**OCB AWARD NUMBER: 2219**

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| **SUBJECT:** | **ARB SUMMARY # 2219** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **16-11-20121015-1089-01-14** |
| **DEPARTMENT:** | **Ohio Department of Job and Family Services** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Thomas J. Nowel** |
| **GRIEVANT NAME:** | **Willie Mathis** |
| **MANAGEMENT ADVOCATE:** | **Tiffany Richardson** |
| **UNION ADVOCATE:** | **Jamecia Little** |
| **ARBITRATION DATE:** | **5-10-2013, 6-6-2013, 6-25-2013** |
| **DECISION DATE:** | **9-11-2013** |
| **DECISION:** | **MODIFIED**  |
| **CONTRACT SECTIONS:** | **Articles: 13.16, 2.02, 24.01, 24.02** |
| **OCB RESEARCH CODES:** | **106.21- Agreement Rights 118.01- Discipline- In General**  |

**HOLDING: Grievance MODIFIED. Although Grievant purposefully entered inaccurate information into the time keeping system, the acquiescence of management mitigates the culpability of the Grievant. Some of the other employees engaged in this conduct were not terminated. The investigation took an unreasonable amount of time. Therefore, termination was not proper. No pay back was to be awarded.**

Grievant was a Software Development Specialist 4. In August of 2009, the Ohio Inspector General received an anonymous complaint regarding six employees. The complaint alleged that the relevant employees were paid for time not worked. The Ohio State Highway Patrol investigated these allegations. Theft of State time could result in a criminal prosecution. However, the Prosecutor’s Office declined to prosecute the Grievant and other relevant employees. Afterwards, the ODJFS Office of the Chief Inspector (OCI) conducted an investigation. Based on card swipes at the office building kiosk, the OCI investigation concluded that the Grievant had committed theft of State time. OCI determined that the Grievant claimed 422 hours and 52 minutes of pay for time he did not work. This number was reduced to 377 hours and 45 minutes because the swipe mechanism at the kiosk was not always accurate. The proper forum to measure the amount of time worked is not determined by the kiosk at the front of the building. It is determined by a system called TimeKeep. The combined investigations spanned over a three year time period. Regardless, Grievant was terminated from his employment in October of 2012 for allegedly receiving pay for time not worked.

The Employer contended that it is the responsibility of each employee to properly account for their time actually worked in an accurate manner. The kiosk card swipes were generally accurate. Grievant was credited with time worked when it was determined that the kiosk was providing inaccurate information. Grievant has no defense for unworked hours. This was illustrated in a spreadsheet populated with information from the kiosk’s records. Although a criminal case was not pursued, the standard of proof for an administrative hearing is significantly different. The amount of time the Grievant cannot account for is egregious and qualifies for termination of employment. Further, there is nothing in the CBA requiring that the management representative during the pre-disciplinary hearing be a different person from the management advocate at arbitration. Therefore, the grievance should be denied.

The Union argued that the appropriate record of time worked is TimeKeep. In this system, the employee’s time is approved by their supervisors. Here, Grievant’s supervisor always approved Grievant’s recorded time worked. Grievant is required to work outside of his approved schedule due to the nature of his position. Grievant was instructed, however, to record only eight hours a day regardless of the time actually worked. This was to avoid paying overtime. The kiosk card swipes used to determine how many hours Grievant allegedly “stole” is inaccurate and inconsistent. The Union challenged the propriety of the same management representative conducting the pre-disciplinary hearing and then presenting the case at arbitration. Other employees accused of “stealing time” were not terminated. The investigation spanned over a three year period. This is an unreasonable amount of time. Additionally, the Grievant has never been disciplined during his time of employment. Therefore, the grievance should be granted.

The Arbitrator found that the CBA does not prohibit the Employer from utilizing the same member of management to conduct hearings at each step of the process and to then present the case at arbitration. The fact that some employees were discharged and others were not is indicative of arbitrary punishment. Grievant’s conduct may have violated policy but his actions occurred in an environment where such behavior was deemed acceptable. Grievant does not have any prior discipline and therefore progressive discipline is an issue. Lack of supervisory response is also an indication that Grievant’s behavior was acceptable. Employees are entitled to know when an established accepted pattern or practice will be changed without that attainment of knowledge surfacing through discipline. The investigation took an unreasonable amount of time. However, Grievant clearly entered information into TimeKeep which was not an accurate reflection of time actually worked.