

**ARBITRATION AWARD**

**OHIO DEPARTMENT OF PUBLIC SAFETY,  
DIVISION OF THE STATE HIGHWAY PATROL**

**and**

**OHIO STATE TROOPERS ASSOCIATION  
GRIEVANT: ROBERT L. BURD**

**CASE NUMBER:** 15-00-990518-0048-04-07

**APPEARANCES:** For the Highway Patrol-- Lt. Sue Rance, and Capt. Richard G. Corbin,  
Advocate OSHP HRM.

For the union--Tpr. Robert L. Burd, Grievant, Bob Stitt, OSTA, and Herschel M. Sigall,  
OSTA Advocate.

Also present: Andrew Shuman, OCB.

**ISSUE:** Was the grievant issued a three day suspension for just cause? If not, what shall the  
remedy be?

**FACTS:** Grievant, Robert L. Burd, was employed as a trooper assigned to the Findlay Patrol Post.  
He was issued a three day suspension based upon his off duty conduct on November 8, 1998. He  
was disciplined for "conduct unbecoming an officer." He learned of an injured person lying in an  
alley, and went to check on the person. He discovered an unconscious man, who had bled from his  
nose. There were other people in the area, and he asked the others to call 911. Several people left  
the area. Grievant does not know for sure who called for help. He left the scene before any help  
arrived, but there were other people still at the scene when he left. Help did arrive after he left the  
scene.

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At the time, grievant was at least suspicious that one of his brothers had been in an altercation with the unconscious man. Grievant was in civilian clothes, and did not hold himself out as a Trooper. He did not come forward to contact the local police to investigate the incident. When he was confronted by an investigator for the prosecutor's office, and a series of Highway Patrol Sergeants, he told them what he had observed and answered their questions truthfully.

There are no procedural issues, and the parties agree this dispute is arbitrable. The suspension was grieved, to no avail, and the matter was presented to me at a hearing in Columbus, Ohio on September 16, 1999, and now comes before me as arbitrator for final resolution.

## **CONTRACT PROVISIONS**

### **18.10 Off-duty Status**

### **19.05 Disciplinary Procedure-Progressive Discipline**

#### **Admin R 4501:2-6-02(I)(1)-Conduct Unbecoming**

**DECISION:** Admin R 4501:2-6-02(I) in part provides: "(I) Conduct unbecoming an officer

A member may be charged with conduct unbecoming an officer in the following situations:

(1) For conduct that may bring discredit to the division and/or any of its members or employees."

Management takes the position that once Trooper Burd came to the side of the unconscious man he had the duty to provide appropriate first aid, to assure emergency aid was called, to remain at the scene until help appeared, and to provide the information he had about the incident and his brother's involvement to the appropriate law enforcement. However it was determined, grievant was identified as an employee of the Highway Patrol, and at least two people complained about his conduct. This brought discredit to the division.

The bargaining unit takes the position that grievant had no duty to take any action in the off-duty situation in which he found himself. He was not holding himself out as a trooper, and did not know he had been identified as a trooper until he was contacted six or eight days later by the investigator. He cooperated, and provided all of the information he had. No action or lack of action on his part led to any injury or worsening of injury to the unconscious man. No action or lack of action on his part led to anyone avoiding criminal charges. The matter was fully investigated. Clearly the mother of the injured man, and her brother, a retired Highway Patrol Captain, wanted action, and believed grievant should be disciplined, but the procedural troubles with the investigation, the witnesses at the arbitration and the mistakes of fact in the preliminary stages of the grievance procedure demonstrate the weakness of management's case.

Grievant was initially charged with witnessing his brother become involved in a physical altercation, and then failing to render aid to the injured party. There was no credible evidence that grievant witnessed any altercation. He did come to an unconscious person and performed an initial assessment of the condition of the man. It is clear no further action in terms of first aid should have been provide by him, as it is uncontested that unconscious persons should not be moved and should be dealt with by the emergency squad unless there was some danger or condition not present in this instance. There is no allegation that grievant could have gotten the squad there any sooner than they appeared if he had stayed. I believe the grievant that there were other people at the scene when he left. I do not find his conversation with a co-worker demonstrates dishonesty sufficient to support discipline.

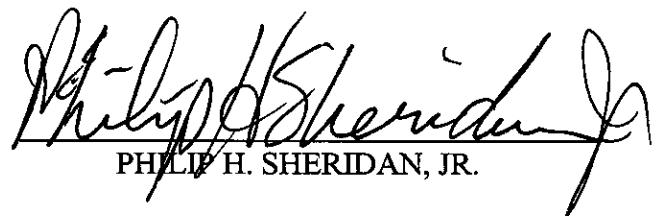
Thus, to me the issue is whether grievant's decision to leave the scene so that he would not be identified and he would not have to provide information concerning his brother's involvement in the altercation, is conduct unbecoming an officer which should support discipline.

I find it does not. R.C. 5503.02 provides the duties and powers of the state highway patrol. I do not find investigation of an incident or giving aid to an injured person to be duties required of a highway patrol trooper when he is in uniform, except as is incidental to his stated duties (e.g. dealing with the aftermath of an auto accident on the highway); I find even less connection when this grievant is out of uniform, off-duty and out of any area which would be considered within his jurisdiction or his ordinary duties relating to enforcing the laws concerning the operation and use of vehicles on the highways, unless he had knowledge of a felony and failed to report it, or took charge of such a situation and held himself out as a highway patrol trooper.

**AWARD:** The grievant was not issued a three day suspension for just cause, and he should be returned his full pay and benefits without any discipline being imposed..

Respectfully submitted,

DATE: September 21, 1999

  
PHILIP H. SHERIDAN, JR.

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