

In the matter of Arbitration between

**Ohio State Troopers Association
Union**

And

**Case # 15-00-020408-0058-07-15
James A. Russell, Grievant**

**State of Ohio, Department of Public Safety
Employer**

In attendance: For the Highway Patrol—Ms. Shirley Turrell-OCB, Sgt. Charles J. Linek, S/Lt. C. L. Schaffnor(witness), Lt. Kelly Hale(Phone witness), Lt. Reggie Lunkins-Advocate

For OSTA—Mr. Robert K. Stitt-OSTA President, Sgt. James Russell(witness), Tpr. Richard Blyberg(witness), Ms. Elaine Silveira-Attorney, Mr. Ed Richardson-Staff Rep., Tpr. Michael Williams(witness), Lt. Michael Black(witness), Mr. Herschel M. Sigall-OSTA General Council, Advocate

Arbitrator's Decision and Award

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on July 9, 2002. It was heard in conjunction with case # 15-00-020404-0056-04-01 (per Joint Stipulations). All witnesses were sworn. No procedural issues were raised and the parties agree that the issue is arbitrable. There were several exhibits presented: Jt. 1 & 2-Unit's 1 and 15 Collective Bargaining Agreements; Jt. 3-Grievance trail #'s 56 & 58; Jt. 4-Discipline Package, composed of-Statement of Charges, Pre-discipline notice, Meeting Officer Reply, Suspension Letter, Highway Patrol Rules &

Regulations-4501-2-6-03(A)(1) Responsibility of Command, Department Record. The employer introduced three additional exhibits during the hearing: Mgm't. 1- Administrative Investigation 01-1285; Mgm't. 2- Proceedure Number HP-25; Mgm't. 3-Annual Performance Review, Sgt. Russell. The union submitted seven exhibits during the hearing: Union 1- 1/3/02 E-mails from Lt. Black to Sgt's. ; Union 2-Case Management Solvability Factors; Union 3-Two E-mails from Lt. Black to Sgt. Blyberg; Union 4- 10/6/01 Radio Logs; Union 5-Monthly duties reports from Sgt. Blyberg to Lt. Black; Union 6-Shift reports from Sgt. Russell to Lt. Black; Union 7-3/8/01 letter to Lt. Black from Hamilton Police Chief-re Trooper Robinson.

ISSUE:

A jointly signed issue statement was submitted and stipulated to as follows:

Did the Grievants receive three (3) days suspension for just cause? If not, what shall the remedy be?

FACTS:

Sergeant James A. Russell has been employed by the Highway Patrol for seventeen (17) years. Grievant Russell has been a Sergeant for ten (10) years and has been at the Hamilton Post since February 1992. An Administrative Investigation was conducted regarding the Hamilton Post's supervisors' role in 12 "Blue Max" (auto Larceny) apprehensions by a Trooper Robinson. The Investigation was conducted in late 2001 and early 2002. The focus was on auto larceny apprehensions by Trooper Robinson that occurred between July 19, 2001 and October 26, 2001. The grievant (Sgt. Russell) was Trooper Robinson's shift supervisor from July 1, until October 3, 2001. As a result of the AI Sgt. Russell was suspended for three (3) days effective March 25, 2002.

The employer charged Sgt. Russell with a violation of Highway Patrol Rule 4501: 2-6-03(A)(1) Responsibility for Command. To wit: It is charged that between July 19, 2001 and October 26, 2001 you failed to provide proper supervision to a subordinate in regard to auto larceny investigations. Sgt. Russell grieved the suspension on 4/3/02, stating that the employer

violated contract provisions: 19.01-Disciplinary Procedure-Standard and 19.05 Disciplinary Procedure-Progressive Discipline.

OPINION:

The Administrative Investigation of the Hamilton Post supervision regarding Trooper Robinson's "Blue Max" activity identified that the grievant was the supervising sergeant during four (4), in question, stolen vehicle recovery "bolts"(mgm't ex. 1-pg. 67). These four auto larceny recoveries (9/11, 9/14, 9/23, 9/30) were cited by management as the incidents that led to the discipline. The recoveries and reports occurred over a nineteen (19) day period. None of the Post supervision, grievant included, were cited for any criminal or collusive activities (mgm't. ex. 1).

Unrefuted testimony of three witnesses (grievant included) raised questions to higher authority about the real perpetrator's (Robinson) activities. The witnesses cited to the Post Commander the "off line" time in the city of Hamilton by Trooper Robinson. The Post Commander's lack of attention to Robinson's activities and the dates the recoveries occurred, may have contributed to the grievant's lack of focus on Robinson's activities and reports.

The citings leading to the discipline occurred on or soon after our nation was attacked by terrorists on September 11, 2001. All law enforcement agencies and personnel were on high alert, working longer hours and had to be feeling the stress of change caused by the attacks.

Sgt. Russell could have been more vigilant, regarding Trooper Robinson's recoveries and reporting; however, I do not find the grievant's actions unreasonable.

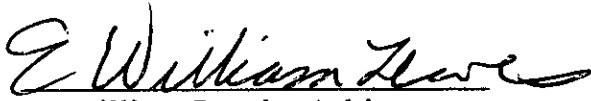
Although supervision and reporting were not as desired, to take such strong disciplinary action is deemed excessive. There are other vehicles available to deal with alleged, first time detected administrative and supervisory inefficiencies.

AWARD:

Considering Sergeant Russell's excellent service and department record, I find that the employer violated Article 19.05 Progressive Discipline.

I accordance with Article 20.12(F): the three (3) day suspension is reduced to a written warning and the grievant is to be made whole for all lost wages and benefits.

Issued this 23rd day of July 2002.


E. William Lewis, Arbitrator