

#1178

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In the Matter of Arbitration
Between
Fraternal Order of Police-
Ohio Labor Council
and
The State of Ohio, Ohio
Highway Patrol

* 96 DEC 23 A8:21
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* Case Number:
* 15-03-960424-0036-04-01
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* Before: Harry Graham
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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 given a five day suspension for just cause? If not, what shall the remedy be?

Background: There is no dispute over the events that prompt this proceeding. The Grievant, Lee Foster, is a Trooper with

the Ohio State Highway Patrol. He has approximately 24 years of service and is assigned to the Massillon post. In February, 1996 he was due to attend an in-service training session at the Highway Patrol Academy in Columbus, OH. Trooper Foster is President of the Highway Patrol Credit Union. On February 27, 1996 he went to Columbus for the monthly meeting of the Credit Union Board of Directors. Contemporaneously he had been experiencing a variety of physical ailments. The training session at the Academy was scheduled to commence on February 28, 1996. On the evening of February 27, 1996 Trooper Foster left Columbus and returned home. He did not attend the training on February 28, 1996. Rather, he reported for work at the Massillon post. The Grievant works the 7:00 a.m. - 3:00 p.m. shift. He worked the bulk of his shift. In order to determine the cause of his physical difficulties his wife had made a doctor's appointment with the family physician. The only appointment available was at 2:50 p.m. on February 28, 1996. The Grievant kept that appointment.

Trooper Foster had not specifically requested permission to leave work early to keep his physician's appointment. He had, however, informed his supervisor's of it. In due course he was issued a five day suspension without pay. It was the opinion of the Patrol that he had not received permission to be absent from work before his shift ended. Nor had he

completed a request for leave.

A grievance protesting the five day suspension was promptly filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Employer: The Patrol points out that the Grievant did not receive explicit permission to leave work early on February 28, 1996. The payroll for that date indicates he worked an entire shift. This is not the case. To the contrary, he departed work early. The precise time of his departure is unknown but in order to keep a 2:50 p.m. appointment the Patrol suggests he must have departed the post some five or ten minutes before then to allow for transit time. Trooper Foster did not submit a request for leave to document his absence. Further, he was in uniform and drove a Highway Patrol Cruiser to the doctor's office. When he arrived at the office he was still on duty. He did not inform the Patrol via radio of his whereabouts or that he was not in the cruiser. Standing alone, this is a serious offense. It does not, in fact, stand alone. Trooper Foster has prior discipline on his record regarding a false report of his whereabouts while on duty. The sequence of events in this situation indicates that there may be developing a pattern of inattentiveness to duty on the part of the Grievant that must be remedied by discipline. As the offenses

involved in this case are serious, the Patrol urges the grievance be denied in its entirety.

Position of the Union: The Union points out that the reasons advanced for discipline in this instance have changed as events unfolded. The initial discipline referenced a violation of Rule 4501:2-6-02(B)(3) of the Patrol.

Specifically, Trooper Foster was charged with going to the doctor while on duty. In the Grievance Procedure the employer noted that the discipline was for Trooper Foster's going to the doctor while in uniform and in a Highway Patrol Cruiser. It also noted that the Grievant was out of contact from 1:28 p.m. to 3:55 p.m. when he reported he was at home. In its opening statement at the arbitration hearing the Employer referenced Trooper Foster's failure to file a request for leave as the reason for discipline. In its closing statement the Employer referred to his failure to maintain radio contact for a period on February 28, 1996 as the reason for discipline. There is no specific reason on the record to prompt discipline in this instance. Hence, it should be overturned according to the Union.

When Foster went to the doctor he had told his supervisors that he was going. He was told "OK." The Employer did not tell him not to go. Even the Employer cannot determine with certainty why it administered the five day suspension at issue in this proceeding. Hence, the requisite

just cause is lacking. The Union urges the discipline be overturned in its entirety and the grievant made whole.

Discussion: There is no element whatsoever of subterfuge in the behavior of the Grievant on February 28, 1996. He told his supervisors of his intent to go to the doctor at the end of his shift. He was given verbal approval. He told his supervisors why he had reported to duty at the Massillon post rather than attending the in-service training in Columbus. The Grievant neither attempted to deceive the Employer nor absent himself from duty improperly.


The Employer may not properly use Trooper Foster's failure to file a request for leave against him in this proceeding. Initially, he used a short time at the end of his shift for personal business. He believed it had been approved by his supervisors. This was not mere wishful thinking on his part. He had told them of his doctor's appointment and been given the OK to go. If the Employer wished to document his absence for payroll purposes it could have directed him to complete the necessary forms subsequent to February 28, 1996. That this has occurred with some frequency at the Massillon post is amply demonstrated by Union Exhibit 1 in this proceeding.

In the entire course of events on February 28, 1996 there is but one instance of possible improper action by the Grievant. This occurred when he failed to indicate his

whereabouts at the end of the shift. Given the nature of the Highway Patrol this is a significant omission of good behavior. The Grievant had been disciplined on a prior occasion for a similar infraction. Trooper Foster is a veteran of 24 years of service with the Patrol. He knows or should know better.

Award: The grievance is sustained in part and denied in part. The five day suspension at issue in this proceeding is to be reduced to a two day suspension. All reference to a five day suspension is to be expunged from the personnel file of the Grievant. The file may include reference to the two day suspension.

Signed and dated this 19th day of December, 1996 at Solon, OH.



Harry Graham
Arbitrator