

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER 755

OCB GRIEVANCE NUMBER: 15-03-911023-0110-04-10

GRIEVANT NAME: ROSS, ERIC

UNION: FOP 1

DEPARTMENT HIGHWAY PATROL

ARBITRATOR: DROTNING, JOHN

MANAGEMENT ADVOCATE: CORBIN, RICK

2ND CHAIR: KIRSCHNER, PAUL

UNION ADVOCATE: SILVERBERG, GWEN

ARBITRATION DATE: MARCH 25, 1992

DECISION DATE: APRIL 12, 1992

DECISION: DENIED

CONTRACT SECTION  
AND/OR ISSUES:

GRIEVANT RECEIVED A ONE DAY  
SUSPENSION FOR NOT EXAMINING A  
VEHICLE FOR ITS CONTENTS BEFORE  
IT WAS TOWED FROM AN ACCIDENT.

HOLDING: GRIEVANT FAILED TO IMPLEMENT THE ADMINISTRA-  
TIVE INVENTORY POLICY AND SHOULD NOT HAVE  
ALLOWED THE VEHICLE TO BE TOWED BEFORE  
INVENTORYING THE CONTENTS OF THE VEHICLE.

COST: \$748.00

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING  
STATE OF OHIO

AND

FRATERNAL ORDER OF POLICE  
UNIT #1

#755

ARBITRATION AWARD

CASE NUMBER: 15-03-911023-0110-04-10  
ARBITRATOR: John E. Drotning

## I. HEARING

The undersigned Arbitrator conducted a Hearing on March 25, 1992 at the Office of Collective Bargaining, 106 High Street, Columbus, Ohio. Appearing for the Union were: Gwen Silverberg, Esq., Ed Baker, and the grievant, Eric D. Ross. Appearing for the Employer were: Lt. Rick Corbin, Paul Kirschner, and Lt. Barry Elder.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. No post hearing briefs were filed and the case was closed on March 25, 1992. The discussion and Award are based solely on the record described above.

## II. ISSUE

The parties jointly asked:

Was the grievant disciplined for just cause in accordance with Article 19, Section 19.01 of the Collective Bargaining Agreement? If not, what shall the remedy be?

## III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 through #7.

#### IV. TESTIMONY, EVIDENCE, AND ARGUMENT

##### A. MANAGEMENT

##### 1. TESTIMONY AND EVIDENCE

Lt. Barry M. Elder, Post Commander at the Swanton Post, testified that he oversees operations at that post and also supervised the grievant. He said that he investigated the incident in question. Elder testified that he received a note from an officer at the Milan Post so he called Mr. Vincent Erconlani. Elder said that Erconlani told him he had been in an accident and when he returned to examine his vehicle after leaving the hospital, Erconlani said that somewhere between \$130 and \$150 was lost or not in his vehicle.

Elder testified that he reviewed Grievant Ross's handling of the accident. He said he checked Ross's accident report which dealt with an OH2 form and that did not show whether any money was involved in the incident.

Elder testified that Ross told him that he handled the crash incident and he reiterated that Ross's form shows the vehicle's contents and Elder said that Ross told him there was a complete inventory done during the evening of the crash at McCoy's Towing Service in Norwalk, Ohio. That is, Elder said, Ross checked out the damaged vehicle after it had been towed to McCoy's Service garage.

In short, Elder testified that Ross should have checked the inventory right at the crash site. Elder then testified with respect to Management Exhibit #2 noting that item C states in part that:

Prior to releasing the motor vehicle or other property from Division control, an inventory must be completed in the owner is not present when the vehicle is removed.

Elder reiterated that Ross should have checked the vehicle's contents before turning over the vehicle to McCoy's Towing Service. In short, Trooper Ross, said Elder, lost control of the vehicle before he checked the contents.

Elder testified that in certain situations, he has been aware of vehicles where more than \$150 was still in a vehicle after the operator had been taken to a hospital.

Elder testified that Ross's failure to check the vehicle right at the crash site meant that he could not in any way document Mr. Vincent Erconlani's claim that \$130 or \$150 was taken from the car.

Elder testified that Ross was aware of the administrative inventory policy as noted on Management Exhibit #2.

Elder also noted that Ross told him that he did not do a thorough investigation and that he should have inventoried the car's contents at the crash site.

On redirect, Lt. Elder stated that another individual named Ricky McNeal had been involved in a burned out car and that vehicle contained a burned .357. Elder said the .357 pistol could not fired. Elder was asked why the officer involved did not see the pistol and he was told by the officer that there was a melted compact disc covering the pistol.

Elder testified that the purpose of an inventory is to document contents and there was nothing of value in the burned vehicle.

Elder testified that he recommended discipline for Trooper Ross but not for the other officer because that officer inventoried the burned vehicle at the scene. Elder agreed that the officer did not find the pistol because it had been covered up by a burned out compact disc.

Elder also testified that Ross told him he was aware of a checkbook in the car's seat at the accident scene, yet he still released the vehicle to the towing service.

Management cross examined Trooper Ross who testified he was aware of the rules and regulations and he had thorough training on inventorying vehicle contents. He acknowledged that he was to inventory contents at the scene of a crash site so he would not lose the chain of control.

Ross said that in this particular case, it was difficult to pull all the contents out of the car and, therefore, the wrecker pulled the car up from the berm. He acknowledged that another trooper could have assisted him in evaluating contents at the scene. Ross said that when he examined the car at the scene, it was filled to the brim with pieces of equipment and guitars, etc. Ross testified that he does not know whether the wrecker took money from the vehicle.

Ross said he read Management Exhibit #2 and he understands that an inventory should be done immediately, but in this case, he decided not to check the contents at the scene, although the administrative inventory under Section C states that he must do such an inventory at the scene.

Ross testified that he was aware of Management Exhibit #3 which talks about the performance of duty and conduct.

## 2. ARGUMENT

Management points out that the facts are clear and thus the question focuses on Management policy.

In this case, the owner of the vehicle, Mr. Vincent Erconlani claimed that \$130 to \$150 was missing from his car and that claim created a serious problem for the Ohio State Patrol.

As a result of allowing the wrecker to remove the car before it had been thoroughly examined by Ross, the Division, the wrecker, and Ross all become suspects. In any event, the Grievant understood the policy and to his credit, he acknowledged that he did not conduct a thorough search of the vehicle at the scene.

Moreover, Management points out that the incident occurred in July and it would not be difficult to inventory a vehicle's contents on this warm summer day.

Management noted that the basic issue is custody and when Management takes possession of a vehicle, it cannot give the vehicle to a person who is not an Ohio State Patrol officer. Management also pointed out that the incident discussed involving a "lost .357 magnum" is not similar to Ross's situation.

Management notes that the vehicle was on fire and the pistol was not found because it was covered by a burned out compact disc. That a .357 magnum was found after the inventory is not the issue; rather the concern is whether the trooper carefully implemented the policy but apparently did not find the .357.

In this case, Ross did not implement the policy, noted the Employer.

Management notes that the one day suspension for Trooper Ross was for prior discipline since he had seven written reprimands and one verbal reprimand between 1988 and July 1991, the time of the current incident. Ross, noted Management, had only four years of service and as a consequence he has had too many problems for such a short tenure.

Management noted that Ross is an intelligent employee and has the ability to work well. He ought to clean up his act and sharpen up his work habits, asserts Management.

Management was not arbitrary or capricious in suspending Ross for one day given his prior personnel department record.

## B. UNION

### 1. TESTIMONY AND EVIDENCE

Trooper Eric D. Ross testified that he worked at the Hiram Post in 1991. He said he started with the Highway Patrol in September of 1988.



Ross said he arrived at the scene of the crash in July of 1991 and saw a small gray car on an incline down in a ditch. He said that various people assisted the driver and he called the ambulance and gave the driver a bandage, etc..

Ross said he and Trooper Durant took statements from the truck driver involved. Ross also said that the individual in the vehicle accident was taken by an ambulance to a hospital.

Ross said he looked at the car with Durant and he said he would check it after it was moved to the wrecker's yard. The car, said Ross, was filled with merchandise from the back to the front and there was only one driver involved.

Ross said he did not see a checkbook, credit card or cash in the car.

Ross said that he told Durant that he would check the car's contents at the wrecker's yard.

Ross said he has probably checked the contents of cars 75 times over his time with the Ohio State Patrol.

Ross testified that he went to the hospital to contact the driver and the driver showed him his wallet and credit card. The driver also asked Ross if he found any money and Ross said he did not. Ross went on to say that after interviewing the driver, he cited him.

Ross testified that he drove to the wrecker yard to inventory the car's contents. Ross said he asked the driver of the wrecker car if he saw any money and the wrecker driver said No. Ross said that he did a satisfactory inventory but he said he never found a car with so much junk in it.

Ross testified that Union Exhibit #3 is a new document called HP250 which does not specifically state all the items in someone's vehicle and he cannot go through a person's suitcase to check everything. Ross said he has never been directed to list every document in a suitcase or in a tool box and he knows of no other troopers who are given time off for failing to inventory a vehicle at the accident scene.

Ross testified that he did not tell Elder that he did not do a satisfactory inventory but rather he said he did the inventory at the wrecker's yard because it made no sense to pull out all of the car's contents at the berm site.

The Union also cross examined Lt. Barry M. Elder who testified that he searched the vehicle two days after the incident. In addition, Elder said that Ross overlooked a checkbook and credit card and he found them on the 24th, two days after the incident in question.

Elder was asked about Trooper Hawn's situation with respect to the burned out van on the turnpike and he said that Trooper Hawn did a good job. He acknowledged that a State Farm Insurance investigator found a .357 magnum in the front seat because it had been melted down by a compact disc box. He acknowledged that Hawn did not find or record the .357 and the Patrol did learn that the weapon had been stolen. However, Hawn was not charged.

On cross, Elder testified that he found the checkbook on the side of the car door and the credit card on the visor and obviously it was moved from the seat where Ross initially saw it.

Elder said that he told Ross that the latter should have inventoried the vehicle at the site of the crash.

## 2. ARGUMENT

The Union agrees that the facts are clear. It goes on to state that the State asserts that Joint Exhibits #5 and #6 mean that Ross overlooked some documents and as a result, he has been disciplined.

The Union notes that if Ross had carefully checked the contents of the vehicle at the site of the highway incident, he might have been injured.

The Union goes on to say that the driver of the vehicle observed his checkbook and credit card on the day after the incident. In fact, the Union said the driver could have put his credit card and checkbook in the car.

The Union argues that the one day suspension is too harsh. Trooper Hawn, notes the Union, overlooked a stolen .357 magnum and he was not disciplined. Therefore, there is no basis to discipline Trooper Ross. In short, both Hawn and Ross should have been treated equally.

The Union goes on to say that Trooper Ross went to the hospital to interview the driver and therefore, if this was such an egregious incident, could the towing operator have been at fault or was the driver faking? In short, the Union questions what happened to the money?

The Union argues that enforcement is lax and that things were not spelled out correctly and that Management Exhibit #2, the administrative inventory, was not implemented in regular fashion.

The Union argues that Article 21.03 of the Collective Bargaining Agreement supports its claim that there is no just cause for Ross's one day suspension.

#### V. DISCUSSION AND AWARD

The question is whether the Grievant was disciplined for just cause under Article 19.01?. The testimony and evidence of all witnesses including Ross indicate that Trooper Ross did not inventory the contents of the crashed vehicle before releasing the motor vehicle to the wrecker. As a result, when Mr. Vincent Erconlani, the driver of the crashed car, claimed that somewhere between \$130 and \$150 was missing from his vehicle, his claim could not be properly investigated by the Ohio State Patrol.

The testimony of witnesses is essentially that no one knows whether \$130 or \$150 was taken from the vehicle or whether any money was actually in the vehicle. But even if funds were taken from the car, the basic issue is why Trooper Ross let a wrecker take the vehicle without carefully examining the car's contents and noting the contents on the appropriate form.


Trooper Ross failed to implement the administrative inventory policy, specifically item C which requires him to carry out a complete inventory of a vehicle's contents before releasing

a motor vehicle to someone else. If an employee releases the vehicle to another before examining the car's contents, there will be a gap in the chain of custody for the vehicle and its contents and then it is impossible to reach accurate conclusions and it puts the Ohio State Highway Patrol in a unsatisfactory situation. Thus, regardless of the Union's argument, it is reasonable to conclude from the testimony of Lt. Elder that Trooper Ross told Elder that he did not do a thorough inventory of the crashed car and that he should not have allowed the vehicle to be towed before inventorying the contents of the crashed vehicle.

The Employer argued that the one day suspension was appropriate largely because of Ross's seven prior written reprimands and one verbal reprimand all of which occurred since December of 1988. Trooper Ross, a four year employee, has a number of written and verbal reprimands and two of the written reprimands indicate that he failed to make out a lost property theft and also failed to follow up on a pending case. While Ross may be a competent trooper, he apparently does not implement the policies of the Ohio State Patrol in the fashion that is expected of him. As a consequence, he has been written up a number of times. That is excessive for a young Ohio State Highway Patrol employee. Because of the various reprimands plus his failure to take inventory of the crashed car, the Employer decided to implement a one day suspension in the hope that it will improve Ross's performance.

The Union's claim that Ross's suspension is excessive is largely based on the claim that a trooper overlooked a .357 magnum which was burned and covered up by a burned compact disc in a vehicle which caught fire and which took place in a different situation. While the trooper in that case did not find the .357, he implemented the inventory policy before releasing the motor vehicle. That trooper was not disciplined largely because the Employer concluded that while the trooper did not find every bit of paraphernalia in the burned vehicle, that was not reason for him to be reprimanded because he had followed the correct procedures.

If Trooper Ross had implemented the inventory process before releasing the vehicle, there would be no basis to suspend or even reprimand him. However, Trooper Ross acknowledges that he did not inventory the car contents at the crash site. Therefore, Management's decision to suspend Trooper Ross is reasonable and there is no reason for the Arbitrator to alter Management's decision.

  
John E. Drotning  
Arbitrator

April 12, 1992