

**ARBITRATION SUMMARY AND AWARD LOG**  
**OCB AWARD NUMBER: 1153**

OCB GRIEVANT NUMBER: 15-03-960324-0030-04-01

GRIEVANT NAME: Eric Weinman

UNION: FOP

DEPARTMENT: Ohio Highway Patrol

ARBITRATOR: Marvin Feldman

MANAGEMENT ADVOCATE: Robert Young

2ND CHAIR: Brain Eastman

UNION ADVOCATE: Paul Cox

ARBITRATION DATE: July 31, 1996

DECISION DATE: August 15, 1996

DECISION: Granted

CONTRACT SECTIONS AND/OR ISSUES: Was the grievant issued a two day suspension for just cause?

HOLDING: Arbitrator Feldman found that the Employer failed to prove their case. The grievant was charged with two work rule violations; 1. Performance of Duty (inefficiency), 2. Truthfulness (making of false statements). The Arbitrator stated that, with regard to the first work rule, the Patrol did not place the written rule into evidence. It became impossible to determine what the rule actually stated. The grievant testified that the rule did exist but that it only had to do with DUI tickets, not a mere speeding ticket. The Arbitrator also stated that the grievant did appear in Court 3 times for this case and that could not be considered inefficiency. Also the grievant did not settle the case, it was the prosecutor that settled the case. With regard to the second rule, Arbitrator Feldman found that the grievant was not lying to his supervisor when he had stated that the State had won its case. The grievant testified that he did believe that the State had won its case, because the defendant had to pay a substantial amount of money, so therefore justice was done.

ARB COST: \$ 906.22

VOLUNTARY ARBITRATION PROCEEDINGS  
THE GRIEVANCE OF STATE TROOPER ERIC WEINMAN

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

APPEARANCES

For the Employer:

Sergeant Robert J. Young, Advocate  
Sergeant Brian A. Rhodes, Witness  
Brian J. Eastman, Office of Collective Bargaining  
Carol Mason-Scott, Observer

For the Union:

Paul Cox, Chief Counsel  
Trooper E.D. Weinman, Grievant  
Ed Baker, O.L.C. Representative  
Beth Klopstein, Paralegal

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

to Captain R.G. Lewis from the grievant's Post Commander revealed the following in that regard:

"Attached is an Administrative Investigation conducted by Sergeant B.A. Rhodes, Unit 1010 concerning the operations of Trooper E.D. Weinman, Unit 593. The investigation was initiated on February 2, 1996, after learning that Trooper Weinman had voluntarily dismissed a speed case just prior to trial.

On February 2, 1996, I sent Sergeant Rhodes to the Brown County Court to check on an unrelated pending case. While at court, he was advised by Assistant Prosecutor Steve Tissander that Trooper Weinman had been at court earlier and had entered into an agreement with a defense attorney to dismiss a speed case just prior to trial. Mr. Tissander advised he agreed to dismiss the charge even though he would have preferred that the case had went to trial.

Sergeant Rhodes also informed me that he had asked Trooper Weinman when he returned to the Post from court if he had won his case, to which Trooper Weinman replied that he had.

It is Post policy that when a case is set for trial, no further consideration is given toward any reductions. This policy was implemented to save court overtime, because defense attorneys and prosecutors were waiting until trial day to either offer or accept a reduced charge.

In this case, prosecution was ready for trial. All parties were present and ready to proceed when Trooper Weinman took it upon himself to enter into an agreement with the defense to dismiss the charge.

Not only did Trooper Weinman use poor judgment in making this decision, but he also gave false information to Sergeant Rhodes regarding the outcome of the case.

It is recommended that disciplinary action be taken against Trooper Weinman for his poor judgment and also for not being honest when giving his answer regarding the outcome of the court case."

was rule 4501:2-6-02, paragraph (E), which revealed the following:

"(E) False statement, truthfulness

A member shall not make any false statement, verbal or written, or false claims concerning their conduct or the conduct of others."

Thereafter and on April 15, 1996, the director of the Ohio Department of Public Safety suspended the grievant two working days. That letter of April 15, 1996, revealed the following:

"April 15, 1996

Trooper Eric D. Weinman  
2576 Moler Road  
Goshen, Ohio 45122

Dear Tpr. Weinman:

Please be advised that for disciplinary purposes, you are being suspended for two working days from your position as a Highway Patrol Trooper, Department of Public Safety, Division of the State Highway Patrol, effective April 16, 1996.

Very truly yours,

/s/Charles D. Shipley  
Director"

A grievance report was thereafter filed by the grievant and it revealed the following:

"GRIEVANT WAS GIVEN A TWO DAY SUSPENSION FOR 'DISMISSING A COURT CASE WITHOUT JUST CAUSE' AND 'TRUTHFULNESS' RESULTING FROM A COURT CASE WHICH OCCURRED ON 2-2-96 at 8:00 AM IN THE BROWN COUNTY COURT. THE CASE WAS A COMMERCIAL SPEED 65/55 INVOLVING DEFENDANT BEN JENKINS. GRIEVANT WAS GIVEN THE TWO DAY SUSPENSION FOR DISMISSAL OF THE CASE AND A STATEMENT MADE IN PASSING.

might be noted that his testimony revealed that the rule stated that troopers may not enter into any plea bargaining and settle any criminal matters.

The grievant testified that he knew that a rule in that regard was issued at the facility but that he believed that the rule pertained to "driving while intoxicated" matters only. The grievant believed that because he said that he was involved in the incident which triggered the rule publication and that initial incident was an "intoxication while driving" matter, not a mere speeding ticket.

It might be noted that it is impossible to determine what the rule actually stated because it was never placed into evidence. The fact of the matter is the employer had the burden of showing a rule violation if in fact the rule was violated. Without the written rule before the arbitrator it is difficult indeed to determine whether a rule violation in fact occurred. We have on one hand an affirmation by the employer by and through Sergeant Rhodes that there was a rule which disallowed plea bargaining for any court matters and on the other hand we have the grievant who denied that the rule was for the purpose of speeding cases. Thus we have a situation which is in equipoise and from that evidence it is difficult indeed to determine what the rule relates to. If in fact the employer sought to enforce a rule then that written rule should have been placed into evidence so that the arbitrator may determine what that rule pertains to. In the present state of events, as were revealed in this instant case, it is quite clear that an interpretation of the rule is impossible.


in the evidence to confirm the witnesses belief. The rules under which the grievant was disciplined on the second charge revealed that the grievant may be disciplined if he is inefficient. I find nothing inefficient in this particular matter whatsoever. The grievant appeared three times at the court house for the same activity (two continuances) and attempted to conclude it by bringing to the attention of the prosecutor a settlement discussion that, he, the grievant, had with the defense attorney. That is not in violation of any performance code that was placed into the record.

Further, the grievant was indicated to have made a false statement to a sergeant when he, the grievant, stated that he had won his court case. As indicated, the grievant felt he won because the speeder paid a substantial amount of money and the grievant felt that he was responsible for having justice done. I do not detect any conduct which would reveal that the grievant was involved in lying to his supervisor.

For all of these reasons I find the grievant filed his grievance for good reason and that the grievance is well taken.

#### IV. AWARD

The grievance is granted and the grievant shall be paid for two days lost time and the discipline shall be removed from the grievant's personnel file and a copy of this award placed therein.

  
MARVIN J. FELDMAN, Arbitrator

Made and entered  
this 15th day  
of August, 1996.