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AWARD OF ARBITRATOR

In the Matter of the Arbitration Between:)

STATE OF OHIO, DEPARTMENT OF HIGHWAY)
SAFETY, STATE HIGHWAY PATROL)
Columbus, Ohio)

-and-)

FRATERNAL ORDER OF POLICE,)
OHIO LABOR COUNCIL, INC., UNIT 1)

HARRY J. DWORKIN,
ARBITRATOR

RE: GRIEVANCE PROTESTING ONE DAY
SUSPENSION FOR FAILURE TO FILE
REPORT OF MOTOR VEHICLE COLLISION

A P P E A R A N C E S

On Behalf of Employer

SGT. RICHARD G. CORBIN	Advocate
DON WILSON	OCB Representative
CAPT. J. M. DEMAREE	Executive Officer, Ohio State Patrol
LT. K. M. GARLOCH	Granville Post Commander
ANNE ARENA	Assistant

On Behalf of F.O.P.

PAUL L. COX, ESQUIRE	Chief Counsel
ED BAKER	FOP Representative
RENEE ENGLEBACK	Paralegal
MAX P. RENTZ	Trooper, Post 45

THE ISSUE

WAS THE GRIEVANT DISCIPLINED FOR JUST CAUSE IN
ACCORDANCE WITH ARTICLE 19, SECTION 19.01 AND
SECTION 19.05 OF THE COLLECTIVE BARGAINING
AGREEMENT BETWEEN THE PARTIES?

IF NOT, WHAT SHALL THE REMEDY BE?

PRELIMINARY STATEMENT AND BACKGROUND:

The grievant is a State Highway Patrol Trooper, with 10-1/2 years of continuous service, assigned to the Granville, Ohio Post. On January 25, 1989, the grievant was issued a one day disciplinary suspension for failing to file a report of a collision between two vehicles that occurred on September 23, 1988, on Interstate 70, within an area that the grievant was patrolling. There is no significant conflict between the parties as to the occurrence, namely, a rear-end collision between two vehicles. The parties are in disagreement as to the severity of the collision, the Employer maintaining that the contact between the two vehicles was sufficiently severe to bend the license plate, and shatter the directional signal of the rear vehicle. The grievant, and FOP claim that the contact between the two vehicles was of minimal degree so as not to warrant the filing of a formal accident report. The FOP reasons that the filing of an accident report in event of minor contact between two vehicles is within the judgment, and discretion of the investigating officer.

The Employer strongly disagrees with the position advanced by the FOP; the Employer maintains that pursuant to the rules that are in effect, an accident report must be filed by the investigating officer irrespective of the severity of the collision, or whether the persons involved request that no report be filed. As regards this aspect of the case, the Employer submitted into evidence a copy of the Divisional Rules, including the following which delineate a trooper's obligation with reference to accident reports, and the exercise of judgment in a manner that would promote the efficiency of the department, and its objectives:

4501:2-6-02

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action.

A grievance, other than one protesting a verbal or written reprimand, is subject to the grievance procedure:

§20.02 Definitions

* * *

2. Disciplinary Grievance - refers to a grievance involving a suspension, removal or a reduction in pay and/or position.

* * *

Pursuant to the language appearing in the labor agreement, §20.07 Arbitration, an arbitrator's decision is required to:

"...conform with the Law of Ohio and do not exceed the jurisdiction or authority of the arbitrator as set forth in this Article. The grievance procedure shall be the exclusive method of resolving grievances."

Finally, the Arbitrator's functions are controlled by the following, contractual limitations:

§20.07 (6) Arbitrator Limitations

"...The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the language of this Agreement."

The State Highway Patrol has drafted, promulgated, and enforced a set of work rules, or "Divisional Rules" pursuant to its authority as set forth in the Agreement. Section 21.01 recognizes the right of the Employer to draft, and enforce reasonable work rules and directives:

ARTICLE 21 WORK RULES

§21.01 Copies of Work Rules

The employer agrees that existing work rules and directives shall be reduced to writing and

§21.02 Application

All work rules and directives must be applied and interpreted uniformly as to all members. Work rules or directives cannot violate this Agreement. In the event that a conflict exists or arises between a work rule and the provisions of this Agreement, the provisions of this Agreement shall prevail.

The Divisional Rules include a portion designated as "Auto Alert" which pursuant to its stated purpose is to "protect our troopers by informing them of the wanted status of any vehicle that they may approach":

1. "The Auto Alert file will be used on every field contact - this means every vehicle contacted for any reason. This may be accomplished by using either the Auto Alert or RP function. The post dispatcher is to check by Auto Alert or RP as soon as possible and advise the officer as soon as the reply is received. Seconds may be critical to the officer's safety. When possible, both Auto Alert and RP should be checked."

Under customary procedure an officer calls in to the post dispatcher information concerning vehicles involved in an accident for entry into a computer, which provides the officer with information concerning the registration status of vehicles. This information is regarded as a safety factor affecting the security of the investigating officer.

In addition to the foregoing, the parties have cited and submitted into evidence portions of the Ohio Revised Code that deal with the duties, powers, and responsibilities of state troopers:

ORC 5503.02 Duties and powers of state highway patrol.

* * *

Patrolmen shall investigate and report all motor vehicle accidents on all roads and highways outside of municipal corporations.***

The foregoing statutory requirements have been supplemented by

aspect of the dispute, the FOP has maintained that troopers are vested with authority to make "judgment calls" so as to determine whether the contact between two vehicles is of sufficient, or serious degree as to warrant, justify, or require further investigation, and filing of an accident report.

The grievant testified that after observing the bent license plate, which he was unable to straighten by hand, he obtained a crow bar from the trunk of his patrol car and straightened the license plate. At the same time he observed amber colored glass on the ground, which turned out to be from the rear vehicle's turn signal. The grievant concluded that "no report was necessary", particularly since the forward driver claimed no injuries, or property damage, and had departed from the scene. The grievant made a legitimate judgment call, and concluded that no report was necessary.

The grievant then proceeded to radio his dispatcher the information he had gathered. He thereupon returned to Interstate 70 to watch for the truck that was reported to be spilling material on the highway. The grievant's radio call was intercepted by Lt. Garloch, the Post Commander, who inquired whether the two drivers were still at the scene. The grievant responded to Lt. Garloch that both drivers had left the scene, and that he could no longer obtain the required information for preparation of an accident report. The grievant represented at the arbitration hearing that it was not customary for troopers to make a license check in all instances involving contact between vehicles; that the making of a license check depended on the circumstances that were indicated at the scene, and that such procedure is observed generally by state troopers under similar circumstances. In the instant case, no suspicious circumstances were indicated that would suggest or require an accident report. further

numbers, and verification of their identities. An accident report is normally made when there is substantial property damage, or injury reported, or apparent to the officer. In the view of the FOP, and the grievant, he acted in a reasonable and proper manner, and as was customary under the attendant circumstances.

POSITION OF EMPLOYER:

The State Highway Patrol maintains that the grievant acted improperly, in disregard of established Divisional Rules and policies, and in violation of state law, in failing to properly investigate, verify the identity of the drivers through a license check, and in failing to file an accident report. In the foregoing respects, the grievant failed to comply with his prescribed duties and responsibilities; he performed his responsibilities in an inefficient manner, which warranted corrective discipline.

Pursuant to the testimony of Post Commander Garloch, the grievant reported the accident through radio conversation. In the course of the radio conversation the grievant was specifically instructed to complete an accident report, and to which the grievant responded, "okay". Nevertheless, the grievant failed to obtain the license numbers of either of the two vehicles, or determine whether they were properly registered, or whether the drivers had valid licenses. In fact, it is claimed that the grievant "has to this day failed to submit an accident report, as required by the Divisional Rules, and as he was instructed to do by Lt. Garloch." The Employer concluded that the grievant failed to comply with General Order No. 4, the "Auto Alert" procedure in that he failed to call in by radio the license numbers of the vehicles involved so as to determine whether either of the vehicles

The Employer points out that applicants who are accepted for training as state highway patrol officers are subject to an extensive training program at the Academy, which includes all existing rules, and emphasizes the importance of their observance. The Academy training includes instruction as regard the investigation of accidents, and preparation and submission of reports. A requirement that is mandated by both the rules, and state law, and which all troopers are required to observe is, that, "when-ever there is damage, however slight, or injury, an investigation must be made and an accident report filed." The Divisional Rules and Policies are mandated by statute, and are recognized in applicable provisions of the labor agreement. ORC 5503.02 mandates that: "patrolmen shall investigate and report all motor vehicle accidents on all roads and highways outside of municipal corporations."

The State Highway Patrol represents that the obligation to investigate and report all traffic crashes, is a "key factor in the imposition of discipline in this case." Even after Lt. Garloch had expressly instructed the grievant to prepare and file an accident report, to which instruction the grievant responded "okay", he did not make, or file a report. The State Highway Patrol refers to the grievant as, "an experienced, competent trooper who in this case simply failed to carry out his sworn duties in a professional manner", (Employer Opening Statement, page 3). The grievant's failure to investigate, and report a traffic accident, constituted a "serious breach of duty and a disservice to motorists involved".

In view of all the circumstances, the grievant's one day suspension was factually warranted, and constituted a mild form of corrective discipline. In determining the measure of discipline, the Employer considered the grievant's prior disciplinary record which revealed a written reprimand in March, 1988.

considers as "closely linked" to the violation for which the grievant was suspended. The one day suspension was "both commensurate with the offense and followed a pattern of progressive discipline" as contemplated by Section 19.05 of the collective bargaining agreement. The grievant's one day suspension was for just cause, and should not be disturbed.

POSITION OF F.O.P.:

The Union maintains that discipline of any form was unwarranted, and that in any event, the suspension penalty was unreasonable, and excessive. As a threshold observation, the Union points out that the grievant's prior reprimand, in 1988, for failing to observe an accident, and being out of his assigned patrol area, was in itself unwarranted, although, pursuant to the agreement, an officer cannot avail himself of the grievance procedure for the purpose of protesting any measure of discipline in the nature of a written, or oral reprimand. The FOP represents that, a total of some 500 reprimands, both oral and written, are issued annually among the total work complement of some 2,000 troopers, none of which is subject to challenge through the grievance procedure. Thus, one out of four troopers receive some form of discipline annually. The Union reasons that many hours are thus "wasted" in processing charges for minor, miniscule infractions. The Employer "tends to issue reprimands as if they are water", and then rely on them for more severe discipline in event of subsequent charges. The foregoing statement is applicable to the instant case, in that, the grievant received a one day suspension regarding a minor contact between two vehicles, where neither driver claimed injury, one driver had left the scene, and neither requested that an accident report be filed

There was very minor, if any damage observed, other than a bent license plate, and broken lens. The grievant proceeded to straighten out the license plate with a crow bar. It was evident that both drivers wished to leave the scene; neither wanted to get involved in so minor an occurrence. Under these circumstances, the grievant cannot be charged with disobeying the orders of his Post Commander; moreover, the grievant has not been charged with insubordination, or disobedience of a direct order. The Employer is seeking to convey to the Arbitrator that there was much more involved than failure to investigate, and file a report. The State Highway Patrol's allusion, and suggestion to the Arbitrator that the grievant was insubordinate, is a "smoke screen" designed to cloud the true issue before the Arbitrator.

While not here challenging the rules, and policies of the State Highway Patrol, or state statutes, the FOP maintains that it is customary, and well established procedure, for each trooper to make a "judgment call" when he arrives at an accident scene, as to whether to file an accident report. The FOP contends that, "not every accident imposes a duty to make a report regarding a two vehicle accident." The FOP represents that, "officers simply do not file reports in each and every case; officers are not held to strict accountability", as regard contacts between vehicles that are minor in degree, where no injuries or property damages are observed, or, where the drivers are reluctant to become involved.

The conclusions urged by the Union appear in the Employer's Level III Decision, as follow:

"The Union contends management has violated Article 19, Section 19.01 of the collective bargaining agreement as the result of a one (1) day suspension given the grievant on January 6,

The grievant asks as a remedy the suspension be vacated; all records of the disciplinary action be removed from his file; and he be made whole.

The Union indicates they feel the discipline invoked in the case is excessive, considering the infraction which occurred. The Union asks as a remedy the suspension be replaced with a written reprimand."

ARBITRATOR'S FINDINGS AND OPINION:

The applicable state statutes, rules and regulations of the State Highway Patrol, set forth with specificity, and in clear and unambiguous language the responsibilities of a state trooper in carrying out his assigned duties. In addition, the evidence establishes that troopers receive orientation courses at the Academy as regard both the Divisional Rules, and regulations, and requirements of state statute. The Divisional Rules are posted, and made available to each trooper at the command post to which the trooper is assigned.

Pursuant to a consideration of the evidence, and all relevant provisions of the Agreement, the rules, and state law the conclusion is unavoidable that, troopers are obligated to comply with the aforesaid requirements, and may not exercise discretion, or judgment as to whether compliance is required. The Arbitrator must therefore reject the argument advanced by the FOP that, it is permissible for state troopers to make "judgment calls" on a case-by-case basis as to whether an accident is severe, or serious enough to require that an investigation be made, and a report be filed. To adopt the argument of the FOP would substantially abrogate the authority of management recognized in the Agreement, and required by state law. Although the argument of the Union that, the Employer has engaged in a "paper chase" in

officer's safety". It appears that the grievant failed to perform this vital function, and responsibility. However, the Arbitrator notes that the grievant has not been charged with insubordination, or disregard of General Order No. 4, and therefore this aspect of the Employer's position must be deemed irrelevant to the issue.

The Arbitrator holds that the evidence overwhelmingly supports the conclusion that the grievant failed to carry out his duties completely and without delay, evasion or neglect; that in failing to file an accident report he exercised an error in judgment, and was inefficient, and for which he was subject to an appropriate measure of discipline consistent with just cause, consideration of his prior work record, and progressive system of discipline as appears in the labor agreement.

Finally, although a one-day disciplinary suspension is not ordinarily regarded as substantial, nevertheless, it may serve as a basis for imposition of more severe discipline in the future, including ultimate discharge in event of subsequent infractions. In this context, it is understandable that even a one-day suspension may be of considerable concern to a state trooper, bearing in mind further that any lesser measure of discipline such as an oral or written reprimand is not subject to challenge through the grievance procedure. The grievant had previously been assessed a written reprimand for being absent from his assigned area without authorization, and failing to observe an accident that occurred along his line of travel. The circumstances of the prior warning were fully explained during the course of the arbitration hearing, and, while the Arbitrator makes no finding as regards the appropriateness of the prior reprimand, it does not appear to have significantly marred the grievant's otherwise satisfactory work record during a period of 10-1/2 years of

Section 19.05, of the Agreement, dealing with progressive discipline, sets forth that the schedule of disciplinary measures will "ordinarily" be followed. The dictionary definition of the adverb "ordinarily" is, "usually, generally, as a rule". The definition suggests that it is not an absolute, or inflexible procedural requirement, and accords the exercise of sound judgment and discretion on the part of management commensurate with the facts and circumstances. In the instant case, in view of the fact that the charge of inefficiency lodged against the grievant stemmed from an error of judgment, not accompanied by any wanton, or willful disregard of the rules, and the fact that the grievant had a satisfactory work record throughout his some 10-1/2 years of service, the conclusion is warranted, and required, that the one day suspension was excessive to a degree as not to comport with the concept of just cause. The grievant has not been charged with insubordination, or disobedience of a direct order of his post commander. There is evidence before the Arbitrator that the rule requiring an accident report in instances that involve minor contacts between vehicles has not been uniformly enforced; discipline for violations under such circumstances is seldom imposed. While, neither the FOP, nor a state trooper may determine whether to comply with a rule, requirement, or state statute, under the facts and circumstances here present, an appropriate measure of corrective discipline would be in the form of counseling, or an oral or written reprimand. The Arbitrator will therefore direct that the suspension be vacated, and that in lieu thereof, the grievant be subject to a written reprimand for error in judgment, and inefficiency in performance of his duties, in that he failed to submit the required accident report concerning a collision between two vehicles.

Respectfully submitted