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IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING
STATE OF OHIO

AND

FRATERNAL ORDER OF POLICE
UNIT 1

ARBITRATION AWARD

CASE NUMBER: 15-03-910327-0029-04-01
ARBITRATOR: John E. Drotning
HEARING DATE: May 22, 1992

I. HEARING

The undersigned Arbitrator conducted a Hearing on May 22, 1992 at the Office of Collective Bargaining, 106 N. High Street, Columbus, Ohio. Appearing for the Union were: Paul Cox, Esq., Ed Baker, Renee Englebach, and the grievant, Trooper William Wade. Appearing for the Employer were: Anne Arena, Lt. Rick Corbin, Paul Kirshner, and Lt. Dale R. Cline.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. Post hearing briefs were submitted on or about June 19, 1992 and the case was closed. The discussion and Award are based solely on the record described above.

II. ISSUE

The parties jointly agreed on the following issue:

Has the Employer violated Article 46, Section 46.02 of the Collective Bargaining Agreement by denying the grievant's March 9, 1991 occupational injury claim based on untimeliness? If so, what shall be the remedy?

The Union agreed with the above issue except that it states:

...injury claim based on the issue of injury? If so what shall be the remedy?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1, #2, and #3.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. UNION

1. TESTIMONY AND EVIDENCE

Trooper William Robert Wade testified that he worked in Delaware, Ohio with the Highway Patrol and had also worked in aviation and motor vehicle inspections, etc.

Wade said he was off on disability for nearly one year. He said that his occupational injury leave should be covered.

Wade went on to say that on November 8, 1989, there was a complaint against him which apparently was chargeable. Wade went on to say that he talked to Capt. Everhart and Lt. Finamore. He went on to say that he spoke to the captain and was reprimanded for conduct unbecoming an officer. As a consequence, Wade said that he received a formal reprimand.

Wade testified that in December of 1989, he had an injury which aggravated a back problem. He said he asked to go on sick leave in February 1990 and that he had a back operation in March of 1990. Wade went on to say he also reported to a Dr. Leuchter, a psychiatrist.

Officer Wade said that Lt. Finamore told him to see another doctor and eventually he met with Dr. Leuchter and the latter was annoyed at him. Wade said he had talked to psychiatrist Leuchter almost eleven years ago. He went on to say that Dr. Leuchter treated him poorly and Wade said he thought he was supposed to see a back doctor, not a psychiatrist, and he was deceived as a result of that visit to Leuchter's office.

Wade said that he had a severe back problem and he could not get a back operation and apparently psychiatrist Leuchter told him that he was lousy patient.

Wade told Leuchter that he did not like him and as a result, he could not drive a marked Ohio State Patrol car or carry what he called a "boom boom". Wade said that Leuchter told him he was no good. In short, Wade said that he gave Leuchter the forty-five minutes due.

Wade claimed that his back really hurt and as he went to work on March 9th, he was involved in an accident on interstate 71. As a result, he was asked to simply check scales on I-71 and he was told to go to his post and his pistol was taken away from him and eventually he was released from duty pending Leuchter's letter.

Wade said that he wanted to get sick leave, compensatory time, and eight hours holiday.

Wade then testified that on March 15th, he had a back operation at Riverside Hospital and he was released in a few days. He said on March 23rd, he got his check and on April 16th or 13th (he could not remember which), he drove to his post and he asked about occupational injury leave because his pistol was taken from him. Wade said that Lt. Finamore told him he was off because of his back problem. He said he also talked to someone else at the post.

Wade testified that Lt. Finamore denied his request for occupational injury leave.

Wade said his problem is with Dr. Leuchter and he was told to convalesce. He said he signed up for an employee assistance program and Major Hartsell put him in the EAP.

Around March of 1991, Wade said he learned that occupational injury leave would not be denied and he was relieved of duty for a stress related issue, not for occupational injury leave.

Wade testified that as a consequence he had to wear plain clothes and drive his own vehicle. Wade had no pistol (firearm) so he considered himself a clerk.

Wade said that Major Hartsell denied his occupational injury leave. Wade went on to say he tried to get occupational injury leave within forty-five days of his submission but that was one year late and he had some stress.

Wade said he returned to duty in February of 1991 and he gave up his rights in February 1991. Wade had back surgery in March of 1990 and by October 1990, his back was okay.

Wade wanted to testify about the 1991 Americans with Disability Act and he read a sentence or paragraph from that document. Wade said he was relieved from duty because of stress.

Wade said he wanted to be a highway patrolman and as a matter of fact had been one for twenty-four years.

Wade testified that he went to see general psychiatrists and all of them said he was okay except Dr. Leuchter.

Wade said that he really wanted occupational injury leave and he said he saved 1600 hours of sick leave and now has about 1000 hours of sick leave.

Wade claims he was told to get off the road because Management thought he was "nuts". He went on to say that he had been on duty from July 1, 1991 and he worked midnights even though he could not see at night. He said that in August he got days and he has been on days since then and he said he received Trooper of the Year Award in 1991.

2. ARGUMENT

Article 46 states that requests for occupational injury leave cannot be unreasonably denied by the Employer. The Employer argues, notes the Union, that on the one hand, Wade's request for occupational injury leave was denied because of a non-duty related injury and on the other hand, occupational injury leave was denied because of stress.

The Union claims that Trooper Wade was told by Lt. Finamore that he did not qualify for occupational injury leave. Thus, Wade could have met the time lines had Lt. Finamore agreed with Wade's request. Thus, the Union notes that the Highway Patrol's denial was unreasonable and the Patrol violated Article 46,05 of the Contract which talks about the authority to approve or disapprove requests.

The Union asserts that Grievant Wade had a non-duty related back injury but that did not relate to his claim for occupational injury leave. The Employer assumes, argues the Union, that Trooper Wade's stress is not duty-related. However, the Union points out that troopers are allowed occupational injury leave as a result of stress.

The Union asserts that since 1980, Wade's emotional stability has deteriorated because of increased traffic problems. Further, neither the Collective Bargaining Agreement nor the Employer's rules exclude occupational injury leave for stress. In this case, Wade's injury is duty related and he is entitled to occupational injury leave.

Thus, the Union argues that Wade's benefit hours should be reinstated and he should be placed on occupational injury leave since March 9, 1990.

B. MANAGEMENT

1. TESTIMONY AND EVIDENCE

There was no cross examination of Trooper Wade by Management and Management produced no witnesses.

2. ARGUMENT

Management notes that the parties submitted occupational injury leave policy forms on 4/26/88 and 2/19/91. Occupational injury leave forms, notes Management, cite incidents covered as well as incidents not covered.

Trooper Wade asked for occupational injury leave on 3/13/91 as a result of stress related to high traffic volume (see Management Exhibit #1). Wade, notes Management, also requested disability leave because of lower back pain in March of 1990 as a result of an injury around December 15, 1989 (see Management

Exhibit #2). Wade, notes Management, filed disability forms in August of 1990.

Management states that the occupational injury leave request must be filed within forty-five days of "the injury". Moreover, the Union has accepted all the occupational injury policies and it cites 9-507.10.

Management asserts that the Union has not shown why the grievant did not file an occupational injury leave request on March 1990 which was within 45 days of the alleged incident.

Management states that Wade said he was denied occupational injury leave by Lt. Finamore, his post commander. Moreover, Management notes that Wade did not grieve the denial of his request. In fact, Management points out that Wade claimed his initial injury really occurred eleven years ago.

Management asserts that occupational injury leave is to compensate employees for short-term injuries which occur in the line of duty. In this case, Management notes that Trooper Wade could not identify any specific injury, although he said he was injured at the Sawmill Athletic Club on off-duty hours. Wade claimed that occupational injury leave was because of stress and he also commented on the Americans for Disability Act which includes mental problems.

In any event, Management claims that unless Wade had a specific injury, occupational injury leave is not appropriate and occupational injury leave is not for mental problems but for physical injuries. Wade, indicates Management, was not injured in any way and, thus, the grievance must be denied.

V. DISCUSSION AND AWARD

The parties essentially agreed on the issue which is whether the Employer's denial of Trooper William Wade's request for occupational injury leave violated Article 46?

Pertinent sections of Article 46 are as follows:

Article 46 - Occupational Injury Leave

Occupational Injury Leave shall be governed by the rules promulgated on this subject and the Ohio Revised Code 5503 as they exist on ratifications of this contract. All employees in the bargaining unit shall be entitled to occupational injury leave.

46.01 Maximum Hours of Occupational Injury Leave

Each employee, in addition to normal sick leave, is entitled to one thousand five hundred (1500) hours of occupational injury leave at regular rate per independent injury incurred in the line of duty, with the approval of the superintendent.

46.02 Injuries

Injuries incurred while on duty shall entitle an employee to coverage under this Article. An injury on duty which aggravates a previous injury will be considered an independent injury. O.I.L. is not available for injuries occurred during those times when an employee was engaged in activities of an administrative, or clerical nature, when an employee is on a meal or rest break, or when an employee is engaged in any personal business.

46.05 Authority to Approve or Disapprove

Authority to approve or disapprove any request for occupational leave rests with the Superintendent. Requests for O.I.L. shall not be unreasonably denied.

The Union's basic claim is that the Employer unreasonably denied Wade's request; thus, he should have received occupational injury leave. The Union argued that essentially Wade's emotional stability deteriorated over a number of years because of increased traffic problems. Given his deterioration, there is nothing in the Contract or the Employer's rules which excludes

the use of occupational injury leave for a stress related problem, asserts the Union.

Wade's own testimony is that he talked to Dr. Leuchter, a psychiatrist, and the latter treated him poorly and told Trooper Wade that there was nothing wrong with him and there was no reason for Wade to receive psychiatric help. Wade also read a sentence or paragraph about the Americans with Disability Act, but that Act was implemented long after Trooper Wade's alleged injuries.

Trooper Wade requested O.I.L. on 3/13/91 as a result of stress involving high traffic volume (see Management Exhibit #1). Wade also filed for disability leave in March 1990 because of lower back pain (see Management Exhibit #2). Apparently, Wade was on Disability Leave from 3/15/90 through October 1, 1990 (see Management Exhibits #3 and #4). Wade's disability leave was apparently extended to 2/13/91 and Wade requested an additional extension through April 19, 1991 (see Management Exhibit #6) and Management disallowed Wade's request.

Wade asked for O.I.L. because of stress as well as lower back pain; yet he did not file for leave within forty-five days of his alleged injuries. Moreover, Management also re-states its opinion that Wade had no specific injuries and even if he were stressed out, O.I.L. is inappropriate (see Management Exhibit #8).

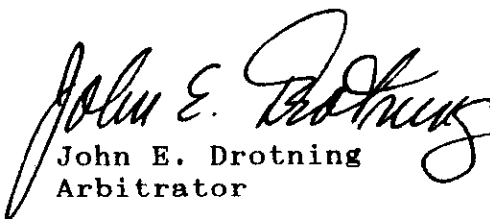
However, the Union pointed out that O.I.L. "shall not be unreasonably denied" and it argued that the Employer denied Wade's request for O.I.L. as a result of his nonduty-related

injuries as well as the fact that he was stressed out because of a higher volume of traffic enforcement along with related duties (see Management Exhibit #1).

Given Trooper Wade's testimony, there is no basis to find that Wade was treated unfairly by Management. Wade did not apply for O.I.L. within forty-five days of his alleged physical problem. As best can be determined, Wade has no physical injuries and his back problem is apparently okay. Thus, there is insufficient evidence to conclude that Wade had a serious occupational physical injury, normally covered under O.I.L..

In addition, Wade's claim that he should be covered by O.I.L. because he was "stressed out" is not persuasive. Management's evidence and testimony is that Wade was not overly stressed as a result of working high traffic volume (see Management Exhibit #1) and the Union presented no medical evidence supporting Wade's claim of stress.

For the above reasons, the grievance is denied.


John E. Drotning
Arbitrator

July 23, 1992