

ARBITRATION SUMMARY AND AWARD LOG
OCB AWARD NUMBER: #1423

OCB GRIEVANCE NUMBER: 1) 15-00-991118-0154-04-01
2) 15-00-990601-0058-07-15

GRIEVANT NAME: 1) Ronald K. Simmons
2) Bobby W. Phillips

UNION: Ohio State Troopers Association

DEPARTMENT: Department of Public Safety

ARBITRATOR: Sandra Furman

MANAGEMENT ADVOCATE: 1) Lt. Susan Rance
2) Sgt. Charles Linek

2ND CHAIR: Renee Macy

UNION ADVOCATE: Herschel Sigall

ARBITRATION DATE: February 14, 2000

DECISION DATE: February 22, 2000

DECISION: Granted in part and denied in part

CONTRACT SECTIONS: Article 19

HOLDING:

- 1) The Grievant was charged with the use of profanity, excessive force, and falsification of documents in regard to a commercial load stop and inspection. The Arbitrator held the use of profanity did not rise to the level of discipline, but held the inspections were not completed properly. The Arbitrator reduced the Grievant's five-day suspension to a one-day suspension because of the Grievant's long discipline-free work record and his lack of opportunity to correct the problem.
- 2) The Arbitrator upheld a one-day suspension for the Grievant's failure to conduct management business in an organized manner and for failing to properly process warrants.

COST: \$700.00

#1423

In the matter of Arbitration between

Ohio State Troopers Association,
Union

And

Case no. 15-00-990601-0058-07-15
Bobby W. Phillips, Grievant

State of Ohio, Department of Public Safety,
Employer

Arbitrator's Decision and Award

Introduction

This matter was heard in Columbus, Ohio on February 14, 2000. Sgt. Charles Linek 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. Additional exhibits were introduced by the parties and admitted during the hearing.

Issue

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

Facts

Grievant is a 20 year employee of the Patrol. At all dates relevant, he was classified as a Sergeant. Grievant held this position for nearly six years. As a sergeant, he had line Trooper duties in addition to first line supervisory duties. There were four sergeants assigned to the Wilmington post during the period under review. Different duties were rotated among the sergeants: during the period in question, Sgt. Phillips was responsible for warrants and personnel. Duties included under the personnel heading were the maintenance of overtime rosters and training records. Warrants were handled by a number of post staff,

including dispatchers, with Grievant having primary responsibility. Grievant shared office space with Sgt. King. Subsequent to the instant discipline, Grievant was transferred to the Lebanon Post.

The Wilmington post was under the direction and control of Lt. Bennett in the relevant time period. The post was due for a biennial audit in December, 1998. Two staff sergeants contacted Bennett's superiors in November 1998, going outside the chain of command. These individuals reported a number of alleged irregularities in record keeping and office management procedures at the post. Upon review of the allegations by district headquarters, an investigation was begun by Lt. (now Captain) Farris.

The investigation lasted approximately four (4) months. Grievant was interviewed, as were the other three sergeants and Lt. Bennett.¹ Extensive documentation was gathered. As the investigation coincided with the upcoming biennial inspection, Grievant and the others addressed irregularities identified through the investigation. The biennial audit was also postponed until March, 1999 due to the disorganized state of the post. Grievant was given orders to clean up the problems relating to his areas of responsibilities, and he was actively engaged in corrective action.

The investigative package contains many items that do not relate to Grievant, as it was the entire supervisory staff's actions that were under review.² Grievant was cited for the following: failure to keep an orderly office; failure to update the overtime rosters; failure to properly file and account for a significant number of warrants; failure to ; complete training records; reports relating to official business that showed no signs of having been completed.

During his interview with Lt. Farris, Grievant had a variety of explanations for the status of his paperwork and office management: his office was a dumping ground for others; the equipment mess was Sgt. King's responsibility; the HP14s were confusing; Lt. Bennett did not do follow up in the same manner as his predecessor; troopers bypassed him and went directly to the dispatchers; he was trying to catch up; he knew where things were in his office despite the disorderly appearance. He admitted that he had become lazy.

Grievant's department record reflects a written reprimand in the year preceding the instant discipline for the same rule violation. The Union introduced a 1998 evaluation that reflects a satisfactory employee.

Opinion

The Grievant was disciplined for violation of Rule 4501:2-6-03(A)(1)- Responsibility of command. The rule makes it clear that although a sergeant may not be a statutory supervisor, he will be held accountable for the matters set forth in the rule.

¹ All of the sergeants were disciplined; a patent explanation for their failure to testify as a witness for either side. Bennett took "early retirement."

² **The Arbitrator is fully aware that Sgts. are in Unit 15, represented by OSTA. Whenever the Arbitrator is referring to supervisory management in the statutory sense, she uses the term "Patrol."**

Here, the facts are largely undisputed. Sergeant Phillips presented no justification at the hearing for the disorder of his office. He presented no explanation at the hearing for his failure to complete the HP14s. The Union challenged the failure of the post commander to sign off on the HP14s, but cannot effectively explain Grievant's failure to complete the remaining sections. Grievant claimed his desk had been broken into. There was no supporting documentation that he had reported this. He maintained that he did not keep original copies of warrants in his desk drawer.

The Arbitrator heard no claim that Grievant asked for additional work time or staff to catch up with the paperwork. He did not claim that he did not understand the requirements of his job. The explanations offered by the Grievant may be summarized as blaming others; acknowledging he had slacked off; and stating he would help get things back to order.

The Arbitrator agrees with the Employer that the serious allegation relates to the handling of warrants. Grievant claimed that he went to Bennett to complain about the status of the warrants and that he was trying to get them in order *before* he was a subject of administrative investigation. Bennett's investigative interview does refer to Phillips' concerns with the warrants. According to Bennett, Phillips didn't understand the database nor how to track warrants. At some point, he was given help with the database by the Network Administrator. No additional follow up was made by Bennett on the warrants issue. The Arbitrator does not find that Bennett's lack of follow up serves to mitigate against Phillips' apparent continued inability to monitor and follow up on warrants.

There was no showing by the Patrol that the eighteen(18) deficient warrants caused any actual problems with the courts or citizenry. (Lt. Farris chose to void a number of warrants.) But the Patrol may properly expect a timely, orderly processing of warrants as an essential part of its mission. The failure of actual harm will not bar discipline. Grievant's conduct during the period in review shows inattention to detail, lack of active supervision of troopers (who purportedly went around him on the warrants issue) and poor office management of required paperwork. Grievant had been recently disciplined for the same rule infraction-albeit with different facts. The discipline is progressive and meets the contractual standard. Therefore, the Arbitrator finds that a one day suspension is appropriate under all the facts and circumstances of this case.

AWARD

The grievance is denied.

Issued this 22nd day of February, 2000 in Columbus, Ohio.


Sandra Mendel Furman, Arbitrator

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In the matter of Arbitration between

Ohio State Troopers Association,
Union

And

Case no.15-00-991118-0154-04-01
Ronald K. Simmons, Grievant

State of Ohio, Department of Public Safety,
Employer

Arbitrator's Decision and Award

Introduction

This matter was heard in Columbus, Ohio on February 14, 2000. 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. 1- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package; Jt. 4- the Load Limit Inspector job description. Jt. 5- record of training. Additional exhibits were introduced by the parties and admitted during the hearing.

Issue

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

Facts

Grievant is a 21 year employee of the Patrol. In July 1999, he held the working title of Commercial Load Limit Inspector. This is a bid position, and

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Grievant held it since 1995.¹ The position is primarily responsible for ensuring that truckers do not violate posted load limits. Prior to beginning the Load Limit Inspector position, Grievant received a manual containing guidelines on the various levels of inspections. He did not receive a formalized 40-hour OJT training, one that was apparently available to troopers who assumed the duties of Commercial Motor Vehicle Inspectors. However, he has worked with certified inspectors and has been performing the duties in a satisfactory manner for a number of years. He has attended meetings along with other inspectors related to his duties. He can explain the differences in the levels of inspections.

During the week, Grievant works with a two person civilian crew, who assists him in the weighing process. Grievant also does normal Trooper road duties. There are goals as to the number of inspections that a Load Limit Inspector must perform in a year, but no adverse consequences were noted if the goals are not met. Thirty inspections are required to maintain certification. Each year, Grievant met or exceeded the certification requirements. Interestingly, there is no certification requirement for his class of Inspector; even though he met the thirty inspections/year threshold for every year except 1999- the year he was reassigned.

In order to follow the directions and expectations of the employer, Grievant was required to tape his stops and inspections. The stops and inspections were recorded by two means- a microphone worn on the front of the trooper's uniform, and by a video camera mounted at the front of the trooper's car. (Not all Trooper's cars are outfitted with a camera). The camera was maneuverable and the images being recorded could be simultaneously observed on the screen mounted in the cruiser. As part of his routine job responsibilities, Grievant was to turn in his tapes to Jackson for review and filing.

Grievant received a policy from the Patrol in 1999 regarding recordings. That same month, he was counseled concerning proper use of the in car camera and the microphone. With this exception, he had been performing his duties without significant comment or incident. He had received two departmental commendations relating to his work.

On July 3, 1999, Grievant had occasion to stop a commercial vehicle alternately driven by a father and son named Schermerhorn. Their truck was stopped by Grievant for speeding in the morning. Grievant was working without the assistance of his civilian crew. During the traffic stop, Grievant also checked the drivers' logbooks. He noted that both books were improperly filled out, and ordered the father (Lyle) to go out of service for eight hours. Grievant escorted the truck to a near by truck stop, per routine. While he was parked at the truck stop, Grievant's audio reception on the mike was marred by static. His cruiser was also parked so that there was not a full view of the cab or the Schermerhorn truck.

¹ After the instant discipline, Grievant was removed from this assignment and returned to a road patrol position. He was transferred to the Dayton post. The return of Grievant to road duties is not grievable.

Grievant had a second opportunity to stop the Schmerhorns' truck during his shift. It was seen on the highway less than eight hours after he had ordered it out of service. When he pulled the truck over on SR 72, Grievant's frustration and annoyance was apparent from his recorded comments. He determined that the driver was now the son, Lynn. (His logbook was not properly updated). He felt that Lynn was uncooperative in pulling over, and was not obeying his directions to get out of the cab. From the tape, it is clear that there was no immediate compliance. Grievant told the driver to get out of the truck or he would "drag his ass out." The driver then complied, after some sharp language from Grievant about the consequences of his failure to comply.

The cruiser was parked at the second stop in front of the truck, so the video recording is not helpful on the placement of the parties. Grievant explained that he had nowhere else to put the cruiser at that time. The microphone was able to record most if not all of the conversation between Grievant and Lynn Schermerhorn during the second stop. There was a period of time when the microphone was dead. From the context, it was not clear that any conversations did occur at that period of "dead air".

Lynn Schermerhorn complained to Grievant's superiors about Grievant's conduct during the second stop, claiming excessive force and use of profanity. Sgt. Jackson investigated the matter. The excessive force claim was unsubstantiated; the use of profanity became part of the departmental charges against Grievant. Grievant was also charged with falsification of documents, stemming from what the Patrol saw as a deficient level 2 inspection of the Schermerhorns' truck.²

As part of the investigation, Jackson reviewed recent tapes and paperwork submitted by Grievant. The investigation showed that Grievant had purportedly failed to properly complete nine other level 2 inspections. The Arbitrator received no direct evidence of the allegedly deficient inspections other than the investigatory interview packet. Nor was the tape of the Schermerhorn stops introduced. The 10 HP 120 forms became the predicate for the falsification charges. The Patrol referred the matter of the alleged reports falsification to the Clark County Prosecutor's office, who determined not to prosecute.

Opinion

The Arbitrator finds that the use of the word "ass" was intemperate and unwise, but does not rise to the level of profanity. No discipline is appropriate for the use of this word, in the context of the moment. The Arbitrator does not condone the language, but finds that a verbal cautioning would be sufficient to put the Grievant on notice that the Patrol does not expect its Troopers to use

² Although Grievant was not obligated to perform a level 2 inspection on either of the two stops, he claimed that he had done so, as he filled out a HP 120. It is the fact he claimed to have performed level 2 inspections that forms a partial basis for the instant discipline. The forms provided in Employer Ex. 1 show that the only violations noted relate to speeding and log book violations. It is possible that there were no other violations, but Grievant conceded that he did not get out of the cruiser for all level 2 inspections.

colloquial terminology. Its use offends the core value of professionalism, but is not so egregious as to merit a disciplinary reaction.

The Patrol charged Grievant with a deliberate violation of its in car camera and recording policy. In the only tape viewed by the Arbitrator, the patrol car was positioned behind the truck being weighed. It was not possible to see the Trooper inspect inside the cab, nor the front of the vehicle. The cruiser would have had to be moved around to face the cab for optimal visibility. The Patrol characterized the first stop- the one where an actual weighing in occurred- as a textbook example of a level 2 inspection. Yet, a viewer does not have a full visual of the inspection.

On the two Schermerhorn stops, the cruiser was not placed in the most advantageous position for viewing the proceedings. I do not find that the Grievant's placement of the cruiser manifested a deliberate intention to thwart policy and/or to hide his actions. The second stop- on SR 72- did not appear to leave the Grievant with many options. He could have positioned his cruiser behind the truck, if he made the truck move up. But in the moment, where the trooper sensed a deliberate attempt by the trucker to frustrate the stop, his actions in placing the cruiser were not so negligent as to be actionable.

As to the alleged turning off of the microphone, the Arbitrator is not sure that the motive was to hide a verbal confrontation; the verbal exchanges appear to be completely recorded. His tone and demeanor on the first Schermerhorn stop are appropriate.³ The Union did not offer an explanation for the mike being off; but it was explained that a microphone could be inadvertently off because of a jostle to its position. I find that the Employer did not prove that the turning off of the mike was done with an intention to thwart or ignore the policy.

I am concerned that the administrative investigation showed that improper video taping occurred in 10 inspections held in a short period: these allegations were not contradicted by the Union. This practice of not adhering to the stated policy cannot be condoned, especially as Grievant had received counseling on his use of the in car camera and microphone in March 1999.

The more complex analysis relates to the claimed falsification of a significant number of inspection reports a short period of time in June and early July 1999. The Patrol stated that the tape #22 does not show a full level 2 inspection for the Schermerhorn stops. The Arbitrator agrees that the level of the activity demonstrated on the tape was not congruent with the level observed for the truck stopped on the first portion of tape #22. Nor does the level of activity described by Grievant comport with what he has done on other dates and times.

The Arbitrator is not convinced that a deficient manual and/or lack of OJT for 40 hours excuses the incomplete aspects of the level 2 inspections performed by Grievant on July 3, 1999. The Arbitrator cannot accept that a walkaround inspection, performed in a cruiser, even if driven around a truck by the Grievant, meets the standard expected by the patrol, DOT, and the citizens of Ohio. The

³ If there were a moment to turn off the mike, it would have been while he was referring to the driver as a "jack off". But his mike was on the whole time.

Arbitrator was further troubled by the fact that of the 10 other purportedly deficient inspections, all were done without the presence of either of the two civilians.

The Union made no real attempt to rebut the allegations that a number of incomplete level 2 inspections were done. It argued that Grievant lacked 40 hours of OJT; that his training manual did not define the specifics of a level 2 inspection; that a level 2 inspection could be performed by the Trooper in his cruiser; and that Grievant had been doing his inspections the same way for three years, suggesting therefore that the employer impliedly condoned the conduct.

The Arbitrator finds merit in one of the Union's arguments: Grievant was a commended, exemplary employee. There was scant evidence of prior department problems over a 21 year tenure. His in car videotapes were routinely turned in to Management; and no problems had been noted. It was not until Schermerhorn's complaint of profane language and excessive force that his work habits were scrutinized and found wanting. Thus, an essential element of appropriate discipline: notice and opportunity to correct- is lacking in the immediate imposition of a five day discipline. A five day discipline is not progressive, in view of the long tenure and the relatively pristine department record. The fact that the Grievant was sloppy or negligent in his level 2 inspections supports some corrective action, as his other explanations do not strike the Arbitrator as creditworthy.⁴ Therefore, the Arbitrator finds that a one day suspension is appropriate under all the facts and circumstances of this case.

AWARD

The grievance is granted in part and denied in part: Grievant's five day suspension is modified to a one day suspension. IT IS SO HEREBY ORDERED.

Issued this 22nd day of February, 2000 in Columbus, Ohio.



Sandra Mendel Furman, Arbitrator

⁴ Reading the transcript of Grievant's investigatory interview, the Arbitrator is not satisfied that Grievant was fulfilling his job responsibilities ~~when he worked alone~~ His testimony at the hearing was not helpful to his claim that he did perform a sufficient level 2 inspection on the occasions cited.