**OCB AWARD NUMBER: 2091**

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| **SUBJECT:** | **ARB SUMMARY # 2091** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **27-30-20091022-0150-01-03** |
| **DEPARTMENT:** | Ohio Department of Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | David Pincus |
| **GRIEVANT NAME:** | John Geiger |
| **MANAGEMENT ADVOCATE:** | Buffy Andrews |
| **2ND CHAIR:** | Ashley Hughes |
| **UNION ADVOCATE:** | Thomas Cochrane |
| **ARBITRATION DATE:** | May 27, 2010 |
| **DECISION DATE:** | August 27, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24 |
| **OCB RESEARCH CODES:** | 118.6523—Abusive Language Towards Management;  118.6461—Inmate Abuse-DYS & DRC; 94.551—Authority  of Arbitrator-In General; 118.01—Discipline-In General |
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**HOLDING: Grievance DENIED. The Arbitrator concluded that the Employer had just cause to remove the Grievant because the Grievant physically abused an inmate.**

The Grievant was a Correction Officer at North Central Correctional Institution. The Employer hired the Grievant on September 11, 2000. On September 14, 2009, the Grievant saw a group of inmates congregating on the recreation yard. The Grievant ordered the group to produce their identification cards and to disperse. One of the inmates did not comply with the Grievant’s orders. The Grievant handcuffed the inmate and escorted him towards the supervisors’ office for discipline. During the escort, the grievant and the inmate had a verbal argument. Additionally, the Grievant alleged that the inmate spit in his face. Once in the supervisors’ office, the Grievant pushed the handcuffed inmate toward a desk. The inmate fell back onto the desk and the Grievant held the inmate down on the desk and told threatened the inmate. Supervisors intervened and tried to restrain the Grievant. The Grievant struggled with the supervisors and cursed at them and tried to get to the inmate. Thereafter, the Employer removed the Grievant for violating Work Rule 42—physical abuse, and Work Rule 44—threatening, intimidating, coercing, or use of abusive language.

The Employer argued that it had just cause to remove the Grievant because the Grievant abused an inmate causing physical injury to the inmate. As such, the Employer argued that Article 24.01 precluded the Arbitrator from modifying the removal.

The Union argued that the Grievant’s conduct did not amount to physical abuse because the Grievant did not injure the inmate. The Union conceded that the Grievant mistreated the inmate and that the Employer should discipline the Grievant. However, the Union argued that removal was inappropriate because the Employer did not provide proof about the inmate’s specific physical injury. As such, the Union argued that the Employer did not physically just cause to remove the Grievant.

The Arbitrator denied the grievance because the Arbitrator concluded that the Grievant physically abused the inmate causing physical injury to the inmate. As such, the Arbitrator ruled that Article 24 precluded him from modifying the Grievant’s removal. Further, the Arbitrator believed that the Employer could no longer trust the Grievant to engage in correction activities. The Arbitrator reasoned that the Arbitrator could not reinstate the Grievant without jeopardizing the Department of Rehabilitation and Correction’s mission. Accordingly, the Arbitrator denied the grievance.