

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING  
STATE OF OHIO

#765

AND

FRATERNAL ORDER OF POLICE  
UNIT 15 - SERGEANTS

ARBITRATION AWARD

CASE NUMBER: 15-03-920221-016-07-15  
ARBITRATOR: John E. Drotning  
HEARING DATE: April 13, 1992

## I. HEARING

The undersigned Arbitrator conducted a Hearing on April 13, 1992 at the Office of Collective Bargaining, 106 North High, Columbus, Ohio. Appearing for the Union were: Paul Cox, Esq., Ed Baker, Sgt. Jon Mikil Kilgore, Renee Englebach, Trooper Mark Allen, and the grievant, Trooper Michael Stemple. Appearing for the Employer were: Lt. Rick Corbin, Anne Arena, Lt. Ronald Hoeft, Paul Kirshner, Suzanne Phillips, Jane Bell, Ruth Emerick, Pamela A. Davis, and Tracy Gerber-Williams. In addition, Capt. Wendell Webb sat in on the Hearing.

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 April 13, 1992. The discussion and Award are based solely on the record described above.

## II. ISSUE

The parties jointly agreed:

Was the Grievant disciplined for just cause?  
If not, what shall be the remedy?

## III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 through #7.

The parties also acknowledged that Dispatcher Suzanne Phillips has not been disciplined for filling out HP53B.

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

##### A. MANAGEMENT

##### 1. TESTIMONY AND EVIDENCE

Ms. Suzanne Phillips testified she has been a dispatcher for four years and normally works the 3 to 11 shift. She indicated that Sgt. Stemple also worked the 3 to 11 shift. Phillips testified that Lt. Hartman is Sgt. Stemple's supervisor. Phillips said she contacted Lt. Hartman about Stemple's behavior.

Phillips went on to say that she was asked to type book reports for Stemple's children (see Management Exhibit #1) and did that two times a year since 1989. Phillips said State employees cannot do personal work while on the payroll.

Phillips said she noted the arrival time of officers and normally they implement a signal 2 as they leave their houses and then a signal 42 as they arrive at the post. Phillips said that Sgt. Stemple did not follow that procedure; that is, he did not radio either signal 2 or 42.

Phillips said that she recorded Stemple's arrival time at whatever time he told her. Phillips went on to say that at times she had to leave the HP53B radio log blank because Stemple cut his arrival time too close and then he would fill in the appropriate time. She said he changed his arrival time during his breaks.

Phillips said she never wrote in Sgt. Stemple's tardiness but rather she left it blank for the last few months when he was late. She went on to say that in the last few months, Stemple was late every night.

Phillips said that Stemple once said to her that he liked to rebel against authority and he liked to be late. She reiterated that Stemple asked her to record incorrect arrival times.

Phillips went on to say that if a trooper stays, say ten minutes overtime, then they would record when they would be on the road or they could record it when they should have been on the road. She went on to say a trooper could stay on the post if he were watching a video or writing up documents, but they would then let her know what they were doing.

Phillips said that Stemple asked her to record incorrect times of other troopers and she said she thought it was wrong to record incorrect times on the radio log.

Stemple, said Phillips, made a sexual comment about some person. Phillips then went on to say that Stemple said that married men don't talk about their affairs.

Phillips went on to say that she talked to Sgt. Kilgore a number of times and then she said that she told Kilgore that she did not want to say anything to Stemple. She went on to say she did not want Kilgore to get her in trouble.

Phillips said that the Highway Patrol enforces a tardiness policy and no one is exempt. She acknowledged that Stemple was never reported late.

Ms. Jane Bell, a dispatcher, testified that she was supervised by Sgt. Stemple. Bell said he did not ask her to type his children's papers although she testified he asked others and she identified Phillips. Bell then said that Phillips did not like to do that typing.

Bell went on to identify signal 2 and signal 42 as the appropriate times when troopers came to work.

Bell testified that Stemple would back up the time for a trooper who was late getting on the road and he did that several times.

Bell said that radio logs should be accurate and she felt they were inaccurate and a violation of work. She said the false information bothered her a little.

On redirect, Bell said that Hartman does not come in late. She went on to say she records the time that officers arrive if she sees them. She went on to say that she recorded false times at their requests.

Bell said that if a trooper has good reason to stay on post, it is okay.

Bell said that no one is exempt from the tardiness policy.

Ms. Tracy Gerber-Williams, a clerk 3, testified she had been a dispatcher between April 23, 1984 and February of 1990. Williams said that Stemple was her supervisor and he asked her to type documents for his children.

Gerber-Williams said she did not know whether Phillips typing for Stemple's children violated work rules.

Gerber-Williams said that Stemple was late for work a few times and she left the HP53B blank. She went on to say then she would write in the time that he told her he had arrived. Gerber-Williams said there were quite a few times when she changed Stemple's arrival time.

Gerber-Williams said she knew that recording improper times was incorrect but she was told to do it anyway.

Gerber-Williams said the tardiness policy is enforced for all employees at the post.

On redirect, Gerber-Williams said that some officers reported in using a signal 2 and some used only a signal 42.

She said that no other sergeants were recorded late by her except for Stemple. She said that Sgt. Stemple was late on the 8 p.m. shift.

Ms. Ruth Ann Emerick, a dispatcher, testified that once Sgt. Stemple changed the radio log; that is, he changed the beginning time of his shift.

Emerick testified that the tardiness policy covers all employees.

Staff Lt. Ronald Hoeft testified that he investigated Sgt. Stemple and he said the latter admitted he changed the HP53B form. Hoeft went on to say that he asked Stemple if he were late for work and the latter first said no and then he said yes he had been late.

The Ohio State Patrol enforces the tardiness policy said Lt. Hoeft. He went on to say that dispatchers log the time and officers utilize a signal 2 or signal 42 and the HP53B is the source document.

Hoeft said that the shift sergeant should get officers on the road on time.

Hoeft said that the HP53B form must be accurate.

Pamela A. Davis, a radio dispatcher for eighteen and one-half years, said that Sgt. Stemple supervised her and she also said that he asked her to change his starting time on the HP53B when he was a bit late. Davis was asked whether Stemple was ever late and she said Yes. She also said that Stemple asked her to change the times when he was late and she did that.

Davis said that Stemple told her when he was late that he had been in the garage or he was talking to another person or he was out back getting gas.

Davis said that she has left his report in time blank and when he came in she would record the time he said that he was at work. She noted that she would put done 0800 if he was a couple of minutes late.

Davis said that she also put the incorrect time when he was tardy and she thought he was late about six times.

Davis said that no other sergeants told her to change the time of their arrival and she went on to say that she has not seen other sergeants come in late.

Davis said the tardiness policy covers all employees.

On re-direct, Davis said that she is supposed to record accurate times on the log. She went on to say that if a trooper is late going on the road, she might record that on the HP53B.

Management also cross examined Union witnesses. Sgt. Jon Mikil Kilgore testified on cross that he thought Ms. Phillips might have lied. In any event, he noted that one cannot put false times on a HP53B form.

Kilgore said that he never asked dispatchers to falsify the times for troopers.

Trooper Mark Allen on cross testified that at times a dispatcher might record a false time. He said that it even occurred in his own situation and he knew it was wrong.

Michael L. Stemple, on cross examination, testified that it was wrong for him to utilize dispatchers to do his children's homework.

Stemple noted that as a supervisor, he must set an example.

Stemple acknowledged that his comment to Ms. Phillips about another employee was inappropriate.

Stemple said that he understands what a HP53B form is and he used them in his supervisory functions. He went on to say that if false times are recorded on the form, it would be hard to verify them and in fact, they cannot be checked out since what they show is what exists.

Stemple said that he did on occasion put incorrect times for troopers who stayed on the post too long. In short, he said he was covering for his own troopers.

Dispatcher Phillips said he was tardy, said Stemple, but he testifies that to his knowledge he was never late for work.

Stemple said that he has been trained for both on and off duty situations and he agrees that he is held to a higher standard of conduct than the average worker.



## 2. ARGUMENT

Management asserts that the question is whether they should have demoted Sgt. Stemple. Stemple's testimony, notes Management, is clear.

Sgt. Stemple violated the Employer's work rules. He used dispatchers to do personal typing for him.

Moreover, Management notes that Stemple's disparaging statement to Suzanne Phillips about another employee was totally inappropriate. However, Management notes that the most serious charge against Stemple was his use of records; that is, the way in which the HP53B form was filled out.

That form must be accurate, asserts Management, and law enforcement officers and supervisors must lead by example.

In this case, Stemple admitted that his own employees falsified the records and yet he also admitted that he let officers stay a bit longer and then noted on the HP53B form the earlier time when they should have left for the road but had actually stayed on the post.

Stemple, notes the Employer, was disciplined because of the dispatchers' testimony about Stemple. Management went on to say that none of the dispatchers were happy about falsifying information. Management goes on to say that apparently Stemple thought that what he did with the dispatchers was okay; that is, it was appropriate for them to put times down at Stemple's direction.

Management asserts that it did not over-react and it points out that no witnesses, including Sgt. Kilgore, said how it was done all over the state.

Management notes that the Ohio State Patrol is a law enforcement agency and officers must be credible and that is a critical component of their activities. In this case, Sgt. Stemple lost his credibility with his employees and he was demoted because he did not operate or behave like a supervisor.

Management goes on to say that Trooper Allen said it was sort of okay to report false times but obviously that was in part because Sgt. Stemple allowed that sort of behavior and that again is the reason for the demotion.

The Employer in this case has just cause for the discipline. This is not a progressive discipline but rather the discipline or demotion is because Stemple was not doing a good job. Stemple's actions were inappropriate, argues Management, and therefore, the grievance should be denied.

B. UNION

1. TESTIMONY AND EVIDENCE

Sgt. Jon Mikil Kilgore, a sergeant at the Norwalk Post, testified that he knew Suzanne Phillips and he was aware that she complained about Sgt. Stemple in October of 1991.

Kilgore said that Phillips told him that Stemple required her to do personal papers for Stemple's children and to change the log.

Kilgore stated he never saw her change the log nor was Stemple late and he said that Phillips lied.

Kilgore said that he gave a statement to Lt. Hoeft. Moreover, Kilgore said that Phillips noted that Stemple was not late and she never said that she would not type. Moreover, Kilgore said that Phillips also said to him not to do anything with respect to Stemple's situation.

Kilgore said he was not aware of dispatchers changing times on the log.

Trooper Mark Allen testified he knew Sgt. Stemple and he went on to say that he never saw him change a log on the HP53B form.

Allen said he is aware of situations where troopers stayed at the post a bit longer and they should have gone out at an earlier time.

Allen said he talked to Phillips and she told him that she did not want to change times anymore but rather she just wanted to put down the exact times.

Michael L. Stemple testified that he was promoted to sergeant in August of 1980 and had about 22 years on the State Highway Patrol.

Stemple testified that he asked Dispatcher Phillips to type a paper for his children and she did that four or five times while he was on duty. He said that she and he would be in the office and if a call came in, either he, a trooper, or someone else would take the task.

Stemple said that if Phillips told him she did not want to type some homework for his children, he would have said that it was okay, but it was his view that Phillips seemed to like to do some typing.

Stemple said he did not recall asking Gerber-Williams to type for him.

Stemple said that he had worked in Elyria for eight years and he knew Ruth Emerick.

Stemple was asked whether he changed times because he was late and he said that, well, he lived around the corner, say less than a mile from the post and there was no need for him to implement a signal 2 in order to arrive at the post.

Stemple said that he told Lt. Hoeft that he wasn't late and that he was never late. He went on to say that if he was always late he is a bit surprised that no trooper or no other sergeant or lieutenant said he was late. In short, he said it only took about two to four minutes to arrive at his office from his house. He went on to say that he does not come to work late and Phillips should have put in appropriate times.

Phillips works 3 to 11 and he said that he starts work at 8:00 p.m. and works until 4:00 a.m..

Stemple said that it was not unusual for him to take some time to actually enter his office after arriving at the post area.

In October of 1991, he was told that he should implement a signal 2 as well as a signal 42.

Stemple said he never confronted Phillips and he never said he was out to get her.

The Union cross examined Management witnesses.

Suzanne Phillips on cross testified that she talked to Lt. Hartman in early October of 1991 and she went on to say that the conversation with Stemple about a dispatcher occurred sometime in the summer of 1991. She went on to say that she talked to Sgt. Kilgore perhaps four or five times between 1988 and 1992 and she would tell him that Stemple was going to be late.

She said that Stemple wanted to write the time of 1754 rather than 1800 so that he could show that he was about six minutes early.

Phillips said that she talked to Sgt. Kilgore about the fact that she did term papers for Stemple's children.

Phillips went on to say that she knew it was wrong to alter the logs. She went on to say that she talked to Lt. Hartman and then she testified that he (Hartman) investigated Stemple but then she said she thought it was turned over to somebody else. She then reiterated that she did not want Lt. Hartman to investigate Stemple.

Phillips said that she never called anyone after talking to other dispatchers and Kilgore with the exception of talking to Hartman.

Phillips testified that from the dispatching office she could see the lobby and she could monitor the TV and see the gas pump in the frontdoor.

Phillips said that she did not talk to Trooper Allen about changing the logs and she did not change his time.

Phillips said that she did indicate to Sgt. Stemple that she liked to type but she did not like to type for his kids. Moreover, she went on to say she did not like typing at 10:00 p.m.. She was asked if she wasn't busy, what would she do and she said she liked to read novels and the lieutenant said it was okay.

Phillips talked about another employee who apparently said a neighbor had a mental problem and had climbed into her bedroom.

Phillips said that she heard employees joke in kidding and she did not like to hear that.

Phillips acknowledged Stemple never used foul language. She was asked whether Lt. Hartman used a signal 2 and she said that she thought so but did not really know.

A signal 42 is used by troopers off and on and some obviously do not always signal 42 and Phillips said she did not mark them if she does not see them or if they do not signal 42.

She said Sgt. Kilgore told her about the balloting in October 1991 and she was a bit upset.

The Union also cross examined Jane Bell who said she did not know when Phillips did homework for Sgt. Stemple's children.

Bell testified that all troopers do not utilize a signal 2 and she noted that most of them did not signal 42.

She said it was not unusual for a trooper to come in and say he had already been on the job for say three minutes and she would record that and she was never told that it was an improper statement.

Dispatcher Bell said Sgt. Stemple was not the only sergeant to allow troopers to hang around a bit longer and she said she had done it for troopers who may have stayed at the Post too long and she would note their leave a bit earlier than they actually left. She said she didn't think that Lt. Hartman was aware of that.

Bell said that Stemple told her he did not want Phillips to win the award.

Bell said she thought that Phillips was concerned and she also said that she read and did her nails and typed her kids papers while she was on duty as long as it did not interfere with her work.

Ms. Tracy Gerber-Williams testified on cross that Stemple asked her to type for his children a few times.

Gerber-Williams said that other troopers never asked her to change the log times. She noted she did not recall ever being asked to do that by a trooper.

Gerber-Williams said most troopers came in by the front door but there was a back door but you could hear them coming in that back door.

Gerber-Williams said no trooper ever came in and said he had been in the garage for fifteen minutes and therefore, mark him as arriving at his appropriate starting time. She went on to say that she did not know where Stemple was when in came in the front or back door. She was asked whether he could have been early and she said that might be so.

Gerber-Williams said that Stemple reported her late and that, of course, bothered her.

Gerber-Williams was asked whether Phillips talked to her about voting and she said No. She also said on recross that she had not been disciplined for altering the log.

Ruth Ann Emerick on cross testified that she had been a dispatcher in Sandusky and Elyria and then went back to Sandusky and then again to Elyria and finally went to the Norwalk post beginning in June 1991 so as to be able to care of her son. Emerick said she worked days.

Emerick testified that all employees do not use a signal 42; that is, some did and some did not.

Emerick said that usually she can see troopers enter the post. She testified she observed Stemple change his starting time on the day shift. That is the only time she saw him do it, said Emerick.

Emerick said that she had seen other times changed many many years ago.



Emerick said she was aware of the balloting among the dispatchers but she knew nothing about charges that Stemple rigged the balloting.

Lt. Ronald Hoeft, on cross, testified that if a trooper signals 2, he is paid only when he gets to the post. He went on to say he did not know if other troopers at the Norwalk post did or did not use a signal 42.

Pamela A. Davis, on cross, testified that at the old post, she could not tell when employees came in and she went on to say that if an employee was pumping gas and the employee told her that he was at work, she would put down the time he told her. She went on to say that she recorded an 8:00 p.m. start time for employees even if they were two minutes late.

Davis said that at times, sergeants might leave to go on the road fifteen minutes late but it would be noted on a log that they left fifteen minutes earlier.

Davis said that she was in Elyria and was not involved in the balloting at all.

On recross, Davis said that HP53B form is accurate.

## 2. ARGUMENT

The Union pointed out that Sgt. Stemple has met and exceeded the sergeant's requirements. He has good evaluations and no discipline. The Union asserts that there is no way the Employer can ignore Article 19. There is no reason that Stemple should lose his stripes and his retirement.

Management's decision is inappropriate and there is insufficient evidence to support the reduction of Stemple from sergeant to trooper plus a five day suspension.

The Union asserts that in this case, Dispatcher Phillips was upset when she did not get the dispatcher of the year award for a second time. Phillips, herself, notes the Union, was vindictive and spiteful.

The Union also points out that there were some things which were troublesome; namely, whether the HP53B's were changed and the answer is that some of them were, Yes. Did Phillips type for Stemple and the answer is Yes. And did Sgt. Stemple say something inappropriate about Ruth Emerick to Phillips and the answer is also Yes. But, says the Union, that is not the reason to reduce a sergeant to trooper.

Each of the witnesses sort of said that maybe the HP53B form was okay and, in fact, they may not have thought that the forms were wrong.

The Union goes on to say that in the typing incident when Stemple asked Phillips to type for his kids while he carried out the dispatching duties, there was no incident and they apparently were friends until the issue of dispatcher of the year came up

and it was clear that Phillips was not going to get it again if she had in the past. Thus, clearly, the issue is Phillip's concern over that inability to achieve dispatcher of the year.

Moreover, the Union notes that Lt. Hartman never appeared and therefore, it is pretty clear that the case does not have merit.

The Union goes on to say that the gossip, if you will, between Stemple and Phillips about Ruth Emerick was, in fact, simply gossip. There is no question, notes the Union, that it was inappropriate for Sgt. Stemple to even engage in that sort of a conversation with Suzanne Phillips but he did but that is not the basis to remove him from the sergeants position to trooper.

The Union claims the demotion is just inappropriate.

The Union also points out that there are falsifications of the HP53B form all over the State.

The Union asserts that Article 19 applies and if Sgt. Stemple is late, reprimand him. If he should have signaled 2 and 42 and did not, then reprimand him and make sure that he does not do it again.

The Union acknowledges that radio logs must be accurately done but if an employee spends ten minutes outside checking or fueling his vehicle and comes in two or three minutes late, should he get demoted? There is simply no basis for the demotion, argues the Union, and Stemple should be reinstated with full back pay.

## V. DISCUSSION AND AWARD

The issue is whether Sgt. Stemple should receive a five day suspension and be reduced in rank from sergeant to trooper?

Stemple is charged with making a disparaging comment in his conversation with dispatcher Phillips about another employee, asking dispatcher Phillips to type his children's term papers, and allowing inaccurate times to be recorded on HP53B's forms. This is a mixed bag of inappropriate behaviors.

The first charge deals with Stemple's one time comment about a dispatcher which Stemple himself acknowledged was a totally inappropriate thing to have said. There was no evidence Stemple frequently made inappropriate remarks when talking to employees. A single incident may be reason for reprimanding Stemple but it is not the basis for demotion.

Stemple should have had more sense than to ask a dispatcher whom he supervises to type his children's papers. Stemple testified that if Phillips did not want to do the typing for him, it was okay with him. In a sense, his testimony indicates insensitivity towards the supervisor/supervised relationship. It is likely that a supervised employee may think there was no alternative but to type the reports to "please the boss" and not cause any problems. There is, however, no clear evidence that Stemple "pushed her into that task". She had done it twice a year for four years and had never complained to Stemple or indicated to him that she did not want to do the typing. Her complaints made in 1991 were not to Stemple but were directed to

others. There was some testimony indicating that the timing of her typing complaints may have been because she did not win "Dispatcher of the Year" and she viewed Stemple as politicking for another dispatcher to be the 1991 winner. Asking Phillips to spend time during working hours typing his children's papers is cause for reprimanding Stemple but is not just cause for demoting him.

Apparently, dispatchers recorded what they viewed as inaccurate times in the HP53B logs over the past few years at the request of Sgt. Stemple. But this along with the allegation that Stemple, himself, entered inaccurate times was raised as a serious concern to Lt. Hartman and Lt. Hoeft for the first time in late 1991. Sgt. Stemple's arrival time and the time which troopers left the post for the road are both issues.

If Phillips did not see Stemple arrive by 8:00 p.m., she said that for the last few months she would leave his arrival time blank and then he would fill in the time. Phillips felt the recorded arrival times were inaccurate, but Stemple may not have been observed by Phillips as he entered, or he may have actually been on time but entered the post late because of outside duties, or he may have been late. The testimony of the dispatchers, particularly that of Phillips, is that Stemple at times arrived a few minutes late. Stemple, himself, acknowledged being late a few times but did not admit changing any recorded times. There was no evidence that Stemple was frequently tardy or that he was late by more than a few minutes. The testimony of various

dispatchers was that many troopers would note they had been "on the job" for three or four minutes prior to logging their arrival times. The testimony also indicates that the practice of using signals 2 and 42 is not consistent or mandatory. Furthermore, as Stemple testified, no other sergeant, trooper or lieutenant ever brought up tardiness as an issue.

No matter how infrequent, there is cause for discipline whenever a charge sergeant records or asks others to record a time other than the actual arrival time. The testimony is clearly suggestive, but the extent the log reflects inaccurate data is unknown. There may be a basis for reprimand or some discipline, but has Management met its burden of providing clear cut, substantiated proof necessary to support Stemple's demotion?

It is fairly clear that sometimes log entries backed up the times troopers left the post for road patrol. Sgt. Stemple may have been "too easy" or may simply have felt that "strong directions" to his troopers were unnecessary. But, whatever the case, does this flaw of Sgt. Stemple mean that he should be demoted?

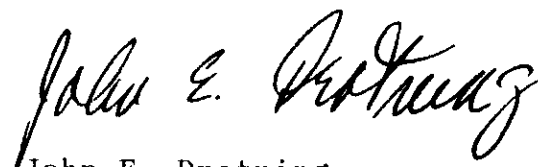
The testimony and evidence indicates that Stemple may be lacking certain managerial skills but his shortcomings did not come up one by one as they became evident in order to be handled in singular fashion. Rather, all his "crimes", if you will, actual and perceived were collected and packaged against him all at once. Stemple had been on the job for ten years and had no

discipline. His evaluation of the Spring 1991 (Union Exhibit A) indicates a number of strengths and no problems. Stemple may not have used his supervisory authority in absolutely appropriate fashion but no deficiency was pointed out to him and he was provided no opportunity to improve his managerial skills.

The Union's argument that Article 19.05's verbal reprimand, written reprimand, suspension, and finally demotion or removal should have been implemented is persuasive. None of the charges were singularly shown to be cause for demotion. If as Management argues, Stemple was demoted because he lost his credibility or ability to manage, part of the blame must be Management's. If it ascertained more readily that all these alleged problems were occurring, Stemple could have been counseled, reprimanded and perhaps even suspended along the way. Instead, Management reacted to a variety of charges by simultaneously both suspending Stemple for five days and demoting him to trooper.

A five day suspension is justified but not his loss of rank. The purpose of the five (5) days is to insure that he does not use dispatchers for personal typing work, that he is careful about his comments, and that HP53B's are kept accurately.

Trooper Stemple shall be reinstated to the rank of sergeant and be made whole and he shall accept the five (5) day suspension.

  
John E. Drotning  
Arbitrator

May 15, 1992