**OCB AWARD NUMBER: 2098**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2098** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-10100702-11-04-01** |
| **DEPARTMENT:** | The Ohio State Highway Patrol/Public Safety |
| **UNION:** | Ohio State Troopers Association |
| **ARBITRATOR:** | Mollie H. Bowers |
| **GRIEVANT NAME:** | Amanda J. Myers |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin D. Miller |
| **2ND CHAIR:** | Marissa Hartley |
| **UNION ADVOCATE:** | Herchel Sigall |
| **ARBITRATION DATE:** | August 17, 2010 |
| **DECISION DATE:** | October 4, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 19.05—Progressive Discipline |
| **OCB RESEARCH CODES:** | 106.101—Harassment-General, 118.301—Progressive Discipline, 118.6521—Insubordination |
|  |  |

**HOLDING: Grievance DENIED. The Grievant was given sufficient warning that access to OHLEG was restricted. However, grievant routinely accessed OHLEG for personal reasons. Additionally, grievant was indicted by the Clermont County Grand Jury in connection with her improper use of OHLEG. The Union’s argument of Disparate Treatment was also rejected. Termination of employment is proper.**

The Grievant worked as a Highway Patrol Radio Dispatcher for just over four years. She was certified for the Law Enforcement Automated Data System (LEADS), and attended a one-hour training session on how to use the Ohio Law Enforcement Gateway (OHLEG) system. Usage of these two computer database systems is restricted to law enforcement purposes only. The Employer became aware that the grievant had been misusing OHLEG to obtain information about her boyfriends. Two audits of OHLEG usage by the Grievant were conducted. Both audits found that the grievant made numerous inquiries on the system that were not permitted. The grievant acknowledged the searches because she wanted to check the background of men she was dating. The grievant admitted that she also accessed the OHLEG system from locations other than work. The grievant was terminated from her employment on June 29, 2010, for violation of Work Rule 501.01(C)(10)(d) Failure of Good Behavior and for violation of Work Rule 510(C)(10)(e) for unauthorized accessing of OHLEG. Further, the grievant was indicted in Clermont County, Ohio on a single count of Unauthorized Use of Property (ORC 2913.04), a felony of the fifth degree.

The Employer arguedthat the grievant had ample notice that access to OHLEG was restricted to law enforcement purposes and must be done only from computers at Division facilities unless prior approval is provided by a supervisor. The grievant did not have such approval. The grievant had read the policy governing OHLEG and signed an OHLEG user agreement. The grievant acknowledged receipt of a copy of the Work Rules which explicitly prohibits the use of state property for any reason other than official state business. The Employer argued it did everything it could to put the Grievant on notice that behavior of the sort she admitted to having engaged in is not only unacceptable, but also that there are negative consequences attached to nonconformance with the explicit prohibitions contained in the Department’s Rules and Policies. The Patrol asked that the grievance be denied in its entirety.

The Union arguedthat the Employer violated the collective bargaining agreement (CBA), Article 19, Disciplinary Procedure, Section 19.05, Progressive Discipline and treated the grievant in a “shockingly different” manner from all others who engaged in similar conduct by terminating her employment. The grievant admitted that she “played” with the system, looked at BMV pictures of her parents, sibling, co-workers, and fellow officers, and used OHLEG “on three occasions to check on people she was interested in dating.” This is not conduct that gives rise to the level of criminal behavior or warrants the harshest discipline possible—termination. The Union argued the grievant was subjected to disparate treatment and cited eight separate cases similar to this case in which the punishment was much less severe. The Union alleged that the the Employer used the indictment of the grievant as justification to “jack up” the significance of the grievant’s behavior to justify termination of employment. The Union asked, as a remedy, that the Grievant be reinstated to her former position as Dispatcher, with full seniority and benefits, and to be made whole in every respect.

The Arbitrator foundthat the grievant was disciplined for just cause and that the discipline of termination should stand. Particular weight was given to the persistent pattern of the grievant’s unauthorized access over a considerable period of time, the multiple locations used to access OHLEG, the frivolous reasons the grievant gave for accessing the system, and the grievant’s short tenure with the Patrol. The totality of the grievant’s actions shows a willful, deliberate, and persistent intent to engage in behavior that she clearly knew, or should have known, was prohibited. Article 19, Section 19.05 of the CBA does not mandate that the steps outlined therein shall be followed regardless of the nature of the offense. Indeed, the language states that “Disciplinary action shall be commensurate with the offense.” The grievance is denied in its entirety.