

Thomas J. Nowel
Arbitrator and Mediator
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In The Matter of a Controversy Between:)	Grievance No.
)	DPS-2014-
The Ohio State Troopers Association)	05007-01
)	
and)	ARBITRATION
)	OPINION AND
Ohio Department of Public Safety, Division)	AWARD
Of the Ohio State Highway Patrol)	
)	Date:
Re: Disciplinary Suspension)	December 10,
Justin G. Craig)	2014

APPEARANCES:

Herschel M. Sigall, Esq. for the Ohio State Troopers Association;
Lieutenant Cassandra Brewster for the Ohio Department of Public
Safety, Division of the Ohio State Highway Patrol; and Robert Patchen
for the Ohio Office of Collective Bargaining.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the Ohio State Troopers Association and the State of Ohio, Department of Public Safety, Division of the Ohio State Highway Patrol. The parties are in disagreement regarding the disciplinary suspension of Justin G. Craig who is a Trooper assigned to the Findlay, Ohio Post. The Grievant was suspended for one day without pay effective July 7, 2014. The suspension was appealed through the Grievance Procedure, and, when the Employer denied the grievance, the matter was appealed to arbitration.

The Arbitrator was selected by the parties to conduct a hearing and render a binding arbitration award pursuant to Article 20 of the collective bargaining agreement. The matter is arbitrated pursuant to Section 20.12 of the Agreement. The parties agreed that the Award would be issued not later than December 10, 2014. Hearing was held on November 25, 2014 at the offices of the Ohio State Troopers Association. At hearing the parties were afforded the opportunity for examination and cross examination of witnesses and for the introduction of exhibits. Witnesses were sworn by the Arbitrator. No procedural issues were raised by the parties.

ISSUE

The parties stipulated to the Statement of Issue as follows. "In conformance with Article 20, Section 20.08 of the Collective Bargaining Agreement the parties submit the following statement of issue for resolution by the arbitrator. Was the

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

WITNESSES

TESTIFYING FOR THE EMPLOYER:

Captain Charles Linek, Executive Officer Personnel Department

TESTIFYING FOR THE UNION:

Justin G. Craig, Grievant

GRIEVANCE

The grievance of Trooper Craig states as follows. Statement of Grievance: On June 20, 2014, I was informed that I am being suspended from my employment with the Ohio State Highway Patrol for 1 day. This was for an alleged violation of Rule 4501:2-6-02(I) (4), Conduct Unbecoming an Officer. I maintain that this discipline is being levied without just cause and is not progressive in nature. I have nothing on my department record. Resolution Requested: I request that the discipline be reduced to either a verbal or written reprimand and the 1 day suspension be returned to my bank of hours and I be made whole.

DISCUSSION AND OPINION

On April 5, 2014, the Grievant, Trooper Craig, and Sergeant Jacob Fletcher were at a crash scene on U. S. 224 at the intersection of I. 75. The crash involved a commercial vehicle which caused the closure of U. S. 224. As Sergeant Fletcher was involved at the crash scene, he observed a vehicle driving westbound on U. S. 224

which nearly caused another crash. The driver then attempted to drive through the crash scene, and the Sergeant walked in front of the vehicle in an attempt to stop the driver from proceeding through the closed section of road. The driver nearly hit Sergeant Fletcher, but he was finally able to force the driver to stop by jumping into the vehicle and applying the brake. The driver of the vehicle was intoxicated, and he laughed at the Sergeant and again attempted to drive off after being ordered to exit his vehicle forcing the Sergeant to physically remove him. Sergeant Fletcher then radioed the Grievant, who was directing traffic at the crash scene, and asked for assistance in gaining control of the intoxicated driver. Both officers handcuffed the suspect who was then placed securely in the back of the Sergeant's cruiser. Sergeant Fletcher questioned the suspect regarding his level of intoxication and stated that he had almost run him over. The suspect began laughing in response. At this point the Grievant stated in an angry voice, "you had better wipe that smile off your fucking face." He then yelled loudly, "wipe it off your face or I'm going to knock your fucking teeth out. Wipe the smile off your fucking face now. He has a family. You almost ran him over you dumb fuck." At this point the suspect responded in a subdued voice. (Audio in the Sergeant's vehicle captured these statements and the tone of voice of the Grievant and suspect. Audio was played at hearing.) The Grievant then walked away from the cruiser and resumed his duties at the crash scene.

Trooper Craig has been employed with the Highway Patrol for eight years and has been assigned to the Findlay Post, working with Sergeant Fletcher, for his entire career with the Patrol. Based on protocol following use of force arrest, video

and audio of Troopers' vehicles are reviewed. The actions of the Grievant became the subject of an administrative investigation, and he admitted to his angry and profane outburst stating that he was upset that the Sergeant could have been severely injured by the actions of the intoxicated driver. During the administrative investigation, the Grievant stated that he had no intention of actually doing physical harm to the suspect. He stated that he had never threatened a citizen during his tenure as a Trooper. Following completion of the administrative investigation, the Grievant was charged with violation of Rule 4501:2-6-02 (I)(4), Conduct Unbecoming an Officer, and a pre-disciplinary hearing was scheduled. The penalty for first offense, based on the Employer's disciplinary grid, ranges from a one day suspension to removal. The Grievant received a one day disciplinary suspension.

The Employer states that the Grievant clearly acted in a threatening manner when he cursed at the suspect in a loud voice. The Grievant was out of control and therefore violated the "Conduct Unbecoming an Officer" policy. The Employer states that Troopers are trained to maintain control in difficult and confrontational situations. The policy specifically prohibits Troopers from using profanity including language or gestures, and, the Employer states, the Grievant made a physical threat. The audio produced by the cruiser's video cam makes it clear that the Grievant violated policy, and he admitted his conduct during the investigative interview. The Employer offers an award of Arbitrator Lewis in which a one day suspension was sustained for the use of profanity by a Trooper. The Employer argues that the one day suspension was not imposed in an arbitrary or capricious manner and asks the Arbitrator to uphold the discipline and deny the grievance in its entirety.

The Union states that there is little factual dispute regarding this matter. The Sergeant could have been killed by the actions of the intoxicated driver who continued to laugh and essentially mock the Sergeant and Grievant. The actions of the suspect created a highly stressful scene which caused the Grievant to respond in a manner which was completely out of character. The Grievant observed his Sergeant pacing due to the high level of stress, and he attempted to de-escalate him by ensuring that the suspect was completely controlled. The Union argues that the Grievant's use of profanity is not his usual behavior. This was a ten second outburst by a Trooper with an exemplary work record. The Union cites the most recent performance evaluation of the Grievant which states in part that he "is a great example of what a trooper should be." The Grievant observed the suspect smirking at Sergeant Fletcher when he stated that he nearly hit him, and he attempted to impress on the suspect the seriousness of his actions. The Grievant has a spotless record with no discipline during his employment. He admits that his behavior was in error. The disciplinary grid is not negotiated but instead is a unilaterally imposed document. The Union argues that a one day suspension is excessive based on the work history of the Grievant and is a violation of the progressive discipline provision of the collective bargaining agreement. The one day suspension will have a negative impact on promotional opportunities. The discipline should be reduced to a verbal or written reprimand.

Troopers frequently find themselves in difficult and dangerous settings. The Employer provides essential training to ensure that members of the Highway Patrol react in a professional and safe manner. In the instant matter, the actions of the

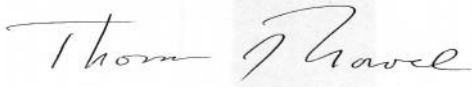
intoxicated suspect threatened the well being of Sergeant Fletcher. The suspect laughed and smirked when confronted by law enforcement, and this certainly would cause a seasoned Trooper to be highly aggravated. As difficult as it would be to maintain a level of professionalism, it remains incumbent upon the officer to remain in control of the suspect and his own emotions. This is what the public expects. The Grievant was charged appropriately with “conduct unbecoming” based on the profane outburst and threatening language. While the Grievant states that he would not have engaged in physical violence, his threat to “knock your fucking teeth out” constitutes a serious violation of policy. The audio of the video cam clearly paints the picture of a Trooper who has lost control. This is not to condone the actions and defiance of the suspect, but law enforcement must rise above it. The suspect was securely in custody in the back seat of the Sergeant’s vehicle when the Grievant confronted him and, based upon audio evidence, had become compliant at this point. The Union argues that the discipline grid is unilaterally imposed and not negotiated, but, as Arbitrator Lewis notes in the Appollonio arbitration (15-03-20121231-0111-04-01), the Management Rights provision of the Agreement allows the Employer to promulgate reasonable rules and policies. While arbitrators may mitigate an imposed disciplinary penalty, even outside the parameters of the Employer’s designed grid, there is no reason to do so in the instant matter. The Grievant testified at hearing that, when he saw the smirk on the face of the suspect, he “wanted to change the suspect’s behavior.” Stern orders would be an expected response. The use of profanity and threat of physical violence have no place at the

Highway Patrol and constitute violation of Rule 4501:2-6-02 (I) (4). The one day suspension is not a violation of Section 19.05, Progressive Discipline. The Grievance of the Union is denied.

AWARD

The grievance of the Union is denied.

Signed and dated this 10th Day of December, 2014 at Cleveland, Ohio.

A handwritten signature in cursive script, reading "Thomas J. Nowel". The signature is written in dark ink on a light-colored background.

Thomas J. Nowel
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 10th Day of December, 2014, a copy of the foregoing Award was served by way of electronic mail upon Herschel Sigall, Esq. for the Ohio State Troopers Association; Lieutenant Cassandra Brewster for the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol; and Alicyn Carrel for the Ohio Office of Collective Bargaining.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in dark ink on a light-colored background.

Thomas J. Nowel
Arbitrator