

THE STATE OF OHIO-THE FRATERNAL ORDER OF POLICE OHIO LABOR
LABOR COUNCIL, INC. UNIT I

In the Matter of an Arbitration)	
)	
--between--)	
)	
The Fraternal Order of Police)	Discharge of
Ohio Labor Council, Inc. Unit 1)	Trooper Brian Roesse
)	
--and--)	
)	
The State of Ohio)	
)	
)	

ARBITRATOR'S DECISION AND AWARD

Captain John M. Demeree
For the State

Paul Cox, Esq.
For the Union.

February 23, 1990.

Calvin William Sharpe
Arbitrator

On September 8, 1989, The Fraternal Order of Police Ohio Labor Council, Inc. Unit 1 (Union) filed a grievance against the Ohio Highway Patrol (State) protesting the discharge of Trooper Brian Roesse (Grievant). The State denied the grievance. Failing to secure satisfactory relief at earlier stages of the grievance procedure the Union has now brought the matter to arbitration. A hearing was held on December 8, 1989, in Columbus, Ohio.

I.

STATEMENT OF THE CASE

A. THE ISSUE

1. Was the state's termination of the grievant for just cause?
2. If not what is the remedy?

B. RELEVANT PROVISIONS OF THE 1989 - 1992 AGREEMENT

ARTICLE 4 - MANAGEMENT RIGHTS

Except to the extent modified by this Agreement, the Employer reserves exclusively all of the inherent rights and authority to manage and operate its facilities and programs. The exclusive rights and authority of management include specifically, but are not limited to the following:

- (8) Effectively manage the work force;

ARTICLE 18 - INTERNAL INVESTIGATION

§18.01 Purpose

The parties recognize that the State has the right to expect that a professional standard of conduct be adhered to by all Highway Patrol personnel regardless of rank or assignment. Since internal investigations may be undertaken to inquire into complaints of misconduct by bargaining unit employees, the State reserves the right to conduct such investigations to uncover the facts in each case while protecting the rights and dignity of accused personnel. In the course of any internal investigation, all investigative methods employed will be consistent with the law.

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant.

ARTICLE 41 - EMPLOYEE ASSISTANCE PROGRAM

§41.01 Committee Representation

The E.A.P. shall be implemented in the Highway Patrol. The Fraternal Order of Police, Ohio Labor Council, Inc. shall be granted representation on any committees that may be established to accomplish the aims of the program.

§41.02 Guidelines

The Fraternal Order of Police, Ohio Labor Council, Inc. will cooperate in the operation of the E.A.P. and abide by the guidelines established for the program.

§41.03 Employees Covered Under E.A.P.

The E.A.P. will be available to members of the bargaining unit and their immediate family (spouse and children). To the extent possible, the services of the E.A.P. will also be made available to employees who are temporarily laid-off, retired, or disabled.

§41.04 Scope of Coverage

Alcoholism, drug abuse, family or marital distress, social and relationship problems, mental or emotional illness, legal problems, financial problems, and related environmental conditions are illness or problems that can often be successfully treated or resolved. All employees with these problems or illnesses will receive assistance in locating treatment for these problems or illnesses.

§41.05 Applicable Provisions

Nothing in this Article is to be interpreted as a waiver of other provisions or procedures contained elsewhere in this agreement.

§41.06 Referrals

It is expected that through employee awareness and educational programs, employees will seek information and/or assistance on their own initiative. Such requests will be processed as voluntary and informal rather than formal referrals.

§41.07 Expenses

§18.09 Off-Duty Status

Disciplinary action will not be taken against any employee for acts committed while off duty except for just cause.

ARTICLE 19 - DISCIPLINARY PROCEDURE

§19.01 Standard

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause.

§19.02 Administrative Leave

Upon verbal notification followed within twenty-four (24) hours by written delineation of the reasons, an employee may be placed upon administrative leave with pay at regular rate. The employees will not lose any pay, fringe benefits or seniority as the result of administrative leave. Administrative leave may be instituted as the result of the Employer's reasonable belief that the employee participated in an event or was in a condition of significant consequence to the Highway Patrol, the employee, or the public. Such administrative leave with pay shall be for the purpose of investigating the event or the condition.

Administrative leave with pay shall not be considered discipline and is not subject to the grievance procedure as long as no loss of pay or benefits is incurred by the employee.

§19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. Verbal Reprimand (with appropriate notation in employee's file);
2. Written Reprimand;
3. Suspension;
4. Demotion or Removal.

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.

Expenses incurred for treatment and hospitalization will be provided under group health insurance programs wherever possible. All payments to third parties for diagnosis or treatment not covered by group health insurance are the responsibility of the individual seeking and/or receiving treatment.

§41.08 Diagnostic Referral, and Case Management Covered by Community Services Centers

The cost of diagnostic, referral and case management services provided by the Community Services Centers will be covered through third party reimbursement under the State health insurance plans made available to employees or by the individual seeking and/or receiving services.

§41.09 Leave

Leave will be authorized in accordance with the provisions of this contract for diagnosis and referral, motivational counseling, individual and group counseling appointments, treatment in a community treatment facility and other recovery services. Any and all provisions involving paid or unpaid leave may be used by employees participating in E.A.P. referrals.

§41.10 Formal and Voluntary Referrals

The services of the Ohio E.A.P. Central Office shall be provided for employees and their families who voluntarily refer themselves for assistance, or accept assistance through informal referral, as well as those employees for whom formal referrals are necessary.

§41.11 Confidentiality

Confidentiality of records shall be maintained at all times within the E.A.P. Information concerning an individual's participation in the program shall not enter his or her personnel file. In cases where the employee and the Employer jointly enter into a voluntary agreement, in which the Employer defers discipline while the employee pursues a treatment program, the employee shall waive confidentiality and the Employer shall receive regular reports as to the employee's continued participation and success in the treatment program.

§41.12 Job Security

An employee seeking and/or accepting assistance to alleviate an alcohol, other drug, behavioral, or emotional problem will not jeopardize his or her job security or consideration for advancement.

§41.13 Diagnosis of Bargaining Unit Member Problems

It is recognized that supervisory and management personnel are not qualified to diagnose an employee's problem. They may make referrals to the E.A.P. Likewise, the Fraternal Order of Police, Ohio Labor Council officers, Associates, and members of the bargaining committee are not qualified to diagnose a member's problem, within the context of the E.A.P. They may also make referrals.

C. BACKGROUND FACTS

Until September 7, 1989, the Grievant had been employed as an Ohio State Trooper for eleven months. Before this period of employment the Grievant successfully completed a period of training in the Police Academy. Among the duties and responsibilities of a state trooper is detecting and arresting motorists for driving under the influence of alcohol (DUI) in violation of Ohio Revised Code Section 4511.19. During the Grievant's period of employment he was stationed at the Portsmouth, Ohio post, one of six contained in Highway Patrol District 9, which covers 10 counties in the southeast corner of Ohio. At 6:30 a.m. on July 29, 1989, the Grievant was involved in an accident on U.S. Highway 52. The accident involved considerable damage to the Grievant's car and to two highway guard rails located at the scene. No other substantial damage or injury grew out of the accident. There were two passengers riding with the Grievant at the time.

The Grievant described the following chain of events leading to the accident. On the evening of July 28, 1989, the Grievant, who was off duty, drank seven beers between 7:30 p.m. and 11:30 p.m. He then went to bed. Between 12:00 and 1:00 a.m. he was awakened by a call from a friend, who was in Huntington, West

Virginia at the time. The friend asked the Grievant to come to Huntington to pick him up, since his car had broken down and he had no means of returning home. The Grievant at first refused, telling his friend to try and find someone else but to call him back if he could not find anyone. Approximately fifteen minutes later his friend called again, and the Grievant drove to Huntington, West Virginia to assist his friend. Grievant left Portsmouth, Ohio between 1:30 and 1:45 a.m. and arrived in Huntington, West Virginia at approximately 3:00 a.m. After the Grievant reached Huntington and found his friend he drank two more beers while waiting for his friend and friend's buddy to fix their car. Later, all three men set out in Grievant's car on U.S. 52, where the accident later occurred near the Ironton, Ohio post..

At the time of the accident the two passengers attempted to persuade the Grievant to leave the scene of the accident. He decided not to leave the scene, since he felt the appropriate procedure would be to report the accident. He flagged a motorist and asked the motorist to report the accident, and a few minutes later Trooper Charles W. Knapp from the Ironton post reported to the scene of the accident. Immediately after Trooper Knapp arrived, the Grievant hurried to him to explain that he was also a state trooper. At the time Trooper Knapp noticed the smell of alcohol on the Grievant's breath and placed the Grievant under arrest. At the Ironton Station that had dispatched Trooper Knapp the Grievant voluntarily submitted to a breath alcohol computer test (BAC). The test revealed that the Grievant had a blood

alcohol content of .18. Trooper Knapp also administered other tests which confirmed that the Grievant had been driving under the influence of alcohol. Highway Patrol Superintendent Colonel Thomas W. Rice put the Grievant on Administrative Leave on August 1, 1989, pending the State's internal investigation of his conduct.

The Grievant was charged in the Lawrence County Municipal Court with DUI and later pled "no contest", leading to his conviction for the offense on August 21, 1989. The Grievant was sentenced to three days in the Lawrence County Jail, suspended upon successfully completing a three-day program at the River Valley Treatment Center and abiding by the terms of probation. The Grievant was also fined \$400, \$200 suspended, and \$40 court costs.

Following his conviction the Grievant requested a transfer from the Portsmouth post of the Highway Patrol to Circleville, Lancaster or Chillicothe. According to the Grievant, his feeling that the arrest and conviction could affect his ability to perform his duties in the Portsmouth area prompted the request. The Grievant further acknowledged in testimony that his arrest and conviction would make performing his job difficult in Southern Ohio. Immediately after the Grievant's conviction the state instituted termination proceedings. The State ultimately discharged the Grievant on September 7, 1989.

The Ohio Highway Patrol has a high incidence of DUI arrests. In 1988 state troopers made 33,000 arrests, 2,700 in District 9 alone. The Grievant testified that during a good month he would make 20 to 25 arrests for DUI, 30% related to accidents.

The Grievant's arrest and conviction were followed by a rash of articles and comments in the Ohio area media. The Youngstown, Columbus, Ironton, Portsmouth, and Huntington, West Virginia community media all covered the Grievant's arrest, conviction and sentence. The "Ironton Tribune" carried an editorial, which bemoaned the continuing problem of drunk-driving and attempted to separate the reputation of the Ohio State Patrol from the incident involving the Grievant, calling it an exception to the rule.

II.

CONTENTIONS OF THE PARTIES

A. THE STATE'S POSITION

The State argues that the Grievant's conviction for DUI coupled with a state trooper's duty to meet a high standard of conduct both on and off duty justify the Grievant's discharge in this case. Citing Elkouri and Elkouri, How Arbitration Works, p. 616, 3rd ed., (BNA 1976), the State asserts that even though the Grievant's DUI was based on off duty conduct, his discharge was necessary to restore the prestige of the Highway Patrol. The State also argues that the DUI conviction would make it very difficult for the Grievant to perform his job.

On three grounds the State distinguishes another case involving Trooper Mary Ann Simon from the Grievant's case: (1) since Trooper Simon was not tested, no blood alcohol level could be ascertained in her case; (2) unlike Grievant Trooper Simon was not convicted of DUI; and (3) there was no publicity surrounding the Simon incident. Based on these asserted

differences, the State argues that the arbitration award by Arbitrator Donald B. Leach reversing the discharge in the Simon case should be given little weight in the Grievant's case.

In the State's view the circumstances of this grievance combine to justify the discharge of the Grievant for off duty misconduct.

B. The Union's position

The Union acknowledges that the Grievant made a mistake in this case and should be subjected to some discipline but argues that the State has overreacted and, thus, departed from the progressive discipline policy contained in the Agreement. The Union claims that Grievant's conduct following the accident demonstrated his commitment to the high standards of the Highway Patrol and his potential to be a good employee in the future. The Union points to the case of Trooper Simon, who after driving under the influence of alcohol was terminated but reinstated by Arbitrator Leach. The Union cites Trooper Simon's refusal to submit to the BAC test and permitting an unauthorized person to drive her patrol car as evidence that she was not, as contrasted with the Grievant, willing to live up to the high standards of character expected by the Highway Patrol.

The Union also argues that a higher standard of scrutiny of the state's discipline must be imposed, when off duty conduct is involved. In support of this argument the Union cites Section 18.09 of the Agreement. Under this higher standard the Union argues that discharge is too harsh for the grievant's misconduct in this case.

The Union challenges the State's claim that it has

established just cause for discharge based on off-duty conduct, arguing that the State has not adequately demonstrated injury to its reputation as a result of this incident. Citing Elkouri and Elkouri, supra, the Union argues that the testimony of community members about the impact of Grievant's arrest and conviction would be the appropriate proof of injury to reputation, not the cited instances of bad publicity. Furthermore, the Union claims the State has shown no impairment to the agency's or a trooper's ability to perform their duties because of the Grievant's DUI conviction. In fact, the Union challenges the State's concern about the impact of this incident as speculative pointing to the State's lack of experience with the problem of DUI convictions.

The Union urges the Arbitrator to reinstate the Grievant with some appropriate measure of discipline. It also suggests making the Grievant's reinstatement conditional upon participation in the Employee Assistance Program under Article 41 of the Agreement.

III.

DISCUSSION AND OPINION

For almost 45 years arbitrators have dealt with the issue of whether the "just cause" standard permits employers to discipline or discharge employees for off-duty misconduct. See e.g. Chicago Hardware Foundry Co., 6 LA 58 (Larkin 1946). The concern is that the employer's supervision of the employment relationship not extend to matters involving employees' private lives. Such matters are deemed better left to the moral judgment of the individual and the sanctions of the community. See Menzie Dairy

The standards that have emerged from decades of arbitral decision-making were first articulated by Arbitrator Louis C. Kesselman in W.E. Caldwell Co., 28 LA 435, 436-37 (1957), where he held that discharge for conduct away from the work place is impermissible unless:

- 1) behavior harms Company's reputation or product . . .
- 2) behavior renders employee unable to perform his duties . . .
- 3) behavior leads to refusal, reluctance or inability of other employees to work with him

These standards show that the pivotal factor in off-duty misconduct cases is the nexus between the employee conduct and the employer's legitimate interests in an effective business operation. These standards are also generally regarded by arbitrators as disjunctive, meaning that the employer's showing of any one of the adverse workplace connections may justify discipline or discharge. Thus, the employee's obligation to avoid conduct away from work that would interfere with the employer's ability to carry on the business effectively has been characterized as a component of the employee's general obligation to provide satisfactory work. See Abrams and Nolan, "Toward A Theory Of 'Just Cause' In Employee Discipline Cases", 1985 Duke L. J. 594, 611-612. Regarding proof of the nexus, Arbitrator D. Emmett Ferguson in Inland Container Corp., 28 LA 312, 314 has added:

The connection between the facts which occur and the extent to which the business is affected must be reasonable and discernible. They must be such as could logically be expected to cause some result in the employer's affairs. Each case must be measured on its

own merits.

Higher Standard For Off-Duty Misconduct

Unlike most agreements the parties to the instant Agreement have acknowledge the special problem of off-duty misconduct. Article 18, Section 18.09 forbids adverse employee actions for off-duty conduct except for just cause. This provision coexists with Article 19, Section 19.01, which prohibits disciplinary action in general without just cause. Based the separate treatment of off-duty misconduct, the Union argues that sections 18.09 and 19.01 contain different standards. According to the Union, on-duty employees have more responsibility toward the State than off-duty employees, and the Grievant's off-duty conduct does not constitute just cause for discharge under the Agreement.

The Agreement itself and the well-settled arbitral principals set forth above do not support this argument. The cases already cited reflect the principal that off-duty employees have less responsibility to an employer than on-duty employees. Generally, employers cannot hold employees accountable for their off-duty conduct unless it produces untoward work related consequences. Thus, a fight with a fellow employee that might result in summary discharge if it occurred on duty, may not be subject to any disciplinary consequences if it occurs off-duty and away from the workplace. See e.g. Honeywell Inc., 68 LA 346 (Goldstein 1977). These cases have been decided under contractual just cause provisions such as those contained in the parties Agreement.

The just cause standard acts as a constraint on the

employer's disciplinary authority under both Sections 18.09 and 19.01. Neither the terms of these provisions nor any other evidence in the record suggests that some standard other than just cause should be applied in cases involving off-duty conduct. Thus, the Arbitrator infers that the parties intended to incorporate into Section 18.09 well-settled arbitral authority delineating the requirements of just cause in cases involving off-duty conduct. Accordingly, the standards set forth above will be applied to the instant grievance.

In this case the State argues that the Grievant's off-duty conduct satisfies all three tests for adequate nexus. It argues that the Highway Patrol's reputation was harmed, the Grievant's ability to perform his job was diminished, and the Grievant's relationship with his co-workers was jeopardized. The Union claims that the State has not proved the proper nexus. The Arbitrator finds that the proper nexus exists.

Harm To Reputation

The record in this case demonstrates that extensive radio, television and newspaper comments attended the Grievant's arrest, conviction and sentence. In addition, Captain James F. Cusick, Commander of District 9, testified that he received 25-30 telephone calls from citizens complaining that they expected better of a state trooper. He also said that his neighbors in Warren, Ohio, located in the northeast section of the state expressed shock about the Grievant's arrest. Using the following words the writer of an editorial appearing in the Ironton Tribune two days after the Grievant's conviction seemed aware of the risk that citizens would attribute Grievant's conduct to the entire

agency:

While [the Grievant's] lapse in judgment reflects poorly on himself, it should not cast a shadow on the Ohio State Patrol as a whole.

We believe our state patrolmen are among the nation's finest and that unfortunate incidents like this one are the rare exception to the rule.

The writer's perceived need for such a corrective statement speaks eloquently about the likely deleterious effect of the Grievant's conduct on the Highway Patrol's reputation. The publicity in this case distinguishes it from cases like Honeywell, Inc., supra, where no adverse publicity casted aspersions on the employer's business operation and, thus, the first nexus test could not be met.

The Union argues that the appropriate means of proving injury to reputation is through community witnesses, who can testify about the community's reaction to the Grievant's conduct. Union counsel certainly points to a well-established and perfectly acceptable means of proving reputation, when it is an issue in the case. See e.g. Federal Rule of Evidence 405. However, reputation testimony is not the exclusive means of proving injury to reputation. In this case Captain Cusick's testimony about public reaction and the documentary evidence of newspaper coverage furnish ample evidence of the adverse impact of this incident throughout the State of Ohio. See Menzie Dairy Co., supra.

The Union also argues that the State must do more than produce newspaper articles to show that the Grievant's conduct impaired the ability of the Highway Patrol to carry out its

mission. The Union points out that the State has not introduced evidence of increased difficulty in enforcing the traffic laws such as, perhaps, more acquittals since the incident involving the Grievant. The Union concludes that in the absence of such evidence the adverse impact of the Grievant's arrest and conviction is speculative.

Indeed, arbitrators have held that mere speculation about the adverse impact of employee off-duty conduct does not suffice to establish the proper nexus. See e.g. Allied Supermarkets, Inc., 41 LA 713, 714-715 (Mittenthal 1963). Yet an actual adverse impact need not be shown in order to establish the proper nexus. As Arbitrator Emmett said in Inland Container Corp., supra, the nexus must be reasonable, discernible and logically expected to cause some result in the employer's affairs. Though not empirically demonstrated, it is certainly reasonable to expect that the Grievant's conduct will make it tougher for the State to implement the 1989 Operational Objective of detecting and removing the alcohol/drug impaired driver from Ohio highways. And to the extent that the drunk driver takes a cue from law enforcement officers the Grievant's conduct sends precisely the wrong signal.

Ability To Perform

The Grievant's arrest and conviction for DUI have also impaired his ability to perform his duties as a State Trooper. Captain Cusick testified that the Grievant would face problems presenting testimony in cases involving the Highway Patrol, since he would always be vulnerable to credibility attacks based on his prior conviction for DUI. The Grievant also acknowledged the

increased difficulty of his job by requesting a transfer from the Portsmouth Post three days after his conviction. At the hearing he admitted that the conviction could affect his ability to perform his job.

Also, the state trooper's job encompasses an added dimension as reflected in the Highway Patrol's Code of Ethics, Oath of Office, Regulations, given to the Grievant during his period of training (March 23 to September 9, 1988). Article IX of the Code of Ethics provides:

They shall so conduct their private and public life that the public will regard them as examples of stability, fidelity and morality.

Section 4501:2-6-02(I) of the Regulations provides:

(I) Conduct unbecoming an officer

A member may be charged with conduct unbecoming an officer in the following situations:

- (2) For conduct that brings discredit to the Ohio State Highway Patrol and any of its members.
- (3) For committing any crime, offense or violation of the laws of the United States, the State of Ohio, or any municipality.

These provisions are effectively part of the state trooper's job description and make the trooper's conduct as a role model a dimension of satisfactory work performance. Under this view not only has the Grievant's work been unsatisfactory, but his off-duty conduct has diminished his ability to carry out the role modeling aspect of his job.

Closely related to the Grievant's ability to perform his job is how he is likely to be regarded by his co-workers. No state trooper currently working for the State has been convicted of

DUI. Captain Cusick's opinion was that the Grievant's co-workers would react negatively to his conviction feeling that he had violated the standards of professionalism to which troopers are dedicated. Trooper Knapp, who arrested the Grievant, testified that he felt he would have moral qualms working with someone who had been arrested for DUI saying, "How can you enforce the law, when are doing it yourself?". In the absence of any countervailing evidence the Arbitrator finds this proof sufficient to establish a connection between the Grievant's conduct and the reluctance of his colleagues to work with him. Compare Westinghouse Electric Corp., 35 LA 315, 323 (Hill 1960), where the Company's showing of resentment among the grievant's colleagues was rebutted by strong evidence among unit members of support for the Grievant.

Progressive Discipline and The Trooper Simon Case

The Union admits that the Grievant made a mistake in this case and must be disciplined but argues that discharge is too harsh. As supporting evidence the Union cites the case of Trooper Mary Ann Simon. In that case the State discharged Trooper Simon for operation a patrol car under the influence of alcohol, making false statements to her superior officer, and permitting an unauthorized person (a dispatcher) to operate the patrol car. Arbitrator Donald B. Leach discounted the severity of the false statement and unauthorized operator charges as justification for discharge and held that the State departed from its progressive discipline policy by discharging Trooper Simon for DUI. The arbitrator noted that the State had been aware of

Simon's problem with alcohol but failed to impose corrective discipline before imposing the ultimate sanction of discharge. Arbitrator Leach imposed a ninety day suspension and mandatory participation in the Employee Assistance Program for up to one year. He ordered her reinstatement, provided she produced substantial evidence by the end of the one year period of a reasonable prognosis of recovery from the disease of alcoholism.

The Union argues that a comparison of Trooper Simon's conduct with the Grievant's shows that the Grievant acted more ethically. Trooper Simon refused to submit to a blood alcohol test and permitted an unauthorized person to drive a patrol car. By contrast the Grievant remained at the scene of the accident against the advice of his passengers and voluntarily submitted to a blood alcohol test despite the number of beers he had consumed within the preceding eight hours. Trooper Knapp pointed out that the Grievant's DUI would not have been detected, had he left the scene and reported the accident later in the day.

On the other hand, the Simon case is distinguishable from Grievant's in ways that requires a different outcome. First, Trooper Simon, though arrested and tried for DUI was acquitted, negating the State's concerns about her ability to give credible testimony in cases involving the Highway Patrol. Second, her refusal to submit to the blood alcohol test made it impossible to determine the level of her intoxication at the time. Third, the Simon case did not receive the statewide publicity attending the Grievant's case.

The Arbitrator appreciates the critical link between Grievant's post-accident compliance with his obligation as a law

enforcement officer and good citizen and the adverse consequences flowing from his pre-accident conduct. The Union correctly points out that Grievant's post-accident conduct reflects some sensitivity to his ethical obligations. Yet, this good conduct does not erase the Grievant's pre-accident misconduct. It is the latter that the Grievant must answer to under the State's disciplinary procedure.

Does the State's progressive discipline policy call for a penalty less severe than discharge in this case? Progressive discipline is good employment relations practice, since it can correct bad performance and preserve a satisfactory employment relationship that benefits the employer and employee. Employees who demonstrate their incorrigibility after several stops on the progressive discipline track suffer the ultimate sanction of discharge. However, when an employee's misconduct is so severe that continued employment would undermine an employer's ability to function effectively, discharge will be deemed warranted even if the employee has received no earlier discipline and is unlikely to repeat the offense. In part such discipline serves the legitimate purpose of deterring other employees from engaging in such conduct. See e.g. Freeman United Coal Co., 82 LA 861, 866 (Roberts 1984)

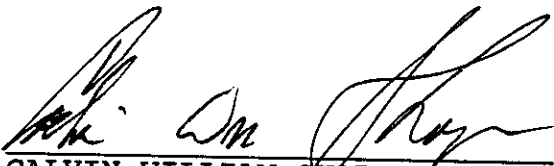
The parties' progressive discipline policy recognizes the value of progressive discipline and the necessity to depart from it in some cases. Article 19, Section 19.05 permits the State to impose more severe discipline than called for by progressive discipline guidelines "if the infraction or violation merits the

more severe action". The Arbitrator finds that the Grievant's level of intoxication while driving and the resulting accident coupled with the State's interest in deterring other troopers from similar conduct warranted a departure from progressive discipline guidelines in this case. Grievant's discharge was for just cause.

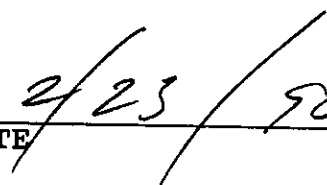
IV

AWARD

The grievance is denied.



CALVIN WILLIAM SHARPE
ARBITRATOR



DATE

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