

#901

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING
OHIO STATE HIGHWAY PATROL

AND

FRATERNAL ORDER OF POLICE
UNIT #15

ARBITRATION AWARD

CASE NUMBER: 15 03 921214-0115-07-15
HEARING DATE: July 22, 1993.
ARBITRATOR: John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on July 22, 1993 at the Office of Collective Bargaining, 106 N. High St., Columbus, Ohio. Appearing for the Union were: Deborah Bukovan, Esq., June Baldini, Ed Baker, and the grievant, Sgt. J.P. Kisor. Appearing for the Employer were: Anne K. Van Scoy, Esq., Lt. Rick Corbin, Don McMillen, Sgt. Rick Rose, Tina Coen Davy, and Stacy Dailey.

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 July 22, 1993.

The discussion and award are based solely on the record described above.

II. ISSUE

The parties jointly submitted the following issue:

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

III. STIPULATIONS

The parties jointly submitted exhibits marked Joint Exhibits #1 through #5.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. MANAGEMENT

Sgt. Rick Rose, a Deputy Sheriff from Muskingum, Ohio, testified that he knew Sgt. Kisor and he said he also knew Tina Coen Davy. He was asked whether Kisor talked about Tina Davy and he said he once thought he heard Kisor say that he was going to "nail" Tina for a DWI and put her in place.

Rose said he was aware that Kisor was serious about that incident.

On redirect, Deputy Sheriff Rose said he was not trying to bother anyone and he had called Stacy Dailey who let Tina know what had happened.

Rose said that he knew Sgt. Kisor.

Management called Tina Coen Davy who testified that she worked for the State Highway Patrol as a clerical worker for three years and then as a dispatcher for three years. She went on to say that Sgt. Kisor was at the Zanesville post for about two years and when she was a clerk, she worked with Sgt. Kisor.

Davy said that in 1991, her working relationship with Kisor soured and in the Fall of 1991, Kisor would leave her notes showing her mistakes and she felt she was getting blamed for no real reasons. Davy said that she received these notes two or three times per week.

Davy testified that she thought Kisor claimed that she had been sleeping around with various persons.

Davy testified that Kisor put her down and harassed her and tried to get her to lose her job and that ruined her self confidence.

On redirect, Davy said that she had grieved her discipline and she also testified that her evaluations were good.

Ms. Stacy Dailey testified she was employed by the State Highway Patrol between May 1991 and January 1993 at the Zanesville post.

Dailey noted she had also worked at the Cambridge post and then went back to Zanesville etc. but essentially she was away from the Zanesville post for roughly two and one-half months.

Dailey indicated that she works swing shifts and lives in Zanesville and she just had a six pound baby.

Dailey said that a Sgt. Staughton interviewed her in 1992.

Dailey went on to say that both Kisor and Coen-Davy worked well together up until the summer of 1991.

Dailey testified that Kisor commented about Coen-Davy and she said that Kisor was concerned about her going out with some "outsiders".

Dailey said that Kisor told her that he would like to pick Davy up for a DUI because she spent weekends at local bars.

Management cross examined Sgt. Kisor who said that Tina was not disciplined for commenting on her social life.

2. ARGUMENT

Management noted that sexual harassment is a real problem. It went on to say that three separate witnesses have heard the grievant make disparaging remarks. The witnesses had no reason to make such statements.

Sgt. Kisor is a supervisor and he knows what to do and he should have addressed the issue involving Tina Coen-Davy. Moreover, Management notes that if Davy acted inappropriately, Sgt. Kisor should have discussed the situation with her.

Management argues the Sgt. Kisor was out to get her and Davy felt that Kisor degraded her and that harmed her job.

Management goes on to say that this is an unfortunate situation.

Management points out that Kisor was a supervisor and as a result, Management proposed a one day suspension and he was aware of the problems.

For all these reasons, Management argues that Kisor's discipline of a one day suspension should be upheld.

B. UNION

1. TESTIMONY AND EVIDENCE

Sgt. Jacob Paul Kisor testified that he has at the Irononton post since April 1993 and prior to that he worked at Zanesville. He went on to say that he supervised Tina Coen-Davy who had been a dispatcher and then she became a clerk.

Kisor said that Davy was a good dispatcher but when she became a clerk, she had a lot of problems. Kisor said he tried to help her do a good job as a clerk, but her work performance did not improve and she essentially screwed up by mis-filing things and putting the payroll in disarray.

Kisor said Davy's filing and payroll was lousy and finally a lieutenant called both of them in and Kisor said he tried to show Davy how to do her job adequately.

Sgt. Kisor said he told Lt. Warner about Davy's problem but there were no reports filed on her.

Kisor said that Davy was open about her social life and she stayed up late at night at a bar and he reiterated that Tina Davy was very open about her social life.

Kisor said he made no statements to Davy and he also testified that he heard Sgt. Rose testify.

Sgt. Kisor said the only reason he went to the Muskingum County jail was to put drunks into the tank and that would take only ten or fifteen minutes. He went on to say that he did not know the deputies who worked in the jail although he apparently knew a couple of outside deputies.

Kisor said he did not try to tell people at the Muskingum jail about Tina Davy's problems.

Sgt. Kisor testified that he made no jokes about blonds nor about Tina Davy. He said he did not tell Stacy Dailey that he wanted to nail Tina Davy. Moreover, he said Stacy Dailey only could hear a bit of his conversation.

Sgt. Kisor said he had been with the Patrol for ten years and in one incident, there had been a chargeable patrol car accident.

The Union cross examined Management witnesses. Deputy Sheriff Rick Rose testified that he knew Tina Coen-Davy and had known her for about four or five years.

Rose went on to say that he did talk to Stacy Dailey and he said that she was a good friend of Tina Davy. Rose said he made no allegations to the State Highway Patrol.

The Union cross examined Tina Coen Davy who testified her first sixteen to eighteen months job was acceptable and she said she had no problem with her work performance. Davy said that the sergeant did not try to help her and she said that in the spring of 1992, no one told her that she had payroll problems. She was asked again whether anyone told that she was having payroll problems and she said yes.

Davy said she complained about Sgt. Kisor and also talked to Lt. Warner and she filed a complaint in July of 1992.

Davy was asked whether she was reprimanded for dishonesty and she said she was.

Davy testified she had talked openly about her social life.

Ms. Stacy Dailey testified that the Patrol contacted her and she said Tina Davy was her close friend.

Dailey went on to say that Sgt. Kisor never bothered her and she had no reason to complain about him.

Dailey said that Sgt. Kisor did say to her that Tina Davy picked her boyfriends off a "hot list".

2. ARGUMENT

The Union argues that the Patrol had no cause to suspend Sgt. Kisor. It goes on to say that apparently Tina and her friends claim that Sgt. Kisor made disparaging comments about Tina Davy. As a consequence severe discipline, asserts the Union, is inappropriate.

The Union states that Tina Davy was told that her job performance needed improvement and as a clerical worker, she was not doing a good job.

The Union goes on to say that Tina Coen Davy openly talked about her actions on the post.

The Union also claimed that Sgt. Kisor visits the jail infrequently and he does not know the jail deputies. Moreover, the Union points out that if Sgt. Kisor caught Tina Davy drinking, he would have arrested her.

For all these reasons, the Union asks that Sgt. Kisor's one-day suspension be eliminated.

V. DISCUSSION AND AWARD

The parties agreed the question is whether Grievant Sgt. J. P. Kisor was disciplined for just cause?

The claim that Sgt. Kisor made disparaging comments to Ms. Davy which then affected her work environment is not persuasive. Sgt. Kisor supervised Davy and was concerned about Coen-Davy's quality of work as a clerk. That he raised his concerns by writing notes pointing out where she went wrong may not have been the most appropriate way to get Davy to correct and improve her filing and payroll work. However, any "bother" to Davy did not constitute sexual harassment.

Ms. Davy, herself, acknowledged that she had problems dealing with payrolls and she also had been reprimanded for dishonesty.

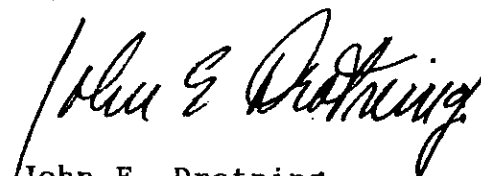
Duputy Sheriff Rose's testimony is clear but it does not provide the basis for Kisor's suspension. Rose did not directly nor professionally relate Kisor's remarks to the Patrol but told a friend in a social or "gossipy" context. The frequency or real significance of the alleged remarks made by Kisor about Davy's boyfriends and wanting her to get a DWI are not known.

Apparently, Davy was very open about her life outside work so it was widely known that she spent weekends socializing at bars. Ms. Stacy Dailey's commented that Kisor was concerned over Daly's spending weekends at a local bar. While it would have been more appropriate had Kisor refrained from bringing in

Davy's "socializing" with concerns about her work problems, it is understandable why he did since often activities outside the work place affects performance.

Given the above testimony and reasonings, there is no basis to conclude that Kisor was guilty of sexually harassing Coen-Davy. Sgt. Kisor was stuck with a tough task when he had to deal with Ms. Davy's problems. While he may have been a bit hard on Ms. Davy and sometimes took an inappropriate course, there is no overwhelming support for issuing Kisor a one day suspension. There is no evidence of sexual harassment and if Management viewed Kisor as supervising Davy or other employees in an inadequate fashion, counseling or a warning would have been the first step.

Thus, it is ruled that the one (1) day suspension should be removed from Sgt. Kisor's record.


John E. Drotning
Arbitrator

August 11, 1993