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April 3, 2001

Michael P. Duco
ODAS Human Resources Division
Office of Collective Bargaining
106 North High Street, 7th Floor
Columbus, Ohio 43215-1859

**Re: OCB # 15-00-000320-0043-04-01 William E. Fulton;
15-00-000912-0127-04-01 Michael D. Meyers**

Dear Mr. Duco:

Enclosed are the arbitration awards in the above cases, along with my invoice.
Thank you for your consideration.

Very truly yours,



Philip H. Sheridan, Jr.

Enclosures
PHS/ps
cc: file

Attending Date
29 MARCH

ARBITRATION AWARD

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

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: WILLIAM E. FULTON**

CASE NUMBER: 15-00-000320-0043-04-01

APPEARANCES: For the Highway Patrol--Lt. Barry W. Donley, Nena Valentine, Staff Labor Relations Specialist, Sgt. Charles Linek, OSHP HRM, and Lt. Reginald Lumpkins, OSHP HRM Advocate.

For the union--Tpr. William E. Fulton, Grievant, Sgt. David Van Buren, Bob Stitt, President, OSTA, Wayne McGlone, OSTA Staff Representative, and Herschel M. Sigall, OSTA Advocate.

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

FACTS: Grievant, William E. Fulton, was employed as a trooper assigned to the Zanesville Post, when he was investigated as a result of his failure to appear at a trial in municipal court, for which he had received a subpoena. Post Commander Lt. Barry W. Donley initiated an investigation when he learned that Trooper Fulton had failed to appear. Fulton was on his day off, December 27, 1999, when he received a call from the dispatcher informing him of a subpoena for his appearance the following day in the Zanesville Municipal Court on a domestic violence charge where he was a potential witness as to the appearance of the victim, and as to what the victim said to him and to Sgt. David Van Buren when they arrested her for DUI. He and Lt. Donley called the prosecutor and

the defense attorney in an attempt to continue the case as Trooper Fulton had family plans out of town on a scheduled vacation day. Neither was able to obtain a continuance, although the prosecutor did tell grievant that he "didn't care whether [grievant] appeared or not." Grievant and his post commander discussed the case at the end of the day and grievant did not tell his commander that he was not planning to attend court or that he was relying on a release from his subpoena by the prosecutor. Grievant failed to appear. The judge offered to continue the matter but the prosecutor declined and proceeded to call the victim as a witness. The case was dismissed after the victim testified that she had not been assaulted by the purported offender. Lt. Donley interviewed grievant, did no further investigation, and recommended discipline. Grievant received a one day suspension. He has received no other discipline of record in his eight years service. There are no procedural issues, and the parties agree this dispute is arbitrable. The suspension was grieved, to no avail, and the matter was presented to me at a hearing in Columbus, Ohio on March 29, 2001, and now comes before me as arbitrator for final resolution.

CONTRACT PROVISIONS

19.01 Just Cause Standard; 19.05 Progressive Discipline; 21.03 Work Rules Application

AWARD

Grievant is charged with a violation of Department of Public Safety Rule 4501:2-6-02

(B)(1), Neglect of Duty.

I find no issue of work rules application has been demonstrated. The incident raised is not similar to these facts as the other issue raised significant health and family issues not present here. I find a one day suspension is appropriate discipline for a first time failure to honor a subpoena. I find just cause for the discipline and deny the grievance in its entirety because I find that grievant chose to

fail to appear based upon his belief that the notice was too short and that he should not be required to change his plans. He did mention the prosecutor's comments, but did not rely on them. I believe grievant took the prosecutor's comments to mean that he would not get into trouble with the prosecutor if he did not appear, but I do not believe grievant thought the prosecutor released him from the subpoena. This, and his failure to tell the post commander, who had made several calls on his behalf to try to get the case continued, that he was not going to go to court because he had been released, convince me that grievant took it upon himself to decide not to appear. I agree with management that discipline was merited because grievant had a duty to appear, no matter how poor the case, or how little he had to offer, unless he was released, and the prosecutor's comment was sufficiently vague that he should have raised the issue with his commander.

Respectfully submitted,

DATE: April 3, 2001



PHILIP H. SHERIDAN, JR.

ARBITRATION AWARD

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

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: MICHAEL D. MEYERS**

CASE NUMBER: 15-00-000912-0127-04-01

APPEARANCES: For the Highway Patrol—Linda Byron, Esq., Chrystal Bennett, Esq., Terry Hinkley, Nena Valentine, Staff Labor Relations Specialist, Sgt. Charles Linek, OSHP HRM, and S/Lt. Kevin D. Teaford, OSHP HRM Advocate.

For the union--Tpr. Michael D. Meyers, Grievant, Bob Stitt, President, OSTA, Wayne McGlone, OSTA Staff Representative, and Herschel M. Sigall, OSTA Advocate.

ISSUE: Was the grievant issued a five-day suspension for just cause? If not, what shall the remedy be?

FACTS: Grievant, Michael D. Meyers, was employed as a trooper assigned to the Aviation Section, when he was investigated as a result of a complaint about his conduct during a court hearing in the Franklin County Municipal Court. Defendant was charged with a stop sign violation and went to trial. The prosecutor who presented the case did not interview Grievant before the hearing. Defendant claimed grievant had been unnecessarily harsh and forceful in his interaction with her on the road, and she was found not guilty by the judge following the court trial. Defendant, the prosecutor and a public defender all testified that grievant was upset by the outcome of the case and acted in a manner that was totally out of the ordinary for highway patrolmen in their opinion. Both the prosecutor and the public defendant testified they had daily contact and

grievant's behavior was out of line. The specifics had to do with grievant trying to whisper to the prosecutor during defendant's narrative testimony, and being told to be quiet so that the prosecutor could hear the witness, getting red faced following the not guilty verdict and asking the prosecutor why the judge would decide the way he did, and then confronting the defendant in the hall after the case was dismissed. After the incident in the hall the defendant reentered the courtroom and was upset and crying. Grievant admitted he was disturbed when the prosecutor started the trial and called him as a witness without any preparation. He tried to help the prosecutor during the course of defendant's testimony, but he did stop after the prosecutor told him to be quiet. He left the court as quickly as he could after the trial and the defendant was right behind him. Depending on who I believe, either grievant said to defendant "you were lucky" and she replied that "you should not get so angry," or defendant said "a little upset, are we" and he replied that "I'm tired of people lying in court." He denied pointing his finger at her, but defendant said that he was red in the face, and obviously angry, and that she felt threatened and went back into the court. The prosecutor then complained to her supervisor, who complained to the patrol. Following an investigation, grievant received a five-day suspension. He has received one written reprimand that I find unrelated to this discipline, in his 21 years service. There are no procedural issues, and the parties agree this dispute is arbitrable. The suspension was grieved, to no avail, and the matter was presented to me at a hearing in Columbus, Ohio on March 29, 2001, and now comes before me as arbitrator for final resolution.

CONTRACT PROVISIONS

19.01 Just Cause Standard; 19.05 Progressive Discipline

AWARD

Grievant is charged with a violation of Department of Public Safety Rule 4501:2-6-02 (I)(1), Conduct Unbecoming an officer.

I find just cause for discipline in this matter, but I grant the grievance in part because I believe a five-day suspension under these circumstances is not in keeping with the progressive discipline standard, and the seriousness of the incident. I find nothing improper or particularly unusual about Trooper Meyers' in court behavior. His testimony was professional and appropriate. Defendant was attacking him when she testified and his attempts to help the prosecutor to cross-examine the witness stopped when he was told to be quiet. There is nothing wrong with being disappointed in losing a case, and asking what happened. As far as I know, people whose faces turn red have very little control over it. Bumping into a door on the way out of court could happen to anyone, and would naturally cause a red face to get redder. However, whether provoked or not, Trooper Meyers knew better than to, in effect, call defendant a liar after the hearing was over. I find this was conduct unbecoming an officer that merited a one day suspension.

Respectfully submitted,

DATE: April 3, 2001

PHILIP H. SHERIDAN, JR.