**OCB AWARD NUMBER: 2119**

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| **SUBJECT:** | **ARB SUMMARY # 2119** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20100513-0094-04-01** |
| **DEPARTMENT:** | Department of Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Sandra Mendel Furman |
| **GRIEVANT NAME:** | Marshall Williams |
| **MANAGEMENT ADVOCATE:** | Anne Ralston |
| **2ND CHAIR:** |  |
| **UNION ADVOCATE:** | Elaine Silveira |
| **ARBITRATION DATE:** | April 7, 2011 |
| **DECISION DATE:** | April 20, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 19 |
| **OCB RESEARCH CODES:** | 118.08—Suspension-In General; 118.301—Progressive Discipline; 118.6561—Work Rules-In General |

**HOLDING: Grievance DENIED. The Arbitrator found that the discipline is progressive and the one (1) day suspension is warranted. The grievant has a documented history of violation of department rules and cited no mitigation for his failure to abide by department rules in this case. The discipline is warranted, is progressive, and is not excessive under these circumstances.**

The Grievant has been employed for five years, as a Trooper, at the Warren Post District 4 Post 78. The Grievant was patrolling when he became involved in a high speed pursuit. When the Grievant joined the pursuit, his lights were flashing and he was not sounding his siren. The Grievant was traveling at speeds in excess of 90 mph until the suspect was stopped at the toll booth by other law enforcement officers. The Grievant also did not have his body microphone on during the entire time of the pursuit. The Grievant was not originally investigated or charged with the failure to activate his body microphone; it was added at a later date. The Grievant was charged with violation of work rule 4501:2-6-02(Y)(2) Compliance Orders. The Grievant received a one (1) day suspension. The Grievant’s deportment record includes: One (1) day suspension, verbal reprimand, One (1) day fine, and two written reprimands.

The Employer argued the Grievant violated a work rule. The Grievant failed to activate his body microphone and he failed to keep his siren turned on during a high speed emergency pursuit. The Grievant’s discipline record illustrates that the discipline is progressive and the grievance should be denied.

The Union arguedthe Grievant did not intend to violate the rules. It was reasonable and necessary for him to turn off the siren in order to hear the dispatcher and his conduct did not cause harm to the public. Under the totality of the circumstances in this matter, the discipline is arbitrary and capricious and the grievance should be granted.

The Arbitrator foundthe Grievant clearly violated work rules when he failed to activate his siren during a high speed pursuit and when he failed to turn on his body mic. The only question is whether there is mitigation for the Grievant’s actions that could form the basis for a reduction in the discipline imposed.

The Arbitrator does not find any mitigation in the Grievant’s claim that he turned off his siren in violation of policy in order to hear the dispatcher. This policy pertaining to siren use applies to all troopers and all troopers must listen to the dispatcher. The solution to not being able to hear the dispatcher is to turn up the volume on the radio. The Grievant offered no excuse for not turning on his body mic.

The Arbitrator ruled that the discipline was warranted and was progressive in light of the Grievant’s discipline record and denied the grievance.