**OCB AWARD NUMBER: 2256**

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| **SUBJECT:** | **ARB SUMMARY # 2256** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20120313-0029-04-01** |
| **DEPARTMENT:** | **Public Safety, Division of Highway Patrol** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Dwight A. Washington** |
| **GRIEVANT NAME:** | **Laura A. Windbigler** |
| **MANAGEMENT ADVOCATE:** | **Jacob D. Pyles** |
| **UNION ADVOCATE:** | **Hershel M. Sigall** |
| **ARBITRATION DATE:** | **9-17-2014** |
| **DECISION DATE:** | **9-17-2014** |
| **DECISION:** | **MODIFIED**  |
| **CONTRACT SECTIONS:** | **Article 63.05** |
| **OCB RESEARCH CODES:** | **Overtime—In General 115.501, Shift Differential 115.6** |

**HOLDING: Grievance MODIFIED. Grievance denied in part and granted in part. Grievant should have been paid shift differential for the hour she worked from 7:00 am to 8:00 am when she had already worked from 11:00 pm to 7:00 am. A new shift did not start at 7:00 am. It was continuous work. The shift started at 11:00 pm and ended at 8:00 am. Grievant, however, is not entitled to shift differential for hours worked on the 18th from 7:00 am to 3:00 pm because that shift did not start between 2:00 pm and midnight as the contract requires. Traveler dispatchers are not entitled to the same shift differential treatment as relief dispatchers.**

*Facts.* Grievant was a traveler dispatcher in February of 2012. Traveler dispatchers are required to report to three different assigned posts and are given varied shifts based upon operational needs. On one shift, Grievant worked from 11:00 pm on February 13th until 7:00 am on the 14th. She then was mandated to work an additional hour from 7:00 am to 8:00 am. She was paid shift differential for the hours worked between 11:00 pm and 7:00 am, but not for the hour worked from 7:00 am to 8:00 am. Grievant claims that she should have been paid shift differential for that hour worked between 7:00 am and 8:00 am. She also claims that she should be paid shift differential for another shift she worked on February 18th, between the hours of 7:00 am and 3:00 pm.

*Employer’s Position.* Grievant is not entitled to shift differential for any of the hours she grieved. Traveler dispatchers and relief dispatchers are not the same with regard to shift differential as the Union claims. The contract expressly treats traveler dispatchers and relief dispatchers differently in regards to reporting locations, pay, and mileage reimbursement. So even though the contract states that relief dispatchers should be paid shift differential for all hours worked on a third shift; that does not apply to Grievant, a traveler dispatcher. Shift differential, moreover, is only given to non-relief dispatchers when they start shifts between the hours of 2:00 pm and 12:00 am. Grievant’s shift on February 18th started at 7:00 am, so she is not entitled to shift differential. On the 14th, when she worked from 11:00 pm to 7:00 am, she was paid shift differential. The additional hour she was assigned to work, from 7:00 am to 8:00 am, was a new shift, and thus she was not entitled to shift differential for that hour.

*Union’s Position.* Grievant should have been paid shift differential for the hours she worked from 7:00 am to 8:00 am on February 14th, and for the hours she worked on February 18th from 7:00 am and 3:00 pm. Although expressly not precedent setting, a 2008 settlement should resolve this case in favor of Grievant. It was based on a 2005 Q&A with the Commander of the Office of Human Resource Management, where that individual stated that traveler dispatchers would receive shift differential for the type of shifts the Grievant worked. Article 63.05 of the contract also states that all “fill-in” shifts are entitled to shift differential. Traveler dispatchers were designed to “fill-in” where required, thereby they are entitled to shift differential when they “fill-in”. And thus Grievant is entitled to shift differential for the hours she grieved.

*Arbitrator’s Decision.* Grievance denied in part and granted in part. Grievant should have been paid shift differential for the hour she worked from 7:00 am to 8:00 am on the 14th because that was a part of the same shift that she started at 11:00 pm on the 13th. It was continuous work. The shift started at 11:00 pm and ended at 8:00 am. Grievant, however, is not entitled to shift differential for hours worked on the 18th from 7:00 am to 3:00 pm because that shift did not start between 2:00 pm and midnight as the contract requires. Relief dispatchers and traveler dispatchers are expressly two different positions. So traveler dispatchers are not entitled to the same shift differential treatment as relief dispatchers. The 2008 settlement does not help Grievant either. It was specifically limited to that particular circumstance, and does not apply to this situation. There was no evidence, moreover, that the 2008 settlement was discussed at bargaining, or that its terms were to be enforced in the new contract.