

IN THE MATTER OF ARBITRATION

BETWEEN

FRATERNAL ORDER OF POLICE
UNIT 2

AND

STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES

ARBITRATION AWARD

HEARING DATE: May 4, 1994
GRIEVANT: E Ucker
GRIEVANCE NUMBER: 25-18-(2-4-94)-02-05-02
ARBITRATOR: John E. Drotning

25-18-02 ES: 51

I. HEARING

The undersigned Arbitrator conducted a Hearing on May 4, 1994 at the District Office of the Department of Natural Resources, 912 Portage Lakes Drive, Akron, Ohio. Appearing for the Union were: Kay Cremeans, Esq., Joseph Edgar, Jack Holycross, LuAnn Ucker, and the grievant, Eric Ucker. Appearing for the Employer were: J. Kenneth Terry, Pat Mogan, Greg Rees, Robert Mazgaj, and James Petrasek.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents, evidence and closing arguments. No post hearing were submitted and the case was closed on May 4, 1994.

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

II. ISSUE

The parties jointly submitted the issue as follows:

Was the three (3) day suspension imposed on Mr. Ucker for just cause? If not, what shall the remedy be?

III. STIPULATIONS

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

In addition, it was stipulated that David Brown worked the State Fair and left his gun belt and his service revolver was stolen. Also employee Tim Jordon had a long gun stolen from a locked vehicle. Neither of those employees were disciplined.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. MANAGEMENT

1. TESTIMONY AND EVIDENCE

Mr. James Petrasek, a Law Enforcement Supervisor at 912 Portage Lakes Drive, testified that he knew Eric Ucker and the latter is assigned to Wayne County. Petrasek testified he was aware that Eric Ucker lost his shotgun and there was an investigative interview and Ucker said he went on vacation and left the shotgun in a roll of carpeting in his house.

In September of 1993, Petrasek said there was an investigation interview and Ucker said his wife threw out the roll of carpeting and Petrasek reiterated that when Ucker's wife threw out the roll of carpeting, the shotgun was inside that roll of carpeting.

Petrasek testified that Mrs. Ucker said that her husband went on vacation and she threw "trash" out of their house including carpet remnants which contained the shotgun.

Petrasek said that he recommended a three day discipline because Ucker had violated work rules. He also testified about Management Exhibit #2. In addition, Petrasek said that he told Ucker that he should follow policy and keep his shotgun in the truck of his car.

Management Exhibit #3 points out that gun lockers are not necessary, said Petrasek.

Management cross examined Union witnesses. Mr. Joseph Edgar testified that he maintains an office in his house and as a result, he could save maintenance money. He testified that he

could buy a gun cabinet and he could be disciplined if he lost his shotgun.

Ms. LuAnn Ucker on cross testified that she was not aware a shotgun was concealed in a carpet that she threw out. She went on to say that she threw out a number of carpets.

Mr. Eric Ucker on cross testified that he lives about seventeen miles from the District office and he testified that in fact that SKB shotgun was lost and he then he read Management Exhibit #4 which is his statement.

Ucker went on to say that he owns about 24 guns, some handguns, some shotguns and rifles. He also testified about Management Exhibit #5 as well as Joint Exhibit #4.

2. ARGUMENT

Management points out that carelessness and neglect of duty are serious offenses particularly when firearms are involved. The Employer indicates that the facts are that the firearm in question was lost and that it was assigned to Officer Ucker. Management claims that the officer assigned a firearm has the responsibility for safekeeping the weapon.

The Union's claim that Ucker was not negligent when he hid the shotgun in a rolled up carpet is not acceptable, argues Management. Weapons are not like flashlights or other items needed in the work of a wildlife officer. Safety with firearms and safe keeping cannot be over emphasized, notes Management, and to lose a weapon is serious and cannot be tolerated.

Management also points out that the Union's claim of disparate treatment is not supported because the locked weapons were stolen not lost or thrown out. The other two employees acted correctly in handling, storing, and locking up their weapons.

To support the grievant would send a very misdirected message that losing one's weapon is really not that serious. Management states that the three day suspension was warranted and fair discipline.

B. UNION

1. TESTIMONY AND EVIDENCE

Mr. Joseph Edgar testified that he has been involved in the Division of Wildlife for 14 years. He also testified that he has no gun locker at his house although he requested a gun locker from Management.

Edgar went on to say that supervisors work out of their homes and offices and he also noted that gun safes can be very expensive. He went on to testify about Union Exhibit #2 which are individuals who needed security cabinets.

Edgar said about a third of the officers have gun lockers at their house. He, himself, said that he hides his weapons.

Ms. LuAnn Ucker testified she is a marketing manager at the DeBold Company in North Canton and travels frequently. She said she has a 18 year old daughter and an 11 year old son.

She said that in July 1984 they went to Canada and she said that her husband also went to the National Trappers Convention.

Ucker said that while her husband was away, she cleaned a lot of junk at the house. She said there were six or eight pieces of a carpet laying in the basement and she threw out carpet while her husband was gone. Ucker said she is willing to pay for the SKB shotgun.

Mr. Eric Ucker testified he has been with the Division of Wildlife for fourteen years and works in Wayne County. He said he works out of his house and he went on to say that he interacts with the public and works out solutions with the public. He went on to testify about Joint Exhibits #5 and #6.

Ucker testified that people call him when he is at his house and that is part of his job.

Ucker testified about the SKB. He talked about a 30/06 which is a model 70 Remington and a service pistol. He said he was not qualified for a SKB shotgun but was qualified to use a service pistol.

Ucker said he does not have a gun locker although he requested one but it was denied.

Ucker testified that between July 22 and July 30, 1993 he was on vacation and he started work on July 31st. He reiterated that his greatest concern is that if the public comes to his house and he is not there, he certainly can't leave the shotguns in an area where people might be aware of them.

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Ucker said that he put his shotgun as well as a 22 automatic into his carpet. He also testified that he used a false bottom for pistols and obviously he is concerned about burglaries.

Ucker testified he left for a trapper convention on August 3rd and returned on August 9th. He went on to say that on August 14th, he received a memo that he must bring a state issued shotgun with rifle slugs and he could not find the shotgun on the 15th, 16th, or 17th so he told his supervisor that he lost his shotgun.

Ucker said his wife actually threw out the carpet which apparently contained his shotgun when he was at the trapper convention.

Ucker said he contacted the dumpster service and apparently the dumpster went to a landfill in Stark County.

On redirect, Ucker noted that he had six or seven long guns as well as pistols which all were unloaded. He also reiterated that he put an SKB and a 22 rifle in his carpet.

The Union cross examined Management witnesses. Mr. James Petrasek on cross testified that he is a Law Enforcement Supervisor and that Ucker and others did not request gun lockers although some employees did have gun lockers. Petrasek reiterated that he encouraged employees to store guns in their lockers.

Petrasek went on to say that there is a defense weapon policy which requires that officers must have their shotguns as well as other weapons secured.

Petrasek reiterated that he did not know how many officers had gun lockers in their homes. He knew that state troopers used shotguns to shoot porcupines, racoons, etc.

Petrasek said that Wildlife Officers work out of their homes. He also points out that he uses a state vehicle. He went on to say that the public does have access to a wildlife officer and he said that if a person wants to call a wildlife officer, that person can use the officer's phone number.

Petrasek reiterated that employees work out of their homes.

2. ARGUMENT

The Union asserts that the Employer must prove that the grievant was negligent and that discipline is proper. Therefore, the Union argues that the burden was not met and it cites Joint Exhibit #1. Moreover, the Union goes on to say that discipline is corrective not punitive and it should be commensurate with the officer's situation. In this case, the Union argues that Eric Ucker should not get three days off; rather, he should be warned and directed to store his weapons appropriately. The Union, however, goes on to say that the Grievant did use appropriate care. He was not offered a gun locker when he had asked for one and Ucker felt that he should have been issued one without having to pay perhaps \$1000.

The Union goes on to point out that the question is whether there is another issue involved but in this case, Ucker pointed out that he had these weapons rolled up in a carpet in a reasonable hiding place. Ucker was not negligent but did what he viewed as appropriate to safeguard the guns at his home while he was away.

The Union points out that Ucker's SKB is now in a landfill and presumably if it went into a dumpster and was probably been broken up. The crushed up SKB is now in a landfill. The Union argues that Ucker was willing to pay for the firearm, but was given three day suspension.

The Union reiterates that two other individuals were not so disciplined.

For all these reasons, the Union claims there is no just cause to issue Mr. Ucker a three day suspension and asks that he be issued full back pay.

V. DISCUSSION AND AWARD

The issue is whether a three day suspension imposed on Mr. Ucker is appropriate?

The Employer viewed Ucker "losing" a state issued shotgun as a serious violation of work rules and policy. Specifically, Ucker is charged with "Neglect of Duty - Major (Endangers life, property or public safety)" and "Loss of firearm through negligence" [Violations 1.A. and 20.B of Management Exhibit #2]. In Management Exhibit #2, suspension or removal is listed as possible discipline for a first offense of these violations.

The Union argues that Ucker "lost" the shotgun but that it was not due to negligence or because he violated work rules.

Ucker's explanation for losing the shotgun is that before he left on a family vacation in late July, he was concerned about his guns and valuables and "secured them". He took precaution to hide the shotgun by apparently placing it in a rolled up carpet in his basement. He returned to work for a week after his family vacation before he left again to attend a Trapper's Convention for a week in early August. Ucker's wife testified that during that time, she decided to clean out the basement area of their home and get rid of trash. She threw out old carpets and remnants - some went in plastic bags to the garbage and some were taken to the dumpster at her mother's apartment building.

The opinion of Law Enforcement Investigators was that Ucker's explanation was not credible and he was "being deceptive" (see Management Exhibit #1). Although it may seem unlikely that

carpets could be handled and thrown out without a shotgun slipping down or being discovered, it must be viewed as possible. All in all, the explanation is plausible. There was no rebutting testimony or evidence to support another explanation of what happened to the SKB shotgun. Thus, there is no basis for the arbitrator to conclude other than that the sworn testimony of Mr. and Mrs. Ucker at the Hearing is accurate.

The Union pointed out that the while Ucker was required to work out of his home and was responsible for the safekeeping of firearms, the Employer provided no gun cabinets. The Union apparently views the Employer as partially to blame for Ucker's need to hide the shotgun in the carpets. Undoubtedly, if Ucker had been issued a secure gun cabinet, the SKB shotgun would not have been lost. However, the question is not whether the Employer should have provided gun cabinets but whether Ucker was negligent in the safekeeping of weapons.

Moreover, the distinction is not whether a weapon was "lost" or "stolen"; in either case, the question is whether the responsible Wildlife Officer was negligent. In the two cases when a gun had been stolen, the officers had apparently followed appropriate practices and were not viewed as acting negligently and thus, were not disciplined. Was Ucker's weapon "lost" because he was negligent?

Obviously, it is a mistake for an officer to lose a shotgun but in this case Ucker left it in what he thought was a "secure" hiding spot. The Employer indicated that Ucker did not follow

the policy of keeping a shotgun in the truck of a vehicle but there may have been good reasons for Ucker not to keep the gun in the truck of his car. Furthermore, Ucker was not negligent in the sense that he misplaced the weapon, left it leaning against a tree in the woods, loaned it to someone, kept it in plain sight, or some other careless action. Ucker took care but made an ill-considered decision to hide the shotgun in carpets stored in the basement of their home without letting his wife know of the hiding place. The combination of events which ended with the shotgun being tossed out with the carpets was unfortunate but does not, however, prove that Ucker was careless and irresponsible. The firearm was lost but it was not lost through negligence. Furthermore, Ucker's actions cannot be viewed as a major neglect of duty which endangered life, property or public safety.

Thus, it is concluded the SKB shotgun was not lost because Eric Ucker was careless or negligent. Therefore, he should not receive a three day suspension. Rather Ucker should be issued a written reprimand based on "leaving a firearm unattended" (20.A in Management #2) for leaving his weapon in an inappropriate location for secure purposes.



John E. Drotning
Arbitrator

May 23, 1994

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