OPINION AND AWARD

In the Matter of Arbitration

Between

Ohio State Troopers Association, Inc.

And

State of Ohio, Department of Public Safety

Case Designation

DPS-2021-02425-15

Date of Hearing: December 14, 2021
Date of Briefs: January 21, 2022
Date of Award: February 7, 2022

APPEARANCES

For the Union
Elaine Silveira, Esq., OSTA General Counsel, Advocate
Larry Phillips, OSTA Staff Representative, 2nd Chair
Sgt. David Richendollar, Observer

For the Employer
Lt. Aaron Williams, Ohio State Highway Patrol, Advocate
Lt. Kaitlin Fuller, Ohio State Highway Patrol, 2nd Chair
Cullen Jackson, Office of Collective Bargaining, Observer

Witnesses
Randall Petersen, Grievant
Sergeant David Zatvarnicky, OSHP
Captain Nakia Hendrix, OSHP
Captain Jacob Pyles, OSHP
Deputy Andrew Day, Geauga County Sheriff's Office
Trooper Scott Schweinfurth, OSHP
Sergeant Jeremy Kindler, OSHP
Sergeant Ron Bornino, OSHP
Sergeant Ryan Pickett, OSHP

An arbitration hearing was conducted on December 14, 2022, at the Ohio State Trooper Association Office in Gahanna, Ohio.

The parties agreed that the matter was properly before the Arbitrator and ready for a final and binding determination. The issue is that of just cause. Specifically, did the Employer have just cause to terminate the Grievant? If not, what shall the remedy be? Both parties were given full opportunity to examine and cross-examine witnesses, pose arguments, and present their respective cases.

The parties submitted the following joint exhibits: the Collective Bargaining Agreement between the parties designated as Joint Exhibit 1 (J1); the grievance trail consisting of the grievance and the step 2 response designated as Joint Exhibit 2 (J2); the discipline trail consisting of the statement of charges, pre-disciplinary notice, OSHP rules, discipline letter and the Grievant's deportment record designated as Joint Exhibit 3 (J3).

The Employer submitted the following documents as exhibits: An Internal Administrative Investigation Report and exhibits #2021-11200 designated as Employer Exhibit 1 (E1); Memo containing media links designated as Employer Exhibit 2 (E2); Media news reports designated as Employer Exhibit 3 (E3); Grievant's internal investigation interview designated as Employer Exhibit 4 (E4); Grievant's 2019/20 annual performance review designated as Employer Exhibit 5 (E5); Arbitration award grievance #DPS-2018-03007-15 designated as Employer Exhibit 6 (E6); Witness Day's exit interview form designated as Employer Exhibit 7 (E7); 2020 Chardon Post leadership survey feedback results designated as Employer Exhibit 8 (E8); 2021 Chardon Post leadership survey feedback results designated as Employer Exhibit 9 (E9); 2021 Grievant's Performance improvement Plan designated as Employer Exhibit 10 (E10); Time Management System payroll entry detail report designated as Employer Exhibit 11 (E11).

The Union submitted the following documents as exhibits: An Internal Administrative Investigation Report and exhibits #2021-11211 pertaining to Lt. Roberts designated as Union Exhibit 1 (U1); 2017-20 Chardon Post leadership survey feedback results designated as Union Exhibit 2 (U2); Grievant's 2017 mid-probation performance evaluation review designated as Union Exhibit 3 (U3); Internal Administrative Investigation Report #2021-11204 designated as Union Exhibit 4 (U4); Internal Administrative Investigation Report #2017-0167 designated as Union Exhibit 5 (U5); Internal Administrative Investigation Report #2017-0243 designated as Union Exhibit 6 (U6); Lt. Roberts disciplinary letter dated 7/22/21 designated as Union Exhibit 7 (U7); Grievant's application for secondary

employment dated 7/27/17 designated as Union Exhibit 8 (U8); Ohio Ethics Commission inquiry #20-Q-0123-012 letter dated 12/24/20 designated as Union Exhibit 9 (U9).

All exhibits were admitted into the record. Both parties timely submitted post hearing briefs. All materials were reviewed and considered by the Arbitrator in reaching this decision.

RELEVANT CONTRACT PROVISION:

Negotiated agreement between Ohio State Troopers Association, Inc. Unit 1 & 15 and The State of Ohio effective 2018-2021

ARTICLE 19 – DISCIPLINARY PROCEDURE (in relevant part)

19.01 Standard

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause.

*****

19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. One or more Written Reprimand(s).
2. One or more day(s) Suspension(s) or a fine not to exceed five (5) days' pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.
3. One or more day(s) Working Suspensions(s). If a working suspension is grieved, and the grievance is denied or partially granted by an arbitrator, and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine; the employee may choose a reduction in leave balances in lieu of a fine levied against him/her.
4. Demotion or Removal.

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

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant.

The deduction of fines from an employee's wages shall not require the employee's authorization for the withholding of fines from the employee's wages.

*****

BACKGROUND

The Grievant, Randall Petersen, was a OSHP Sergeant assigned to second shift at the Chardon Post at the time of the incident and his subsequent termination. The Grievant had approximately 20

years of service with the Patrol at the time of his termination. In his 20 years of service, the Grievant had one major disciplinary item on his deportment record dating back to September 2018 when he was terminated. That termination was arbitrated and the Grievant reinstated as of May 6, 2019 – leaving the Grievant with a 216-day suspension on his record. The Grievant was returned to the Chardon Post from which he had been terminated. The Grievant resumed his duties as a Sergeant and was assigned to the second shift, which runs from 2:00PM to 10:00PM.

Not quite two full years later, on March 19, 2021, the Grievant was sent an email from his supervisor tasking him with assigning a unit to a drive-by welcome home parade that was to occur on April 3 at 2:00PM. The email explained that the parade was in celebration of a Riverside High School student's return home after several months in the Cleveland Clinic. The Grievant received the email and read it on March 20, 2021. Upon reading the message the Grievant determined that he would not assign one of the two Troopers actively working the second shift to the parade because it would involve changing a work schedule or incurring overtime, and the assignment simply did not rise to the level of significance that warranted the extra effort that it would have required of an already overtaxed and short-staffed second shift. The assignment was ignored, the date came and went, the Patrol did not participate in this community event. Within a matter of days when it became known that the Patrol had not sent a representative to the parade, an investigation was undertaken. In the course of the administrative investigation, the Grievant acknowledged that he had knowingly disregarded the assignment that had been given to him. He asserted that because the email had said, "Please assign a unit to handle this detail" it was more of a request rather than a direct order. Thus, the Grievant thought he had a level of discretion as to whether to fulfill the assignment.

Upon conclusion of the administrative investigation, it was determined that the Grievant had violated the Rules and Regulations of the Ohio State Highway Patrol, specifically 4501:2-6-02(Y)(1) – Compliance to Orders. The Grievant was ordered to a pre-disciplinary meeting on July 21, 2021. One week later the Grievant was terminated on July 28, 2021. A grievance was filed on August 4, 2021, claiming a violation of just cause and progressive discipline. The grievance was denied at step 2 and appealed to arbitration. An arbitration hearing took place on December 14, 2021.

POSITION OF THE EMPLOYER

Choices are a part of living. The Grievant has a record of making poor choices for himself. These choices have consequences and that is the crux of the matter in this case. The Grievant, for a second

time in a few short years knowingly and rather stubbornly made a poor professional choice. The Grievant acknowledges that on March 20, 2021, when he read the email message from his Ppost Commander instructing him to assign a unit to the parade detail scheduled for April 3, he immediately determined that he would not follow through and make the assignment. He also, in hindsight, acknowledges this was a mistake – an error in judgement. One of the most fundamental tenets of the workplace is that an Employer's management personnel must be able to rely on subordinate staff to carry out their lawful work directions. This is so fundamental that health and safety as to life and limb is the only significant exception. It is well established that an employee must 'work than grieve' if there is an objection to an assignment. Moreover, in the situation at hand, in the two weeks between receiving the email and when the parade detail was to take place, the Grievant made no attempt to communicate with his Post Commander to get more information about the parade detail or to voice his misgivings about the parade detail. He quite simply decided to ignore the work assignment. There is no question that the Grievant's actions violated the Patrol's rules and regulations.

The Grievant's prior termination, which was reduced by an arbitrator's order to a 216-day suspension, is entirely relevant. This major suspension on the Grievant's deportment record is the precursor step to termination. This is so, not only because of the normal step progression from major suspension to termination, but because the underlying misconduct for the major suspension is similar in nature to the current termination. In 2018 the Grievant was found to have violated rule 4501:2-6-02(G)(2). The Arbitrator found that the Grievant's request for Secondary Employment had clearly been denied and yet the Grievant proceed to ignore that denial and move forward with paperwork to become the co-owner of a Bar/Tavern. The Arbitrator put the Grievant directly on notice of how he should behave going forward in situations where his thoughts and opinions diverge from those of his Employer's management team. The Arbitrator stated, *"[H]e could have initiated a discussion with Management, withdrawn the application, or made a reasonable attempt to resolve the situation. As Management made reference to in their closing statement, the principle of 'Obey now – grieve later' could instead have been used."* Although the Arbitrator in this earlier case opined that, *"it was unlikely that the Grievant would repeat the misconduct"* the facts of this case establish that in fact the Grievant has repeated the misconduct.

The Union cannot write-off the incident as a simple mistake made in the context of a poor working relationship with the Post Commander. As the record shows, the other Sergeants at the Chardon post all testified that regardless of their impressions of the Post Commander's leadership style

they each would have fulfilled the assignment had it been given to them. The grievance must be denied, and the termination upheld.

POSITION OF THE UNION

What underpins this disciplinary scenario is the reality of two supervisors who did not get along. Lieutenant Roberts, the Post Commander, was well known to be a troubled supervisor and as such he created a difficult working environment for everyone at the post. Most particularly for the Grievant. The Grievant admits that he made a mistake in not staffing the parade detail assigned to him. However, this mistake is not a terminable offense. There are reasons the Grievant made the decision he did, not to staff the parade. If he had had the kind of relationship with his Post Commander, that he should have been able to have, he could have talked to the Post Commander and explained his reasoning. However, the Post Commander simply did not engage with the Grievant in a professional way, and the Grievant knew this from having tried to communicate with his Post Commander in the past. Contrary to the Employer's claim, there is no ongoing sequence of failures to comply with orders. The Grievant has no long history of not fulfilling assignments he is given. The overwhelming evidence in the record shows that the Grievant is a capable Sergeant. He works well with his peers, and he is viewed as a supportive supervisor by the troopers on his shift. In contrast, the Post Commander was known for not being an effective leader. If not for the bad blood between the Post Commander and the Grievant, this situation would never have escalated to the point that it did. In fact, there were substantive conversations between employees of the Chardon post and the Union leadership about the possibility of filing a hostile work environment grievance against the Post Commander for more than just his failed supervision of the Grievant – but for his failed leadership of the entire class of bargaining unit employees at the Chardon Post.

The fact is, there were actual reasons behind the Grievant's decision not to comply with the parade assignment. Chief among those reasons was the level of burnout being experienced by the second-shift troopers. Two of four troopers assigned to the shift were off work on extended leave, and his two remaining active troopers were already overworked and taxed beyond reason with actual mission-critical work such as handling crashes. Another reason the Grievant acted as he did was the fact that he had consistently been advised to limit overtime and this assignment would have required overtime for his second-shift troopers.

The Grievant has been under heightened scrutiny since his reinstatement and thus one might see a form of retaliation in the level of discipline he received for this minor rule violation. Furthermore, the Employer's claim that this termination is progressive because of the long suspension in his deportment record is simply not supported by the Employer's own practice of using demotion for supervisors prior to termination, and using demotion held in abeyance as an alternative corrective action. The Employer has on other occasions, least of which is not the Post Commander at the Chardon Post involved in this matter, done multiple internal investigations on complaints involving the same individual prior to resorting to demotion or termination. In the instant case, the Employer could have very easily done as much. The Union asks that the grievance be sustained, and the termination rescinded.

DISCUSSION

There are three main elements of any workplace disciplinary case – notice, proof, and reasonableness. Each of these three elements is addressed below.

The Element of Notice

Generally, the element of notice in a disciplinary case is satisfied when there is evidence of a published rule and that the Grievant was aware of the rule before the matter arose. Such is the case here. The Ohio State Highway Patrol's Rules and Regulations are published in the Ohio Administrative Code and well disseminated within the Department of Public Safety. However, even without a published work rule compliance to orders is so fundamental to the paramilitary nature of law enforcement that it would be unrealistic for a member to claim to be unaware that such conduct could lead to serious discipline.

There has been no dispute that the Grievant was aware of his duty to comply with lawful orders from a supervisor. The Grievant acknowledged as much in his testimony and stated that he was mistaken in his conduct and that he should have followed the work direction given to him. Whether this Grievant was sufficiently on notice of the actual penalty level he would be subject to in these circumstances is discussed below relative to the reasonableness of the Employer's action.

In general, and for the purpose of establishing whether there is just cause for discipline, the Grievant can be said to have been on notice of the importance of compliance to orders.

The Element of Proof

The Arbitrator's role as a finder of fact is of limited value here. The facts of the case are not in dispute; the significance of the facts is what the parties view so differently.

Through testimony and documents the record establishes that on March 20, 2021, the Grievant received and read an email from his Post Commander regarding a parade detail celebrating the homecoming of a local young man after a lengthy stay in the Cleveland Clinic. The parade was to take place on April 3, 2021. Further, the record establishes that upon reading the email message, the Grievant determined that he would disregard the email and not assign someone to attend the parade detail. The record establishes, and the Grievant acknowledges, that he did not undertake any effort to find out more about the detail itself or how his troopers on second shift, or any shift, would feel about taking on the detail. He simply decided for himself that he (and everyone at the Chardon Post) was too burned out, and that he would not require anyone to take on the parade detail. The record is clear that having determined not to staff the parade detail, the Grievant never revisited his decision nor did he voice his opposition to staffing the detail to his Post Commander.

Testimony in the record from three Sergeants assigned to the Chardon Post, a former Trooper from the Chardon Post, and a current Trooper at the Chardon Post establishes without a doubt that the email sent from the Post Commander to the Grievant was a clear work assignment to the Grievant tasking him with assigning a Unit to the parade detail. Each of the Sergeants, having read the email, testified that had the assignment been given to him in the same manner, he would have understood it to be a work order, not discretionary, and would have fulfilled the assignment without issue. (Tr. 224, 230, 246) One of the Sergeants testified that he was sure that had the assignment come to him, when asked, one of the Troopers at the post would have volunteered to take the parade detail. (Tr. 226) All of the Sergeants testified that in their capacity as supervisor they have the authority to make such an assignment and to authorize overtime if necessary or change a Trooper's start time to accommodate the parade detail. Testimony from the Trooper currently assigned to the Chardon Post established that although he himself was experiencing work burnout – as the Grievant himself testified – had he been given the parade detail he would have done it without question. (Tr. 204)

The Employer has met its burden to establish that the circumstances giving rise to discipline did in fact occur as initially reported.

<u>The Element of Reasonableness</u>

The reasonableness of discipline is judged on the proportionality of the disciplinary penalty in relation to the proven offense, the employee's tenure and work record, as well as how the employee was treated in comparison to other similarly situated employees.

In this case the proven offense is a failure to comply with a lawful work order [4501:2-6-02(Y)(1) Compliance to orders]. This is a broad rule encompassing a wide range of conduct. Scenarios of failed conduct under this rule could range anywhere from an unintentional or inadvertent performance failure to malicious disregard for a direct order. The penalty for violating this work rule must be fit, proportionately, to the particular proven facts of the case. Here, the Grievant's action was undeniably willful and deliberate. He may not have stood in front of his Post Commander and refused to follow a direct order, but he has come as close to so doing as any employee could and not be tandemly charged with gross insubordination. As the Grievant pointed out in his testimony, employees forget to follow through on work assignments all the time and they are not summarily terminated. (Tr. 271-272) However, that is not the circumstance of the Grievant's conduct in this case. The Grievant, upon reading the work assignment, immediately and actively decided not to comply with the Post Commander's direction. The Grievant had a full two weeks to reconsider his decision, to investigate, to talk to a peer for perspective on the matter, or to simply ask some of the Troopers at the Post if anyone was interested in doing the assignment. From his testimony it is clear that he knew that two of the Troopers on first shift lived in the community where the parade detail was to take place; and although he faults his Post Commander for not considering that option for staffing the detail, he too failed to consider this option as a simple solution to the matter.

Another characteristic to consider regarding the nature of the offense, is the type of work assignment with which the Grievant failed to comply. The Union has pointed out that the parade detail that the Grievant decided to leave unassigned was not a mission-critical assignment, nor could it be characterized simply as an operational assignment. For the Union and the Grievant the parade detail was a lower-value public relations assignment. I would generally agree with this assessment, with the caveat that law enforcement public relations is ever more complex and critical at all levels of authority within a law enforcement agency. This distinction, however, only really matters if the Grievant had been faced with an 'either/or' choice, which he was not. The facts of the situation are well-established, and they show that the Grievant was not faced with a spontaneously dilemma over two competing assignments – one that would preclude the other. The Grievant had two weeks to sort the matter out, juggle assignments/schedules, find a solution. The Employer sufficiently established through the hearing

record that the Grievant had multiple options for dealing with the detail and that he failed to use any of the options at his disposal. I generally agree with the Union's assessment that the Patrol suffered no great harm organizationally for the Grievant's failure to staff the parade detail. However, whether the Employer suffered reputational harm is not a dispositive factor in this case. For this Arbitrator, there is nothing in the nature of the work assignment itself that mitigates the Grievant's conduct.

Under the just cause standard, progressive and commensurate discipline is also judged with respect to the Grievant's tenure and work record. At the time of the incident the Grievant had approximately 20 years with the Patrol. This is substantial tenure and would ordinarily warrant a significant level of deference when it comes to implementing discipline. A counterweight to the Grievant's tenure is his recent work record. The Grievant was terminated from the Patrol on September 11, 2018, over a matter of secondary employment. The Grievant was reinstated to his position on May 9, 2019, by order of an arbitration award. The Grievant's termination was reduced to a 216-day suspension. The Arbitrator found that the Grievant had clearly violated a work rule prohibiting off-duty employment without prior approval from the Superintendent. The current disciplinary matter arose less than two years after the Grievant's reinstatement and over a year from when the suspension would expire from his deportment record (there is a three-year look back period in the CBA).

There is a degree of similarity between the conduct that lead to the Grievant's termination in 2018 and the conduct that lead to his termination in 2021. In both instances the Grievant set his mind on a course of action that defied a clear order. In the 2019 award reinstating the Grievant, the Arbitrator expressly faulted the Grievant for not making a reasonable attempt to have a discussion with Management to resolve the matter. The Arbitrator pointed out that the "obey now – grieve later" principle should have been followed. Here too, in 2021, the Grievant failed to have a discussion with Management about his concern with the parade detail. Again, he failed to follow the principle of "obey now – grieve later." The mitigating factor of the Grievant's 20 years of tenure is outweighed by the aggravating factor of the 216-day suspension for a related form of misconduct.

It is this similarity between the circumstances and cause of the 2018 termination and the current termination that stands as a unique form of notice for the Grievant. The current fact pattern in isolation would reasonably be viewed as a serious offense although perhaps not a terminable offense; however, when viewed in context with a prior severe discipline for a related offense, it can reasonable be judged a triggering event for termination. Within the meaning of progressive discipline, a commensurate penalty is not simply one that fits the immediate rule violation in isolation without

regard for other factors, but one that fits the immediate conduct in the context of the employee's work record and history of prior discipline. Progressive discipline is designed to give an employee the opportunity to learn and correct conduct, which is why related misconduct is treated with escalating penalties, while unrelated misconduct is often initially treated independently with a separate progressive track. In the case at hand, for the three years following his reinstatement, the Grievant had what should have been an ever-present reminder that he needed to obey the rules – most particularly as they pertain to compliance to orders.

The Union argues that the Employer has erred in its analysis of this case by not taking into consideration the failed leadership and supervision of the Chardon Post Commander at the time of this incident. Entered into the hearing record are annual staff leadership feedback surveys showing that under this Post Commander staff assessed the quality of leadership to have dropped on a 1-10 scale from 5.6 in 2017 to 3.4 in 2021. Similarly, the overall level of morale dropped from an assessed value of 7.1 in 2017 to 2.1 in 2021. The hearing record through testimony also establishes that the Grievant as well as other employees assigned to the Chardon Post were in consultation with the Union about filing a class-action grievance concerning the allegation of a hostile work environment. Also included in the record are two documents pertaining to the Post Commander's own deportment record showing that the Lieutenant had a history of minor infractions and associated minor discipline; and in July 2021 he was disciplinarily demoted in rank to Sergeant and transferred away from the Chardon Post.

I accept that a troubled supervisor's wake can be broad and deep in a workplace. A troubled supervisor adversely impacts not just his/her own work record and career but can have an adverse impact on the work records and careers of those the individual supervises. However, in the instant case there is a lack of evidence directly connecting the Post Commander to the Grievant's misconduct. If there was evidence that the Grievant had attempted to discuss the matter with the Post Commander and been rebuffed, or evidence of follow-up emails from the Grievant to his Post Commander regarding his concerns over the parade detail that had gone unanswered, then perhaps the Lieutenant's conduct could be a key factor of mitigation. This, however, is not the situation. The Grievant in his own words acknowledges and accepts that he *"dropped the ball on this one"* and he *"owns it."* (Tr. 272) Upon a thorough review of the facts of this case and with as fair an understanding as an outsider can have of what the work environment was like for the Grievant, I must conclude that in this instance, the Grievant is the agent of his own misconduct.

Entered into the hearing record are documents of disciplinary actions the Employer has taken in other situations with other supervisory personnel. In one case a Lieutenant received a written reprimand for Conduct Unbecoming an Officer. In another case a Lieutenant received a demotion held in abeyance and a five-day suspension for violation of Compliance to Orders and Responsibility of Command. In yet another case, a Lieutenant was found in violation of Performance of Duty, Compliance to Orders, and Motor Vehicle and Aircraft Operations. This Lieutenant also received a demotion held in abeyance with a five-day suspension. Importantly, the Union's disparate treatment defense is an affirmative defense, for which the Union carries the burden of proof. *See* ELKOURI & ELKOURI, How ARBITRATION WORKS 8-107 (8th Ed. 2016) To meet this burden, the Union must prove that the Grievant was similarly situated with referenced comparator cases. As Arbitrator Jonathan Dworkin explained*: "It is not enough that an employee was treated differently than others; it must also be established that the circumstances surrounding his/her offense were substantively like those of individuals who received more moderate penalties."* Genie Co., 97 LA 542,549 (1991) The details of these cases are each quite different from those of the Grievant's situation. Thus, they cannot be considered true comparator cases for the purpose of establishing disparate treatment. What this small sampling of supervisory discipline cases does show is that the Employer has used demotion, or the threat of demotion, as a disciplinary step when addressing supervisory misconduct. Could the Employer have chosen to use demotion or the threat of demotion in the Grievant's case? Yes, most certainly. The powers of leniency or clemency reside in management. Whereas arbitrators can modify a penalty found to be too severe due to mitigating circumstance, there is no authority to modify a penalty as a function of clemency. See ELKOURI & ELKOURI, HOW ARBITRATION WORKS 15-43 (8th Ed. 2016) The Grievant no doubt regrets his misconduct. Nevertheless, when the Employer has acted within the general understanding of what constitutes just cause as provided for in the labor agreement, it is not for the Arbitrator to overturn the Employer's chosen penalty and offer clemency based on the Grievant's expression of regret. In the instant case, the Grievant has certainly provided an explanation for his regrettable actions; however, his explanation does not rise to the level of a mitigating circumstance. As for principles of fairness, even a seemingly severe penalty is not manifestly unfair when viewed in the context of the case's unique facts.

SUMMARY

On March 20, 2021, the Grievant received and read an email from his Post Commander tasking him with assigning a Unit to parade detail. Upon noting in the email that the detail was to begin at 2:00 on April 3, 2021, the Grievant made the decision not to assign the parade detail to any of the troopers at

the Post because he believed them to be burned out due to short staffing and a heavy workload. The Grievant's actions were a willful and deliberate failure to comply with a legitimate workorder. The matter was investigated and ultimately the Grievant was terminated for his misconduct. The Union and the Grievant acknowledge that the Grievant made a mistake; however, they argue his misconduct does not warrant termination.

The Grievant was clearly on notice of his responsibility to follow all lawful orders given to him. The para-military nature of law enforcement and the need for compliance to orders is well-recognized as a fundamental tenant of good order and organizational effectiveness. As a supervisor the Grievant has the added responsibility of setting an example for those he supervises. Furthermore, the Grievant was uniquely on notice of the importance of compliance to orders having been formerly terminated in 2018 for failing to follow a directive. The Grievant was reinstated from that earlier termination with a 216-day suspension. In the prior case, the Arbitrator relied on the belief that the Grievant's misconduct was an isolated incident. That isolated incident stood in contrast to an 18-year work record with no prior discipline and performance evaluations that showed the Grievant was meeting all work expectations. In the current scenario, the Grievant has engaged in misconduct that is similar in nature to the prior incident; thus, it cannot be argued that his misconduct is an isolated incident. Although the Grievant is long-tenured, his work record is not unblemished. Whereas the record establishes that the Employer has used demotion or the threat of demotion in other cases of supervisory misconduct, the Employer is not required to include demotion as a disciplinary step prior to the ultimate step of termination. In this case, the Employer has generally acted within the principles of progressive discipline by imposing a termination. Although the Grievant had his reasons for not complying with the workorder he was given, those reasons do not rise to the level of a mitigating factor on which to base a penalty modification.

AWARD

For the reasons herein stated the grievance is denied.

Respectfully submitted at Columbus, Ohio, February 7, 2022.

Felicia Bernardini, Arbitrator