

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association (OSTA)
Union

And

Case no. DPS 2020-4472-01
Jeffery Huffman Grievant
Three Day suspension

State of Ohio, Department of Public Safety (DPS)
Employer

Umpire's Decision and Award

Introduction

This matter was heard in Gahanna, Ohio on 9/13/22 at OSTA headquarters. Elaine Silveira represented Grievant. Grievant was present and testified. Other Union representatives were present as observers/second chair.

LRO Michael Wood represented the State Highway Patrol. (OSP) Other Management representatives from the OSP and the Office of Collective Bargaining were also present as observers/second chair.

Each side called witnesses in support of its position.

The OSP called as witnesses Sgt. Jacob Fletcher who prepared the administrative investigation (AI) and Lt. Angel Burgos, who described the chain of events from the command/reporting point of view.

The Union called Grievant. The Union also called Sgt. Geer, present at the scene and Grievant's immediate supervisor.

All witnesses were sworn and advised of the strictures of the Motion to Separate.

There were several joint exhibits (Jt. Ex.) presented: Jt. 1- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package. The issue was stipulated. Additional exhibits were introduced, and all were admitted during the hearing. These will be discussed below as relevant.

The decision issued within stipulated time limits.

Issue

Was the Grievant issued a three (3) day working suspension for just cause? If not, what shall the remedy be?

Applicable CBA Provisions

Articles 19; 20

Background

Grievant was assigned as a Trooper at the Bowling Green Post. A radio call indicated that a motorcycle was travelling wrong way in the southbound berm, i.e., going north in the southbound lane of I-75. Huffman responded from the Post. Grievant crested the rise on I-75 near US Rte. 6. As he descended, he slowed down, saw the cyclist's headlights, turned his vehicle into the direction of the oncoming motorcyclist and collided with the motorcyclist at a very slow speed. He estimated 1mph; the investigation indicated 1-3mph.

Injuries ensued for both Grievant and the motorcyclist. Appropriate reports /charges were timely filed.

An AI ensued finding Grievant at fault, citing him with violation of OAC 4501:2-6-02 (Y)(2):

Compliance to Orders.

A member shall conform with, and abide by, all rules, regulations, orders and directives established by the superintendent for the operation and administration of the division.

The specific charge was: "On August 10, 2020, Trooper Huffman struck a wrong-way motorcyclist with his patrol car."

The three-day suspension was issued 9/15/20. It was timely grieved.

Grievant has a disciplinary history consisting of a one-day suspension issued on 6/26/19. It was active. The allegations in the one-day suspension related to intentional contact with a suspect vehicle and transporting a prisoner without the seatbelt secured. Union Ex. 3. That discipline was sustained in arbitration.

Summary of FACTS

Grievant was dispatched to deal with a motorcyclist travelling in the berm the wrong way on I-75 near Rte. 6 on a rainy night in August 2020. Per Grievant as he slowed in approach to the motorcyclist [Stover] his Patrol vehicle veered into the berm to stop Stover. He inadvertently lost his footing on his brake while bracing himself for the expected impact and the vehicle collided with the motorcycle, causing injuries to both Grievant and Stover.

On scene and at the St. Vincent's hospital after transport, Stover albeit legally intoxicated stated Grievant was hit by him, not the reverse.

Discipline ensued after an investigation was initiated due to the contact between the cruiser and the motorcycle.

OSP Position:

Review of the video and the record indicated Grievant had ample time to make appropriate decisions. His actions violated procedure and his training in handling this sort of circumstance. The discipline is within the grid; is commensurate; is nondiscriminatory and no abuse of discretion exists such as to mitigate the discipline. The discipline is for just cause and the grievance must be denied.

OSTA Position:

Grievant was not engaged in a pursuit. The victim himself stated he hit Grievant-twice. The contact was a mistake, an accident. Grievant's credibility is established. The discipline was improperly yoked to the prior discipline, enhancing the level of discipline imposed. The discipline is without just cause. The grievance should be granted in its entirety.

Opinion

The Employer bears the burden of proof. The burden in a discipline case such as this is preponderance of the evidence.

The issue is whether or not Grievant made intentional contact with the motorcycle on the night of the collision.

The AI was admitted into evidence. The video of the event makes it clear that the ability to see clearly and stop safely was challenging for both Grievant and the wrong way motorcyclist. It was raining steadily and there was glare. Grievant's emergency lights and spotlight were engaged but it was night and quite hard to see.

The Umpire watched the video at the hearing and again at her office. She reviewed the entire record, including all exhibits presented by the OSP and OSTA.

Grievant testified in his own behalf. Sgt. Geer supported his testimony both as to the immediate aftermath of the collision and as to Grievant's credibility.

The Umpire credited Grievant's testimony that his contact with the motorcyclist was inadvertent, accidental, regrettable and unavoidable under the totality of circumstances. He denied purposefully turning his vehicle toward/into the motorcyclist. His emergency flashers and spotlight were on, but glare made it challenging to see. His testimony was consistent. Although his testimony was somewhat challenging in that he was abstract in his desire to convey his state of mind that night, on the whole it was deemed credible. He denied intent and was not in pursuit. He was fearful of the motorcyclist's body coming through his windshield. He rendered immediate on scene assistance and sought emergency assistance as well-immediately. He himself was injured.

In order to sustain the discipline, the Umpire would need to conclude he engaged in intentional contact with the motorcyclist. This was not proven by a preponderance of evidence.

He was not demonstrated to be overly negligent in his actions; intentional or malicious. The speeds involved were very low; supporting the testimony that his foot slipped off the brake. In order to sustain the discipline of intentional contact, the Umpire would have needed a preponderance of evidence that Grievant deliberately decided to stop the wrong way motorcyclist on I-75 on the

berm with his cruiser and risk multiple injuries-to the cyclist- to himself- to other drivers-gawkers or not. That level of negligence and ill intent is not supported by the record.

Sgt. Fletcher was unable to state who decided the event constituted intentional contact. He did slow down the video as part of his investigation, but it was not definitive. The speeds of the two involved parties were not reflected on the video presented at arbitration. It was not possible to determine the involved parties' respective speeds. From the video it was hard to impossible to determine "who struck who." No measurements at the scene were taken. No pictures outside and beyond the video from the in-car camera exist.

Grievant believed the speed at impact to be 1-2 mph and the speed on approach to be 20mph. No testimony was in the record as to whether that speed was consistent with intent or inadvertence or prudence or training.

Fletcher was not told to investigate the events for "false statements".

Only Grievant was interviewed.

Because Grievant was not stationary at the time of impact the OSP initiated the investigation. It was initially designated as a crash then someone in the chain of command "upgraded" the event to a response to resistance (RTR hereinafter).

There was no accident reconstruction.¹ The on-scene supervisor determines if an accident reconstruction needed to happen. That did not occur. Had there been a greater weight of evidence that Grievant failed to exercise due care or was unable to stop due to excessive speed or that an accident reconstruction showed his contact to be intentional, then the discipline would stand. A motorcyclist and a moving vehicle colliding could have been horrific. The events of that night were very unfortunate. Physical harm of a serious nature occurred but the cause was not proven to be Grievant's deliberate or avoidable actions.

¹ There was no testimony about the cost/timing of such a reconstruction, whether it was the norm or rare. But there were enough questions in the record that such a report may have been pivotal. It will not be known. Certainly, no crash report was prepared.

Lt. Burgos completed the RTR investigation. Testimony indicated Grievant consistently denied intent. He was described by Burgos as “hard working” and not dishonest. Burgos was convinced however after conversations with three other District management personnel to reevaluate his initial conclusion. Accordingly, a consensus was reached that intentional contact occurred. There was consideration given to a prior one-day suspension which was active at the time discipline was being considered.

Sgt. Geer indicated he had no reason to doubt Grievant’s version of events. He stated that Grievant has never given Geer a reason to doubt his word. Nothing was introduced to impeach Geer. Geer was present at the scene but could not recall his conversation with Grievant at the scene as his focus was on the second crash that evening.

The rules about intentional contact are clear and known by the Grievant. But his actions that night were insufficiently proven to be more than a very intense set of unfortunate occurrences. [Indeed, within moments yet another motorcycle collision occurred in the immediate area of this incident. This is mentioned anecdotally as it had no relevance to Grievant’s case] There was no just cause for the discipline under the specific circumstances of this event.

AWARD

**The grievance is Granted. Grievant shall be made whole.
IT IS SO HEREBY ORDERED.**

S/ Sandra Mendel Furman

Sandra Mendel Furman, JD, NAA

Issued September 19, 2022, in Bexley, Oh

Certificate of Service

The Award was issued by electronic email to the parties’ representatives on this same date.

s/ Sandra Mendel Furman