**OCB AWARD NUMBER: 2159**

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| **SUBJECT:** | **ARB SUMMARY # 2159** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110824-0093-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Amy Pennington |
| **MANAGEMENT ADVOCATE:** | Kevin Miller |
| **2ND CHAIR:** | Marissa Walter |
| **UNION ADVOCATE:** | Elaine Silveira |
| **ARBITRATION DATE:** | December 16, 2011 |
| **DECISION DATE:** | February 28, 2012 |
| **DECISION:** | GRANTED |
| **CONTRACT SECTIONS:** | Article 19—Disciplinary Procedure; Section 19.01—Standard; Section 19.05 —Progressive Discipline |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.311—Just Cause-Concept of; 118.6481—Dishonesty-In General |
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**HOLDING: Grievance GRANTED. The Arbitrator found that there was no just cause for the removal of the Grievant for using the language “Vehicles moved prior to arrival, no evidence at scene” in crash reports when this was not true. The Arbitrator found that the Grievant used this incorrect language because she believed it was required any time a crash report did not include a field sketch, not because the Grievant was attempting to use a short cut and deceive the Employer. For this reason, there was no rule violation for making a false statement or truthfulness and thus no just cause to remove the Grievant.**

 This grievance arose out of the Grievant’s use of the phrase “vehicles moved prior to arrival, no evidence at scene” on crash reports that did not include a field sketch. The Grievant was told by a supervisor, Sergeant Scales, that when a crash report did not include a field sketch the report should use the phrase in question. The Grievant continued to use this phrase for five years, regardless of whether or not it was true, for every crash report that did not include a field sketch. Even when using the phrase, the Grievant would include evidence and photos of the scene. The Grievant indicated that prior to being told by Sgt. Scales to use the phrase in question, she had used other phrases to indicate why there was not a field sketch but had been corrected. It was not until the use of the phrase “vehicles moved prior to arrival, not evidence at scene” that the Grievant was able to have crash reports without a field sketch approved.

 The Employer argued that the Grievant used the term in order to avoid having to complete a field sketch. In so doing, the Grievant violated OSP work rules 4501:2-6-02(E)(1) and 4501:2-6-02(B)(1)(5): False Statement, Truthfulness and Performance of Duty. The Employer pointed to inconsistent statements made by the Grievant during the Administrative Interview as evidence of her not being truthful. The Employer also argued that the Grievant’s inclusion of photographs in the crash report was not dispositive as to her truthfulness because the Grievant was aware that supervisors tended to only review the crash reports. Because the issue was the Grievant’s truthfulness, the Employer argued that removal for a first offense was warranted under progressive discipline.

 The Union argued that there was not just cause for removal because the Grievant did not have any intent to deceive when she used the phrase “vehicles moves prior to arrival, no evidence at scene.” The Grievant only used the phrase after a conversation with Sgt. Scales led her to believe that any crash report that did not include a field sketch required the phrase. The Grievant continued this practice for five years and had the reports reviewed and accepted by supervisors. The Union also argued that the Grievant’s inclusion of photos indicated that there was no intent to deceive.

 The Arbitrator granted the grievance and made the Grievant whole. The Arbitrator concluded the Grievant’s use of the phrase was a performance issue, not a discipline issue. The Arbitrator determined that the Grievant’s inclusion of photos in the crash report undercut the Employer’s claim that she was being untruthful and using the phrase as a shortcut. While the use of the phrase in question was incorrect when it was not the truth, the Arbitrator concluded that the Employer failed to carry its burden of persuasion to show just cause.