#746 @ 3/9/01

27-05-(99-12-13)0693-01-03

OPINION AND AWARD

IN THE MATTER OF THE ARBITRATION BETWEEN
Correction Reception Center, a Branch of Ohio Department of Rehabilitation and Correction
-AND-

OCSEA/AFSCME, Local 11

APPEARANCES

Correction Reception Center
Carrie Belt, Witness
Cynthia Sovell
Theodore Dyrdek
Lieutenant David Hayes, Corrections Lieutenant
Neni Valentine, Advocate
Kenneth Weimer. Labor Relations Officer

For OCSEA
David Justice, OCSEA Staff Representative (Advocate)
Henry Subora, Witness
Garland Turner, Grievant

Case-Specific Data
Date(s) of Hearing: December 11, 2000
Date of Award: March 7, 2001
Contract Year: 1997-2000
Type of Grievance: Discharge/Inattention to Duty, Poor Judgement
Grievance No.: 27-05-(12-12-99)
Grievance Denied

Robert Brookins

Robert Brookins
Arbitrator, Professor of Law, J.D., Ph. D.

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VIII. Preliminary Statement

The Correctional Reception Center (CRC or the Employer) is a branch of the Ohio Department of Rehabilitation and Corrections (DRC) and a party to a Collective Bargaining Agreement[1] with the Ohio Civil Service Association (OCSEA), Local 11 (the Union), which represents CRC's correction officers.

On September 23, 1999, CRC notified the Grievant that he was accused of having violated Rules 7, 8, and 11, on August 9, 1999.[2] That notice also apprised the Grievant that a pre-disciplinary hearing would be held on September 29, 1999, to review the charges against him.[3] The pre-disciplinary hearing was in fact held on October 5, 1999.[4] On October 6, 1999, the Pre-disciplinary Hearing Officer found the Grievant guilty as charged and, on November 8, 1999, CRC notified the Grievant that his removal would become effective on November 24, 1999.[5]

On December 4, 1999, the Union filed Grievance No. 27-05-(12-12-99) (the Grievance), challenging the Grievant's removal and claiming that he was removed for other than just cause and in violation of Article 24.01 of the Collective Bargaining Agreement.[6] After receiving no step-3 response from CRC, the Union appealed the Grievance to Step 4 of their negotiated grievance procedure, requesting arbitration.[7]

The Union and CRC (the Parties) agreed to hold an arbitral hearing before the Undersigned, on December 11, 2000, at CRC in Akron, Ohio. Except for Lieutenant David Hayes (Corrections Lieutenant), all parties relevant to the resolution of this dispute attended the arbitral hearing. The Undersigned presided over that hearing and afforded the Parties a full and fair opportunity to present any admissible evidence and arguments supporting their positions in the instant dispute. Specifically, the Parties were permitted to make opening statements and to introduce admissible documentary and testimonial evidence, all of which was available for relevant objections and for cross-examination. Finally, the parties had a full opportunity to submit closing arguments or post-hearing briefs and opted for the latter. The Undersigned received the last Post-Hearing brief on or about December 26, 2000, when the arbitral record was officially closed.

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[1] Joint Exhibit No. 1.

[2] Joint Exhibit No. 2b.

[3] *Id.*

[4] Joint Exhibit No. 2c.

[5] Joint Exhibit No. 2d.

[6] Joint Exhibit No. 3.

[7] *Id.* at 2.

Thereafter, the Undersigned notified the Parties that he had experienced severe computer-related problems which delayed this opinion and award, a delay for which the Undersigned deeply apologizes.

IX. The Facts

Mr. Garland Turner (the Grievant) has been employed with the state of Ohio for approximately 13 years and was a Correction Officer with CRC when the instant dispute arose. Although CRC had employed the Grievant for only six years, he has accumulated approximately 13 years of tenure with the state of Ohio. On December 8, 1986, the Grievant was hired as a Sales Clerk for Liquor Control. The Hocking Correction Facility, a branch of the Ohio Department of Rehabilitation and Correction (DRC), hired the Grievant, as a Corrections Officer, on February 7, 1989, and, on February 25, 1990, subsequently transferred him to the Lorain Correction Facility. On March 6, 1994, the Grievant was transferred to CRC. On November 26, 1996, the Grievant signed his first Last Chance Agreement with CRC.[8] On February 5, 1999, the Grievant and CRC signed a second "Last Chance Agreement, which was in effect when the instant dispute arose."[9]

On August 9, 1999, for the first time during his tenure the Grievant was assigned to a Perimeter Patrol Post (post duty). Correction officers assigned to a post duty usually sit in a perimeter vehicle and observe the outer perimeters of the institution. The cabins of these vehicles contain an array of equipment, including a handgun, a shotgun, and a two-way radio, which continually broadcasts communications among correction officers. It is absolutely essential that correction officers on post duty remain particularly alert as they are among the last obstacles to would-be escapees.

On the morning of August 9, 1999, the Grievant parked his perimeter vehicle just off Perimeter Road with the front of the vehicle facing eastward toward the institution. At approximately 7:30 a.m. that morning, the Grievant was sitting in the driver's seat of the vehicle with his right elbow resting on the center console. His right hand supported his head as he observed the prison compound through the left side of the windshield or driver's window and listened to communications on the two-way radio. While observing the compound, the Grievant began to focus exclusively on a reception inmate who was conversing with a cadre inmate, in violation of CRC policy.

Ms. Carrie Belt, a temporary employee, had parked her vehicle on Perimeter Road a short distance from the Grievant's perimeter vehicle and walked across a parking lot and a small stretch of grass to approach the Grievant's perimeter vehicle. Furthermore, as she approached the vehicle, Ms. Belt had said "hello" in a slightly raised voice which elicited no response from the Grievant, who admitted that he did not

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[8] Joint Exhibit No. 8f.

[9] Employer Exhibit No. 2.

hear Ms. Belt say hello. Failing to get a response, Ms. Belt then walked up to the perimeter vehicle and tapped on the passenger's window with her sunglasses. The tapping startled the Grievant, who was still concentrating exclusively on the two inmates in the compound. Because of his preoccupation with the inmates in the compound, the Grievant could not challenge Ms. Belt, who was not wearing her identification badge when she approached the perimeter vehicle.

Ms. Belt had taken no more than 1.5 minutes to walk from her vehicle to the Grievant's perimeter vehicle.

She told the Grievant that she was taking a vehicle to the institution's garage and asked for a ride from the garage back to the institution. The Grievant agreed. While driving Ms. Belt from the garage to the institution, the Grievant advised her of the proper procedure for obtaining rides around the institutional grounds.

After conferring with Captain Day and with a Lieutenant Hayes, Ms. Belt filed an Incident Report (Report) on August 10, 1999, claiming that the Grievant was asleep on his perimeter patrol post.[10] A first-shift supervisor received that Report on August 11, 1999, but the Grievant was unaware that Ms. Belt had filed an Incident Report until August 17, 1999.

Pursuant to Ms. Belt's Report, Lieutenant Hayes interviewed the Grievant who was accompanied by a Union Representative (Mr. Henry Subora). During that interview and during his testimony before the Undersigned, the Grievant denied that he was asleep but admitted that he neither saw nor challenged Ms. Belt before she tapped on the window of the perimeter vehicle. After the interview, the Grievant commented that many people died without ever suspecting that they were in danger, a statement that Lieutenant Hayes interpreted as meaning that the Grievant could have been killed on August 9, 1999.[11] In his Report of Employee Corrective Action (RECA), Lieutenant Hayes concluded that the Grievant used poor judgement and was not sufficiently aware of his surroundings.[12] Lieutenant Hayes also noted that the Grievant had violated his Last Chance Agreement of February 5, 1999, which Lieutenant Hayes attached to his RECA.

X. Relevant Contractual Provisions and Work Rules

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.

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[10] Employer Exhibit No. 2.

[11] Joint Exhibit No. 2a.

[12] Joint Exhibit No. 2a.

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. Working suspension;
D. One or more fines in an amount of one (1) to five (5) days, the first fine for an employee shall not exceed three (3) days pay for any form of discipline; to be implemented only after approval from OCB.
E. One or more day(s) suspension(s)
F. Termination

Relevant Standards of Employee Conduct						
Rules Nos.	Relevant Provisions	1st Offense	2nd Offense	3d Offense	4th Offense	5th Offense
7	"Failure to follow post orders, administrative regulations, policies, procedures or directives"	OR/3	3-5	5-10	R	
8	"Failure to carry out a work assignment or the exercise of *poor judgment* in carrying out an assignment"	WR/R	1-3/R	5-10/R	R	
11	"Inattention to Duty"	OR/1	WR/3	3-5	5-10	R
PPPO[13] A(2)	**"All Officers . . . required to be fully alert at all times . . . permit nothing to distract them. . . ."**	—	—	—	—	---

IV. The Issue

1. Whether the Employer violated the terms of the Settlement Agreement (2/5/99)by terminating the Grievant.
2. Whether the Grievant was terminated for just cause.

V. Summaries of the Parties' Arguments

A. Summary of the Union's Arguments

1. Termination of the Grievant violated Article 24.01 and .02 of the Collective Bargaining Agreement.
2. The Employer manipulated the rules to bring the Settlement Agreement into play. The Employer alleged that different rules were violated when another employee engaged in essentially the same conduct as the Grievant.
3. The Employer stacked the charges against the Grievant by alleging that the Grievant violated post orders and Rule 11, both of which proscribe inattention to duty.
4. The Employer prematurely introduced it during the investigation and during the pre-disciplinary hearing, thereby impermissibly skewed and tainted the outcome of the dispute. The Settlement Agreement should have been referred to only after the alleged misconduct is proven. Then it may be used in the penalty decision to assess the proper measure of discipline.
5. The Grievant is a victim of disparate treatment. Another employee, Mr. Phillip Steward, engaged

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[13] Perimeter Patrol Post Orders.

in the same misconduct as the Grievant but was charged under different rules and was suspended rather than terminated.

B. Summary of the Employer's Arguments

1. The Last Chance Agreement is not distinguishable from the Settlement Agreement.
2. Termination of the Grievant was proper under the Last Chance Agreement, which calls for the Grievant's removal if he violates a security standard.
3. The Grievant was not treated disparately. Mr. Steward was not similarly situated to the Grievant. For example the Grievant's disciplinary history was worst than Mr. Steward's. Mr. Steward was not the subject of a Last Chance Agreement and had not received a thirty-day suspension for violation of Rule 7.

VI. Discussion

A. Whether the Grievant violated Rules 7, 8, or 11

Although Ms. Belt's Report alleged that the Grievant was asleep, CRC neither charged nor disciplined him for sleeping on duty. Nor does evidence in the arbitral record support Ms. Belt's allegation. Instead, CRC charged the Grievant with violation of Rules Nos. 7, 8, and 11. These rules essentially proscribe poor judgement and inattentiveness on duty. Therefore, a pivotal issue in this dispute is whether the Grievant was inattentive or exercised poor judgement while on duty, on August 9, 1999, when he failed to notice Ms. Belt approach his perimeter vehicle.

A commonsense interpretation of being "inattentive to duty" on post patrol is failing to be sufficiently vigilant to prevent surreptitious mischief that might be afoot in the area under surveillance. Although it was harmless, Ms. Belt's behavior typifies the types of events that employees on post duty must prevent. The Grievant's and Ms. Belt's accounts of the August 9 incident are the only windows through which the Arbitrator can determine the sufficiency of the Grievant's vigilance. That is, whether he should have seen Ms. Belt approaching his perimeter vehicle.

To resolve this issue, the Arbitrator first examines the Parties' positions. The Union argues that the Grievant was clearly attentive. In fact, from the Union's perspective, the Grievant's *attentiveness* triggered the entire incident by preventing him from either seeing or hearing Ms. Belt approach the vehicle. That is, the Grievant was unaware that Ms. Belt had approached the perimeter vehicle because he was simultaneously observing two other activities: (1) listening to communications over the two-way radio, and (2) observing two inmates impermissibly conversing inside the compound. Furthermore, relying on the approximate ninety-second duration of the entire incident, the Union asks, "How one minute of directed attention rises to the level of inattention."[14]

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[14] Union's Post-Hearing Brief at 4.

In contrast, CRC essentially argues that the Grievant was manifestly inattentive. In essence, CRC is relying on the following conduct, which the Grievant admits, to infer that he was inattentive. First, the Grievant neither saw Ms. Belt approach the perimeter vehicle nor heard her say "hello." Second, Ms. Belt had to walk up to the vehicle and tap on the window to get the Grievant's attention.

B. Legitimacy of the Grievant's Response

The task now is to determine whether the Grievant's explanation constitutes a legitimate reason for his failure to see Ms. Belt approaching his perimeter vehicle. Because the record does not reveal any affirmative misconduct by the Grievant such as sleeping on duty, the Employer's charge of inattentiveness must stand or fall on the timeliness of the Grievant's response to Ms. Belt, on August 9, 1999.

The record reveals that correction officers assigned to post duty must remain acutely aware of their surroundings, lest they subject themselves and others to unnecessary risk. While observing inmates within the compound and listening to communications over the two-way radio, the Grievant allowed Ms. Belt to simply walk right up to his perimeter vehicle and tap on the window. Although it is not clear that the Grievant explicitly stated that he could have been killed under those circumstances, such a conclusion does not affront commonsense. In addition, the lives of others would have been placed at risk had Ms. Belt been given to mischief. Consequently, the Grievant had a duty to maintain a level of vigilance that would preclude his being caught by surprise by anyone, let alone by someone who was not even attempting to surprise him. The Arbitrator can find nothing in the record to justify this situation. Correction officers on post duty simply cannot afford to become overly engrossed in any activity, lest they become vulnerable to ominous and potentially fatal surprises.

C. Length of the Grievant's Inattentiveness

The record does not establish how long the Grievant was inattentive. Nevertheless, assuming, arguendo, the Grievant was inattentive for no more than ninety seconds, the facts plainly show that it was ninety seconds too long. Saying that one is engrossed in legitimate activity for ninety seconds does not address how deeply one should allow himself to become engrossed while on post duty. Ultimately, then, the Arbitrator agrees with the Employer that Ms. Belt's walking unnoticed up to the perimeter vehicle establishes that the Grievant was impermissibly inattentive. Therefore, his behavior violates Rules 8, and 11 of the Employee Standard of Conduct.

D. Premature Introduction of the Second Last Chance Agreement

The Union asserts that CRC prematurely and manipulatively introduced the Settlement Agreement into the dispute during the investigation. The Settlement Agreement provides in relevant part: "This Agreement shall not be introduced, referred to, or in any other way utilized in any subsequent arbitration,

litigation, or administrative hearing, except as necessary to enforce its provisions and terms. Inasmuch as Lieutenant Hayes admits that he had access to the Last Chance Agreement during his investigation, the Union's allegation is substantiated. Furthermore, the Arbitrator agrees that a Last Chance Agreement should not be introduced into a disciplinary dispute until the alleged misconduct has been established, lest there is a risk that the existence of the Last Chance Agreement will somehow influence the Employer's decision on the merits of the dispute. Although the Employer erred in prematurely introducing the Last Chance Agreement, nothing in the record suggests that the Agreement influenced the Employer's decision to find the Grievant guilty of violating the Rules as charged. However, as discussed below, introduction of the Last Chance Agreement during the investigation could have influenced the nature of the charges leveled against the Grievant.

E. Disparate Treatment–Propriety of Charging a Rule 7 Violation

Here the Union makes two arguments. First, it maintains that CRC subjected the Grievant to disparate treatment by charging him with a Rule 7 violation. According to the Union, the Employer stacked the charges here to bring Rule 7, and hence, the Last Chance Agreement into play. In the reference case for the disparate treatment claim, the Warden found another Correction Officer (Mr. Phillip Steward) lying in a cataleptic stupor while on post duty in his perimeter vehicle.[15] CRC charged Mr. Steward with violation of Rules 8 and 11. Unlike the Grievant, however, Mr. Steward was not charged with a Rule 7 violation, and, hence the "manipulation" charge. Furthermore, Mr. Steward was suspended for three days; The Grievant was terminated. The Union argues that Mr. Steward and the Grievant are so similarly situated as to warrant charging them with the same rule violations and imposing similar disciplinary measures.

CRC disagrees. It argues that the Grievant's extensive disciplinary history and his Last Chance Agreement wholly distinguish his case from Mr. Steward's and justify the decision to terminate the Grievant.

Before assessing the Parties' arguments, the Arbitrator notes that CRC's argument is not fully responsive to the Union's. The Union's argument is bifurcated, a discrepancy in the breadth of the alleged rule violations and in the severity of penalties imposed. In contrast, CRC's response addresses only the discrepancy in the latter.

The Grievant is indeed a victim of disparate treatment. Proponents of disparate-treatment must establish two facts: (1) The victim of disparate treatment is similarly situated to the referential party, and (2) without justification the victim is treated different from the referential party. In the instant case, the similarity between the Grievant and Mr. Steward lies in the nature of their conduct. Both were unalert on

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[15] Union Exhibit No. 1.

post duty. Mr. Steward was in a cataleptic state and the Grievant allowed Ms. Belt to approach his perimeter vehicle undetected. Indeed, Mr. Steward's conduct is probably more offensive than the Grievant's. Actionable differential treatment occurs where CRC elected to charge the Grievant (but not Mr. Steward) with a Rule 7 violation. The similarity of their conduct precludes this discrepancy in the charges. If the Grievant's conduct violated Rule 7, on August 9, 1999, then Mr. Steward's conduct could have done no less, on April 4, 1999.[16] Yet, unlike the Grievant, Mr. Steward was not charged with violation of Rule 7. CRC's arguments notwithstanding, nothing in the record justifies such a discrepancy in the charges leveled against these employees. Reference to the Grievant's disproportionately longer disciplinary record and to his Last Chance Agreement hardly explains, not to mention justifies, the disparity in CRC's charges.

In addition, the dissimilar charges adversely affected the Grievant and skewed the disciplinary outcome in this dispute. Charging the Grievant with a Rule 7 violation triggered the Settlement Agreement and the Last Chance Agreement, which calls for the Grievant's removal. But for the Rule 7 violation neither document would have been a factor in Grievant's automatic termination. The Settlement Agreement incorporates the Last Chance Agreement by reference and states in pertinent part: "The Grievant will sign a Last Chance Agreement whereby any violation of Work Rule 7 that constitutes a security violation will result in a removal. . . ."[17] Also, the Last Chance Agreement specifically provides:

> It is agreed by all that if the employee violates the last chance agreement or if there is continued violation of Work Rule 7 that constitutes a security violation[18] the appropriate discipline shall be termination from his/her position. The department need only prove that the employee violated the above agreement(s)/rule(s). The arbitrator shall have no authority to modify the discipline. All parties acknowledge the *waiver of the contractual due process rights to the extent stated* above.[19]

Clearly, under the Last Chance Agreement, CRC may ignore the Grievant's procedural rights to an independent penalty decision that contemplates all relevant mitigative and aggravative factors. The Last-Chance Agreement explicitly premises CRC's right to forego traditional procedural steps in the penalty phase on the existence of Rule 7 violations. Needless to say that although it is not stated therein, the Rule 7 violation must be legitimate or procedurally proper. Thus, CRC must first follow procedural steps in that

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[16] Union Exhibit No. 1.

[17] Joint Exhibit No. 2g at 1.

[18] The underlined section in the different font represents a handwritten, underlined section in the original Last Chance Agreement.

[19] Joint Exhibit No. 2g at 3 (emphasis added).

part of the decision making process antecedent to the penalty phase, where CRC is free to reference the Settlement and Last Chance Agreements to ascertain the agreed-upon measure of discipline. Removals or other disciplinary measures pursuant to Last-Chance Agreements may not rest on a bed of procedural violations.

Disparate treatment is an affirmative defense, which, if proven, drastically affects the outcome of any given dispute. The Arbitrator, therefore, holds that because CRC subjected the Grievant to disparate treatment by charging him with a Rule 7 violation, he should not have been charged with a Rule 7 violation. Accordingly, the Rule 7 violation is set aside because it was applied in a disparate manner. Accordingly, the record will show that the Grievant violated only Rules 8 and 11.

To be clear, the Employer discriminatorily charged the Grievant with a Rule 7 violation, thereby impermissibly introducing the second Last Chance Agreement into the dispute and relying on it to discharge the Grievant. In essence, then the Employer did wrongfully rely on the second Last Chance Agreement to terminate the Grievant.

F. The Penalty Decision

1. Disparate Treatment

At this point in the decision-making process, the issue of disparate treatment—and hence the second Last Chance Agreement—drops out of the analysis because the record does not show that the Grievant and Mr. Steward are similarly situated in the penalty phase of the decision-making process. The Grievant's unusually long history of active progressive discipline is carefully documented in the record. However, there is no detailed, independent documentation of Mr. Steward's disciplinary history. Instead, there are the following general comments:

> Phillip Steward did not have a disciplinary history akin to Garland Turner. Mr. Steward was not under a Last Chance Agreement for the second time like Mr. Turner. Ms. Steward was not suspended for 30 days for violating work rule #7, which Mr. Turner violated repeatedly over a five-year period.[20]

The Union does not contend that Mr. Steward is similarly situated to the Grievant with respect to disciplinary history.

G. The Proper Measure of Discipline

The question now is what measure of discipline is proper, absent the Rule 7 violation? In other words, whether under all the relevant circumstances of this case, removal is unreasonable, arbitrary, or capricious, absent the second Last Chance Agreement. Here the Arbitrator must examine the aggravative and mitigative circumstances surrounding this dispute.

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[20] Employer's Post-hearing Brief at 2.

1. Mitigative Circumstances

Factors that tend to mitigate the level of potential discipline include the Grievant's thirteen years of tenure with the state of Ohio and that portion of his performance record that does not contain ratings that are below average. Overall, the Grievant's performance record with CRC is at best mixed and, therefore, cannot be viewed as decisively mitigating or aggravating.

2. Aggravative Factors

The strongest aggravative factor is the Grievant's long disciplinary history, excluding the second Last Chance Agreement, as depicted below:

Grievant's Active Disciplinary History				
Date	*Rule Violated*	*Type of Infraction*	*Discipline Imposed*	*Joint Exhibit No.*
8/25/99	Rule No. 2	Tardiness	Written Reprimand	**8J**
6/19/99	Rule 2C	Tardiness	Oral Reprimand	**8i**
2/5/99	Rule 7	Failure to follow post orders	Thirty-day suspension/Last Chance Agreement	**2g**
8/27/97	Rule 2C & 3b	Tardiness Failure to notify or follow call-in procedure	Written reprimand	**8g**
11/25/96	Rule 7, 16, 30c, 44, 45	Myriad violations[21]	Removal/Last Chance Agreement	**8f**
10/15/96	Rule 7	Failure to follow post orders	One-day suspension	**8e**
9/12/96	Rule 2 &2b	Tardiness; Shift Tardiness	Written Reprimand	**8d**
6/24/96	Rule 2	Tardiness	Oral Reprimand	**8b**
5/7/96	Rule 7	Failure to follow post orders	Written Reprimand	**8c**
8/15/95	**Rules 8 & 30**	**Failure to follow post orders; Losing control of instrument**	**One-day suspension**	**8a**

Even after one excludes the second Last Chance Agreement, the Grievant's disciplinary history is simply dismal. It cannot be gainsaid that CRC has not made a valiant effort to rehabilitate the Grievant,

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[21] The Grievant was charged with violating the following:
(1) Rule 7—Failure to follow post orders, administrative regulations, policies, procedures or directives, (2) Rule 16—misusing official position for personal gain, to include but not limited to the accepting or soliciting of bribes in the course of carrying out assigned duties, (3) Rule 30c—Unauthorized conveyance, distribution, misuse, or possession of other contraband, (4) Rule 44—Threatening, intimidating, coercing or use of abusive language toward any individual under the supervision of the department, and (5) Rule 45—Without express authorization, giving preferential treatment to any individual under the supervision of the Department, to include but not limited to: a. The offering, receiving, or giving of a favor, b. The offering, receiving, or giving, of anything of value.

albeit to no avail. His disciplinary record speaks for itself. The Grievant's tenure with the State of Ohio can by no means begin to offset the aggravative weight of his disciplinary record and his mixed performance record. The magnitude of imbalance between these mitigative and aggravative factors preclude even the possibility of holding that the Employer acted in an unreasonable, arbitrary, or capricious manner in deciding to terminate the Grievant.

VII. The Award

For all the foregoing reasons, the Grievance is **DENIED** in its entirety. The Grievant was terminated for **just cause**.

Notary Certificate

State of Indiana)

)SS:

County of Marion

Before me the undersigned, Notary Public for Hendricks County, State of Indiana, personally appeared Robert Brookins, who swears under oath and under penalty of perjury that the contents of this document are true and accurate and were prepared solely by Robert Brookins who hereby acknowledges the execution of this instrument this 13th day of March, 2001.

Signature of Notary Public: Susan K. Agnew

Printed Name of Notary Public: _____

My commission expires: _____

County of Residency: _____

SUSAN K. AGNEW
Notary Public, State of Indiana
County of Hendricks
My Commission Expires 11/13/2006

Robert Brookins

Robert Brookins