

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration

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Between

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EXPEDITED

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DECISION AND AWARD

OHIO STATE TROOPERS

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ASSOCIATION, INC.

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Anna DuVal Smith, Arbitrator

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Case No. 15-03-970701-0074-04-01

and

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Charles D. Bisesi, Grievant

OHIO STATE HIGHWAY PATROL

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Suspension

Hearing

Date of Hearing: May 28, 1998

Place of Hearing: Columbus, Ohio

Advocate for the Ohio State Troopers Association: Herschel Sigall, Esq.

Advocate for the Ohio Highway Patrol:

Lt. Robert J. Young

Issue

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

Decision and Award

The case for an improper relationship (4501:2-6-02 I3) is overblown. There is no evidence of any untoward activity, only hearsay and circumstances viewed with suspicion because of that hearsay. For example, the Grievant's use of the unrecorded line is easily explained by his routine use of that line on Union business and his lack of prior knowledge of the nature of the Mansfield Post's business. Transporting DUIs home also turns out to be routine without being deemed "personal business." Going out of one's assigned post to do so may not be routine, but this occurred as the result of the sergeant's last-minute intervention when the Grievant was already close to the county line. The fact that the Grievant knew the suspect from having arrested her on a similar charge

some years ago, subsequently running into her at local establishments, and receiving information on a crime does not, in itself or even in conjunction with other facts of the case, make for the sort of relationship that is implied here. However, an officer of the Grievant's experience knows or should know the importance of not placing himself in a position that puts him or his employer at risk when he can avoid it. The Grievant erred in this regard by his failure to properly document both his time *and* his mileage.

As to leaving his assigned post without authorization (4501:2-6-02 B3), the sergeant knew what was going on and let it occur though he had the opportunity to stop it like he did the involvement of Tpr. Cross. The second part of the charge on this rule is more troublesome, for although the Grievant was out of his area for only approximately 20 minutes (10 minutes each way from the county line), neither the dispatcher nor the other trooper from his post knew where he was and he was not available through the usual communications channels.

In sum, the Grievant was not issued a one-day suspension for just cause. He should have been disciplined only for the procedural errors of not documenting his mileage and not letting his own post know where he was. For these violations he will receive a written reprimand. The one-day suspension will be expunged from his record and he will be paid one day lost wages and benefits and otherwise made whole.

Cuyahoga County, Ohio
June 3, 1998


Anna DuVal Smith, Arbitrator

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration

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Between

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EXPEDITED

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DECISION AND AWARD

OHIO STATE TROOPERS

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ASSOCIATION, INC.

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Anna DuVal Smith, Arbitrator

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Case No. 15-03-970523-0062-04-01

and

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Robert S. Chapman, Grievant

OHIO STATE HIGHWAY PATROL

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Suspension

Hearing

Date of Hearing: May 28, 1998

Place of Hearing: Columbus, Ohio

Advocate for the Ohio State Troopers Association:

Herschel Sigall, Esq.

Advocate for the Ohio Highway Patrol:

S/Lt. Robert W. Booker


Issue

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

Decision and Award

With no direct witnesses to the events alleged, the Employer's case depends on work records and the Grievant's admissions. It is clear to me from the latter that the Grievant had more than casual exchanges of pleasantries with the OTC employee while they both were on duty and that either he allowed his professional duties at toll collectors' booths to become a shield behind which the personal relationship developed or he deliberately exploited them for that purpose. In other words, he consciously or unconsciously sought her out and had conversations with her about intimate, private matters. The Grievant does not know where to draw the line between a friendly professional relationship and an on-duty personal involvement. This warrants correction. On the

other hand, how often his contacts occurred and for how many minutes or hours remains unknown. Moreover, there is no proof of harassment or neglect of duty. In light of this and his clean record, a one-day suspension is not progressive and is more than corrective. I therefore find it was issued without just cause and reduce it to a written reprimand. The one-day suspension will be expunged from his record and he will be paid one day lost wages and benefits and made whole.



Anna DuVal Smith, Arbitrator

Cuyahoga County, Ohio
June 3, 1998

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration

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Between

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EXPEDITED

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DECISION AND AWARD

OHIO STATE TROOPERS

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ASSOCIATION, INC.

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Anna DuVal Smith, Arbitrator

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Case No. 15-03-970310-0032-07-15

and

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William J. O'Rourke, Grievant

OHIO STATE HIGHWAY PATROL

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Suspension

Hearing

Date of Hearing: May 28, 1998

Place of Hearing: Columbus, Ohio

Advocate for the Ohio State Troopers Association: Herschel Sigall, Esq.

Advocate for the Ohio Highway Patrol:

Lt. Robert J. Young

Issue

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

Decision and Award

There is no question in my mind that the Grievant purposefully placed his vehicle in the path of the motorcycle and applied his brakes. There is also no question that he knew the rider was without goggles or helmet and that he did not yet know the rider's record beyond what he observed with his own eyes in the preceding minutes. Clearly the Grievant was outside the Policy 200.06-01 guidelines for roadblocks of motorcycles which state that "no type of roadblock should be considered unless the violator is wanted for or chargeable with a life-threatening felony," caution that moving roadblocks are "extremely dangerous," that "the violator is very unpredictable and many times will choose any avenue of escape or ram the patrol car," and indicate that moving roadblocks

usually involve two patrol cars which are "gradually slowed to a stop." Moreover, the Grievant is a supervisor with many years of service and had frequent roll-call training on the use of force and on pursuits. The only question is whether the Grievant's actions forced the cyclist to crash or merely forced him to make a decision. That is, did the cyclist have a reasonable opportunity to avoid colliding with the cruiser, or was this option removed by the Grievant? The State imposed the suspension believing the Grievant not only forced the cyclist to crash, but did so on purpose. If the State is correct, I would agree the suspension is warranted. However, I do not find the evidence as persuasive as the State does. The distance and perspective of the witness from the restaurant, the lack of testimony from the other observer, the diagram of the accident site and the estimated speed of the vehicles, and the Grievant's own story all leave the question open in my mind as to whether the Grievant left enough distance for the 40 mph motorcycle to stop or turn right instead of colliding with the cruiser. It thus seems to me as equally likely that the proximate cause of the crash was the cyclist's decision and futile attempt to escape by turning left to go around the cruiser as it was the Grievant's decision to use force to stop the cycle. A doubt of this magnitude must be resolved in favor of the Grievant. However, the Grievant is not completely blameless for the course of events, for he acted outside of guidelines which were well known to him and, in my opinion, without sufficient justification under these circumstances. I therefore find that while the State lacked just cause to suspend the Grievant, good and sufficient reason exists for a written reprimand. The one-day suspension will be expunged from the Grievant's record and be replaced with a written reprimand. The Grievant will receive one day lost wages and benefits and made whole.

Cuyahoga County, Ohio
June 3, 1998



Anna DuVal Smith, Arbitrator