**OCB AWARD NUMBER: 2101**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2101** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20091124-158-04-01** |
| **DEPARTMENT:** | Ohio State Highway Patrol |
| **UNION:** | Ohio State Trooper Association |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Jeffrey A. Burroughs |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin D. Miller |
| **2ND CHAIR:** | Sgt. Anne R. Ralston |
| **UNION ADVOCATE:** | Herschel Signall |
| **ARBITRATION DATE:** | October 18, 2010 |
| **DECISION DATE:** | October 26, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 19.01—Standard; Article 19.05—Progressive Discipline |
| **OCB RESEARCH CODES:** | 2.01—Management Rights; 118.301—Progressive Discipline; 118.6561—Work Rules  |
|  |  |

**HOLDING: Grievance DENIED. The Arbitrator found that the Employer had just cause to issue a three day suspension to the Grievant.**

On August 20, 2009, Grievant initiated a traffic stop. As a result of the stop, Grievant placed the driver of vehicle into custody. The driver has a passenger, so Grievant called for assistance. The fellow trooper received consent from the passenger to search the car. During the search, the fellow trooper found a marijuana blunt in a self-contained container. The Grievant stated that he said “ought to toss it” (referring to the marijuana), but was interpreted to mean toss it (as in get rid of it). The Grievant issued a citation to the passenger at the sheriff’s department. The Grievant was charged with violating work rule 4501:2-6-02(B)(1) Performance of Duty for failure to perform his duties in a professional manner.

The Employer arguedthat on the date of the incident, Grievant failed to carry out his duties in a professional manner. The statement by the Grievant to dispose of evidence is unprofessional and the discipline was proper and appropriate in these circumstances. The Employer contends that it is not the responsibility of Grievant to determine the admissibility of evidence, but for the judicial system. The behavior exhibited by Grievant is grossly unacceptable in its professional organization. The discipline was progressive. Grievant had two written reprimands and a one-day suspension on his department record. The Employer requests the Arbitrator to uphold the standards and expectations of the Division and deny the grievance.

The Union arguedthat the Grievant did not direct his fellow trooper to dispose of evidence. In the Grievant’s opinion, with thirteen years of experience, there was a residual amount of contraband, the search was unconstitutional, the passenger gave consent to search only for weapns, and marijuana was located in self-contained container. When Grievant knew his statement was misinterpreted by fellow trooper, the Grievant said, “no, hold on to it!” Grievant issued the citation. The discipline was excessive and did not commensurate the offense. The Union requests the Arbitrator grant the grievance.

The Arbitrator foundthat there is a factual dispute whether or not Grievant directed his fellow trooper to dispose of the marijuana blunt. It is not meant for a trooper to make this type of determination in the field. The residual amount of contraband is not an issue in the performance of his duties as a trooper. The expectation from his employer is to secure the evidence, and then allow the judicial system to administer justice. The evidence supports a finding that Grievant directed his fellow trooper to dispose of the marijuana. Said conduct is unprofessional and has a direct correlation to his job duties. The discipline was with just cause. The three day suspension was not so excessive a punishment as to beyond the Employer’s managerial prerogatives. The grievance is denied.