**OCB AWARD NUMBER: 2108**

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| **SUBJECT:** | **ARB SUMMARY # 2108** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **27-11-20090615-0034-01-05** |
| **DEPARTMENT:** | Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Susan Grody Ruben, Esq. |
| **GRIEVANT NAME:** | Yuntaya Carter-Hoskins |
| **MANAGEMENT ADVOCATE:** | Ben Dunn |
| **2ND CHAIR:** | Ashley Hughes |
| **UNION ADVOCATE:** | Robert Jones |
| **ARBITRATION DATE:** | September 21, 2010 |
| **DECISION DATE:** | December 19, 2010 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 24.01—Standard; Article 24.02—Progressive Discipline; Article 24.06—Imposition of Discipline |
| **OCB RESEARCH CODES:** | Insubordination—118.6521; Progressive Discipline—118.301; Discipline-In General—118.01 |
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**HOLDING: Grievance DENIED. The Arbitrator found that the Grievant did not sufficiently cooperate during the internal investigation and the Employer had just cause to remove the Grievant for the serious offense of not cooperating in an internal investigation.**

The Grievant began her employment in May of 1999. On April 28, 2009, the Grievant was arrested at her home on a charge of Obstructing Official Business when she refused to let deputies enter her house. The Employer opened an internal investigation regarding the Grievant’s arrest. During the interviews, the Grievant stated that certain questions should be directed to her attorney and would not give any response. The Grievant was removed based on the arrest and not being cooperative during an investigatory interview which violated Rule 24—Interfering with, failing to cooperate in, or lying in an official investigation or inquiry.

The Employer arguedthat the Grievant engaged in self-help by refusing to answer legitimate and reasonable questions regarding her off-duty conduct. The Employer had no duty to contact the Grievant’s attorney during the investigation. The Employer has a reasonable expectation that all employees will conduct themselves in a manner such that their activities both on and off duty will not adversely affect their ability to perform their job duties. Because the Grievant chose not to cooperate with an official investigation, the Employer was unable to complete a proper investigation. The Grievant had seven active disciplines, three which were performance-related disciplines. The disciplinary grid mandates removal for a Rule 24 violation on the third offense. The Employer argued the grievance should therefore be denied.

The Union arguedthat the Employer did not have just cause to remove the Grievant. The Employer lacked sufficient evidence to prove the Grievant failed to cooperate in the investigation. The Employer abruptly ended the interviews without caucusing with the Union steward and the Grievant about a duty to respond. The Employer also failed to give the Grievant clear forewarning of the severe consequences of her actions and failed to give the Grievant training on about Garrity Rights. The Grievant was following the direction of her attorney not to answer the question about property removed from her home. This was the Grievant’s first offense for an alleged violation of Rule 24. Progressive discipline was not followed pursuant to Article 24.02. Therefore, the union argued the grievance should be granted.

The Arbitrator foundthat the Grievant’s arrest for obstructing official business gave the Employer cause to conduct an internal investigation. The Grievant was well aware she had a duty to cooperate fully during that investigation. It was within the Employer’s reasonable interest to investigate various aspects of the Grievant’s arrest to determine whether she was fit for duty. The Grievant did not sufficiently cooperate during the internal investigation. The Grievant had seven active disciplines at the time of her removal, three of them performance related. Thus, it was within the zone of reasonableness for the Employer to conclude it was appropriate to remove the Grievant for the serious offense of not cooperating in an internal investigation. Therefore, the Arbitrator denied the grievance.