

ARBITRATION AWARD

**OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF THE STATE HIGHWAY PATROL**

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: TERRY L. MCGILL**

CASE NUMBER: 15-03-971010-0106-07-15

APPEARANCES: For the Highway Patrol--Lt. Robert J. Dunn, Marietta Post, Michael Hosler, LEADS Security Officer, S/Lt. Robert W. Booker, Jr., OSHP HRM, and Lt. Robert J. Young, Advocate, OSHP HRM.

For the union--Sgt. Terry L. McGill, Grievant, Bob Stitt, OSTA, Elaine Silveira, OSTA, and Herschel M. Sigall, OSTA Advocate

Also present: Michael P. Duco, Esq., OCB, and Jim Lendavic OCB\LRS.

ISSUE: Was the grievant issued a five day suspension for just cause? If not, what shall the remedy be?

FACTS: Grievant, Sgt. Terry L. McGill, was employed as a sergeant at the Marietta Post in 1997, when he was investigated as a result of a complaint made to the post commander by a woman who complained that Sgt. McGill had run her license plate through LEADS (Law Enforcement Automated Data System) without just cause and had then released that information to his wife, who worked for the complainant. An investigation revealed that Sgt McGill had run her license plate, as well as the license plates of several other vehicles which he observed near his patrol vehicle where he parked it at his apartment, and that Sgt. McGill's wife knew what his searches had revealed. He was charged with a violation of Highway Patrol Rules and Regulations, specifically Compliance to

Orders. As a result of statements he made during the investigation, he was also charged with False Statements. He is a nineteen year employee, with one previous three day suspension for availability for duty and false statements. He received a five day suspension. There are no procedural issues, and the parties agree this dispute is arbitrable. The suspension was grieved, to no avail, and the matter was presented to me at a hearing in Columbus, Ohio on May 21, 1998, and now comes before me as arbitrator for final resolution.

CONTRACT PROVISIONS

20.12 Alternative Dispute Resolution

AWARD

The grievance is denied, except that the grievant should be paid the holiday time and one half that he would have received but for the suspension. I make no finding of purpose in the scheduling of the suspension, but believe the coincidence should not result in the suspension resulting in the loss of anything but the five regular days pay.

I believe the admitted misconduct of checking his wife's boss's plates and relating that information to his wife is a violation of the LEADS procedures which the grievant admittedly understood. It appears appropriate to mete out serious discipline for any violation of the requirement that the LEADS data base only be used for the "administration of criminal justice" Admin R 4501:2-10-01(D). The other two checks, which grievant explained as being related to his job, as he was rightfully concerned about safeguarding the state's property, and knowing who his neighbors were, still became known to the public because of his conversations with his wife. It is exactly this result, which lowers public confidence that their Fourth Amendment Rights are being respected except in the limited criminal justice context, that supports the discipline. I do not

believe the false statement charge was sustained. Under the circumstances of the investigation, with the delay in taking grievant's statement, his assertions that he did not recall the names of the persons whose licenses he ran is not proven to be a lie by the suspicion of the supervisor that he should remember. However, even without the false statement charge, the discipline is appropriate.

Respectfully submitted,

DATE: May 29, 1998


PHILIP H. SHERIDAN, JR.

ARBITRATION AWARD

**OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF THE STATE HIGHWAY PATROL**

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: MICHELLE L. RAYOT**

CASE NUMBER: 15-03-961121-0102-04-01

APPEARANCES: For the Highway Patrol--Shanda Cochrane Rice, Sgt. Todd Mason, , S/Lt.

Robert W. Booker, Jr., OSHP HRM, and Lt. Robert J. Young, Advocate, OSHP HRM.

For the union--Tpr. Michelle L. Rayot, Grievant, Bob Stitt, OSTA, Elaine Silveira, OSTA,
and Herschel M. Sigall, OSTA Advocate

Also present: Michael P. Duco, Esq., OCB, and Jim Lendavic OCB\LRS.

ISSUE: Was the grievant issued a three day suspension for just cause? If not, what shall the
remedy be?

FACTS: Grievant, Michelle L. Rayot, was employed as a trooper at the Swanton Post in 1996,
when she was investigated as a result of a complaint made to the post commander by the Wauseon
Police Department after a woman filed a police report concerning her being assaulted by a nude
man who was simultaneously masturbating. She told the Wauseon police she had reported this
incident to a female Highway Patrol Trooper who was in the drive-through at Burger King near
where the incident occurred in the Wal-Mart parking lot. She said she pointed out the vehicle and
the offender, who was watching her from the parking lot as she went up to the car, and that the
Trooper told her to go inside and call the sheriff, because it was out of her jurisdiction, and she
couldn't do anything. Trooper Rayot also reported the incident, but stated she was told by the

woman that she had seen a man masturbating in his truck, and that when she asked if he was still around, the woman said he had driven off. She admitted telling the woman to go inside the Burger King and call the sheriff to make a report, and that she took no action, but returned to the turnpike to her assigned duties. She was charged with violation of Admin R. 4501:2-6-02, performance of duty and assistance to the public, for failing to assist a crime victim. She was then a one year employee, with a previous verbal reprimand as well as a written reprimand on her record. She received a three day suspension. There are no procedural issues, and the parties agree this dispute is arbitrable. The suspension was grieved, to no avail, and the matter was presented to me at a hearing in Columbus, Ohio on May 21, 1998, and now comes before me as arbitrator for final resolution.

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20.12 Alternative Dispute Resolution

AWARD

The grievance is sustained because the employer has the burden of proof in disciplinary matters. See, e.g. Elkouri, Frank, *How Arbitration Works*, 5th edition, BNA Books, 1997, pp. 905-906.

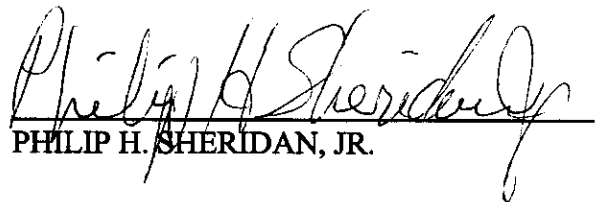
If I believe Trooper Rayot, no discipline is merited, as there was no crime scene to hold, and although making a call for the complainant would have been the better public relations action, I am not prepared to say failing to make a call where the offender has left the scene is a violation of the provisions of Admin R. 4501:2-6-02.

Similarly, if I believe Ms. Rice, then a nude man, who had grabbed her and made sexual advances against her, and who was still sitting in his truck watching her, escaped justice because of Trooper Rayot's failure to take any action when she was told this.

One woman's word against the other, without more, does not persuade me the state has proved the allegations which support the discipline. There is nothing in Rayot's testimony which is any different than what she said the night the incident occurred. It is consistent, and frankly I cannot picture Ms. Rayot ignoring an incident which probably amounted to a felony, if it had been presented to her as Ms. Rice stated in either of her written statements and her testimony. For the foregoing reasons, the suspension is disaffirmed.

Respectfully submitted,

DATE: May 29, 1998


PHILIP H. SHERIDAN, JR.