**OCB AWARD NUMBER: 2245**

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| **SUBJECT:** | **ARB SUMMARY # 2245** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-35-20130327-0056-01-03** |
| **DEPARTMENT:** | **Department of Rehabilitation and Correction** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Meeta Bass Lyons** |
| **GRIEVANT NAME:** | **Rock Nissen** |
| **MANAGEMENT ADVOCATE:** | **Richard Shutek** |
| **UNION ADVOCATE:** | **Derek Urban** |
| **ARBITRATION DATE:** | **1-30-2014** |
| **DECISION DATE:** | **4-18-2014** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Article 24.00** |
| **OCB RESEARCH CODES:** | **118.01-Discipline—In General** |

**HOLDING: Grievance GRANTED. It was not entirely clear that the Grievant was asleep on duty.**

*Facts.* On January 30, 2013, the Grievant and another Corrections Officer (CO) were assigned to guard an inmate at St. Vincent’s Hospital. Two nurses claimed that these CO’s were sleeping on duty. The Grievant wore a hat that covered his face. And he did not respond to the nurse when she addressed him. She could not, however, see his eyes. The Grievant denied sleeping on duty. The Employer removed him anyway.

*The Employer’s Argument.* The Grievant fell asleep while carrying a 40 caliber Glock Handgun. He also had 32 rounds of ammunition. The guarded inmate is highly dangerous. The inmate was serving a 14.5 year sentence for voluntary manslaughter with a gun. Falling asleep on duty, thus, is an unacceptable risk worthy of dismissal.

*The Union’s Argument*. The nurses failed to make a proper assessment of whether or not the Grievant was asleep. In fact, the Grievant was awake. He just did not feel the need to engage the nurse when she attempted to speak with him. The warden, further, did not have access to the entire story before making the decision to remove the Grievant.

*Holding.* The Employer could not prove by a preponderance of the evidence that the Grievant should be removed. The Employer’s star witness, the reporting nurse, was not entirely sure that Grievant was asleep on duty. In response, she stated that she did not think that he could watch the inmate properly while wearing his hat so low. The Grievant, however, is not charged with that. He is charged with sleeping on duty. Since it could not be proven that he was actually asleep, the grievance was granted.