

#1546

IN THE MATTER OF ARBITRATION
BETWEEN
THE OHIO DEPARTMENT OF TAXATION
AND
THE FRATERNAL ORDER OF POLICE/OLC INC. UNIT 2

Before: Robert G. Stein

PANEL APPOINTMENT

CASE # 30-1-001228-004-05-02
Katrina Miaudi, Grievant

Advocate(s) for the UNION:

Paul Cox, Esq., Chief Legal Counsel
Joel Barden, 2nd Chair
FOP/OLC
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Advocate for the EMPLOYER:

Tim Stauffer, Esq. Advocate, ODT
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INTRODUCTION

A hearing on the above referenced matter was held on November 5, 2001 in Columbus, Ohio. The parties stipulated to the fact that the issue was properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions. The parties made closing arguments in lieu of submitting briefs. The hearing was closed on November 5, 2001. The Arbitrator's decision is to be issued within forty-five (45) calendar days or no later than December 21, 2001.

ISSUE

The parties agreed upon the following definition of the issues:

Was the Grievant, Katrina Miaudi, suspended for just cause? If not, what should be the remedy?

RELEVANT CONTRACT LANGUAGE (Listed for reference, see Agreement for language)

ARTICLE 19.01, 19.05 DISCIPLINE

EMPLOYER'S POSITION

The Employer's position is straightforward. The Employer contends that both of the July seminars ended at approximately 12:30 p.m. and that the Grievant failed to report back to work or gain approval for approved leave time.

The Employer based its three- (3) day suspension upon these incidents and upon the Grievant's prior disciplinary record. The Employer points out that the Grievant's record indicates a pattern of behavior similar to the violations leading to the instant matter. According to the Employer, the Grievant was issued a written reprimand in April of 2000 for failing to report to her supervisor that her state vehicle was towed for being parked in a reserved parking spot. In September of 2000 the Grievant was issued a 3-day suspension (the discipline was modified to a paper suspension of 3 days, and she received 2 days of back pay) for falsely accusing her supervisor of making unwanted physical contact with her during an official Departmental operation.

Based upon the above, the Employer requests that the grievance be denied.

UNION'S POSITION

The Union argues that the Grievant spent hours outside of her normal work hours in transit between her home and the training sites during the weeks of July 21 and July 27, 2000. The Union does not disagree that the two seminars ended sometime around 12:30 p.m. each day. However, it argues that when other factors such as transportation and professional exchanges with seminar participants (following, 12/27/00 seminar, UX 4, 5) are factored into the situation the Grievant was not required to account for her time.

She had worked her forty hours during the week, asserts the Union. Moreover, if employees are required to work overtime they must gain the permission of their supervisor, argues the Union. The Union also contends that the Department of Taxation/Enforcement has no formal procedures requiring an employee to return to the office if a seminar ends early.

The Union also argues that the Grievant had prior managerial approval to attend the two seminars (one 5-day and one 3-day) by virtue of having them approved. The Union contends that common sense would dictate that an employee who gets out a few hours early should not be required to return to work or to get additional permission, beyond the period already granted to the Grievant.

Based upon the above, the Union requests the grievance be granted.

DISCUSSION

The Grievant is a short-term employee who appears to have had difficulty early in her tenure with the Department. In the year 2000, the instant suspension was her third discipline in approximately 9 months. It is clear that the Employer granted the Grievant permission to attend two seminars during the week of July 21st (5 days) and July 27th (3 days). I agree with the Union's contention that during those weeks the Employer expected the Grievant to be out of the office and in training for 40 hours and 24 hours respectively. In both cases, it appears that the seminars ended approximately 3 to 4 hours early.

As one who has attended numerous seminars, I am aware that it is not unusual for the last day of an extended seminar to be shortened. In many cases this is done to

accommodate people who must travel long distances. For example, the two Painesville police officers identified in UX 4 & 5 most likely had a good distance to travel from London, Ohio to Painesville, Ohio on July 21, 2000.

Given that the last day of a seminar commonly ends earlier than the usual workday, it is surprising there is no departmental policy regarding this issue. On July 24, Tax Enforcement Supervisor Richard T. Shirk recommended to Chuck Kumpar that the Grievant be disciplined for not informing supervision of her whereabouts and accounting for her time following the July 21st seminar. The Grievant's coworker, Agent Charles Marcum, called the office, requesting compensation time for the remainder of the workday that was granted. In contrast, the Grievant had not contacted Mr. Kumpar.

What I find inexplicable is that the Grievant was not informed of her error prior to the end of the second seminar. Supervisor Kumpar had a responsibility to inform Ms. Miaudi that she was violating departmental policy. When the second seminar ended early in the same fashion as the previous week's seminar, Ms. Miaudi conducted herself in the same fashion. The Employer argued vigorously that it is vital to know the whereabouts of its employees and to account for their time. Yet, when they had an opportunity to correct a situation that they reasonably should have known could happen again, they failed to correct it. If anything, the Employer enabled the Grievant's conduct by not informing her of the error of her ways. For this reason, I do not find the July 27th incident to be properly included in the reasons for suspension.

The Union argues that common sense should prevail in this matter. I agree with this assessment, but it applies to both the Grievant and the Employer. I find the argument of the Employer to be persuasive that it is the responsibility of the Grievant to inform her

supervisor of her whereabouts while she is working. Clearly, if she got hurt while in transit to or from a seminar, the Employer may be liable. If an emergency arose and the Grievant had to be contacted, she needed to keep her Employer informed as to her whereabouts. Furthermore, from an auditing point of view, the Employer is accountable for her paid time. I find the Grievant acted irresponsibly when she did not inform her supervisor that the seminar ended early and that she needed direction regarding the remainder of the day. It may have been impractical for her to come back to the office, given the need to travel from London to Columbus on a Friday afternoon. However, she was wrong in assuming she had the right to simply go home and not contact management while "on the clock."

The rationale provided by the Grievant that she had already worked 40 hours does not relieve her from her obligations to keep her Employer informed. The Grievant submitted evidence that she may have stayed for a considerable amount of time after the seminar on July 21st and discussed aspects of it with two police officers from Painesville. This was contradicted by the testimony of her coworker, Charles Marcum, who stated he saw her driving on I 70 at about 12:30 p.m. The Grievant's account of the facts is simply not credible and little weight is given to UX 4 & 5 because there was no ability to cross examine the officers who made these statements. Furthermore, I find it implausible that after five (5) days of a seminar, participants would spend an additional two (2) hours discussing its content on a Friday afternoon. It becomes even less plausible when two of the alleged discussants had to travel some three- (3) hours back to Painesville. If the Grievant was talking with the officers, there is no way to verify it was about work-related topics.

On the other hand, common sense would dictate that employees need to know what to do when the seminars end earlier. A policy that includes requirements of whom to contact should be clearly articulated to all employees and it should be uniformly enforced.

Unfortunately, it appears Ms. Miaudi is on a course to further discredit her career with the Department and possibly with future employers. Her work record indicates a lack of focus on professional responsibility, which is causing her to head in the wrong direction. Although I believe the Employer did not have just cause to sustain the level of discipline it issued in this case, for the reasons stated above, it had reason to take some action based upon Ms. Miaudi's pattern of discordant conduct. People who are serious about having successful law enforcement careers must consistently demonstrate that they have a high level of discipline and the respect for authority required of this profession.

AWARD

The grievance is denied in part and sustained in part.

The Grievant's 3-day suspension shall be reduced to a 1-day suspension for being absent without leave following an early end to her seminar on July 21, 2000. She shall be paid two days of back pay at the rate of pay deducted at the time of suspension. She shall also be made whole for any loss of seniority and benefits.

Respectfully submitted to the parties this 21st day of December, 2001.

A handwritten signature in black ink, appearing to read 'Robert G. Stein', written over a horizontal line.

Robert G. Stein, Arbitrator