**OCB AWARD NUMBER: 2232**

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| **SUBJECT:** | **ARB SUMMARY # 2232** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20130426-0028-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Sandra Mendel Furman** |
| **GRIEVANT NAME:** | **Bertha L. Toton** |
| **MANAGEMENT ADVOCATE:** | **Lt. Heidi Marshall** |
| **UNION ADVOCATE:** | **Elaine Silveira** |
| **ARBITRATION DATE:** | **12-18-2013** |
| **DECISION DATE:** | **1-6-2014** |
| **DECISION:** | **MODIFIED** |
| **CONTRACT SECTIONS:** | **Article: 19.01** |
| **OCB RESEARCH CODES:** | **118.09 Fines** |

**HOLDING: Grievance MODIFIED. A five-day fine was reduced to a three-day fine. Training given to the Grievant was insufficient. And the evidence did not prove that the Grievant’s errors crossed an unacceptable threshold. However, the Grievant appeared not to take her job seriously and it seems that she did not make any appreciable effort to address valid concerns about her work product.**

The Grievant is a Dispatcher at Post 52. She has been an employee for 9 years. During a monthly audit of the Grievant’s work, discrepancies were discovered in her Computer Aided Dispatch entries. Due to these errors, Grievant underwent “extensive training.” Three days after the “training” session, the Grievant committed similar errors to those previously mentioned. The supervisor noted that improvement was minimal. Later, the Grievant contended that her training was not extensive. And in fact, it was not training at all. Grievant also stated that her original CAD trainer had been ineffective, as he was on his cell phone for a majority of the time. Yet, the Grievant had rated the trainer favorably in post-training evaluations. The Grievant also claimed that she had previously asked for additional training. But that such training was denied. Grievant argued that her errors were subject to more ridicule than others. Previously, the Grievant had a one day fine, a written reprimand, and a verbal reprimand. In this case, she was issued a 5-day fine.

The Employer contended that it followed the disciplinary grid. Grievant had repeatedly been to training with little to no results. According to her supervisor, further training would be a waste of time. Grievant already knows how to do the job. For some unknown reason though, the Grievant chooses not to perform in this manner. Additionally, the Grievant’s supervisor believes that the Grievant refuses to learn from mistakes. Therefore, the discipline was for just cause.

The Union argued that the Grievant never received proper training. The Patrol has essentially given up on the Grievant without allotting for appropriate training. Further, due to the high volume rate, errors are common for the Grievant’s position. The Grievant is no more at fault than any other employee in her position. There has not been a showing that the Grievant’s error rates are worse than any other employee’s. Therefore, the grievance should be granted. Or in the alternative, the fine should be reduced.

The Arbitrator found that the supervisor did not train the Grievant as claimed. There was no notice that if improvement did not occur quickly, then the Grievant would be subject to discipline. However, it appears that the Grievant did not take these issues seriously or make any appreciable effort to address valid concerns. Regarding disparate treatment, the Grievant cannot prove that her errors were “singled-out” compared to others. Additionally, it was not sufficiently proven that the errors made by the Grievant crossed an unacceptable threshold. The arbitrator is unsure if the Grievant needs more training, but insists that the Grievant should not be given up on. The grievance was modified from a five-day fine to a three-day fine.