

**In the matter of Arbitration between:**

**Ohio State Troopers Association  
Union**

#1689

**And**

**Case # 15-00-021216-0199-04-01  
Benjamin W. Richardson, Grievant**

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

**In attendance:** For the Highway Patrol---Ms. Heather R. Goss, Ass't. Press Secretary-Governor (witness) Ms. Catherine Kolbalsh, ODPS/Labor; Sgt. Charles J. Linek; S/Lt. Rick Munk (witness); Ms. Neni Valentine, LRS/OCB; Lt. Reggie Lumkins-Advocate

For OSTA---Sgt. Lee A. Darden (witness); Mr. Dennis M. Gorski, President; Tpr. Benjamin W. Richardson (witness); Mr. Herschel Sigall, General Council; Ms. Elaine Silveira, Attorney-Advocate

**INTRODUCTION:**

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on June 17, 2003. This hearing began at 12:15pm and all witnesses were sworn. No procedural issues were raised and the parties agreed that the issue was arbitrable. The following exhibits were presented: Jt. 1- Unit 1, Collective Bargaining Agreement; Jt. 2-Grievance Trail; Jt. 3-Discipline Package, composed of---Statement of Charges, Pre-discipline Notice, Pre-discipline Meeting Officer's Reply, Suspension Letter, Highway Patrol Rules and Regulations: 4501-2-6-02 (B)(1)(5), Performance of Duty; Department Record; Mgm't. Ex. #1-Administrative Investigation 2002-2479, stipulated to by the parties.

**ISSUE:**

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

## **FACTS:**

Trooper Benjamin Richardson has been employed by the Highway Patrol since November 15, 1991. He is currently assigned to the Capital Square Security Detail, Post 97 (Statehouse). On November 6, 2002 at the time of the alleged incident he was also assigned to the Statehouse, Post 97.

An incident occurred at the Statehouse Ceremonial Staff Offices on or about 11:15am, on November 6, 2002. Tpr. Richardson was in the unlit Staff Offices when Ms. Goss, Governor's Ass't. Press Secretary, entered and turned on the lights. Ms. Goss reported being startled, saying, "you shouldn't be here!" She reported the incident to Lt. Seitz, Commander of the Protection Unit on the same day.

S/Lt. Munk conducted an Administrative Investigation on November 7, 2002, which was followed by a Pre-disciplinary hearing on December 3, 2002. The grievant was charged with violating Rules and Regulations of the Highway Patrol, specifically Rule 4501:2-6-02 (B)(1)(5)—Performance of Duty/ Inefficiency, Compliance to Orders to wit: It is charged that on November 6, 2002, Tpr. Richardson entered the Statehouse Ceremonial Offices of the Governor for purposes unrelated to his assigned duties. Trooper Richardson was suspended for three (3) days effective December 17, 2002. Trooper Richardson filed a grievance on December 12, 2002 alleging the employer violated Article 19.01 and 19.05, Disciplinary Procedure.

## **OPINION:**

The facts in this case are not in dispute. Testimony of the primary witnesses, Ms. Goss and the grievant, Tpr. Richardson corroborate each other's recollection of the events. Ms. Goss entered the Governor's Ceremonial Offices, turned on the lights and Tpr. Richardson rose from behind a rear desk. The grievant stated he had dropped his keys, and left abruptly through the rear door. Tpr. Richardson later stated to his supervisor and in a pre-disciplinary hearing that he was using the shuttered darkened room (Mgm't. Ex.-1) to make a personal cell call to his wife. Personal cell calls are not prohibited, as long as the employee is discrete, according to Sgt. Darden, a Post 97 supervisor.

Trooper Richardson, according to Management Exhibit # 1, was assigned to Line 3: Statehouse (outside), at the time of the incident. Therefore, management charged the grievant with violating Rule 4501: 2-6-02 (B)(1)(5), by entering Statehouse Ceremonial Offices of the Governor for purposes unrelated to his assigned duties. The above mentioned Rule reads as follows:

**(B) Performance of Duty**

- (1) A member shall carry out all duties completely and without delay, evasion or neglect. A member shall perform his/her duties in a professional, courteous manner.
- (5) Members who fail to perform their duties because of an error in judgement or otherwise fail to satisfactorily perform a duty of which such member is capable, may be charged with inefficiency.

Did the Trooper's actions and behavior violate these rules? There is no question in the arbitrator's mind that the actions and behavior of the grievant were suspicious. To make a cell call in a pitch dark room (Mgm't. Ex.-1) when lights are available for use is questionable. The act of gathering one's things and abruptly leaving the room, stating only "I dropped my keys", without self-identification, in my opinion, was not professional or courteous behavior. An explanation of reason for using the room certainly would have been in order and would have allayed suspicion. In the arbitrator's opinion, the grievant did use poor judgement in selecting the particular location and behaving as he did, when interrupted.

I do not find the penalty excessive, unreasonable or that management abused its discretion<sup>1</sup>. The employer followed the prescribed progressive discipline in Article 19.05 and there was a preponderance of evidence supporting the charges.

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<sup>1</sup> Elkouri & Elkouri, 5<sup>th</sup> Edition-Pg. 911.

**AWARD:**

The grievance is denied.

This concludes the arbitration decision.

Issued this 26<sup>th</sup> day of June.

Respectfully submitted,

A handwritten signature in cursive script that reads "E. William Lewis". The signature is written in black ink and is positioned above the printed name and title.

E. William Lewis  
Arbitrator