

In the matter of Arbitration between:

**State of Ohio, Department of Public Safety-Ohio State Highway patrol
Employer**

And

Case # DPS-2016-00283-15

Sergeant Bryan Cook

**Ohio State Troopers Association
Union**

In attendance for Ohio State Highway Patrol: Lt. Darrell G. Harris-Advocate, Mr. Cullen Jackson 2nd Chair, OCB, Tpr. K.E. Compton(witness), Lt. Marty Fellure, Sgt. Robert M. Haslip(witness).

In attendance for OSTA: Mr. Larry Phillips-Advocate, Ms. Elaine Silveira, General Counsel, Sgt. Bryan Cook(witness), Sgt. Jeremy Mendenhall, OSTA President.

INTRODUCTION:

This matter was heard at the Headquarters of the Ohio State Troopers Association, Gahanna, Ohio. The Hearing was held on March 21, 2017 at 9:05am. All witness were sworn. There were no procedural issues raised, and the parties agreed that the issue was properly before the arbitrator. The following were submitted as Joint Exhibits: Jt. #1-Collective Bargaining Agreement. Units 1 & 15(CBA); Jt. #2, Grievance Trail-DPS-2016-00283-15; Jt. #3, Discipline Package, composed of— Statement of Charges, Pre-Disciplinary Notice, Disciplinary Letter, Highway Patrol Rules & Regulations-4501:2-6-03(C)-Responsibility for Orders & 4501:2-6-02 (B)(5)=Performance of Duty, Department Record. The following were introduced as Management Exhibits: ME-A, Administrative Investigation(AI) # 2015-0805(Sgt. Bryan Cook, Unit 484; ME-B, 5503.02 State Highway Patrol – powers and duties.;

ME-C, OSHP Policy OSP203.03 POWERS/DUTIES/AUTHORITY/CODE OF ETHICS/OATH/RULES AND REGULATIONS; ME-D, OSHP Policy And Procedure, Sign Off Report; ME-E, OHIO STATE HIGHWAY PATROL SWORN OFFICER DISCIPLINE GRID. The following were submitted as Union Exhibits: UE-1, MAPQUEST Trip mileage between Wilmington Post and Incident location.

ISSUE:

The parties submitted a jointly signed issue statement, which reads as follows:

Was the Grievant issued a one (1) day suspension for cause? If not, what shall the remedy be?

BACKGROUND:

On November 8, 2015, at 1847 hours, Tpr. Compton is dispatched to 7419 Pence Road, Highland County. He was dispatched to assist the Highland County Sheriff's Office on private property. Pence Road is in a rural area of the County. Dispatcher Cooper told Tpr. Compton that the call involved a suicidal male. He was in his front yard with a gun when he was threatening suicide(ME-A).

Trooper Compton is seen on the car video speeding to the incident scene(ME-A). While in transit Tpr. Compton is instructed via cell phone by his Supervisor, Sgt. Cook. Sgt. Cook told Tpr. Compton to just do perimeter and traffic control until the County Sheriff's Department arrives. Sgt. Cook tells Tpr. Compton that they know who it is and where he is(ME-A).

Upon arrival at 1855 hrs., Tpr. Compton has a conversation with a female(wife). She advises him that the male subject is around back by the swing set, and he had just fired two shots into the air(ME-A video). He was also advised by the female that the subject had consumed a lot of alcohol. Trooper Compton told Dispatch that he was first on the scene, and that he was instructed to back off and remain on the roadway until the Sheriff Deputies arrive.

At 1901 hrs., the County Sheriff Deputies arrive. They immediately walk onto the property without any communication with Tpr. Compton(ME-A & video). Trooper Compton relocates near one of the Deputy's cars on the roadway. While at the Deputy's car, he hears their radio traffic asking the whereabouts of Tpr. Compton. At 1904 hrs. Tpr. Compton advises Dispatch, that he believes the Deputies were requesting his assistance. Sgt. Cook asked the Sheriff's Office what assistance they were requesting, through Dispatch(ME-A). Trooper Compton, per Sgt. Cook's direction, remained on the roadway. By 1910 hrs., the subject was in custody, albeit, with a struggle(ME-A). Trooper Compton, testified that due to darkness and his distance from the Deputies and the subject, he did not hear or see any struggle.

On November 9, 2015, the Highland County Sheriff contacted the Wilmington Post Commander. The Sheriff was upset about this incident. They requested assistance, and the Trooper stayed on the roadway without assisting the Deputies, even as they struggled(ME-A). As a result of Post Commander Jordan's inquiries, he was concerned about Sgt. Cook's handling of the incident. Therefore, an AI was conducted and completed on December 2, 2015(ME-A).

As a result of the AI, Sgt. Cook was charged with violating Rule 4501:2-6-03 (C) Responsibility to Orders, and Rule 4501:2-6-02(B)(5) Performance of Duty. It was found that Sgt. Cook failed to properly supervise a subordinate during an assistance to another agency's incident(Jt. #3(c)). A Pre-Disciplinary Meeting was scheduled, but waived by Sgt. Cook on 1/11/16. On January 14, 2016, Sgt. Cook was notified that he would be suspended for one (1) day without pay, effective January 25, 2016, for the above identified Rule violations(Jt. #3).

Sergeant Cook filed a Grievance on 1/14/16. He claimed that the OSHP did not have just cause for the discipline and he requested to be made whole for all wages and benefits(Jt. #2). A Step 2 Grievance Meeting was held on 1/27/16, with the Grievance being denied on 2/1/16. The Union appealed the Grievance to Arbitration on 2/1/16. By mutual agreement between the parties, the Arbitration Hearing was scheduled for March 21, 2017.

DISCUSSION AND OPINION:

The Union argued that the Discipline Grid was not in the CBA and was not negotiated with them. Therefore, ME-E(Grid) was not a valid document to be used. Article 4- MANAGEMENT RIGHTS gives the Employer the authority to "make any and all rules and regulations". The Grievant was charged with violating two of these Employer work rules. Article 21 – WORK RULES, establishes that "the issuance of work rules is not grievable". However, "the application of such rules and directives is subject to the grievance procedure". The just cause and the Progressive Discipline provisions identified in Article 19, are the standards to be met in administering discipline(Jt.-1). The DISCIPLINE GRID, in its Purpose Statement acknowledges these standards as follows: "The application of the following grid will conform to the applicable collective bargaining agreements, including the "just cause" standard that exists. Thus, in the arbitrator's opinion, the DISCIPLINE GRID as a guide to administering the "just cause" provision is an appropriate document, reviewable by the Union and an Arbitrator.

The Grievant was charged with violating two work rules: 4501: 2-6-03(C) Responsibility to Orders, and 4501: 2-6-02 (5) Performance of Duty. His alleged stated violation was determined through an AI. He was charged with failing to properly supervise a subordinate during an assistance to another agency.

The burden of proof of this alleged violation is that of management. Therefore, what did Sgt. Cook do wrong during this incident? The Hearing officer in his Step 2 Grievance response, states: that Sgt. Cook by instructing Tpr. Compton to remain on the road resulted in the failure to respond to assist the Deputies in a dangerous situation.

Sergeant Cook was on Post when the request for assistance came in from the Highland County Sheriff's Office. Evidence and testimony showed that Sgt. Cook was too far away to be on scene soon enough(UE-1). Trooper Compton was the first to arrive on scene eight minutes after being dispatched(ME-A.video). He was

instructed to remain on the road and secure the perimeter while waiting on the Sheriff's Deputies, by Sgt. Cook. Trooper Compton's in-car video shows the two Deputies arriving six minutes after Tpr, Compton. The Deputies immediately go on property without communicating with Tpr. Compton. It appears to the arbitrator, that the Deputies were not looking for assistance at that time.

Trooper Compton testified that he heard the Deputies over their car radio asking about his whereabouts, however, he could not see or hear the Deputies. The Deputies, in the arbitrator's opinion, were more complicit than the Highway Patrol. If they wanted assistance, they should have consulted with Tpr. Compton prior to entering a potentially dangerous situation. Trooper Compton was less than one year out of the Academy, and to send him chasing after the Deputies in the dark could have exacerbated the situation. In fact, through cross examination, the management witness testified that Sgt. Cook, in his opinion, was following OSHP way of doing things, in this situation. Sergeant Cook, in the arbitrator's opinion, did not fail to properly supervise Tpr. Compton by having him remain on the roadway.

AWARD:

The Grievance is sustained. Sgt. Cook is to be made whole for all lost wages and benefits.

This concludes this Arbitration decision.

Respectfully submitted this 30th day of March 2017.

E. William Lewis
Arbitrator
/s/

