**OCB AWARD NUMBER: 2097**

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| **SUBJECT:** | **ARB SUMMARY # 2097** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **22-10-20100802-0001-01-14** |
| **DEPARTMENT:** | Ohio Lottery Commission |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | David M. Pincus |
| **GRIEVANT NAME:** | Jeanett Lewis |
| **MANAGEMENT ADVOCATE:** | David Long |
| **2ND CHAIR:** | William Newsome |
| **UNION ADVOCATE:** | Robert Robinson |
| **ARBITRATION DATE:** | July 26, 2010 |
| **DECISION DATE:** | October 1, 2010 |
| **DECISION:** | Modified |
| **CONTRACT SECTIONS:** | Article 24.01—Discipline; Article 24.02—Progressive Discipline; Article 44.02—Operations of Rules and Law; Article 44.04—Work Rules; |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.301—Progressive Discipline; 118.6481—Dishonesty-In General  |
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**HOLDING: Grievance MODIFIED. The grievance was granted in part and denied in part. The removal was modified to a thirty day suspension with back pay for any time served beyond the suspension period. The Grievant was reinstated to her former position with no loss of seniority and all prior benefits were restored.**

The Grievant was hired as a full-time employee on June 28, 1991. She was removed on January 30, 2010 with nineteen years of state service. On March 31, 2009, then Director, Mike Dolan, sent an email to all employees regarding an Inspector General’s investigation of the use of promotional tickets. Dolan cautioned all employees not to distribute or utilize any promotional tickets. The Grievant invited her granddaughter’s mother to Northfield Park on July 17, 2009. The Grievant had a significant number of promotional tickets which she gave to her granddaughter’s mother to play KENO. In order to claim the prize from playing the ticket, it must be signed. Northfield Park personnel informed the Employer that one of its employees and a compatriot played nineteen promotional tickets and received an equal number of claim forms. The Grievant and her compatriot were identified as the culprits. The Grievant admitted signing the claim forms with a fictitious name. On January 29, 2010, the Employer issued a removal order for violation of Policy HR-09-01 Work rule IV-K, Dishonesty, violation of O.R.C. 124.34, HR-09-01 Work rule III-E, Failure of Good Behavior and Insubordination.

The Employer argued that the discipline was timely and reasonable given the circumstances. The July 17, 2009, incident was brought to the Employer’s attention in September of 2009. Interviews were initiated and analyzed which surfaced a number of discrepancies and caused another round of interviews to be conducted. A pre-disciplinary hearing was conducted in January of 2010, when the parties were able to coordinate their calendars. The Employer argued the Grievant was insubordinate when she disobeyed a direct order by her supervisor, Director Dolan. The Grievant admitted to signing the claim forms, even though she used an alias somewhat related to her prior common law relationship which the Employer argued amounted to dishonesty in violation of the work rule. The Grievant’s explanations for her actions were inconsistent. Her varying versions were not supported by the union’s claim that a diabetic episode caused the Grienvant to be confuse on the date in question. Those varying explanations greatly reduced the Grievant’s credibility, and thus, her general trustworthiness.

The Union arguedthat the Employer did not have just cause to remove the Grievant. The Employer violated Article 24.02. The six month delay in issuing disciplined caused the untimely removal of the Grievant. The O.R.C. 124.34 claim was not properly supported. The record failed to identify specific acts of misconduct in violation of this provision. The Grievant was not insubordinate. The Director’s email was not a directive in a classical sense; as such it could be used to support removal. The Grievant did not violate Work rule IV-K. Nothing in the rule equates signing a coupon as an act of dishonesty. The Grievant signed the claim forms, but there were documented mitigating circumstances which faded her recollection. Due to mitigating on the date in question, the Grievant became confused, which could have caused her to sign the forms with an alias. The Grievant is trustworthy and her work record supports this conclusion.

The Arbitrator foundthat the Employer had just cause to discipline, but not remove the Grievant from employment. The Employer did not violate Article 24.02, because most of the initial delay in disciplining the Grievant was outside the Employer’s control. The Grievant did not violate Work rule B-Insubordination. The Arbitrator determined that the Employer failed to put employees on notice of the disciplinary consequences of not following the instructions in the email from Mr. Dolan. The dishonesty charge was elusive, and yet, discipline was unavoidable but somewhat mitigated. The Grievant’s length of seniority, untarnished disciplinary record and strong prior performance record persuaded the the Arbitrator to modify the grievance.