

ARBITRATION AWARD

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

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: SHELLY R. WALDEN**

CASE NUMBER: 15-00-980923-0139-04-01

APPEARANCES: For the Highway Patrol--Deputy Jeff Gobbi, Clermont County Sheriff's Department, Jim Lendavic, OCB, and Lt. Robert J. Young, Advocate OSHP HRM.

For the union--Tpr. Shelly R. Walden, Grievant, Bob Stitt, OSTA, and Herschel M. Sigall, OSTA Advocate.

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

FACTS: Grievant, Shelly R. Walden, was employed as a trooper assigned to the Georgetown Post. She was issued a three day suspension based upon her action when she was stopped by Deputy Gobbi while she was on her own time and driving her personal vehicle. She received a warning ticket claiming she had exceeded the speed limit and that she had changed lanes without a signal.

The facts are not seriously in dispute. The grievant did not believe she had committed an offense, and she identified herself as a trooper in order to convince the deputy she knew what she was talking about. She was correct about the speed limit, and the turn signal offense came up rather late in the contact. However, she did try to continue her argument with the deputy after he had made it clear he had heard all he wanted to hear. When he ordered her to return to her vehicle she "flipped him off".

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 May 18, and June 4, 1999, and now comes before me as arbitrator for final resolution.

CONTRACT PROVISIONS

19.01 Disciplinary Procedure-Standard

19.05 Disciplinary Procedure-Progressive Discipline

Admin R 4501:2-6-02(I) and 4501:2-6-05(B)(1)

DECISION: Grievant argues management determined to discipline her for impermissible reasons, and points to the discussion of her as a lesbian with an attitude in the initial investigation of Deputy Gobbi's complaint. She also argues her frustration and gesture should be excused because of the rude and ignorant behavior of the deputy.

Management argues that grievant's conduct caused needless problems in dealing with the County Sheriff, and that it is exactly this sort of conduct which is contemplated when the Patrol issues regulations for the control of unbecoming conduct by its employees. Grievant identified herself as a trooper and then acted so as to cause a complaint to be filed against her by the on-duty officer. The amount of discipline is justified because of a previous written reprimand issued to the grievant concerning another complaint issued against her when she was the subject of another traffic stop.

I fully accept the grievant's argument that the deputy did not act in a professional manner in dealing with her. It does not appear to me that he made a valid stop, even for a warning, although I suppose the signal violation is possible. However, she did involve herself and the Patrol in arguing with someone who she recognized as a person who was not likely to be convinced he was wrong,

and who was likely to try to cause her trouble on her job if she gave him an opening. His behavior is not in question. Hers is. I find "flipping off" the deputy is conduct unbecoming an officer, even one off duty, when she holds herself out as a patrol trooper. The discipline is not too harsh given the previous incident.

AWARD: The grievant was issued a three day suspension for just cause.

Respectfully submitted,

DATE: June 11, 1999


PHILIP H. SHERIDAN, JR.

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ARBITRATION AWARD

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

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: RONALD J. GREENWOOD**

CASE NUMBER: 15-00-990316-0015-04-01

APPEARANCES: For the Highway Patrol--Sgt. Reginald Lumpkins, S/Lt. Larry J. Banaszak, Jim Lendavic, OCB, and Lt. Robert J. Young, Advocate OSHP HRM.

For the union--Tpr. Ronald J. Greenwood, Grievant, Tpr. John H. Croston, Bob Stitt, OSTA, and Herschel M. Sigall, OSTA Advocate.

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

FACTS: Grievant, Ronald J. Greenwood, was employed as a trooper assigned to the Athens Post. During the course of a traffic stop, Tpr. Greenwood took hold of the passenger by the neck and arm, and threw him to the ground. He was disciplined for excessive use of force. Tpr. Greenwood was training a new trooper, and the entire incident was recorded on videotape. The vehicle appeared to be operated by an intoxicated driver, and when the troopers tried to stop it the driver continued to drive at 45 miles per hour for several miles, and then stopped in the roadway of a dark county road. The operator and the passenger did not immediately obey the commands of the troopers, but did exit the vehicle. Tpr. Greenwood admittedly intended to and did throw the passenger to the ground to handcuff him. The passenger cooperated in being handcuffed, and followed the directions given him after being taken to the ground. The driver did resist being put on the ground and being

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handcuffed. No one was injured. The troopers then reported the use of force according to policy, and the discipline was initiated after a central office review.

There is a procedural issue, and the parties agree this dispute is arbitrable (absent the procedural issue). The suspension was grieved, to no avail, and the matter was presented to me at a hearing in Columbus, Ohio May 18, and June 4, 1999, and now comes before me as arbitrator for final resolution.

CONTRACT PROVISIONS

19.01 Disciplinary Procedure-Standard

19.05 Disciplinary Procedure-Progressive Discipline

20.02 Definitions (Grievance Procedure)

20.07 Grievance Procedure

DECISION: Procedural issue: Management argues the arbitration should be decided in management's favor because the arbitration was not filed in accordance with Article 20 of the labor agreement. The agreement requires that grievances for suspensions of less than ten days be filed at the second step of the grievance procedure. Since the second step requires filing with the Office of Human Resource Management within ten days, and since the grievant's original grievance form was not filed with that office within the time limit, the language of the contract requires that the arbitration be resolved in favor of the position of the employer.

The union argues that procedural defaults are disfavored in arbitration cases and the language of the second step of the grievance procedure is so confusing on its face that any procedural default should be excused. The grievant filed his grievance with his supervisor well

within ten days, and then forwarded it to Human Resource Management as soon as it was returned to him by his supervisor.

I will consider the grievance on its merits. The language of the second step of the grievance procedure does not clearly state a time limit when grievances are to be filed directly at the second step, but rather assumes a first step grievance has been filed and denied. It makes no sense to me that a grievant filing at the first step would have substantially more time to file than a grievant filing at the second step.

Management argues that the use of force by grievant is clearly inappropriate under the circumstances. The videotape shows no action by the passenger in getting out of the vehicle which justified the grievant's action in throwing him to the ground. Even though the grievant is an exemplary employee with no previous discipline the matter is serious enough to justify a three day suspension.

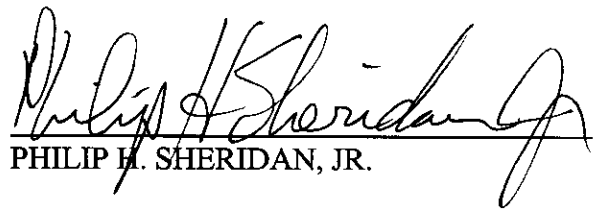
The union argues that the use of force by the grievant was appropriate under all of the circumstances. The investigation and discipline was based on assumptions that were not true. The passenger had locked the door to the car as the grievant approached the vehicle. The vehicle was registered to a woman, and the actions of the driver in continuing to drive for the distance he did also caused justifiable concern that the two men in the car were more than just a couple of drunks. Grievant and the other trooper on the scene both insisted the men did not follow orders and appeared ready to resist, run or fight. The grievant also asserts that he had been counseled about not being aggressive enough in drunk driving traffic stops. The union also argues the discipline is excessive even if justified because it is substantially more harsh than would be expected for an employee with the performance record of the grievant.

I have again reviewed the videotape of the incident in conjunction with the grievant's testimony as well as the testimony of his witness. What I see is a visibly drunk individual getting out of the vehicle and turning toward it. He says nothing, and makes no movement that I could see to walk to the rear of the vehicle. Trooper Greenwood then takes him forcefully by the neck and arm and throws him to the ground. I do not find the force used was "based on the actions and behavior of the subject". The use of force does not appear to be "reasonable for the situation". Management's decision to impose more severe discipline than would be expected under the progressive discipline article of the contract is justified by management's attempts to prevent abuse of power and force by troopers in the pursuit of their duties.

AWARD: The grievant was issued a three day suspension for just cause.

Respectfully submitted,

DATE: June 11, 1999


PHILIP H. SHERIDAN, JR.