

**IN THE MATTER OF ARBITRATION
BETWEEN**

Ohio State Troopers Association (OSTA)

Union

Case number should be 2742 NOT 2741 DB

And

Case no. DPS-2024-2741-01

Tammy Soto
One 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 5/22/25 at OSTA headquarters. Larry Phillips represented Grievant and OSTA. Grievant was present and testified. Other Union representatives were present as observers.

Matt Stegner represented the State Highway Patrol. (OSP) Other Management representatives from the OSP and Office of Collective Bargaining were present as observers.

The OSP called as witnesses Sgt. Burkhart who prepared the administrative investigation (AI) and Sgt. Kaess.

The Union called Grievant as its witness and Dave Richendollar for background and context testimony.

All witnesses were sworn.

There were several joint exhibits (Jt. Ex.) presented: Jt.1- the collective bargaining agreement; Jt.2- the grievance trail and 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 one day fine for just cause? If not, what shall the remedy be?

Applicable cba provisions

Articles 19; 20

Background

Grievant was charged with the following: **Performance of Duty** OAC 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 ...failure to take required action, or failure to take appropriate action at any time.

A one day fine was issued to Soto effective 2/22/25.

It was timely grieved.

SUMMARY of FACTS

Grievant was assigned to the Milan post. At the time of the incidents she had 13 years tenure in her position with a clean department record.

The discipline arose from actions regarding payment for Grievant and two other Troopers from other posts for an extra duty assignment on 3/22/24. The assignment originated from the Cleveland post.

Grievant and Troopers Beyer and Hawkins volunteered for an escort duty providing highway escort service for an oversized load being transported by truck from Cleveland to the Kentucky border. There was no hourly rate posted on the extra duty job opportunity.

The Troopers were also assisted for the beginning of the escort service by a Cleveland Police Department [PD] officer. This is deemed a multi-jurisdictional escort and it is covered by OSP policy. Grievant testified that she had reviewed Policy 500-18 revision 18 in advance.

Administrative Professional [AP] Byczek sent Soto a memo 3/13/24 that there was no direction to charge a higher rate. This response related to an earlier inquiry made by Grievant involving an escort trip she had made in February 2024 with Sgt. Kaess. In that instance no upcharge was sought or approved.

Grievant and the two other troopers [Beyer and Hawkins] involved as escorts on 3/22/24 presented for payment a voucher for an extra duty escort assignment originating from Cleveland and ending at the OH-KY border.

Trooper Beyer filmed the transaction of payment. Grievant prepared the paperwork.

Because the off duty rate for the Cleveland police escort was \$61.36/hr. Grievant and her coworkers sought reimbursement for the \$61.36/hr. rate for the portion of the trip that involved the Cleveland PD escort.

The higher rate had not been preapproved for the multi-jurisdictional rate at/before the time of escort. There is no dispute that part of the escort was multi-jurisdictional. The extra duty rate was negotiated roadside. The rate charged the trucker was based upon Grievant's reading and understanding of Policy 500-18

Revision #18.¹ The three Troopers involved all discussed the upcharge as the events unfolded in real time.

The vouchers were originally approved for payment. Then a review indicated that the higher rate was in error. Grievant and the two other employees were so advised.

The review found that the higher rate had not been preapproved by the AP. Grievant needed that preapproval and needed to repay the higher amount received.²

All three involved troopers received a one day fine.

Sgt. Kaess testified that he did not upcharge in February 2024. He worked with Grievant on that occasion which was also a multijurisdictional transport. He stated that he checked in with AP Byczek and did not upcharge. He stated that an upcharge is permitted when it has been prearranged. The proper process per Kaess to follow for an upcharge is: check with the AP then bill later as per the direction given.³ Kaess acknowledged that the AP is not within a trooper's chain of command.

Grievant stated that Sgt. Kaess did not tell her on this 3/22/24 occasion to contact Byczek for the appropriate rate.

Grievant repaid the difference between the amount received and the allowed amount. Revision 19 issued before she received her one day fine.

Sgt. Burkhart stated that the rate of pay for extra duty has never been negotiated roadside. During the course of the investigation, she learned of another situation where the extra duty upcharges were negotiated.

OSTA representative Dave Richendollar related a discussion between himself and Lt. Williams regarding the ambiguity in Policy rev.18. The three cases involved in the 3/22/24 incident were the only ones in his experience in OSTA.

Trooper Beyer's grievance proceeded to arbitration before Grievant's case. The discipline was overturned. The arbitration decision by Umpire Zeiser was admitted over the OSP's objection as to relevancy. The same facts were present in both cases with minor variations. The variation of note was Soto had prior experience in the extra duty compensation process; she worked an assignment a month earlier with Sgt. Kaess. In that situation, although multi-

¹ The language in Policy 500-18 Revision #18 states: Multi-Agency/Details Hosted by Other Agencies-Highway Patrol officers working multi-agency ...shall be compensated at the rates within this policy or at the highest special duty rate of any agency working...the detail, whichever is greater. This applies to all applicable officer and supervisory rates.

² Burkhart stated that Byczek was investigated due to the invoice paperwork prepared by her for this event. No written/time off/fine discipline was recommended/imposed on Byczek. This testimony was admitted over the OSP objection.

³ No such procedure is found in writing in the record.

jurisdictional also, no upcharge was charged. She also had some correspondence about the upcharge process.

The third grievance's status [Hawkins] was not made part of the evidentiary record.⁴

OSP Position:

Grievant knew/should have known that her request for payment above and beyond the base rate for extra duty was not sanctioned. She lacked preapproval for the higher than base rate charged. AP Byczek told her that there was no preapproval for the higher rate on an earlier multi-jurisdictional escort event taking place in February- a month earlier. "Upcharges" have never been negotiated roadside.

Despite her prompt repayment Grievant's actions were in violation of policy. Her actions were in conflict with OSP core values. She did not ask for guidance from Byczek before taking the upcharge.

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 disciplined for following a policy that has undergone multiple revisions. The policy under which she was disciplined was modified soon after the events herein. OSP Policy 500.18 Extra Duty Patrol Services Revision 18 was confusing and ambiguous. Grievant followed it as she understood it. All of her actions were in the open and recorded.

The discipline is without just cause. Grievant has no prior discipline. The grievance should be granted in its entirety. Grievant should be made whole for the one day fine and receive reimbursement for the \$69 she repaid the contracting Truck driver.

Opinion

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

The facts are not in dispute.

The policy at issue has undergone multiple iterations. It was changed shortly after the events herein. The fact it was changed before this discipline issued but after the events occurred giving rise to the incident creates a reasonable inference but is not conclusive proof herein on the merits.

A point of confusion was the definition of multi-agency detail; and the rate to be charged if the detail ceased to be a multi-agency detail at some point in the

⁴ In closing argument OSTA indicated that the third grievance was in the settlement process. The Umpire disregarded this statement as it was not part of the record.

escort trip. **Notably any pre-approval process was nonexistent in Policy Revision 18.**

Trooper Beyer contacted Sgt. Kaess. Per Beyer [in his case] Kaess advised the higher amount paid to the Cleveland police escort was available to the Troopers. Kaess did not confirm this in this hearing.

At the conclusion of the escort trip, the three Troopers presented the driver with an invoice based upon the calculation of the higher rate received and paid to the Cleveland PD escort-for only that portion of the trip that was multi-agency. The transaction was recorded on BWC. The receipts made and collected from the truck driver were likewise photographed at time of preparation and delivery to the customer.

AP Byczek invoiced the truck driver for the base rate amount. He advised that he had been charged a higher rate-the \$61.36 rate paid to the Cleveland PD escort. A new invoice was prepared by the AP. The rate was changed by her to a rate even higher than the three involved troopers charged. The amount reflected on her invoice was the amount charged by the troopers but it wrongly represented the hours involved so that the amounts were matching to the invoiced amount. Byczek was not disciplined for her action in changing the invoice amount. This fact was noted but is not determinative as disparate treatment is not weighed when persons are not similarly situated. It did cause the Umpire to question the fairness of this discipline but that is not the basis for the award.

The Umpire reviewed the sequence of events herein. Most important in her analysis was the fact that the policy in effect at the time of the incident giving rise to the discipline was fully susceptible of being reasonably interpreted in a manner to support the higher rate sought by Grievant for the multi-jurisdictional portion of the trip. Neither does the policy Rev. 18 state that preapproval by an AP required to upcharge in a multi-jurisdictional situation. That fact is weighed heavily by the Umpire.

AWARD

The grievance is granted. Grievant did not violate the policy. She is entitled to be made whole. The “make whole” requires repayment to her by the OSP of the amount of the upcharge. The discipline shall be expunged from her record.

IT IS SO HEREBY ORDERED.

S/ *Sandra Mendel Furman*

Sandra Mendel Furman, Esq., NAA

Issued 5/28/25 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*