**OCB AWARD NUMBER: 2199**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2199** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **35-04-20120718-0018-01-03** |
| **DEPARTMENT:** | **Ohio Department of Youth Services** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Craig A. Allen** |
| **GRIEVANT NAME:** | **Kelly Johnson** |
| **MANAGEMENT ADVOCATE:** | **Larry L. Blake** |
| **UNION ADVOCATE:** | **Russell Burkepile** |
| **ARBITRATION DATE:** | **1-24-2013** |
| **DECISION DATE:** | **2-25-2013** |
| **DECISION:** | **Denied** |
| **CONTRACT SECTIONS:** | **Article 24 – Discipline** |
| **OCB RESEARCH CODES:** | **118.6496 – Excessive Use of Force in DYS;** |

**HOLDING: Grievance denied. The Arbitrator found that Grievant’s response of hitting a Youth with a radio, biting that Youth, and using a choke hold to subdue that Youth constituted excessive use of force and justified termination.**

Grievant was a Youth Specialist at the Indian River Juvenile Correctional Facility. Following an altercation whereby a Youth threw a cleaning agent at Grievant and it got into her eyes, Grievant charged the Youth who was standing near a closet, hit the Youth with a radio, bit the Youth, and placed the Youth in a chokehold. Following an investigation, the Employer terminated Grievant for violating a number of work rules, including 5.01P (Failure to Follow Policies and Procedures), 6.02P (use of Excessive Force with Injury), and 6.05P (Use of Prohibited Physical Response).

The Employer argued that a thorough investigation by a well-trained investigator revealed that Grievant had been both a victim and subject. Specifically, conversations with witnesses revealed that the Youth threw cleaning chemicals at Grievant, Grievant choked the Youth, the Youth claimed to have been bitten by Grievant and had bite marks, Grievant hit the Youth with her radio, and Grievant used unapproved methods in securing the Youth, despite training on proper use of force. The investigation also revealed that Grievant had made inappropriate comments towards the Youth. Further testimony showed that Grievant had been trained on proper procedure for use of force; however, she used unapproved techniques and excessive force as the Youth had retreated against the wall. Given the Employers No Tolerance Policy and Grievant’s unwarranted excessive force, the Employer was justified in terminating Grievant.

The Union argues that Grievant was a good officer who followed the rules. She acted as any reasonable officer would have done and the Union’s witness testified to not seeing the Youth get bit or struck with the radio. As Grievant feared for her life, had her hair pulled by the Youth, could not see well because of the chemicals in her eyes, and knew that the Youth had a history of violent behavior and had assaulted many people in the past, she acted appropriately. The Union also argued that the Unit Manager should have assisted in securing the Youth and Grievant was remorseful the situation occurred.

The Arbitrator found that termination was appropriate because of Grievant’s response: after being splashed with window cleaner, Grievant responded by charging the Youth, striking him in the head with a radio, placing the Youth in a chokehold, biting the Youth and pushing his head to the floor, and never using any verbal strategies to deescalate the situation. Given Grievant’s training and 13 years of experience, she knew that her actions were not taught or approved by DYS. Although the Union cites *Graham v. Connor* to show Grievant’s actions were reasonable, the case was irrelevant because it dealt with a civil rights action. Therefore, despite Grievants service record the discipline was reasonable under the circumstances and the grievance was denied.