**OCB AWARD NUMBER: 2243**

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| **SUBJECT:** | **ARB SUMMARY # 2243** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **31-03-2013-0419-0016-01-07** |
| **DEPARTMENT:** | **Department of Transportation** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Meeta Bass Lyons** |
| **GRIEVANT NAME:** | **Keith Crumley**  |
| **MANAGEMENT ADVOCATE:** | **Edward Flynn** |
| **UNION ADVOCATE:** | **Jim Beverly** |
| **ARBITRATION DATE:** | **1-23-2014** |
| **DECISION DATE:** | **3-27-2014** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Article 24.00 and 24.02**  |
| **OCB RESEARCH CODES:** |  **118.01-Discipline—In General**  |

**HOLDING: Grievance DENIED. The Grievant’s removal was upheld. He disobeyed orders, endangering his co-workers. He also made false statements in order to retaliate against his supervisors. As a result, the employer-employee relationship was permanently impaired.**

*Facts.* In October of 2012, the Grievant served as the lead worker during a culvert excavation job. The plans called for a 10 foot wide, 4 ½ foot deep trench. Under these specifications, no protective system was required. Protective measures are only necessary when the trench reaches a depth of 5 feet. After the job commenced, the Grievant decided to deviate from the plan, resulting in a 5 foot wide and 6 foot deep trench. The Grievant asked for protective measures but his supervisor denied them based on the presumption that the Grievant had stuck to the original plan. The job was completed without incident. But the Grievant received a written reprimand for not following orders. Specifically, the Grievant had not dumped materials at a given location. This angered the Grievant. So he reported that his supervisor forced him to work in an unsafe manner. An investigation was launched. It found that the supervisor was neglectful. Upon further review, however, it was discovered that the initial investigation was flawed. The supplemental investigation concluded that the Grievant was neglectful in his duties and that he had made false statements against his supervisor in retaliation. As a result, the Grievant was removed from his position.

*The Employer’s Argument.* The Grievant disregarded orders, putting his co-workers in an unsafe position. Since he was properly trained, the Grievant had no legitimate excuse for deviating from the original plan. He also made false statements and accusations in order to retaliate against a supervisor. Because of these false statements, the State wasted resources conducting an investigation. For these reasons, the Employer had just cause to remove the Grievant.

*The Union’s Argument*. The punishment administered was excessive. Every member of the crew had the authority to stop the project. But none did. Further, no persons were injured. So the Grievant was not neglectful in his duties. The investigation was also unfair because members of the crew were threatened by their supervisors. Crew members narrated their stories accordingly. Essentially, they used the Grievant as a “scape-goat.”

*Holding.* The Arbitrator found the Grievant’s testimony unconvincing. It lacked specificity and supporting evidence. Further, the lack of protective measures implemented during the excavation posed a serious safety risk. This lapse in judgment could have resulted in death or serious injury. There are few mitigating factors to help the Grievant’s cause, as he appears to be well-trained and experienced. The Grievant also made false statements in order to retaliate against a supervisor. As a result, the employer-employee relationship was permanently impaired. Grievance denied.