

Notice of Disciplinary Appeal

Institution: OSP	RIB Case Number: OSP-18-001923
Inmate Name: SANDERS, CARLOS A	Number: R130559

Warden:

I appeal the Rule Infraction Board's decision rendered on Aug. 14, 2018 that found that I violated the following rule(s) Rules 15, 16, 46, 54 and 61

In my opinion the decision of the Rules Infraction Board was incorrect for the following reasons:
(Be brief and specific in stating the basis for your appeal)

- I did not waive my right to have 24 hours pass between the time I received a copy of the Conduct Report and my appearance before the RIB. I appeared before the RIB _____ hours after receiving the conduct report.
- I did not waive the presence of the charging official at the RIB hearing. The charging official did not appear.
- The RIB denied my request for a relevant witness.
- No evidence was introduced at the hearing to support the RIB's decision.

Other (Be Brief and Specific): 1. There was no tangible evidence presented at my Serious Misconduct Panel (SMP) hearing which supports the allegation that I was involved in "rioting, or encouraging others to riot." In fact, during my SMP hearing the charging official, Brian Wittkup, stipulated that I was "not involved in rioting, or encouraging others to riot; however, just like the 1993 Lucasville uprising was supposed to have been a peaceful protest, it ended up turning into a full-scale rebellion." Therefore, I did not violate Rule 15 nor policy 53-CLS-04, variance 1 No. 3, which states: The inmate has led, organized, participated in or incited a serious disturbance or riot (or attempted to commit any

Inmate Name: <u>Siddique Abdullah Khan</u>	Number: R130-559	Date: Aug. 22, 2018
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of these acts) that resulted in, or was planned/intended to result in, the taking of a hostage, significant property damage, interruption of vital institutional services, physical harm, loss of control of a facility/unit, or loss of life.

2. The SMP outright denied my request for relevant witnesses. The SMP was being disingenuous when it purported to have denied all five (5) of my outside witnesses "due to relevancy, unavailability and security reasons." For starters, the Chairman, Deputy Warden Keith Foley, did not arrange for the presence of my witnesses nor did he make an attempt to call any of them, and phone records can easily substantiate this assertion. Second, there was no "security reasons" to justify his denial. Just like he made arrangement for the Charging Official, Brian Wittsup, to testify via telephone, he could have made the exact same arrangement for my witnesses. AR 5120-9-08.1 (E)(6) makes it perfectly clear that "witnesses may appear in person, by telephone, or other electronic means." Although my witnesses were ready, willing and able to testify at my SMP hearing, they receive no phone call or other communication from the SMP Chairman.

3. On the cover page of my conduct report the Charging Official unequivocally expressed that he did not "wish to have input into the disciplinary proceedings." Moreover, I unequivocally expressed throughout my hearing that I did not

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request nor desire his input as a witness. According to AR 5120-9-08.1 (E)(5), the only other way the Charging Official could have appeared as a witness is "if the SMP has questions for the official." Although there was only one question, or possibly two, the SMP had for the official, Mr. Wittzup was repeatedly allowed to offer his input, critiques and/or objections to my testimony, notwithstanding the SMP was putting forward no new or specific questions to him. In short, he was granted free reign to express whatever he desired and the SMP, his subordinates, allowed the hook, line and sinker. Thus, he was not on the telephone as a witness but as an adversary and critic during my entire testimony/hearing, which my hearing commenced at 9:39 AM and concluded at 2:04 PM.

4. The SMP chairman would neither postpone my hearing for good cause nor provide me with the full documents for preparation of my defense (See VI. Procedures (B)4 and (C)2), simply because my conviction was already ingrained in the mind. Put another way, I was provided the bare form of a hearing without any substance. This became crystal clear during the SMP first deliberation on my innocent or guilt. The panel left the room to deliberate and the chairman was still talking to Mr. Wittzup on the telephone in the corridor but outside of my hearing. After about 20 minutes, the panel returned to the room to notify me that they were going to continue with my hearing before deliberating.

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That's when Mr. Wittzup instructed them to share more of the evidence being used against me. That's when the chairman started reading more of what I allegedly said over the phone. I asked the chairman to allow me to see what he was reading. Mr. Wittzup instructed him to let me read typed versions of the alleged phone conversations, but to be careful not to share with me their confidential work. Lo and behold! Mr. Foley gave me some of the wrong papers, viz., the Disposition and Supplemental Disposition of the Rules Infraction Board. These documents had already found me guilty and the punishments I were to receive.

5. In violation of ODRC Policy 56-DSC-03 (E)1, "The charging official . . . shall not be permitted to participate in the deliberations of the SMP." Mr. Wittzup participated in the deliberations.

6. In violation of ODRC Policy 56-DSC-03 (E)6, "The decision of the SMP must be based solely on information obtained in the hearing process . . . , and evidence derived from witnesses and documents." In this connection the SMP stated: [T]he SMP believes that Sanders R130559 did misuse his JPAY privilege by answering an anti-ABAMARK Food Service organizer's JPAY message to him. The organizer asked inmate Sanders R130559 to recruit other inmates to work with them via JPAY to stop ABAMARK from being used

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at the University of Cincinnati until they stop feeding inmates incarcerated in Ohio. Inmate Sanders R130559 gave the organizer ten other inmate names and their numbers and instructed the organizer to tell the ten that "Imam Hasan" referred them. Not only was I not served a conduct report for this alleged recruitment offense, there was nothing discussed about it during my SMP hearing. Absolutely nothing! So where did the two SMP persons get this information from other than Mr. Wittkup himself? He simply typed up, in advance, the Disposition and Supplemental Disposition of the Rules Infraction Board and gave it to the SMP members to sign-off on.

The fabricated charges in my conduct report, the procedural errors in my SMP hearing, and the dirty games played by all parties involved are so egregious and a violation of my due process rights... that not even returning my case to a new SMP for a rehearing will cure and/or correct the violation(s) of applicable procedures and the vindictiveness shown toward my person. Thus, the only legal remedy is, for my case to be dismissed with prejudice; for Brian Wittkup, Deputy Chief Inspector Paul Shoemaker, and all other ODRC officials to leave me alone and allow me to do the remainder of my time without being harassed due to the 1993 Lucasville uprising. My request is reasonable. Thank you for your utmost cooperation.

Prayerfully,

As. A. Nabam