

## **IN THE MATTER OF ARBITRATION BETWEEN**

**Ohio State Troopers Association (OSTA)**  
Union

And

Case no. DPS 2022-5659-1  
Trooper Tyler Boetcher Grievant  
Five 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 2/9/23 at OSTA headquarters. Larry Phillips represented Grievant and OSTA. Grievant was present and testified. Other Union representatives were present as observers.

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

The OSP called Lt. Bailey who prepared the administrative investigation (AI).

The Union called Grievant as its witness.

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 five (5) day working suspension for just cause? If not, what shall the remedy be?

#### **Applicable CBA Provisions**

Article 20

## **Background**

Grievant was charged with the following:

Conduct unbecoming an Officer OAC 4501:2-8-02 (1)(4), for Using profane and derogatory language towards another officer.

The five day suspension was issued 8/5/22.

It was timely grieved.

## **SUMMARY of FACTS**

Grievant was assigned to the Chillicothe Post. At the time of the incident, he had nearly seven years tenure.

He and Trooper Draper were working midnight shift which began on 2/19/22 and carried over into 2/20/22. Draper had made a significant drug bust. As the two were discussing the next steps, Grievant handed her a checklist of items to be included in the report. Draper indicated that she didn't need the list and knew what had to happen next. He said "Fuck you bitch" [FYB hereinafter] and left the room.

Draper reported it, not because she was offended by the FYB but because she was insulted by his assumption that she needed guidance on drug bust protocols. She so stated every time she was asked about her reaction.

The investigation followed.

### **OSP Position:**

The discipline is within the grid; is commensurate; is progressive; 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:**

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 Post met its burden of proof. The facts were uncontroverted. The language directed by Boetcher towards Draper specifically was profane and derogatory. But the discipline was not for just cause.

Certainly there is a distinction between being cursed at and hearing curses and foul language. No one would condone under any circumstances anyone cursing at a coworker. It is not "ok" even in a coarse work setting. But without giving a seminar on current mores and values, no one is immune to hearing foul and degrading terms in venues including the workplace once upon a time sacrosanct from such language. What is also obvious is that to one person's sensibilities it is not even noteworthy; to another coarse language is highly rude, offensive and disgusting. At Chillicothe, the culture was allegedly of the "let's just say whatever on Post." This time a line was crossed. But no one contends it was because no one had ever heard the cited curse words on Post before.

Trooper Draper was neither side's witness. Her presence was not required as the salient offense was not in dispute. But the recipient of the curse -although she complained-stated her taking offense was *primarily* due to Grievant's presumption that she needed assistance with the protocols-and ***not being told "FYB"***. Draper indicated they often joked and cursed with each other. Per Grievant and per Vollmer [per the AI] she did not want Boetcher to receive discipline.

The principals were and are work friends. Their past cursing/hazing/"dogging" of each other was mutual. This was confirmed in Bailey's investigation and his testimony at the arbitration.

The closeness of the two principals and friendship and collegiality was noted by all of the supervision and noted in the AI as well. The fact that even after this cursing incident they worked well together was confirmed by Draper in the AI. She stated that she believed Grievant was only trying to help her that night. In the AI follow up she indicated that she herself has used profanity on Post; that is how they speak to each other.

Grievant apologized to Draper within a week of making the comment- and it was deemed a sincere apology.

In the aftermath, no one has assigned the two principals to separate shifts or even discussed transfers. There has been no repetition of such language from Grievant towards his peer.

Each and every witness from both sides confirmed that coarse language was normative at the Post. This was in distinction to language used while serving the public. No one indicated that anyone at anytime had objected; no one indicated that there had been past training on Post or counselling about the permissible lines between so called “shop talk” and boundaries. Although subsequent AIs did not support findings against others [allegations raised by Grievant] the basic facts are undisputed.<sup>1</sup> Coarse foul language is employed at the Post.

Discipline here was lock step imposed because Grievant had prior discipline in his deportment record-for unrelated offenses. A five day suspension is a progression but not for related offenses. The Umpire concludes that this discipline is arbitrary and capricious because to follow an automatic progression for utterly dissimilar offenses violates a fundamental principle: the discipline must not be excessive considering the facts and circumstances involved. Otherwise it is arbitrary and capricious. A short suspension here was all that was needed to give Grievant notice that this language was in violation of work norms and common courtesy and work behavior. Counselling or a written reprimand might have resolved it as well, but a one day suspension is formal notice that a repeat incident of like nature will result in harsher discipline.

The problem in allowing some crude talk and disallowing other examples of coarse and crude talk is that the boundaries cannot easily be discerned. Pulling out just three members of the Post for training perhaps sends a message that may be ambiguous to the others. Management Ex. 3-A and 3-B.

While noted, that is not the Umpire’s concern. What is her concern is that a discipline must meet just cause standards and not be arbitrary or capricious.

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<sup>1</sup> The Umpire was concerned about the allegations made by Grievant concerning Vollmer, Draper and Morgan. See Management Ex. 2 for Vollmer’s AI. Although that AI was not deemed to require further action, the time and resources spent in the follow-up was noted. Bailey stated that Grievant was not disciplined for making those allegations which were deemed unfounded. Grievant made those unsubstantiated allegations. It was noted and became part of the Umpire’s weighing of the evidence in consideration of the appropriate penalty.

This discipline was excessive considering all the extant facts. The discipline was reduced because it was too harsh. The prior disciplines were unrelated in type and facts. But Grievant is now on clear notice that the use of profane and derogatory language towards another Trooper will be cause for more severe discipline. He has been trained, warned and disciplined.

**AWARD**

**The grievance is granted in part and denied in part. The appropriate discipline is a One day suspension. Grievant should be made whole consistent with the award.**

**IT IS SO HEREBY ORDERED.**

*S/ Sandra Mendel Furman*

Sandra Mendel Furman, Esq., NAA

Issued February 13, 2023 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*