**OCB AWARD NUMBER: 2124**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2124** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-030-20101210-0164-04-01** |
| **DEPARTMENT:** | Ohio State Highway Patrol |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Bertha L. Toton |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin D. Miller |
| **2ND CHAIR:** | Lt. Charles J. Linek |
| **UNION ADVOCATE:** | Herschel Sigall |
| **ARBITRATION DATE:** | May 26, 2011 |
| **DECISION DATE:** | June 8, 2011 |
| **DECISION:** | Granted |
| **CONTRACT SECTIONS:** | Article 19—Disciplinary Procedure |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.08—Suspensions-In General; 118.6561—Work Rules-In General |
|  |  |

**HOLDING: Grievance GRANTED. The Arbitrator found that the Employer did not have just cause to issue a ten-day suspension. The Grievant in this case initiated a traffic stop for slow speed at night on a two lane highway after following the citizen vehicle for a mile and determining slow speed (15 mph below the posted speed) may indicate driver impairment based on her training. The Arbitrator determined that the Grievant had sufficient suspicion to initiate an investigatory stop and that no violation of OSP work rules occurred.**

A citizen-complaint was filed against the Grievant in a matter unrelated to the grievance at issue. As a result of the complaint, a review was conducted of her videotape on September 23, 2010. On September 23, 2010, the Grievant stopped a vehicle that was travelling slowly to make sure everything was okay. The duration of the stop was three minutes and three seconds. There were a total of six vehicles that passed by the area during the traffic stop. During the Grievant’s investigatory interview, she stated that she paced the vehicle at 40mph for approximately one half mile to one mile and the vehicle was traveling 15 miles below the speed limit. She stopped the vehicle to conduct a “wellness check.” The Grievant learned in her Advanced Detection and Apprehension and Prosecution (ADAP) training that when you observe a vehicle that had indications of a possible OVI driver, you stop the vehicle to see if the occupants inside it are sober and licensed. The Grievant attended training on three occasions prior to the traffic stop in question.

The Grievant was charged with violating work rules, Compliance to Orders and Performance of Duty, for allegedly stopping a vehicle with no probable cause. The Grievant was given a ten-day suspension. The Grievant had ten reprimands, three one-day suspensions, two three-day suspensions, and a five-day suspension on her record at the time of the discipline.

The Employer arguedthat the Grievant violated work rule Compliance to Orders and work rule Performance of Duty for stopping a vehicle with no probable cause or reasonable articulable suspicion contrary Ohio State Highway Patrol Policy Number: OSP-203.46. Trainees are not taught to conduct “wellness checks” but only stops with probable cause or reasonable articulable suspicion based upon the totality of the circumstances. The Employer noted that it had tried to address the Grievant’s deficiencies through trainings, special reviews, and supervisory ride-alongs. The Grievant failed to comply with Division policy and procedures and progression in discipline is a necessary step in correcting behavior. The ten-day suspension was appropriate and commensurate with the infraction. The Employer requested the Arbitrator to deny the grievance.

The Union arguedthat the stop of the vehicle was “text book”; the Grievant’s actions during the stop were in compliance with policy and training, and did not warrant discipline. The Grievant’s prior discipline record was not relevant because there was no just cause to discipline her in this instance. A traffic stop may be made on the basis of reasonable articulable suspicion. The Union requested the Arbitrator to grant the grievance.

The Arbitrator foundthat the Ohio State Highway Patrol Policy Number: OSP-203.46 permits traffic stops based on a standard of reasonable suspicion. A Trooper must have a reasonable suspicion of criminal activity, including a minor traffic stop, based upon the totality of the circumstances to make a traffic stop. In accordance with the training, (ADAP), the cues or indicators of impairment were equal to or greater than fifty percent. The Arbitrator was persuaded that reasonable suspicion existed to initiate the brief investigatory stop. The evidence did not support a violation of the work rules. The discipline was not warranted, and the grievance was granted.