

OHIO DEPARTMENT OF PUBLIC SAFETY, )  
DIVISION OF THE STATE HIGHWAY PATROL)

Employer,

Grievance of Christopher Brock  
Grievance No.: DPS-2016-00355-15

V.

# OHIO STATE TROOPERS ASSOCIATION

**Arbitrator Sarah R. Cole**

Union,

Appearances:

For the Union:

Elaine Silveira, OSTA Representative  
Larry Phillips, OSTA Representative  
Sgt. Christopher Brock, Grievant  
Bob Cooper, OSTA Staff Representative

For the Department of Public Safety:

Lt. Marty Fellure, DPS Representative  
S/Lt. Cassandra Brewster, DPS Representative  
Cullen Jackson, Office of Collective Bargaining

### Opinion

The Department of Public Safety, Division of the State Highway Patrol (OSP), issued a three-day suspension to Christopher Brock, the Grievant, for violating Rule 4501:2-6-01(I)(1), Conduct Unbecoming an Officer, based on actions he took during a court proceeding that occurred on February 25, 2015. On December 22, 2014, while on duty working a safety belt enforcement detail, Grievant struck the back of a RTA bus. The OSP, through Lieutenant

Antonio Matos, issued the Grievant a citation for failing to keep “Assured Clear Distance Ahead”.

On February 25, 2015, the Grievant and Lieutenant Matos were both subpoenaed to appear in Cleveland Municipal Court. The Grievant arrived on time, and in civilian clothes. He was off-duty. He spoke briefly to the prosecutor upon his arrival and then sat down in the courtroom. At some point after that, but before the court began its morning session, Lieutenant Matos arrived. Seeing Lt. Matos, the Grievant went to the courtroom entrance to say hello and joked with the Lieutenant about the ironic situation they faced. Lt. Matos asked the Grievant to let the prosecutor know that the Lieutenant was present so that he could communicate with her. The Grievant did so and then returned to his seat. At that point, again before the court began its session, the prosecutor made eye contact with Lt. Matos, who was still in the hallway/courtroom entrance area. Lt. Matos indicated to the prosecutor that he was present and made a “fingers walking” gesture inquiring whether he should enter the courtroom. The prosecutor made a motion that Lt. Matos should leave the courtroom. Lt. Matos confirmed that he should leave the courtroom by giving the prosecutor a “thumbs up”. The prosecutor returned the thumbs up and Lt. Matos left the courtroom door area. Shortly after this interaction, the courtroom doors were closed and the court session began.

At the start of the court session, Lt. Matos could no longer be seen by anyone in the courtroom. The proceedings involving the Grievant’s charge were short:

“Court: Madam Prosecutor, did you have a conversation with Mr. Brock?

Ms. Maurath: There’s no trooper present.

Court: Okay. Sir, are you making a Motion to Dismiss?

Defendant (Brock): Yes, ma’am.

Court: Your Motion to Dismiss is Granted.”

Mgmt Exh. 2 at 35.


Several months later, a television reporter, Ed Galleck, aired a story about this event. The story focused on the fact that the prosecutor asserted that no trooper was present, so that the case was dismissed, when in fact Lt. Matos was compensated for being present at the courthouse that day. The OSP conducted an investigation of the incident and determined that the Grievant was under an obligation, when the prosecutor stated that there was no trooper present, to state that Lt. Matos was in the courthouse somewhere and available to testify. His failure to do so, according to the OSP, was conduct unbecoming an officer who was off-duty/discredit to the Division. The OSP issued the Grievant a three-day suspension.

The OSP has the burden of proof in this case and the evidence the OSP presented was insufficient to justify the three-day suspension imposed on the Grievant. The Grievant appeared in court to challenge his citation. He knew that, at one time, Lt. Matos was present to testify against him. He may well have been surprised when the prosecutor asserted that no trooper was present to testify. But it is beyond the reasonable expectation of the OSP to require that the Grievant question the prosecutor’s assertion that Lt. Matos, “the trooper”, wasn’t present. Although we do not know the reason, it was clearly the prosecutor’s decision to dismiss Lt. Matos and then assert, truthfully at that point, that the trooper wasn’t present. Even Lt. Matos testified that it was the prosecutor’s decision that he leave. While law enforcement officers are held to a high standard of proper behavior even when off-duty, that should not extend to the point of creating an obligation to question a prosecutor’s assertions in court. The Grievant’s actions, even when considered in light of the OSP’s high standards for trooper behavior on and off-duty, were appropriate and in no way shed unfavorable light on the agency.

Award

The grievance is granted. The three-day suspension should be removed from the Grievant's record and he should be given back pay for the three-day period and have his seniority for that period reinstated as well.

May 8, 2017

  
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Arbitrator Sarah R. Cole