

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 624

OCB GRIEVANCE NUMBER: 15-03-910315-0032-04-01

GRIEVANT NAME: JEFFERIES, STEVEN D.

UNION: FOP UNIT 1

DEPARTMENT: HIGHWAY PATROL

ARBITRATOR: DROTNING, JOHN E.

MANAGEMENT ADVOCATE: CORBIN, LT. RICK

2ND CHAIR: SAMPSON, RODNEY

UNION ADVOCATE: COX, PAUL

ARBITRATION DATE: JUNE 3, 1991

DECISION DATE: JULY 1, 1991

DECISION: DENIED

CONTRACT SECTIONS

AND/OR ISSUES: 15 DAY SUSPENSION FOR CONDUCT UNBECOMING AN OFFICER WHILE OFF-DUTY (THREATENING THE SERVICE MANAGER AT A CAR DEALERSHIP). MAKING FALSE STATEMENTS REGARDING RACIAL SLURS HE SAYS WERE USED BY A CAR DEALER TOWARDS HIM.

HOLDING: JEFFERIES'S INCREDIBLE "STORYTELLING" IS THE KIND OF BEHAVIOR WHICH THE PATROL CANNOT CONDONE. EVEN THOUGH GRIEVANT HAS NO PRIORS, HIS ACTIONS WARRANTED A MORE SEVERE PENALTY THAN A REPRIMAND. MANAGEMENT WANTS TO IMPRESS UPON HIM EARLY IN HIS CAREER THE IMPORTANCE OF TRUTH AND CREDIBILITY.

ARB COST: \$745.50

# 624

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING  
OHIO STATE HIGHWAY PATROL

AND

FRATERNAL ORDER OF POLICE  
UNIT #1

ARBITRATION AWARD

GRIEVANCE: 15-03-910315-032-04-01  
GRIEVANT: S.D. Jefferies  
ARBITRATOR: John E. Drotning

## I. HEARING

The undersigned Arbitrator conducted a Hearing on June 3, 1991 at the Office of Collective Bargaining, 65 E. State St., Columbus, Ohio. Appearing for the Union were: Paul Cox, Esq., Ed Baker, Jim Roberts, and the grievant, Steven D. Jefferies. Appearing for the Employer were: Lt. Rick Corbin, Rodney Sampson, Keith J. Marino, Chief William Crosier, and Lt. Steven Raubenolt.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. No post hearing briefs were filed and the case was closed on June 3, 1991. The discussion and Award are based solely on the record described above.

## II. ISSUE

The parties jointly asked:

Was the grievant suspended for just cause as required by Article 19.01 and 19.05? If not, what shall the remedy be?

## III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 through #9.

#### IV. TESTIMONY, EVIDENCE, AND ARGUMENT

##### A. MANAGEMENT

##### 1. TESTIMONY AND EVIDENCE

Management called as its first witness, Trooper Steven D. Jefferies. Jefferies testified he had been trooper for four years and that he had six months training at the Highway Patrol Academy and also had in-service training. Jefferies acknowledged that he was trained on the rules and regulations book and he had read the material as noted on Joint Exhibit #9; namely, the Code of Ethics. Jefferies went on to say that the parties discussed the Code of Ethics, the Oath of Office, and regulations in class and he identified the Code of Ethics IX which talks about a trooper's conduct in his private and public life.

Jefferies acknowledged that the State Highway Patrol is held to a higher standard than other law enforcement offices. He said that the standard of the Ohio Highway Patrol helps him to do a good job.

Jefferies said he owned a Nissan Maxima and he went to the Glavic dealership in Mentor. He said that his spoiler on the rear of his car was deformed and he had had the car for four months.

Jefferies said that he covers Lake and Geauga Counties and that at the time of the incident, he said he was off-duty and he went to Glavic along with his six month old daughter. He said the personnel at Glavic knew that he was a state trooper.

Jefferies said that Mr. Marino was the service manager and he (Jefferies) wanted the spoiler on his car serviced.

Jefferies said that Marino said he'd replace the spoiler and he made an appointment and dropped the car off and then his wife picked the car up and when he looked at the car, he noticed the spoiler was not fixed and as a result, he went back to Glavic and talked to Marino and they had a heated discussion.

Jefferies said he told Marino that the latter had lied to his wife and he said he did not appreciate that. He went on to say that Marino told him the spoiler had been tampered with and they argued back and forth for five or ten minutes and he claimed that it was covered by warranty.

Jefferies was asked whether he threatened Marino and he said he did after the second encounter when he said to Marino:

I know who you are. I know where you work. I know where you live and I will kick your ass.

Jefferies said he talked to owner Glavic who said he would not honor the spoiler.

Jefferies said a woman was present when he threatened Marino.

Jefferies said that Marino said to him, "You are not a tough guy" and eventually he apologized to Marino and the latter to him. He went on to say that Glavic told him to leave the dealership and he did so. He said that he told Glavic that he thought Marino was prejudiced and he thought that Marino was giving him the run-around and that he didn't want to fix his car because he (Jefferies) was black.

Jefferies said he did not think Glavic was prejudiced.

Jefferies said he left the dealership, went home, and called two other service places. He said he called California and complained about the situation and when he called California, he told the Nissan people that police officers had to remove him from the premises of Glavic Nissan.

Jefferies went on to say that he never got a response from the people in California so he fabricated a story about the Mentor and Willoughby police to get California Nissan people to move on his spoiler problem.

On the evening of the incident, said Jefferies, he had to work and he also said he talked to Trooper Rose and two other troopers and he told them that he had a warranty problem and the dealership was prejudiced. He said he also told these troopers that the cops had escorted him out; that is the police from Willoughby and Mentor.

Jefferies testified that he did not know why he told the troopers that fake story.

Jefferies went on to say that he told the troopers that he would kick Marino ass, although he did not intend to do that. He testified that he apologized to Marino but twelve hours later, he was still saying that he would kick Marino's ass.

He said that he told the troopers that Marino had called him a "boy".

Jefferies said he has no problem with the Willoughby or Mentor police and has interacted with those officers. He said he did not think the police at Willoughby and Mentor were prejudiced.

Jefferies acknowledged that it is against the law to violate 29.0327, so to "kick one's ass" would violate Management Exhibit #1.

Keith J. Marino, the Service Director for Glavic Nissan for sixteen and one-half years, testified that he has done about all the jobs at Glavic except new cars. He said he knew Jefferies and was aware that Jefferies did not buy a car from Glavic. He said he knew Jefferies before he had the Nissan and he knew that Jefferies was a State police officer.

Marino said that Jefferies asked him for some help on the trim and he was aware that the rear spoiler was a mess. He said he told Jefferies that it looked like someone had taken the spoiler off and he told Jefferies that it was not a warrantable item and Jefferies was not satisfied. He said he talked to Jefferies and told him that "he'd fix the spoiler himself". He said that Jefferies brought the car in two days after their discussion and he said he would take care of the spoiler.

Marino said that he told Jefferies that there was no warranty on that car. He said he tried to fix the spoiler and he said that it had been removed previously. He said he realized that the lugs were sanded. He said he put new two sided tape on the spoiler and new locking lugs and at least made the spoiler secure, although it still looked a mess and he could not replace the spoiler without charge. He said his repair job was not billed to Nissan and he did not bill Jefferies.

On the following day, he said Jefferies came in and wanted Nissan to cover it under the warranty, but Marino said that if they turned the spoiler in, the Nissan people would know it was not something that Nissan had done to the car. He said Nissan would not pay for the spoiler and he clearly would not pay.

The conversation between himself and Jefferies lasted about twenty minutes and eventually, he took Jefferies into his office so that the shouting would stop. He said he told Jefferies he would contact the District Service Manager, but to fix it, Jefferies would have to pay and as a result, Jefferies threatened him with, "I'll kick your ass". Marino said he was shocked and he told Jefferies that he should not threaten him in front of his secretary.

Marino said he did not know whether Jefferies would hit him and he said he knew that Jefferies was aware of his home address and in any event, eventually Jefferies just stormed out and he acknowledged that Jefferies never came close to him. He said about fifteen minutes later, Jefferies came back to his office and the same conversation occurred and he was threatened again with the following: "I know where to find you. I know where you are and you're mine."

Jefferies was asked to leave and he did so, said Marino.

Marino said that Jefferies did not apologize before leaving.

His computer terminals showed Jefferies' name and on the computer terminal, there was the comment:

He had been physically removed from our dealership by four officers.



Marino said he did not call the police nor did anyone else and no police ever came. Marino said he did not file criminal charges against Jefferies.

Marino said he had never been threatened in the past.

Lt. Steven Raubenolt, Commander of the Chardon Post, testified that grievant Jefferies had been there about four years. He testified that he contacted Chief Crozier from the Willoughby Police and was told he was not aware of any involvement between his office and Glavic Nissan and the same situation was true for Mentor. Thus, no police were involved, said Raubenolt.

Raubenolt said he investigated the dealership and Jefferies acknowledged that altercation. He went on to say that if he had to serve a warrant, he would contact the Willoughby and/or Mentor police.

Raubenolt said that he asked Jefferies if he would change his way of doing things and the latter said, No, he'd do the same thing again.

Raubenolt was asked whether Jefferies lied to him before and he said that he had. He went on to say that an officer's credibility is critical and troopers must perform their jobs carefully. He said his officers testify in court and he knows the prosecutors and the judges.

On redirect, Lt. Raubenolt said that Jefferies' credibility means to him that he has some trouble believing Jefferies. His "make believe" story generates problems. He went on to say that there are six black officers at Chardon. They did not want fake

stories to create problems among white and black officers when in fact, nothing occurred.

He said he is going to give Jefferies a second chance.

Chief William Crosier, Chief of Police and Fire at Willoughby, testified that he had 32 years in law enforcement. He said that he received a call from Lt. Raubenolt about four police officers and a police dog who had to remove Jefferies from the premises of Glavic Nissan.

Crosier said he found nothing occurred, but he felt he had to continue since Lt. Raubenolt had called about the incident. In any event, Crosier said that his second command checked it out and said there was no such incident involving a police dog and four police officers. He said he checked with the Mentor police and they found no such report.

Crosier said he asked Raubenolt to make sure that all the troopers at the Chardon post knew that nothing had occurred.

Management cross examined Trooper Jefferies who said that he eventually got his car fixed. He said he never threatened to kick ass and he really never lost control. He said that he was not justified in threatening Marino. He also acknowledged that he was not justified in spreading false rumors.

## 2. ARGUMENT

Management asserts that the facts are not in dispute. Jefferies admitted his anger and it is true that others probably have had problems with car dealerships. However, in this case, Trooper Jefferies's conduct went askew. Keith Marino at Glavic knew Jefferies and in the interaction, Jefferies makes

the comment to Marino: "I'll kick your ass". In addition, he made the comment: "I know who you are. I know where you work. You are mine."

Management said that Marino was concerned even though Jefferies had a baby in his arms and while Marino did not file charges, he was concerned.

Management goes on to say after the interaction with Marino, Jefferies went to his patrol post and then made comments to other troopers about being kicked out of the Glavic Nissan by four policemen and a dog and that the cops called him "Boy". This is a whole new issue, argues Management. Now the Employer has to worry about other troopers and their concern over what the Willoughby and Mentor police allegedly did to Jefferies. However, what is obvious is that nothing happened. There is no record of any interaction between the Willoughby and Mentor police and Glavic Nissan as attested to by Raubenolt and Crosier.

Thus, the question is why did Jefferies make up this allegation?

Management argues that troopers are what are called "Gray Shirts" and they are one organization and if one outsider attacks any one of them, all are concerned, but in this case, Jefferies made up a hoax. Management went on to say that the State Highway Patrol is a very credible organization. In this case, the Employer did not blow the issue out of proportion; rather, it was Jefferies.

The evidence supports the 15 day suspension, asserts the Employer. The Union's argument that a verbal reprimand is okay makes no sense. In this case, Jefferies was not treated disparately and the 15 day suspension is justified because of the events and interaction between Jefferies and others. Jefferies should not have lied and as a result, he must pay the consequences.

The event was not generated by the Employer and the trooper cannot make statements that are untrue. Moreover, the Director of Highway Safety and the Superintendent supported a fifteen day suspension. That suspension will change Jefferies behavior and will impress upon the grievant that he violated the rules and he must pay the consequences.

## B. UNION

### 1. TESTIMONY AND EVIDENCE

Officer Steven D. Jefferies testified that he had three prior problems with Glavic. He said he had a 1988 Nissan and the shock was busted and he could not get a rental and he called California as a result and they fixed it. The second, said Jefferies, involved the fact that he had a problem with an electronic fuel pump and he was told by Marino that he could not service it. He returned and he was told it would cost \$200 to repair it and he said neither the first warranty nor the extended warranty on the 88 car which he did not buy from Glavic did not cover it.

Jefferies said the third incident involved steering where he was charged \$45 and he said he should only pay \$25 and he called California and they told him \$25.

Jefferies said that he goes to Glavic Nissan because it was close and if he wanted to go to Shaker Heights, it is a about a 45 minute drive. He said he had heated arguments with Marino over the spoiler. He said Marino looked at the spoiler and said it was warranted. He said that Marino told him that the spoiler was warped and had to be replaced but when he got the car back, he realized the spoiler was still deformed. He said he took the car back to the dealership and then had a yelling match with Marino.

Jefferies said he never talked to the Willoughby or Mentor police departments.

Jefferies said he contacted the Youngstown dealership and was told that the spoiler problems were common and it would be fixed or he could go to Shaker Nissan and have it done. He said he took the car back to Youngstown and the spoiler was replaced immediately.

Jefferies said he spoke to the headquarters in California and complained about the problem he had in Glavic Nissan. He said he used the four police officers and dog situation as a gamut to get results from Nissan customer service in California. When he returned to work after his involvement with Marino, he said he talked to three troopers and told them of the problem and he made up a story about the Willoughby and Mentor cops coming to remove him from the premises.

About a week later, he said he was contacted by Lt. Raubenolt and he explained the situation to him.

On cross, he said the only thing he could figure out was that Marino was upset over the fact that he bought the car in Youngstown and not from Glavic Nissan.

Jefferies said he has no other discipline.

The Union cross examined Management witnesses. Marino was asked whether he checked the spoiler number to see if it was installed by a dealer or manufacturer and he said that he did. He said he was aware that the spoiler had been removed on one occasion.

He testified that Jefferies had a baby in his arms all the time he was involved in their altercation.

Marino said he did not receive a call from the Youngstown dealership about where Jefferies bought the car. He said he did not talk to the Youngstown dealership nor did he talk to the Shaker Heights dealer.

Marino was asked whether he was bothered by the fact that Jefferies was holding a baby in his arms and he said not initially but eventually he got a bit concerned. He acknowledged that they only had a verbal exchange.

Marino was asked whether he was concerned and he said sure, he was concerned about a physical threat. He said he didn't know what might happen and he did not want the situation to escalate. Marino said he was not convinced that anything would happen but he was concerned.

Marino said he did not recall Jefferies's claim about a \$45 charge. He said that in any event, it would be on the computer screen.

Lt. Steven Raubenolt, on cross, testified that he talked to Jefferies after the Willoughby police boondoggle. Raubenolt said the case has not affected his relationship with either the Willoughby or Mentor police.

On recross, Raubenolt said that Jefferies did not lie about the incident in question but he lied on a previous occasion.

Raubenolt said that Jefferies did not complain about whites versus blacks at his post. He went on to say that all the officers at his post were told of the incident and he also had to let the Willoughby and Mentor police know about the incident.

Chief William Crosier was not cross examined.

## 2. ARGUMENT

The Union asserts that this is an incredible situation. The only reason for the fifteen day suspension, argues the Union, is the allegation about the Willoughby and Mentor Police Departments along with the police dog.

Lt. Raubenolt broadcast the alleged event to both the Willoughby and Mentor police. If Raubenolt, argues the Union, had simply asked Jefferies what happened, he would have been told that he made up the story, but Raubenolt did not ask Jefferies. Thus, the Employer created the problem.

The lying about the other police agencies and the fabricated story is simply something that everyone does, argues the Union, but that is not basis for a fifteen day suspension.

In this case, it is management's fault, especially Lt. Raubenolt's and even he admits there was no problem between the Mentor and Willoughby police departments and the Chardon State Highway group.

Jefferies may have been intemperate in terms of his interaction with Marino but that does not justify a fifteen day suspension. Marino knew Jefferies was a trooper. Moreover, there is no way that Jefferies could threaten Marino at the same he was holding his six month old baby. Marino's testimony clearly acknowledges that Jefferies did not in any way touch Marino.

The Union argues that the basic facts are weak and there was no real threat by Jefferies toward Marino. Jefferies has had no prior discipline and the Contract requires the Employer to follow progressive discipline. Moreover, if Article 18.09 were violated, the Employer has not proven that more serious discipline should be imposed.

Moreover, the Union asserts that the Arbitrator should not ignore Article 19.05. The Employer has not shown why Article 19.05 should not be imposed.

A fifteen day suspension is outrageous for what the Union calls a "garbage case". The Employer has not met the burden and, therefore, Jefferies should be awarded full back pay and benefits, asserts the Union.



## V. DISCUSSION AND AWARD

The issue is whether the Employer had just cause to issue Trooper Jefferies a fifteen day suspension?

The relevant contract language, Articles 19.01 and 19.05, is as follows:

### 19.01 Standard

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

### 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
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.

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

In addition, the Union in its closing asked that Article 18.09 be considered. This is as follows:

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

The testimony and evidence indicate that while off-duty, Jefferies argued with Glavic employee Marino and said:

I know who you are. I know where you work.  
I know where you live and I'll kick your ass.

That Jefferies was holding his child in his arms means it is highly unlikely he could or would have exercised any physical injury to Marino. However, his verbal interaction is not the kind of words and phrases of a State Trooper. Even so, if this were the sole issue, it is questionable whether there would be just cause for discipline and certainly, the fifteen day suspension would be tempered.

However, the more fundamental problem involves Trooper Jefferies's lying and making up stories not only to a California Nissan dealership or customer service but more importantly to his fellow troopers while on duty. Under direct examination when called by the Employer, Jefferies said he told Trooper Rose and two other officers about his warranty problem, the dealership was prejudiced, he would kick Marino's ass, that the police from Willoughby and Mentor had to escort him from the dealership, and that they called him "boy".

As a consequence, the Patrol called Willoughby police to find out that four of its officers and a dog had not escorted Jefferies out of the Glavic dealership. Similarly, Mentor police were not involved. No such incident occurred and, in short, Jefferies fabricated stories.

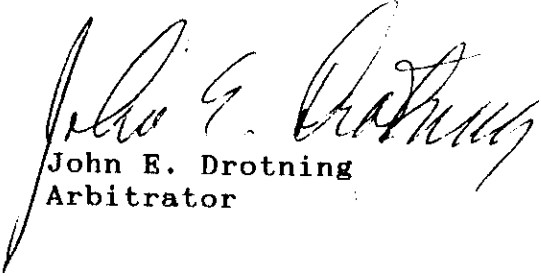
When questioned by Lt. Raubenolt, Jefferies to his credit did not stonewall or lie but acknowledged there was no truth to the story he related to fellow officers. However, Jefferies apparently was so overwrought by his experiences with Glavic and Nissan, that he was unable to rationally assess the potential damage of relating such a fabricated story. Furthermore,

Raubenolt testified that when he asked Jefferies if he would change his way of doing things, Jefferies told him he would do the same thing again.

Although perhaps spoken almost unconsciously and without intention, those false statements, as the Employer asserts, violate aspects of the Code of Ethics and regulations of the Ohio State Highway Patrol (see Joint Exhibit #9). Furthermore, the false comments generated problems between the State Patrol and the Willoughby and Mentor Police Departments. In addition, they had the potential to create internal racial conflict and to damage the cooperative working relationship between the troopers and area police officers.

Thus, Jefferies's incredible "storytelling" is the kind of behavior which the Patrol cannot condone. While Jefferies has had no prior discipline, the Employer persuasively argued that this behavior warranted a more severe penalty than a reprimand. Jefferies is early in his career as a state trooper and Management wants to impress upon him how important truth and credibility are to the functions of the State Highway Patrol.

There is no reason to change Management's decision to suspend Jefferies for fifteen days and the grievance is denied.



John E. Drotning  
Arbitrator

July 1, 1991