

**In the matter of Arbitration between:**

**State of Ohio, Department of Public Safety-Ohio State Highway Patrol  
Employer**

**And**

**Case # DPS-2016-00005-01**

**Trooper Steven Dunn**

**OHIO STATE TROOPERS ASSOCIATION**

**Union**

In attendance for the Ohio State Highway Patrol: Lt. Marty Fellure-Advocate, Mr. Cullen Jackson, 2<sup>nd</sup> Chair OCB, Sgt. Terrill Barnes-AIU(witness), Lt. Darrell Harris, Sgt. Michael McManis(witness).

In attendance for OSTA: Ms. Elaine Silveira-Advocate(General Counsel), Tpr. Steven Dunn-Grievant(witness), Mr. Jeremy Mendenhall-OSTA President, Mr. Larry Phillips-Staff Representative.

**INTRODUCTION:**

This matter was heard at the headquarters of the Ohio State Troopers Association, Gahanna, Ohio. The Hearing was held on March 21, 2017, at 12:05p. All witnesses were sworn. There were no procedural issues raised, and the parties agreed that the issue was properly before the arbitrator. The following were submitted as Joint Exhibits: Jt. #1-Collective Bargaining Agreement, Units 1 & 15(2012-2015); Jt. #2-Grievance Trail-DPS-2015-00005-01; Jt. #3-Discipline Trail, composed of—(a) Statement of Charges, (b) Pre-Discipline Notice, (c) Discipline Letter, (d) Ohio State Highway Patrol Rules and Regulations: 4501:2-6-02(Y)(2) Compliance to Orders, (e) Department Record. The following were introduced as Management Exhibits: ME-1, Administrative Investigation(AI) #2015-0635 Trooper(Tpr.) Dunn; ME-2, OSHP SWORN OFFICER DISCIPLINE GRID. The following were submitted as Union Exhibits:

UE-1, DISCOVERY REQUEST TRACKING SHEET; UE-2, Photo of DISCOVERY REQUEST "bin"; UE-3, Performance Document-Steven Dunn, 10/05/2013-04/05/2014.

**ISSUE:**

The parties submitted a jointly signed issue statement, which reads as follows:

Was the Grievant issued a one (1) day suspension for cause? If not, what shall the remedy be?

**BACKGROUND:**

The incidents giving rise to the discipline commenced on August 30, 2015. Trooper Dunn, at the time was a three-year Tpr. assigned to the second shift, Post 40. On August 30, day shift Sgt. McManis observed court paperwork turned in by Tpr. Dunn. Sergeant McManis noticed that the paperwork did not have a Discovery Receipt attached. Attaching the Discovery Receipt was allegedly Post policy. Sergeant McManis also observed that the paperwork was not logged into the Discovery Log Book, also allegedly Post policy(ME-1).

A post-it note requiring the receipt to be attached to the paperwork and logged-in was placed in Tpr. Dunn's in-basket, by Sgt. McManis. The following day(8/31) Sgt. McManis saw the same paperwork in the Discovery in-basket, accompanied with a post-it note from Tpr. Dunn. His note claimed that the paperwork was not Discovery. Later that same day, Sgt. McManis prepared a training IOC to Tpr. Dunn explaining Post policy for sending Discovery. Sgt. McManis requested that the training IOC be signed and returned to him(ME-1).

On September 3, 2015, having not yet received the signed IOC from Tpr. Dunn, Sgt. McManis prepared and placed another training IOC in Tpr. Dunn's in-box. There was still no response from Tpr. Dunn by September 5, 2015. Therefore, Sgt.

McManis contacted Tpr. Dunn by radio regarding the training letters. During the radio discussion, Tpr. Dunn told Sgt. McManis that he put the training IOC's in the trash(ME-1).

Trooper Dunn was suspended without pay for one (1) day resulting from these incidents. He was charged with violating Ohio State Highway Patrol Rules and Regulations 4501: 2-6-02 Compliance to Orders, to wit: it is charged that you failed to follow the instructions of a supervisor regarding court paperwork and threw the training IOC's in the trash(JE-3). Compliance to Orders reads as follows: A member shall immediately and completely carry out the lawful orders of a supervisor, or a designated officer in charge, which pertains to the discharge of the member's duties(JE-3).

As a result of the soon to be imposed discipline, Tpr. Dunn filed a grievance on 1/1/2016. He claimed on the Grievance that he was going to be issued a one (1) day suspension(JE-2). Trooper Dunn requested to be made whole for all lost wages and benefits from the one (1) day suspension. Prior to the issuing any discipline, a Pre-Disciplinary Hearing was scheduled, however, Tpr. Dunn waived the scheduled PD Hearing.

A Step 2 Grievance meeting was held on 1/12/2016. At the Step 2 Meeting the Union claimed that the Employer violated Section 21.01-Copies of Work Rules, of the CBA. The procedure to enter all Discovery into the log-book was not placed in writing, per the Union. As a result, Section 19.01—Standard, was violated, as the Employer had not shown just cause in imposing discipline.

The Grievance was denied on 1/20/2016. The Hearing Officer found that “ the Grievant received a training IOC by a supervisor which was dismissed and thrown away, not once, but twice”. The Work Rules state that members shall carry out the lawful orders of “a” supervisor not “his or her” supervisor. The Grievant was insubordinate as he willfully disobeyed the direction of the supervisor on duty by throwing away and ignoring the IOC(JE-2).

The Grievance was appealed to Arbitration by OSTA on 1/20/2016. By mutual agreement between the parties, the Arbitration Hearing was scheduled for March 21, 2017.

### **DISCUSSION AND OPINION:**

The incidents giving rise to the issue are not in dispute. Trooper Dunn, on 8/30/2015, did put Discovery regarding an OVI arrest into the Jackson County Discovery Receipt bin. On that same day, Sgt. McManis, who per testimony, was the Court Liaison Officer, determined that a receipt should have been attached to the paperwork and logged in (ME-1). Two IOC's were sent to Tpr. Dunn regarding Post 40's Discovery policy, both of which were trashed by him without correcting the policy error or responding to the IOC's.

The Union argues that this was a simple misunderstanding, and could/should have been handled differently. However, in the arbitrator's opinion, the "simple misunderstanding" should have ended with the first IOC from Sgt. McManis to Tpr. Dunn. Trooper Dunn's actions thereafter were unbecoming of an Ohio State Trooper. His trashing of the IOC's and not correcting his error, once made aware of policy, was disrespectful, in the arbitrator's opinion. He could have been charged with insubordination according to the Disciplinary Grid. However, he was only charged with failure to follow instructions from a supervisor.

Although the Disciplinary Grid is not in the CBA, as argued by the Union, it does defer to the just cause standard in the CBA. The Grid, as stated in the Application Section, is "to be used as a guide to maintain consistency" (ME-2). In disputes of this nature, it is still the prerogative of the arbitrator to interpret the application of the Agreement's just cause standard.

In this case, the Grievant was charged with a lesser offense than identified in the description section of the Disciplinary Grid's Insubordination violation. I believe that a lesser charge was used because, all other actions of Tpr. Dunn show him to

be a very good Trooper. However, I do find that in this case, his behavior towards Sgt. McManis was remarkably bad. Thus, I do not find that the OSHP was capricious or arbitrary when administering this discipline.

**AWARD:**

The Grievance is denied.

This concludes the Arbitration decision'

Respectfully submitted this 31<sup>st</sup> day of March 2017.

E. William Lewis

Arbitrator

/s/