**OCB AWARD NUMBER: 2152**

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| **SUBJECT:** | **ARB SUMMARY # 2152** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110120-0023-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Edward Weirrick |
| **MANAGEMENT ADVOCATE:** | Lt. Charles Linek |
| **2ND CHAIR:** | Lt. Kevin Miller |
| **UNION ADVOCATE:** | Elaine Silveira |
| **ARBITRATION DATE:** | December 7, 2011 |
| **DECISION DATE:** | December 21, 2011 |
| **DECISION:** | Modified |
| **CONTRACT SECTIONS:** | Article 19—Disciplinary Procedure |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.6516—Neglect of Duty; 118.6541—Leaving Post  |
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**HOLDING: Grievance MODIFIED. The Arbitrator found just cause to discipline the Grievant, but the one-day fine was excessive and reduced it to a written reprimand with back pay.** **The Arbitrator determined that the contract allows for repeat discipline and progression is not always necessary. While discipline is warranted in this case, the severity of that discipline should be mitigated by the facts presented in the arbitration.**

The Grievant has been a dispatcher for four (4) years. On October 11, 2010, the Grievant was the sole dispatcher working at the Van Wert Dispatch Center. While on duty, the Grievant requested a restroom break but the Sergeant indicated that he would relieve him as soon as he finished some paperwork. Before the Sergeant finished his paperwork and before giving the Grievant a restroom break, the post received a Signal 31A call (an accident with injuries). The Sergeant responded to the call. While at the scene, the Sergeant called the Grievant for printouts but the printer was out of paper. The Grievant left his chair to get the copy paper and placed the phone on Signal One (desk out of service) without transferring full communications to another facility. While he was away from his desk, the Grievant went to the restroom. When the Grievant returned to his desk, he placed the phone on Signal Two (desk back in service), and resumed his duties. The Grievant was away from his desk for fifty-one seconds. The Grievant was charged with violation of work rule 501.01(C) (10) (b) Neglect of Duty and received a one-day fine.

The Employer arguedthat the Grievant violated policy by not transferring full communications to another facility while he was away from his desk. He had knowledge of the policy and failed to comply with its provisions. The Grievant had a written reprimand on his discipline record and a one-day fine was the next step in progressive discipline. The Employer saw no reason to mitigate the discipline. The Grievant suffers from a medical condition and knew he had to urinate prior to the Sergeant leaving the post. The Grievant could have taken a restroom break in accordance with procedure prior to the Sergeant leaving the post. The Employer argued that the circumstances in this case are serious because Grievant left the station while a trooper was conducting a traffic stop. The Employer request that the grievance be denied.

The Union arguedthat progressive discipline requires that discipline be commensurate with the offense. The Grievant has a medical condition and had an urgent need to urinate or risk soiling his clothes. The one-day fine is not commensurate with the offense because no harm occurred. The Union request that the grievance be granted and the one-day fine be reduced to a written reprimand.

The Arbitrator foundthat there is just cause to discipline the Grievant for violation of rule 501.01(C)(10)(b) Neglect of Duty. The Grievant’s exigent circumstances caused him to deviate from policy in a manner he thought would address all concerns. The Arbitrator finds that the contract language in this situation allows the employer to impose discipline at the same level already on the Grievant’s discipline record based on the circumstances of the event and does not always require progression. The Arbitrator determined that the discipline imposed by the employer is not commensurate with the offense. The one-day fine was excessive, and was modified to a written reprimand with back pay.