

IN THE MATTER OF ARBITRATION  
UNDER THE 1983 CONTRACT

---

Between:	)	
The Ohio Department of	)	
Transportation	)	Grievance No. 12-86-D3-U6
	)	
THE EMPLOYER	)	ND 480
	)	
-and-	)	Grievant: Randal W. Fullenkamp
	)	
The Ohio Civil Service	)	
Employees Association,	)	
Local No. 11, AFSCME,	)	
AFL-CIO	)	
	)	
THE UNION	)	

---

Before: NICHOLAS DUDA, JR., ARBITRATOR

---

OPINION AND AWARD

March 25, 1987

**CASE DATA****SUBJECT**

Suspension.

**APPEARANCES****FOR THE UNION**

Linda Fievy, Attorney, Presenting the Case

Randal W. Fullenkamp, Highway Worker 2, Grievant

Donald Yunker, Witness, Route Marker 1

**FOR THE STATE**

Rachel Livengood, Labor Relations Specialist - District 8, Presenting the Case

Eugene Brundige, Deputy Director for Labor Relations, ODOT

William T. Johnson, Labor Relations Specialist

Lynn Ginzer, Safety Inspector

Herbert Shively, Garage Superintendent

Linda Dillard - Safety Officer

Nancy Conklin, Intern - Observer

**JOINT STIPULATIONS**

1. [Grievant] is an employee of the Ohio Department of Transportation.
2. [Grievant] has been employed with the department as a Highway Worker 2 since July 12, 1982.
3. [Grievant] was suspended from employment for one day on May 29, 1986 as the result of an accident on January 13, 1986.

4. This grievance is properly before the Arbitrator.
5. In addition to the 1983 Labor Agreement, the provisions of Section 25.09 of the 1986 Labor Agreement are to be applied in this case at the joint request of the Parties.

#### STIPULATED ISSUE

Was the disciplinary action, a one day suspension, imposed on [Grievant] for "just cause"? If not, what shall the remedy be?

#### EVALUATION

In the winter one of the duties of Highway Worker 2 is to operate "equipment involved in snow and ice control, including plowing snow and treating pavement with chemicals and abrasives". There is no showing that Grievant had ever been trained in operations of plowing equipment and he testified that he had learned on the job without any training whatsoever although he had ridden with other workers operating a snow plow.

On January 13, 1986, Grievant was assigned to plow highways using a dump truck equipped with a snow blade. Another State employee was riding with him.

Grievant was plowing State Road 96, traveling from west to east. Immediately after passing each intersection which had a significant amount of snow he would stop the truck, raise his blade, back into the intersection and plow out the mound of snow which his blade had made in the intersection before proceeding down 96. The truck warning lights were operating and when the truck was backed, the sound warning alarm sounded automatically.

At about 2:45 P.M. in clear daylight, Grievant approached the Hinesville Road intersection which had a considerable amount of snow drift. In anticipation of backing to eliminate the mound of snow in the intersection he braked in the normal manner and came to a stop fifteen to twenty feet beyond

the intersection. When he looked into both sideview mirrors he saw no cars behind the truck on Route 96. Unbeknownst to Grievant, at about the same time a car traveling northward on Hinesville Road south of 96 reached the intersection just as the truck passed through; without stopping as required by the stop sign, the automobile operator looked left for traffic on Route 96 approaching from the west and made a right turn into 96 eastbound without first looking to the right. As the car entered Route 96 its driver saw the truck immediately in his path. Probably each vehicle was traveling less than 5 m.p.h. when they collided.

Grievant immediately reported the accident to the State Highway Patrol which came to the scene. He also made a written report to the employer.

On May 20, 1986 the Director notified Grievant in writing that he was suspended for one day. The letter stated:

In accordance with Directive A301, Violation 7,19 (Carelessness with equipment resulting in the loss, damage, or an unsafe act; Damage to State vehicle as a result of failure to operate vehicle in a safe manner) you are hereby suspended for...Thursday, May 29, 1986...

You were guilty of violation of the Ohio Revised Code, Section 124.34 (Neglect of Duty) when on January 13, 1986 while plowing snow from an intersection you backed into a vehicle making a right turn.

Directive A-301, issued January 10, 1986 was addressed to "Assistant Directors, Director's Office Staff, Chief Engineers, Deputy Directors, Assistant Deputy Directors, Bureau chiefs and District Deputy Directors". The directive states the two cited violations as follows:

7. Carelessness with tools, keys and equipment resulting in the loss, damage, or an unsafe act.
19. Damage to State Vehicle as a result of failure to operate vehicle in a same manner.

There is a question whether Directive A-301 or the specific violations cited had ever been communicated to Grievant. Even if not, Grievant should

have known he was subject to discipline for careless or unsafe operation of State vehicles resulting in damage to the State equipment.

According to each of the Employer's Inspector, the Grievant and the State Highway Patrol, there was no damage to the State vehicle. For that reason one could question whether the requirements of violation 7 and/or 19 apply. Whether the admitted damage to the automobile met the damage requirement need not be decided in this case which will be decided on more substantial grounds.

The discipline letter alleged that Grievant was "guilty of violation of the Ohio Revised Code, Section 124.34 (Neglect of Duty)." That portion of the Ohio Revised Code was not even submitted in this arbitration. Furthermore there was no showing that Grievant was found guilty of or even charged with violating anything in the Ohio Revised Code.

The only submission concerning the Ohio Revised Code was Section 4511.38 of the Traffic Laws. That section concerns "Rules for Starting and Backing Vehicles" The section requires that before backing, operators of vehicles "shall give ample warning and while backing they shall exercise vigilance not to injure person or property". According to the only direct evidence presented, Grievant's testimony, he did give warning and did exercise vigilance; in other words, he complied with the submitted section. There is no showing that he didn't comply or was found in violation of Section 4511.38.

The section also recognizes that public works employees, such as Grievant, may back vehicles, even on an expressway, in the performance of official duties. Grievant was performing his duty.

At the arbitration hearing the State suggested that Grievant violated item 4 of the "Procedures for Effective Snow Plowing" in the Department's "Snow Plow Operators Manual". According to Grievant he had never seen and didn't receive this manual until after the accident. The State's only evidence on distribution was that the manual was distributed sometime during

the winter of 1985-1986.

Item 4 says "clear snow past intersection before making turnaround". That wording does not prohibit backing a vehicle on a highway. Furthermore Grievant was not disciplined for violating a procedure in the Snow Plow Operators Manual.

Grievant testified without contradiction that he and the other drivers with whom he has ridden, routinely back their vehicles on the highway at intersections to plow out the intersection.

The State may have the authority to prohibit its drivers from backing vehicles on the highway provided that such a rule could be complied with consistent with highway safety. There is no showing that any such prohibition existed before January 13, 1986.

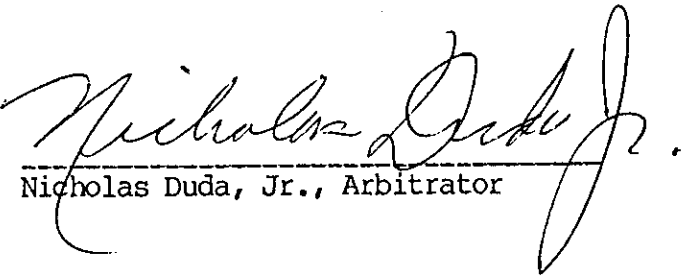
It is not clear that the proximate direct cause of the collision was unsafe or careless operation by Grievant. It is at least as probable that the accident happened because the other driver went through the Stop sign and turned right without even looking right, simply because he assumed that the truck which he had seen from a distance, had continued east on Route 96. The collision probably would have occurred if Grievant had not started to back but remained parked.

#### **CONCLUSION**

The Employer has not shown just cause for the one day suspension of Grievant.

**AWARD**

The grievance is sustained. The Department is directed to rescind the one day suspension issued May 20, 1986. Furthermore the State is directed to make Grievant whole by providing him one days' pay for May 29, 1986.



Nicholas Duda, Jr., Arbitrator