**OCB AWARD NUMBER: 2171**

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| **SUBJECT:** | **ARB SUMMARY # 2171** | | |
| **TO:** | **ALL ADVOCATES** | | |
| **FROM:** | **DAVID LONG** | | |
| **OCB GRIEVANCE NUMBER:** | **15-03-20120217-0018-04-01** | | |
| **DEPARTMENT:** | Division of the Ohio State Patrol | | |
| **UNION:** | OSTA | | |
| **ARBITRATOR:** | Robert Stein | | |
| **GRIEVANT NAME:** | Daniel Stephens | | |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin Miller | | |
| **2ND CHAIR:** | Jessie Keyes | | |
| **UNION ADVOCATE:** | Herschel Sigall & Elaine Silveira | | |
| **ARBITRATION DATE:** | April 5, 2012 | | |
| **DECISION DATE:** | June 27, 2012 | | |
| **DECISION:** | MODIFIED | | |
| **CONTRACT SECTIONS:** | Article 19.01—Disciplinary Procedure Standard; Article 19.05––Progressive Discipline | | |
| **OCB RESEARCH CODES:** | 118.6481—Dishonesty-In General; 118.311—Just Cause; 118.315—Burden of Proof; 118.01—Discipline-In General | | |
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**HOLDING: Grievance MODIFIED. The Arbitrator found that Employer failed to prove that Grievant intentionally made a false statement in an accident report because charges of dishonesty require a higher burden of proof. Grievant’s record contained nothing to suggest he would have intentionally lied, so Employer’s speculation did not satisfy the burden. However, the Arbitrator found that Grievant failed to comply with the “field sketch” requirement. Thus, under the disciplinary grid, a three-day unpaid suspension was required in lieu of termination.**

The events that led up to Grievant’s February 7, 2012 termination stem from an investigation into Grievant’s record following a statement that he would be testifying on behalf of the Union for an arbitration hearing. Employer believed Grievant was going to make a disparate treatment defense, as he was not involved in the incident. As such, Grievant’s crash reports were reviewed and it was found that Grievant had falsely indicated the vehicles were moved from final rest, in direct contradiction to crash scene evidence. An investigation ensued and it was concluded that Grievant had in fact purported incorrect information in his report under facts similar to the arbitration he testified in. Following a pre-disciplinary hearing on January 31, 2011, Grievant was eventually terminated.

Employer argued that Grievant was properly terminated because he “neglected to properly document evidence during a crash investigation” and “falsified a crash report by indicating both vehicles [sic] were moved from final rest,” when evidence showed that they were not. Specifically, Employer believed that Grievant intentionally falsified the report to avoid completing a time intensive field sketch and also neglected to properly document evidence in his crash report. As a nine year veteran, it was reasonable to infer that Grievant did not make a simple error, but rather, he intentionally took a shortcut. Further, the employee discipline grid clearly stated that any “false reporting, falsification of documents or dishonesty” is clear grounds for termination, regardless of one’s record.

The Union argued that Employer failed to meet its burden of proof for dishonesty and simply proved Grievant made an error. Because an error is not per se an intentional false statement and intentional dishonesty requires a higher burden, the burden was not met. Further, Grievant’s strong record did not support this conclusion, especially since the 2011 investigation only revealed 1 issue out of 153 reports.

The Arbitrator found that Employer did not meet the burden of proving that Grievant made an intentionally false statement given his strong record and the surrounding evidence. Further, dishonesty charges require a higher burden. However, the Arbitrator concluded that Grievant had failed to comply with the “field sketch” requirement. Because the troopers are held to high standards of professionalism and standards, his neglect of duty was sufficient to justify a three-day unpaid suspension.