**OCB AWARD NUMBER: 2238**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2238** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20130123-0091-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Thomas J. Nowel**  |
| **GRIEVANT NAME:** | **Rufus V. Irby**  |
| **MANAGEMENT ADVOCATE:** | **Heidi A. Marshall**  |
| **UNION ADVOCATE:** | **Elaine Silveira**  |
| **ARBITRATION DATE:** | **2-12-2014** |
| **DECISION DATE:** | **2-17-2014** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Article 19.00**  |
| **OCB RESEARCH CODES:** | **118.08 Suspensions-In General**  |

**HOLDING: Grievance DENIED. The discipline derived from an irresponsible decision to operate a vehicle. By experiencing pre-episodic conditions, the Grievant was on notice. And therefore, the Grievant acted negligently when he volitionally operated the vehicle, placing himself and others at risk. Thus, the suspension had just cause.**

The Grievant received a 5-day suspension. While driving, the Grievant exercised erratic maneuvering. This included several potential collisions barely avoided. A passenger observed the Grievant sleeping as he operated the vehicle. In response, the passenger made comments to the Grievant. But dangerous driving continued. Seemingly to gather himself, the Grievant pulled into a McDonalds where he momentarily fell asleep. Continued mishaps occurred and the passenger was forced to drive. Upon arrival, the Grievant reported his condition. And he was driven home. Later, the Grievant saw a doctor and was given a medical release. Due to the potential harm that could have occurred, the Grievant received this suspension.

The Employer contended that the Grievant has a history of sleeping on the job. With this notice, the Grievant had a duty to mitigate potential harms. Since the Grievant “felt kind of funny” and then “felt worse” before leaving, the Grievant should have known the potential medical implications and the possible harm to others associated with those implications. Driving nearly eight miles, almost causing two accidents, is unacceptable.

The Union argued that the Grievant has 34 years of experience. Further, he did not fall asleep. He suffered from a medical condition. And once the Grievant recognized his condition, he deferred to the passenger. Because the medical condition is out of the Grievant’s control and the Employer is aware of it, the discipline given was excessive.

The Arbitrator found the discipline unrelated to the Grievant’s medical condition. Indeed, the discipline derived from an irresponsible decision to operate a vehicle. By experiencing pre-episodic conditions, the Grievant was on notice. And therefore, the Grievant acted negligently when he volitionally operated the vehicle, placing himself and others at risk. Thus, the suspension had just cause.