

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

And

**Case # 15-00-20510-0073-04-01
Willie Smith Jr., Grievant**

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

In attendance: For the Highway Patrol--- Ms. Shirley Turrell, OCB; Sgt. Charles J. Linek; Sgt. Joe Dragovich (witness); Lt. Reggie Lumkins-Advocate

For OSTA--- Mr. Dennis Gorski, President; Tpr. Willie Smith Jr. (witness); Mr. Robert Cooper, Staff Representative; Sgt. Ronald Cox (witness); Ms. Elaine Silveira, Ass't. General Council-Advocate

INTRODUCTION:

The matter was heard in Columbus, Ohio at the Office of Collective Bargaining on January 22, 2003. 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- Unit 1, Collective Bargaining Agreement; Jt. 2- Grievance Trail; Jt. 3- Discipline package, composed of— Statement of Charges, Pre-discipline Notice, Meeting Officer Reply, Suspension Letter, H. P. Rules & Regulations: 4501:2-6-02(Y)(2) Compliance to Orders, Department Record; Agreement to Amend Grievance; Jt. 4- Administrative Investigation # 02-1406.

ISSUE:

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

“Did the Grievant receive a one-day suspension for just cause? If not, what shall the remedy be?”

FACTS:

Trooper Willie Smith Jr. has been employed by the Highway Patrol since October 1998. The grievant is currently working out of the Hiram Post. At the time of the alleged incident he was assigned to the Warren Post #78.

The alleged incident occurred at the Warren Post Headquarters on January 21, 2002 at approximately 6:00am. At the time of the alleged incident, Tpr. Smith was working the 10:00pm to 6:00am shift. On or about 6:00am, an incident occurred between the grievant and his shift supervisor, Sgt. Joe Dragovich. As a result of the alleged incident Tpr. White was suspended for one-day, on April 12, 2002.

An Administrative Investigation was conducted in late January followed by a Pre-disciplinary hearing on March 20, 2002. The DPS Director issued a letter of one-day suspension to the grievant on April 11, 2002. The grievant was charged with violation of Highway Patrol Rule 4501: 2-6-02(Y)(2) Compliance to Orders, to wit: "it is charged that on January 21, 2002 you failed to comply with lawful orders of a supervisor." A grievance was filed by Tpr. White on April 25, 2002. He alleged that the employer violated Article 7 (NON-DESCRIMINATION) and Article 18 (ADMINISTRATIVE INVESTIGATION). The Grievance charges were subsequently amended (1/7/03), by mutual agreement, to a charge of violating Article 19 (DISCIPLINARY PROCEDURE), Section 19.01-Standard.

OPINION:

Testimony and evidence showed that on January 21, 2002, at approximately 6:00am., a discussion was commenced by Sgt. Dragovich with Tpr. White. The subject of this discussion, according to Sgt. Dragovich, was to revolve around operational issues. Those operational issues occurred during Tpr. White's just completed shift. According to witness testimony, the discussion began at the Sgt's. office and due to the grievant's reluctance to pursue the topic, both participants wound up in the dispatch room.

The grievant's unrefuted testimony, showed that he requested union representation. Sgt. Dragovich testified that representation was unnecessary since the issue was not disciplinary in nature. At some point in the radio room discussion an unrefuted order was given to Tpr. White by Sgt.

Dragovich. The order was that Tpr. White was to return to the Sgt's. office to discuss the operations matter. A response of "no", by Tpr. White was heard, and testified to, by a number of witnesses, per the AI. Trooper White denies that he refused the Sergeant's order.

According to testimony, the Post union steward came on duty during the radio room interchange. Shortly thereafter, Sergeant's Dragovich's requested discussion was held in his office, which included the union steward. Sergeant Dragovich testified that Tpr. Jones (union Steward) appeared within a couple of minutes of him ordering the grievant to his office.

Insubordination is a serious offense. There was no dispute as to whether an order was given. The dispute revolves around the compliance to the order. Grumbling or disagreeing about an order does not, in itself, constitute insubordination¹. However, non-compliance with a lawful order does constitute being insubordinate. In labor relations the accepted norm is to comply now and grieve later.

In this incident, compliance occurred very soon (minutes) after the order was given. Albeit, it could have been very fortunate for the grievant that a union representative happened to come on duty.

The relationship between the grievant and the shift supervisor, Sgt. Dragovich, has been strained for quite awhile. The choice of time for the discussion could have been better on the part of Sgt. Dragovich. However, his right to request the discussion is undenied. Testimony by witnesses throughout the AI, show that the grievant's behavior, in the dispatch room, was uncalled for and certainly disrespectful, in the arbitrator's opinion.

Evidence and testimony showed that the order was given and responsively complied with, albeit, fortunate for the grievant.

When the arbitrator considers the grievant's Department Record and his disrespectful behavior, during the incident, he cannot totally exonerate the grievant in this case. However, the specific charge of non-compliance cannot be sustained.

¹ Principles Governing Just Cause Determination (Arbitrator Winograd-FMCS --"Labor Arbitration Manual"

AWARD:

In accordance with Article 20.12(F), the one-day suspension is reduced to a written warning. The grievant is to be made whole for the lost wages and benefits.

This concludes the arbitrator's decision.

Issued this 27th day of January 2003.

A handwritten signature in cursive script, reading "E. William Lewis". The signature is written in black ink and is positioned above a horizontal dashed line.

E. William Lewis, Arbitrator