regional Office
161 South High Street, #100
Akron, Ohio 44308-1617
(216) 379-3040

Northwest Regional Office
One Government Center, Suite 1016
Toledo, Ohio 43604-2236
(419) 245-3040

Southeast Regional Office
1007 East State Street
Athens, Ohio 45701-2181
(614) 594-2205

899 East Broad Street, 4th Floor
Columbus, Ohio 43205-1195
(614) 466-4676

Southwest Regional Office
7162 Reading Road, Suite 250
Cincinnati, Ohio 45237-3838
(513) 351-5500

40 West Fourth Street, #200
Miami Valley Tower
Dayton, Ohio 45402-1889
(614) 263-4200

*JX-16; (4 letters)
from Jrs personnel file.*

April 3, 1995

TO: Randy Deeble, Juvenile Corrections Officer
FROM: Employee of the Month Committee
THRU: Nan Hoff, ^{JH} Superintendent
SUBJ: EMPLOYEE OF THE MONTH - April 1995

Congratulations! You have been selected as MmYC's Employee of the Month for April, 1995.

You have been one of the main building blocks to what Kennedy Hall has become.

Over the last month, you have spent countless hours fulfilling the needs of Kennedy Hall youth and your Treatment Team. You always make yourself available throughout the Institution to help when needed.

You have made Kennedy Hall your second home and your dedication is well-appreciated by the youth you serve.

Congratulations, Mr. Deeble, the Employee of the Month for April, and thanks for all you do for Maumee Youth Center.

cc: Personnel
W.C. Mullan
File

OHIO DEPARTMENT OF YOUTH SERVICES



RECLAIMING OHIO

Central Office
51 North High Street
Columbus, Ohio 43215
(614) 456-4314

Circleville Youth Center
640 Island Road
P.O. Box 598
Circleville, Ohio 43113
(614) 477-2500

Cuyahoga Hills Boys School
4321 Green Road
Highland Hills, Ohio 44128-4898
(216) 454-5200

Indian River School
2775 Indian River Road, P.O. Box 564
Massillon, Ohio 44647-0564
(216) 537-4211

Maumee Youth Center
U-469 County Rd. 1D, Route 2
Liberty Center, Ohio 43332-9598
(419) 875-5655

Mohican Youth Center
P.O. Box 150
Loudonville, Ohio 44842-0150
(419) 994-4127

Scioto Juvenile Correctional Center
5993 Home Road
Delaware, Ohio 43015-9476
(614) 881-3550

Rheview Juvenile Correctional Center
7990 Dublin Road
Delaware, Ohio 43015-9476
(614) 881-3250

Training Institution Central Ohio
2130 West Broad Street
Columbus, Ohio 43266-0531
(614) 456-8350

Freedom Center RTC
P.O. Box 18183
584 West Broad Street
Columbus, Ohio 43218-0183
(614) 752-8800

Independence Hall RTC
8101 Dublin Road
Delaware, Ohio 43015
(614) 881-3337

Cleveland Regional Office
615 West Superior Ave., #660
Cleveland, Ohio 44113-1886
(216) 787-3350

Northeast Regional Office
161 South High Street, #100
Akron, Ohio 44308-1617
(216) 379-3040

Northwest Regional Office
One Government Center, Suite 1016
Toledo, Ohio 43604-2236
(419) 245-3040

Southeast Regional Offices
20 East Circle Drive, Room 230
Athens, Ohio 45701
(614) 594-2205

899 East Broad Street, 4th Floor
Columbus, Ohio 43205-1195
(614) 466-4676

Southwest Regional Offices
7162 Reading Road, Suite 400
Cincinnati, Ohio 45237-3638
(513) 396-5340

40 West Fourth Street, #200
Miami Valley Tower
Cayton, Ohio 45402-1889
(513) 285-4525

April 11, 1994

Mr. Randy Deebie
Juvenile Corrections Officer
Maumee Youth Center
U-469 County Road 1D, Route 2
Columbus, OH 43332-9598

Dear Mr. Deebie:

Recently, you were selected and honored by Maumee Youth Center (MMYC) as its Employee of the Month. This is an honor and indicates that the institution wanted to recognize your hard and numerous contributions to MMYC.

We also want to join with the administrators and staff of MMYC in recognizing you and your good work. Congratulations and best wishes for continued success.

Thank you very much.

Sincerely,

Cheri L. Walter

W.C. Mullan

Cheri L. Walter
Deputy Director
Program Services

W. C. Mullan
Deputy Director
Division of Institutions

CLW,WCM:ss

cc: Director Geno
Superintendent
Deputy Superintendents

Figure 3

Appendix C

OHIO DEPARTMENT OF YOUTH SERVICES



RECLAIMING OHIO

Central Office
51 North High Street
Columbus, Ohio 43215
(614) 466-4314

Circleville Youth Center
640 Island Road
P.O. Box 598
Circleville, Ohio 43113
(614) 477-2500

Cuyahoga Hills Boys School
4321 Green Road
Highland Hills, Ohio 44128-4898
(216) 464-8200

Indian River School
2775 Indian River Road, P.O. Box 564
Massillon, Ohio 44667-0564
(216) 837-4211

Maumee Youth Center
U-469 County Rd. 1D, Route 2
Liberty Center, Ohio 43532-9568
(419) 875-6965

Mohican Youth Center
P.O. Box 150
Loudonville, Ohio 44842-0150
(419) 994-4127

Scioto Juvenile Correctional Center
5993 Home Road
Delaware, Ohio 43015-9476
(614) 881-3550

Riverview Juvenile Correctional Center
7990 Dublin Road
Delaware, Ohio 43015-9476
(614) 881-3250

Training Institution Central Ohio
2130 West Broad Street
Columbus, Ohio 43264-0531
(614) 466-8350

Freedom Center RTC
P.O. Box 18183
584 West Broad Street
Columbus, Ohio 43218-0183
(614) 752-6800

Independence Hall RTC
8101 Dublin Road
Delaware, Ohio 43015
(614) 881-3337

Cleveland Regional Office
615 West Superior Ave., #850
Cleveland, Ohio 44113-1886
(216) 787-3350

Northeast Regional Office
161 South High Street, #100
Akron, Ohio 44308-1617
(216) 379-3040

Northwest Regional Office
One Government Center, Suite 1016
Toledo, Ohio 43604-2236
(419) 245-3040

Southeast Regional Offices
23 East Circle Drive, Room 230
Athens, Ohio 45701
(614) 594-2205

899 East Broad Street, 4th Floor
Columbus, Ohio 43205-1195
(614) 466-6676

Southwest Regional Offices
7162 Reading Road, Suite 400
Cincinnati, Ohio 45237-3638
(513) 396-3340

40 West Fourth Street, #200
Miami Valley Tower
Dayton, Ohio 45402-1889
(513) 265-6525

September 27, 1996

TO: Randy Deeble, JCO

FROM: Superintendent & Deputy Superintendent's

SUBJECT: LETTER OF RECOGNITION

It is comforting to know, here at Maumee, we are surrounded by concerned and supportive staff such as you, giving up your day off (especially a Saturday) to come and support a unit who had virtually no staff, is exceptional. This only supports the fact you're an exceptional person.

More significantly, you did this without compensation. Your compassion for peers and co-workers was/is quite evident. You reflect the "G" in going the extra mile.

Nan Hoff

Nan Hoff, Superintendent

Carl Brown

Carl Brown, Deputy Superintendent

Mary Creager

Mary Creager, Deputy Superintendent

Joan Sill

Joan Sill, Deputy Superintendent

cc: Personnel File

George V. Voinovich, Governor • Nancy P. Hollister, Lt. Governor • Geno Natalucci-Persichetti, Director

Notary Certificate

State of Indiana)

)MS. STRODE:

County of Marion

Before me the undersigned, Notary Public for Marion County, State of Indiana, personally appeared Robert Brookins, and acknowledged the execution of this instrument this 3rd day of August, 2000

Signature of Notary Public: Anita Jones

Printed Name of Notary Public: Anita Jones

My commission expires: May 2 2007

County of Residency: Boone

Robert Brookins
Robert Brookins