

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-2019-03485-01

Trooper Chad M. Schell

In attendance for the Ohio State Troopers Association: Mr. Larry Phillips, Staff Representative-Advocate; Ms. Elaine Silveira, General Counsel; Tpr. John Lamm(witness); Tpr. Chad Schell(witness).

In attendance for the Ohio State Patrol(OSP): Lt. Aaron M. Williams-Advocate; Sgt. Chad Bass(witness); Cpt. Michael Kemmper(witness); Mr. Victor Dandridge, OCB; Mr. Michael D. Wood, LRO3, 2nd Chair.

INTRODUCTION:

This matter was heard at the Ohio State Troopers Association, Gahanna, Ohio. The Hearing was held on May 22, 2021 at 10:30am. 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 2019-0345-01 + Step 2 Response; Jt.-3, Discipline Trail, Statement of Charges, Pre-discipline Notice, Highway Patrol Rules & Regulations-4501: 2-6-02(Y)(2) Compliance to Orders, Discipline Letter, Department Record.

The following were introduced as Management Exhibits: ME-1, Administrative Investigation(AI) with DVD-Tpr. Schell; ME-2, OSP 203.39 CANINE TEAMS, 2/13/2015; ME-3, Sign off Report CANINE TEAMS; ME-4, Arbitration-Chad Schell(10/16/2020).

The following were introduced as Union Exhibits: UE-1, Definition of Enclosed Area; UE-2, Canine Unit- Home Visit; UE-3, CBA, Section 23.03, Canine Handlers-Unit 1; UE-4, Annual Reviews of Tpr. Schell from 10/1/2016 through 9/30/2019; UE-5, Arbitration-Tpr. Schell (9/16/2020); UE-6, OSHP- K9 Training Report-1/1/2021 to 4/5/2021; UE-7, Picture of gated stairs at Tpr. Schell's residence.

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 five-day suspension for just cause? If not, what shall the remedy be?

BACKGROUND:

Trooper Schell, an eight year employee is currently assigned to the Medina Post. Prior to this incident, Tpr. Schell was assigned to the Cleveland District as a K9 Handler.

On 6/28/2019, at approximately 9:15am, Tpr. Schell while off duty, left his residence for a dental appointment. While he was gone canine Jimmy, bit his five year old daughter. The daughter, Tegan, was petting Jimmy(ME-1). Tegan was taken to the hospital, and it was determined that she had extensive lacerations to the right side of her face. As a result of this tragic event, Tegan is still receiving treatment for her injuries.

Jimmy the canine is also known as a "Bowman" dog¹. Per testimony, Bowman trained dogs were housed with the families when off duty. This dog had been

¹ Refers to the training organization located in Gahanna, Ohio.

assigned to Tpr. Schell as his handler since 2015. Tpr. Schell testified that Jimmy was housed with the family on the first floor of his residence. Furthermore, Jimmy slept in Tpr. Schell's bedroom next to he and his wife.

On April 5, 2019, prior to this tragic incident, canine Jimmy was removed from duty. Jimmy remained with the Schell family while Tpr. Schell was away working. Canine Jimmy was removed from duty for biting two suspects fleeing from a car crash on March 4, 2019(ME-4). Trooper Schell was still assigned to the Cleveland District on March 4th.

Canine Jimmy remained off duty and housed with the Schell family from 4/5/19 until this biting incident on 6/28/19(ME-1). While off duty, Jimmy was not to receive any additional training, per evidence and testimony. During Jimmy's off duty time Tpr. Schell witnessed three separate instances where Jimmy exhibited "frustration"(ME-1). Canine Jimmy urinated in the house, which he had never done before, and two, he took bags of bread out of the pantry and shredded the bags, and three, he scratched the door molding off the door in the storage area(ME-1).

As a result of this tragic biting incident, an Administrative Investigation(AI) was conducted by Sgt. Bass(ME-1). The AI Report resulted in Tpr. Schell being charged with violating Rules & Regulations of OSHP, specifically 4501: 2-6-02(Y)(2) Compliance to Orders. It was found that Tpr. Schell failed to have his division canine properly secured at his residence. The canine subsequently bit his daughter which required medical attention(Jt.-3(a)). On September 13, 2019 Tpr. Schell was notified that he would be suspended for a period of five-days(5) without pay(Jt.-3).Trooper Schell elected to forfeit accrued compensatory time in lieu of the suspension.

A Grievance was filed on 9/24/2019 claiming that the OSHP violated Section 19.01 Standard of the CBA(Jt.-2). During the time of the canine's removal from duty, Management ordered Tpr. Schell to leave the dog at his residence. Furthermore, the canine was not to receive additional training. The Grievant feels he bears no responsibility for the incident(Jt.-2).

The Grievance was denied at Step 2 on 10/21/2019. Management claims that the Grievant failed to follow policy and procedure. The Grievant had a three-day (3) suspension on his Record, and therefore, a five-day (5) suspension is progressive. The Grievance was ultimately appealed to Arbitration(Jt.-2).

DISCUSSION AND OPINION:

The facts in this case, as to what happened are not in dispute. However, the circumstances and contributing factors surrounding this tragic incident are problematical, and in dispute. The OSHP claims that the Grievant was not in control of his canine at the time of the dog bite(Jt.-3). On the other hand, the Union and Grievant argue that the housing of this canine was no different on the day of the bite, than any other day(Jt.-2). Furthermore, the Union and the Grievant claim that he was not responsible for the incident and was not in violation OHSP Rules and Regulations(Jt.-2,3).

Ohio State Patrol policy 203.39-Canine Handlers Manual, as it pertains to the housing of a canine, specifically, Care and Equipment reads as follows:

“ the canine shall live at the residence of the handler. Regardless as to whether the handler is physically present, handling, safety and care of the canine shall be the responsibility of the assigned handler.”(ME-1)

Section five of CANINE TEAMS reads in part: (ME-2)

The canine will only be permitted to be off lead at the handler’s residence if ONE of the following conditions apply:

- The canine is contained in a completely enclosed area inside the home,
- The canine is contained in a completely enclosed fenced area outside the home,
- The canine is wearing an electric collar devise and the power control unit is on the handler’s person.

On 6/28/19, at approximately 10:00am, K9 Jimmy bit Tpr. Schell’s five-year old daughter, Tegan. This was a tragic event for a family to endure. The canine at the

time of the event was on the first floor of the house with Tpr. Schell's wife and daughter(ME-1). The bite required eighteen stitches to the right side of Tegan's face, for which she is still receiving treatment. Trooper Schell was disciplined for not having control of his K9. This tragic injury to Tpr. Schell's daughter, caused by his employment situation would seem like more than enough punishment for a person to endure. On the other hand, for the OSHP to ignore this tragic incident regarding potential policy and procedure violations, would also, be wrong.

Prior to Tpr. Schell being selected as a canine handler he was interviewed for the position. During the interview process Tpr. Schell declared that he was not interested in the assignment unless the canine would be housed as a family pet(ME-1, testimony). The Canine Home Visit form shows the canine was to be housed "Inside the House-Basement(UE-2). Form UE-2, does not say ie. Basement, therefore, the arbitrator believes the dog was to be in the house and basement.

Per evidence and testimony, Tpr. Schell functioned as a canine handler from 2015 until 4/5/2019. He and his canine were assigned to the Cleveland District with the Criminal Control Division. This Division of the OSHP works closely with the Cleveland PD in drug and crime prevention. Cleveland is considered a high crime area.

While working the Cleveland District with K9 Jimmy, there were two incidents identified where Jimmy bit a member/members of the public(ME-4,UE-5). Union Exhibit 5 occurred on March 5, 2018, and Management Exhibit 4, occurred on March 4, 2019. Both incidents were investigated and discipline was issued to Tpr. Schell. The March 2018 biting incident was not investigated until one year later, and was complaint generated. Canine Jimmy was removed from duty (4/5/19) after the March 2019 biting incident(ME-1,4).

From 4/5/19 until Tegan was bitten the canine remained housed at Tpr. Schell's residence. According to Tpr. Schell's testimony, Jimmy lived with the family on the

First floor of the home. Jimmy slept in the Grievant's bedroom next to him and his wife(ME-1). During the time when Jimmy was off duty Tpr. Schell would go to work as usual leaving the canine on the first floor of the residence. As time went on, Jimmy showed signs of frustration, per Tpr. Schell. Jimmy urinated on the floor, took bags of bread from the pantry and shredded the bags, and he scratched the molding off the storage room door(ME-1+testimony). These actions were probable warning signs, in the arbitrator's opinion. The OSP took a working dog off the road, housed at the handler's home, and his handler went to work as normal.

Trooper Schell testified that when the OSP ordered Jimmy off the road, they directed Tpr. Schell not to continue training Jimmy(UE-6). This training activity generally occurred weekly for one hour. Also, per Tpr. Schell, when his canine was ordered off the road(4/4/19), Jimmy was to be taken to the OSP training facility in Marysville. However, during a subsequent phone call with supervision, Tpr. Schell was told to keep the canine at his residence(ME-1). Captain Kemmper's undisputed testimony, declared that Tpr. Schell also wanted the dog at home.

According to Management testimony, canines are now kept in Kennels at the handler's residence. Furthermore, the OSHP now trains their own canines.

There is no doubt, in the arbitrator's mind, that the OSHP knew that "Bowman" trained dogs lived in the handler's residence and interacted with family. Trooper Lamm testified that a number of canines in his District lived in the handler's residence.

Much time was spent at the Hearing disputing what "a completely enclosed area inside the home" means. Management argued that it means a kennel type enclosure. The Union, on the other hand, argued that Tpr. Schell's first floor of the home, with no open exits, was appropriate(UE-1). Obviously there was no similar interpretation of "completely enclosed in the house". Policy 203.39 CANINE TEAMS states: " the canine is contained in a completely enclosed area inside the home". Does this mean an area that the canine cannot get out of, or does it mean

separated from others? No where in the CANINE TEAMS Policy, when housed in the home, did it say separated from family. However, when Tpr. Schell went to the dentist, he left the family in control.

There was another incident of a family housed canine biting a family member. Trooper Lamm testified that his canine bit his son while in the home. Although these circumstances were different he was not disciplined. His canine was an active working dog, but off duty.

There is enough evidence and testimony in this case to convince the arbitrator that both parties had some responsibility in this unfortunate incident. The OSHP permitted, and Tpr. Schell approved, the canine to be at his residence after taking him off the road. A working trained canine not going to work with his companion(handler), would certainly cause the canine frustration, in the arbitrator's. As a result, Tpr. Schell witnessed incidents of the canine showing frustration, albeit not at family, at the time.

This was a tragic incident, and both parties could possibly have done something different and maybe preventing the injury. However, not many human beings have been issued a "Crystal Ball".

In the arbitrator's opinion, there are mitigating circumstances to be considered. The most important being the severe injury to the Grievant's child and the family trauma it created. The OSHP, per testimony, has dramatically changed their canine training and handling of the dogs, possibly because of incidents like this. Therefore, the arbitrator is of the opinion, that in this unusual set of circumstances, the escalation of the discipline is excessive.

AWARD:

The five-day (5) suspension is reduced to a three-day (3) suspension. The Grievant is to be made whole for the two (2) additional days of forfeited compensatory time.

This concludes the Arbitration decision.

Respectfully submitted this 28th day of May 2021.

E. William Lewis

Arbitrator

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