**OCB AWARD NUMBER: 2153**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2153** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110130-0001-04-01** |
| **DEPARTMENT:** | Ohio State Highway Patrol |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | Cory Harris |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin Miller |
| **2ND CHAIR:** | Lt. Charles Linek |
| **UNION ADVOCATE:** | Herschel Sigall |
| **ARBITRATION DATE:** | December 7, 2011 |
| **DECISION DATE:** | December 21, 2011 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 19—Discipline  |
| **OCB RESEARCH CODES:** | 118.301—Progressive Discipline; 118.6561—Work Rules-In General; 118.01—Discipline-In General  |
|  |  |

**HOLDING: Grievance DENIED. The Arbitrator found that the Grievant had been given notice of the policy and the violation was uncontested. Also the Collective Bargaining Agreement does not require a “mechanical application” of progressive discipline by the Employer. More severe discipline is warranted if supported by the nature of the infraction. The 1 day suspension is within the Employer’s prerogative and is “reasonably related to the seriousness of the offense.”**

The Grievant was a 10 year trooper at the time of this incident.On October 18, 2010, a call came into Dispatch from a driver involved in a two car accident. The Grievant was dispatched to the scene. He did not complete a crash report or conduct a crash investigation at the accident site. A few days later, the other person involved in the October 18, 2010 accident came to the post and requested a copy of the crash report but the report had not been completed by the Grievant. A CAD entry on the incident stated, “no damage, no report taken.” The Grievant was questioned about the incident, and was instructed to do the report. The Grievant conducted a crash investigation, and issued a citation. The Grievant was charged with violation of work rule 4501:2-6-02(B)(1)(5) Performance of Duty, for failure to complete a traffic crash report and was given a one-day fine.

The Employer arguedthat OSHP Policy dictates that traffic crash reports be completed regardless of the wishes or arrangements made by the parties involved. The Policy also dictates that at a minimum, a crash report should have been completed when there are observed damages. The Grievant had notice of this policy and failed to complete the crash report in accordance to the policy. The Employer also argued that the Ohio Revised Code does not dictate its policy. The Employer has routinely levied more severe discipline for such conduct, but only issued a one-day fine in this instance. The Employer requested that the grievance be denied.

The Union arguedthat the Grievant was mistaken as to the operative guideline when responding to the crash. The Union also argued that the one-day fine was excessive. Training, rather than an economic penalty, is an appropriate remedy to bring about correction in this instance. The Grievant did not have any prior discipline on his record before this incident and progressive discipline was not applied in this case. In the Grievant’s opinion, there was minimal damage to the vehicles. This was not a case of the Grievant avoiding his duties. The Union requested that the grievance be granted and reduce the one-day fine to a written reprimand.

The Arbitrator foundthat there was just cause to discipline Grievant for violation of Rule 4501:2-6-02 (B)(1)(5) Performance of Duty. The just cause standard does not require a mechanical application of each disciplinary measure starting with a verbal warning, written warning, then fine or suspension, through discharge. The Grievant’s work record and tenure did not overshadow the policy considerations of the rule and penalty. The grievance is denied.