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In the Matter of Arbitration

Between

Fraternal Order of Police-Ohio  
Labor Council, Bargaining Unit 15

and

The State of Ohio, Ohio Highway  
Patrol

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Case Number:

15-03-941212-0105-07-15

Before: Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

Paul Cox

Fraternal Order of Police-Ohio Labor Council

222 East Town St.

Columbus, OH. 43215

For Ohio State Highway Patrol

Robert J. Young

Ohio State Highway Patrol

660 East Main St.

Columbus, OH. 43205

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer violate the Collective Bargaining Agreement at Article 51 when it failed to make court no-show pay to the Grievant on November 30, 1994? If so, what shall the remedy be?

Background: The facts of this matter are undisputed. The

Grievant, William Gruszecki, is a Sergeant assigned to the Lisbon post of the Highway Patrol. On November 30, 1994 he worked the 11:00 p.m. - 7:00 a.m. shift. He went off duty at 7:00 a.m. on the 30th. Following the end of his shift he had a court appearance scheduled for 9:00 a.m. At 8:00 a.m. he telephoned the court to confirm his appearance was required. At about 8:20 a.m. he made contact with court officials and was informed that the hearing would not occur as scheduled. His appearance at court was not required on November 30, 1994. Sergeant Gruszecki subsequently applied for two hours pay. This type of pay is termed "court no-show pay" in the terminology of the parties. That payment was denied. A grievance protesting that denial was promptly filed and the parties agree it is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points to Article 51, Section 51.02 of the Agreement and insists it has been breached in this instance. Section 51.02, D contains the sentence "Day off is defined as any twenty-four (24) hour or more period in which the employee is not scheduled to be working." In this situation the Grievant ended his work day at 7:00 a.m. on November 30, 1994. He was then scheduled for two days off duty. These were December 1 and 2, 1994. On December 3, 1994 he was scheduled to return to work at 11:00 p.m. In total, he was off-duty for 64 hours. The Agreement,

cited above, references a 24 hour period off-duty for eligibility for court no-show pay. Sergeant Gruszecki was off duty for more than 24 hours. Hence, the pay at issue in this proceeding should be made to him the Union insists. In its view, the concept of "day-off" is the 24 or more hours referenced in Section 51.02D of the Agreement. That the posted schedule (Employer Exhibit 2) does not indicate November 30, 1994 to be a day off for Sergeant Gruszecki is immaterial in the Union's view. The test is the number of hours off-duty, not the posted day off in its opinion.

The history of negotiations supports the its position in this dispute the Union asserts. During the course of negotiations for the present Agreement the Union made a concession to the Employer. At Section 51.02 B it agreed to abandon the pre-existing three hour minimum payment to be made to employees required to appear in court within one hour of their starting or ending time at work. The trade-off was two hours court no-show pay in any 24 hour period in which the employee was not scheduled to work. That situation occurred in this case and the Employer must make the disputed pay to the Grievant in the Union's view. It seeks two hours pay for Sergeant Gruszecki. In his grievance the Sergeant also asked for a \$100.00 payment to St. Jude's Children's Research Hospital in Memphis, TN. as part of the relief to be afforded to him. The Union asks that this payment be provided

in the award as well.

Position of the Employer: The Employer asserts that a "day-off" is a day when an employee is not at work. The Grievant was at work on November 30, 1994. His work day ended at 7:00 a.m. He was not off-duty on the day in question. Hence, no court no-show pay is due to him.

During negotiations the State consistently asserted that the court no-show pay would be made only on a day-off. Sergeant Gruszecki was not off-duty on November 30, 1994. His posted days off were December 1 and 2, 1994. When the State did not pay him, it was merely carrying out the terms of the Agreement as it had indicated to the Union would be the case during the course of negotiations. As the Employer views this situation there are several possible scenarios which could occur. The Union interpretation of the disputed language could be correct, in which case payment should be made to the Grievant. The Employer's interpretation could be correct, in which case no payment is due as Sergeant Gruszecki was on-duty on November 30, 1994. Or, in a third interpretation of the language, the Grievant would not become eligible for the court no-show pay until 7:00 a.m. Thursday, December 1, 1994 which was 24 hours since he last worked. As the State views the language, its interpretation is most reasonable. Hence, the grievance should be denied.

Discussion: At Section 51.02 D the parties took pains to

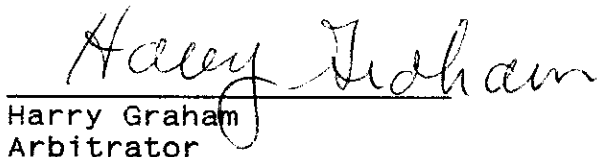
define a "day off." It is defined "as any twenty-four (24) hour or more period in which the employee is not scheduled to be working." (Emphasis supplied). Attention is called to the word "any" in the definition. Use of that word contemplates the court no-show payment being made during those circumstances in which an employee is not at work for twenty-four or more hours. It is unnecessary that a person be on a scheduled day off to receive the pay. All that is necessary to become eligible for the payment is the condition of being off-duty for "any twenty-four hour or more period in which the employee is not scheduled to work." In this case the chronology of events experienced by Sergeant Gruszecki satisfied the contractually established test for eligibility. It is undisputed that Gruszecki went off duty at 7:00 a.m. on November 30, 1994. He was not scheduled to work again until 11:00 p.m. on December 2, 1994. This period exceeds 24 hours. It is not required by the Agreement that the Grievant experience a cancellation of a previously scheduled court appearance on a scheduled day off in order to be eligible for no-show pay. All that is required by virtue of the word "any" is that the proper number of hours elapse in order for the tolling of eligibility to occur. That transpired in this situation. The concept of "day off" referenced in the first sentence of Section 51.02 D must be read in connection with the second sentence of the same Section. The second sentence

provides the definition to be used when determining what constitutes a "regular day off" which is referenced in the first sentence. In the absence of the second sentence which defines the term used in the first sentence the position of the Employer would have been correct. Inclusion of the definition in the second sentence modifies the concept of "regular day off" to include "any" 24 hour or more period in which an employee is not working; precisely the situation in which Sergeant Gruszecki found himself on November 30, 1994.

That Sergeant Gruszecki was off duty approximately one hour before learning that he would not be required to report to court on November 30, 1994 is irrelevant. He was in a period during which he was not scheduled to be working for more than 24 hours. As that was the case, the Grievant was eligible for no-show pay.

Award: The grievance is sustained. The grievant is to receive two (2) hours pay at the straight time rate. No payment is awarded to St. Jude's Children's Research Hospital.

Signed and dated this 1st day of August, 1995 at Solon, OH.

  
Harry Graham  
Arbitrator