**OCB AWARD NUMBER: 2111**

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| **SUBJECT:** | **ARB SUMMARY # 2111** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20091220-0174-07-15** |
| **DEPARTMENT:** | Public Safety  |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Jeffery Ruddle |
| **MANAGEMENT ADVOCATE:** | Sgt. Anne R. Ralston |
| **2ND CHAIR:** | Lt. Kevin D. Miller |
| **UNION ADVOCATE:** | Elaine Silveira  |
| **ARBITRATION DATE:** | January 27, 2011 |
| **DECISION DATE:** | February 8, 2011 |
| **DECISION:** | Modified |
| **CONTRACT SECTIONS:** | Article 19.05—Progressive Discipline  |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.08—Suspension-In General; 118.6561—Work Rules-In General  |
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**HOLDING: Grievance MODIFIED. The Arbitrator found just cause to discipline the Grievant for his failure to complete documentation but did not find just cause for discipline on the allegation of failure to supervise a trooper who was in his command. The arbitrator determined that the Employer failed to meet its burden of proof on that allegation. The five (5) day suspension was deemed to be excessive and was reduced to a three (3) day suspension.**

On August 30, 2009, the Grievant was the supervisor of the 11p.m.-7a.m shift at the Hiram Post. During the shift, the office of Immigration and Customs Enforcement (I.C.E.) reported a vehicle traveling the Ohio turnpike that was suspected in illegal activity and may have had a large amount of currency in the vehicle. Trooper Head (Head) stopped the vehicle. The Grievant and two other troopers responded for assistance. The Grievant conducted the probable cause search of the vehicle and found a vacuum sealed bag that contained $34,720.00 in U.S. currency, a small amount of marijuana, and paraphernalia. The money was surrendered to the I.C.E. agents with no internal documentation. The Grievant instructed Head to complete a case investigation and enter the case into the system. Head failed to file the original marijuana and drug paraphernalia charges in the court. The Grievant was charged with violation of work rule 4501:2-6-02(B)(1) Performance of Duty for failure to carry out all duties completely and without delay, and work rule 4501:2-6-03(A)(1) Responsibility of Command for failure to supervise a trooper under his command. The Grievant was given a five-day suspension.

The Employer arguedthe Grievant failed to properly handle evidence seized in a traffic stop. Departmental policy requires all evidence seized and released to be documented on agency specific forms. The Grievant failed to conduct a count of the money seized, and released the same to the federal agents without internal documentation. This behavior was a violation of work rule 4501:2-6-02(B)(1). The Grievant concluded the overtime shifts without ensuring the trooper under his command completed the case investigation summary and associated documents. This behavior was a violation of work rule 4501:2-6-03(A)(1). The discipline is progressive. The Grievant had been trained and has completed three (3) courses to address his deficiencies. The Grievant had a one-day suspension and a two-day suspension on his record at the time of the incident. These disciplines stem from three prior charges of Failure to Supervise or Perform Supervisory Duties and one charge of Responsibility for Orders/Command. The behavior of the Grievant had not changed, and it was necessary to advance to the next step in progression. The Employer had just cause to issue the five-day suspension.

The Union arguedthe Grievant supervised the other troopers in his command. The Grievant had seventy two (72) hours to complete the Records Information Management Report System, and it was his intention to return to work to complete the same. The agency specific forms were not completed because it was I.C.E.’s case. The forms required by I.C.E. were completed, and a copy was provided to the post upon request. No issue of chain of custody presented itself, and neither case was jeopardized by the lack of internal documentation. The discipline should be reduced. The Union argued the Arbitrator should grant the grievance and that the five (5) days of wages and benefits should be returned to him, and his deportment record should be cleared.

The Arbitrator found that no evidence was presented concerning Trooper Head’s years of service and the level of supervision that he required. Without such evidence, filing criminal charges in connection with the traffic stop and car search should have been a routine matter for Head. As such, the Employer did not satisfy its burden of proving that the Grievant failed to supervise troopers under his command. The Arbitrator found that the Grievant violated work rule 4501:2-6-02(B)(1) Performance of Duty because he failed to complete required Highway Patrol documentation. However, the Arbitrator determined that the five-day suspension was excessive and unreasonable. The Arbitrator sustained the charge of Responsibility of Command but modified the five-day suspension to a three-day suspension.