**OCB AWARD NUMBER: 2233**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2233** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20130501-0033-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Susan Grody Ruben**  |
| **GRIEVANT NAME:** | **Sean E. Carpenter** |
| **MANAGEMENT ADVOCATE:** | **Lt. Cassandra L. Kocab** |
| **UNION ADVOCATE:** | **Herschel M. Sigall**  |
| **ARBITRATION DATE:** | **10-3-2013** |
| **DECISION DATE:** | **12-27-2013** |
| **DECISION:** | **MODIFIED**  |
| **CONTRACT SECTIONS:** | **Articles: 19.01, 19.05** |
| **OCB RESEARCH CODES:** | **118.01 Discipline-In General—118.301 Progressive Discipline**  |

**HOLDING: Grievance MODIFIED. The Grievant’s termination should be reduced to a six-month unpaid suspension. Despite the seriousness of the Grievant’s conduct, the State’s reasoning for termination was greatly undercut when the Grievant’s criminal conviction was reversed.**

The Grievant is an Ohio State Trooper. Incidents amidst the night of July 28, 2012 instigated an administrative investigation into the Grievant’s action regarding an impaired motorist. This motorist had become stuck on cable wires in a berm. Two officers were already at the scene when the Grievant arrived. One of these officers informed the Grievant that the motorist was impaired. And relatively soon after, an Officer said, “We’re gonna drop him [the motorist] off at Taco Bell. I figured they’ll have someone in there that interprets.” It is important to note that the impaired motorist was of Hispanic heritage and spoke little to no English. The Grievant, despite having quasi-knowledge of the motorist’s impairment and having earlier told these Officers to “get him a ride,” did not attempt to stop this offensive drop-off from occurring. The Grievant negligently deferred to the arresting Officer’s judgment. Later that night, while walking down a dark road, this motorist was struck and killed. Following this sad event, the Grievant was charged with dereliction of duties. In the Delaware Municipal Court, the Grievant was found guilty on two counts of misdemeanor dereliction of duty—a conviction that was later reversed. In April of 2013, Grievant was issued a termination letter. The letter stated that the Grievant “failed to take appropriate action at a crash scene involving an impaired motorist.” Further, during the administrative investigation, it was determined that the Grievant was untruthful.

The Employer contended that the Grievant had the duty to prevent the deputies from acting negligently. Further, by suggesting that the motorist be given a ride home, the Grievant also acted negligently. Proper conduct called for administering an alcohol test. The Grievant carelessly acquiesced to the deputies’ actions. To say the least, this was an unprofessional act. Additionally, during several interviews, the Grievant was untruthful. The Grievant has been unremorseful and has not admitted fault. Thus, the Employer argued that the Grievant’s termination should stand.

The Union argued that the Grievant’s misdemeanor was reversed. This conviction was central to the State’s reasoning in discharging the Grievant. Had the Grievant never been improperly convicted, he would have never been terminated. A reversal of his conviction, therefore, calls for a reduction in discipline. Further, the Union asserted that no actual crash took place. An expert witness testified to this fact. It follows that the Grievant had no duty to investigate the scene. Additionally, the Grievant’s alleged untruthfulness stemmed not from an intention to lie, but from common variances that occur when recalling an incident. Also, it was not the Grievant’s decision to take the motorist to Taco Bell. Since the motorist was in the custody of another officer, there was nothing for the Grievant to act upon.

The Arbitrator found that the Grievant’s culpability did not turn on the motorist’s later death. The Grievant’s conduct was grossly unprofessional and ineffective, relying too heavily on his rapport with the other Officers. Further, the Grievant’s acquiesce to the offensive drop-off location was unsavory. And these actions dictate that the Grievant should be punished. But the State made the Grievant’s conviction a material part of his termination. His later exoneration undercuts the State’s reasoning for dismissal. Thus, the Grievant’s removal should be reduced to a six-month unpaid suspension.