

OCB AWARD NUMBER: 2506

SUBJECT: Arb Summary #2506
TO: All Advocates
FROM: Megan Schenk
OCB GRIEVANCE NUMBER: DPS-2014-06658-1
DEPARTMENT: Public Safety
UNION: OSTA
ARBITRATOR: Sandra Furman
GRIEVANT NAME: Michael Ervin
MANAGEMENT ADVOCATE: Lt. Brewster
UNION ADVOCATE: Herschel Sigall
ARBITRATION DATE: January 11, 2016
DECISION DATE: January 27, 2016
DECISION: Granted
CONTRACT SECTIONS: 19
OCB RESEARCH CODES: 118.01 – Discipline in General; 118.08- Suspensions in General; 118.315 – Burden of Proof;

HOLDING: Grievance **GRANTED**. The evidence in the record regarding the Grievant’s brief, verbal exchange with a captain from the county sheriff’s department, while trying to respond to a call for an officer assist, was insufficient to prove the Grievant engaged in conduct unbecoming an officer.

Facts: Grievant was a Trooper who was issued a one-day suspension for conduct unbecoming an officer, specifically, acting unprofessionally during a traffic detail. Grievant was assigned to handle traffic during a heavily attended event that occurs several times a year. While responding to a call from a Sergeant, the grievant had two interactions with a captain in the county sheriff’s department, one of which was witnessed by a man who served as a trustee in the jail under that captain. The captain filed a complaint with the Employer stating that his brief interaction with Grievant was unprofessional in tone and action. He complained about Grievant’s tone of voice, which he described as loud and very agitated towards him. A second non-verbal interaction took place between the captain and Grievant moments later as Grievant was trying to reach the sergeant to confirm details regarding the call from the sergeant regarding what he had observed. Grievant described the captain as blood red faced, arms crossed, audible breathing and blocking his path. Approximately six years prior, grievant had made a traffic stop involving the captain that did not result in any action against the captain. Grievant and others had made several prior citations and DUI convictions of the trustee.

The Employer argued: Grievant was suspended for just cause. Grievant already had a written reprimand, three-day suspension, and one-day fine on his record. Grievant was unnecessarily antagonistic toward the captain and he operated his vehicle in a dangerous manner after the encounter with the captain, almost backing into another vehicle. One impartial witness and the sergeant corroborated the captain’s statements regarding the incident. The grievance should be denied in its entirety.

The Union argued: Grievant was wrongfully issued a one-day suspension. Grievant acted properly at all times and was responding as quickly as possible to a call to assist an officer. The captain and trustee both have reasons to have a hostile animus against Grievant. The sergeant’s testimony does nothing to support the captain’s account. Grievant has won several awards and accolades in his position. The grievance should be granted and Grievant made whole.

The Arbitrator found: The Employer carries burden of proof in a discipline case and the burden was not met. Only Grievant testified and was subject to cross examination and the assessment of the arbitrator as to credibility. The sergeant's statements as to the conversation he overheard between the parties was the captain allegedly saying "calm down bud, calm down". The sergeant stated that he did not see Grievant do anything disrespectful to the captain. The captain and trustee had reasons to be biased against the Grievant from prior interactions. There is insufficient showing of any violation of the cited rule in the events described in the record. The discipline should be expunged and Grievant made whole in back pay, benefits and any other contractual entitlements.