**OCB AWARD NUMBER: 2255**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2255** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20140314-0026-04-01** |
| **DEPARTMENT:** | **Public Safety, State Highway Patrol** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Jack Buettner** |
| **GRIEVANT NAME:** | **Lonnie Michael Butler** |
| **MANAGEMENT ADVOCATE:** | **Lt. Casssandra Brewster** |
| **UNION ADVOCATE:** | **Hershel M. Sigall** |
| **ARBITRATION DATE:** | **6-24-2014** |
| **DECISION DATE:** | **8-27-2014** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Article 19.00** |
| **OCB RESEARCH CODES:** | **Discipline—In General 118.01** |

**HOLDING: Grievance GRANTED. Arbitrator found that Grievant was wrongfully terminated because Employer disciplined the Grievant as if he had been convicted of OVI when that was not the case. Upon Employer’s decision, Grievant’s fate had not yet been determined. Agitating circumstances, Grievant did not end up being convicted of OVI. Law enforcement may be held to higher standards, but their off-duty conduct must be relevant to their employment for it to warrant termination. A three-factor test determines when that is so. Moreover, an arrest, in and of itself, is insufficient to cite as harm.**

*Facts.* On March 11, 2014, Grievant was terminated from his employment for allegedly conducting himself in a manner unbecoming of an officer. In February of 2014, Grievant, while driving late at night, rear-ended a vehicle. Officers at the scene of the crash believed that Grievant had been drinking. When asked, Grievant claimed that he only had two beers, subsequently refusing to perform field sobriety tests and a Breathalyzer test. Based on his behavior and the officer-on-the-scene’s experience, Grievant was determined to be intoxicated, and was issued a citation for operating a vehicle under the influence. That May, Grievant pled no contest to a reckless operation charge. Prior to his plea, however, he was terminated from his employment.

*Employer’s Position.* Grievant’s termination was for just cause. He rear-ended an 18-year-old who at arbitration expressed her damaged perception of the State Highway Patrol. After the crash, two officers observed signs of Grievant’s intoxication: his mannerisms were consistent with alcohol consumption and the odor of alcohol on his breath. Grievant claims to have suffered a head injury, and further professes that the injury causes symptoms similar to that of intoxication. But Grievant never mentioned sustaining a head injury until after the fact; not mentioning it at the scene of the crash or at the police station where he was taken after. His actions were of such a manner that he failed to act as an officer should. He hurt a citizen because he was negligent with his drinking.

*Union’s Position.* Grievant’s termination was without just cause. He was in an accident, and he was charged with operating a vehicle under the influence (“OVI”). But, his mannerisms which resembled intoxication were not due to alcohol consumption. They were due to a concussion. A doctor confirmed this the very next day. Grievant, further, was never convicted of OVI, and instead pled no contest to a reckless operation charge. He would have gone to trial, but he could not afford the lawyer fees. His termination, moreover, was predetermined. He was terminated before a conviction or his plea. Progressive discipline was not followed, as he only has a one-day suspension on his record. Grievant is a man of high repute amongst his peers, and according to them, he is a good officer. He should be reinstated.

*Arbitrator’s Decision.* Arbitrator granted the grievance. Grievant was never convicted of OVI, but Employer’s disciplinary process treated Grievant as if he had been convicted. Employer observed a rule, and concomitantly the disciplinary grid, concluding that removal was appropriate. The grid, however, only calls for removal when an employee has actually been convicted, not just charged. Treating the Grievant as guilty before the courts determine that to be true is unfair.

Law enforcement may be held to higher standards, but their off-duty conduct must be relevant to their employment for it to warrant termination. Adopting the rule from Callwell Co. 28 LA 434 (Kesselman, 1957), “discipline may be imposed if employee’s conduct (1) harms the employer’s business, (2) adversely affects the employee’s ability to perform his job, or (3) leads other employees to refuse to work with the offender.” Employer’s argument that Grievant’s actions discredited them is insufficient. A “mere showing that an employee has been arrested or involved in some misconduct as a matter of public record is an insufficient reason to cite harm to the Employer.” Grievant’s conduct did not “adversely impact the reputation, mission, or the public trust of the Ohio State Highway Patrol.” Grievant also has a good work record, and the court has removed his driving suspension. He thus is reinstated.