**OCB AWARD NUMBER: 2189**

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| **SUBJECT:** | **ARB SUMMARY # 2189** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-3520120515-0140-01-03** |
| **DEPARTMENT:** | **Department of Rehabilitation and Correction – Toledo Correctional Institute** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Craig Allen** |
| **GRIEVANT NAME:** | **Shawna Giddens** |
| **MANAGEMENT ADVOCATE:** | **Don Overstreet** |
| **UNION ADVOCATE:** | **Jim Hauenstein** |
| **ARBITRATION DATE:** | **12/13/2012** |
| **DECISION DATE:** | **12/31/2012** |
| **DECISION:** | **Granted** |
| **CONTRACT SECTIONS:** | **Article 2 – Non-Discrimination; Article 24 - Discipline** |
| **OCB RESEARCH CODES:** | **118.01 – Discipline in General; 118.67 – Disparate Treatment; 118.6485 – Falsification of Records, DR&C; 118.301- Progressive Discipline** |

**HOLDING: Grievance granted. The grievant was a corrections officer (CO) at TCI. The incident involved grievant’s failure to report the correct time in the log book after misreading her wrist watch. Because a similarly situated CO was not disciplined for a similar erroneous log entry and the termination was not progressive, the grievance was granted.**

Grievant was a 15 year employee with the Department of Rehabilitation and Correction working as a CO, at the time of her removal. The grievant had 2 prior disciplines on her record. The grievant was removed on May 15, 2012, for violating Employee Conduct Rule 22 – falsifying, altering or removing any document or record. On March 8, 2012, Grievant placed incorrect entries into the Log indicating she had completed rounds in advance.

Management argued that even though Grievant claimed she misread her watch, the Warden did not believe her. Management argued that the Warden’s lack of belief in Grievant’s account, in combination with the incorrect entry, is a decisive point and provides just cause for termination. Given the seriousness of falsifying a legal document, Management contends that in light of her pervious disciplinary history, removal was appropriate. Moreover, Management contended that the CO who had a similar situation was not similarly situated because the other CO notified the warden of the mistake – unlike Grievant who was confronted about the error.

The Union argued that Grievant experienced disparate treatment because a similarly situated CO received no discipline upon incorrectly filling out the Log. Because the Log is a legal document Grievant was unable to change the time she completed her rounds. Moreover, because Employer recently removed the clock from the room, Grievant was forced to rely on her watch. Because there was “no benefit of logging entries ahead of time” it was simply a mistake.

The Arbitrator found that removal was not progressive discipline under the circumstances. The fact that the Warden did not believe Grievant about her log entries was not enough to justify removal. Because Grievant was consistent in her testimony about her watch and reported this to the warden, Grievant was similarly situated to the CO who received no discipline; thus, Grievant experienced disparate treatment. Grievant was a 15 year employee and under the facts of the case, removal was not progressive. Therefore, the grievance is granted.