

IN THE MATTER OF THE ARBITRATION BETWEEN

Ohio State Troopers Association, Inc.	:	
Unit 1 & 15,	:	Grievance No.: DPS-2023-02813-01
	:	
Union,	:	Grievance: 3 day suspension
	:	
and	:	Grievant: Reymundo Zavala
	:	
The State of Ohio, Department of Public	:	Opinion and Award
Safety, Division of State Highway Patrol,	:	
	:	January 30, 2024
Employer,	:	

APPEARANCES

For the Union:

Larry Phillips, Staff Representative
Bruce Elling, Staff Representative
Kari Root, President
David Richendollar, Vice President
Reymundo Zavala, Grievant

For the Employer:

Aaron Williams, Staff Lieutenant
Kaitlin Fuller, Lieutenant
Collin Jackson, Office of Collective Bargaining

Daniel G. Zeiser
Arbitrator
P.O. Box 43280
Cleveland, Ohio 44143-0280
216.509.3718
danzeiser@aol.com

I. INTRODUCTION

This is a labor arbitration conducted under the terms of the parties' collective bargaining agreement. It involves a grievance filed by the Ohio State Troopers Association, Inc. (Union or OSTA) on behalf of the Grievant, Reymundo Zavala, contesting the Ohio Department of Public Safety, Division of State Highway Patrol's (Employer or OSHP) decision to suspend him for 3 days for a violation of OSHP Rules and Regulations 4501:2-6-02(B)(5) - Performance of Duty. The Employer suspended the Grievant by letter dated September 25, 2023 for pursuing a motor vehicle following a traffic stop. The grievance was timely filed on October 5, 2023. It was processed under Article 20 of the 2021-2024 Contract Between Ohio State Troopers Association, Inc. Unit 1 & 15 and The State of Ohio (Labor Contract).

The Employer denied the grievance at all steps of the grievance procedure and the matter was submitted to alternative dispute resolution pursuant to Section 20.12 of Article 20 of the Agreement, which includes a permanent panel of arbitrators. This Arbitrator was selected from the panel. The arbitration hearing took place on January 25, 2024 at the offices of OSTA, 190 W. Johnstown Road, Columbus, Ohio. During the hearing, the parties had the full opportunity to present witnesses, introduce relevant exhibits, and argue their positions in accordance with Section 20.12. Witnesses were sworn and separated, examined and cross-examined. The parties made closing statements and the matter was submitted.

II. ISSUE

The parties submitted the issue as follows:

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

II. RELEVANT PROVISIONS OF THE LABOR CONTRACT AND EMPLOYER RULES

ARTICLE 19 - DISCIPLINARY PROCEDURE

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. On 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 of more day(s) Working Suspension(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.

OHIO ADMINISTRATIVE CODE SECTION 4501:2-6-02(B)(5)

Members who fail to perform their duties because of an error in judgment, or otherwise fail to satisfactorily perform a duty of which such member is capable, may be charged with inefficiency. Unsatisfactory performance may be demonstrated by a lack of job-related knowledge, an unwillingness or inability to perform assigned tasks, failure to take required action, or failure to take appropriate action at any time.

OSP-203.20-002 MOTOR VEHICLE AND FOOT PURSUITS

A. VEHICULAR PURSUITS - STATEMENTS OF POLICY

* * *

3. **Pursuit Justification** - A pursuit is only justified when the necessity of apprehension outweighs the level of danger created by the pursuit. When engaged in vehicular pursuits, Division officers will operate within the limits of safety while considering other methods to identify or apprehend the suspect(s).
4. **Initiating/Continuing Pursuit** - When an officer determines that a suspect is fleeing, the officer shall immediately notify the dispatcher of the initiation of the pursuit. The dispatcher will then immediately notify a Division supervisor.

Prior to initiating a motor vehicle pursuit, and throughout the duration of the pursuit, the following information must be taken into consideration:

- a. Seriousness of the offense(s) known to the officer(s) involved
- b. Probability of apprehension
- c. Area where the pursuit takes place (e.g., business, residential, rural, etc.)

- d. Current traffic volume
- e. Current road and weather conditions
- f. Assistance available to the officer
- g. Knowledge of the identify of the driver and/or occupants

* * *

8. **Pursuit Termination** - A pursuit shall be terminated under any of the following conditions:

- a. The seriousness of the offense is outweighed by the risk to the public of continuing the pursuit.
- b. In the opinion of the officer or supervisor, due to factors such as, but not limited to, the prevailing traffic, roadway, and environmental conditions, the continuation of the pursuit would be futile or create a danger to the officer(s), the general public, and/or the suspect(s), that outweighs the need for apprehension.
- c. The suspect has been identified to a point where apprehension may be made at a later time and there is no longer a need for immediate apprehension.
- d. The pursuing officer(s) loses sight of the suspect's vehicle and the location is unknown.

IV. **FACTS**

The facts involved in this grievance are not in serious dispute by the parties. The Division of State Highway Patrol (SHP) is a division of the Department of Public Safety (DPS). The SHP is an internationally accredited agency whose mission is to provide professional public safety services in the State of Ohio. The Ohio State Troopers Association represents all permanently appointed full and part-time CAD Specialists, Dispatchers, Electronic Technicians, Troopers, and Sergeants employed in the SHP. (JX 1). The Grievant was hired as a Trooper on January 29, 2020. (JX 2). He transferred to the Norwalk Post from Sandusky about a month prior to the incident at issue here. The Grievant's 2022-2023 performance review rated him as meets expectations for each category. His supervisor noted that he understands safety and can be counted on to make sound decisions in most situations. (UX 1). Prior to his three day suspension, the Grievant received a written reprimand in 2022 when he located a gun and

marijuana under the front passenger seat of his patrol car that had been placed by an arrestee, and a five day suspension for having a preventable accident and an unauthorized person in his patrol car during the accident. Both incidents fell under Section 4501:2-6-02(B)(5) as well as other sections. (JX 3.e).

In the mid-afternoon of Friday, May 12, 2023, the Grievant initiated a traffic stop on US Route 20 about a mile west of the village of Monroeville in Huron County. The vehicle was traveling 75 mph in a 60 mph zone. The Grievant approached the vehicle on the passenger side and could see the driver and two passengers. Due to the heavy tint on the windows, he could not tell if there were additional passengers behind the front passenger. The driver gave the Grievant a Florida driver's license. According to the Grievant, the license photo matched the driver. The driver indicated that the vehicle was a rental, he did not have a copy of the rental agreement, and the person who rented the vehicle was not with them. The Grievant then asked the driver to turn off the vehicle because he was going to ask him to step out of the vehicle. The driver initially complied. As the Grievant walked around the rear of the vehicle to approach the driver's side, he heard yelling from inside the vehicle. The vehicle then started and pulled away.

The Grievant initiated pursuit. The speed limit changed to 55 mph just east of the location the pursuit began. The vehicle and the Grievant quickly entered the village of Monroeville and they passed through two active school zones. Noticing two school buses as he approached an intersection, the Grievant terminated the pursuit on his own. The pursuit lasted just under a minute. During it, the Grievant's top speed was 122 mph, which occurred as he approached a 35 mph business zone outside the village limit. He entered the village limit at 97 mph and the first school zone at 93 mph. He exited the first school zone at 103 mph and entered the second at 98 mph. He was inside the second school zone when he terminated the pursuit. (MX 1, p. 5). Throughout the pursuit, the Grievant had the driver's license. (MX 1).

On May 16, 2023, Staff Lieutenant Scott Rike, Assistant Commander of the Bucyrus District, was informed of the incident. Staff Lt. Rike was directed to conduct an administrative investigation on the Grievant and Sergeant Jason Demuth, who oversaw the pursuit. He interviewed the Grievant, Sgt. Demuth, and Lieutenant Timmothy Hoffman, Norwalk Post Commander, and reviewed video and other information. (MX 1, p. 16). Following the investigation, the DPS concluded he exercised poor judgment when he pursued the vehicle from the traffic stop in violation of Section 4501:2-6-02(B)(5). On October 2, 2023, the Grievant was suspended for three days without pay. (JX 3.c). This grievance followed on October 5, 2023. (JX 2).

V. POSITION OF THE EMPLOYER

The grievance should be denied and the three day suspension upheld. The Employer had just cause to suspend the Grievant. The Grievant had prior discipline, and the Employer exercised leniency when he was suspended for three days, when he had a prior five day suspension.

The investigation revealed that he should not have initiated the pursuit. He was trained on the Motor Vehicle and Foot Pursuits Policy a number of times, yet he still pursued the vehicle through the village and school zones at over 120 mph. While the Grievant terminated the pursuit on his own, he should not have even initiated it. The risks were simply too great. Indeed, the Grievant admitted he did not know if he could have stopped in time had a pedestrian entered the roadway. Even accepting that initiating the pursuit was justified, one cannot justify his speed through the school zones. The Grievant has been trained on the policy, but still did not comply. Discipline will help ensure he will comply.

VI. POSITION OF THE UNION

The grievance should be sustained. The Employer did not have just cause to suspend the Grievant. He should be made whole. This was more than just a traffic stop. The Grievant

was suspicious of the occupants and called for a drug sniffing dog. Although he had the driver's identification, this did not mean it was legitimate. Indeed, information obtained later indicates it could be fake.

The pursuit was short and the Grievant called it off after less than a minute. There were no crashes or injuries. No one even complained about the chase. Since the policy did not prohibit the pursuit, there was no violation. The Trooper has discretion under the policy, based on the factors listed. The Grievant took them into account and pursued, and terminated it when the risks outweighed the need for the chase. There is no evidence showing he failed to exercise caution, and no just cause for the suspension.

VII. OPINION

The Employer bears the burden of proving that just cause exists for the Grievant's discipline. Just cause generally requires persuasive proof that the rules or policies cited for the discipline were violated and the discipline was proportionate to the offense. That is, the discipline imposed was reasonable under the totality of the circumstances. Usually, the just cause standard favors progressive discipline, which gives the employee an opportunity to correct behavior and provides notice that failure to do so will lead to more severe discipline. However, progressive discipline need not always follow an oral warning, written warning, suspension, and discharge in lock step order. The facts and circumstances of each particular case dictate the appropriate disciplinary level. Progressive discipline concepts, however, do not apply in the face of gross misconduct, such as dishonesty, that warrants summary discharge in the first instance. This is particularly so when law enforcement officers are involved, given their unique place in the working world. Law enforcement officers are guardians of the peace and security of the community, and the efficiency of our entire system, designed to maintain law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust given them. For this reason, police officers must be held to a higher standard of conduct

than other public employees. “Law enforcement officials carry upon their shoulders the cloak of authority of the state. For them to command the respect of the public, it is necessary then for these officers even when off duty to comport themselves in a manner that brings credit, not disrespect, upon their department.” *Jones v. Franklin Cty. Sheriff*, 52 Ohio St.3d 40, 43 (1990). Law enforcement officers are generally aware of this, although they do not always like it. Finally, no citation is needed for the principle that employers have the initial discretion to impose discipline for proven misconduct. Generally, arbitrators will not second guess management so long as the penalty imposed is reasonable under the facts and circumstances.

The Employer suspended the Grievant for exercising poor judgment when he pursued a vehicle from a traffic stop. (JX 3.d). The Motor Vehicle and Foot Pursuits Policy lists a number of factors to consider before initiating a motor vehicle pursuit. They are:

- a. Seriousness of the offense(s) known to the officer(s) involved
- b. Probability of apprehension
- c. Area where the pursuit takes place (e.g., business, residential, rural, etc.)
- d. Current traffic volume
- e. Current road and weather conditions
- f. Assistance available to the officer
- g. Knowledge of the identify of the driver and/or occupants

(MX 1, p. 52). The Employer relies heavily on factors a and g, and somewhat less so on c. That is, at the time the vehicle sped off, the only known offense was a minor misdemeanor traffic offense, the Grievant had the license of the driver and knew his identity, and the pursuit went into Monroeville and through one and into another active school zone. OSTA counters that this was more than a traffic stop. The Grievant was suspicious because the vehicle was a rental, the driver did not have the rental agreement, and the renter was not in the vehicle. In addition, it asserts that having the driver’s license does not ensure it is legitimate.

Both arguments have strengths and weaknesses. The SHP is correct that the only known offense was a minor traffic offense, but a driver’s license can be fake. Indeed, a later LEADS search indicated it could be fake. (MX 1, p. 40). On the other hand, OSTA’s position that

this was more than a traffic stop does not appear to be very well supported on this record. During the OSP investigation interview, the Grievant mentioned only that the driver was rubbing himself and the third party rental as grounds for requesting a drug-sniffing dog. (MX 1, p. 8).

Looking at the factors listed above, the Arbitrator agrees that the seriousness of the known offense, a misdemeanor traffic offense, weighs against pursuit. However, the other factors tend to support the Grievant's decision. The probability of apprehension is not exactly clear at the time any pursuit is initiated, and the same goes here. It cannot be foreseen how the driver will react, where he will go, how fast he will drive, if he will turn, and so forth. The area where the pursuit was initiated is rural, though it is just outside Monroeville. The Grievant could not foresee whether the driver would continue through Monroeville, make a U-turn, or turn onto Route 99. It must be noted, though, that the most likely option was to continue through Monroeville, since that was the direction of travel. Viewing the video, there was moderate traffic at most, and road and weather conditions were good. There is not much evidence in the record as to the assistance available to the Grievant. (MX 1, pp. 10-11). In addition, while the Grievant had the license of the driver, this did not identify the other two or more occupants.

In addition, the chase did not last long, less than one minute, and covered 1.53 miles. There were no accidents, property damage, or injuries as a result. (MX 1, p. 40). The video did not show a near miss or close call. No complaints were received about the chase. And the Grievant decided to terminate the chase upon continuing to see moderate traffic, including school buses. (MX 1, p. 25, 29). Finally, throughout the investigatory interview, the Grievant repeatedly cited the factors in making the decision to pursue. He did not believe there was a risk to the public, noting there was light traffic, no pedestrians, the roads were dry, and the suspect was not driving erratically. He did, however, acknowledge their speed. In deciding to terminate the chase, the Grievant stated that the chase posed a risk based on the amount of traffic and the suspect beginning to weave in and out of traffic. (MX 1, pp. 8-9).

All in all, the record revealed that the Grievant considered the appropriate factors and made his decision accordingly. As noted above, the factors overall tend to support the Grievant's decision to initiate the pursuit, although not heavily. As OSTA contends, the policy gives a Trooper discretion to pursue. It does not prohibit any and every pursuit for a traffic stop. OSTA submits he took the policy factors into account and terminated the pursuit when the risks outweighed it. The Arbitrator agrees that the Grievant made a judgment call and his decision should be viewed as such. Accordingly, the Arbitrator concludes that the SHP did not have just cause to suspend the Grievant for three days.

However, the Grievant's actions in continuing the pursuit at more than 90 mph through one active school zone and into a second is another matter. Initiating the pursuit is one decision, continuing it is another. The policy also sets forth factors to consider in terminating a pursuit.

8. Pursuit Termination - A pursuit shall be terminated under any of the following conditions:

- a. The seriousness of the offense is outweighed by the risk to the public of continuing the pursuit.
- b. In the opinion of the officer or supervisor, due to factors such as, but not limited to, the prevailing traffic, roadway, and environmental conditions, the continuation of the pursuit would be futile or create a danger to the officer(s), the general public, and/or the suspect(s), that outweighs the need for apprehension.

(MX 1, p. 53). While pursuing the vehicle outside Monroeville and even into the 35 mph zone poses one set of risks, continuing at over 90 mph through one active school zone and into a second poses a different set of risks. Not only are children present, particularly at St. Joseph's Middle School, there are buses, parents picking up children, and generally more and slower traffic. Yet the Grievant did not terminate the pursuit until after entering the second active school zone where he observed continued moderate traffic and school buses. Even though he terminated the pursuit, the Arbitrator finds that the SHP had just cause to discipline the Grievant for his speed through the school zones and not terminating the pursuit sooner.

The Grievant was suspended for three days for pursuing the vehicle. Lt. Hoffman testified that the Grievant should not have initiated the pursuit as well as his speed through the slower speed zones, including the school zones. Thus, given the Arbitrator concluded there was no just cause to discipline for the initial decision to pursue, the Arbitrator finds that three days is too severe a penalty. The Arbitrator reduces the suspension to one day.

VIII. AWARD

The grievance is sustained in part and denied in part. The Employer did not have just cause to discipline the Grievant for three days, since the decision was based in part on the decision to initiate the chase. The Grievant's suspension is reduced to one day, the Grievant's personnel records are to reflect a one day suspension only, and the Grievant is to be made whole for two days of the suspension.

Dated: January 30, 2024

A handwritten signature in blue ink, appearing to read "Daniel G. Zeiser", is positioned above a horizontal line.

Daniel G. Zeiser
Arbitrator