**OCB AWARD NUMBER: 2190**

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| **SUBJECT:** | **ARB SUMMARY # 2190** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20120322-0033-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Tiffany J. Wilson** |
| **MANAGEMENT ADVOCATE:** | **Charles Linck** |
| **UNION ADVOCATE:** | **Hershel Sigall** |
| **ARBITRATION DATE:** | **10/30/2012** |
| **DECISION DATE:** | **1/5/2012 [sic]** |
| **DECISION:** | **Modified** |
| **CONTRACT SECTIONS:** | **Article 19 –Disciplinary Procedure; Article 21 – Work Rules** |
| **OCB RESEARCH CODES:** | **118.01 – Discipline in General; 118.301- Progressive Discipline; 118.75 – Last Chance Agreements; 118.634 – Off-Duty Misconduct** |

**HOLDING: Grievance modified. The grievant was an off-duty trooper with OSTA assigned to the Mt. Gilead Post. The incident involved grievant’s arrest for driving 102 MPH while under the influence. Although Grievant plead no contest to the OVI charge, troopers are held to a high standard of conduct, and the incident gained media attention, the Arbitrator felt removal was “too harsh” and the grievance was modified.**

Grievant was an 11 year employee with the Ohio State Patrol working as a trooper, at the time of her removal. The grievant had a clear record with numerous letters of commendation and no history of drinking issues. The grievant was removed on May 9, 2012, for violating OSHP Rule 4501 – conduct unbecoming an officer. On February 17, 2012, Grievant was arrested by her Post Commander for driving at an excessive rate of speed while under the influence.

Management argued troopers are held to higher standards than average citizens. Grievant’s Post Commander arrested Grievant after following up on at least two calls that a possible drunk driver had “almost killed” someone by speeding and driving erratically. Grievant was clocked at 102 mph and had a BAC of .16%. Grievant admitted that she knew she was intoxicated when she drove her car. Moreover, numerous media outlets covered the story of the trooper/Grievant’s incident. Therefore, Management believes removal was appropriate under the circumstances.

The Union admits Grievant made a mistake and has “already paid a heavy price” due to court costs associated with her no contest plea for OVI. The Union argues that under Section 6 of Appendix C, Grievant should be placed in an EAP and be given a five year Last Chance Agreement. The Union also stated that a recent policy change to OVI convictions (recommending termination) should not apply given the short timeframe between the new policy and incident (two days). Moreover, Grievant was told that if she did not get her driving privileges back she would be terminated; she successfully reacquired her privilege to drive. Overall, she was a good employee she should not be terminated.

The Arbitrator found although Grievant’s actions were inappropriate and contrary to the standard a trooper is held to, termination was too harsh. The Arbitrator did not agree with the Union’s interpretation of Section 6, stating that the Employer’s disciplinary response was not limited by the provision. Moreover, any policy change did not apply as it only reiterated the discipline level regarding criminal convictions – noting that had Grievant not been convicted, the argument might be applicable. However, as this was Grievant’s first offense, and research revealed a different case where a trooper with a higher BAC was not terminated, a Last Chance Agreement with random drug testing was more appropriate than termination. Therefore, the grievance was modified.