#1388

In the matter of arbitration between

Ohio State Troopers Association,
Union

And

Case no. 15-00-990407-0022-04-01
James P. Danaher, Grievant

State of Ohio, Department of Public Safety,
Employer

Arbitrator's Decision and Award

Introduction

This matter was heard in Steubenville, Ohio on August 12, 1999. Lieutenant Sue Rance represented the Employer. General Counsel Herschel Sigall represented the Union. All witnesses were sworn. No procedural matters were raised. There were several joint exhibits presented: Jt. I- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package; Jt. 4- the departmental investigative package. Additional exhibits were introduced by the Union and admitted during the hearing.

Issue

The issue was stipulated as follows: Was the Grievant issued a one day suspension for just cause? If not, what shall the remedy be?

Facts

Grievant is a nearly sixteen year employee of the Patrol. He was assigned to the Steubenville post as a Trooper. On November 20, 1998, Grievant was hired by a private contractor to control northbound traffic on SR 7. The road was being repaired under ODOT supervision. As part of the repair process, the road's two passing lanes, north and south bound, were closed for a period of time. Prior to this date, the ODOT subcontractor had sought traffic control assistance from the Steubenville post. [redacted]

Grievant testified that he was controlling northbound traffic only; and was given no other direction as to his responsibilities by either the contractor or any Employer management staff. After an uneventful morning, the construction process reached the area where SR 7 intersects with CR 17(also known as Rush Run Road). [redacted] The eastbound vehicle, driven by McCartney, was struck by the southbound traffic on SR 7.

It is undisputed that McCartney did not check for southbound traffic before he proceeded. [redacted]

[redacted] Certain signed a report of a telephone interview conducted by the Employer. A series of events followed, resulting in a second investigation of the accident. McCartney's original citation for failure to yield was pulled, and the instant case resulted. [1]

[1] This case was held as an expedited proceeding. The investigative files were admitted and testimony was offered about the construction site, the role of the officer, the motive of witness

Neither the driver of the eastbound vehicle nor his wife testified. No explanation was proffered for their nonappearance. No offer of proof was made as to their anticipated testimony. McCartney's statements appear as part of the Jt. Ex. 4.

Opinion

Grievant was charged with a violation of Rule 4501:2-6-02(B)(5). [redacted] In support of its position, the Employer brought forward an eyewitness, Costain, who had no apparent motive to testify against Grievant, other than his civic duty.

The Union argues that Grievant did not motion the vehicle driven by McCartney out into the on coming southbound traffic, and thus committed no chargeable offense. The Union points out that Costain's memory is uncertain as to the placement of the relevant parties and other vehicles at the time of the accident. The Union points out that in order to believe the scenario posited by the Employer, it would be necessary for the Arbitrator to believe that Grievant motioned a car out into a safe zone, knowing that the car could not then make the turn into the northbound lane of SR 7, and that the Grievant did so with the full knowledge that he could not see southbound traffic on SR 7 at the time he directed the eastbound car out into the highway. The Union argues that this assumption is inconsistent with logic and common sense.

The Arbitrator is left with two conflicting versions of Grievant's hand motions on the date of November 20, 1999. She must decide which version to credit. [redacted] sworn testimony on the critical fact in dispute: what happened on November 20, 1998. [redacted]

Costain in coming forward, what might have happened if Grievant had the chance to live the day over again, etc. [redacted]

deemed conclusive enough by the Arbitrator to mandate a finding in favor of the Employer.

The Employer stated that Grievant made an honest mistake in his actions on November 20,1998. The Employer did not contend that Grievant could see southbound traffic from his position. Its apparent position is that Grievant deliberately, but without malice, motioned McCartney to head out across moving traffic until northbound SR 7 traffic was moving once again, and his car could then move into the northbound lane. This scenario is not compelling to the Arbitrator. Indeed, had the Grievant showed such a flagrant disregard for the safety of McCartney and his passenger, the Arbitrator can only assume that a much higher level of discipline would be before her. Nothing in the Grievant's past history of employment would support the inference that he was lying about what happened on November 20, 1998. [redacted]

Award

The Grievance is granted. Grievant shall be made whole in back pay and benefits for the period of the suspension.

Issued this 19th day of August, 1999 in Columbus, Ohio.

Sandra Mendel Furman, Arbitrator

#1388

In the matter of Arbitration between

Ohio State Troopers Association,
Union

And

Case no. 15-00-990506-0044-04-01
John Kennedy Fitzgerald, Grievant

State of Ohio, Department of Public Safety,
Employer

Arbitrator's Decision and Award

Introduction

This matter was heard in Steubenville, Ohio on August 12, 1999. The Employer was represented by Lieutenant RobYoung. General Counsel Herschel Sigall represented the Union. All witnesses were sworn. No procedural matters were raised. There were several joint exhibits presented: Jt. I- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package; Jt. 4- the departmental investigative package. Additional exhibits were introduced by the parties and admitted during the hearing.

Issue

The issue was stipulated as follows: Was the Grievant issued a five day suspension for just cause? If not, what shall the remedy be?

Facts

The facts are undisputed. Grievant is a nearly ten year employee of the Patrol. He was assigned at the time of the incident giving rise to the discipline to the St. Clairsville post. [redacted]

Opinion

The Employer imposed a five day suspension on Grievant for an accident that caused damage to a structure on its property; it cited Rule 4501:2-6-05(D)(1) as the basis. The Employer characterizes the accident as preventable. There was also evidence of scraped paint from the vinyl siding on the state car driven by Grievant; apparently, this was easily removed from the car. The Employer argues that the discipline was appropriate in the context of the responsibilities and expectations placed on a Patrol Officer, to drive safely, courteously, and in conformance with all laws. The Employer urges the Arbitrator to place the discipline in the context of Grievant's past disciplinary record.

[redacted] The Union states that the Employer's warning in its grievance response that the next offense is discharge should militate against imposition of the five day suspension. The Union also cited an example of claimed disparate treatment involving a high ranking managerial employee, where a less severe discipline was imposed for a significantly more severe accident in terms of property damage. It appears that a one day suspension was imposed for two preventable accidents. The management official was cited for the accident at the main post office, in contrast to Grievant. Upon cross-examination of Lt. Young, additional instances of lesser discipline for accidents involving other departmental employees were cited; although no names, dates, or specifics were available.

There is no dispute that the Grievant caused an accident on February 19,1999.

The current incident did not cause personal injury nor did it result in damage of a financially significant nature. The Union contrasts this with the accident caused by the management employee; see Union Ex. 5. Despite any contrast that appears between the two accidents, it cannot serve as the basis for mitigation.

dissimilar discipline. Under appropriate facts, a discipline may be disaffirmed or modified if there is proof of such disparate treatment.

Award

The Grievance is denied.

Issued this 19th day of August, 1999 in Columbus, Ohio.

Sandra Mendel Furman, Arbitrator