

In the matter of Arbitration between:

State of Ohio, Department of Public Safety-Ohio State Highway Patrol
Employer

And

Ohio State Troopers Association
Union

Case # DPS-2020-00925-01
Trooper Dennis S. Wilcox

In attendance for the Ohio State Patrol: Michael D. Wood(LRO3)-Advocate, Sgt. David Bailey(witness), Mr. Victor Dandridge,OCB, Lt. Aaron M. Williams, 2nd Chair.

In attendance for Ohio State Troopers Association(OSTA): Ms. Elaine M. Silveira, General Counsel-Advocate, Mr. Larry Phillips, Staff Representative, Tpr. Dennis Wilcox(witness).

Introduction:

This matter was heard at the Ohio State Troopers Association, Gahanna, Ohio. The Hearing was held on May 12, 2021 at 9:00am. All witnesses were sworn. There were no procedural issues raised, and the parties agreed that the matter was properly before the arbitrator. The following were submitted as Joint Exhibits: Jt-1, Collective Bargaining Agreement(CBA) 2018-2021; Jt-2, Electronic Grievance DPS-2020-00925-01 +Step 2 Response; Jt-3, Discipline Trail-Statement of Charges, Pre-discipline Notice, Highway Patrol Rules & Regulations-4501:2-6-02(I)(4)-Conduct Unbecoming an Officer, Discipline Letter, Department Record.

The following were introduced as Management Exhibits: ME-1, Administrative Investigation(AI) with DVD-Tpr. Wilcox; ME-2, OSP Sworn Officers Discipline Grid(Dec. 19, 2019);ME-3, Department Records of 7 OHSP employees.

The following was introduced as Union Exhibits: UE-1, Annual Reviews of Tpr. Wilcox from 10/1/2016 through 9/30/2019.

ISSUE:

In conformance with Article 20, Section 20.08 of the Collective Bargaining Agreement the parties submit the following Statement of issue for resolution by the arbitrator.

Was the Grievant issued a one-day suspension for just cause? If not, what shall the remedy be?

BACKGROUND:

Trooper Wilcox, a twenty-three year employee is assigned to the St. Clairsville Post. On December 18, 2019, Tpr. Wilcox was working the afternoon shift. He was sent to check on a vehicle going eastbound on I70. The vehicle was not maintaining an appropriate lane, interfering with other traffic(ME-1).

Trooper Wilcox caught the vehicle near the West Virginia state line. Trooper Wilcox, on his cell phone was describing the driver's actions to Dispatcher Snyder. During the conversation Tpr. Wilcox picked up the mic, per testimony and evidence, and used profanity over the radio(ME-1). Trooper Wilcox's description of the incident and driver was "she looks like an elderly lady. She doesn't know what the fuck she's doing." After this radio transmission Sgt. Bayless informed Tpr. Wilcox of his improper radio comment(signal 27), and he apologized for it(ME-1).

As a result of Tpr. Wilcox's radio transmission an AI was conducted by Sgt. Bailey(ME-1). The finding resulted in Tpr. Wilcox being charged with violating Rule 4501: 2-6-02 (I)(4) Conduct Unbecoming an Officer. " It was found that on December 18, 2019, Tpr. Wilcox made unprofessional comments over the radio during a traffic stop (3/12/2020)".

On March 12, 2020 Tpr. Wilcox was suspended for a period of one-day (1) without pay, to be effective March 16, 2020.

A grievance was filed on 3/12/2020 claiming that the OSHP violated Section 19.01 Standard and 19.05 Progressive Discipline. The vehicle driver did not hear the inappropriate comment only internal radio personnel heard the comment. The comment, by the Grievant was not malicious and just a mistake, claims the Union. The Union requested that the discipline be removed from his Department Record(Jt-2(b)).

The grievance was denied at Step 2 and it was ultimately appealed to Arbitration. By mutual agreement between the parties, the Arbitration Hearing was scheduled for May 12, 2021.

DISCUSSION AND OPINION:

The facts in this case are not in dispute. During his testimony, the Grievant admitted to making the inappropriate comment, on his open mic. Other employees of the OSP heard the comment. This comment by Tpr. Wilcox by using profanity over the air-waves was in the Arbitrator's opinion, Conduct Unbecoming an Officer.

The OSHP, per Article 4 has the "right to hire and transfer employees, suspend, discharge and discipline employees." The Employer also has the right to establish Work Rules per Article 21. However, the application of such rules and directives is subject to the grievance procedure(Jt.1) The application of these rights are modified by Article 19.01 Standard(just cause) and 19.05 Progressive Discipline. The question before this arbitrator is whether the OSHP violated Article 19 in applying the discipline.

The Work Rule regarding professional conduct, in this case, has been violated in the arbitrator's opinion. However, was the of discipline commensurate with the offense and did the discipline follow the principles of progressive discipline? (CBA,Art. 19)

Per Section 19.05 disciplinary action shall include:

1. One or more written Reprimands
2. One or more day(s) suspension(s) or a fine not to exceed five (5) days pay
3. One or more day(s) Working suspension(s)
4. Demotion or Removal.

However, more severe discipline (or combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action.

It was not alleged by the OSHP that Tpr. Wilcox intended to use profanity over the air, and testimony corroborated the occurrence as a mistake.

Even though the OSHP submitted two IOC's(ATT. D) showing Tpr. Wilcox using inappropriate language, the incidents were not similar. Furthermore, IOC's are not incorporated as part of the Progressive Discipline provision.

Seven other Department Records of discipline were submitted to support the level of discipline administered to Tpr. Wilcox. However, the submitted records are not sufficient in incident detail to classify as "similar", in the Arbitrator's opinion(ME-3). One of the submitted Records(Dispatcher Tiongco) was testified to by Sgt. Bailey, because he was the Investigator. Sgt. Bailey's investigation record showed that Tiongco's Record commenced with a Written Reprimand. Additionally, the alleged violations committed by Dispatcher Tiongco were more severe than this case. Even the other six submitted Department Records' case summaries descriptions generally depicted more severe violations than Tpr. Wilcox's.

This particular incidence of violation is not severe enough to merit more severe discipline than a Written Reprimand, and it is not commensurate with the offense, in the Arbitrator's opinion.

AWARD:

The discipline is to be reduced to a Written Reprimand and The Grievant is to be made whole for all lost wages and benefits.

This concludes the Arbitration decision.

Respectfully submitted this 28th day of May 2021.

E. William Lewis

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Arbitrator

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