

VOLUNTARY ARBITRATION PROCEEDINGS  
GRIEVANCE NO. 15-03-941021-0094-04-01  
THE GRIEVANCE OF TROOPER FREDERICK E. PATTERSON, III

THE STATE OF OHIO	:	
	:	
The Employer	:	
	:	
-and-	:	<u>OPINION AND AWARD</u>
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.	:	
	:	
The Union	:	

APPEARANCES

For the Employer:

Robert J. Young, Advocate  
Georgia Brokaw, OCB, Second Chair  
Lieutenant John C. Shore, Witness  
Staff Lieutenant M.P. Megison, Witness  
Staff Lieutenant Richard Corbin, Observer

For the Union:

Paul L. Cox, Attorney  
Ron Moening, Labor Representative  
Jim Roberts, Chairman, Labor Council  
Ed Baker, Labor Representative  
Renee Engelback, Paralegal  
Fred E. Patterson, III, Grievant

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Attorney-Arbitrator  
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## I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted on March 13, 1995, at the conference facility of the employer in Columbus, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn but not sequestered and that post hearing briefs would not be filed. It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

## II. STATEMENT OF FACTS

At all times mentioned hereafter article 19.05 of the contract of collective bargaining by and between the parties was in use. That paragraph and section revealed the following:

### "19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. Verbal Reprimand (with appropriate notation in employee's file);
2. Written Reprimand;
3. A fine not to exceed two (2) days pay;
4. Suspension;
5. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action.

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant.

Fines are only to be administered in accordance with the procedures adopted by the Office of Collective Bargaining. The deduction of fines from an employee's wages shall not require the employee's authorization for the withholding of fines from the employee's wages."

Also in use at the time of the instant event was certain work rules unilaterally promulgated by the employer. There was no serious claim by the union that the rules were not published, were not reasonable and were not evenhandedly applied. Rule (B)(5), the rule under which the grievant was suspended in the instant matter, revealed the following:

"(5) Members who fail to perform their duties because of an error in judgment or otherwise fail to satisfactorily perform a duty of which such member is capable, may be charged with inefficiency."

The incident in this particular instant matter, by the employer's own definition, was court related inefficiency. In that regard the employer in the step two minutes listed the prior discipline of the grievant relevant to court related inefficiencies as follows:

"Trooper Patterson has been disciplined numerous times for court related inefficiency.

06/12/89: Written Reprimand for failing to collect evidence in order to prosecute the case.

05/03/90: Verbal Reprimand for failing to act on a court case.

02/12/92: Written Reprimand for failure to appear for a court case.

02/20/92: Written Reprimand for failure to file criminal complaints properly.

03/16/93: Three day suspension for failure to have criminal complaint notarized.

The above are examples of prior court related discipline. The grievant has numerous other inefficiency related disciplines."

The instant incident occurred when on July 31, 1994, the grievant was directed to a hospital in his area of jurisdiction to investigate a vehicle crash. As a result of obtaining statements from hospital staff, the father of the driver involved in the incident and the driver involved in the crash, the grievant cited the driver for failure to control the vehicle which he was driving and for a seatbelt infraction, both items being violations of the Ohio Revised Code. The grievant further directed the driver of that vehicle to appear in a Municipal Court of Mt. Vernon, Ohio. The fact of the matter is that that municipal court did not have jurisdiction over the area at which the crash occurred. The grievant knew that because in his traffic crash report the grievant revealed the correct area of the crash as being Coshocton County in the Township of Keene. That particular area triggered activity in another municipal court.

As a result of that inpropriety, the superior officer of the grievant voided the summons and did not allow the summons to be refiled. That was a choice of the lieutenant making that decision and had nothing to do with the error of the grievant. The matter could have been

refiled in the proper municipal court but the lieutenant in charge of making these decisions indicated and stated that there was insufficient evidence in the file to write the summons in the first place. At any rate, the activity of the employer in suspending the grievant for seven days was triggered from the grievant's failure to properly furnish the correct Municipal Court on the summons. The employer in the step two answer that it filed, revealed the following:

"As a result of the administrative investigation the grievant was charged with violating Rules and Regulations of the Highway Patrol specifically; 4501:2-6-02 (B) (5). This was for failing to properly investigate a vehicle crash, and for several clerical errors. At the pre-disciplinary meeting evidence was brought forward that the grievant did attempt to go to the crash scene to verify the scene itself. The meeting officer considered this evidence and the investigation itself and found just cause for discipline. The just cause was limited to the improper processing of the crash related citation. The discipline imposed was a seven day suspension."

To that, a protest was filed and the remedy requested revealed the following:

REQUEST THE GRIEVANT BE MADE WHOLE, WITHDRAWL(SIC)  
THIS SUSPENSION(SIC) TIME OFF USED (56 HOURS)  
VACATION TIME - BE PLACED BACK ON GRIEVANT'S  
TOTALS, WITH AN EXTRA 8 HOURS COMP. TIME ADDED TO  
HIS TOTALS FOR FRED'S AGGRAVATION & TROUBLE."

The statement of facts further revealed that the grievant was a trooper with seven years of seniority; that the grievant substituted seven vacation days for the suspension and that the grievant contested the discipline on the basis that he received disparate treatment because

others had not been disciplined for similar events although similar events occurred prior to others at this post. The evidence failed to reveal any proof in that regard with any specificity, however. The union further argued that the clerical error was minimal and inconsequential. The union further argued that there was insufficient cause to trigger further progressive discipline because of the minimal activity of the error complained of by the employer. It was upon those facts that this matter rose to arbitration for opinion and award.

### III. OPINION AND DISCUSSION

The state and the union entered into a collective bargaining agreement which contained a progressive discipline clause. The purpose of the clause and the purpose of the progressive discipline theory is to hopefully awaken those involved in substandard conduct to the fact that further and continued substandard conduct could create greater disciplines until finally, discharge is reached. The event triggering each step may be minimal but the fact of the matter is that when substandard conduct occurs, that event triggers usually, the next step in the progressive discipline ladder or track. It is inappropriate to argue that the activity complained of was indeed minimal. The activity occurred and the grievant knowing the hearing place to be other than Mt. Vernon Municipal Court did not pay heed to the situation and place the proper court name on the summons. Simply put, the act occurred and progressive discipline was invoked.

The union argued that disparate treatment was used in this particular instance. The evidence failed to reveal any predicate for that defense. Simply put, the union offered no evidence of any other

troopers whatsoever not being disciplined for the same type of activity to which the grievant admitted to in the hearing in this particular matter. Depending on the basis of disparate treatment is one thing but the evidence must substantiate that argument.

From all of the evidence and after reviewing all of the disciplines it is true that the grievant was sloppy in his paperwork activity. In each event that was placed into the record of his prior discipline (none of which are under protest at this time) all revealed the same type of happenstance that occurred with the grievant exhibiting sloppy paperwork. The grievant was found guilty of being inefficient or being sloppy in his prior activity and the same is true in this particular case.

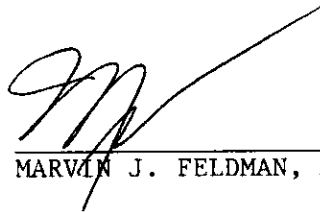
As was noted the grievant's immediately prior episode of inefficiency was an event of March 16, 1993, in which the grievant was given a three day suspension for failure to have a criminal complaint notarized. The instant matter is the next example of inefficiency and it appeared to me that the grievant should be disciplined but that the amount of seven days is too severe. I am recommending a five day suspension on the basis that the grievant best be advised that further and continued activity may well lead to discharge on the basis of the theory of progressive discipline.

Arbitrators are not prone to modify or change the discipline invoked by an employer unless there is good and sufficient reason in the file to do so. This is a case that triggers that modification. The evidence revealed that the prior discipline was a three day suspension

for failure to have a criminal complaint notarized or inefficiency in court related matters and it appeared that seven days is too great and that a five day suspension brings the point home well to the grievant. For that reason the matter is modified into a five day suspension.

IV. AWARD

The seven day suspension is modified into a five day suspension. The grievant shall be reimbursed. The grievant admitted the inefficiency but the seven day suspension appeared too severe under the circumstances of the case.



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MARVIN J. FELDMAN, Arbitrator

Made and entered  
this 22nd day  
of March, 1995.