

ARBITRATION AWARD SUMMARY

OCB Award Number: 293
OCB Grievance Number: 15-03-880719-0091 Larry Hetrick
Union: FOP
Department: OSP
Arbitrator: Frank Keenan
Management Advocate: Lt. Darryl Anderson
Union Advocate: Paul Cox
Arbitration Date: 4-12-89
Decision Date: 6-7-89
Decision: Granted

ARBITRATION

BETWEEN

The State of Ohio,
Ohio State Highway Patrol

and

Fraternal Order of Police,
Ohio Labor Council, Inc.

O.C.B. Grievance # 15-03-⁸⁸⁰⁷¹⁹~~880789~~-091-04-01

APPEARANCES:

For the Patrol:

L.M. Hetrick

Lt. Darryl L. Anderson,
Labor Relations
Ohio State Highway Patrol
Columbus, Ohio

For the F.O.P.:

Paul L. Cox,
Chief Labor Counsel
F.O.P., O.L.C., Inc.
Columbus, Ohio

*hearing
4/12/89*

OPINION AND AWARD OF THE ARBITRATOR

Frank A. Keenan
Arbitrator

STATEMENT OF CASE

The Grievant in the case, Trooper L.M. Hetrick, seeks Court Appearance pay pursuant to Section 61.06 of the Contract for an appearance in Court on July 19, 1988. In this regard Section 61.06 of the Contract provides as follows:

61.06 Court Appearances

Members of the bargaining unit who are required to appear in Court during their off duty hours shall be guaranteed a minimum of two (2) hours pay or actual hours worked, whichever is greater. The Employer shall not change an Employee's schedule or scheduled shift in order to avoid payment for court time incurred during off duty hours without the consent of the Employee involved. Payment should be made in cash or compensatory time at the discretion of the Employee. Employee's shall notify their immediate supervisor when they are required to appear in Court.

On July 19, 1988, the Grievant's scheduled shift ended at 4:00 p.m. He was also subpoenaed to the Findley Municipal Court at 4:00 p.m. on that date to testify concerning a traffic offense. He arrived a little early and discussed his testimony. The case was called and when the defendant did not appear, posted bond was declared forfeited and the case dismissed by the Judge at approximately 4:10 p.m. Trooper Hetrick then returned to the Post and completed his day's paperwork. He left for home and a period of routine time off at approximately 4:50 p.m. Hetrick was paid 50 minutes

overtime pay. Part of this was recorded as court overtime and part regular overtime. Had he been paid two hours minimum Court Appearance pay, he would have earned more money.

During negotiation for the Contract, the F.O.P. sought four (4) hours minimum Court Appearance Pay. It was discussed at the bargaining table that this provision would cover the situation where a Trooper is off duty and has to go to the bother of dressing in uniform, etc. on his day off to come into Court. As the record reflects, it was intended as an accommodation for inconvenience and the encumbrance on the Employee's off duty time. The Parties did not reach agreement and the matter was submitted to Factfinder Graham for a recommendation. The language of Section 61.06 of the Contract is what the Factfinder recommended.

The Patrol takes the position that no "off duty" time is involved here since Trooper Hetrick simply never went off duty; he was on duty both before and after 4:00 p.m. Moreover, asserts the Patrol, no inconvenience or encumbrance to off duty time is involved here; there was no hiatus between Hetrick's regular duties and his Court appearance. What is involved here is simply a continuation of Grievant Hetrick's normal shift.

The F.O.P. takes the position that the clear and unambiguous language of the Contract provides that where, as

here, a Trooper is "off duty" and yet is required to appear in Court, he/she shall be paid a minimum of two (2) hours pay, and hence the Grievance must be granted.

The Patrol would frame the issue thus:

"Did the Highway Patrol properly pay the Grievant for his Court activities on July 19, 1988? If not, what should the remedy be?"

The F.O.P. would frame the issue:

"Did the Patrol violate Section 61.06, and if so, what shall the remedy be?"

In my judgment, the issue is best framed as follows:

"Was the Grievant's pay for his Court appearance on July 19, 1988, violative of Section 61.06 of the Contract, and if so, what is the appropriate remedy."

DISCUSSION AND OPINION:

Directly to the point, the F.O.P.'s position is found to be meritorious. The issue posed is answered in the affirmative. In the clearest of terms Section 61.06 at sentence one (1) provides that when on "off duty hours" you are required to appear in Court, you're entitled to two (2) hours minimum pay. The second sentence makes clear that "off duty" is a reference to time not encompassed by the Employee's "scheduled shift." Thus, where, as here, the required Court appearance occurs during off duty, i.e. before or after the Employee's "scheduled shift," then minimum pay

of two (2) hours is clearly due. Where the language utilized is clear and unambiguous it is normally improper to delve into bargaining history in an effort to ascertain an intent different from the intent manifested by the language utilized. Nonetheless, doing so here in the interest of thoroughness, nothing in the bargaining history is at odds with the intent manifested by the language utilized. Thus, while the circumstances present here (a court appearance contiguous to the end of the Grievant's shift) were not expressly used as an illustration of the circumstances contemplated by the Court Appearance Pay concept embodied in Section 61.06, the Patrol concedes that not every possible illustration of the proposed language's embrace was explored. Furthermore, while the illustration used at the bargaining table, as more fully noted above, clearly came within the parameters of the expressed "purpose" of the provision, to reiterate, to alleviate the inconvenience and encumbrance on an Employee's "off duty" time, so too do the circumstances here. Thus while it may have been less of an inconvenience and encumbrance because no changing into uniform etc. were involved, nonetheless the required court appearance constituted an encroachment onto the Grievant's "off duty" time and was thus in accord with the "purpose" of Section 61.06.


So it is that the Grievance must be sustained. The

Grievant's pay for July 19, 1988, did not comply with the provisions of Section 61.06 of the Contract.

AWARD

For the reasons more fully set forth above, the Grievance is Sustained and the Grievant shall be made whole by payment to him of the two (2) hours minimum pay for an off duty Court Appearance called for in Section 61.06.

Dated: June 7, 1989



Frank A. Keenan
Arbitrator