

**OCB AWARD NUMBER:**

**SUBJECT:** Arb Summary #2513  
**TO:** All Advocates  
**FROM:** Megan Schenk  
**OCB GRIEVANCE NUMBER:** DPS-2015-04566-1  
**DEPARTMENT:** DPS  
**UNION:** OSTA  
**ARBITRATOR:** Susan Grody Ruben  
**GRIEVANT NAME:** Morris M. Johnson  
**MANAGEMENT ADVOCATE:** Lt. Marty Fellure  
**UNION ADVOCATE:** Elaine N. Silveira and Herschel M. Sigall  
**ARBITRATION DATE:** March 17, 2016  
**DECISION DATE:** June 29, 2016  
**DECISION:** DENIED  
**CONTRACT SECTIONS:** Article 19.07  
**OCB RESEARCH CODES:** 118.01 – Discipline In General; 118.6561 - Work Rules In General; 118.75 - Last Chance Agreements

**HOLDING:** Grievance **DENIED**. The Arbitrator found that Grievant’s texts from his personal cellphone to an arrestee indicate Grievant’s attempt to cultivate a personal relationship and constitute conduct unbecoming an officer. Therefore, because of Grievant’s Last Chance Agreement, the Employer had just cause to terminate.

**Facts:** Grievant had been employed by the State as a Trooper since 2001. On December 5, 2013, the Grievant signed and entered into a Last Chance Agreement agreeing to termination if the Grievant were to violate various work rules including rule 4501:2-6-02(I)(3) Conduct Unbecoming an Officer. The Last Chance Agreement was valid for two years. Within the scope of the Last Chance Agreement, the Grievant violated the above work rule when he stayed at an arrestee’s residence for 32 minutes while on shift, used his position as a Trooper to acquire the arrestee’s phone number, and texted the arrestee from his personal phone in hopes to build a personal relationship.

**The Employer argued:** Grievant was terminated for just cause. Grievant voluntarily and knowingly entered into a Last Chance Agreement on December 5, 2013. Grievant invoked his Last Chance Agreement and was terminated for just cause when he violated work rule 4501:2-6-01(I)(1)(3) Conduct Unbecoming an Officer. Grievant had arrested a woman for OVI. Grievant took the woman to the station, and then home. While at her residence, Grievant violated the above work rule when he stayed for 32 minutes discussing personal business after putting himself on patrol. During the conversation, Grievant provided the woman personal information and made sexually suggestive comments. After the conversation, Grievant used the information from the traffic citation to obtain the woman’s cell phone number, which Grievant texted from his personal cellphone. Grievant used his position to acquire personal information and attempt to advance a relationship with an arrestee.

**The Union argued:** Grievant was wrongfully terminated. The termination provision of the Last Chance Agreement was not triggered by the actions of Grievant. Grievant did not attempt to cultivate a personal relationship with the woman. Grievant properly conducted a regular traffic stop based on the woman's driving patterns. Grievant removed the drunk woman from the highway, saw that her car was safely positioned off of the roadway, and transported her to the station. Grievant then transported the woman home after she was unable to find a ride. Grievant returned to the woman's car to place a note on the windshield so that the car would not be towed. Grievant then texted the woman to inform her that her car was safe, and would not be towed. Grievant acted professionally and did not try to cultivate a personal relationship.

**The Arbitrator found:** The arbitrator found the Employer had established that Grievant's actions were Conduct Unbecoming an Officer. The arbitrator found that the Employer's primary witness, the woman arrested for OVI, was not particularly credible or forthcoming. However, the text messages sent from Grievant to that woman were highly unprofessional and established Grievant's attempt to cultivate a personal relationship. Therefore Grievant's request is denied.