**OCB AWARD NUMBER: 2087**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2087** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **27-17-20090225-0003-01-03** |
| **DEPARTMENT:** | Ohio Department of Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Mitchell B. Goldberg |
| **GRIEVANT NAME:** | Joseph W. Holzhauer |
| **MANAGEMENT ADVOCATE:** | Buffy Andrews |
| **2ND CHAIR:** | Ashley Hughes |
| **UNION ADVOCATE:** | Robert Robinson |
| **ARBITRATION DATE:** | June 21, 2010 |
| **DECISION DATE:** | July 24, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24 |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.6485—Falsification of  Records, DR & C; 118.6516—Neglect of Duty; 118.6465  Relationship-Inmate |
|  |  |

**HOLDING: Grievance DENIED. The Arbitrator found that the prohibited and unauthorized relationship between the Grievant and Inmate was a serious offense, enough under these facts and circumstances to sustain the forfeiture of the Grienvant’s employment.**

The Grievant was a Corrections Officer (CO) assigned to Housing Unit-J, at the North East Pre-Release Center. He worked the third shift that began at 10:00 pm and ended at 6:00 am the following day. The CO assigned to the building must make 16 security checks during an 8-hour shift where inmates must report to their rooms and be counted. The post orders state that the officer is to conduct security rounds, look into each cell, ensure that all inmates in each cell are alive and breathing, and make a minimum of two rounds per hour with no more than thirty minutes between each round at staggered intervals. The assigned CO has the responsibility to accurately report his activities and assigned duties in his logbook for purposes of record keeping and accountability. The Grievant was removed for: (1) failing to make regular rounds; (2) falsification of log entries; and (3) having an improper relationship with an inmate. Specifically, the Grievant did not make rounds as required and he falsified log entries so that it appeared as if he did make rounds. Additionally, the Grievant had an improper relationship with an inmate that worked as a Porter on the Grievant’s shift.

The Employerargued that the videotape evidence showed that the Grievant’s log entries were falsified because the times on the videotape did not match the entries in the log. The Employer produced letters, which purported to show the unauthorized relationship between the Grievant and Inmate. The evidence showed that the Inmate’s sister enabled this relationship by conducting 3-way telephone calls between the Grievant, Inmate and her sister.

The Union arguedthat the Employer did not prove the charges and allegations against the Grievant by the high standard of proof that is required in arbitration proceedings when an employee is terminated for alleged unethical or illegal conduct. The video evidence was incomplete; other video evidence that would show the Grievant making his rounds was not produced. The letters were not written by the Grievant, and it is not the Grievant’s voice on the recorded telephone calls. The Grievant was acquitted on the charges of sexual battery upon Inmate by jury trial. This exoneration should suffice to establish the Grivant’s innocence relative to these administrative charges, and the Grievant should be reinstated to his former position and be made whole with respect to reinstatement of his seniority, the clearing of his record, and the recovery of any and all lost earning and benefits.

The Arbitrator foundthat the criminal trial acquittal has limited relevance in this arbitration proceeding for the three reasons. First, the parties are different. Second, the issues are substantially different. Finally, the burden of proof imposed upon the prosecution and upon the Employer is different in each matter. The jury did not have the opportunity that was afforded to the Arbitrator in this proceeding to judge the Grievant’s credibility. The Arbitrator found that the evidence supports the finding that the Grievant was involved in an unauthorized relationship with the Inmate with the requisite degree of certainty required by the above arbitration standards. This was based on the personal notes written from Grievant to Inmate and the testimony from Inmate and her sister who testified about the ongoing romantic relationship between the Grievant and Inmate. The testimony included personal facts about the Grievant and information that would ordinarily not be known by the two women if the Grievant’s relationship with Inmate were only a normal CO-Inmate relationship. The handwriting on the notes is similar to the Grievant’s handwriting on other documents. The Arbitrator held that the remaining charges do not need to be discussed. The prohibited and unauthorized relationship between the Grievant and Inmate is a serious offense, enough under these facts and circumstances to sustain the forfeiture of the Grienvant’s employment. The Union presented no compelling mitigating factors that would justify a reversal of the Employer’s discharge decision.