**OCB AWARD NUMBER: 2223**

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| **SUBJECT:** | **ARB SUMMARY # 2223** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **16-11-20121015-1088-01-14** |
| **DEPARTMENT:** | **Ohio Department of Job and Family Services** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Craig A. Allen** |
| **GRIEVANT NAME:** | **Lloyd Clark** |
| **MANAGEMENT ADVOCATE:** | **Jason Hovance** |
| **UNION ADVOCATE:** | **Jamecia Little** |
| **ARBITRATION DATES:** | **5-23-2013, 6-13-2013, 7-17-2013** |
| **DECISION DATE:** | **9-23-2013** |
| **DECISION:** | **DENIED** |
| **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 DENIED. Grievant purposefully entered inaccurate information into the time keeping system and reported time that he did not work. Although there were concerns over using the entry kiosk to show Grievant’s absence from times he claimed he worked, allowance for mechanical issues was insufficient to offset the large discrepancy of time Grievant claimed to have worked. Other employees engaged in this conduct were terminated. Having the same individual conduct the Pre-D, Step III Hearing, and mediation was not improper under the CBA. Although Grievant was not actively being supervised, the Grievant was on notice regarding the probable consequences of his behavior and the supervisor was disciplined. The investigation was thorough and objective. Thus, the Employer met its burden of showing Grievant stole time and removal was appropriate.**

Grievant was a Software Development Specialist 2. 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 can result in a criminal prosecution. However, the Prosecutor’s Office declined to prosecute the Grievant and other accused employees. Afterwards, the ODJFS Office of the Chief Inspector (OCI) conducted the investigation. Based primarily 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 191 hours and 12 minutes of pay for time he did not work. This number was later reduced to 130 hours and 14 minutes after giving credit for any times the Grievant could show he was working and times the kiosk was not working properly. Due to a variety of factors, the investigations spanned over a three year time period. Grievant was finally 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. After a full and fair investigation the kiosk card swipes were found to be generally accurate, and when the kiosk provided inaccurate information Grievant was given credit. Grievant has no defense for unworked hours. This was illustrated in a spreadsheet populated with information from the kiosk’s records and discounted any time periods Grievant could show he was working. Although a criminal case was not pursued, the standard of proof for an administrative hearing should be preponderance of the evidence. The amount of time the Grievant cannot account for was egregious and qualified for removal. Having a management representative conduct the pre-disciplinary hearing and mediation was not precluded by the CBA. 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 did not count hours worked in the conference room (outside the kiosk). The Union challenged the propriety of the same management representative conducting the pre-disciplinary hearing and then presenting the case at arbitration. Some employees accused of “stealing time” were not terminated. Moreover, the supervisor’s compliance in approving time prevented Grievant from receiving notice about the policy. The investigation spanned an unreasonable amount of time as it took three years to conclude. Additionally, Grievant had no prior discipline before his termination. 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 was not indicative of arbitrary punishment. The investigation was lengthy, though fair, and reasonably established Grievant frequently took double the allocated lunch break and left early. Grievant was on notice and given ample opportunities to show his whereabouts. Therefore, due to the substantial amount of unaccounted time and the money involved, under a preponderance of the evidence removal was justified.