**OCB AWARD NUMBER: 2693**

SUBJECT: Arb Summary # 2693

TO: All Advocates

FROM: Allie Harris

OCB GRIEVANCE NUMBER: DRC-2021-00306-03

DEPARTMENT: Ohio Department of Administrative Services

UNION: Ohio Civil Service Employees Association

ARBITRATOR: Meeta A. Bass

GRIEVANT NAME: Scott Ahart

MANAGEMENT ADVOCATE: Don Overstreet

UNION ADVOCATE: Karl Wilkins

OCB REPRESENTATIVE: Kate Nicholson

ARBITRATION DATE: February 17 and March 10, 2022

DECISION DATE: June 28, 2022

DECISION: DENIED

CONTRACT SECTIONS 24, 24.02, 24.03, 24.06

OCB/BNA RESEARCH CODES: 118.251 – Violation Of Post Orders, Policies or Procedures; 118.311 – Just Cause; 118.6511 – Negligence/Dereliction of Duty

KEYWORD SEARCH TERMS: Termination; Dereliction of Duty

**HOLDING: Grievance DENIED.** The Grievant’s dereliction of duty was founded when he allowed inmates to fight in clear breach of his responsibility.  The Employer had just cause to terminate the Grievant.

**Facts:** Grievant has been a Correction Officer with ODRC at Ross Correctional Institution since 2015. On April 18, 2020, an incident report was submitted detailing a conversation between Grievant and an Inmate. Grievant permitted Inmate to voice serious threats against another correction officer without repercussion. During an investigation for this incident, the Unit Manager became aware that on April 4, 2020, there was a fight between two inmates. Unit Manager believed that Grievant and another CO facilitated the fight with the assistance of an Inmate. On January 28, 2021, Employer issued a Removal Letter for the incident stating that the other CO allowed the fight to happen and Grievant had full knowledge of what was transpiring. Employer charged Grievant for violating the Employees Code of Conduct, Rule 7, 8, 38, 39, and 50.

**The Union argued:** Union contends that Employer failed to meet its burden of proof to establish just cause for discipline. Union also argues that Grievant did not arrange or facilitate a fight between the two inmates. Union also argues that any violations of established rules were modified by common practice in the workplace. Union contends Grievant faced disparate treatment. Union contends that Grievant and another CO had nothing to gain from the inmates’ altercation. Union contends that Employer did not charge Grievant with threats to a co-worker in the removal letter and asserts that the removal letter only charged Grievant with the alleged misconduct on April 4, 2020. Union contends that Grievant has no active discipline on his record for his five years of service.

**The Employer argued:** Employer contends that the evidence established that Grievant and his coworker conspired with an inmate to help organize and facilitate a fight between two inmates. Employer also contends that the evidence established that Grievant permitted an inmate to conduct illegal gang activities even while on formal sanctions. Employer maintains that Grievant’s actions betray and threaten the institution’s security. Employer further contends that he has met his burden of proof in accordance with the Just Cause Standard.

**The Arbitrator found:** Arbitrator found that Grievant and another CO allowed an Inmate inappropriate freedom of movement. Grievant and another CO also should not have allowed the Inmate free access to roam the unit as a result of the Inmate’s sanction order. The Arbitrator was convinced by the Employer’s arguments of Grievant’s misconduct. The Arbitrator found that the weight of all the evidence, testimony, and video clearly establishes rule violations of Rule 7, 8, 38, 39, and 50. Further, the Arbitrator found that it is apparent that the Grievant’s failures on April 4, 2020, were a significant dereliction of duty that violated the rules set out in the removal letter. The Arbitrator found that due to the serious nature of the misconduct, the Employer complied with its disciplinary grid and performance track policy when assessing the termination. The Arbitrator notes that inmates are entitled to a safe living space, and it is the job of a correction officer to prevent rather than facilitate a fight. A breach of this fundamental responsibility is not excusable. The Arbitrator also found that Grievant and other CO acted with clear intent to facilitate the fight, and as such, the penalty for each is the same. Therefore, the grievance has been **DENIED**.