**OCB AWARD NUMBER: 2078**

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| **SUBJECT:** | **ARB SUMMARY # 2078** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20090302-0028-04-01** |
| **DEPARTMENT:** | Ohio State Highway Patrol |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | James P. Danaher |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin D. Miller |
| **2ND CHAIR:** | Marissa Hartley |
| **UNION ADVOCATE:** | Elaine Silveira |
| **ARBITRATION DATE:** | April 19, 2010 |
| **DECISION DATE:** | April 19, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 19.01; 19.05 |
| **OCB RESEARCH CODES:** | 118.09—Fines; 118.301—Progressive Discipline; 93.4661  Timeliness of Grievances; 94.09—Arbitrability-Procedural |
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**HOLDING: Grievance DENIED. The Arbitrator found that the grievance is not arbitrable.**

On October 3, 2008, the Grievant attempted to initiate a traffic stop for a speeding violation. Grievant activated his pursuit light and on two occasions pulled alongside the suspect and motioned him to stop. The suspect failed to comply and the pursuit ensued. Grievant then pulled around the suspect’s vehicle to slow him down and prevent him from accelerating and creating a more dangerous situation. The Grievant acknowledged that during the course of the traffic stop, he violated several written policies of which he had knowledge.

The Employer arguedthat the fine letter was issued by mail on January 30, 2009, and Grievant was fined for an amount equivalent to one day effective in the pay period of February 1, 2009. It is the past practice of the Employer to defend grievances which are filed within fourteen days of the receipt of the fine letter on the merits. The grievance is therefore untimely filed, and thus not arbitrable. The Grievant had a written reprimand on his record at the time of the incident and a one-day fine is appropriate to maintain progressive discipline. The Employer requested the Arbitrator to find the grievance to be not arbitrable, and in the event that the grievance is found to be arbitrable, to deny the grievance.

The Union argued that the grievance was timely filed. The Grievant had actual knowledge of the fine once his paystub of February 27, 2009 reflected that the fine was imposed. The grievance was filed within fourteen days of said date, March 2, 2009. The Union contended that progressive discipline does not restrict the Employer from repeating lesser penalties. The Union requested that the Arbitrator grant the Grievance.

The Arbitratorheld that the grievance is not arbitrable. Disciplinary grievances require direct filing at Step 2, and are subject to the time restrictions of Article 20.11. Once the Grievant received the fine letter he knew or should have known of the disciplinary action. The fine letter is the triggering event, and not the receipt of the paystub indicating that the fine was in fact imposed. The time for filing the grievance thus began to run on or about February 3, 2009. Therefore, the Arbitrator determined that the grievance was not arbitrable.