

#1606

ARBITRATION AWARD

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

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: DA'RELL THOMAS**

CASE NUMBER: 15-00-20020408-0057-04-01

APPEARANCES: For the Highway Patrol—S/Lt. Kevin Teaford and Renee L. Byers, Esq.,
Advocate OSHP HRM.

For the union--Tpr. Da'rell Thomas, Grievant, and Herschel M. Sigall, OSTA Advocate.

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

FACTS: Grievant, Da'rell Thomas, a twenty-four year employee as an Ohio State Trooper, is employed as a trooper assigned to the Georgetown Post. Grievant was charged with violation of Admin R. 4501:2-6-02(U), Use of Leaves. He received a three-day suspension. He has received a verbal reprimand on February 7, 2001, a written reprimand on July 6, 2001, a one-day suspension on January 31, 2002, and the present three-day suspension on March 22, 2002, for alleged violation of utilizing more sick leave than accumulated, causing a negative sick leave balance. He has also received an unrelated verbal reprimand, and twenty-seven violations of the weight policy, which I do not consider, pursuant to Article 40.03 of the contract. 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 September 20, 2002, and now comes before me as arbitrator for final resolution.

CONTRACT PROVISIONS

Article 48.04: Sick Leave Policy

AWARD

The grievance is granted. Policy Number DPS-501.10 provides, under Special Provisions: "Bargaining unit members will continue to be subject to the sick leave policy outlined in the relevant labor agreement. If this policy is different or in conflict with the labor agreement, the labor agreement will take precedence." The contract provides, in Article 40.04 II.D. Pattern Abuse: "Consistent periods of sick leave usage, for example: ...7. Continued pattern of maintaining zero or near zero leave balances; or 8. Excessive absenteeism – use of more sick leave than granted." I read those sections in conjunction with Article 40.04 III. C, which provides, in part, "Use of sick leave for valid reasons shall not be considered for pattern abuse." The grievant had medical excuse forms completed by his physician for the two absences considered for this discipline. Article 48.04 II. A. provides: "Sick Leave: Absence granted per negotiated contract for medical reasons." Grievant is being disciplined for a form of "pattern abuse" not included in "unauthorized uses" in the contract, which is different than the policy in this regard. The contract trumps the policy.

Respectfully submitted,

DATE: September 24, 2002


PHILIP H. SHERIDAN, JR.