
In the Matter of Arbitration *
Between * Case Number:
Fraternal Order of Police-Ohio * 15-03-960109-0007-04-01
Labor Council *
and * Before: Harry Graham
The Ohio State Highway Patrol *

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 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:

Was the Grievant, David H. Simpson, issued a twenty (20) day suspension for just cause? If not, what shall the remedy be?

Background: The events prompting this controversy are not in dispute. The Grievant, David Simpson, has been a Highway

Patrol Trooper for approximately three and one-half (3.5) years. During that period he has been involved in seven (7) patrol car crashes. These have resulted in discipline of a progressive nature, culminating in the twenty (20) day suspension under review in this proceeding.

The Grievant is assigned to the Highway Patrol Post in Chardon, OH. On October 31, 1995 the post was informed of a vehicle operating in reckless fashion on I 90, north of Chardon. Trooper Simpson responded to the call and proceeded north on State Route 44. He left the Post at approximately 5:20 p.m. At about 5:37 p.m. Trooper Simpson was involved in an accident at the junction of SR 44 and Auburn Rd. in Geauga County. As he approached the junction the traffic light was red against him. He moved to the left berm and passed vehicles that were stopped for the red light. When he entered the intersection he was struck by a vehicle proceeding westbound. That vehicle had the green light. Both cars sustained minor damage. When the incident occurred Trooper Simpson had his lights and siren on. His headlights were in the flashing mode.

As the Grievant had prior incidents of preventable accidents on his record which had prompted the Patrol to issue progressively severe discipline a twenty (20) day suspension was administered to Trooper Simpson. That suspension was processed in the grievance procedure of the

parties and they agree it is properly before the Arbitrator for resolution on its merits.

Position of the Employer: The Patrol points out this is not the first instance of discipline for involvement in a preventable patrol car crash received by the Grievant. Seven prior instances of discipline were on his record at the time of this event. They were of progressive nature. Immediately prior to the October, 1995 incident he had a live ten (10) day suspension for a preventable crash.

Trooper Simpson had received extra driver training in order to deal with his repeated involvement in preventable crashes. In June, 1995 he had successfully passed a refresher course in Defensive Driving Maneuverability. The instructor for that course had noted that Trooper Simpson drove aggressively. It was recommended that he adopt a more conservative attitude. This had not occurred on the evening of October 31, 1995 according to the Patrol; hence the accident.

There is within the Highway Patrol an extensive review procedure when personnel are involved in traffic accidents. The circumstances of the accident are carefully scrutinized to determine whether the event should be classified as "preventable" or "nonpreventable." In this situation the normal review procedure was followed. All officers concluded that this accident was "preventable." Had Simpson come to a

complete stop before entering the intersection no crash would have occurred. As he was found to be at fault and had a history of similar events on his record the grievance should be denied the Employer asserts.

Position of the Union: According to the Union no reason whatsoever exists for discipline in this situation. On October 31, 1995 the Grievant was proceeding north on Ohio State Route 44. He had all warning signals operating on his cruiser. All emergency lights were on as was his siren. He slowed to approximately 10 mph as he entered the intersection of SR 44 and Auburn Rd. He did absolutely nothing wrong in this case. There is no evidence on the record to support a conclusion that the Grievant in any way contributed to the accident.

That the Grievant had a poor driving record prior to October 31, 1995 is irrelevant according to the Union. When he came to be involved in this accident he was not at fault in any way. In fact, had he been driving more aggressively, he would have proceeded through the intersection at a higher speed, making it unlikely he would have been hit in these circumstances.

In the final analysis, there is nothing on the record to prompt a conclusion that the Grievant was in any way at fault for the crash in October, 1995. As that is the case, his prior driving record is irrelevant in the Union's view. It

urges the grievance be sustained and the twenty day suspension at issue in this proceeding be stricken from Trooper Simpson's record and that back pay be made to him.

Discussion: Employer Exhibit 1 in this proceeding is the file concerning the internal investigation of the accident at SR 44 and Auburn Rd. The accounts of the investigator and all witnesses are consistent. Trooper Simpson slowed to about 10 mph as he entered the intersection. All warning devices on his vehicle, siren and lights, were operating. He was struck by another vehicle whose driver apparently did not either see or hear him. The investigator, Sergeant Richard Kreft, testified at the hearing. He indicated it was not required that Trooper Simpson come to a complete stop at the intersection before entering it. In his report he concluded that the other driver "never saw Trooper Simpson...."

Included in Employer Exhibit 1 is the report of the investigating officer who arrived at the scene, Patrolman Dan C. Grant of the Burton Police Department. In relevant part Officer Grant concluded that:

The trooper in all intents and purpose did what was possible to avoid the possibility of having an accident, by using emergency lights, and siren, slowing to a near stop to allow crossing traffic to yield to the emergency vehicle.

The person driving the other vehicle appeared not to be able to hear, or be looking for any possible danger that may have come from the side.

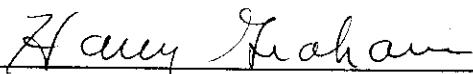
The record before the Arbitrator in this proceeding does

not show the slightest evidence of fault on behalf of Trooper Simpson in this situation. None of the reports in Employer Exhibit 1 indicate how he acted wrongly. That the Grievant had an extensive record of preventable accidents in his file at the time of this incident is insufficient to support discipline in this instance.

The evidence before the Arbitrator in this case shows that the Grievant was hit by the other vehicle. This despite his slow speed and use of all warning devices on the cruiser. Trooper Simpson was not cited by either the Highway Patrol or the investigating officer from Burton. There must be more than a poor prior record to justify an instance of discipline. There must also be evidence of fault or wrongdoing. In this case, there is none.

Award: The grievance is sustained. The twenty (20) day suspension at issue in this proceeding is to be removed from the Grievant's personnel file. He is to be paid all straight time wages he would have earned but for this incident.

Signed and dated this 3rd day of September, 1996 at Solon, OH.



Harry Graham
Arbitrator

cc 1
cc 2
cc 3
cc 4
cc 5