

In the Matter of Arbitration

between

U.S. Department of Justice
Federal Bureau of Prisons
Federal Transfer Center
Oklahoma City

and

American Federation of Government Employees,
Local 171

FMCS 11-58573-1
Suspension, Reddout

before

John B. Barnard
Arbitrator

For the Agency

Mr. Wesley Pummill
Labor Relations Specialist

For the Union

Mr. Donny Boyte
President, Local 171

9:00 am January 25, 2012
Federal Transfer Center
Oklahoma City

The Issue

Was the disciplinary action taken for just cause, or if not, what shall be the remedy?

Authority

The Master Agreement

Article 5.2 A

...to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees.

Article 30 C

The parties endorse the concept of progressive discipline designed primarily to correct and improve employee behavior, except that the parties recognize that there are offenses so egregious as to warrant severe sanctions for the first offense up to and including removal.

Background

The grievant, Russell Reddout, is assigned as a Correctional Officer at the Federal Transfer Center, Oklahoma City. At the time of his two day suspension, there appears to be no prior discipline on his record.

On June 8, 2011, he was given a notice of proposed suspension for three calendar days, for Failure to Follow Past Orders. Such proposal states in part,

Specification A On December 16, 2010, while working as the Special Housing Unit (SHU) #2 Officer, on morning watch, you failed to secure the outer 7G range sally port door while the inner 7G range sally port door was opened...

The Specific Post Orders for Special Housing Unit No. 2 Officer for the Morning Watch state, "At no time will both sally port doors be unsecured at the same time. These doors will remain locked at all times when they are not in use."

Specification B On December 16, 2010, while working as the Special Housing Unit (SHU) #2 Officer, on morning watch, you were in possession of the D-15 key ring which only the SHU #4 Officer is authorized to obtain from the SHU #1 Officer.

The Specific Post Orders for the Special Housing Unit #2 Officer state, "The SHU #4 Officer...will obtain key ring D-15 from the SHU #1 Officer ...Key ring D-15 will be returned to the SHU #1 Officer as soon as there is no longer a need to open the sally port door. At no time will key ring D-15 remain in the possession of the SHU #4 Officer.

Subsequent to the proposal, the Agency, on August 8, 2010, issued Reddout a two day disciplinary suspension.

Such matter is now properly before the arbitrator.

Agency Position

The undisputed evidence demonstrates that Reddout maintained control of both sets of keys and left both sally port doors unsecured at the same time, which is in direct violation of the Post Orders.

The grievant acknowledged he received the Standards of Employee Conduct. He also received training annually on the Standards as well as institutional operations. He also admitted he read and understood his post orders. To this, he has never taken responsibility for his actions.

A complete investigation was conducted on this incident, and the facts were proven to have occurred. The investigation was fair and impartial.

It is clear that the misconduct in this case is undisputed based on the admission of the grievant and that the issue to be decided is the appropriateness of the discipline. Management considered the Douglas Factors, took action to correct the employee's behavior, and such was for the efficiency of the service.

The Agency respectfully requests that the Arbitrator render a decision in favor of the Agency.

Union Position

The Agency did not show where Officer Reddout's discipline was fair and consistent with similar incidents and was given for just and sufficient cause.

This was a very simple investigation where the Agency took only two affidavits, one from Reddout, and one from Lt. Ellicutt. If Captain Henderson had provided the mandatory SHU training, this incident would not have occurred.

The Agency took approximately eight months to issue discipline, rendering most any corrective value of discipline minimal. Such didn't make any sense. Reddout was allowed to work some of the most important positions during this time without any incidents.

This incident was nothing more than a mere lack of training, and should have been handled as such.

The Union requests and entreats the Arbitration to grant the requested remedies,

- 1) That Senior Officer Russell Reddout be made whole.
- 2) All disciplinary action be expunged from the BOP records to include Officer of Internal Affairs, and any file maintained by the Office of Inspector General on behalf of the BOP that pertain to this case.
- 3) Anything else deemed appropriate by the Arbitrator.

Discussion and Conclusions

The Union maintains that Reddout he unknowingly failed to follow the proper procedures the morning of December 16, 2012, but he had never been assigned to the SHU on a quarterly bid post. He had only worked in the Special Housing a few times and had never worked in the unit while Grange was being utilized

to house female inmates. This incident would not have happened if the Agency would have followed the National Shu Anywhere SHU post orders, which states in the first sentence,

...all staff (including sick and annual reliefs assigned to the Special Housing unit (SHU) posts will receive training prior to assuming their post each quarter...

Such training was not afforded Reddout. Also, his discipline was much harsher than other employees with similar charges. Also, he had received a verbal counseling from Lt. Ingram that morning.

Reddout testified as to his training in that regard,

Q. Have you ever been assigned to SHU as a quarterly post?

A. No.

Q. And have you received any training on SHU, other than the one hour training that was provided in annual refresher training?

A. No.

Q. Had you received this four hour training that the Captain testified to?

A. No.
(t 139)

There's also the question of the requested Union representation provided to Reddout when he was required to give his affidavit. Reddout's testimony (t 140, 1) reflects that such was not either provided or available. Based upon that, the

Agency should have rescheduled the meeting with Reddout in order to assure his requested affidavit. Certainly enough time had passed since the incident that another week or two wouldn't have impeded the process. Also, Specific Investigative Supervisor Mangel already had Reddout's affidavit typed out when he arrived at the SIS office. It seems that such affidavit would have been better served by being drawn up after Mangel's discussion.

Also contributing to the question of just and sufficient cause are several of Reddout's responses to Warden Kastner in the meeting held in Kastner's office on June 21, 2011. Some responses by Reddout,

Warden Kastner asked Mr. Reddout if he had worked this post before we were using G-Range for female inmates.

Mr. Reddout stated he did not recall but did not believe he had.

Warden Kasnter asked Mr. Reddout if he knows the rules of the Special Housing Unit.

Mr. Reddout stated he was not aware of all of the rules.

Warden Kastner asked Mr. Reddout if other officers had instructed him on the correct procedures for SHU.

Mr. Reddout stated no, not really.

There then is the fact that the Agency took approximately eight months to issue discipline in this case. It is well established that for discipline to be effective and

instructive, such discipline must be administered in a reasonably timely manner. Such was not the case here, however. There was no reasonable explanation reflective in the testimony and evidence which could have justified waiting eight months to finally issue discipline to Reddout over a matter in December, 2010 which was arguably not a complicated incident.

In sum, based upon the Agency's actions as described, there cannot be a finding of just and sufficient cause here. Arguably, any particular action by the Agency could be viewed as correct and supportable, but when all of the described Agency undertakings are taken as a whole, such decision made to support the two day suspension cannot be upheld.

Decision

As discussed, the Agency's decision to give Officer Reddout a two day suspension was not for just and sufficient cause.

1. Officer Reddout is to be made whole for having been given a two day disciplinary suspension.
2. All disciplinary action is to be expunged from the Bureau of Prison records to include Office of Internal Affairs, and any files maintained by the Office of Inspector General on behalf of the Bureau of Prisons that pertain to this case.

April 30, 2012
Dallas, Texas



John B. Barnard, Arbitrator