**OCB AWARD NUMBER: 2103**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2103** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **27-19-20090324-0076-01-03** |
| **DEPARTMENT:** | Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | David M. Pincus |
| **GRIEVANT NAME:** | Clifford Edge |
| **MANAGEMENT ADVOCATE:** | David Lundberg |
| **2ND CHAIR:** | Jessie R. Keyes |
| **UNION ADVOCATE:** | Mike Hill |
| **ARBITRATION DATE:** | September 15, 2010 |
| **DECISION DATE:** | November 4, 2010 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 19.05—Progressive Discipline; Article 19.01—Standard  |
| **OCB RESEARCH CODES:** | Discipline-In General—118.01; Last Chance Agreements—118.75; Progressive Discipline—118.301 |
|  |  |

**HOLDING: Grievance DENIED. The Arbitrator found that the Grievant did not have probable cause to issue a citation for not wearing a seatbelt and that the Grievant’s issuing of a seatbelt citation in this instance was the event that triggered the LCA.**

The Grievant was assigned to the Chillicothe Patrol Post on April, 5, 2010. On this date, the Grievant was on patrol and checked a UPS truck on US 23 traveling in the opposite direction in excess of the posted speed limit. The Grievant stopped the vehicle and began to talk with Ms. Hall, the driver. During the exchange, the Grievant told Ms. Hall that he can cut her a deal by giving her a warning for the speeding violation and give her a citation on not having a seatbelt on because it will not go against her license. This exchange was recorded by the Grievant’s patrol car video. Later that day, Ms. Hall called the Chillicothe Post and claimed that Grievant issued her a citation for not wearing a seatbelt, even though, according to her, the Grievant knew she had her seatbelt on, and despite her request that she be given the speeding citation as opposed to the seatbelt citation. Ms. Hall filed a written statement and an Administrative Investigation was opened. The Grievant was charged with a violation of the Ohio Highway Patrol’s Rules and Regulations, specifically Compliance to Orders. The Grievant was on a Last Chance Agreement (LCA) and was discharged.

The Employer arguedthat it had just cause to terminate the Grievant. The audio portion of the video demonstrates that the Grievant attempted “cut her a deal” and issued a seatbelt violation instead of the speeding violation for which he stopped her. The Grievant’s own words “I’m gonna say…” demonstrate that he was uncertain and was making an assumption regarding something he did not actually witness. The Grievant testified that if you are not 100% sure of a violation, you do not issue the citation. The Grievant admitted that he never looked at the seatbelt, even after Hall told him there was no shoulder belt. The Grievant did not see Hall not wearing her seatbelt; therefore, he issued a citation without probable cause. The Employer argued that other troopers have been charged with violation of the Division’s Compliance to Orders rule for improper issuance of seatbelt citations, although they were not discharged. The Grievant’s discipline of termination was predicated on a mutually agreed LCA signed by Grievant on December 29, 2009. The Employer argued that this behavior could expose the Division to litigation due to troopers not treating everyone equally and requests that the grievance be denied.

The Union arguedthat the Grievant reasonably believed he had probable cause to issue a citation for a seatbelt violation to Ms. Hall. The Grievant had a clear view of her operation of the truck because she had the door open. The Grievant charged Ms. Hall under ORC 4511.263. The UPS truck did not have a three point seat restraint system, and therefore was a violation of Ohio law. The Union also argued that the investigation conducted by the Employer was flawed. Lt. Linek confirmed that if the restraint system had been removed or altered it would constitute a violation of the seatbelt law of Ohio. Lt. Linek also testified that the Grievant should have issued a warning. The standard for a warning is the same as a citation; the trooper must have probable cause. The Employer failed to prove that the Grievant did not observe a seatbelt violation and did not have probable cause. The grievance should be granted and the Grievant must be restored to his position with no loss of pay or benefits.

The Arbitratorheld that the grievance must be denied. The Employer proved by a preponderance of the evidence that the Grievant did not have probable cause to issue Ms. Hall a citation for not wearing a seatbelt. The Compliance to Orders violation triggers the LCA signed by the Grievant on December 29, 2010, and subjects him to termination. The Arbitrator held that the Grievant may have suspected that Ms. Hall was not wearing a seatbelt, because the Grievant did not see the shoulder harness. The Grievant did not witness that Ms. Hall did not have the seatbelt fastened because Ms. Hall was not in the driver’s seat when the Grievant approached the truck. The Union’s attempt to show that having only a lap belt was a violation of law must be rejected because, the Grievant admitted that he was not thinking about any tampering with the original seatbelt and the lack of shoulder harness when he issued the citation and Ms. Hall was attempting to comply with the law by wearing a lap belt. The Grievant’s issuing of a seatbelt citation in this instance was the event that triggered the LCA. The Arbitrator has no power to mitigate the discipline to which the Grievant, the Union and the Employer agreed. The grievance is denied.