

## IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association,  
Union

And

Case no. DPS-2014-06658-1  
Michael Ervin Grievant

State of Ohio, Department of Public Safety,  
Employer

### Umpire's Decision and Award

#### **Introduction**

This matter was heard in Columbus, Ohio on January 11, 2016 at OSTA headquarters. Lieutenant (Lt.) Brewster represented the Employer. General Counsel Sigall represented the Union. All witnesses were sworn. A motion to separate witnesses was granted. There were several joint exhibits 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 by the parties and admitted during the hearing.

#### **Issue**

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

#### **Applicable CBA Provisions**

Article 19

#### **Background**

Grievant is assigned as a Trooper at the Portsmouth Post. His immediate supervisor is

Grievant has a disciplinary history. It is reflected in Jt. Ex.3

He was charged with violation of Rule 4501:2-6-02(I)(1)(4), Conduct unbecoming an officer. The specific allegation related to acting unprofessionally during a traffic detail.

The one-day suspension was issued in July, 2014.

It was timely grieved.

#### **Summary of FACTS**

Grievant was assigned to handle traffic related to the Scioto County Swap Days. This is a heavily attended event occurring several times a year. This was not a regular assignment but was an off duty overtime assignment.

While responding to a call from Sgt. Howard, he was stopped by Captain Murphy of the Scioto County Sheriff's department. Murphy claimed in a complaint filed with the Patrol his brief interaction with Grievant was unprofessional in tone and action. He complained about his tone of voice, which he described as loud and very agitated towards him. The entire interaction between Grievant and Murphy took less than a minute and one-half.

A second non-verbal interaction took place between Murphy and Grievant moments later as Ervin was trying to confirm with Sgt. Howard what he had observed. Grievant described Murphy as blood red faced, arms crossed, audible breathing and blocking his path. This testimony is uncontroverted.

Murphy did not testify. His statements were contained in the Administrative Investigation. (AI) M-1.

Murphy had a prior encounter with Grievant some six years prior when Grievant made a traffic stop involving Murphy. That encounter resulted in no findings or action taken against Grievant.

Murphy was at all times relevant in charge of the Scioto County Jail.

The other claimed corroborating witness to Grievant's alleged unprofessional conduct was Larry Floyd Jr. Likewise he did not testify. Uncontroverted evidence in the record indicated prior citations made by Grievant and DUI convictions by others. Floyd served as a trustee in the jail under Murphy.

The AI contained an interview with Sgt. Howard. Howard did not testify. Howard claimed he could not hear the conversation between Grievant and Murphy.

Ervin testified about the encounter with Murphy. He stated his intent was to respond as quickly as possible to the call for assistance made by Sgt. Howard. He also prepared an inter-office communication to his supervisor the day after the incident. He denied acting in a hostile, rude, unprofessional or inappropriate manner.

There is no audio recording of the verbal encounter between the two principals.

### **Employer Position**

Grievant was unnecessarily antagonistic towards Murphy. Murphy had the right to stop Grievant and ask him where he was going. He acted in a manner that caused Murphy to believe he was being disrespected. Grievant handled his vehicle in an unnecessarily dangerous manner after the encounter with Murphy almost backing into another vehicle.

An impartial witness Larry Floyd corroborated the incident.  
Sgt. Howard's version lent further support to credit Murphy.  
Grievant's conduct does not meet the professionalism standards of the Department.

Any claimed bias from Murphy and/or is remote in time and speculative.  
The discipline is progressive. Ervin's file had a written reprimand active as well as a three-day suspension and one day fine.  
The suspension is for just cause and the grievance must be denied.

### **Union Position**

Grievant acted at all times appropriately. He was responding to the call for assistance from his Sgt. He wanted to get to the scene as quickly as possible as it was an officer assist call. The location was extremely crowded with cars and people. The room to maneuver the vehicle was limited. He had his emergency lights on during the approach. The lights remained on until he was stopped by Murphy.

At no point did Grievant act in a manner inappropriate to the time, place and persons involved. There are no allegations of cursing or verbal abuse.

Grievant has a prior relationship with both accusers. Both had encountered him in his role as a Trooper. Murphy complained about Grievant in a 2008 traffic stop initiated by Grievant. Six years is not so remote in time as to erase the hostile animus. It is important to note that Murphy's prior allegations were deemed to be unfounded.

Floyd has an DUI record and has been a trustee in the jail. Floyd had been ticketed by Grievant. Murphy supervises and supervised the County jail at all dates relevant. Floyd's denial that he did not know either Murphy or Grievant is not believable.

Both had a hostile animus against him and therefore their statements are not creditworthy.

Howard's testimony in writing does nothing to support the Employer's discipline. He did not hear the conversation between Murphy and Grievant.

Discipline affects Grievant's ability to be promoted, act as a mentor and attend training. He has won awards for his seat belt enforcement record, an ACE winner and other enforcement accolades.

The grievance should be granted and Grievant made whole.

### **Opinion**

The Employer bears the burden of proof. In this case that burden was not met.

The three most pertinent witnesses to the events giving rise to the discipline were Grievant, Murphy and Howard.

Only Grievant testified and was subject to cross examination and the assessment of the arbitrator as to credibility. This was important to the decision in Grievant's favor.

Howard's statements as to the overheard conversation between the parties was Murphy allegedly saying "calm down bud, calm down". This is in contrast to other testimony in the record that he heard none of the conversation between Grievant and Murphy. Significantly Howard stated that he did not see Grievant do anything disrespectful to Murphy.

Murphy admitted in the AI he knew Grievant from the prior interaction and that he had complained about him at that time. Murphy did not corroborate Howard's statements about saying his purportedly stating "Calm down, calm down bud" to Grievant.

Floyd's testimony in the AI is suspect due to prior encounter with Grievant who cited him three years earlier. Floyd had a pre-existing relationship with Murphy which was not denied by counter testimony. Floyd's testimony lacks specific detail. It is not supportive of the charges.

Grievant's version of events was deemed credible.

Grievant was responding to an officer assist dispatch. He knew from the dispatch that an individual was resisting arrest.

Grievant admitted getting frustrated at what he perceived as Murphy's obstructing his path to Sgt. Howard. He stated he felt belittled by Murphy's conduct. He stated he felt Murphy was a hindrance in his getting to respond to the Sgt. Grievant himself asked Murphy to speak to him in a different tone. Grievant stated that is all he said to Captain Murphy.

Grievant asked Howard to "do something with the way he (Murphy) is talking to me."

Grievant described Murphy's blood red face and arms folded, and that Murphy was blocking his path when he was talking to Howard. This is further support for an interpretation favorable to Grievant.

All testimony confirmed there is a vast height and weight disparity between the two principals-Grievant and Murphy. This adds credence to Grievant's feelings about Murphy at the two points of contact.

There is nothing rising to the level of a concern in Ervin's actions or verbiage as contained in the record. He was not rude, aggressive, untoward or unprofessional based upon the greater weight of evidence in the record.

Although the verbal recording of the actual interchange might have been helpful the record was sufficient to determine the matter. Grievant was not at fault for not recording the incident.

There is insufficient showing of any violation of the cited rule in the events described in the record.

**AWARD**

**The grievance is Granted. The discipline should be expunged and Grievant made whole in back pay, benefits and any other contractual entitlements.**

IT IS SO HEREBY ORDERED.

Issued this 27th day of January, 2016 in Columbus, Ohio.

*S/ Sandra Mendel Furman*

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Sandra Mendel Furman, Arbitrator