

Arbitration Between:

Ohio Department of Public Safety, Division of the State Highway Patrol

and

Ohio State Troopers Association

Grievance of Robert Bailey, DPS-20120-02386-01

State Highway Patrol Representatives

Aaron Williams, Ohio State Highway Patrol

Staff Lt. Jacob Pyles, Ohio State Highway Patrol

OSTA Representatives

Larry Phillips

Elaine Silveira

*Witness for the Grievant:* Sgt. Anthony Percy

*Witness for the OSHP:* Sgt. David Bailey

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OSHP), issued a one-day suspension to Trooper Robert Bailey for violation of OSHP Work Rule 4501:2-6-02(I)(4) Conduct Unbecoming an Officer for using unprofessional language while conducting an arrest on March 28, 2020.

That day, Trooper Bailey, the Grievant, participated in a lengthy pursuit of two murder suspects. After pursuing the suspects for over forty miles, during which the suspects tried to collide with his vehicle, and drove recklessly and at high rates of speed, the suspects crashed their vehicle in downtown Cincinnati. The Grievant exited his vehicle, with his gun drawn, and proceeded to tell the suspects to get on the ground. The vehicle's dash cam captured Grievant using numerous expletives, including the F-word, mother-F and other iterations of the F-word. He directed some of these profane verbal assaults at the suspects and others were more general in nature, i.e. "get on the f-ing ground." The video of the arrest was obtained by the local ABC affiliate (WCPO) and was posted on youtube. On youtube, the video received 1.6 million views and included a number of comments by viewers, some of which criticized the Grievant's use of profanity during the arrest process. OSHP investigated the use of profanity during the arrest and,

despite the Grievant's lengthy and unblemished employment record, issued him a one-day suspension. The Grievant claims that the suspension was excessive discipline under the circumstances and that similarly situated employees who have used profanity have received lesser punishments, such as a counseling or a Written Reprimand. For reasons articulated more fully below, I uphold the OSHP's discipline of a one-day suspension.

OSHP Work Rule 4501:2-6-02(I)(4) Conduct Unbecoming an Officer for using unprofessional language while on duty, prohibits the use of profanity, including language or gestures. For an employee with a clean department record, like the Grievant, discipline can be anywhere from a one-day suspension, up to a Removal. While the Grievant acknowledges that he used profanity, he contends that his lengthy, unblemished work record, together with the stress he was experiencing due to the lengthy chase of two murder suspects, justify no discipline in this situation or, minimally, less discipline than was issued. The Grievant also contends that he was given more discipline than other, similarly situated, troopers.

Unquestionably, the lengthy chase in which the Grievant participated was extremely stressful. Grievant's supervisor, Lt. O'Bryon, was particularly understanding of the Grievant's behavior, explaining that a trooper in a stressful situation like a lengthy pursuit, might use "battle language" or profanity. The lieutenant also described Grievant's behavior as uncharacteristic of his twenty-six years of employment. Evidence presented at the hearing, however, established that no other troopers at the scene used profane language when participating in the arrest process even though some of them had been involved in the pursuit longer than had the Grievant.

The Union also cited two other situations, which it claimed involved similarly situated employees, neither of whom received one-day suspensions for using profanity. I find that neither the situation involving Sergeant Robert L. Burd, nor the case involving Trooper Wilcox, are similar to that of the present Grievant. While both cases involved the use of profanity, neither incident was publicized at all, much less to, at minimum, 1.6 million viewers.<sup>1</sup> Unfortunately, the Grievant's pursuit of the murder suspects was heavily publicized in the media – both the television audience and the social media audience. The youtube video, which the investigator cited in his report, included comments that were available to the decisionmakers who issued the discipline in this case. Unquestionably, that level of negative publicity, even without direct complaints to the OSHP, can harm the department. Thus, even taking into account the Grievant's extraordinary service record and commitment to the OSHP, I find that the discipline in this case is supported by just cause.

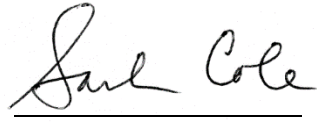
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<sup>1</sup> In addition, in the case of Trooper Wilcox, the OSHP did not allege that Wilcox *intended* to use profanity over the air. Here, Trooper Bailey intended to use profanity and knew he was being recorded.

**Award**

The one-day suspension is upheld.

Date: June 7, 2021

A handwritten signature in cursive script, reading "Sarah Cole", positioned above a horizontal line.

Arbitrator Sarah R. Cole