**OCB AWARD NUMBER: 2092**

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| **SUBJECT:** | **ARB SUMMARY # 2092** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **27-20-20100225-0095-01-03** |
| **DEPARTMENT:** | Ohio Department of Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Marvin J. Feldman |
| **GRIEVANT NAME:** | Andre Battle |
| **MANAGEMENT ADVOCATE:** | Allison Vaughn |
| **2ND CHAIR:** | Ashley Hughes |
| **UNION ADVOCATE:** | James Beverly |
| **ARBITRATION DATE:** | June 10, 2010; July 19, 2010; and July 20, 2010 |
| **DECISION DATE:** | September 6, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24 |
| **OCB RESEARCH CODES:** | 118.6496—Excessive Use of Force in DRC/DYS; 118.301—  Progressive Discipline; 118.6497—Threat to Security of an  Institution; 5118.6561—Work Rules-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 used excessive force on an inmate.**

The Grievant was a Correction Officer at Mansfield State Reformatory. The Grievant worked as a Correction Officer for ten (10) years. On February 9, 2010, the Employer removed the Grievant for violating Work Rule 38 and Work Rule 40. Specifically, the Employer removed the Grievant because the Grievant used excessive force on an inmate. On September 20, 2009, the Grievant entered an inmate’s cell for a shakedown. The inmate allegedly refused the shakedown by grabbing onto his bed and an adjacent cabinet. In response, the Grievant wrapped his arm around the inmate’s neck. Shortly thereafter, the Grievant grabbed the inmate by the throat and lifted the inmate off of the ground. Several inmates and correction officers yelled for the Grievant to stop, but the Grievant did not immediately disengage.

The Employer argued that it had just cause to remove the Grievant because the Grievant used excessive force on the inmate. During the arbitration hearing, the Employer presented several witnesses who testified about the September 20, 2009 incident. The witness’ testimony about the September 20, 2009 incent revealed that the Grievant used excessive and unnecessary force against the inmate. As such, the Employer urged the Arbitrator to deny the grievance because the Employer had just cause to remove the Grievant.

The Union argued that the Grievant’s removal was without just cause, not commensurate with the offense, excessive, and disparate. Specifically, the Union argued that other officers committed similar offences without being removed. Additionally, the Union complained that the Employer did not discipline the Grievant’s partner for violating protocols on September 20, 2009. The Union explained that the Grievant used the level of force necessary under the circumstances.

The Arbitrator denied the grievance because the Arbitrator concluded that the Grievant used excessive force against an inmate on September 20, 2009. The Arbitrator was disturbed by the size advantage that the Grievant had over the inmate. Further, the Arbitrator determined that the Grievant ignored several policies during the shakedown. Specifically, the Arbitrator determined that the Grievant unnecessarily initiated a dangerous confrontation and used excessive force during the confrontation. The Arbitrator determined that the Grievant’s conduct was grossly dangerous; as such, progressive discipline was inapplicable. Accordingly, the Arbitrator denied the grievance because the Employer had just cause to remove the Grievant.