

IN THE MATTER OF ARBITRATION

Between)
)
STATE OF OREGON, EXECUTIVE)
DEPARTMENT)
)
 - and -)
)
OREGON PUBLIC EMPLOYEES)
UNION, LOCAL 503, SEIU)
_____)

OPINION AND AWARD
of
PHILIP KIENAST
September 11, 1985

RE: Adams Grievance

APPEARANCES

For the Union:

Charlene Sherwood, Esq.

For the Employer:

Ray Nelson, Labor Relations Manager

OPINION

This proceeding is in accordance with the parties' Agreement. A hearing in this matter was held on August 21, 1985 and the record closed at its conclusion. The stipulated issue reads:

Did the Employer violate Article 20 of the Agreement when it disciplined the grievant, Randy Adams, with a wage reduction in February, 1985?

If yes, what is the appropriate remedy?

Pertinent Agreement Provisions

ARTICLE 20 - DISCIPLINE AND DISCHARGE

Section 1. The principles of progressive discipline shall be used when appropriate. Discipline shall include, but not be limited to: Written reprimands; merit rating of a "3"; reduction in pay; demotion; suspension; and dismissal. Discipline shall be imposed only for just cause.

The parties agree that the procedure herein described shall be the only contractual procedure for resolving disputes concerning Discipline and Discharge.

Section 2.

(a) Dismissal Appeals. The dismissal of a regular status employee may be appealed by the Union to binding arbitration. The appeal must state the reasons for the appeal and be submitted to the Labor Relations Division, in writing, within ten (10) calendar days after its receipt, and the final decision and order of the arbitrator shall be made within fifteen (15) calendar days following the close of the hearing.

(b) Reduction, Suspension and Demotion Appeals. An employee reduced in pay, demoted, or suspended shall receive written notice of the discipline with

the specific charges and facts supporting the discipline. The reduction in pay, demotion, and/or suspension of a regular status employee may be appealed to the Agency Head step in the grievance procedure within ten (10) calendar days from the effective date of the action. The Agency Head shall respond in writing in accordance with the appropriate time limits contained in the Agency grievance procedure. If the appeal is not resolved at the Agency Head step, the Union may appeal the action to the Labor Relations Division within fifteen (15) calendar days after receiving the response from the Agency. The Labor Relations Division shall respond to the grievance within fifteen (15) calendar days. If the appeal is not resolved at the Labor Relations Division, the Union may submit the issue to arbitration within fifteen (15) calendar days after receiving the response from the Labor Relations Division.

The grievant was employed as a maintenance repairman at the Employer's Dammasch State Hospital, a facility for treatment of the mentally ill. On February 22, 1985 he received the following written disciplinary notice from the hospital superintendent, Victor Holm (J1):

Being employed as a Plant Maintenance Repair Worker at Dammasch State Hospital you are being notified of the following personnel action:

ACTION: Reduction in salary of one step for a period of six (6) months.

EFFECTIVE DATE: March 1, 1985 through August 31, 1985.

STATUTORY GROUNDS: Just Cause.

CHARGE AND COMPLAINT: On February 7, 1985, you had left a tool in a lavatory on Ward D. The tool was later found by a patient and turned in to Joan Kaufman, R.N., at about 5:30 p.m. Quitting time for you on that date was 4:30 p.m. The maintenance log indicates you were on the ward at 9:15 a.m. and 1:25 p.m.

This particular tool, which through your negligence was left unattended in a patient lavatory, is made of tempered steel, round stock 12" long with an offset

curve at the bottom of 2-1/4" with a sharp point on the end. It is used to clear out commodes in the lavatories. Photographs of this tool are attached. As such it could have been used as a very lethal weapon. A blow to the head or neck area with this tool would seriously maim or kill a person outright.

The control of tools by staff is of utmost importance because of the potential danger of the use of a tool as a weapon by a mentally ill patient. About a year ago there was an incident of a tool, a linoleum knife, being stolen by a patient from a maintenance worker tool cart. As a result, Jim Clark, Physical Plant Superintendent, spoke to all persons in the Physical Plant Department on the danger of tools to patients. Later Diane Neubert, Nursing Director, also briefed maintenance staff on this same subject and the need to keep all tools under strict control by maintenance staff. Last fall Lewis Kanthack, who replaced Jim Clark as Physical Plant Superintendent, spoke to all physical plant staff including yourself of the need for strict tool control. Despite this, you still committed an act of negligence in leaving this tool which could have been used as a lethal weapon thus creating a potentially very dangerous situation. Your actions are also a serious infraction of Hospital Rule XIV concerning safety as found in the Employees Manual.

Your reduction in salary is taken for just cause.

On March 8, 1985 Mr. Adams grieved this disciplinary action claiming (J2):

I was given a salary reduction effective March 1, 1985. The action is without just cause for the following reasons: 1) I was not negligent as alleged, 2) there was no progressive discipline, 3) I received unequal treatment, and 4) given all the facts and circumstances of this incident and my past record of service, the discipline is too severe.

[Remedy Requested:] That the salary reduction be rescinded, that all references to it be removed from all official files and that I be made whole including all back pay and benefits.

Dr. Holms subsequently suspended four of the six month reduction in salary in "consideration of the financial impact and [the grievant's] awareness of the significance of [his] actions. . ." (J3)

Contentions

The Union contends the grievant's action was a simple error and not the result of negligence. It argues counseling rather than discipline is appropriate in cases of error. Notwithstanding, the Union contends the discipline was not progressive as required by Article 20. The Union claims that others who committed the same error received no discipline. In addition, it notes that patients are routinely allowed access to potential weapons such as pool cues, silverware and detachable cords and wires.

The Employer contends the grievant's offense is distinguishable from previous similar violations because: (1) the area was more easily accessible to patients, (2) the high weapon potential of the tool involved, and (3) recent notices to employees to control their tools. It argues the punishment given the grievant was proportional to the seriousness of his offense.

Analysis and Conclusions

The grievant's discipline resulted from new emphasis on control of tools initiated by Dr. Holm in 1984. He wrote a memo

to employees in January 1984 to alert them to the danger posed by lost, stolen or forgotten tools. The grievant's supervisor, Lou Kanthack, testified that at staff briefings he reemphasized this policy. The grievant himself testified that Lou had told them at one recent briefing that "[Lou] was going to come down hard" on employees who did not keep their tools under their control.

The record discloses that prior to these new directives being issued other employees had lost control of their tools and not been disciplined for it. These do not present examples of disparate treatment. The Employer can institute new rules at its discretion and commence to discipline employees for failure to follow the new directives.

Even the one incident that occurred after the policy change in 1984 resulted in some discipline. This incident involved two employees who left their tools in the dentist's office. Mr. Kanthack testified he orally warned the two about their carelessness. Mr. Kanthack also testified the reason for the milder discipline in this case was that the dentist's office is more secure than the patient wards and because he arrived at the dentist's office just after the two employees had left. In his judgment the degree of exposure resulting from the incident was minimal.

The Arbitrator finds that the grievant's carelessness justifies discipline. By his own testimony he knew that his

supervisor was "going to come down hard" on violations of the tool control policy. Regardless of other potential weapons that are routinely available to patients, the Employer has a legitimate concern with attempting to limit additional potential hazards in the hospital beyond those that exist because of the needs of patients to eat and recreate.

The Arbitrator also finds the degree of additional exposure caused by the grievant's carelessness was significantly greater than that caused by the two employees at the dentist office. Accordingly, discipline beyond an oral warning was justified. However, he finds the pay reduction imposed does not meet the progressive discipline language of Article 20. It requires that progressive discipline be used when appropriate.

Given the fact that this was the first formal discipline under the new control policy, the unblemished work record of the grievant and the lack of evidence of negligence on the grievant's part, the Arbitrator finds a written warning was the appropriate level of discipline to impose.

In light of the foregoing the Arbitrator concludes the pay reduction penalty imposed by the Employer did not meet the progressive discipline standard agreed to by the parties. He will order the discipline reduced to a written reprimand and order that the grievant be made whole for the wages he lost as a result of the pay reduction penalty.

AWARD

1. The Employer did violate Article 20 of the Agreement when it disciplined the grievant, Randy Adams, with a wage reduction in February, 1985.
2. The Employer shall reduce the discipline imposed to a written warning and make the grievant whole for wages he lost as a result of the original penalty.

Philip Kienast
Philip Kienast
September 11, 1985
Seattle, Washington