**OCB AWARD NUMBER: 2136**

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| **SUBJECT:** | **ARB SUMMARY # 2136** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **23-18-20101008-0067-01-04** |
| **DEPARTMENT:** | Mental Health |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Craig A. Allen |
| **GRIEVANT NAME:** | Eddie L. Williams III |
| **MANAGEMENT ADVOCATE:** | Marlo Cain |
| **2ND CHAIR:** | Victor Dandridge |
| **UNION ADVOCATE:** | George Yerkes |
| **ARBITRATION DATE:** | July 21, 2011 |
| **DECISION DATE:** | August 19, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24—Disciple; Article 24—Grievance Procedure; |
| **OCB RESEARCH CODES:** | 118.01—Disciple-In General; 118.6368—AWOL; 118.311—Just Cause-Concept of |
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**HOLDING: Grievance DENIED. The Arbitrator found that the Employer had just cause to remove the grievant.**

The Grievant was a Therapeutic Program Worker (TPW) employed at Northcoast Behavioral Healthcare in Northfield, Ohio for twenty-five years. The Grievant’s job required him to work from 7:00 A.M. to 3:30 P.M. On June 26, 2010, the Grievant arrived for his shift at 8:30 A.M., 1.5 hours after he was required to report to work. Rule 2.4 of the Code of Conduct and General Work Rules required the Grievant to make prior arrangements to be late and to submit a Request for Leave. Because Grievant failed to complete these requirements he was considered Absent Without Approved Leave (AWOL) for the 1.5 hours. The Employer and the Grievant disputed what time the Grievant called the Nursing Supervisor, Patricia Davis, to inform the Employer that he had overslept and inquire if he should still report. The Employer claimed that the Grievant did not make the call until 7:55 A.M., fifty-five minutes after he was required to report, while the Grievant claims he called at 6:35 A.M., twenty-five minutes prior to when he was required to report. The Grievant had previously received a written reprimand, two day fine and five day suspension for AWOL violations. A Pre-Disciplinary hearing was held on September 2, 2010. The Pre-Disciplinary hearing was delayed because the Grievant had also been accused of patient abuse. The Union Chapter President was informed of the reasoning behind the delay on several occasions. The Employer notified the Grievant and the Union of removal, pursuant to Article 24.06 of the Collective Bargaining Agreement, on October 8, 2010.

The Employer argued the Grievant failed to properly notify his supervisor about his delayed arrival and that this caused hardship. The Employer argued that removal was in line with the disciple grid, which calls for termination at Level 2 after a five day suspension had previously been issued. The Employer argued that the Grievant’s seniority was considered, and that other employees in similar circumstances were also removed. The Employer responded to the Grievant’s timeliness argument by arguing that there was a patient abuse allegation that the Employer considered merging with the AWOL infraction. The Employer claimed that the Union Chapter President was kept apprised of the situation. Further, when the patient abuse allegation was unsubstantiated, the Employer moved forward with the AWOL Pre-Disciplinary hearing in a timely manner.

The Union argued that the Grievant’s seniority was not adequately considered and that disciplinary action was not taken in a timely manner. The Union argued that because the AWOL and patient abuse allegations were unrelated the delay was unreasonable. The Union argued that because the Grievant’s tardiness was the result of oversleeping he could not have made prior arrangements by a request for leave. The Union also argued that the Grievant notified the Employer that he would be late by telephone at 6:00 A.M., not 7:55 A.M. as alleged by the Employer, because it took the Grievant two hours to arrive by bus and he could not arrive at 8:30 if he had called at the time alleged by the Employer. Additionally, the Union argued that the Employer made no showing of hardship as a result of Grievant being AWOL. The Union also argued that the sickness and passing of the Grievant’s father did not affect his attendance and that the Employer failed to suggest the Employee Assistance Program to help Grievant manage his father’s death. Critically, the Union argued that the Employer ignored the seventh test of just cause. The Union pointed to the Employer’s non-elaboration as to its consideration of seniority, the Grievant’s performance evaluations, and previous Arbitrator’s decisions about the importance seniority plays in just cause.

The Arbitrator denied the grievance. The Arbitrator accepted that the Grievant did notify the Nursing Supervisor at 6:00 A.M., not 7:55 A.M., and that there was no direct evidence of hardship on the Employer caused by the Grievant being AWOL. The Arbitrator noted that the lack of hardship was a simply a matter of good fortune. The Arbitrator concluded that the investigation was not unreasonably late and that the Employer complied with Article 24.06 of the Contract. The Arbitrator noted that the Union Chapter President had been notified of the delay and that notice to the Union is notice to the Grievant. The Arbitrator found that the evidence showed the Grievant’s seniority was considered and that the Grievant’s seniority should have made him aware of the Employee Assistance Program. The Arbitrator noted that the Grievant had progressed from a written reprimand on November 3, 2008 to a five day working suspension on October 2, 2009 prior to his order of removal on October 8, 2010. It was shown that during the disciple progression, the Grievant’s seniority was considered when he was told that his two day suspension would be removed from his record in six months if he did not receive any intervening discipline. Because the Arbitrator concluded that the only mitigating factor the Union could have reasonably shown was seniority, and there was evidence that it had already been considered, the grievance was denied.