

#949

IN THE MATTER OF ARBITRATION

BETWEEN

FRATERNAL ORDER OF POLICE
UNIT 15

AND

STATE OF OHIO
STATE HIGHWAY PATROL

ARBITRATION AWARD

GRIEVANCE NUMBER: 15-03-930917-081-07-15
ARBITRATOR: John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on January 21, 1994 at 106 North High St., Columbus, Ohio. .
Appearing for the Union were: Walter Florence, Esq., Ed Baker, and Sgt. Joe Mosakowski. Appearing for the Employer were: Anne Arena Van Scoy, Heather Reese, Lt. Rick Corbin, and Lt. Thomas Derr.

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 filed on or about January 25, 1994. The discussion and Award are based solely on the record described above.

II. ISSUE

The parties jointly asked:

Was there just cause for a one day suspension of Sgt. Joe Mosakowski? If not, what shall be the remedy?

III. STIPULATIONS

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

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. MANAGEMENT

1. TESTIMONY AND EVIDENCE

Lt. Thomas R. Derr, the Post Commander at Ashtabula, testified that he oversees operations and statistics and he has sixteen troopers, four sergeants, as well as four other employees. He went on to say that he has been a post commander for three years and he cited Management Exhibit #1 which is the job description for a sergeant.

Derr said that Mosakowski had been with the Highway Patrol for about sixteen years and he formerly was a trooper.

On June 12, 1993 Derr said he conducted an investigation of Mosakowski and the latter was a shift supervisor and Trooper Dutton sat the desk from 11:00 a.m. to 7:00 p.m..

Derr then testified about three road troopers who had been on the job for various years and he reiterated that on June 12, Trooper Dutton sat on the desk. He then testified about Management Exhibit #2 and that a trooper had to stop some individuals who were drinking and driving at the same time.

Derr went on to say that there is radio and telephone traffic on a dictaphone and he cited Management Exhibit #2 and the troopers can hear what is going on.

Derr said that Mosakowski never responded and there was continuous traffic on the dictaphone.

Derr then testified about the traffic between 0201 and 0231. He testified then about 0136 to 0231.

Derr went on to say that dispatchers check on troopers to make sure they are available each half hour. He went on to say that Mosakowski was aware of the policy and he cited Joint Exhibit #6.

Derr went on to say that he interviewed Mosakowski who said he did not signal out on the scales at the tourist center but rather he checked some other things. Derr said that Mosakowski was to signal out at the Ashtabula and apparently Mosakowski did not signal out. Thus, Derr said that in short, the Post thought that Mosakowski's last location was at the Ashtabula tourist center.

Derr then testified about Management Exhibit #3 which are copies of reprimands of Mosakowski and Joint Exhibit #4 which indicated that he was late for work at one time.

Derr said that Mosakowski had a lot of experience over 23 years and he has supervised younger employees as well as dispatchers.

Derr was concerned over the fact that Mosakowski did not respond for almost one hour.

On redirect, Derr said that Mosakowski is an excellent sergeant.

2. ARGUMENT

Management asserts that Sgt. J. R. Mosakowski received a one day suspension because he failed to initiate or maintain radio contact with the post for about 55 minutes. The evidence indicate that he should report every 30 minutes.

Management notes that the policy is reasonable because officers could be subject to dangerous situations and Highway Patrol personnel must be concerned not only about the safety of others but about their own personal safety. Grievant Mosakowski was the shift supervisor on the evening in question. He was aware of the rules about maintaining radio contact and he did not do so.

The discipline for Grievant Mosakowski is commensurate with his offense and it is progressive based on his past deportment and numerous reprimands for related offenses.

Thus, Management asserts that this grievance must be denied.

B. UNION

1. TESTIMONY AND EVIDENCE

Sgt. Joe Mosakowski testified that it is likely that a dispatcher might not make checkups in one hour. He was asked whether on June 11th and 12th, he was concerned and he said that at 0136 he was at the tourist information center and there was a suspicious trailer present. He went on to say that the

scales for trailers are about one-quarter of a mile away from the tourist information center.

Mosakowski testified that he could hear transmissions on a mobile radio as well as on his car radio and a radio at the scales. He talked about the mobile radio extensions which could be on his belt and those mobile radios work in conjunction with car radios.

Mosakowski said that on June 12, 1993, his car doors were open and he could hear transmissions about twenty feet at the scales and he patrolled the area on route 7 and he got no calls. He said he was not concerned about the fact that there were no calls coming into him over a one hour period.

Mosakowski said that there are dead spots which means that there are places where signals that do not occur.

Mosakowski testified that he discovered that his car battery was not working effectively. He said when he observed there was a poor battery in his vehicle, he had his battery checked out on June 21st and there were some dead cells so he replaced the battery on June 23rd.

Mosakowski said that the radio log is from dispatchers and there are nine instances where there were no checkups between 52 minutes and 2 hours.

The Union cross examined Lt. Derr who testified that Management Exhibit #4 states nothing good about Mosakowski. He said he did not train Mosakowski. However, Derr went on to say that he does train and reviews various policies and procedures.

Derr said he does not check up on employees every half hour from 6:00 p.m. to 6:00 a.m. and he said that at times road personnel do not always hear a dispatcher call and there are dead spots on one's radio.

Derr then testified about Trooper Dutton who apparently was to receive additional training as a dispatcher.

2. ARGUMENT

The Union asserts that the facts are clear and the evidence shows the Mosakowski was at the tourist information center and he was also at the scales for about 20 minutes taking care of minor matters. He went on to say he and William Frye were checking a load limit.

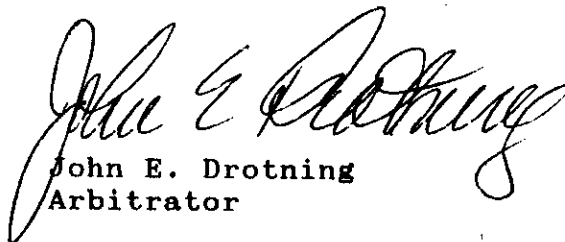
The Union asserts that there was no transmissions in Mosakowski's car radio and it noted that sergeants do not get checkups every thirty minutes and thus, Mosakowski should not be issued a one day off reprimand.

V. DISCUSSION AND AWARD

It is the opinion of the Arbitrator that the Employer had just cause to impose discipline. However, the Union argued convincingly that the level of discipline was too severe. The policy violation standing alone can only be viewed as a minor one. This fact coupled with the Grievant's long tenure as a Highway Patrol employee would tend to mitigate the level of discipline. In all likelihood, the grievant would change his behavior in response to a lesser disciplinary penalty.

However, the grievant is a long term employee with a recent history of five (5) previous minor rule violations. The imposition of a 1 day suspension for failure to strictly follow the "check-up" procedure was progressive and in accordance with Article 19 of the labor Agreement.

In light of the above, the grievance will be granted in part and denied in part. The one (1) day suspension imposed on the grievance for a rule violation which occurred on June 11, 1993 will expire on June 11, 1994, assuming there are no same or similar rule violations in the interim. The suspension will then be expunged from the Grievant's department record. There will be no reinstatement of lost pay or benefits.


John E. Drotning
Arbitrator

February 5, 1994