

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association (OSTA)
Union

And

Case no. DPS 2023-02975-15
Sgt. Christopher Brock Grievant
Three day Fine

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

Umpire's Decision and Award

Introduction

This matter was heard in Gahanna, Ohio on 3/28/24 at OSTA headquarters.

Larry Phillips represented Grievant and OSTA. Sgt. Brock testified in his own behalf. Other Union representatives were present as observers.

Lt. Aaron Williams 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. OSP witnesses were Sgt. David Zatvarnický who prepared the AI and Lt. Phillip Robinson who acted as Grievant's then supervisor of the Hiram Post.

There were several joint exhibits (Jt. Ex.) presented: Jt. 1- the statement of issue; Jt. Ex. 2-collective bargaining agreement; Jt. 3- the grievance trail; Jt. 4- the discipline package. The issue was stipulated. An additional OSP exhibit was introduced-the administrative investigation [AI]packet, and it was admitted during the hearing.

The decision issued within stipulated time limits.

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

Applicable CBA Provisions

Article 20

Background

Grievant was charged with violation of the following: Performance of Duty 4501:2-6-02 (B)(2) and 4501:2-6-02(B)(5). The allegations related to an alleged failure to file needed paperwork with the particular local court on two occasions; a misrepresentation as to the disposition on a felony charge and an alleged failure to complete proper case follow up. Three specific case instances were cited. As a result of the alleged failure of follow up on the citations, none of the three persons involved in the citations Grievant issued proceeded to a case adjudicated in court.

The three day fine was issued the pay period ending 11/18/23.

It was timely grieved.

Grievant had a prior written reprimand of record for alleged failure to complete case follow-up in a timely manner and failure to file felony weapon charges on two distinct cases.

Summary of Facts

Grievant is a long term Sgt. who at the dates involved was assigned to the Hiram Post. He is currently assigned to the Cleveland post. He is a senior employee with 25 years tenure. He has been a Sgt. for nearly 19 years.

The first set of allegations related to a December 2021 highway arrest. Questions arose about the arrest paperwork in July 2023 in the course of an administrative review by Lt. Robinson, Post Commander. Grievant cited Candace House for DUI. She was not in fact charged as a matter of record and her case did not proceed through the judicial system. Grievant did not recollect what happened with the paperwork he is required to file with the BMV. Despite notice he still had time to refile on House, he did not. House had no charges pressed against her despite the citation.

The second allegations related to an operating a motor vehicle under the influence [OVI] charge against Kayla Williams. His paperwork did not result in a court notice nor a requisite filing with the BMV. Grievant lacked a specific memory of this arrest.

The third matter involved Cameron Vredevelt. A very small amount of a controlled substance and other items were seized from him. It was a single pill and it was sent to the laboratory by Grievant per procedure. It was a schedule 1 substance. Despite Grievant and Sgt. Ivory both making attempts to connect with the Prosecutor, he did not ever speak to the Prosecutor. After almost two years after the arrest Brock annotated the matter as: prosecution declined. He then caused the evidence to be destroyed. There is no allegation that the destruction

was malicious or outside of procedure. This notation of “prosecution declined” was not the actual disposition. As noted above there was no response to the Post from the Prosecutor’s office.

BMV 2255 forms were never filed with either the courts or the BMV for the above matters; the DPS report system OTIS had no record of the reports being filed; and a second chance to timely file charges on House was overlooked/bypassed by Grievant.

The investigation followed.

There are no procedural issues raised.

The fine was imposed in January 2023.

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. Grievant missed an opportunity to correct his error in one case and inexplicably chose not to follow up. He misstated the Prosecutor’s intention in the third matter: he never spoke to the Prosecutor yet annotated the form as though he had. The discipline is for just cause and the grievance must be denied.

OSTA Position:

The discipline is without just cause. The discipline is arbitrary and capricious; and is unwarranted under all the facts and circumstances. There is no check and balance system for filing court/BMV paperwork. Grievant’s discipline is overly harsh and punitive based upon his record and the facts involved. The grievance should be granted in its entirety. In the alternative, a three day fine is overly punitive and is not progressive. A one day suspension is appropriate and not overly harsh.

Opinion

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

The burden of proof was met. OSP proved that Grievant failed on three separate occasions to fulfill the necessary steps required to cause traffic violations committed by three individuals to appear in court for the citations issued. The end result is that persons charged with traffic and criminal offenses were never ordered to appear in court to account for and receive judgment for the allegations.

With House, Grievant had the chance to correct his error. His explanation as to why he did not was that he didn't want to look like he was covering things up. That explanation did not resonate with the Umpire. He also claimed that Robinson told him not to refile on House. This was specifically denied by Robinson. It did not make sense for Robinson to have so stated to not file as Grievant claimed.¹

Regarding Williams, there is no reason offered for the non-filing of the requisite paperwork with the court or BMV. He had no direct recollection of that matter.²

With regard to the Vredeveld matter Brock misrepresented that the Prosecutor declined the case. This purported "declining" was not a fact but an inference made by Grievant due to the Prosecutor's non response to contact made by Grievant and allegedly Sgt. Ivory. [Ivory did not testify]. The Umpire finds the inference was bad judgment but not a deliberate attempt to obfuscate or frustrate the wheels of justice. The two year time gap also bespeaks of a lack of follow up, compounding the overall picture.

Union arguments that there is no method of factchecking that items placed in the court basket get delivered to the intended municipal court may be true. It is not a failsafe system as the Union points out. Accountability falls back on the original "filer", not the employee making the drop of bin contents or doing a run to a courthouse. This involves an assumption on the Umpire's part; otherwise there would be a stream of these charges and cases. However, in the overwhelming majority of cases the bin contents get to the right court-because this is the only inference possible in the absence of contrary evidence. In one of the cases at issue the information was not uploaded to OTIS; there is no alternative explanation for that error. The BMV non filing cannot be blamed on anyone else.

In no manner does the Umpire believe that Grievant deliberately and with mal intent sloughed off his duty to process fully the three tickets he issued. But his level of follow up was insufficient to convince her that he understood that blaming others was not the solution. Assuming that the court paper got lost on the way after he placed it in the bin would be easier to accept without supporting evidence

¹ This testimony came in through rebuttal.

² Considering the volume of tickets written in the course of a year and the fact that these matters were brought up many months after the fact during an audit, the fact Grievant had no specific recollection of that ticket is not concerning. The concerning part is that he did not perform the multiple steps necessary to have the ticket processed without any reason offered.

had the BMV paperwork been filed properly and/or OTIS entries been made. That is not the record.

Neither does it make things more favorable for Grievant that he lost for reasons unexplained the chance to make things right on the House filing-the clock had not yet run out. His defense offered for that matter was not credited.

The Union argues that progressive discipline was not applied. There was no evidence specified as to why the OSP deemed a three day suspension was appropriate and a one day suspension was not considered. But considering the record as a whole, Grievant despite many years of loyal and mostly unimpeached service [the recent written reprimand was of record] must still perform the known and routine duties related to processing the citation paperwork. Otherwise, the traffic stops intended to make highways safe are made hollow if no consequences follow. That is an essential job function and no 25 year employee should have three distinct examples of failure to perform basic duties at this career point. The discipline could have been a one day but the issuance of a three day suspension is not an abuse of discretion on the record as a whole.

AWARD

The grievance is denied.

IT IS SO HEREBY ORDERED.

S/ Sandra Mendel Furman

Sandra Mendel Furman, JD., NAA

Issued April 1, 2024 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