

In the matter of arbitration between

Ohio State Troopers Association,
Union

And

Case no. 15-00-990804-0091-04-01
Lisa Hoffman, Grievant

State of Ohio, Department of Public Safety,
Employer

Arbitrator's Decision and Award

Introduction

This matter was heard in Columbus, Ohio on October 26, 1999. Lieutenant Robert Young 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. 1- 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 three day suspension for just cause? If not, what shall the remedy be?

Facts

Grievant is a nearly ten year employee of the Patrol. She was assigned to the Akron post as a Trooper. On June 3, 1999, she had a verbal exchange with Sergeant Combs, which led to the instant discipline. The facts are not in serious dispute.

Grievant had worked very hard on Memorial Day weekend. She had written a large number of citations. She was in possession of evidence that had to be logged in and secured, and had court filings, which were due on June 4th. There were crash reports to correct. It was her hope and expectation that she would be allowed to complete the paperwork, and do all tasks necessary to finalize the activities of the immediately preceding holiday weekend. When she arrived at work, Combs told her that she would have a road assignment, including the assignment of PSI, which would involve three hours of her 2pm-10pm shift. A debate ensued between Sgt. Combs and Grievant as to the propriety of the assignment, in light of the volume of work she had left over from the Memorial Day activities.

Combs described Grievant as first reacting emotionally and physically to the assignment, by throwing up her pile of papers into the air. This was not denied by Grievant at the hearing. Her voice was quite loud, but not to the point of yelling. There was some back and forth between the parties concerning the appropriateness of the assignment. Combs kept trying to get the Grievant to hear his position that she could attempt to get much of the paperwork done and do PSI; Grievant was steadfast in her position that it was an either/or proposition. She raised several challenges as to whether or not she was being ordered to do PSI and stated that she wouldn't do it unless she was ordered. Combs declined to give the order, claiming that her attitude and demeanor made the PSI an unproductive assignment at that juncture. Grievant either characterized the assignment as "stupid"; or claimed it was a "stupid" suggestion by Combs that she notify her supervisors in a note when her workload was excessive. Regardless, Grievant did not deny using the word "stupid" in the context of the discussion. Additional comments made by Grievant also struck the Arbitrator as unnecessarily provoking.

The discipline order claims that Grievant violated Rule 4501:2-6-02(1), by speaking to her supervisor in a profane and unprofessional manner in front of co-workers and civilians. There is *no* evidence that she spoke in a profane manner in front of co-workers and/or civilians; the parties stipulated that the civilian heard nothing and there was no testimony about what Drake heard. I am convinced that Trooper Hoffman did forcefully challenge a job assignment. She did not deny this at the hearing. She obviously did not want to do the PSI, and her reaction to the assignment- i.e. throwing up her papers, challenging the wisdom and efficacy of the assignment, and using a style and tone inconsistent with professional demeanor- should not go uncorrected. Her past O.P.E.R.A.T.I.O.N.S. reports

reflect concern with her tone of voice, lack of tact, and being "too quick" with a response. Not surprisingly, Grievant disagreed with these comments. Regardless, she was on notice that the Employer had a concern with her personal communication style.

The Union suggests a possible sexist motivation for the discipline; the evidence did not support this. The Arbitrator finds there is a line between assertive, confident discussion style, and rudeness. It is not the volume of the debate standing alone, but all of its tone and tenor that causes the Arbitrator to find Grievant crossed the line.

The Arbitrator finds that the Employer did not meet its burden of proof as to just cause for the three day suspension, based upon the evidence presented. As stated above, this appears to be a heated and loud debate about a job assignment. (Management's second step answer evinces a tolerance for disagreement about assignments. Thus, it is not the debate that supports the discipline, but the nature of the debate). No one witnessed it; so the purported embarrassment of the Employer before the public was not proven. The Arbitrator does not find the remark about "busting ass" to be profane in the context. Nor was there sufficient proof about whether or not she called the assignment "bullshit." Even if it was said, it was not profane in the context.

Management did not choose to order Grievant to do the PSI assignment; a refusal certainly would have brought a charge of insubordination. I am troubled about the reaction Grievant did have; however. She cannot be condoned in her perception that if she doesn't like her work assignment, she is free to act as though there was no command structure and rule of civility. I suspect that she realized her inappropriate conduct soon afterwards, because she dramatically changed her demeanor and tone in a subsequent encounter with Combs that same date.

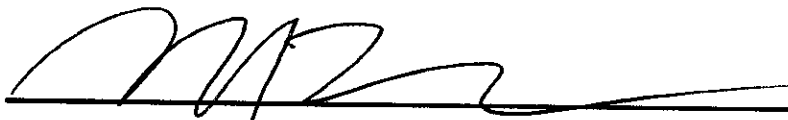
Grievant's statement that she would do nothing differently if placed in the same scenario indicates a lack of awareness that her conduct can on occasion go out of bounds, although she otherwise appears to be an exemplary Trooper. Combs testified that in his nearly ten year tenure, he had never encountered a like scenario in tone of voice, volume, or reaction to an assignment.¹ The Arbitrator finds that the use of sarcasm, the rude use of "stupid", throwing papers up in the air in an apparent expression of disgust or frustration, the challenge laid down- are you ordering me to do it or else I won't do it-, to be unacceptable conduct in a command setting. It is Grievant's nearly ten year unimpeached record that provides the basis for a modification of the penalty; as well as the failure of proof on profane language and the fact no one else seemed to hear the exchange.

¹ The Union did not dispute the particularly high standards of civility sought to be upheld by the Patrol.

Award

The Grievance is granted in part and denied in part. Grievant shall be made whole in back pay and benefits for the period of the suspension; however, a written reprimand shall be placed in her file concerning the events of June 3, 1999.

Issued this 27th of October, 1999 in Columbus, Ohio.

A handwritten signature in black ink, appearing to read 'SMF', is written over a solid horizontal line.

Sandra Mendel Furman, Arbitrator