**OCB AWARD NUMBER: 2253**

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| **SUBJECT:** | **ARB SUMMARY # 2253** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20140327-0031-07-15**  |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Felicia Bernardini**  |
| **GRIEVANT NAME:** | **William F. Lee** |
| **MANAGEMENT ADVOCATE:** | **Lt. Jacob D. Pyles** |
| **UNION ADVOCATE:** | **Herschel Sigall** |
| **ARBITRATION DATE:** | **5-7-2014** |
| **DECISION DATE:** | **7-1-2014** |
| **DECISION:** | **MODIFIED**  |
| **CONTRACT SECTIONS:** | **Articles 19.00** |
| **OCB RESEARCH CODES:** |  **118.01—Discipline—In General**  |

**HOLDING: Grievance MODIFIED. The Arbitrator found that the demotion should be reduced to a one-day suspension. She stated that a demotion is too serious an action here. It is a profound consequence, given only to employees with continual behavioral or performance problems. The Grievant here made a one-time mistake with minimal harm, and no pattern has been established that indicates that the Grievant is liable to behave poorly again.**

*Facts.* The Grievant was demoted from the rank of Sergeant to Trooper for violating work rules. The Grievant had used an E-Z Pass, designed to facilitate travel through tolls, for personal use when it was given to him for work purposes only. He used the pass to drive another Sergeant to a military separation hearing. The Grievant is ex-military, no longer subject to military orders. And though his presence at the hearing was requested, he was not subpoenaed. Because the Grievant used his E-Z Pass for personal use, he was fined $82.50 by the Pennsylvania Turnpike Commission. He was also billed $13.00 by the Ohio Turnpike Commission. He paid both fines timely. But before he did, he tried to get the fines waived.

*The Employer’s Argument.* The Grievant knowingly disobeyed the Highway Patrol’s work rules. He used his E-Z Pass, designed for work use, for personal use instead. He then tried to use his position as a way to get the fines waived. To make it worse, during the investigation, he made false claims that he was on “official business” and that he was “reporting to the government.” In reality, though, he was helping a friend. These events culminate into a serious breach of trust and it reveals that the Grievant is not ready for a leadership position.

*The Union’s Argument*. This was an off-duty incident. As an employee, the Grievant is highly respected and qualified. The only reason the Employer even knows about this issue is because the Grievant self-reported it. The Grievant thought he was allowed to use the E-Z Pass for all government use. He is a military veteran of 20 years and thought that by attending this military hearing, he was serving an official government function. He is now, however, aware of the difference between official government business and personal business. He has admitted his mistake, and he is not liable to make it again. The Patrol’s discipline was not commensurate with the offense. A demotion is too serious a charge for an honest mistake.

*Holding.* The Arbitrator found that the demotion should be reduced to a one-day suspension. The Grievant knowingly used the E-Z Pass while in his personal car, but he reasonably thought that it was a permissible use. He only tried to get the fines waived because he still believed that he was acting in an official government capacity. So demotion is too serious an action here. It is a profound consequence, given only to employees with continual behavioral or performance problems. This situation does not meet that standard, as the Grievant here made a one-time mistake with minimal harm, and no pattern has been established that indicates that the Grievant is liable to behave poorly again.