

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

WON:		CONTRACT:	'01-'03
LOST:		CASE NO.:	20841, 20998, 21188
SPLIT:	XXX	VOLUME:	
ISSUE:	5 and 10 day suspension	PROVISIONS:	Art. 4/9
ARBITRATOR:	JAY E. GRENIG	LOCAL:	2748
HEARD:	10/18/05	BARG. UNIT:	PSS
AWARD:	11/13/05	EMP. UNIT:	DOC – DOCC

This is a non-precedential expedited award.

The Grievant had been employed as a Probation and Parole Agent for about 5 years. On 10/25/04, the Grievant was suspended for 5 days for allegedly falsifying his chrono logs. He had coded his chrono log to show that he had met an offender at the offender's home when he had in fact met the offender at school. On 4/7/05, the Employer suspended the Grievant for 10 days for insubordination, failure to follow policy or procedure, and negligence in performance of assigned duties. The Employer charged the Grievant with not releasing an offender from custody within 10 working days from the date the order to reinstate probation was entered, as he should have. The Employer also charged the Grievant with failing to indicate what type of leave he was going to use to cover shortages on his time sheets between 11/28/04 and 1/19/05. The Grievant asked for a time extension and was told to have the information to the supervisor by the close of business on Friday, 1/21. The Grievant's Union representative advised him not to submit the information until he heard from the Union, and the Grievant did not submit the information until Monday, 1/24. In early 2005, the Grievant's supervisor directed him to send an e-mail at the start and end of each workday so the supervisor could verify the Grievant's work hours. The Grievant challenged the supervisor's actions.

The Employer argued that the Grievant falsified his chrono logs and that he failed to release an offender in a timely manner. The Employer also contended that because the Grievant had not been reporting to work on time, he was required to sign in by e-mail to assure that he was reporting to work.

The Union asserted that the Grievant was not treated equally with other employees and asserted that the Employer discriminated against the Grievant, who was a native of Sierra Leone.

The Arbitrator concluded that there was no just cause for a 5-day suspension because the Grievant had never been disciplined before the suspension, the time log entry in question was a single error that the Grievant readily admitted, and the error was of the type made by many agents from time to time. Given the importance of the chrono log entries, the Arbitrator determined that there was just cause for a written reprimand. The Arbitrator also determined that there was no just cause for the 10-day suspension because although the offender was kept in custody longer than he should have been, the Grievant kept his supervisor informed of the offender's status and was therefore not solely responsible for the offender's being kept in custody. The Arbitrator found that the Grievant's actions surrounding the Employer's directive to provide the supervisor with information regarding leave time was reasonable and did not provide a basis for discipline. Finally, the Arbitrator found that the supervisor's directive requiring the Grievant to sign in and out by e-mail was in the nature of a work rule. The Arbitrator sustained the Grievance as to the e-mail requirement because the rule did not apply to all employees under like circumstances, and the Employer did not provide a copy of the new rule.

The Arbitrator ordered the 5- and 10-day suspensions expunged from the Grievant's record and the Grievant made whole for all lost wages and benefits. The 5-day suspension was to be replaced with a written reprimand, and the Employer was directed to cease promulgating work rules without complying with the Agreement.