**OCB AWARD NUMBER: 2702**

SUBJECT: Arb Summary # 2702

TO: All Advocates

FROM: Allie Harris

OCB GRIEVANCE NUMBER: DPS-2022-04644-01

DEPARTMENT: Ohio Department of Administrative Services

UNION: Ohio State Troopers Association

ARBITRATOR: Marc Winters

GRIEVANT NAME: Jovande Coleman

MANAGEMENT ADVOCATE: Kaitlin Fuller

UNION ADVOCATE: Elaine Silveira

OCB REPRESENTATIVE: Cullen Jackson

ARBITRATION DATE: August 9, 2022

DECISION DATE: October 14, 2022

DECISION: MODIFIED

CONTRACT SECTIONS 19.01, 19.03, 19.05

OCB/BNA RESEARCH CODES: 18.01 – discipline-in general; 118.311, just cause

KEYWORD SEARCH TERMS: just cause; termination

**HOLDING:** Based on evidence presented, Employer did not show just cause to justify termination. **Grievance MODIFIED.**

**Facts:** Grievant was terminated from his position as a State Trooper by Employer for violating the Department of Public Safety’s Rules and Regulations. Two incidents led to administrative investigations which ultimately resulted in the termination. The first incident involved Grievant pointing his division-issued firearm out of his patrol car. The second incident occurred when Grievant traveled to his girlfriend’s ex-husband’s residence to confront him over something he said to Grievant’s girlfriend. An administrative investigation found that Grievant displayed operational deficiencies during a traffic stop and improperly brandished his division-issued firearm and that Grievant was involved in an off-duty incident and brandished his personal firearm. Grievant was terminated for violating DPS policy.

**The Union argued:** Union contended that Employer failed to show just cause and level of discipline was commensurate with the offense. Union argued that each incident should be examined on its own. Union argued that following the first incident, Grievant did not receive any training at the post or district level. Discipline should follow progressive discipline. As for the second incident, Union contended it was neither fair nor objective. Union contended that Employer did not produce any direct evidence that Grievant violated rules.

**The Employer argued:** Employer contended that evidence from both investigations demonstrate Grievant is aggressive, has failed to display sound decisions, and continually operated outside the methods of which he has been trained. Grievant had prior notice of Employer’s expectations to operate within the parameters of his training, and Employer had provided the necessary training to Grievant at the post level, online, and individualized training at the academy. Discipline had been issued to modify behavior and was unsuccessful. Employer contended that the discipline imposed was not arbitrary, capricious, or discriminatory. Employer also contended they had just cause for termination and factors of mitigation are not present for modification of discipline.

**The Arbitrator found:** Arbitrator found that it was clear Grievant was not terminated for any one event but for the two incidents involving on duty conduct and off duty conduct. Arbitrator stated that as a State Trooper, Grievant must be held to a higher standard for conduct displayed on and off duty. Arbitrator found that Grievant clearly violated DPS training and procedures in the on duty incident. Arbitrator found that no evidence from the second incident would suggest Grievant was incapable of continuing to perform his duties. Ultimately, when looking at the incidents combined, Arbitrator found that evidence was not sufficient to show just cause whereby the end result would justify termination. Arbitrator found that the evidence does support just cause whereby the end result would justify discipline in the form of a 90-day suspension. Therefore, the grievance is **MODIFIED.**