**OCB AWARD NUMBER: 2148**

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| **SUBJECT:** | **ARB SUMMARY # 2148** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-02-20110303-0023-01-03** |
| **DEPARTMENT:** | Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Craig Allen |
| **GRIEVANT NAME:** | Rodney Burchett |
| **MANAGEMENT ADVOCATE:** | Allison Vaughn |
| **2ND CHAIR:** | Jackie Milsom  |
| **UNION ADVOCATE:** | John Gersper |
| **ARBITRATION DATE:** | September 23 and October 5, 2011 |
| **DECISION DATE:** | November 9, 2011 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Article 24—Discipline  |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.6485—Falsification of Records, DR & C; 118.6561—Work Rules-In General  |
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**HOLDING: Grievance MODIFIED. The Grievant failed to discover an inmate that had committed suicide. However, removal was excessive because there was no immediate threat to the safety of Officers or Inmates and Grievant’s clean, 16+ year work record. A one month suspension was imposed with full back pay minus the suspension. All benefits, seniority etc. restored as well.**

Inmate Stone was found to have committed suicide in his cell at the Allen Correctional Institution on October 14, 2010. The inmate was found hanging from his cell window by a sheet. It was determined that Inmate Stone had been dead at least 8 hours before he was discovered. Corrections Officer Rod Burchett conducted rounds the previous night and did not discover that Inmate Stone had committed suicide. It was determined through an investigation by the agency that C.O. Burchett had violated department policy in that his failure to discover the suicide constituted a threat to the security of the institution and that this failure brought discredit to the agency.

The Grievant is a 16 ½ year employer with the State. The Grievant is a veteran Correction Officer, and is well trained in the specific knowledge that regular, quality rounds are essential to the safe and effective supervision of inmates. On October 14, 2010, at around 7:45 AM, an inmate discovered the body of another inmate, Inmate Stone, hanging from his cell window. The body of Inmate Stone was in the direct line of sight through the cell door window. The Grievant worked that same unit from 10:00 PM on October 13, to 6:00 AM on October 14, 2010. A coroner later determined that Inmate Stone had been dead for at least 8-hours when discovered. Rounds are supposed to be conducted every thirty minutes and Counts every two hours. The Grievant stated that he completed 4 actual counts and all of his security rounds during his shift but did not discover the Inmate Stone had committed suicide. The Grievant was removed on March 3, 2011. The Grievant had no discipline on his record at the time of his removal. The Employer charged the Grievant with violating Rule 22, Falsifying, Altering or Removing a Document of Record, Rule 24, Interfering with, Failing to Cooperate in or Lying in an Official Investigation or Inquiry, Rule 38, Any Act, or Failure to Act, or Commission Not Otherwise Set Forth Herein Which constitutes a Threat to the Security of the Facility, Staff, Any Individual Under the Supervision of the Department, or a Member of the General Public, and Rule 39, An Act That Would Bring discredit to the Employer.

The Employer arguedthat the Grievant did not follow Policies and Post orders. When doing Rounds, the officers are supposed to see the flesh of the inmates. If the Grievant would have done the Rounds correctly, he would have seen Inmate Stone.

The Union argued that the Grievant had no prior discipline and the penalties for the rule violations cited did not include removal on a first offense. C.O. Burchett testified and said that he did his rounds properly and did not observe anything out of the ordinary.

The Arbitrator foundthat there is no just cause for removal. The Arbitrator found that there is no evidence of a violation of Rule 22. There is also no evidence of a violation of Rule 38. No one escaped or attempted to escape; neither was there any assault or altercation with Staff or Inmates. The Arbitrator found that there is a violation of Rule 24. He also found that the Grievant did not make quality Rounds and Counts. The Grievant could not have made quality Rounds and Counts when Inmate Stone had a sheet around his neck and was in the same position for 8 hours. He found that the Grievant violated Rule 39 because the attendant news stories regarding the suicide and the fact that it went undiscovered for 8 hours brought discredit upon the institution. The Arbitrator rules, however, that the removal of the Grievant was not commensurate with the offenses. Based on the length of service and lack of prior discipline, there is no just cause for removal. The Arbitrator ordered the Grievant returned to work with back pay but with a one month suspension.