**OCB AWARD NUMBER: 2079**

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| **SUBJECT:** | **ARB SUMMARY # 2079** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-02-20090603-0072-01-09** |
| **DEPARTMENT:** | Ohio Department of Public Safety |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Christy Backus |
| **MANAGEMENT ADVOCATE:** | Kathy Gulla |
| **2ND CHAIR:** | Marissa Hartley |
| **UNION ADVOCATE:** | William Anthony Jr.  |
| **ARBITRATION DATE:** | January 28, 2010 |
| **DECISION DATE:** | April 24, 2010 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Article 24 and Article 28 |
| **OCB RESEARCH CODES:** | 118.311—Just Cause-Concept of; 116.2001—FMLA Issues;118.6481—Dishonesty-In General; 118.6484—Falsificationof Records |
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**HOLDING: Grievance MODIFIED. The Arbitrator found that the Employer did not have just cause to remove the Grievant. The Grievant is an 18 year employee and the Arbitrator was not persuaded that the Grievant intentionally falsified time sheets but rather did so recklessly and carelessly without intent. The discipline was modified to a 10 day suspension and the Grievant was re-instated to her position following the suspension.**

The Grievant was an Account Examiner for the Ohio Department of Public Safety. On March 24, 2009, the Employer removed the Grievant for violating work rules 501.01(C)-Leave without Pay, and 501(C)(10)(c)-Dishonesty. On March 24, 2009, the Grievant had the following entries on her active discipline record: (1) verbal reprimand for violating the parking policy; (2) verbal reprimand for taking leave without pay; (3) written reprimand for improperly using a handicapped placard; (4) written reprimand for taking leave without pay; (5) one-day fine for taking leave without pay; (6) verbal reprimand for tardiness; (7) three-day working suspension for taking leave without pay; and (8) three-day fine for negligence in using FMLA leave. A supervisor suspected that the Grievant falsified her timesheets. The Employer investigated the supervisor’s suspicions. The Employer’s investigation revealed that several of the Grievant’s time sheets were inaccurate. Additionally, on March 24, 2009, the Grievant was approved for FMLA leave until 10:00 a.m.; however, the Grievant called-in to request additional leave because someone vandalized her car. The Employer determined that the Grievant’s request for additional time after 10:00 a.m. did not qualify as FMLA and the Grievant had to use permissive leave to satisfy the additional time request. The Grievant did not have any permissive leave available. As such, the Employer characterized the Grievant’s leave after 10:00 a.m. as leave without pay. The Employer removed the Grievant for dishonesty and taking leave without pay. At the time of her removal, the Grievant had nearly eighteen (18) years of service.

The Employer argued that it had just cause to remove the Grievant. Specifically, the Employer argued that its investigation revealed twenty-two (22) separate occasions where the Grievant was compensated for time that she did not work. Further, the Employer argued that the Grievant’s behavior demonstrated a regular and premeditated pattern of dishonesty that violated the Employer’s trust. Additionally, the Employer argued that the Grievant took leave without pay on March 24, 2009 after several prior reprimands for the same offense. The Employer believed that it had just cause to remove the Grievant and asked the Arbitrator to deny the grievance.

The Union argued that the Employer did not have just cause to remove the Grievant. The Union contended that the Grievant did not take leave without pay on March 24, 2009. Specifically, the Union argued that on March 24, 2009, the Grievant called-in to use vacation leave. The Union alleged that the Grievant’s immediate supervisor told the Grievant that the request qualified for vacation leave. As such, the Union argued that the Employer improperly denied the Grievant’s request to use vacation leave, which caused the Grievant to go into a leave without pay status. Additionally, the Union argued that the evidence did not demonstrate that the Grievant was dishonest. Specifically, the Union argued that the evidence did not demonstrate that the Grievant engaged in a pattern of deception for monetary gain by falsifying her time sheets. Further, the Union argued that the Grievant’s punishment was too severe and did not follow progression. The Union also argued that the Employer stacked charges, conducted a flawed investigation, and treated the Grievant with hostility.

The Arbitrator determined that the Employer did not have just cause to remove the Grievant for taking leave without pay because the Employer did not provide sufficient evidence to establish the Grievant’s available permissive leave on March 24, 2009. Specifically, during the investigation, the Grievant’s supervisor testified that he was unsure about the Grievant’s actual leave balances. Thereafter, the Employer never supplied additional evidence to establish that the Grievant did not have permissive leave on March 24, 2009. However, the Arbitrator determined that the Grievant was dishonest in violation of work rule 501(C)(10)(c). Nevertheless, the Arbitrator reinstated the Grievant and modified the Grievant’s punishment to a ten-day (10) suspension because the Employer did not prove that the Grievant intentionally falsified her time sheets. Rather, the Employer demonstrated that the Grievant carelessly or recklessly falsified her timesheets. The Arbitrator believed that the Employer’s investigation was not fair and objective. Further, the Arbitrator determined that the Employer’s investigation was unpersuasive because the investigator based his conclusions on several inaccurate assumptions. As such, the Arbitrator modified the Grievant’s discipline.