

**IN THE MATTER OF ARBITRATION**  
**BETWEEN**  
**STATE OF OHIO – DEPARTMENT OF YOUTH SERVICES**  
**INDIAN RIVER JUVENILE CORRECTION FACILITY**  
**AND**  
**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION**  
**LOCAL 11**  
**AFSCME. AFL-CIO**

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Arbitration Date: January 15, 2010

Grievant Benny Wilmoth: #35-04-20090508-0021-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Rochelle M. Jones  
Ohio Department of Youth Services  
51 N. High Street, Suite 101  
Columbus, Ohio 43215

Advocate for the Union:

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## **I. HEARING**

The hearing was held at the Indian River Juvenile Correctional Facility on January 15, 2010. The hearing commenced at 9:00 A.M. The joint issue before the arbitrator is "Was the Grievant, Benny Wilmoth's termination from his position as a Juvenile Corrections Officer for just cause? If not, what shall the remedy be?"

Testifying for Indian River Juvenile Correctional Facility (the "Employer") were Timothy Gillis, Administrative Assistant 3, the Investigator; Don Bird, Training Manager; and Joan Oliveri, Bureau Chief for Employee Relations.

Testifying for the Ohio Civil Service Employee's Association, Local 11 AFSCME (the "Union") were Antonio James, Juvenile Corrections Officer; and the Grievant, Benny J. Wilmoth.

## **II. STATEMENT OF THE CASE**

On May 18, 2009 a grievance was filed by Benny Wilmoth. In the grievance Benny Wilmoth claimed "The Employer did not establish Just Cause for his removal." The Grievant requests reinstatement, payment of all wages less appropriate deductions to include Union dues. No loss in Seniority, any missed Holiday or Holiday Premium Pay, any missed Overtime Opportunity, Payment for any medical, dental or vision expenses less co-pay. All accrued leave, Personal, Sick, and Vacation from date of removal. All Discipline removed from his Personal file including any electronic file, return to shift, post and days off held at time of removal.

The Grievance is properly before the Arbitrator.

### III. THE EMPLOYER'S CASE

The first witness for the Employer was Timothy Gillis. Mr. Gillis has a degree from the University of Dayton in Criminal Justice. Mr. Gillis is a retired Lieutenant from the Montgomery County Sheriff's Office. He has had training at the Peace Officer Training Academy in Use Of Force. He has twenty - nine years experience with the Sheriff's office and the Department of Youth Services.

Mr. Gillis testified that he has been involved in several thousand investigations of which several hundred involved Use of Force. Mr. Gillis was referred to Investigation Exhibit, page 1 which is his report of his investigation of the incident February 19, 2009 at 6:03 A.M. concerning [REDACTED]

Mr. Gillis testified that assignments were given to the Investigators on a rotational basis. He said he started his investigation February 19, 2009 and concluded it March 11, 2009. Mr. Gillis said he went into the EMS System, reviewed witness statements, the video and made notes. He then set up interviews. He testified that he interviewed [REDACTED], JCO Cutright, JCO Canico, JCO Fite, JCO Bray, JCO Weir, Unit Manager Beddell and the Grievant. Mr. Gillis said he also interviewed JCO Rolland, JCO Dickey, JCO James and Nurse Stewart.

Mr. Gillis said he was working several cases at the same time and had made some typos and transposed some names in his report.

Mr. Gillis testified that he had asked the same questions of JCOs Rolland and Dickey.

The video of the incident was played and Mr. Gillis testified as to his interpretation of the events on the video. Mr. Gillis said he had made a time line on the video based upon what he had

seen.

The video starts at 6:23 A.M. The video shows [REDACTED] being taken to the floor by the Grievant and JCO James. The Grievant was on the top, back and side of [REDACTED]. [REDACTED] yells in pain from being hit. Mr. Gillis testified that the Grievant is making downward thrusting motions and the Youth is yelling he is in pain and yelling his head is being slammed. The Grievant says "Nobody slammed your head". Mr. Gillis also testified that the handcuffs were tightened on [REDACTED] causing him pain.

Mr. Gillis was then referred to Investigation Exhibit pages 1 and 2. This is his interview with Nurse Stewart. Nurse Stewart did a medical assessment on [REDACTED]. [REDACTED] said staff pushed his head into the floor and handcuffed him. Nurse Stewart noted blood on the floor outside the Youth's room. Nurse Stewart said there was blood on the Youth's face and a small cut on the Youth's lower lip. No photos were taken as the camera was not working. Nurse Stewart was called back at 8:53 A.M. to make another assessment. [REDACTED] complained of a headache. The Youth had redness in the temple area and redness on his wrist and hands. There were photographs taken at this time.

Mr. Gillis testified that Nurse Stewart was interviewed on March 4, 2009. Nurse Stewart responded because Staff said [REDACTED] was resistant and could not come to the clinic. Nurse Stewart said she saw redness on the Youth's temple. [REDACTED] said staff made him hit his head on the floor and that the redness on his wrists came from handcuffs.

Mr. Gillis said he got color photographs from medical and Investigation Exhibit pages 93 to 98 are the photographs of [REDACTED]

At this time another video was played which is a slowed down version of the other video. Mr. Gillis said "Notice the Grievant's feet. He is trying to get more leverage. It looks like the Grievant is making downward thrusts. You can hear two clicks of handcuffs being tightened."

Mr. Gillis said his conclusion was set forth at Investigation Exhibit at page 18. He said the Grievant was making thrusting motions and [REDACTED] screamed each time of thrust. He further said the Grievant tightened the handcuffs while the Youth was yelling the cuffs were too tight.

Mr. Gillis then said he had talked to all the witnesses and reviewed all the videos. He sent his Investigation to Senior Investigator David Haynes for review and then to Ms. Hughes. Mr. Gillis said two witnesses said the Youth was in pain. These witnesses were JCO Cutright Investigation Exhibit page 3 and JCO Weir Investigation Exhibit page 7. Both said the Youth was screaming over the handcuffs.

On Cross - examination Mr. Gillis was asked "Do incarcerated persons always tell the truth?" He answered "NO". He then said he thought the Youth was truthful.

Mr. Gillis testified [REDACTED] told him he was in fear of his life and wanted out. [REDACTED] was 19 years of age.

Mr. Gillis was asked if he had checked the Youth's record. He said he does not go into the Youth's record or the JCO's.

The Union then offered Union Exhibit 1 which is the AMS report at which point the Employer agreed that [REDACTED] is a bad kid. Mr. Gillis said past behavior has nothing to do with this. He was asked if he knew of or when the Youth wrote a statement and he answered

"No".

Mr. Gillis was then asked if the color photographs show how the injury was incurred and he said they do not. He then said Staff told him the Youth had busted his lip on the initial take down. He also said all witnesses interviewed did not see the Grievant put his hands on [REDACTED] head. The Grievant's hands were on the Youth's back.

Mr. Gillis was asked if JCOs at this time had handcuff keys and he said they did not. Mr. Gillis was then referred to Investigation Exhibit Page 1 which is Nurse Stewart's statement and Investigation Exhibit Pages 2 and 3 which are [REDACTED] statement. [REDACTED] said the Grievant pushed his head into the ground.

Mr. Gillis was asked if the Ohio Highway Patrol had done an investigation. He replied that they had but no charges were filed. He was then referred to Investigation Exhibit Page 4 which is JCO Cutright's statement. JCO Cutright said the Grievant did not push the Youth's head.

Mr. Gillis was then referred to Investigation Exhibit Page 5 which is JCO Fite's statement. JCO Fite says JCOs did nothing. He was then referred to Investigation Exhibit page 6. This is JCO Bray's statement. JCO Bray had his hands on [REDACTED] feet. He said the JCOs did nothing to hurt the Youth.

Mr. Gillis was then referred to Investigation Exhibit Page 5. In this statement JCO Weir said the Youth busted his own lip. The Grievant did not put his hands on the Youth's head. He said the JCOs did nothing to hurt the Youth. All said if we saw it we would have stopped it and reported it.

Mr. Gillis then turned to Investigation Exhibit Page 9. Operations Manager Beddell was

narrating for the video. He was the Supervisor and ordered the JCOs to take the Youth to the floor. Mr. Gillis then read Investigation Exhibit Page 10 where JCO Rolland said the Grievant did not have his hands on the Youth's head. Mr. Gillis was then referred to Investigation Exhibit Page 12 which is Nurse Stewart's statement. She said there is no evidence of the Youth being pushed or dragged on the floor.

Mr. Gillis was then referred to Investigation Exhibit Page 14. This is JCO James statement. JCO James said the Youth hurt his lip when he fell to the floor.

Mr. Gillis was then asked, "Could JCO James have seen what happened?" He answered "Yes". He was then asked if JCO Bray should have had a view. He said "Yes".

At this point the video was played again. Mr. Gillis was then asked "Does the video show JCO Cutright come out of a room and look straight down on the incident?" He answered "Yes". He also said JCO Fite was there looking down.

Mr. Gillis then read Investigation Exhibit Page 65 which is Operations Manager Beddell's statement. Mr. Beddell says the Grievant had his hands on the Youth's back. Mr. Gillis then read further from Mr. Beddell's statement at pages 66 and 67. Mr. Beddell said the Grievant was turning the Youth over and he never saw the Grievant come into contact with the Youth's head.

Mr. Gillis was then referred to Investigation Exhibit Page 57 which is JCO Bray's statement. JCO Bray said Grievant did not have his hands on the Youth's head and no one hurt the Youth. He was then referred to Investigation Exhibit Pages 49 and 50. This is JCO Cutright's statement. JCO Cutright said the Grievant was trying to roll the Youth over and there was no pushing on the Youth's head.

Mr. Gillis then read Investigation Exhibit Page 55. This is JCO Fite's statement. JCO Fite said the Grievant did not have his hands on the Youth's head. He then read Investigation Exhibit, Pages 78, 79 and 81. This is JCO James' statement. JCO James said the Youth went down face first. He also said the Grievant was not mad or upset and did not hurt the Youth. JCO James said that the Grievant did not hurt the Youth.

Mr. Gillis then read Investigation Exhibit pages 47 and 48. This is [REDACTED] statement. [REDACTED] said he was resisting and that he was handcuffed and then his head was slammed by the Grievant. [REDACTED] did not tell the Nurse what happened and said he wanted to be moved.

Mr. Gillis then read Investigation Exhibit pages 68 and 70. This is JCO Rolland's statement. JCO Rolland said [REDACTED] hit his head while thrashing and that neither the Grievant or any other JCO hurt the Youth.

Mr. Gillis next read Investigation Exhibit pages 60 and 61, the statement of JCO Weir. JCO Weir said the Youth busted his own lip and that Grievant did not have his hands on the Youth's head.

On Re-Direct Mr. Gillis read Investigation Exhibit page 47. This is where the Youth said the Grievant slammed his head four times. He was then asked "if the JCOs appear to be diverting attention from the Youth". He answered "Yes". He was then asked "Do staff lie?" He replied "Yes". Mr. Gillis then said the video shows thrust and the Youth's head hitting the floor.

The Employer's next witness was Don Bird. Mr. Bird is a Training Manager. Mr. Bird has been with the Department of Youth Services for twenty-four years; first as a JCO and the last five years as a Training Manager.



Mr. Bird is a Response to Resistance ("R2R") Instructor and also teaches other "R2R" Instructors. He has been an "R2R" Instructor since 1999. He said he is familiar with this incident and had reviewed the video.

The video was then played for Mr. Bird. He said there were three officers trying to cuff the Youth. The Supervisor was giving directions. Mr. Bird said the Grievant's technique was not "R2R" approved and it did not appear Grievant was trying to turn the Youth over.

Mr. Bird was then asked about handcuffs. He said you rotate their arm behind their back and put the handcuffs on. He said JCOs are told how to do this. He further said you should put your finger between handcuff and hand and the handcuffs are tight enough. Mr. Bird also said the Youth cannot loosen the handcuffs. He then said [REDACTED] was somewhat compliant when the handcuffs were put on. If the Youth says the handcuffs are too tight, the JCOs are to have medical check.

Mr. Bird then testified that the Grievant should have gotten the Youth into a position to be handcuffed and that the thrusts were unwarranted in his opinion.

On Cross-examination Mr. Bird said there are several techniques to take a Youth to the floor. He also said that the handcuffs lock on their own and the Youth could have caused the handcuffs to tighten by his actions. Mr. Bird said that if the Operations Manager saw the handcuffs were too tight he could either call the Nurse or loosen them himself.

On Re-Direct Mr. Bird said he doesn't know how the Youth got on the floor.

The Employer's last witness was Ms. Joan Oliveri. Ms. Oliveri is the Bureau Chief for Employee Relations. She has had this position for three and a half years. One of her duties is Discipline. The Discipline packet is sent to her and discussed with the Deputy Director.

Ms. Oliveri looks over the packet and makes a recommendation to the Director. Ms. Oliveri said the Director has a zero tolerance for excessive or inappropriate force.

Ms. Oliveri was then referred to Policy Tab page 5 of 9. This page shows rule 4.12 Inappropriate force and 5.1 Failure to follow Policy and Procedure. She then read the last page of this Tab which is the Infraction Discipline Guide. This shows the possible penalties to be 15 days to termination.

Ms. Oliveri said the prior discipline caused the tougher stance. She also said the thrusting motion was unwarranted and that the Grievant caused the injury.

On Cross-Examination Ms. Oliveri was asked if she had a medical degree. She replied "No".

#### IV. THE UNION'S CASE

Prior to its presentation of evidence the Union made a Motion pursuant to Rule 50 of the Ohio Rules of Civil Procedure. The Union asserted that the Employer had a complete lack of evidence and it was therefore entitled to judgment.

The Employer responded by arguing that the Arbitrator is bound by the four corners of the Contract and the Contract requires an arbitration to proceed to its conclusion. The Motion by the Union was over-ruled.

The Union's first witness was Antonio James. He is a JCO Youth Specialist. Prior to working at this facility he worked at Lorain Correctional Institution. JCO James said he knows



On February 19, 2009 JCO James was working on D Unit when JCO Dickey called a

Signal 5. [REDACTED] was in JCO Dickey's face. [REDACTED] was ordered to his room and started getting physical when his room started getting cleaned out. JCO James said the Operations Manager said to take [REDACTED] to the floor. He said the Youth landed face first on the floor. He then said the Youth was on the floor and the JCOs were trying to secure him.

JCO James said the Operations Manager was telling the JCOs to roll the Youth over on his stomach to get him cuffed. He said the Grievant never put his hands on the Youth's head. JCO James said the reason you could hear two clicks in the video is because there were two cuffs. He also said the Youth causes the cuffs to tighten when he struggles.

On Cross-Examination JCO James looked at Investigation Exhibit pages 79 & 80 which is his statement. He said he is not sure how the Youth got his injuries. He also said he recalls the facts better now. JCO James said he helped escort the Youth to his cell and that the Youth said someone smashed his face on the floor.

On Re-Direct JCO James said the Youth did not say when his face was pushed into the floor.

The Union's last witness was the Grievant, Benny J. Wilmoth. He was the JCO on day shift on I Unit. JCO Wilmoth has five years as a State Employee.

On February 19, 2009 JCO Wilmoth responded to a Signal 5 on D Unit. On arrival he found the phone smashed on the floor and everything off the desk. [REDACTED] was threatening bodily harm to JCO Dickey. Operations Manager Beddell was the direct supervisor.

JCO Wilmoth testified that the Youth was verbally threatening. The Youth went to his room and Staff were ordered to strip it. [REDACTED] then became hostile and started shoving JCO James. The order was then given to use the C-grip. Staff were unable to do this as the Youth

was too combative.

JCO Wilmoth said the Operations Manager gave the order to take the Youth to the floor and he went face down. JCO Wilmoth then said on the floor the Youth came up on his side. He said he had his left arm on the Youth's back and his right arm lower. The Operations Manager said to roll him over. JCO Wilmoth then said the Youth became compliant right before handcuffing. He said he put the handcuffs on one hand which accounted for one click, the other click was the second handcuff.

JCO Wilmoth said he never put his hands on the Youth's head and he caused no injury to the Youth. He said he never slammed the Youth's head into the ground. He also said the Youth could have tightened the handcuffs by his own actions.

On Cross-Examination JCO Wilmoth said he doesn't know how the Youth got a bloody lip. He said, I never made a downward motion. The Youth was on his side and I was trying to turn him over.

JCO Wilmoth heard [REDACTED] screams and he told the Youth to roll over. He then said there is no training for dealing with a Youth in this position.

On Re-Direct JCO Wilmoth said Youth sometimes yell when the cuffs are put on. He said the Youth did not state his name.

On Re Cross Examination JCO Wilmoth said he wasn't sure if he was the white dude referred to by the Youth.

## **V. OPINION & AWARD**

The Employer sets forth in its closing argument that the Ohio Department of Youth Services has policies and procedures in place to protect the Youths in its care as well as staff.

The policies pertinent to this case are its General Work Rules Policy; the Management of Resistant Youth Behavior and its Standard Operating Procedures. All of these policies are before the Arbitrator as Joint Exhibits.

The parties have agreed as to the Grievant's training record and his last re-certification in Response to Resistance (R2R) Training on November 21, 2008.

The Grievant had approximately four and a half (4.5) years experience in an institutional setting.

The Employer contends the Grievant failed to use the minimum amount of force necessary to gain compliance from [REDACTED]

The Grievant is alleged to have used inappropriate force on [REDACTED] on February 19, 2009. The Employer relies on a video taken of the incident and the testimony of Investigator Timothy Gillis and Don Bird, Training Manager to prove the Grievant pushed the Youth's shoulder and upper back area with great thrust. This thrust caused the Youth's face to hit the floor and his mouth to bleed. The Employer also asserts the Grievant inappropriately handcuffed the Youth causing redness and indentation marks on the Youth's wrist.

The Employer also relies on the testimony of JCO Jonathan Cutright and JCO Montoya Weir. JCO Cutright states he heard [REDACTED] yell afterwards that his head had been pushed and that when he was rolled over, somebody slammed his head and then did so again when [REDACTED] was put in his room. JCO Weir said the Youth yelled that staff busted his lip and complained the handcuffs were too tight.

The Employer argues that the video shows the Grievant using a downward thrusting motion on the Youth. The Youth says, "You were slamming my head hard". The Grievant denies

this on the video. He said, "Nobody slammed your head". The Youth had a bloody mouth and there was blood on the floor.

The Employer points out that when the Youth was in his room he said "I am going to punch that white dude in his face for busting me in my head". As the Employer says, the other JCO involved with the restraint, JCO James is black.

The Employer also argues that the video shows the Grievant applying the handcuffs and that he also tightened them. The evidence is the clicking sound on the video which is evidence of the handcuffs being applied and then tightened.

The Employer then argues that there is medical evidence of the injury and that the Youth told the Nurse his head hurt from the Grievant slamming his head.

The Employer uses the video to counter the Union's argument that the Grievant was only following orders of the Operations Manager. The only direction given by the Operations Manager was to the Youth to calm down and roll over on his stomach. The Operations Manager then told the JCOs to put the Youth's hands behind his back and handcuff and then to clean out his room completely. The Operations Manager was disciplined for failure to protect the Youth.

The Employer next attacked the testimony of JCO James. The Employer argues that in his Investigatory Interview JCO James said "he did not know or recall anything about the incident, only that he was doing a rear finger flex. The Employer says JCO James' testimony is suspect because of his recall of the incident eleven (11) months later at the arbitration. However, JCO James did say in his Investigatory Interview "I don't know, he could have gotten it when we were ordered to take him to the floor". JCO James was referring to [REDACTED]'s injuries.

The Employer also argues that the testimony of the Grievant at the arbitration hearing was

inconsistent with his Investigatory Interview statement. During the arbitration hearing the Grievant testified that he heard the Youth yell that he was being hurt and that he heard the Youth state that the Grievant had slammed his head to the floor. The Grievant also said he heard the Youth state the handcuffs were too tight. The Grievant also said the technique used was not one taught by the Ohio Department of Youth Services.

The Employer also relies on the testimony of Don Bird, the R2R Instructor as an expert witness. Mr. Bird testified that the downward thrusting motion is not a technique taught and that the motion was excessive and unwarranted Mr. Bird said at the time the handcuffs were being applied that [REDACTED] was complying with the JCO's instructions. He did confirm that if the Youth is resisting that the handcuffs will tighten on their own but that the Youth was not resisting.

Mr. Bird said proper technique would have been to ensure there is a one finger gap between the handcuffs and the Youth's wrist and this was not done.

The Employer also stresses the importance of Ms. Joan Oliveri's testimony. Ms. Oliveri testified about the Director's strong stance against excessive and unwarranted force. She testified that Grievant had prior active discipline for not following policies and procedures. Ms. Oliveri explained the General Work Rules and the Infraction. Discipline Grid. She said it rose to the level of removal because the Grievant used excessive force and had prior related active discipline.

The Union argues in its Closing Argument that there is no proof that the Grievant slammed the Youth's head into the ground. The Union sets forth a series of facts which it claims are relevant. Among these facts are that on February 19, 2009 [REDACTED] had been destructive

by throwing notebooks and other objects off the officer's desk in the day room of D Unit. [REDACTED] cursed and physically threatened the female staff member, a Signal 5 was called, and staff including the Grievant responded. Operations Manager Vernon Beddell, Grievant's Supervisor directed the response to the signal. [REDACTED] was ordered to his room and became upset when staff were ordered to clear out his room. [REDACTED] made physical contact with staff and a struggle ensued. Operations Manager Beddell ordered Grievant and JCO James to place the Youth in a C-grip. This was not successful and Grievant and JCO James were ordered to "take the Youth to the ground". [REDACTED] hit the ground face first but turned on his side to resist being handcuffed. JCO James placed the Youth in a rear finger flex as Grievant tried to gain control of his other hand to place the Youth on his stomach to handcuff him. JCO James and Grievant were told by Mr. Beddell to roll [REDACTED] over and handcuff him. [REDACTED] continued to struggle as he was handcuffed. JCO James and Grievant did not have handcuff keys. [REDACTED] stopped resisting and while Mr. Beddell was pointing the camera down at him said "You slammed my head hard". The Union also points out that once [REDACTED] was handcuffed, the Grievant and JCO James moved away from him and other staff took over. JCOs Fite and Cutright escorted the Youth to his room. After [REDACTED] was in his room he complained that his handcuffs were too tight and Mr. Beddell said "sit down I'll have them off you in a moment". Mr. Beddell was the only one with a handcuff key. Immediately after the incident [REDACTED] refused to either sign a YBIR or write a statement.

The Union then asserts that in order to believe the Employer's evidence, the arbitrator would have to believe that seven witnesses including a supervisor are lying; that the video conclusively demonstrates Grievant pushed the Youth's head into the floor and purposely applied



the handcuffs too tight.

The Union further argues that Operations Manager Beddell ordered the Youth taken to the floor and that he recorded the entire incident and did not observe the Grievant "pushing the Youth's head into the ground". The Union also argues that there is no eyewitness evidence against the Grievant. The only witness is [REDACTED]

The Union also disputes that the video supports the Employer's position. The Union argues that there is no clear shot of the Grievant having his hand on the Youth's head or slamming it into the ground.

The Union then lists some of the factors that are used in determining the credibility of witnesses. The Union says there are multiple experienced witnesses whose testimony is strong and consistent. There is no evidence that the witnesses are lying and their testimony supports the Grievant. The Union says the only statement against the Grievant is from [REDACTED] and is uncorroborated

The Union further argues that the medical evidence only shows the Youth had a split lip and not what caused it. The Union says there is credible evidence the injury was caused by the fall to the floor.

The Union then argues that there is no evidence on the video that the Grievant applied the handcuffs too tight. The Union argued that the Youth could have tightened the handcuffs and this was not refuted. The Union also points out there is no evidence that the Grievant was mad or upset.

The Union also points out that the best evidence would have been from [REDACTED] and he was not called to testify. The Employer offered no explanation as to his absence.

The Arbitrator having reviewed all the evidence agrees with the Union's argument. The failure of [REDACTED] to appear causes a major problem to the Employer. [REDACTED] failed to sign the YBIR or to sign a statement right after the incident. There is also no reason given for [REDACTED] absence. Since [REDACTED] did not testify, the Employer's evidence is the video and the medical record. The Employer had the video interpreted by Investigator Gillis and Don Bird, Training Manager. Both of these witnesses have considerable experience and their interpretation of the facts is not unreasonable. The problem is that eyewitness testimony refutes their conclusion.

Investigator Gillis testified that all the witnesses interviewed did not see the Grievant put his hands on the Youth's head. JCO Weir said the Youth busted his lip when he fell to the floor. All the JCOs interviewed said if they saw anything out of line they would have stopped it and reported it.

Investigator Gillis also said that JCOs James, Bray, Cutright, and Fite had a clear view of the incident. All the JCOs said no one hurt [REDACTED]. The Employer in its argument said the video has three clicks on it which it argues show Grievant tightened them. Investigator Gillis said there were two clicks. This supports the Union's argument that there was one click for each handcuff. The evidence is undisputed that at the time of this incident the JCOs did not have handcuff keys.


The medical evidence in this case does not show how the Youth got his injury but only that he had one.

I grant the grievance and the Employer's case is dismissed.

## VI. AWARD

1. The Grievant, Officer Wilmoth, is to be reinstated to his position as Juvenile Corrections Officer.
  2. The termination is to be stricken from his record including any employee electronic record.
  3. The Grievant is to receive all lost wages including roll call pay, step increases and longevity less any interim earnings and appropriate deductions including Union dues.
  4. The Employer and Employee share of PERS contributions.
  5. Any holiday pay or premium pay that the Grievant would have been entitled to.
  6. All leave balances accrued from date of removal.
  7. No loss of seniority.
  8. The post, shift and good days that the Grievant held when he was removed.
  9. Payment for all lost overtime opportunities.
  10. Payment for any medical, dental or vision expense that would have been covered under his insurance less appropriate deductible and co-payments.
- The Arbitrator will retain Jurisdiction for sixty (60) days.

Entered at Ironton, Ohio this 9<sup>th</sup> day of February 2010

  
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Craig A. Allen  
Arbitrator