

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association,
Union

And

Case no. DPS-2014-05490-1

Patricia Nemeth 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. Lt. Fellure 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 Patrol 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 Circleville Post.

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

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

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

It was timely grieved.

Summary of FACTS

Grievant was disciplined for events arising from a traffic stop on northbound US 23 north of South Bloomfield on April 23, 2014.

There is a complete audio/visual recording of the encounter between the two principals-Grievant and O. Michael Meade, a citizen complainant. Neither Meade nor Grievant testified. Meade's and Grievant's comments and points of view are summarized in the AI. (M-1) Meade was primarily aggrieved that he was "treated like a criminal for no reason".

Employer Position

Grievant was unnecessarily harsh and antagonistic towards a driver stopped for traffic violations. She was upset that she had to direct him to place his hands where she could see them. She was loud, used hand gestures towards him and used language inconsistent with professionalism.

She had been warned and disciplined about her approach with citizens in the past.

Grievant's conduct does not meet the professionalism standards of the Department.

The discipline is progressive. Her file had a notation that she had been spoken to in the recent past about her contacts with citizens. See J-3 and M-5. The discipline is for just cause and the grievance must be denied.

Union Position

Grievant acted at all times appropriately. She handled the stop in an appropriate manner. She acted reasonably in her oral directions to the driver. Her concern was with officer safety.

The grievance should be granted and Grievant made whole.

Opinion

The Employer bears the burden of proof.

Both parties relied in substantial part on the taping of the interaction between Grievant and Meade. Although the umpire observed the recording closely twice on two occasions the recording failed to show Grievant acting in an unprofessional manner meriting corrective disciplinary action.

Grievant followed a process for stopping and identifying a person known to be carrying a concealed weapon. (CHL herein) Her concern was to ensure she saw both of Meade's hands. There is no violation of a written, established protocol in her requests to have his hands placed where she could see them. Requiring the visual of hands in plain sight is consistent with RC 2923.12(B)(2) Nothing in M-2 appears to have been violated by Grievant's actions.

Unless and until there is evidence of a prescribed way to do a CHL stop Grievant's method of seeking to see both hands and directing an individual to place them outside a window when she is behind a trailer with tinted glass and a headrest does not appear to violate any rule or training. The Patrol failed to introduce sufficient evidence that she handled this inappropriately. Her goal was to ensure she could see both his hands. She could not under the extant circumstances until she gave him instructions.

She was firm with Meade. She was concerned about the fact he had a CHL and she didn't know where the weapon was located. Her concern was amplified by the fact he was seen talking on his cell when she pulled him over. Nothing in that part of the conversation is troubling.

She was no nonsense. She told him his actions caused her to almost “clear leather”. While the umpire finds this single remark troubling it does not rise to the level of rude or unprofessional conduct meriting a loss of pay.

Nor does the record contain any specifics as to what prior conduct she had been warned about in the past to determine whether she was failing to follow instructions previously given to her on this remark or her approach about putting hands out the window. There is some evidence about a prior CHL stop that in no way resembled this occurrence.

The Patrol seems to be upset about her conversation with Meade about Meade’s prior stop on an earlier date with another Trooper where she indicated she would have handled it differently. She admitted in the AI to elevating her voice and used hand and arm gestures while she was “trying to educate him.”

The conversation ended with her advising him he would be cited in the future if the stated problems with the trailer weren’t corrected and his vehicle would be towed. Grievant further told him where she had placed his gun- on the rear portion of his trailer. The Patrol seems to have no quarrel with this part of the stop. Neither does the umpire.

The loud road noise, the quality of the recording and Meade’s raising his voice and admitted tone to her all amplified the volume of the encounter. While that one cited remark is unorthodox, it is the sole troubling incident in the encounter. For the Patrol’s desired inference that she handled a CHL stop in an inappropriate manner the record is incomplete. The discipline is excessive and unwarranted under the circumstances.

The Patrol should have training or an in service explaining to her how her conduct regarding the “hands in plain sight” was inappropriate. It might offer her refresher training about citizen approach/communication. Although the disciplinary notice references such training, no details were present in the record regarding whether it was taken or its content.

AWARD

The grievance is granted. The discipline should be expunged and Grievant made whole in back pay, benefits and any other contractual entitlements. There is no order rescinding the taking of refresher classes. Refresher classes should be attended if not already taken.

IT IS SO HEREBY ORDERED.

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

S/ Sandra Mendel Furman

Sandra Mendel Furman, Arbitrator