**OCB AWARD NUMBER: 2165**

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| **SUBJECT:** | **ARB SUMMARY # 2165** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110414-0062-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Sandra Mendel Furman |
| **GRIEVANT NAME:** | Adam Foster |
| **MANAGEMENT ADVOCATE:** | Kevin Miller |
| **2ND CHAIR:** | Aimee Szczerbacki |
| **UNION ADVOCATE:** | Elaine Silveira |
| **ARBITRATION DATE:** | April 19, 2011 |
| **DECISION DATE:** | May 7, 2012 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Section 19.01—Standard; Section 19.05—Progressive Discipline; Section 18.02—Bargaining Unit Member Rights |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.311—Just Cause-Concept of; 118.301—Progressive Discipline |
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**HOLDING: Grievance MODIFIED. The Grievant’s one day fine for violating work rule 4501:2-6-02(B)(1)(5), Performance of Duty, Inefficiency, was modified to a written reprimand. The Arbitrator determined that while there was probable cause for the Grievant to initiate a field sobriety test, there were mitigating factors that made a one day fine excessive. The Arbitrator pointed to the Grievant’s lack of prior discipline, the conditions on the night of the incident, and the fact that the Grievant self-reported the incident as reasons why the imposed discipline was excessive.**

The Grievant, a Trooper for four years at the Swanton Post of the Highway patrol, responded to a driver call that a commercial vehicle was driving erratically. The Grievant located and pulled over the vehicle. Despite several indicators that the driver of the vehicle was impaired, the Grievant only performed a “swipe” eye test on the scene. After discovering a flat tire on the vehicle, the Grievant allowed the driver to drive three miles to the nearest toll plaza. Once there, the Grievant detected an odor of alcohol, administered a full field sobriety test, and arrested and charged the driver with OVI. The Grievant self-reported the incident and his supervisor conducted training following a review of the traffic stop video. An AI was conducted and the Grievant was

given a one day fine for violating work rule 4501:2-6-02(B)(1)(5) because he failed to perform a field sobriety test during the initial stop.

 The Employer argued that the Grievant failed to perform a field sobriety test when circumstances indicated it was necessary. The Employer argued that its policy is to give a one day suspension for a failure to administer a field sobriety test. Because a test was not administered when it should have been, the fine was warranted.

 The Union argued that circumstances at the time of the initial stop made the imposition of discipline unnecessary. The weather conditions made it difficult for the Grievant to detect the smell of alcohol while also providing a plausible reason for the driver’s erratic driving. Further, once the Grievant became aware that the driver was likely intoxicated he initiated the required test and arrested the driver. Moreover, the Union argued that the Grievant did not have any prior discipline and self-reported the incident.

 The Arbitrator modified the discipline from a one day fine to a written reprimand. The Arbitrator concluded that probable cause to initiate a field sobriety test existed during the initial stop. The Arbitrator also concluded there were mitigating factors that made a one day fine excessive. The Arbitrator pointed to the weather conditions at the time of the initial stop, the flat tire on the vehicle, the Grievant’s self-reporting of the incident, the lack of previous discipline, and the eventual arrest made at the toll stop as the mitigating factors. Because of these mitigating factors, the Arbitrator used her authority under the CBA to reduce the discipline.