**OCB AWARD NUMBER: 2257**

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| **SUBJECT:** | **ARB SUMMARY # 2257** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **30-04-20140106-0001-01-14** |
| **DEPARTMENT:** | **Department of Taxation** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Meeta A. Bass** |
| **GRIEVANT NAME:** | **Johnetta Gwinn** |
| **MANAGEMENT ADVOCATE:** | **Gregory Siegfried** |
| **UNION ADVOCATE:** | **Barbara Follmann** |
| **ARBITRATION DATE:** | **7-24-2014** |
| **DECISION DATE:** | **9-26-2014** |
| **DECISION:** | **MODIFIED** |
| **CONTRACT SECTIONS:** | **2.00, 22.00, 24.00** |
| **OCB RESEARCH CODES:** |  **Discipline—In General 118.01** |

**HOLDING: Grievance MODIFED. Grievant reinstated to her former position without back-pay. Arbitrator determined that Grievant failed to produce the amount of “correspondences” that Employer expected her to accomplish. Employer’s expectations were reasonable, and there was no evidence that Grievant was treated disparately. But Grievant’s previous deficiencies were not disciplined, and her supervisor did not inform her that she needed to retrieve more work from the wall bins upon the completion of her assigned work.**

*Facts.* Grievant works for the Department of Taxation reviewing, interpreting, and analyzing various tax-related communications and documentations. Grievant has to complete 75 “correspondences” per day. After a supervisor reviewed Grievant’s performance, it was discovered that she was not meeting this productivity expectation. Employer then decided to establish a program whereby Grievant would be distributed work at the beginning of the day to complete. The program did not indicate that a failure to complete the 75 correspondences per day goal would result in removal. When the program ended, results showed that Grievant did not successfully reach the level of desired productivity. Yet, she still wasn’t disciplined. Her supervisor continued to give her work at the beginning of the day, and Grievant continued to complete that work. Grievant’s supervisor continued to monitor her performance, though, recording a deficiency of production for four months straight. Grievant was subsequently removed.

*Employer’s Position.* Grievant’s removal was for just cause. Grievant failed to routinely produce, in a satisfactory manner, an average of at least 75 correspondences per day. There was, moreover, sufficient work available. If Grievant did all the work her supervisor had given her, then the Grievant should have known to grab more work out of the work bins on the wall. The removal was also in-line with progressive discipline. Grievant has a poor work record, having been demoted twice, and actively retaining a three-day and a five-day suspension on her record.

*Union’s Position.* Employer cannot meet their burden of proof. Their documents do not show that Grievant did not produce. Indeed, they only show that more work was potentially available. In order to support the charge, Employer must show that Grievant failed to complete work actually assigned to her. Employer also did not show how Grievant’s production compared to other employees. And Grievant’s supervisor only once expressed concern about Grievant’s work. The 75 “correspondences” a day were a goal, not a requirement. Grievant, moreover, had other responsibilities; namely, she is a union steward who rightly uses work time to complete her union duties.

*Arbitrator’s Decision.* Arbitrator determined that the grievance should be granted in part. Charging Grievant with Neglect of Duty, unsatisfactory work performance, is a broader charge than Neglect of Duty, failure to meet work standards for quality or quantity of work. Since the evidence relates more to productivity, Arbitrator only considered the more specific Neglect of Duty charge, relating to the quantity and quality of Grievant’s work. The average ten minute per “correspondence” goal was not unfair, nor was the Grievant disparately treated, as witnesses consistently testified that it takes about ten minutes on average per “correspondence.” Grievant’s supervisor testified that he gave Grievant sufficient work, but he also testified that she should have taken more work from the bins on the wall when she had finished the work he had given her. If the work was sufficient, then she should not have to take more to meet goal. It was never made clear to Grievant that by just doing the supervisor’s assigned work, her job was in jeopardy. Grievant’s supervisor, moreover, tracked her work for over a four month period without telling her that she was ineffectively producing. Because of this, Grievant is reinstated, but without back-pay.