**OCB AWARD NUMBER: 2166**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2166** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110407-0060-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Sandra Mendel Furman |
| **GRIEVANT NAME:** | Jacquelyn Layson |
| **MANAGEMENT ADVOCATE:** | Kevin Miller |
| **2ND CHAIR:** | Aimee Szczerbacki |
| **UNION ADVOCATE:** | Herschel M. Sigall |
| **ARBITRATION DATE:** | April 19, 2011 |
| **DECISION DATE:** | May 7, 2012 |
| **DECISION:** | GRANTED |
| **CONTRACT SECTIONS:** | Section 19.05—Progressive Discipline |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.311—Just Cause-Concept of; 118.301—Progressive Discipline |
|  |  |

**HOLDING: Grievance GRANTED. The Grievant’s 1 day fine for violating work rule 4501:2-6-02(B)(1)(5), Performance of Duty, Inefficiency, was overturned. The Arbitrator determined that there was not probable cause for the Grievant to initiate a field sobriety test, and therefore no rule violation.**

The Grievant, a Trooper for six years in the Toledo Post of the Highway patrol, was on patrol during the early hours of January 19, 2011. While responding to an accident, the Grievant came across a vehicle in a ditch. There were a number of accidents and spin-outs due inclement weather, including snow, ice, and cold. The Grievant stopped to assist the driver of the vehicle in the ditch. The Grievant spoke to the driver, who was on her cell phone, asked about the driver’s well-being, and called for a tow truck. Having determined the driver was safe and that a tow truck was on the way, the Grievant left the scene to respond to her initial call. Following the Grievant’s exit from the scene, two local police officers responded. One officer claimed to have detected a slight sense of alcohol, but neither officer suggested impairment. After the driver’s car was removed from the ditch, she was involved in an accident with a truck. During the investigation of the accident, a blood sample of the driver was taken; it showed that she had a blood alcohol level of .178. An AI was launched and the Grievant was given a 1 day fine for violating work rule 4501:2-6-02(B)(1)(5) because she failed to perform a field sobriety test.

 The Employer argued that the fine was warranted because the Grievant failed to perform tasks required by her training. Others, including the EMS squad and hospital staff, indicated that the driver was visibly intoxicated. The Employer stressed that motorist safety is of the highest importance, and that other Troopers had been given a 1 day fine for failing to administer OVI protocols. Further, the Grievant did not identify the vehicle or driver, as required. The Employer argued that the cause of events made it unlikely that the driver became intoxicated between her interaction with the Grievant and the accident.

 The Union argued that the fine was imposed without just cause because there was not the reasonable suspicion needed to begin OVI protocols. Given the weather that evening, it was not unlikely that the accident was the result of road conditions. The Union also argued that the officer interacted with the driver and did not have any suspicion that she was impaired. The two local officers the responded after the Grievant also concluded that the driver was not impaired. The Union further pointed to a finding that for every one OVI arrest, there are three face to face contacts with impaired drivers that do not result in an arrest.

 The Arbitrator granted the grievance in full. The Arbitrator concluded the evidence presented did not lead to a conclusion that there was probable cause to initiate OVI protocol. The fact that the driver was later found to have a blood alcohol level above the legal limit was not determinative. Because the Arbitrator found that there was not probable cause, there was not a rule violation and therefore there was not just cause for the fine.