**OCB AWARD NUMBER: 2114**

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| **SUBJECT:** | **ARB SUMMARY # 2114** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20090419-0057-04-01** |
| **DEPARTMENT:** | Public Safety  |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Virginia Wallace-Curry |
| **GRIEVANT NAME:** | Patrick Phouts |
| **MANAGEMENT ADVOCATE:** | Kevin Miller |
| **2ND CHAIR:** | Anne Ralston |
| **UNION ADVOCATE:** | Herschel Sigall |
| **ARBITRATION DATE:** | January 11, 2011 |
| **DECISION DATE:** | March 22, 2011 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 51—Court Leave |
| **OCB RESEARCH CODES:** | 115.226—Court Appearance Pay; 118.637—Traffic Violations; 24.351—Past Practice-In General  |
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**HOLDING: Grievance DENIED. The Arbitrator found that the Grievant was not entitled to court leave and compensation under Article 51 of the collective bargaining agreement.**

On March 16, 2009, the Grievant responded to a request for back-up by his shift supervisor, Sergeant Jason Greenwood. While in route to the scene, the Grievant activated his emergency lights and siren as he approached three cars in his path. Two cars immediately pulled over to the right of the roadway, while the third car, driven by a 16 year old who had just secured her license, did not pull over to the right. She turned left into the lane in which the Grievant was traveling. The Grievant attempted to swing further left to avoid the accident but collided with her car. Sgt. Greenwood assigned responsibility for the accident to the young driver. Lt. Norris told Sgt. Greenwood that the Grievant should be cited for the accident. Sgt. Greenwood refused, but was given a direct order to charge the Grievant and he issued a citation to him. On April 10, 2009, while off-duty, the Grievant appeared in court for his arraignment. The prosecutor dismissed the case without prejudice to the State. After his appearance in court on April 10, 2009, the Grievant entered a request for minimum court appearance pay and the request was denied. The Union alleged a violation of Section 51.02 of the Agreement.

The Union arguedthat Article 51 was intended to cover actions where the Trooper is mandated to explain the event of an on-duty accident. The Grievant appeared in court as a result of an action arising out of his employment; was not responsible for the accident that ensued, and was wrongfully cited. The Union argued that the Grievant’s time spent defending his public and official conduct clearly fell within the express language of Article 51. The contract is intended to cover instances such as this where the Trooper was called to answer for actions taken while officially acting as a Trooper. The Union requested that the grievance be sustained and the Grievant be awarded three hours of court leave pay as provided in Article 51.02.

The Employer arguedthat the Grievant was not entitled to compensation for his court appearance because he was named as a party before the court. In interpreting the meaning and intent of Article 51, all three subsections, 51.01, 51.02 and 51.03, must be examined. If Section 51.02 were intended to stand alone, there would be no reason for the language in Section 51.01. The Grievant was not summoned for jury duty and he was not subpoenaed to appear before any court or official proceeding. A Trooper who receives a citation while they are working and chooses to appear in court to contest the charge is not appearing on an action that arose out of their employment. The fact that they are a law enforcement officer and allegedly broke the law while on-duty does not entitle them to compensation to fight their own personal legal battles. The Employer noted two similar situations like this had occurred in the past and neither one received court appearance pay. The Employer requested that the grievance be denied in its entirety.

The Arbitrator foundthat the grievance must be denied. There is no language that grants court leave time for the situation posed by this grievance. The Grievant chose to appear in court to contest the citation. Section 51.02 (C) of the contract refers to any employment related action in which the employee is subpoenaed. Under Section 51.03, the employee may be granted leave to appear in court rather than receive compensation. Article 51 does not include a scenario in which the employee is cleared of wrongdoing and, thus, appeared in court on an action arising out of his/her employment. Therefore, the grievance was denied.