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REVIEWED BY

JUL 31 2003  
C. 7-31-03  
GRIEVANCE COORDINATOR

IN THE MATTER OF ARBITRATION  
BETWEEN  
STATE OF OHIO – DEPARTMENT OF YOUTH SERVICES  
AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION  
AFSCME LOCAL 11, AFL-CIO

Grievant: Lee Stringer

Case No. 35-03-20021001-0066-01-03

Date of Hearing: June 3, 2003

Place of Hearing: Warrensville, Ohio

**APPEARANCES:**

For the Union:

Advocate: Victor Dandridge  
2<sup>nd</sup> Chair: Lori Collins

Witnesses:

Lee Stringer

For the Employer:

Advocate: Rebecca Martin  
2<sup>nd</sup> Chair: Kate Stires

Witnesses:

Lee Stringer (upon cross examination)  
Dr. John Bradley  
Stephen Young  
Benjamin G. Bower  
Gary Schultz  
David Haynes

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: July 30, 2003

## INTRODUCTION

The matter before the Arbitrator is a grievance pursuant to the Collective Bargaining Agreement ("CBA") in effect March 1, 2000 through February 28, 2003, between the State of Ohio and the Ohio Civil Service Employees Association AFSCME Local 11, AFL-CIO ("Union").

The issue before the Arbitrator is whether just cause exists to support removal of the Grievant, Lee Stringer ("Stringer"), for violating the Department of Youth Services' ("DYS") policy regarding misuse of sick leave, dishonesty, misappropriating/misusing funds and falsification of documents. The removal was recommended by Benjamin G. Bower ("Bower"), superintendent at Cuyahoga Hills Juvenile Correctional Facility. The discipline was issued because DYS felt the Grievant's conduct was of such a serious nature that removal was required.

The removal of the Grievant occurred on September 26, 2002 and was appealed in accordance with Rule 24 of the CBA. This matter was heard on June 3, 2003 and both parties had the opportunity to present evidence through witnesses and exhibits. Post-hearing briefs were received on June 18, 2003 at which time the record was closed. This matter is properly before the Arbitrator for resolution.

## BACKGROUND

The Grievant worked for over thirteen (13) years for DYS primarily as a Juvenile Corrections Officer ("JCO") at the Cuyahoga Hills Juvenile Correctional Facility ("Cuyahoga"). Cuyahoga is a medium security facility for felony offenders ages ten (10) to twenty-one (21), who have been confined by Ohio's Juvenile Courts. DYS operates eight (8) similar correctional/rehabilitation facilities within Ohio.

The Grievant was assigned to third shift and normally worked from 10:00 p.m. to 6:00 a.m. JCOs are responsible for following procedures regarding the protection of the youths and to ensure that the facility is secure at all times.

On June 9, 2002 the Grievant was injured at work and as a result, was off until July 18, 2002. (Joint Stipulations ("JS") 2, 3) In attempting to restrain an offender, who was characterized as physically out of control, the Grievant felt a sharp pain and a pop in his left shoulder. (Joint Exhibits ("JX"), D-45) The Grievant sought emergency medical treatment at South Pointe Hospital and on June 10, 2002 applied for Occupational Injury Leave ("OIL") benefits due to the June 9, 2002 injury.<sup>1</sup> The maximum amount of OIL leave the Grievant was entitled to pursuant to the CBA, at full rate of pay, was nine hundred sixty (960) hours. Upon return to work on July 18, 2002, the Grievant's request for OIL leave for days off due to the June 9<sup>th</sup> injury was still pending. (JX D-29)

The initial diagnosis on June 15<sup>th</sup> by the Grievant's treating physician, Dr. Mark Panigutti ("Panigutti"), indicated a sprain in the left shoulder and a rotator cuff tear. (JX D-31, D-32) Dr. Panigutti's statement was part of the documents submitted to DYS in support of the OIL benefits request. (JX D-31) Dr. Panigutti noted objective physical findings of weakness, stiffness and impingement in the Grievant's left shoulder and indicated that pain would occur with certain overhead movements. (Union Exhibit ("UX") 1)

On June 29, 2002, the Grievant's left shoulder was reinjured while at work in an attempt to stop a fight between two (2) youths. In addition to the Grievant's participation, JCOs Pamela Mockabee, Tony Jones and Harry Washington responded to this Signal "3" incident and all

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<sup>1</sup> OIL benefits are available to certain employees who suffer bodily injury in the performance of their duties. Ohio Administrative Code ("OAC") 123:1-33-17 contains the procedures to apply for OIL benefits and if granted subsection (E) provides the following:

- (1) Are in lieu of any other employer paid leave or workers compensation benefits;
- (2) Preclude an employee from engaging in any activity which adversely affects the employee's recovery;
- (3) Preclude an employee from engaging in any activity for wage or profit; and
- (4) Will be terminated upon a finding that the employee is no longer disabled. (JX F-1) (emphasis added)

completed accident/incident reports. (JX D-88, D-92, D-93) The Grievant again applied for OIL benefits (JX D-25) due to his inability to work and Dr. Panigutti completed the required medical forms. (JX D-26, D-27) No medical documents were submitted by the employer contesting either of Dr. Panigutti's physician statements in support of the Grievant's OIL applications.

OIL benefits were subsequently granted to the Grievant covering the period of time he was unable to work after the June 9, 2002 injury up until August 14, 2002 when the OIL benefits were terminated by the employer. The Grievant received approximately 104 hours of OIL payments. The OIL benefits were discontinued after the employer discovered that the Grievant was coaching football for Maple Heights High School ("Maple") while claiming to be unable to fulfill his duties as a JCO due to the work injuries. Upon learning that the Grievant was coaching, Bower and Gary Schultz ("Schultz"), Deputy Superintendent, on August 6, 2002 around 8:30 a.m. went to the high school practice field and observed the Grievant for about 20 minutes participating in football-related instructional drills. (JX D-12, D-13) Bower and Schultz observed the Grievant catching and throwing footballs, raising his hands and arms up and down without any obvious signs of pain or discomfort. They also observed the Grievant carrying football equipment, which was characterized as heavy equipment by Bower. Moreover, both believed that the full range of motion demonstrated by the Grievant during the instructional drills were similar to the duties of JCOs. As a result of the foregoing, DYS headquarters was contacted and an investigator was assigned to review this matter.

David A. Haynes ("Haynes"), Inspector, met with Bower and Schultz to obtain background information on the Grievant. On August 7, 2002 at around 8:30 a.m. Haynes observed the morning football practice without the Grievant's knowledge of his presence. Haynes obtained multiple digital photos of the Grievant (JX D 48-67) illustrating the Grievant's involvement in different drills which at times required him to raise his left arm, catch and throw footballs and do other drills that required the use of both arms. Haynes' investigation disclosed that the Grievant until his resignation, effective July 15, 2002, was an Assistant Football Coach

operating under a signed supplemental contract. The supplemental contract was a paid position, however, the payment would not be received until October or November of 2002. The Grievant, after July 15, 2002, became a "volunteer" coach, which was an unpaid position, and as of August 6<sup>th</sup>/August 7<sup>th</sup> Stringer was functioning as a volunteer coach for Maple.

Haynes, on August 13<sup>th</sup>, interviewed Dr. Panigutti, who declined to review the digital photos, but opined that throwing and catching footballs was different than restraining youths at Cuyahoga. (JX D-4) Dr. Panigutti, however, felt that the Grievant's rehabilitation in July 2002 had digressed and implied that the football drills may have contributed. (JX D-4) Finally, Haynes, a former JCO, believed that the football drills performed by the Grievant were similar to the job duties of JCOs. Haynes' investigation concluded that the Grievant had exaggerated the extent of his injuries in an attempt to defraud the state and misrepresent the extent of his left shoulder injury to enable him to coach football while on sick leave.

The Grievant was officially charged by DYS with the following violations of DYS Directive 103.17:

- 2.2 Misuse of sick leave
- 3.1 Dishonesty
- 3.12 Providing a fraudulent physician/healthcare provider statement/verification
- 4.7 Misappropriating/misusing funds
- 4.8 Falsification of documents<sup>2</sup>
- 5.1 Failure to follow policies and procedures
- 5.2 Ethics
- 5.9 Violation of Ohio Revised Code 124.34

The pre-disciplinary hearing occurred on August 26, 2002 with Carol Metz ("Metz") serving as the hearing officer. Metz found that just cause existed to discipline the Grievant for each of the

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<sup>2</sup> The pre-disciplinary notice to Grievant dated August 22, 2002 incorrectly listed 4.8 as "Misappropriating/Misusing Funds" as opposed to the proper title cited above and properly listed in the Hearing Officer's Report at JX C-4.

charges listed above. However, Bower recommended removal due to the Grievant's intent to defraud by obtaining OIL benefits while working another job, and being dishonest about the extent of his work-related injuries. Bower's removal recommendation was based only upon Rule violations 2.2 (misuse of sick leave); 3.1 (dishonesty); 4.7 (misappropriating/misusing funds) and 4.8 (falsification of documents). The remaining charges were dismissed by Bower.

The active discipline of record at the time of the removal included two (2) written reprimands issued within the past twelve (12) months for violating DYS Directive B-19 Work Rules.

### ISSUE

Was the Grievant removed for just cause? If not, what shall the remedy be?

### RELEVANT PROVISION OF THE CBA AND DYS GENERAL 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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(i).

#### DYS Directive 103.17 Work Rules:

##### **RULE 2.2 – MISUSE OF SICK LEAVE**

Misuse of sick leave by providing fraudulent verification or reasons for using sick leave.

##### **RULE 3.1 – DISHONESTY**

Being dishonest while on duty or engaged in state business, including but not limited to, deliberately withholding, giving false or inaccurate information, verbally or in writing, to a supervisor or appropriate authority, i.e., State Highway Patrol, State Auditor, etc.

##### **RULE 3.12 – PROVIDING A FRAUDULANT PHYSICIAN/HEALTHCARE PROVIDER STATEMENT/VERIFICATION**

**RULE 4.7 – MISAPPROPRIATING/MISUSING FUNDS**

Misappropriating or misusing state funds or other funds with which the employees has been entrusted.

**RULE 4.8 -- FALSIFICATION OF DOCUMENTS**

Falsifying or altering an official document.

**RULE 5.1 -- FAILURE TO FOLLOW POLICIES AND PROCEDURES****RULE 5.2 -- ETHICS**

Any violation of Ohio Ethics Law, (Chapter 29 and Chapter 102) including, but not limited to accepting gifts, gratuities or other special favors or misusing the employee's position for personal gain.

**RULE 5.9 – VIOLATION OF OHIO REVISED CODE 124.34**

Including, but is not limited to such offenses as incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, in-subordination, discourteous treatment of the public, neglective duty, violation of such section or the rules of the Director of Administrative Services or the failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office.

**POSITION OF THE PARTIES****POSITION OF THE EMPLOYER**

DYS serves as the corrections system in the State of Ohio for youth from ages ten (10) to twenty-one (21). Juvenile offenders reside in eight (8) different facilities in Ohio after being adjudicated of a felony I, II, III or IV charge(s). JCOs are primarily assigned to carry out procedures to ensure that the youths are protected and the facility is secure at all times. Cuyahoga is a medium-security facility with a population up to five hundred (500) felony offenders from ages fourteen (14) to twenty-one (21).

The Grievant suffered injuries on July 9, 2002 and July 29, 2002. DYS is not disputing that injuries occurred but questioned the seriousness and severity of the injuries since the Grievant was able to perform certain physical duties as a football coach. The football coach duties germane to this matter occurred on August 6 and 7, 2002 at a time the Grievant was alleging that pain prevented him from working as a JCO.

On August 6 and 7, 2002, the Grievant was observed by Bower, Schultz and Haynes participating in football practice, engaging in the exact movements that he claimed to medical

personnel he was unable to perform. DYS contends that the Grievant falsified the extent of his injuries thereby, leading to a misuse of sick leave.

Moreover, the Grievant's physical participation would only adverse his recovery, if the injury was as severe as alleged. Haynes' telephone conference with Dr. Panigutti on August 13, 2002, underscores the medical concern that coaching football during July may have had upon his medical condition.

The completion of the OIL application and obtainment of OIL wage payments is tantamount to dishonesty, misappropriating funds and/or falsification of documents according to the employer.

The Grievant was observed on August 6<sup>th</sup> and August 7<sup>th</sup> doing movements with his arms, including throwing and catching footballs. Some of the catches required that he lift his left arm above his shoulder level, and he extended his left arm in a way that suggested to Bower, Schultz and Haynes that range of motion was no problem for the Grievant. The Grievant was told by Dr. Panigutti not to lift heavy objects and based upon the Grievant's complaints, Dr. Panigutti's subjective findings included decreased range of motion, weakness, stiffness and impingement in his physician statement. (JX D-1)

The misuse of sick leave and dishonesty charge involves the Grievant's ability to coach football when he was "unable to work" as a JCO, and he had apparently pre-planned this absence to coincide with the football practices. The Grievant was released by Dr. Panigutti to return to work without restrictions on July 18, 2002. However, the employer contends that the Grievant resigned from his coaching position effective July 15, 2002 because he was planning to be off of work on another injury leave. (Management Exhibit ("MX") 1) The inference being that Stringer was planning an "injury leave" in the future even though Dr. Panigutti had approved his return to work without restrictions.

The Grievant misappropriated/misused public funds, according to DYS, by applying for and receiving OIL benefits while working in a **physically intense** job away from Cuyahoga.



Schultz observed the Grievant on August 6, 2002 carrying "a duffle bag and a blocking pad without assistance." (JX D-13 p. 1) Bower concurred that the Grievant's ability to perform coaching duties and use both arms made it clear to him that there were no physical limitations on the Grievant's activities. Haynes provided numerous digital images of the Grievant, including several photos, where his left arm was lifted higher than his shoulder. Haynes obtained a statement from the Grievant dated August 15, 2002 whereby the Grievant stated it was difficult to raise his left arm above his shoulder in a pain-free motion, and that he couldn't catch a football with both hands without pain. (JX D-72)

As a result of the employer's belief that the Grievant was dishonest by engaging in activities similar to his JCO duties while on sick leave, the benefits were terminated effective August 14, 2002. (JX D-109) At the time of the cessation of OIL, the Grievant had been paid 104 hours of OIL leave. As an alternative position, the employer submits that if just cause does not exist for the removal that the proper remedy would be for the Grievant to obtain the balance of any currently remaining OIL benefits, and due to his medical inability to currently work as a JCO that the Grievant file for benefits through the Bureau of Worker's Compensation.

The Grievant was removed for being dishonest, misappropriating funds, misuse of sick leave and/or falsification of documents and that the evidence taken in its totality satisfies the just cause standard within Article 24 of the CBA.

#### **POSITION OF THE UNION**

In June 2002, the Grievant signed a supplemental contract to become an assistant football coach at Maple. The Grievant was to be compensated \$4,469.76 for the football season. On July 15, 2002 the Grievant resigned from his paid position as assistant football coach and forfeited any compensation he was to receive in October or November of 2002. (JX D-75)

Regarding the July 15, 2002 resignation, the Grievant was aware that he would probably receive OIL payments and knew that he couldn't receive OIL payments as well as be paid as an assistant football coach. Dr. Panigutti signed the attending physician's statement on July 15, 2002 completing an OIL prerequisite for the obtainment of benefits. Therefore, his resignation was in compliance with Ohio Revised Code 123:1-3-17 (E)(3), by removing any claim that he was coaching for pay while being paid OIL benefits prior to July 15, 2002. Simply, at all times germane to this matter, the Grievant was a volunteer coach at Maple. (JX D-75)

The Grievant's activities of August 6<sup>th</sup> and 7<sup>th</sup> at best, were misperceived by the employer. None of the activities involved any contact with the players nor was the use of physical force present during any of the observations by the employer. The use of the Grievant's arms above his shoulders could occur--with pain. The Grievant indicated that pain was associated with certain arm movements to Dr. Panigutti and Haynes, and the Grievant did not state that he was unable to raise his left arm above his shoulder.

The football equipment that Bower and Schultz observed being moved on August 6<sup>th</sup> by the Grievant, was light and weighed no more than ten pounds. Bower, Schultz nor Haynes observed any contact with the players or that any physical force was demonstrated by the Grievant or the players toward each other. The activities on August 6<sup>th</sup> and 7<sup>th</sup> were not comparable to JCO job duties with the striking difference being the lack of physical force by the Grievant with the players at any time.

The charges of dishonesty, misuse of sick leave and misappropriation are not supported by any credible facts, particularly the medical evidence. Dr. Panigutti and Dr. Sheldon Kaffen ("Kaffen") (UX-2), DYS physician, agreed that the Grievant was injured and "...is suffering from an impingement syndrome of the left shoulder." (UX 2, p. 2) If the Grievant was injured on the job and is entitled to sick leave and/or OIL benefits, how can he be disciplined for being dishonest or falsifying records? The Union submits that DYS presented no evidence to support the charge of falsification of documents as well. The Grievant signed the OIL applications due

to his injuries which were verified by witnesses, incident reports and medical evaluations. The employer failed to meet any burden of proof to support the discharge of the Grievant.

The Grievant, as a thirteen (13) year employee, with only two (2) active written reprimands at the time of removal should have received greater consideration as a result of being a long-term employee with a good work record. No mitigation was evidenced or utilized by the employer in its haste to remove the Grievant. Finally, without a medical determination that the Grievant's injury was improved to enable him to engage in all aspects of his job, particularly being physically able to protect himself and others, safety and security would always be at risk if sick leave was not utilized.

The employer failed to meet its burden on any of the charges and as a result of such the Grievant should be made whole and reinstated in accordance with Article 24 of the CBA.

#### BURDEN OF PROOF

It is well accepted in discharge and discipline related grievances, the employer bears the evidentiary burden of proof. See, Elkouri & Elkouri – "How Arbitration Works" (5<sup>th</sup> ed., 1997)

The Arbitrator's task is to weigh the evidence and not be restricted by evidentiary labels (i.e. beyond reasonable doubt, preponderance of evidence, clear and convincing, etc.) commonly used in the non-arbitable proceedings. See, Elwell- Parker Electric Co., 82 LA 331, 332 (Dworkin, 1984).

The evidence in this matter will be weighed and analyzed in light of the DYS burden to prove that the Grievant was guilty of wrongdoing. Due to the seriousness of the matter and Article 24 requirement of "just cause," the evidence must be sufficient to convince this Arbitrator of guilt by the Grievant. See, J.R. Simple Co and Teamsters, Local 670, 130 LA 865 (Tilbury, 1984).

## DISCUSSION AND CONCLUSIONS

After thoughtful consideration of the testimony and all of the evidence submitted by the parties, I find that the grievance is granted.

The facts are not in dispute that Stringer was injured on the job on June 9<sup>th</sup> and June 29<sup>th</sup>. On both occasions the Grievant and others completed incident reports detailing the circumstances of what occurred. Both injuries occurred to the Grievant when he employed physical force to "restrain" and/or employ "break-up" techniques on youths who refused to follow directives. The June 9<sup>th</sup> injury resulted from a youth using force to get out of the Grievant's grasp, and the June 29<sup>th</sup> re-injury occurred when the Grievant attempted to stop a fight.

The employer does not dispute the injuries occurred as testified by Bower and the Grievant. No evidence suggests that any of the incident reports or other supportive documentation contained in JX D 78-106 are unreliable. Moreover, each injury is supported by medical documentation containing objective findings as to the nature of the shoulder injury in addition to the Grievant's subjective complaints.

To apply for OIL benefits, under OAC 123:1-33-17, the Grievant had to suffer a bodily injury on the job and within twenty (20) days of the injury submit an application with various attachments. The regulation requires the employer to forward the Grievant's paperwork "...along with disputing information or documentation certifying that the injury was sustained in the line of duty..." OAC 13:1-33-17(C)(1) (in part--emphasis added). No evidence exists that DYS medically disputed the Grievant's injuries by submitting conflicting medical evidence. In fact, Dr. Kaffen examined the Grievant on October 25, 2002, almost ninety (90) days after the re-injury, and concluded that the initial conservative treatment for his condition, i.e., impingement syndrome of the left shoulder, recommended by Dr. Panigutti was appropriate, but due to the Grievant's current condition, surgical intervention is required. (UX-2, p. 2)

I find that on both occasions, the Grievant followed the application process and complied with the procedures in the OAC, and no evidence establishes that the Grievant falsified the data

or submitted dishonest information on either application. Hence, no violation of Rules 3.1, 4.7 or 4.8 of DYS Directive 103.17 occurred based upon the Grievant's conduct and failure of the employer to dispute any alleged misleading information pursuant to OAC 13:1-33-17 (C)(1).

DYS removed the Grievant due to the August 6<sup>th</sup> and 7<sup>th</sup> observations, and Bower determined that he was working "...in a physical intense job away from Cuyahoga Hills Juvenile Correctional Facility..." (JX C-8) (emphasis added). DYS submitted photos to support the physical activity of the Grievant as a coach to demonstrate that the Grievant was dishonest, exaggerated his injury and misused sick leave. In other words, if the Grievant could coach, he was physically capable of performing his JCO duties. I disagree.

An analysis of the photos, coupled with Haynes, Schultz and Bower's testimony and statements failed to convince this Arbitrator that the "physical intense" tasks observed at Maple are uniquely similar to critical JCOs' duties. As examples: Was the Grievant observed in actual contact with the players that required the use of physical force? Was the Grievant observed breaking up a physical altercation with players? Was the Grievant observed doing drills which necessitated the use of upper body strength requiring employing the left shoulder or arm in a meaningful manner? The Arbitrator carefully reviewed the digital images of the Grievant captured by Haynes, and as a layperson, could not infer that the activities portrayed are similar to the "physical intensity" required to subdue youthful felony offenders who are generally out of control. Simply, both injuries were due to use of force situations, catching footballs hardly equates to a d-grip escort or attempting to separate fighting youthful offenders. (JX D-25)

Another "physical intense" task, according to DYS, is that the Grievant carried "heavy equipment" on August 6<sup>th</sup> as contained in Bower's removal notice. The employer presented no evidence as to the actual weight of the alleged heavy equipment. The equipment itself or other evidence to indicate its weight would have been instructive, since the Grievant testified unrefuted, that the equipment was lighter than his ten (10) pound lifting limit.

DYS placed emphasis on the Grievant's ability to catch a football, which required him to raise his left arm at or above his shoulder level. As pointed out by the Union, no medical report states that the Grievant cannot raise his left arm above his shoulder. The Grievant's statement to Haynes (JX D-71) and medical personnel indicated that he could lift his arm above the shoulder--but not without pain.

Whether the Grievant used good sense in coaching on August 6<sup>th</sup> or 7<sup>th</sup> is certainly questionable, but medically he was not precluded from the activities and no evidence was introduced that placed a total cessation on all of the Grievant's physical activities. If the Grievant's left shoulder condition was diagnosed as chronic or acute, then a different analysis would occur. No medical evidence exists that precluded the Grievant from using his left arm. Therefore, based upon the evidence presented, I find that the Grievant did not misuse sick leave contrary to 2.2 of Directive 103.17.

Another practical consideration is why would the Grievant have to pre-plan an injury<sup>3</sup> or be dishonest about coaching at Maple when virtually 100% of the practices and/or scrimmages occurred in the Grievant's off duty hours. Additionally, the execution of a supplemental contract for Maple by the Grievant is a public record and was apparently approved by the Maple Heights Board of Education at a public meeting. The secrecy theory adopted by DYS was not supported by the process associated with the employment of the Grievant under a supplemental contract. see, Ohio Revised Code § 3313.53.

The employer's evidence failed to meet its burden regarding any of the charges to support the Grievant's removal under Article 24 of the CBA, therefore the grievance is granted for all the reasons stated above.

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<sup>3</sup> To preplan the July 29, 2002 injury, the Grievant would have to involve youths, JCOs and medical personnel to carry out this scheme. DYS only presented Bower's testimony that rumors existed regarding the preplanning and nothing more.

The Grievant shall be entitled to his remaining OIL benefits, not previously received, as a result of the July 9, 2002 or July 29, 2002 injuries. The Grievant shall be reinstated with back pay, benefits and all applicable seniority rights subject to medical proof of physical fitness.

However, as properly raised by the Employer, if the Grievant is medically unable to perform his job duties as a result of the injuries, then the proper recourse lies within the Bureau of Worker's Compensation system.

#### AWARD

The grievance is granted, subject to the following:

1. The Grievant shall be paid his remaining OIL benefits not previously received due to the July 9<sup>th</sup> and July 29<sup>th</sup> injuries. Total OIL benefits shall not exceed nine hundred and sixty (960) hours.
2. The Grievant is to be reinstated within fourteen (14) days of this award and is entitled to back pay, benefits and all applicable seniority rights subject to medical proof of physical fitness.
3. If the Grievant is unable to return to work due to his medical condition, the Grievant shall avail himself of the processes within the Bureau of Worker's Compensation.
4. The Arbitrator retains jurisdiction for a period of sixty (60) days for any concerns that may arise during the implementation of this award.

Respectfully submitted this 30<sup>th</sup> day of July, 2003

  
Dwight A. Washington, Esq., Arbitrator