

**ARBITRATION SUMMARY AND AWARD LOG**  
**OCB AWARD NUMBER: 1107**

OCB GRIEVANT NUMBER: 15-03-951114-0103-04-01

GRIEVANT NAME: David West

UNION: FOP 1

DEPARTMENT: Ohio Highway Patrol

ARBITRATOR: Mervin J. Feldman

MANAGEMENT ADVOCATE: Lt. Richard G. Corbin

2ND CHAIR: Brian Walton

UNION ADVOCATE: Paul L. Cox

ARBITRATION DATE: December 21, 1995

DECISION DATE: January 12, 1996

DECISION: Denied

CONTRACT SECTIONS  
AND/OR ISSUES: The use of uniform for personal and private activity.

HOLDING: Arbitrator Feldman stated that the evidence is overwhelming  
The grievant stoped the motorist for self-serving reassons  
rather than upholding the laws of the State of Ohio.

ARB COST:

#1107

VOLUNTARY ARBITRATION PROCEEDINGS  
CASE NO. 15-03-951114-0103-04-01

D. West

THE STATE OF OHIO	:	
	:	
The Employer	:	
	:	
-and-	:	<u>OPINION AND AWARD</u>
	:	
THE FRATERNAL ORDER OF POLICE/	:	
OHIO LABOR COUNCIL, INC.	:	
UNIT 1	:	
	:	
The Union	:	

APPEARANCES

For the Employer:

Staff Lieutenant Richard G. Corbin, Advocate  
Brian Walton, Second Chair  
Amy Beach, Observer  
Sergeant Brian Landis, Observer

For the Union:

Paul L. Cox, Attorney  
Renee Engelbach, Paralegal  
Beth Klopstein, Paralegal  
David K. West, Grievant  
Ed Baker, Staff Representative

MARVIN J. FELDMAN  
Attorney-Arbitrator  
1104 The Superior Building  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114  
216/781-6100

## 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 December 21, 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

The grievant in this particular matter is a trooper of the State of Ohio Patrol. He has seventeen years of service. His discipline record included discipline for court inefficiency, abusive use of sick leave, use of the uniform for personal and private activity, untruthfulness, tardiness, preventable patrol vehicle crash, overweight and a failure to render assistance.

In addition, to that long list of substandard activity by the grievant, the grievant also had been subjected to a twenty day suspension under the charge of improper on duty association with an individual for purposes other than those necessary for the performance of official duty. The facts in that case revealed that the grievant stopped a motorist with whom he had a social meeting, but the stop was not for official purposes although it included turning on his lights and

the use of his siren. That event was protested by the grievant and on July 6, 1995, the grievant's protest was denied and the matter was affirmed by the arbitrator herein. That opinion and award is attached hereto and made part hereof as if fully rewritten herein. It is some sixteen pages long and should be made part of the instant record.

The sum and substance of the current charges are found in a statement of charges against the trooper under letter of November 8, 1995. It stated as follows:

"November 8, 1995

Colonel Warren H. Davies  
Superintendent  
Ohio State Highway Patrol  
660 East Main Street  
Columbus, Ohio 43205

Subject: Statement of Charges Against Trooper D.  
K. West

Dear Colonel Davies:

It is herewith stated that reasonable and substantial cause exists to establish that Trooper David K. West, U755, P60, D7, has committed an act or acts in violation of the Rules and Regulations of the Ohio State Highway Patrol, specifically of:

Rule 4501:2-6-02 (I) (1 & 3) Conduct  
Unbecoming an Officer

It is charged that on October 31, 1995, while on duty, Trooper West had an improper on duty association with an individual for purposes other than those necessary for the performance of official duties and brought discredit to the Division. To wit: Trooper West stopped a female acquaintance of his, did not report the event as required by procedure, and made inappropriate and uninvited physical contact with her.

Sincerely,

Captain W. E. Lanning  
District Seven Commander  
Cambridge, Ohio"

Those were the charges that finally determined the discharge of the grievant and further statement of the charges in correspondence dated after that is entirely unnecessary. At any rate the citizen testified. She stated that she was stopped by the grievant. She stated that she knew the grievant but had not "dated" him. She stated that she was involved in housekeeping duties at a local hospital near Zanesville where the grievant took his meals. She stated that she had met the grievant at the hospital cafeteria. She stated that she had a casual talking relationship with the grievant at the hospital, no where else, and that there was no romantic relationship whatsoever. The complainant further testified that she had been married but was now single. The complainant further testified that she was contacted by telephone by the grievant at work and there was casual talk but nothing more.

The complainant stated that she drove a 1985 Nissan truck, orange, brown and rusty and was alone when stopped by the grievant. The vehicle that stopped her was a marked highway patrol car of the State of Ohio and it put on its red and blue lights. There was some evidence that the grievant had assisted the complainant with seat belts at that time but the complainant testified that she was uncomfortable because he was a man; that he ran his hand across her hip; that he had no relationship with her and that she felt helpless at the time she was stopped. The complainant further testified that she complained to the State Highway Patrol and that as a result of all of this, the discharge of the grievant occurred.

The record failed to reveal that such stop was duly recorded by the grievant with his radio contact at the time the stop was made or at any

other time. The employer indicated and stated that such stop and failure to reveal the stop was contrary to rule of the State Highway Patrol of Ohio. The grievant admitted the stop. the grievant said that the complainant was traveling fifty plus miles an hour in a forty or forty-five mile and hour zone and that he did not try to kiss or touch the grievant and that he never grabbed or touched her legs or waist. The grievant admitted not calling in the stop and the grievant admitted that this was his second episode of such incident.

At any rate, a protest was filed and that protest revealed the following:

"I WAS DISCHARGED BY THE HIGHWAY PATROL ON THE  
13TH OF NOVEMBER WITHOUT JUST CAUSE."

The request for remedy revealed the following:

"RETURNED TO DUTY IMMEDIATELY ND MADE WHOLE."

It was upon this evidence and those facts that this matter rose to arbitration for opinion and award.

### III. OPINION AND DISCUSSION

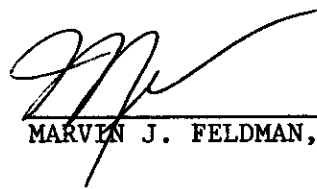
Management alleged that this was the second gross substandard act of the grievant for the same type of event. The first event was merely six months prior for which a twenty day suspension was upheld in arbitration. The employer found that the grievant had established an alarming pattern of behavior which made his continued employment as a law enforcer impossible; that on this occasion, a citizen was stopped

without reason other than for the personal gain of the state trooper and that the grievant acted outside the scope of his employment. The defense to the matter was that the complainant was speeding. However the stop was not called in nor was the grievant ticketed. It is apparent that the incident in this particular matter is the same type of incident that happened in the prior matter of July, 1995, a copy of that award being attached hereto and made part hereof. Quite frankly, the grievant has very little to complain about the termination of his seniority in this particular case.

The evidence in this particular case is overwhelming and the discharge of the grievant must be upheld for the charge indicated. There is very little discussion necessary in this case and the facts speak for themselves as they did in the previous case. Simply put, the stop of the motorist was made for the purpose of self-serving reasons rather for the purpose of upholding the laws of the State of Ohio.

IV. AWARD

Grievance denied.



MARVIN J. FELDMAN, Arbitrator

Made and entered  
this 12th day  
of January, 1995.