**OCB AWARD NUMBER: 2204**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2204** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20120329-0036-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Sandra Mendel Furman** |
| **GRIEVANT NAME:** | **Hiram Morales** |
| **MANAGEMENT ADVOCATE:** | **Corey W. Pennington** |
| **UNION ADVOCATE:** | **Elaine Silveira** |
| **ARBITRATION DATE:** | **3/12/2013** |
| **DECISION DATE:** | **3/20/13** |
| **DECISION:** | **Modified** |
| **CONTRACT SECTIONS:** | **Article 19 – Disciplinary Procedure** |
| **OCB RESEARCH CODES:** | **118.301 – Progressive Discipline; 118.6561 – Work Rules; 118.08 - Suspension** |

**HOLDING: Grievance modified. The Arbitrator found that although Grievant violated a work rule when he failed to secure a glass pipe, he did so without negligence or bad intention. Grievants honest demeanor and mistake did not necessitate a one-day suspension; rather, a written reprimand was more appropriate.**

Grievant was a trooper at the Milan Post who had been employed for more than eight years when the incident occurred. Grievant conducted a traffic stop that involved individuals who lacked proper identification as US citizens. Following the arrival by US Customs and Border Patrol and a second trooper, a glass pipe was discovered in the car with the strong smell of marijuana. No marijuana was found following a search of the vehicle and no residue was discovered on the pipe so Grievant left the pipe in the car. Grievant was later charged with violating Work Rule 4501:2-6-02 (W) for failing to safeguard property. Grievant’s only other discipline was a fine for being 48 minutes late in January of 2012.

The Employer argued that Grievant violated a known work rule. He was a trained and long term employee that knew he needed to secure the pipe. Grievant deliberately did not seize the pipe so the discipline was commensurate with the offense.

The Union argues that Grievant did not detect the strong smell of marijuana and no residue was discovered on the pipe. The pipe was neither contraband nor illegal to possess so there was no need to seize the pipe. His actions were mistaken and not intentional. Grievant’s actions did not cause any harm as deportation was the inevitable result of the traffic stop, despite not taking the pipe into evidence. Therefore, a written reprimand was more appropriate.

The Arbitrator found that although Grievant violated the work rule relating to keeping evidence without bad intention or negligence, a one-day suspension was not commensurate with the offense. Grievant admitted his bad judgment after talking with his supervisor. His actions were not due to sloppy or negligent behavior. He did not carelessly disregard the rules and no evidence was put forth for the one-day suspension instead of lesser discipline—noting that a one-day suspension was the most severe discipline for a violation of this work rule. Because Grievant violated the rule for a good faith reason, a written reprimand is sufficient to put Grievant on notice.