

#1394

ARBITRATION

BETWEEN

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

and

GRV. OCB #15-00-980202-0018-04-001

THE OHIO STATE TROOPERS  
ASSOCIATION

Appearances:

For the Patrol:

Lt. Robert J. Young, Esq.

For the Association:

Herschel M. Sigall, Esq.  
and  
Elaine N. Silveira, Esq.  
On the Brief

OPINION AND AWARD OF THE ARBITRATOR

Frank A. Keenan  
Labor Arbitrator

22 OCT - 3 PM 1991

Statement of the Case:

The instant matter was submitted to the Arbitrator, with briefs, on April 16, 1999. It involves the question of whether the Patrol was obliged to pay double back pay and/or overtime pay to Troopers whose shift assignments changed pursuant to the terms of Article 26.01, which terms were modified in the current and governing Contract. Under the newly modified terms of Section 26.01 Troopers may not bid on the same shift more than three times in a row. The duration of a shift period is approximately three months. Heretofore it had been six months. Accordingly, there are times when a shift ends and a new shift begins where a number of Troopers will be scheduled, for example, to work 4 p.m. to midnight one day and then turn around and work 8 a.m. to 4 p.m. the next day. In this example there would only be sixteen hours between shift starting times. This situation of less than twenty-four (24) hours between starting times triggers the double back provisions of Section 26.05. Following the implementation of the modified 26.01, there were occasions where the Patrol, with 72 hours notice or more, changed the off duty days of the new shift, in effect requiring the Trooper to take off the first day of his/her new shift schedule and work the off day which the posted and bid schedule indicated was later in the work week. This rescheduling of the Trooper's off duty day to the first day of the new shift schedule avoided the double back situation. It also triggered the

grievances of Trooper McLaughlin and Trooper Patton, which are the subject of the instant arbitration proceeding.

Trooper McLaughlin grieved in pertinent part as follows:

"Alleged Contract Violation - 26.05 double backs.

Facility Commander changed scheduled days off of affected units to avoid double back pay.

This change was made to the following Post 5 units as well: Trooper R. Wells . . . , Trooper B. L. Rutherford . . . , Trooper A. W. Lawer . . .

Requested Remedy - double back pay for affected units. "

Trooper Patton grieved in pertinent part as follows:

"Alleged Contract Violation - 26.05 and 27.03

My permanent work shift changed pursuant to the operation of Article # 26 and I moved from 1st shift to 3rd shift. My days off remained the same. In moving from 1st to 3rd shift I would have reported to work on the first day of my new shift less than 24 hours after completing my last service on first shift and would have therefore been entitled to the "double back" pay provisions of Article 25.05.

In violation of Article 27.03 the employer changed my scheduled days off and thereby avoided the payment of this premium time. Article 27.03 states, 'The employer will not change a member's schedule . . . to avoid the payment of overtime without the member's consent.' I gave no such consent.

Requested Remedy

That I be paid all premium pay that would have accrued to me had the employer not changed my schedule in violation of the collective bargaining agreement."

The Ohio Troopers Coalition publishes a publication entitled "The Bugle" for the members of the OTC and the 9 Troopers Lodges, including OSTA. The volume 98, Issue I edition of the Bugle contained the following excerpt:

"Answers to Frequently Asked questions

\* \* \*

DOUBLE BACKS - The Ohio State Troopers Association has been forced to file its first unfair labor practice (ULP) with . . . SERB after receiving grievances alleging that the Patrol refused to pay double backs created as a result of the mandatory three-month shift changes. This was clearly addressed at the negotiating table. Our negotiating team warned that mandatory shift changes would create double backs and cost the State money. Captain Corbin stated 'Double backs are a cost of doing business--we will pay them.'

The ULP the Bugle refers to was filed 2/4/98 and reads in pertinent part as follows:

"During mediation and fact finding related to the negotiation of the recently executed collective bargaining agreement for Units 2 and #15 the employer did state at the bargaining table and to the Fact finder that the change it proposed in previous contract language that would modify permanent shift assignment would not interfere with existing provisions requiring the payment of premium time when ever an employee is scheduled to work two shifts less than twenty four hours apart. The employer stated at the negotiation table that such occurrences occasioned by the adoption of its shift assignment proposal would be viewed as 'simply a cost of doing business.' The Fact finder adopted the proposal of the employer and the OSTA membership ratified that proposal with the assertion of the employer firmly in mind. The employer now has undertaken concerted action to unilaterally change schedules of bargaining unit members upon such members being required to change shifts to conform to the new contract provisions. The change of schedules is undertaken to avoid the payment of premium time and is contrary to the stated intention and position of the employer at and during negotiations. Such conduct constitutes bad faith bargaining in violation of ORC 4117 A (1) (3) & (5) and is a continuing Unfair Labor Practice."

SERB dismissed the ULP with prejudice stating that "information gathered during the investigation reveals the issue of

changing days off is purely a contractual matter that would be best addressed in the grievance/arbitration process."

The Patrol introduced into the record a written Statement from Captain Corbin stating in pertinent part as follows:

" . . . I was a member of the Employer negotiating team during the first round of negotiations with the Ohio State Troopers Association in 1997.

At the completion of the negotiations and acceptance of Factfinder Jonathan Dworkin's award the Union issued a recap of the contract changes in their publication The Bugle. On page 6 of the first issue of the publication the Union attributed a quote to me about their "warning" that a change in scheduling methodology would create double backs and cost the state money.

First of all, I did not do the presentation on scheduling during factfinding, and I do not recall making the statement. However, the Union's use of the alleged quote in The Bugle, was in my view, a amateurish attempt to create animosity among the rank and file toward the Employer.

The fact is the scheduling method used since 1986 negotiations resulted in double backs, as evidenced by arbitration awards dating back to 1987. In addition, the Employer has paid double backs since 1986, some of which result from schedule changes. The administrative impact of the quote is accurate.

In regard to double backs, a change in the scheduling process, away from strict seniority based scheduling to a more equitable system, did not change the double back language, prior arbitration awards, or the practice of the parties. It certainly did not erode the Employer's right to change time off days in accordance with Arbitrator Keenan's 1991 award. . . ."

The Patrol's advocate and brief writer, Lt. Young, notes in his brief that he too was a member of the Employer's negotiation team for the current Contract and that "double backs were never

discussed in conjunction with the issue of changing days off when the schedule changes."

One or another of the parties point to the following Contract provisions as relevant:

**ARTICLE 26: HOURS OF WORK AND WORK SCHEDULES**

**26.01 Shift Assignments**

Shift assignments will be made by the facility administrator on the basis of seniority. Beginning with the first bid period following implementation of the Agreement, schedules for troopers assigned to field locations will be bid by seniority, most senior first, at each facility. Troopers will bid upon two reasonably equal three month periods. Troopers may not bid on the same shift (day, afternoon, midnight) more than three times in a row unless choices are limited by prior selection. Dispatchers and Electronic Technicians will continue to bid on the basis of seniority only.

**26.05 Double Backs**

At any time when the starting times of shifts worked by a member are less than twenty-four (24) hours apart, the members will receive one and one-half (1-1/2) times his/her hourly rate, including premium pay for the second shift worked except in local emergency situations. A shift worked immediately following a report-back will not be considered a double back for pay purposes under this Article.

**ARTICLE 27: OVERTIME**

**27.01 Overtime and Compensatory Time**

Because of the unique nature of the duties and emergency response obligations of the Division, management reserves the right to assign employees to work overtime as needed.

1. Any member who is in active pay status more than forty (40) hours in one week shall be paid one and one-half (1.5) times his/her regular rate of pay including shift differential if ordinarily paid for all time over forty (40) hours in active pay status. The regular rate of pay includes all premium pay routinely received.

#### 27.02 Active-Pay Status

For purposes of this Article, active pay status is defined as the conditions under which an employee is eligible to receive pay, and includes, but is not limited to, vacation leave, personal leave, compensatory time, bereavement leave and administrative leave. Sick leave shall not be considered active pay status for the purposes of this Article.

#### 27.03 Overtime Assignments

It is understood and agreed that determining the need for overtime, scheduling overtime, and requiring overtime are solely the rights of the Employer. The Employer will not change a member's schedule or scheduled shift starting time to avoid the payment of overtime without the member's consent. Mandatory overtime, assigned by the Employer, shall be assigned to the most junior employee at the facility. In the event of multiple overtime assignments, reverse seniority shall be used. . . .

#### The Association's Position:

The Association takes the position that Patrol changed the Grievants' days off solely to avoid payment of a double back, as illustrated by the case of Trooper Fiala. Thus when Trooper Fiala reported to work he found a note from his supervisor stating that his schedule had been changed "to facilitate the change of shifts and you from having to double back." The Patrol argues that it has retained the right to change scheduled for "operational necessity." However, the instant cases are not about "operational necessity," but rather about avoidance of a contractual duty to pay double back pay when a Trooper returns to work within 24 hours of the starting time of his last shift. In all cases, the schedule was changed after the bid period, when it was realized that a double back would take place. When a Trooper bids on a specific shift assignment, he or she does so according to what days off have already been

designated. The Association asserts that the Grievants have been penalized by the Patrol's misinterpretation of Article 26.05. The Grievants' schedules were changed and therefore they did not work the double back, which caused them to be deprived of the extra pay associated with the double back.

The Employer erroneously relies upon this Arbitrator's decision in the arbitration of Trooper Kevin J. Calderwood, OCB # 15-02-900821-067-04-01. That arbitration did not pertain ~~to~~ double backs. That arbitration dealt with the changing of days off due to the operational necessity caused by the Ohio State Fair. As this Arbitrator so aptly stated in the Calderwood arbitration, "only the strongest of implications could serve to deprive the Patrol of response to legitimate operational needs." (pg. 13). The grievance was sustained because the Employer had failed to give Trooper Calderwood the requisite notice required.

Rather, the Union believes the proper arbitration to follow is the decision by this Arbitrator in Trooper Ronald Greenwood's case, OCB #15-03-880131-0012-04-01. In that case, Trooper Greenwood, prior to a new shift assignment, was asked to change his days to avoid a double back; Trooper Greenwood declined. Nevertheless, the Employer unilaterally changed Trooper Greenwood's days off without his consent. The change avoided the double back and thereby alleviated the Employer's responsibility to pay the double back.

The Employer argued that the reason for avoiding the double back was to ensure that its employees are healthy and well-rested



for their work shift. However, the Employer contradicts itself when it does not allow the payment of a double back for training, whether it be to training or from training. Are employees less tired after or before a training schedule? The Employer would contend that they are. The reason the Employer changed the schedule of Trooper Greenwood and the troopers in the instant case, was to avoid the payment of a double back.

This Arbitrator, in the Greenwood case, held that Article 26.05 "does not 'preclude' double backs' it merely discourages double backs by providing an economic disincentive when they occur." (pg. 9). This Arbitrator continued and cited language from an arbitration decision by Harry Dworkin,

[T]he Arbitrator's decision must be consistent with the clear, and unambiguous language of Section 26.05, which contains no language that would suspend operation of the "double back" provision. On the contrary, the language declares, without exception, that 'at any time when the starting time of shifts worked by a member are less than 24 hours apart', the individual officer shall receive 'double back' pay." (pg. 9).

This Arbitrator further stated that both parties were fully aware of the meaning of Article 26.05 because they expressly prohibited it from pertaining to emergency situations.

The arbitration decision also recognized that it is beyond the Arbitrator's authority to add to, subtract from, or modify the collective bargaining agreement. Article 26.05 is very specific in its language, as recognized by arbitrator Dworkin and this Arbitrator. This Arbitrator also held that there are no exceptions set forth in Article 26.05 for "purported safety and economic

reasons". (pg. 10). Finally, this Arbitrator held that "the Patrol was simply not at liberty to unilaterally shorten said assignments by two days, at least not for the safety/economic reasons advanced here." (pg. 11).

Based on all the foregoing, the Association urges that the grievances be sustained.

The Patrol's Position:

The Patrol takes the position that the Union bears the burden of establishing a violation of the parties' Contract and they are unable to carry their burden in the instant matter. It is the Patrol's contention that changing scheduled time off days is a longstanding practice of the Patrol and not a new practice. It has been done in connection with training, changes in shift assignments, and operational needs consistent with sound management. With respect to changing scheduled days off in order to avoid unnecessary double back situations, the Patrol takes the position that the practice of unilaterally changing a Trooper's scheduled days off in order to avoid unnecessary double backs was simply not involved in the Greenwood case, (Grv. #15-03-880131-0012-04-1), decided by the undersigned on December 7, 1998 (herein Greenwood), and cited and relied upon by the Union. Rather, asserts the Patrol, in the Greenwood case, following a successful bid for new shift hours of six months duration by Trooper Greenwood, the Patrol nonetheless extended his "old" shift schedule by two days and up to his scheduled day off under the "old" shift

schedule in order to avoid a double back situation. It was this mechanism of an extension of Greenwood's "old" shift and foreshortening by two days the six months shift period Greenwood had successfully bid on, which the undersigned condemned as violative of 26.01 in the Greenwood case. A unilateral change in a Trooper's days off, which alone is involved here, was not involved in Greenwood. Thus, asserts the Patrol, after the undersigned's decision in the Greenwood case in 1988, it became the mechanism and practice of the Patrol to change time off days in situations where, due to shift changes, failure to do so would result in an unnecessary double back. Nothing in the Greenwood decision limited the Patrol's ability to do so, asserts the Patrol. Additionally, this ability on the part of the Patrol to unilaterally change a Trooper's scheduled days off was condoned by the undersigned arbitrator, asserts the Patrol, in the Calderwood case (Grv. #15-03-900821-067-04-01), decided August 8, 1991 (herein Calderwood). Furthermore, asserts the Patrol, following the undersigned's 1998 Greenwood decision, no contractual changes prohibiting the unilateral change of scheduled days off to avoid a double back situation were negotiated, and no arbitrations prohibiting same were issued.

With respect to bargaining history, while the Association did propose in the last negotiations (and successfully so) to prohibit the change of a Trooper's scheduled day off to avoid the payment of overtime in Section 27.03, significantly, it failed to propose such

a restriction vis-a-vis the double back situation addressed in Article 26, and no discussion took place concerning changing time off days to avoid unnecessary double back situations. Moreover, asserts the Patrol, the Association's proposal for Section 27.03 in and of itself raises the inference that the Association recognized the ability of the Patrol as the Employer to change scheduled time off days. It is the Patrol's position that the Association negotiated a change in Article 27 and is now, through the instant proceeding, attempting to unwarrantedly further the scope of the language of 27.03 through arbitration and not negotiation. But a double back situation is not an overtime situation. This latter point is elaborated upon by the Patrol vis-a-vis Trooper Patton's grievance. Thus the Patrol notes that Patton cites Section 27.03 as one of the Contract's sections the Patrol violated. The Patrol states that the schedule of Trooper Patton was changed to avoid an unnecessary double back situation in conjunction with a new scheduling cycle. As a remedy, he wants to be paid a double back. A double back is not overtime as defined in Section 27.01. Overtime is being in active pay status more than forty hours in one week. A double back is basically additional pay the employee earns when the Employer schedules them with less than twenty-four hours between shifts. It's a penalty or disincentive assessed against the Employer. It certainly is not overtime. The circumstances of this grievance have nothing at all to do with section 27.03. No overtime was worked by the grievant, Section 27.03 does not apply.

Still further with respect to the Union being on notice of the Patrol's purported right to unilaterally change work schedules, the Patrol points to Policy 9-203.15, revised July 9, 1993, and contends that this policy provided additional notice to the Union of the position of the Patrol as to the changing of time off days. In this regard the Patrol asserts it provides copies of all policies to the Union in accordance with Article 21, and that no objection to this policy was ever made and no grievance filed until the instant matter.

The Patrol acknowledges that pursuant to the modifications to Section 26.01 in the current Contract the potential for double back situations from shift changes arises twice a year instead of just once a year. It comments: "does the Employer want to pay double backs? No of course not, if it can be avoided. Obviously if a large number of employees are changing shifts creating numerous double back situations all the schedules cannot be changed. The Employer will not create staffing shortages just to avoid payment of double backs. Does the Employer want employees working sixteen hours straight or with any eight hours between shifts? No, not if it can be avoided, because a fatigued Trooper on duty raises safety concerns. Can it be avoided at times by changing time off days? Yes it can. "

Based on all the foregoing, the Patrol urges that the grievances be denied.

### Discussion and Opinion:

As has been seen, one party, the Association, relies to a great extent on the undersigned's 1988 Greenwood decision; the other party, the Patrol, relies to a great extent on the undersigned's 1991 Calderwood decision. This circumstance puts the Arbitrator in the unenviable position of having to explain, and/or distinguish these prior decisions of more than a decade ago, and nearly a decade ago, respectively, in light of the fact pattern present here.

First addressed is the undersigned's 1988 Greenwood decision. At that time Section 26.05 read the same as it does today. Section 26.01, however, differed. At that time Section 26.01 provided for assignment to a permanent shift for a six month period by seniority. Greenwood successfully bid a change of permanent shift, going from a 2:00 p.m. to 10:00 p.m. afternoon shift to an 8:00 a.m. to 4:00 p.m. day shift. The parties had agreed that all newly bid shifts would begin on a day certain. Had Greenwood begun his new day shift on that day certain, his starting time for his "new" day shift, 8:00 a.m., would have been less than twenty-four (24) hours apart from the starting time of the "old" afternoon shift, 2:00 p.m. Accordingly, the trigger for Section 26.05's double back pay would have been tripped. However, pursuant to an unwritten Divisional Policy and practice at that time, in order to avoid the safety hazard of a fatigued trooper and in order to avoid the double back payment called for by Section 26.05, the Patrol unilaterally continued Greenwood's "old" afternoon shift hours and

up to his scheduled any off, some two days subsequent to the day certain on which his "new" day shift schedule was to, as the parties had generally agreed, begin. In this manner, then, Greenwood was deprived, by two days, of the full six months of the day shift that Section 26.01 assured him. The undersigned found the Patrol's unilateral conduct of extending Greenwood's "old" schedule and thereby cutting in to the six month's duration of his "new" schedule to be violative of Section 26.01. There were no exceptions set forth in Section 26.01's clear and unambiguous terms, and hence an exception by virtue of a policy or practice of extending a Trooper's old schedule could not be sanctioned. Remedially, therefore, Greenwood was to be regarded as having in fact started his "new" shift on the day certain, and, in turn, this circumstance and assumed situation simply triggered the double back contingency of Section 26.05, because, starting on the day certain, Greenwood's starting time on his new shift was "less than 24 hours apart [from his "old" shift starting time]."

It can thus be seen that the Greenwood decision is a Section 26.01 decision, dependent upon the precise terms of Section 26.01 then prevailing, terms which differ markedly from those obtaining currently. Additionally, it is not truly a Section 26.05 decision.

Next addressed is the undersigned's 1991 Calderwood decision. Trooper Calderwood bid on an afternoon shift in part at least because of that schedule's scheduled days off. Due to manpower needs to cover Ohio State Fair duties, one of Calderwood's

scheduled off-days was unilaterally changed by the Patrol and Calderwood was assigned to work that scheduled day off. Calderwood grieved that he was required to take 3 hours sick leave for a doctor's appointment and he wanted it back. The Union argued that the Patrol's unilateral change of Calderwood's day-off, indeed all unilateral changes to an employee's scheduled days off, are violative of Section 26.01. The Union contended that Section 26.01 implicitly froze a Trooper's days off because said Section speaks in terms of permanent shifts, and the posted shifts embrace fixed days off. Hence the Contract contemplates that said fixed days off are not subject to change, argued the Union. The Patrol counter-argued that no such implication was possible because the Patrol had a practice of changing a Trooper's day off and the Union tried and failed to negotiate limits on the Patrol's right to unilaterally change scheduled days off both in 1985 and in 1988. I agreed with the Patrol. Thus I found that "given the nature of the Patrol's mission, and the vagaries of the threats to the public's safety, only the strongest of implications could serve to deprive the Patrol of the ability to unilaterally change an employee's off duty days in response to legitimate operational needs," and "no such implications are found in the contractual language the parties have utilized." I went on to say that to the contrary, given the Union's failed efforts in the 1985 and 1988 negotiations to restrict the Board's right to unilaterally change a Trooper's scheduled days off, the inference was that the Union recognized as



inherent the Patrol's right to make changes in a Trooper's off duty days. Furthermore, I found that by its 1988 proposal, the Union clearly recognized that changes in a Trooper's off duty days were in fact being made by management and further that express contractual provisions were needed to discourage and/or prohibit same. Still further, I found that "by practice, changes in a Trooper's off days are only made in response to initially unforeseen operational needs (and not whimsically, as the [Union] legitimately expresses a concern), and that a significant effort is put forth by the Patrol to avoid changing a Trooper's day off because, in essence, it recognizes that, as the [Union] asserts, Troopers bid on a 26.01 permanent shift in part because of its anticipated off duty days. . . . [W]here a change in an off duty day is necessitated, it is the Patrol's practice, a practice having by now assumed binding status, to . . . give to the Trooper seventy-two (72) hours notice of such a change." But in Calderwood the Patrol failed to give the Trooper the 72 hours notice it had bound itself to give him by virtue of its binding practice to do so, I found that "the Contract and evidence established that Management has always had the right to change the employee's scheduled days off in the event that operational needs consistent with sound management practice justify such a change," and that "the Employer must give the employee adequate notice (ordinarily 72 hours notice . . . )." Hence Calderwood's sick leave was restored to him.

It appears that in the instant case the Union is relying on the undersigned's reference to "operational needs," from which the Union argues that no "operational needs" are involved here; that to the contrary only avoidance of a double back situation is involved. The Union appears to argue that the Calderwood decision stands for the proposition that changes in a Trooper's days off can only be justified and sanctioned if "operational needs" dictate same. In my view the Union reads too much into the Calderwood decision. It overlooks the context of the Calderwood decision, namely, a clear instance of a change in an employee's off duty days due to manpower needs for the State Fair, i.e., due clearly to an "operational need." In my view a fair reading of the Calderwood decision does not support the conclusion that it was intended to pronounce that only "operational need" would support unilateral changes--by Management in a Trooper's days off. This "operational needs" terminology was dictated by the "fact" that changes due to "operational needs" was the uncontradicted "practice" to evolve from the record in the Calderwood case, coupled with a "practice" of 72 hours notice of such off duty day changes. Here the uncontradicted "practice" to evolve from the record is that ever since the undersigned's 1988 Greenwood decision, and through successive Contracts, the Patrol has had a "practice" of changing days off to avoid a double back situation. And this "practice" is, as Calderwood makes clear, in the face of no express or implied contractual restriction on Management's reserved right to make

unilateral changes in an employee's off duty days. By way of contrast the express provisions of Section 26.01 in 1988, clear and unambiguous, stood in the way of, and rendered non-binding, any "practice" contravening said express terms, such as the practice in the Greenwood case itself of extending a Trooper's "old" shift schedule into the period of the new shift schedule to which he was properly entitled. Thus it must be found at this juncture that the Union has simply acquiesced in the post-Greenwood practice of the Patrol of changing off duty days in order to avoid a double back situation. The decade plus duration of the practice; the relatively frequent number of occasions when the Employer has invoked the practice; and the Union's failure to seek to change the status quo with respect to the practice in the most recent Contract negotiations (in contrast to its successful proposal in 27.03 to prohibit changes in schedules to avoid overtime) fully support the inference that the Union, until these grievances, has acquiesced in the practice of management changing days off to avoid double back situations. Nor can the motive and purpose of avoidance of a double back situation, and hence the avoidance of double back pay, be found to be mere whimsy, and hence arbitrary and capricious conduct on the part of the Employer, in light of the long held and legitimate rationale put forth by the Patrol to the effect that double back situations are ideally to be avoided in light of the safety concerns raised by a fatigued Trooper serving a second shift with less than 24 hours between start times.

With respect to the Association's reliance on Captain Corbin's comment in

the most recent negotiations to the effect that "double backs are a cost of doing business," and, further, that the Patrol "will pay them," I find such to fall far short of constituting, as the Association suggests, a concession or recognition on Corbin's part that double back situations were inevitably created by the shift changes wrought pursuant to Section 26.01, or that such statement served to relinquish Management's practice and right to unilaterally change an employee's scheduled off duty day in order to avoid a double back situation. This is so because an ambiguity inheres in Corbin's comment. Thus, as the Patrol notes, there are occasions where, due to staffing needs, a Trooper's off duty day can not be changed and advanced to the beginning of his new shift in order to avoid a double back situation and on those occasions the Patrol is obliged to pay (and has done so) the double back pay contemplated by Section 26.05. Corbin's reference to the "cost of doing business" appears to be related to this phenomenon, and in any event, the record fails to demonstrate otherwise.

In sum then, it was incumbent upon the Union to either declare in the most recent negotiations that it no longer acquiesced in the Patrol's practice of unilaterally changing days off in order to avoid a double back situation, or to secure the type of express prohibition of the Patrol's right to make such unilateral changes to a Trooper's day off, as it did in Section 27.03 vis a vis schedule changes to avoid overtime, and thereby end the otherwise binding status said practice had attained. Having failed to do either, the Patrol cannot be found to have violated the Contract when, as here, it exercises the authority the

parties' practice has granted to it (in the event there is any doubt as to its inherent right to do so), to unilaterally effectuate changes in a Trooper's scheduled day off in order to avoid a double back situation.

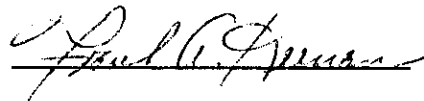
There remains for consideration Trooper Patton's contention that Section 27.03 has been violated by the Patrol's unilateral change to his day off to avoid a double back situation. Suffice it to say that for the reasons advanced by the Patrol, I concur in the Patrol's perception, that no basis exists to find that the Patrol violated Section 27.03 when it unilaterally changed Patton's scheduled off duty day.

Based on all the foregoing, the grievances must be denied.

Award:

For the reasons more fully noted above, the grievances are denied.

Dated: September 29, 1999



Frank A. Keenan  
Arbitrator