**OCB AWARD NUMBER:**

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| **SUBJECT:** | Arb Summary #2512 |
| **TO:** | All Advocates |
| **FROM:** | Megan Schenk |
| **OCB GRIEVANCE NUMBER:** | DNR-2015-03434-2 |
| **DEPARTMENT:** | DNR |
| **UNION:** | Fraternal Order Of Police, Ohio Labor Council, Inc. |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Barry Hennig |
| **MANAGEMENT ADVOCATE:** | Andrew Shuman |
| **UNION ADVOCATE:** | Paul L. Cox |
| **ARBITRATION DATE:** | March 16, 2016 |
| **DECISION DATE:** | May 20, 2016 |
| **DECISION:** | Modified |
| **CONTRACT SECTIONS:** | Article 19.01 |
| **OCB RESEARCH CODES:** | 118.01 – Discipline in General; 118.08 – Suspension  In General; 118.301 – Progressive Discipline; |

**HOLDING:** Grievance **MODIFIED**. Discipline was modified from a three-day working suspension to a one-day working suspension. Employer had a rational basis for disciplining Grievant. Evidence revealed Grievant violated the “two-line” rule, and effectively “impaired or compromised” his own “ability to carry out his duties as a public employee effectively.” However, the Employer incorrectly applied progressive discipline, so Grievant’s overall discipline was reduced.

**Facts:** Grievant has been employed by the State as a Wildlife Officer for over ten years. His duties include patrolling Lake Erie, and looking for violations of fishing regulations. On June 5, 2015 Grievant, who was off-duty, and two other fisherman were found in violation of Ohio Administrative Code 1501:31-13-01 by fishing with too many rods in the water. On August 11, 2015 a pre-disciplinary hearing was held where it was determined Grievant should serve a three-day working suspension. The Employer had determined that Grievant had neglected his duty as a wildlife officer and effectively impaired or compromised his ability to carry out his duties as a public employee. On September 14, 2015 Grievant filed a grievance disputing the above charges.

**The Employer argued:** Grievant was disciplined for just cause.As a wildlife officer, Grievant knew the rules, should have been aware of an extra rod in the water, and was caught by his coworkers ignoring the rules he had sworn to uphold. Grievant’s story has continued to change, and it is not clear if he was switching bait, if another line was dropped into the water, or if the seventh line was there purposefully; however, all parties involved acknowledge that there were at least seven rods in the water. Grievant’s selective observance of wildlife laws undermines his credibility and will impair trust among Wildlife Officers and with the public. This was not Grievant’s first violation of work rules, but was his third. This forced the Employer to consider a higher penalty than if Grievant had no active discipline on his record. Although removal is recommended for a third offense, the Employer elected to use a three-day working suspension in hopes that it would correct Grievant’s behavior.

**The Union argued:** Grievant was wrongfully disciplined.The Employer is responsible for showing how Grievant violated Rule C(9), which the Employer failed to do. Clearly the Employer does not truly believe Grievant was unable to carry out his duties because Employer issued Grievant a working suspension. Grievant continued to do his job, performing the same tasks. The Employer incorrectly contends that it applied progressive discipline. Employer is referencing a previous one-day working suspension when saying that this is Grievant’s third violation. However, that settlement agreement said in part “this agreement shall not be introduced, referred to, or in any other way utilized in any subsequent arbitration.” The Employer can therefore not use this previous suspension when considering how to discipline Grievant. The Employer overreacted to the charge; a charge such as this is normally left to the discretion of the responding officer, and is normally charged to the captain of the boat, which Grievant was not.

**The Arbitrator found:** The recordis unclear about what exactly occurred on the boat while Grievant was fishing, and a violation would normally go to the captain of the ship. However, Grievant immediately apologized to his coworker, Officer Shinko, when he said “you put me in a tough situation here.” This indicates Grievant knew he was doing something wrong, otherwise there would have been no reason to apologize. While the record does not definitively show who had control of the extra rod, the record does show that the Grievant put fellow Wildlife Officers in a compromising position by fishing on a boat that was in violation of the two-line rule. By putting his fellow Wildlife Officers in a compromising situation, the Grievant “impaired or compromised” his own “ability to carry out his duties as a public employee effectively.” The Arbitrator finds a violation of Work Rule C(9). With that being said, the three-day working suspension was too long. The language of Grievant’s previous one-day working suspension excludes it from consideration in progressive discipline. Therefore, the Arbitrator modifies Grievant’s discipline to a one-day working suspension.