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In the Matter of Arbitration Between:

OHIO DEPARTMENT OF HIGHWAY SAFETY
DIVISION OF HIGHWAY PATROL

and

FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.
BARGAINING UNIT 1

Re: Gr. 15-03-931229-0129-04-01
Trooper S. Edgar

Hearing held April 21, 1994 in Columbus, Ohio

Decision issued May 7, 1994

APPEARANCES

State

Staff Lt. R. E. Brooks, Advocate
Anne Van Scoy, Labor Relations Officer
Renee Coil, 2d Chair, OCB

Union

Kay Cremeans, Esq., General Counsel
Ed Baker, Staff Representative
Tpr. Scott Edgar, Grievant

Umpire

Douglas E. Ray

I. BACKGROUND

Grievant is in his third year as an Ohio State Highway Patrol Trooper. He is assigned to the Milan post and his duties include investigating crashes, enforcing traffic laws, arresting motorists, investigating crimes and other duties. On November 23, 1993, he fell on a wet and slippery garage floor at the post and suffered a serious injury to his ankle which caused him to be off work until February 9, 1994. Grievant filed a request for occupational injury leave and it was denied in December, 1993, on the grounds that his injury was not covered by the occupational injury leave provisions of the contract. A grievance was filed December 29, 1993, and the matter processed to arbitration. On April 21, 1994, a hearing was held before the undersigned umpire.

The factual background does not seem to be in dispute. At the outset of his midnight to 8 a.m. shift, Grievant was ordered by his sergeant to take a gas tank reading and fuel pump reading and enter the figures on the gas log. The practice is for the trooper to fill out the gas log and leave it on the sergeant's desk. The sergeant then completes the fuel reconciliation reports which are required to insure that no gasoline is missing from the underground tanks. Grievant had already gone outside, taken the reading from the tank and returned the measuring stick to its hook in the garage. He was then on his way to his patrol car to get his flashlight to enable him to read the fuel pump which

was outside the garage. On his way, he stopped at the microwave oven in the garage to get his coffee cup and take it to his car. While walking across the garage on his way outside, Grievant slipped. The glossy floor was slippery because wet. He tore tendons in his ankle and suffered further complications.

II. CONTRACT PROVISIONS

The parties referred to a number of provisions of the contract at hearing. Among the provisions reviewed by the umpire are:

Article 46 which provides for occupational injury leave under O.R.C. 5503. It provides for 1500 hours occupational injury leave at the regular rate per independent injury incurred in the line of duty, with the approval of the Superintendent. In Section 46.02, it provides that injuries incurred while on duty acting within the scope of the individual's authority and job classification shall entitle an employee to coverage. The Section goes on to state that "O.I.L. is not available for injuries incurred during those times when an employee is in the act of arriving or departing from his/her assigned facility if not responding to an emergency or called in by a supervisor, when an employee is 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." Section 46.05 gives the Superintendent authority

to approve or disapprove any request for occupational leave but states that requests "shall not be unreasonably denied."

III. ISSUE

Has the Employer violated Article 46, Section 02 of the Unit 1 contract by denying occupational injury leave to the Grievant from November 31, 1993, through February 8, 1994?

If so, what shall the remedy be?

IV. POSITIONS OF THE PARTIES

The parties made a number of detailed arguments at hearing. They are only briefly summarized below.

A. The Union

The Union argues that it was unreasonable to deny Grievant occupational injury leave. The Union stresses that Grievant was injured while on duty performing a duty he had been ordered to perform. The duty was in the scope of his authority as required by Section 46.02. Countering arguments made by the Employer, the Union argues that Article 46 is not limited to troopers who are actively engaged in enforcing the law when they are injured. The Union argues that a trooper is entitled to occupational injury leave when injured performing his duties unless those duties are administrative or clerical. The duties involved here were not administrative or clerical in the Union's view. Checking fuel levels did not involve typing, filing, answering the phone or other desk duties. Grievant was engaged in physical work and, in the Union's view, this was neither administrative nor clerical. The Union stresses

that there was no dispute from the Employer that the garage floor was slippery and argues that to deny benefits for this injury incurred in the line of duty is unreasonable and unconscionable. The Union asks that the grievance be granted, that occupational injury leave be approved and that Grievant be made whole for the hours of accrued leave taken which he would not have had to take had occupational injury leave been approved.

B. The Employer

The Employer argues that the denial of leave was proper and asks that the grievance be denied. The Employer argues that Grievant was injured performing a task that was both clerical and administrative as those terms are used in the contract. The Employer argues that occupational injury leave is for injuries incurred while the employee is engaged in hazardous duty, not for the types of duties performed here, and argues that the reason such leave was put in the contract and statute only for the highway patrol is because of the special risks faced by troopers which differ from those faced by other State employees. The Employer suggests that the Union is trying to gain a benefit in arbitration which it failed to gain through negotiations and produced extensive testimony as to the bargaining history of the provision in question. In conclusion, the Employer asks that the grievance be denied.

V. DECISION AND ANALYSIS

The umpire has reviewed the collective bargaining agreement, the testimony of witnesses, the exhibits and the arguments of the parties in reaching a decision in this matter. Section 46.01 states that occupational injury leave is to be granted "with the approval of the Superintendent." Section 46.05 states that "Authority to approve or disapprove any request for occupational leave rests with the Superintendent. Requests for O.I.L. shall not be unreasonably denied." Thus, the contract gives the umpire authority to overturn the Superintendent's disapproval, but only if it is found that the request was "unreasonably denied." Despite the strong arguments made by the Union and the undeniable nature of its argument that Grievant was injured while following orders in the line of duty, the umpire finds that, due to the contract language, the leave was not unreasonably denied. The reasons for this ruling follow.

1. The umpire finds that the tasks which Grievant was performing at the time of his injury were clerical and administrative as those terms are used in the contract. The task was to enter data on a form which was on a clipboard. This form was then to be left for the sergeant who would complete the reconciliation forms. Although the Union sought to argue Grievant was performing more physical work, his task was to enter numbers on a form. Indeed, he had already hung up the stick used to measure fuel levels at the

time of his injury and was on his way out for a flashlight to enable him to read the fuel pump numbers.

In March, 1993, this umpire did uphold a Union grievance involving the denial of occupational injury leave in case 15-03-910903-094-04-01. In that case, however, a trooper on duty stopped along the highway to aid a stranded motorist and suffered an injury while attempting to remove rusted lug nuts from a wheel. This case, by contrast, did not occur on the road but, rather, involved filling out a form while still at the post.

2. Because Grievant was on his way to his patrol car and was carrying his coffee cup to the car, it could be argued that he was at least in part preparing for his departure. This would not, however, help Grievant's case because Article 46 also excludes injuries suffered while an employee is in the act of arriving or departing from the assigned facility unless responding to an emergency. Thus, whether Grievant was still in the process of filling out the gas log, a task the umpire finds to be clerical, or preparing for his departure, Article 46 explicitly excludes his injury from coverage.

3. There was much testimony about bargaining history. While the history indicates that the Union did successfully bargain for improvements in the program in past years, there is no indication that the Union succeeded in getting coverage for all injuries incurred on duty. The exclusions are part of the contract.

4. The Union makes a strong argument that the garage floor was slippery and that, as a consequence, Grievant was injured while on duty. Article 46, like the workers' compensation system, does not seem to be premised on the basis of fault. Even if fault were established, it would not guarantee coverage under Article 46.

5. Under Article 20, the umpire lacks authority to add to the contract and may not impose any obligation not specifically required by the contract. To grant the grievance under the circumstances of this case might well violate this directive.

VI. AWARD

The grievance is denied.

May 7, 1994

Columbus, Ohio, County of Franklin



Douglas E. Ray

Umpire