**OCB AWARD NUMBER: 2225**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2225** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20121219-0104-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Bertha L. Toton** |
| **MANAGEMENT ADVOCATE:** | **Lt. Ronald Raines** |
| **UNION ADVOCATE:** | **Mr. Hershel Sigall** |
| **ARBITRATION DATE:** | **9-24-2013** |
| **DECISION DATE:** | **10-10-2013** |
| **DECISION:** | **MODIFIED** |
| **CONTRACT SECTIONS:** | **Articles: 19.01, 19.05** |
| **OCB RESEARCH CODES:** | **118.08 Suspensions- In General** |

**HOLDING: Grievance MODIFIED. Although the Grievant should have dispatched appropriately, the Employer did not meet the clear and convincing standard that the Grievant was untruthful. Therefore, the three day suspension should be reduced to a one day suspension.**

Grievant is a dispatcher. As is customary, on the day in question, the Grievant received a call from a citizen. The citizen stated that an 18-wheeler, driving at a high speed, had nearly run someone off the road. In response, the Grievant hung-up the phone on the citizen, declaring that she had an emergency call coming-in. Approximately one minute later, the citizen called back and asked to speak with a supervisor. The citizen further complained about the dangers of this particular 18-wheeler. The dispatching supervisor asked the Grievant to transfer the call to the Sandusky Post. The Sandusky Post dispatched a cruiser, but no reckless operation was found. An investigation was initiated concerning this incident. It was determined that the Grievant did not create an incident (CAD); did not send a trooper to the caller; did not transfer the citizen’s call to the appropriate Post, and ultimately hung-up on the caller. Further, it was alleged that the Grievant had been untruthful during the investigation. The Grievant was given a three-day suspension.

The Employer contended that the Grievant was untruthful during an investigation and that the Grievant did not follow protocol. The Grievant received a call from a citizen about a reckless and possibly impaired driver. The Grievant placed the motoring public at risk when she failed to act upon the information she received. The discipline given to the Grievant for this violation constitutes a routine corrective action.

The Union argued that the discipline was not progressive in nature. The Grievant never had any intent to be dishonest. The Grievant simply answered the questions as she recalled the information. Further, the Division failed to retain copies of all the appropriate audio recordings in question. The Grievant does not deny a neglect of duty, but the Union asserts that this issue should be covered more thoroughly in training.

The Arbitrator found that the three day suspension should be reduced to a one day suspension. The Arbitrator was not convinced that the Grievant lied about the incident. The Employer had to prove, under a clear and convincing standard, that the Grievant was untruthful. The Employer did not meet this burden. Additionally, after listening to a recording, the Arbitrator was convinced that the calling citizen in question sounded like a “nut-case.” However, the Arbitrator acknowledged that the Grievant should have dispatched appropriately. The grievance was modified.