**OCB AWARD NUMBER: 2112**

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| **SUBJECT:** | **ARB SUMMARY # 2112** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20100226-0015-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Donald E. Walker |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin D. Miller |
| **2ND CHAIR:** | Sgt. Anne R. Ralston |
| **UNION ADVOCATE:** | Elaine Silveira |
| **ARBITRATION DATE:** | January 27, 2011 |
| **DECISION DATE:** | February 8, 2011 |
| **DECISION:** | Modified |
| **CONTRACT SECTIONS:** | Article 19.01—Standard |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.301—Progressive Discipline; 118.25—Work Rules-In General |
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**HOLDING: Grievance MODIFIED. The Arbitrator found that the Employer satisfied its burden of proving that the Grievant failed to travel at a lawful speed in accordance with policy and procedure. The five-day fine of the Grievant was excessive, unreasonable, and contrary to Article 19.01 and 19.05 of the Collective Bargaining Agreement.**

On September 26, 2009, Grievant was involved in a patrol car crash involving a deer. Grievant frequently stopped by a Circle K for coffee before going to work. When Grievant was leaving the Circle K, heading to his post, a deer darted in front of his cruiser. Grievant was not injured. The estimate to repair the patrol car was in excess of $10,000 and the vehicle was not repaired. Grievant did not provide a rate of speed at the time of the accident and reported the crash at 5:49a.m. The Automated Vehicle Locator (AVL) history shows a speed of 78 miles per hour at approximately 5:32a.m. The last speed shown on the AVL Report is 88 miles per hour. The GPS report indicates that Grievant’s location was west of the location where Grievant struck the deer. Grievant was charged with violation of work rule 4501:2-6-02(Y)(2) Compliance to Orders and work rule 4501:2-6-05(D)(1) Motor Vehicle Operation. The Grievant was issued a five (5) day suspension.

The Employer arguedthat the routine deer crash reports are normally coded as a non-preventable crash and the officer is not disciplined. This is different because the Grievant was traveling at excessive speeds as captured by the GPS-AVL locator in the patrol car. If the Grievant was not obeying the speed limit then the Grievant was not doing everything to prevent a crash. The Employer argued that it is impossible to travel the distance from the Circle K to the Warren Post at the posted speed limits from the time Grievant left and arrived at the post prior to the start of his shift. The excessive damage is also an indicator of excessive speed. There is just cause to discipline Grievant for excessive speed. The Grievant had two reprimands, two one-day suspensions, and a three-day suspension on his record at the time of the incident. The next step was a five-day suspension. The grievance should be denied.

The Union arguedthat a deer crash is not-preventable regardless of speed. Discipline should not be imposed for a non-preventable deer crash. The Union argued that the GPS-AVL report is not reliable. The witness to the crash noted Grievant’s speed around 55 mph. The Union argued that this case is one of disparate treatment. This was the only administrative investigation conducted on a deer crash in 2009. The Union argued that a five (5) days fine was excessive and in light of the evidence of disparate treatment, it was arbitrary, capricious and discriminatory.

The Arbitrator foundthat the crash was non-preventable, however the evidence also supported the claim that the Grievant was traveling in excess of the speed limit at the time the crash occurred. There was no evidence that AVL locator was not properly operating on the day of the accident and the witness’s observation was not persuasive evidence of the Grievant’s speed. The found that Employer satisfied its burden of proving that the Grievant failed to travel at a lawful speed in accordance with policy and procedure and therefore there was just cause to discipline. The Collective Bargaining Agreement states that penalties can be repeated and lesser discipline imposed; it is not necessary to advance to the next step in progression. The Grievant violated the work rules; however, the five-day fine of the Grievant was excessive, and contrary to Article 19.01 and 19.05 of the Collective Bargaining Agreement. The Arbitrator sustains the grievance in part. The five-day suspension is modified to a one-day suspension and Grievant was given back pay and benefits less the period of the suspension.