**OCB AWARD NUMBER: [2649]**

SUBJECT: Arb Summary # [2649]

TO: All Advocates

FROM: Rachel Tollefsrud

OCB GRIEVANCE NUMBER: DNR-2018-04015-02

DEPARTMENT: Department of Natural Resources

UNION: Unit 2

ARBITRATOR: Tobie Braverman

GRIEVANT NAME: Jennifer Brown

MANAGEMENT ADVOCATE: Andrew Shuman

UNION ADVOCATE: Kimberly A. Rutowski

OCB REPRESENTATIVE: Eric Eilerman

ARBITRATION DATE: 7/7/2020

DECISION DATE: 9/21/2020

DECISION: Grievance GRANTED

CONTRACT SECTIONS Art 19 - Discipline Procedure

OCB/BNA RESEARCH CODES: 118.311–Just Cause, Concept of; 118.6561–Work Rules-in General

KEYWORD SEARCH TERMS: Just cause, progressive discipline, report, work rule violation, campergate

**HOLDING:** **Grievance GRANTED**.Employees cannot be expected to conform their conduct to expectations not clearly spelled out in rules or policy. Without knowledge of clear expectations, employees cannot be held responsible for a failure to meet them. There is no evidence the Grievant was ever instructed to photograph or arrange for seizure of the camper

**Facts:** Grievant had been employed as a Natural Resources Officer Investigator since 2015, having worked for the State since 1999. In December 2017, a warrant to search a camper was obtained and executed. The camper was later broken into and stolen in January. In the investigation as to the whereabouts of the camper, the Grievant and fellow investigator Carlson failed to provide a report both when they obtained and turned in gas station footage of the camper, and later when they went to interview a previous owner of the camper. When the camper was later found, Grievant and Carlson left the scene to find the alleged owner without ensuring that the camper would be towed. The grievant did not file a report regarding her actions, while Carlson did file a report.

**The Union argued:** The Union argued that the Employer did not demonstrate just cause for discipline. The Grievant was not the “owner” of the case and was not responsible for maintaining a file on the investigation. When she was working with Carlson, both agreed he would prepare the reports. At the time there was not a requirement that all investigators present submit a report when working together. The policy requiring both officers submit a report was only implemented and put in writing after this disciplinary action. The investigation was not fair or objective.

**The Employer argued:** The Employer argued they had just cause to discipline the Grievant. The Grievant engaged in activities related to the investigation of the camper allegedly stolen from East Fork State Park on three separate dates but did not write an Investigatory Report for any of those dates. Basic training dictated that officers involved in an investigatory act prepare a report even when two officers are working together. The Grievant also failed to take appropriate enforcement action when the camper was located when she left the scene without taking any action to secure the trailer or its contents.

**The Arbitrator found:** While there was an expectation that each investigator working together submit a report, there was no written rule or policy requiring this at the time of the discipline. There is no evidence that the expectation for all officers involved to submit a report was ever clearly communicated to the Grievant. While it was a reasonable expectation for all officers to submit reports, it is not reasonable to impose discipline for a failure to submit reports without a clear communication of those expectations. In regard to the charge for failing to take investigatory action, she was not the owner of the investigation, and she had no greater responsibility to determine what actions should be taken with regard to the camper than any other officers on scene. The only remedy warranted is the expungement of discipline from the Grievant’s work record. Therefore, the grievance is **GRANTED**.