**OCB AWARD NUMBER: 2168**

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| **SUBJECT:** | **ARB SUMMARY # 2168** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20111223-0132-07-15** |
| **DEPARTMENT:** | Division of the Ohio State Patrol |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Jeffrey Hauenstein |
| **MANAGEMENT ADVOCATE:** | Charles Linek |
| **2ND CHAIR:** | Marissa Walter |
| **UNION ADVOCATE:** | Herschel Sigall & Elaine Silveira |
| **ARBITRATION DATE:** | March 8, 2012 |
| **DECISION DATE:** | June 3, 2012 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 19.01—Disciplinary Procedure Standard; Article 19.05––Progressive Discipline |
| **OCB RESEARCH CODES:** | 118.6481—Dishonesty-In General; 118.6515—Poor Judgment; 115.217—Breaks |
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**HOLDING: Grievance DENIED. The Arbitrator found that Grievant’s inconsistent statements were untruthful and justified removal. Although the Employer’s conduct unbecoming charge could not be substantiated, as the Employer was unable to prove that Grievant engaged in a sexual act, the Arbitrator still found that Grievant’s untruth was enough to justify removal. Because Grievant stated “I don’t recall” what happened during a paid break, in an attempt to cover up questionable behavior, Grievant knowingly made an untrue statement. The Employer’s compelling need for honest sergeants with strong integrity was enough to justify removal.**

On December 21, 2011, Grievant was terminated as a sergeant for the Ohio State Highway Patrol for making a false statement and for conduct unbecoming of an officer. An administrative investigation (“AI”) on October 25, 2011 revealed that Grievant made personal phone calls and sent personal text messages to his girlfriend while on-duty as well as made a Facebook post about his girlfriend having an orgasm, suggesting a sexual encounter during a paid lunch. A second AI conducted on November 14th revealed conflicting testimony by Grievant and served as the second basis for termination – dishonesty. Grievant alleged that no sexual encounter occurred and Grievant did not lie about the encounter.

The Employer argued that Grievant participated in a sexual encounter during his on-duty meal break and then lied about the encounter during the AI. The Employer first argued that on August 25, 2011 Grievant engaged in a sexual act with his girlfriend. This charge stems from a Facebook post by Grievant discussing how “HOT” it was that his girlfriend had an orgasm during his lunch break. The Employer discussed how Grievant was being paid to eat and not to watch a sexual act; the Division routinely discharges employees for watching pornography and having sex while on duty. The Employer also argued that because Grievant lied about his participation in a terminable sexual encounter while on duty. Therefore, his untruthfulness harms the integrity of the Division and justifies termination.

The Union argued that watching a woman masturbate did not constitute a “sexual encounter.” The Union contends that a trooper’s obligation is to be in a position to respond to an emergency; beyond that, a trooper is free to do what he wants during his paid meal break. Further, because Grievant did not participate in the “autoeroticism,” there was no sexual encounter within the common meaning of the term. The Union also argued that Grievant did not lie because Grievant understood sexual encounter to mean something different than the Employer.

The Arbitrator found that the Employer met the burden of proving that the alleged made a false statement in violation of the Rules. The Arbitrator found that Grievant lied about the Facebook post in an attempt to cover-up his terminable actions on August 25, 2011. However, the Arbitrator did not find just cause for the conduct unbecoming charge because Grievant did not have a sexual encounter while he was on a paid break.