

**IN THE MATTER OF ARBITRATION
BETWEEN**

Ohio State Troopers Association (OSTA)

Union

And

Case no. DPS2024-00767-15

Sgt. Michael Jordan Grievant

One 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 5/28/24 at OSTA headquarters.

Larry Phillips represented Grievant and OSTA. Sgt. Jordan was present and did not testify. Other OSTA representatives were present but did not testify.

Lt. Kaitlin Fuller 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. Geer who was directly involved in the events giving rise to the discipline and Lt. Evan Slates who acted as Grievant's then supervisor. The OSP witnesses were sworn in prior to testifying.

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.

The decision issued within stipulated time limits.

Issue: Was the Grievant issued a one (1) day suspension for just cause? If not, what shall the remedy be?

Applicable CBA Provisions

Article 20

Background

Grievant was charged with violation of the following: Responsibility of Command 4501:2-6-03 (A). The allegations related to an alleged failure to properly supervise a critical incident.

The notice of suspension issued 3/7/24.

It was timely grieved.

Grievant had a clean department record.

Summary of Facts

Grievant is a Sgt. He and others in multiple law enforcement agencies were involved in a critical incident involving armed motorists who were described as homicide suspects travelling south on I-75 from Monroe, MI. The suspects travelled at very high speeds down I-75, through Bowling Green towards Findlay.

The incident occurred on 9/2/23.

Grievant attempted to stop the fleeing vehicle by deployment of stop sticks. The stop sticks failed to deter the suspects' vehicle. Grievant rolled up the stop sticks to place them in his vehicle. He had communication with others in law enforcement involved indicating the failure of the stop sticks. He noticed a bullet hole in the driver's side of his OSP cruiser. Jordan called the supervisor to ask if he should wait at the place he had pulled over and was advised to proceed south to aid and assist in the critical incident.

When Jordan arrived at the scene, he stayed close to his cruiser. He had a very brief interchange with Sgt. Geer, who left after the brief interchange to directly assist and supervise the matters incident to detaining the Michigan suspects. Law enforcement assistance was also provided by the Wood County Sheriff Department. Geer was acting at that time as the officer in charge [OIC] of the scene.

The investigation followed.

The discipline was imposed in March 2024.

OSP Position:

The discipline is within the grid; is commensurate; is nondiscriminatory and no abuse of discretion exists such as to mitigate the discipline. Grievant failed to participate in a leadership role in a critical incident. He took no active part in the events but mostly sidelined himself. His actions were not those expected of a Sgt. who occupies a position of leadership, especially in a critical incident. 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. Grievant cannot be compared to other Sgts. His activities that date were all according to the facts and circumstances then extant. He was not the lead Sgt. He did not fail to do anything that was expected of him. 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.

In this case, the OSP elected to present two witnesses: Lt. Slates and Sgt. Geer. The individual preparing the Administrative Investigation [AI] was not present to testify. The Union objected to the presentation of the AI contents by anyone other than the individual involved in its preparation-Sgt. Fletcher. The Union received the AI copy as a prehearing exchange of documents. However, it did not accept the introduction of the AI in whole or in part from any other witness other than Sgt. Fletcher.

The umpire agreed in part with the Union's motion to exclude the AI with two specific exceptions: the condensed statement of Lt. Slates-who testified at the arbitration and the dash camera footage from Grievant's cruiser which showed Grievant and Geer's interaction at the site where the suspects had been detained in addition to Grievant's actions in laying the stop sticks. These two parts of the AI were able to be identified and authenticated by the OSP witnesses.

This case presented a first time situation for this umpire: a case without the bulk of materials contained in the AI. The umpire noted that the contents generally in the AI are helpful to a decision as much background is contained therein. AIs have been in the umpire's experience with these parties admitted through the testimony of the preparer. Although typically containing layers of/an abundance of hearsay and sometimes tangential information, the umpire before ruling on the merits considers both the thoroughness of the investigation; the supporting documentation; the contrast [if any] between witnesses statements at the AI and his/her testimony at hearing before the umpire. In a case where it is raised, the umpire will also assesses any allegations made by the Union of bias or lack of impartiality. None of this was available to her in this matter.

The fact that the Union had its usual pre-hearing opportunity to review the entire AI file did not make its objection less viable. The Union's position requires [unless it chooses to waive authentication] the OSP to in each and every case

produce the person who prepared the AI or risk a motion to exclude and its granting in whole or in part.

The AI investigator does not contribute based upon first-hand knowledge any of the underlying facts and circumstances supporting the discipline: it is not his/her role. But that witness provides the at the very minimum the basis for the OSP to demonstrate impartial, thorough investigations were had before discipline issued.

Under the parties' "mini arb" structure of two witnesses per side, that means only one witness will likely be available for the OSP to establish its reasons for the discipline. This has been the norm in all other "mini arbs" presided over by the undersigned. These procedures are perhaps matters for the bargaining table but under the parties' extant cba language the umpire concluded that the AI with the limited exceptions noted was not properly part of the record.

Lt. Slates' testimony description of events; Sgt. Geer's testimony and the video left the following findings: Sgt. Jordan did not take an active, leadership role during the events that occurred during the high speed chase. He was slowly securing the failed stop sticks and was concerned about the cruiser's bullet hole as "evidence" at the attempted stop. The suspects were in a high speed race down I-75-suspects who were clearly armed and dangerous and likely shot into his cruiser-although no direct evidence exists on that point. He did not prioritize his responsibilities under the extant circumstances.

Jordan displayed no urgency in riding to the arrest scene and at the scene stayed in the background. In no way was he commanding or leading the events at the rest area; he was remote and disengaged from the activities involved in the apprehension. Because he did not testify, the umpire has no insight into his thought processes/motives or anything to contradict or diminish the visuals presented on the dash cam as well as a description-albeit limited-from Sgt. Geer.

The OSP did not explain why training or formal counseling wasn't considered as a means of informing Grievant of its valid expectations of a sergeant being more engaged on scene. He was not the Sgt. in charge of the scene. But Grievant's implied retreat into a mode of "I'm not the person in charge" did not meet expectations of leadership on the date in question. The umpire does not have authority to order retraining, counseling and/or a refresher course in leadership or the like as a means of supporting Grievant in the fuller performance of his duties.

Per Management Ex. 2: "Sergeant Jordan is being counseled so that he is aware of the expectation that he needs to be there for his units, and regardless of where the incident is, if our unit is involved that he needs to assist and supervise." This reprimand was just a few weeks before the high speed pursuit.

Under the extant circumstances Grievant did not meet the reasonable expectations of his Sgt. responsibilities on the date in question. He could certainly have been more activist and engaged, but his failure to do so on this date and time was not sufficiently proven to be a failure to command rising to the level of a suspension. A suspension is too harsh based upon the record.

The record is insufficient to support a finding that Grievant violated the Responsibility of his Command-in a willful/deliberate manner. Discipline of lost pay/suspension under these facts before attempting formal counseling/retraining/ is not for just cause. Grievant was informally counselled weeks earlier before this incident for not supervising and communicating with his unit. Therefore, the first level of discipline-a written reprimand-is appropriate under these facts and circumstances.

AWARD The grievance is Granted in part; Grievant is to receive a written reprimand for his lack of supervision and leadership displayed during the high speed chase incident.

IT IS SO HEREBY ORDERED.

S/ Sandra Mendel Furman

Sandra Mendel Furman, JD., NAA

Issued June 2, 2024 in Bexley, Oh

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