

In the matter of Arbitration between

Ohio State Troopers Association,
Union

And

Case no.15-00-99222-0180-04-01
Patrick Hathaway, Grievant

State of Ohio, Department of Public Safety,
Employer

Arbitrator's Decision and Award

Introduction

This matter was heard in Columbus, Ohio on April 10, 2000. Lieutenant Rob 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. 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 seven year employee of the Patrol. At all dates relevant, he was assigned to the Lebanon Post. He performed trooper duties, but also did a large number of public relations tasks for the post. These included programs directed towards teens, such as CARTEENS and CRASH. These duties involved extensive public contact, and linkages to local schools. Union exhibit 1 details his varied public relations activities on behalf of the post. Grievant stated that he enjoyed this work, and spent many off duty hours preparing for these presentations.

The facts giving rise to the instant discipline are somewhat disputed, but the basic outlines are not. Grievant lives in a neighborhood with a posted 25

mph speed limit. It is a neighborhood filled with children, and on occasion the children play and ride bikes in the street. Teenagers and others are known to exceed the posted speed limit. Two children in the neighborhood, both living quite close to Grievant, have been injured by cars. Grievant is the father of six children, ranging in ages from 18 months to twelve years.

On September 2, 1999, Grievant was at home washing one of his cars. He observed a car speeding down his street. He tried to signal the driver, but she ignored his signal. He walked down to the residence, and spoke to the driver. He went partially up her driveway, and approached her, but remained 20 feet away from her the entire conversation. The driver was Katie Davis, a then 18 year old student living at home with her parents. The two had a conversation. She acknowledged speeding. Much of the rest of the conversation is disputed. There is no dispute that Grievant stated that he was acting as a concerned neighbor. Both participants agree that the conversation was challenging and somewhat confrontational in tone. Katie Davis did not claim to be intimidated.

Two days later, on September 4th, Grievant was jogging. He saw Katie's father, Phillip, and chose to speak with him about Katie's conduct and their conversation concerning her speeding.¹ The content of the conversation is in dispute. There is no dispute that Grievant stated that he was acting as a concerned neighbor and as a parent. Both Davis and Grievant agreed that the conversation strayed from Grievant's interaction with Katie. The conversation ended with Davis ordering Grievant off his property. Both agree that Grievant asked if that was a threat.

Davis called the post several days later and spoke to Lt. Borden to complain about Grievant's approach to Katie and Grievant's conduct in their conversation. (This taped conversation was introduced as a union exhibit.) It is Davis' oral complaint that gave rise to the investigation and resultant discipline. Written statements were taken from both father and daughter on 9-14-99. Phillip Davis' conversation of 9-4-99 with Grievant was not separately cited on the disciplinary notice as a basis for discipline.

Opinion

Grievant is charged with a violation of Rule 4501:2-6-02(I)(1). It is necessary to determine whether the admitted verbal confrontation brought discredit to the division. Due to the varying accounts, the Arbitrator must determine which version of the conversation is more creditworthy. Katie claimed that Grievant stated that he had jurisdiction over her; that he could call the Monroe Police Department and have a stake out on her; that she should get a radar detector to prove her allegations that others were speeding including Grievant's wife; that Grievant could put on his uniform, get in his car, and give her a ticket; that he had access to her (traffic) records. Grievant denied that he stated he had jurisdiction over her; that he made any statements about a

¹ Neither Davis knew Grievant by name before their individual conversation with him. Each stated that s/he was aware that Grievant was a Trooper. Grievant often parked his cruiser in his driveway.

stakeout; that he stated he could put on his uniform, return to his cruiser, drive to her house and give her a citation; that he had made any statements about her past record or that he could access same.² He admitted that he stated that if she felt others were speeding, she would have to prove it with radar. Grievant did state he would contact the Monroe P.D. for extra patrol in the neighborhood, and later followed up on that statement. At the hearing, Grievant stated that he felt the conversation had not gone well.

Katie admitted she was speeding at the date in question. She admitted that she had speeded in the past. Her driving record is unenviable: by her own count, she has at least two speeding tickets and was involved in two accidents—one was at fault. (She had only been a licensed driver for two years). She did not claim to be intimidated at the hearing by the conversation. Her demeanor did not reveal a young person who felt threatened by her neighbor, a male who approached her on her parents' property. It was not until a week after Grievant spoke to Katie Davis, that Phillip felt impelled to complain to the post. It is the Arbitrator's opinion that the conversations with Grievant likely did not cause much disquiet and upset in the Davis home. Katie told her father about the discussion with Grievant at some date and time between September 2nd and September 4th, but the report did not provoke an immediate of response from her father.

Although the conversation with Phillip Davis is not specifically cited on the disciplinary notice, it is part of the events supporting management's actions. In that conversation, it is undisputed that Davis lied about the fact that Katie told him about her conversation with Grievant.³ Grievant did tell Phillip that his daughter had an attitude in the conversation he had with her on September 2nd.

Grievant denied most of the alleged remarks relating to potential use of his police authority. It is clear that he feels very strongly about speeders in his neighborhood. He feels so strongly about it that he has spoken to several of his neighbors about the problem. As he stated at the hearing, he feels an obligation to say something when he sees something unsafe. Two of his neighbors concurred with him about the speeding problem.

The question is, did Grievant by his conduct cause discredit to the Patrol? The Arbitrator finds that the Patrol did not meet its burden of proof. Grievant was meticulous in his approach to the Davises; he stated at each encounter that he was speaking as a citizen and a neighbor. He was not in uniform at the time of either conversation. Phillip Davis claimed at the hearing that he was intimidated in the conversation. The Arbitrator does not credit this claim. In fact, it appears that he stood his ground with Grievant and gave as good as he claims to have gotten. There is insufficient evidence that Grievant abused his police status or the authority of his office. The person who admitted to law enforcement contacts and connections in the reported conversations was Phillip Davis.

² There was no evidence that Grievant had ever accessed LEADS or any other source to determine Katie's traffic history. It is against Patrol policy to allow LEADS access for private purposes.

³ At the hearing his answers about his knowledge of Katie's prior driving record were less than forthcoming.

Nothing said by Grievant in the conversation brought discredit to the Patrol. Grievant may not be the most politic of neighbors; his approach was more forthright and direct than most neighbors might make for an initial contact.⁴ If he wants to make friends with the Davises, he has probably lost that opportunity. But he need not suffer a loss of pay and a disciplinary annotation in his file for the alleged conversations. The Arbitrator accepts and acknowledges the higher standard of conduct that the Patrol requires of its employees, even while off duty. It is the opinion of this Arbitrator that Grievant did not cross the line in his conduct.

AWARD

The grievance is granted. IT IS SO HEREBY ORDERED.

Issued this 17th day of April, 2000 in Columbus, Ohio.

A handwritten signature in black ink, appearing to be 'S. Mendel Furman', written over a horizontal line.

Sandra Mendel Furman, Arbitrator

⁴ Grievant did contact the Donisis about their son's speeding. Mrs. Donisi was no more receptive to this information than were the Davises. Perry Wheeler was a witness to the conversation between Grievant and Mrs. Donisi; he characterized Grievant's demeanor as calm.