**OCB AWARD NUMBER: 2123**

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| **SUBJECT:** | **ARB SUMMARY # 2123** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **30-04-20100503-0035-01-14** |
| **DEPARTMENT:** | Taxation |
| **UNION:** | OSCEA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Louis H. Byers |
| **MANAGEMENT ADVOCATE:** | Ashley Hughes |
| **2ND CHAIR:** | Michael Duco  |
| **UNION ADVOCATE:** | John Porter |
| **ARBITRATION DATE:** | March 25, 2011 |
| **DECISION DATE:** | May 22, 2011 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 28.01—Vacations; Article 36.07—Wages  |
| **OCB RESEARCH CODES:** | 94.554—Effect of Prior Awards; 124.80—Service Credit; 93.4661—Timeliness of Grievances  |
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**HOLDING: Grievance DENIED. The Arbitrator found that he is limited to 22 additional days pursuant to Section 25.02.**

The Grievant was hired by the Department of Taxation effective January 4, 1999. Prior to that time, the Grievant had served six years in the Ohio National Guard. On about April 25, 2010, the Grievant became aware that his Ohio National Guard service could be converted to State service credit. Grievant submitted a written request to obtain it, and the State granted the credit effective April 25, 2010. Arbitrator Graham awarded five grievants State service credit “based on the initial date of enlistment in the National Guard.

The Union arguedthat the Grievant should receive service credit back to the date of the Graham Award, June 21, 2001. The State is depriving the Grievant of vacation accruals and longevity pay which he earned based on his Ohio National Guard service. The State should not be permitted to put the onus on employees to apply to receive something granted in 2001 in the Graham Award. The Union requests the Arbitrator to retain jurisdiction until the vacation accrual and longevity pay are calculated and agreed to by the Parties.

The Employer arguedthat the grievance is untimely. The Grievant reasonably should have become aware he was eligible for additional State service credit when the Graham Award was issued—June 21, 2001. The instant grievance was filed May 3, 2010, approximately nine years after the Graham Award was issued. The Grievant should have became aware of his eligibility when the Union published an article on the subject in 2007 in the Union newsletter. The grievance also lacks merit. The Graham Award expressly limited any retroactivity to five grievants in that case. That retroactivity was limited to 30 days pursuant to Article 25.02. The State has no obligation to notify employees of their Ohio National Guard service credit eligibility.

The Arbitrator foundthat he is limited to 22 additional days pursuant to Section 25.02. The Agreement does not require the State to identify and seek requests for service credit from employees who served in the Ohio National Guard. As soon as the Grievant provided documentation, he was credited for his Ohio National Guard Service. The grievance is denied.