**OCB AWARD NUMBER: 2196**

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| **SUBJECT:** | **ARB SUMMARY # 2196** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **31-13-20120402-0010-01-14****31-13-20120402-0011-01-14**  |
| **DEPARTMENT:** | **Department of Transportation** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Thomas J. Nowel** |
| **GRIEVANT NAME:** | **John Milling and Eric Smith** |
| **MANAGEMENT ADVOCATE:** | **Colleen Ryan** |
| **UNION ADVOCATE:** | **Timothy Rippeth** |
| **ARBITRATION DATE:** | **9-13-12 and 1-11-13** |
| **DECISION DATE:** | **2-15-2013** |
| **DECISION:** | **GRANTED**  |
| **CONTRACT SECTIONS:** | **Articles 24.01, 24.02, and 24.07**  |
| **OCB RESEARCH CODES:** |  **118.01-Discipline—In General**  |

**HOLDING: Grievance GRANTED. Grievants were removed without just cause. Employer’s order was ineffective. The order was verbal, so it was possibly unclear. And it was not a direct order. Employer asked for a verbal commitment to train, not the actual act. Grievants, thus, did not violate the work rule they were removed under.**

*Facts.* Grievants held Aviator 2 positions with the Ohio Department of Transportation, Division of Aviation. They were terminated after refusing to obey orders. In 2011, due to changes within the Department, Grievants’ duties shifted and further training was required. While training, Grievants determined that their equipment was unsafe. Specifically, the new plane’s cockpit restricted their ability to move. They requested an FAA inspection. The FAA subsequently conducted a ground test, validating Grievants’ concerns and concluding that safety is ultimately the pilot’s determination. The FAA also concluded, however, that the averaged sized pilot could safely fly the plane. Employer then demanded that training restart. But Grievants refused. As a result, they were removed.

*The Employer’s Argument.* Grievants were removed for just cause. They refused to comply with a direct order. And the Union failed to show that Employer’s plane was unsafe. An employee may disobey direct orders only when there is imminent danger of death or serious physical harm. Since the plane was safe to fly, as others of similar size flew without incident, Grievants do not meet this standard. Employer needed Grievants to complete this training for operational purposes. Their refusal to do so wastes State resources and harms departmental efficiency.

*The Union’s Argument*. Grievants were removed without just cause. The FAA stated that the plane was safe for average sized pilots. Grievants, however, are not average sized. Due to their stature, the cockpit unsafely restricted their movement. And they cannot be forced to pilot in unsafe conditions. As experienced pilots, Grievants are more than qualified to assess safety conditions adequately. Informed and experienced, they correctly asserted their right to refuse unsafe work. Grievants made Employer aware of this. But Employer chose not to act effectively. Grievants cannot be punished for that.

*Holding.* Grievants were removed without just cause. Employer’s order was ineffective. The order was verbal, so it was possibly unclear. And it was not a direct order. Employer asked for a verbal commitment to train, not the actual act. Grievants, thus, did not violate the work rule they were removed under. An optimal safety assessment was never conducted either since a third party neutral never observed Grievants in the cockpit.