**OCB AWARD NUMBER: 2227**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2227** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20121119-0099-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Sandra Mendel Furman**  |
| **GRIEVANT NAME:** | **Marty J. Ferguson** |
| **MANAGEMENT ADVOCATE:** | **Lt. Heidi Marshall** |
| **UNION ADVOCATE:** | **Herschel Sigall**  |
| **ARBITRATION DATE:** | **10-30-2013** |
| **DECISION DATE:** | **11-11-2013** |
| **DECISION:** | **MODIFIED**  |
| **CONTRACT SECTIONS:** | **Articles: 19.01, 19.05** |
| **OCB RESEARCH CODES:** | **118.08 Suspensions- In General**  |

**HOLDING: Grievance MODIFIED. Although the Grievant has two previous incidents concerning his demeanor, these occurrences did not rise to the level of discipline. Therefore, the Grievant was not on written notice regarding his behavior. His prompt apology and continued improvement indicated to the Arbitrator that the Grievant’s one-day suspension was too harsh. The proper discipline was a written reprimand.**

Grievant is an Ohio State Trooper. On August 23, 2012, during the second shift, the Grievant was the only Trooper on duty. During this time period, the Grievant investigated a hit and run. The Grievant determined that materials on the crash site had been moved. After some investigating, the Grievant was directed to the home of Patricia Williams. The Grievant made contact with Ms. Williams. Ms. Williams later complained that the Grievant had acted rudely toward her. The Grievant acknowledged such behavior when he apologized to her. As he stated, he had “acted like an ass.” The Grievant was charged with violating work rule: Conduct Unbecoming an Officer. He was given a one-day suspension.

The Employer contended that it had followed the disciplinary grid. The Grievant does not have a clear deportment record. He has two previous verbal reprimands. The Patrol consistently issues one-day suspensions for a citizen’s complaint of discourteous treatment. Additionally, the Grievant has two prior informal complaints regarding similar behavior. His performance evaluations from 2011 and 2012 indicated that he needed to work on his demeanor. Also, his apology used vulgar language. Therefore, a one-day suspension was justified and the Employer asked that the grievance be denied.

The Union argued that progressive discipline was not applied. The Grievant should have received a verbal warning or at most a written reprimand for his conduct. A suspension is a serious mark on a Trooper’s deportment record. It affects transfers, teaching, training, and promotional opportunities. The Grievant has continued to work on and has seen improvement in his demeanor. Further, the Grievant apologized for his conduct and is self-aware. The discipline was too harsh, and therefore the Union asked that the grievance be granted.

The Arbitrator found that the complainant, Ms. Williams, was not credible. Ms. Williams gave various retellings of the event. Additionally, the Grievant has continued to work on his issues with demeanor. And although the Grievant has two previous incidents concerning his attitude, these occurrences did not rise to the level of discipline. Therefore, the Grievant did not have previous written notice regarding his behavior. His choice of words in the apology did not aggravate the situation. Further, his prompt apology is a mitigating factor. Accordingly, the grievance was modified. The proper discipline was a written reprimand