**OCB AWARD NUMBER: 2262**

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| **SUBJECT:** | **ARB SUMMARY # 2262** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **MEGAN SCHENK** |
| **OCB GRIEVANCE NUMBER:** | **30-03-20140416-0014-05-02** |
| **DEPARTMENT:** | **Ohio Department of Taxation**  |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Susan Grody Ruben**  |
| **GRIEVANT NAME:** | **James Goodall** |
| **MANAGEMENT ADVOCATE:** | **Charles L. Kumpar** |
| **UNION ADVOCATE:** | **Paul Cox** |
| **ARBITRATION DATE:** | **10-1-2014** |
| **DECISION DATE:** | **12-10-2014** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Article 19.00, 19.01, 19.05** |
| **OCB RESEARCH CODES:** | **118.01—Discipline—In General**  |

**HOLDING: Grievance DENIED. Grievant committed several mistakes that ultimately amounted to a neglect of duty worthy of demotion. Employer did not prove all of its charges, but they proved enough of them to show that Grievant had seriously injured Employer’s operation.**

*Facts.* Grievant was demoted from a Tax Criminal Investigation Senior Agent to a Tax Criminal Investigation Agent for neglect of duty. The demotion occurred after two Agent Supervisors conducted an audit of the evidence room for which Grievant was responsible. The Supervisors reported that the evidence room was unattended and unsecured without the presence of any agents; numerous items that were destroyed months earlier were not marked as such; case numbered items were not properly stored and located as indicated on the Master Inventory; evidence was improperly stored at Grievant’s home; boxes were improperly noted; items were on the Master Inventory without a case number or name; and evidence was logged into the database system late and inappropriately. The Union challenged the validity of the demotion.

*Employer’s Position.* Employer had just cause to demote Grievant. Grievant did not have the capabilities to satisfactorily perform the Lead Evidence Officer duty of the Tax Criminal Investigation Senior Agent as evidenced by his conduct. The Master Evidence inventory document is a primary evidence document, and it should almost always be complete. But Grievant’s Master Evidence inventory document was only about 75% complete, which is completely unacceptable. Grievant also inexplicably left the unlocked evidence room unattended, among numerous other violations, all of which demonstrate a neglect of duty. Grievant’s basic responsibilities ensure evidence is properly collected, secured, and maintained. Grievant, however, failed to perform these basic duties, thereby endangering the performance of criminal prosecutions.

*Union’s Position.* Employer’s position is flawed. When Grievant left the evidence room, he could still see all the entrances to the locker. Grievant had not entered some information into the database, but what was entered, was entered correctly. Grievant asserts that case numbered items were properly stored and located, as indicated by the Master Inventory. All items out of place were an inherited problem. He never took improperly retained evidence home, and incorrect box notations were merely typos. Employer, moreover, cannot know if Grievant improperly retained the evidence locker because they had not conducted an audit prior to handing it over to Grievant. And Employer never trained Grievant properly for the Senior position. Grievant had asked Employer for help with the evidence locker before as well, but instead of help, he received punishment. Progressive discipline is being ignored here, as Grievant only has one verbal reprimand in 15.5 years of employment. Most importantly, Grievant’s actions did not compromise Employer’s operations. Grievance should be sustained.

*Arbitrator’s Decision.* Grievance denied. Grievant committed several mistakes that ultimately amounted to a neglect of duty worthy of demotion. He left the evidence room unsecured, and though he could still see the entrances, such a watch is an insufficient effort to secure the room. Grievance was five months behind on logging destroyed items in the Master Inventory. The Master Inventory did not accurately reflect where items were located in the evidence room. Grievant claims he inherited this problem, which maybe he did, but he did not fix it in over a year; thus, it was a task he should have completed. The charge for taking evidence home is unsubstantiated. Incorrectly notating boxes evidences sloppy work. Grievant also neglected his duty by not identifying all items in the Master Inventory with a case number and name, and by not timely logging evidence into the database. Employer did not prove all of its charges, but they proved enough of them to show that Grievant had seriously injured Employer’s operation.