**OCB AWARD NUMBER: 2150**

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| **SUBJECT:** | **ARB SUMMARY # 2150** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-23-20110208-0008-01-03** |
| **DEPARTMENT:** | Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Robert Hughes |
| **MANAGEMENT ADVOCATE:** | Jackie Sebastian |
| **2ND CHAIR:** | Christopher Lambert |
| **UNION ADVOCATE:** | David Justice |
| **ARBITRATION DATE:** | September 14, 2011 |
| **DECISION DATE:** | December 6, 2011 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Article 24.01 – Standard Discipline; Article 24.02 – Progressive Discipline; Article 24.06 – Imposition of Discipline; Article 24.10 – EAP |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.6481—Dishonesty-In General; 118.6561—Work Rules-In General |

**HOLDING: The Grievance was MODIFIED. The Arbitrator determined progressive discipline was not followed in that the Grievant was a 12+ year employee with no active discipline and the Employer failed to take corrective measures when it became aware of improper conduct and removed the Grievant on a first offense. Discipline is modified to a 20 day suspension with a performance based last chance agreement.**

The Grievant is a shakedown officer along with other post duties as assigned. On August 23, 2010, the shift supervisor of the Grievant expressed concerns that Grievant was not performing his duties, was regularly bringing a cell phone to work and he regularly listened to music on his MP3 player. The Employer installed a surveillance camera to monitor the Grievant. On October 23, 2010, the Employer observed a live feed from the surveillance camera showing the Grievant with a cell phone several times. During the investigation, it was found, that while on state time and on state premises, the Grievant also showed coworkers and contract workers sexually explicit pictures, including a sexually explicit picture of his genitalia

The Grievant was removed on February 4, 2011 for violations of Rule 7, Failure to follow post orders, Rule 30C, Unauthorized conveyance or possession of contraband, Rule 13, Improper Conduct…harassment on the basis of sex, Rule 24, Lying in an official investigation, and Rule 50, Any violation of ORC 124.24.

The Employer arguedthat the above conduct of the Grievant violated the Standards of Employee Conduct and that the Grievant failed to search inmates as required by his job and was dishonest in his investigatory interview.

The Union arguedthat the Grievant is a 12 year, 7 month employee with no record of discipline. The Employer failed to address the grievant’s behavior when it was first identified and chose to delay correction of that behavior in order to stack charges against the grievant. The allegations of inappropriate and unwanted sexual comments were not substantiated and were untimely.

Regarding the cell phone and MP3 player allegations, the Union contends that another employee had a cell phone seized by the Employer on the same date and only received a 2 day suspension.

The Arbitrator foundjust cause to discipline the Grievant**.** The Grievant failed to consistently comply with post orders under Rule 7 by failing to conduct pat down and strip searches in compliance with ODRC policy.

The Arbitrator determined the Employer failed to establish a Rule 13 violation but found sufficient support for the Rule 24 violation in that camera images showed that the Grievant’s testimony was false. There was also sufficient support for the Rule 50 violation as the Grievant showed sexually explicit photographs to two female contract workers and a co-worker while on state time and on state premises. In addition, it was shown that he took a picture of his own genitalia on state time in the restroom at the state facility. These acts constitute a failure of good behavior.

Additionally, the Employer did prove a violation of Rule 30C regarding the allegation that the Grievant brought contraband, namely a cell phone and MP3 music player onto facility property in violation of agency policy.

Regarding the discipline, the Employer exceeded its managerial prerogatives in removing the Grievant. The Employer did not take action to correct the Grievant’s behavior when it became known. All violations called for a range of discipline beginning with a written reprimand or a minimum suspension on a first offense. Removal was excessive in light of the Grievant’s employment record, good evaluations, and clean record. The Arbitrator determined the appropriate remedy to be a 20 day suspension with a performance based Last Chance Agreement.