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IN THE MATTER OF ARBITRATION BETWEEN

OHIO STATE TROOPERS ASSOCIATION Unit 1
Employee Organization

And

STATE OF OHIO, DEPARTMENT OF PUBLIC SAFETY
Employer

GRIEVANT Christopher E. Anderson

Case No. 15-00-20010906-0108-04-01

ARBITRATOR'S DECISION AND AWARD

Appearances:

For the Employee Organization:

Herschel M. Sigall

Elaine Silveira

Robert Stitt

For the State of Ohio:

Lt. Reggie Lumpkins

Sandra Mendel Furman, Arbitrator
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INTRODUCTION

This matter was heard before the undersigned on October 26, 2001 in Toledo, Ohio at One Government Center. Grievant Christopher "Pete" Anderson appeared as the union witness. Also present were OSTA President Robert Stitt, Attorney Elaine Silveira and Staff Representative Ron Moerning. General Counsel Sigall represented Grievant at the hearing. Sigall, Stitt, and Silveira presented closing arguments.

The State's witnesses were Lt. Greg Gregilla, Walbridge Post Commander, Sgt. Rodney Tyler from the administrative investigations unit of the Patrol, Jennifer Loar and Richard Meeker. Also present were Rob Young from central office of the Patrol and Neni Valentine from the Office of Collective Bargaining. Richard Collins acted as an observer. Lt. Lumpkins represented the Patrol and presented closing argument.

The contract, grievance trail, and disciplinary record were introduced and accepted as Joint Exhibits 1-3. Each side provided additional exhibits in support of their respective position; these are referred to in the discussion below.

There were no procedural arguments presented. Each side was given the opportunity to call witnesses and cross-examine witnesses, and present relevant materials in support of their position. All witnesses were sworn. Post hearing arguments were postmarked on November 14, 2001. The hearing was closed upon receipt of the closing arguments.

ISSUE:

Was the Grievant terminated for just cause? If not, what shall the remedy be?

APPLICABLE CONTRACT SECTIONS:

Article 19

STATEMENT OF FACTS:

Grievant was terminated from employment on August 28, 2001. At the date of termination, he had eight years tenure. Grievant was employed as a Trooper assigned to the Walbridge, Ohio post. Grievant was charged with a violation of OSHP Rule 4501:2-6-02(I)(1) Conduct Unbecoming an Officer. While off duty, Greivant allegedly engaged in offensive conduct at the Rossford, Ohio Denny's Restaurant, while under the influence of alcohol.

The events preceding his discharge occurred on July 15, 2001. Denny's is a popular spot for Troopers and other local enforcement personnel. Grievant, prior to July 15, 2001, was a recognized and frequent patron. He is known by the nickname "Pete". On the date at issue, Grievant had been drinking with a friend, Juan Montano. He was not on duty. They went to the Denny's during the early morning hours, the so called bar rush time. At the restaurant, Grievant engaged in behaviors that were deemed offensive and rude to certain patrons-Meeker, and the Jetts. Meeker testified that Grievant attempted to grab food off his plate. Grievant claimed that he remarked about Meeker's food order. Tammy Jett stated that Grievant used a disparaging term for homosexuals in a loud manner. Meeker, the purported object of the insulting language, did not hear it. Nor did Loar. Grievant admitted that he stated that he doesn't "get down" with faggots. He may have made remarks about another waitress' breast area, asked her age and if she had a boyfriend. He may have demanded service out of turn and/or in a loud manner. The other waitress, Rachel Ulmer, did not testify and stated to Sgt. Tyler that she did not want to get involved. Nor was her signed statement included in the A.I. He used the words "bitch" and/or "f-----g" according to witness statements and Meeker. The above described and alleged behaviors were boorish and unacceptable in a public place.

It is undisputed that Grievant engaged in physical contact with Jennifer Loar, a waitress at Denny's. The exact nature and intent of the physical contact is in dispute. Loar claimed that Grievant attempted a full nelson hold and when she told him to get off her in clear and profane language, he cupped/grabbed each of her breasts in his hands for a few seconds then released her, saying she was drunk. Loar states that the full nelson hold lasted longer than the contact with her breasts. Loar's testimony is partially supported by Meeker. Grievant claims that he attempted a full nelson hold causing Loar to slip. As she lost her balance, his hands may have grazed her breasts. It is undisputed that Loar was not physically injured by the contact.

It is undisputed that Grievant's contact with Loar at the restaurant was uninvited and unwelcome. Loar expressed her displeasure and upset at the time verbally to Grievant, and promptly made an oral and written report to her restaurant manager Nancy Blankenship. It is noted that she characterized the full nelson in her first written report as a "joke". Management Ex. 1 pg. 29.

After Grievant released Loar, he sat back down in his booth. Blankenship prepared his food order to go. As he was leaving the restaurant, he noticed other troopers in the parking lot-Stamos, Pratt, and Bowers. He engaged in short conversation with them about his conduct in the restaurant. He self-administered a portable breath test in the parking lot. He registered a.12, above the legal drunk driving limit. Grievant was not driving that night.

Blankenship came out and spoke to Anderson before he left the parking lot with Montano. The other troopers went into the restaurant and noticed Loar was upset. The troopers were likewise aware that Anderson was intoxicated. The troopers had limited conversations with Loar. None of the troopers reported any information about Grievant or Loar to their supervisor. Loar was told by them to do what she had to do and they would not hold it against her. Although present at or near the time of the incident as a patron, Sgt. Gary Vinson from Rossford Police Department did not file a report. Management Ex. 1.

Loar filed criminal charges two days after the incident. She told her boyfriend about the incident and he was very angry. He had been fired from Denny's for using a racial epithet about African Americans. Grievant is African American. As of the date of the hearing, the three criminal charges against Grievant remained unresolved.

EMPLOYER POSITION

The Employer maintains that there is a direct nexus between Grievant's off duty conduct and his role as a Trooper. Grievant embarrassed the Patrol and chose to act in this manner in a place frequented by other Patrol officers and where he is known as a Trooper. Grievant cannot be believed as to his claims of inadvertent touching. Grievant has prior discipline that reflects adversely on his trustworthiness. Grievant has expressed no remorse for his actions. Grievant should not be reinstated as he behaved in an outrageous and criminal manner.

UNION POSITION

The Union points to conflicts in the evidence and testimony as to who did what action, who saw what occurred, and who heard what occurred. Loar lacks credibility. Meeker could not accurately identify the placement of the participants on a diagram. Union Ex. 2 Grievant has a good service record and favorable evaluations. Union Ex.3.

The Union implies some racial animus to Loar. Since the evidence is conflicting and the Employer did not prove that Anderson did grab Loar's breasts, he should be reinstated to his position.

DECISION AND AWARD

The Arbitrator's task in this matter is to weigh the evidence as to Grievant's actions on July 15, 2001. There are several matters which are not disputed: Grievant was legally drunk and out in a public venue; he made some unwarranted reference to Meeker's food; he used the word "faggots"; he put Jennifer Loar, a waitress, in a full nelson hold; and touched her in the breast area. The touching was not welcome and was offensive to Loar. None of these actions, separately or in combination, reflect well upon the Grievant.

What makes these actions deserving of further analysis is the fact that these activities occurred off duty and while Grievant was out of uniform. Also, there is some conflict in the evidence as to the nature of the touching. Witness Young only saw the full nelson. Witness Meeker had a partial view and saw Grievant's left hand on the left breast for three to five seconds; he did not see the full nelson. The Jetts saw no touching. Anderson from the incident through the arbitration hearing stated that he might have accidentally grazed her breast while releasing her from the hold. Loar states that he "cupped" her breasts for a few seconds after the hold. (Purportedly others witnessed some or part of the events but did not want to get involved, per Sgt. Tyler and Loar.)

Assuming that Loar felt a "cupping", the Arbitrator still must determine if Grievant should forfeit his position for the events of July 15, 2001. Grievant is a nearly nine year employee of the Patrol. His evaluations from the past three years reflect a Trooper who meets or exceeds expectations in all areas. He was a leader in DUI and seat belt violation arrests, and selected as Trooper of the Year at the Walbridge Post in 1999. The comments in the core values section of the 1999 and 2000 evaluations both mention his honesty. (There was a 1996 two day suspension that called into question his honesty. Union Ex. 4. It does not appear in his official department record, which only contains two verbal reprimands, both issued in 2001. Joint Ex. 3.)

The Arbitrator does not agree with the Patrol that Grievant lacks credibility and cannot provide faithful service to the Patrol if reinstated. If he were perceived as

dishonest, it is unlikely that honesty would be cited as one of the three core values displayed by Grievant per the 1999 and 2000 evaluations. Comments from those evaluations state: "Does not rationalize or shade the truth when questioned about things. Always gives a straightforward answer even when it may get him into trouble...he willingly admits his mistakes, corrects them, and moves on." His most recent evaluation states:"...treats others fairly and with respect...his contacts with the public are handled in a professional manner..." This Trooper was viewed as an asset to his post prior to the events on July 15, 2001.

The Arbitrator reviewed the entire record in weighing Grievant's recognition of his behaviors the evening of the events, immediately thereafter, and at the hearing. The record reflects that on the evening of the incidents, he recognized that he had upset Loar. He said that she was "tripping". He told the Patrol investigator that he respects ladies and does not grab them on their backsides or breasts. He spoke to Blankenship on July 16th and expressed remorse for his conduct. He asked her to tell Loar that it was a misunderstanding and that he was sorry that she took it like that. At the hearing, he stated that he did not intend to offend Loar. Grievant recognized that he had no right to put her in a full nelson nor had any permission to touch Loar that morning at Denny's. He denied intending to make unwanted sexual contact. He stayed away from the Rossford Denny's and Loar at all dates after the incident. All witnesses --including Loar - describe Anderson as a professional. No one claimed that any of his alleged or admitted behaviors on July 15, 2001 were typical or recurrent.

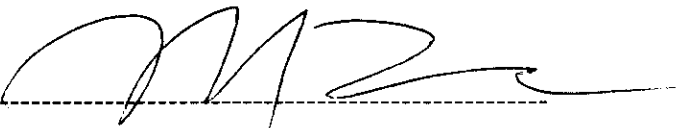
Grievant thought he would be "surprising" Loar by the full nelson but she was working and not at all happy with his surprise, as witnessed by her cursing at Grievant and her tears and complaints to several persons immediately after the event. But Grievant and Loar had been friends for three years before this night, and this friendship included socializing and going to a club bar together. Grievant had borrowed money and repaid it to Loar on at least one prior occasion. His approach to her that night was out of character, but the parties did have a history. It was not a random physical/sexual touching of an utter stranger in a public place. The Arbitrator finds that the touching was horseplay gone way too far, precipitated by impaired judgment due to alcohol.

Grievant did not express any recognition that his use of the word "faggot" is wrong, and this could lead to future unfortunate scenarios. (It is noted that Meeker did not corroborate the claim that two gay men changed their seats because of Grievant's conduct). Grievant also lacked recognition that he should not been "buzzed" in a public place, *especially* where he is known as a Trooper. The Arbitrator further notes that even though he registered .12 on the PBT, Grievant stated the reason he wasn't driving was due to the fact it wasn't his car. The Arbitrator hopes that this time off will have served to put Grievant on notice that drinking to the level reached that night then interacting in a public place can carry adverse consequences.

The Patrol has the right to expect that its officers while off duty will not engage in the undisputed behaviors exhibited by Trooper Anderson on July 15, 2001. Having so stated, the Arbitrator does not find the off duty conduct of such extreme nature that it severs the employment relationship of a long term employee with a good service record. There was no evidence of notoriety to these events, and the criminal matters are not resolved.¹

AWARD

Grievant shall be reinstated. The Arbitrator does not award back pay. IT IS SO HEREBY ORDERED.

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

Sandra Mendel Furman, Arbitrator

Issued in Columbus, Ohio on December 6, 2001

¹ The Arbitrator is aware through prior hearings that the Patrol does employ persons who have been convicted of various offenses while off duty.