

In the matter of Arbitration between:

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**Ohio State Troopers Association
Union**

And

**Case # 15-00-021011-0151-04-01
Trooper Ronald K. Simmons, Grievant**

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

In attendance: For the Highway Patrol---Ms. Catherine Kolbash, ODPS-Labor; Ms. Cathy Luft (witness); S/Lt./OSP Susan Rance-Locke; Lt. Reggie Lumkins, Lt./OSP; S/Lt. R. L. Munk (witness); Ms. Neni Valentine-OCB; Sgt. Charles J. Linek-OSP—Advocate

For Ohio State Troopers Association---Mr. Dennis Gorski, President; Ms. Elaine Silveira, OSTA Attorney; Trooper Ronald K. Simmons, Grievant (witness); Mr. Herschel M. Sigall, Chief Legal Council—Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on April 17, 2003. All witnesses were sworn. No procedural issues were raised and the parties agreed that the issue was 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, Pre-discipline Meeting Officer's Reply, Suspension Letter, H. P. Rules & Regulations; 4501:2-6-02 (B)(1)(5), Performance of Duty; Department Record; Mgm't. 1- Picture dated 8/5/02 of Ms. Luft & Grievant, Trp. Simmons; Mgm't. 2- Layout of Ohio Expositions Center; Mgm't. 3- AI 2002-2118; Un. 1- O.P.E.R.A.T.I.O.N.S.- EVALUATION-Trp. Ronald K. Simmons.

ISSUE:

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

Did the Grievant receive a one (1) day suspension for just cause? If not, what shall the remedy be?

FACTS:

Trooper Ronald K. Simmons (grievant) has been employed by the Ohio State highway Patrol since January 14, 1979. At the time of the alleged incident he was, and is currently, assigned to Post 12, Springfield, Ohio, however, in August of 2002 he was temporarily assigned to the Ohio State Fair. On August 6, 2002 a Miss Cathy Luft contacted a Trooper Bloomberg, stating (Statement Form-Mgm't. Ex.-3) that Trooper Simmons, a former boy friend, was coming by her stall (horse) and being obnoxious.

A formal complaint was filed against Trp. Simmons by Miss Luft on August 7, 2002. The original Report of Investigation (Mgm't. Ex.-3) taken by S/Lt. H. W. Hudson III, alleges that the complainant (Miss Luft) was being stalked by the grievant. Charges were not filed against Tpr. Simmons regarding stalking.

After an Administrative Investigation, conducted by S/Lt. Munk, Tpr. Simmons was charged with violating Rules and Regulations of the Ohio State Highway Patrol. Specifically; Rule 4501: 2-6-02 (I)(3), Conduct Unbecoming an Officer. It was charged that between August 4, 2002 and August 6, 2002 the grievant had improper on-duty association with a patron at the Ohio State Fair (Miss Luft). Tpr. Simmons was suspended for one (1) day on October 5, 2002. A grievance was filed by Tpr. Simmons on October 7, 2002, alleging that the employer violated Article 19—19.01 & 19.05, Progressive Discipline Procedure.

OPINION:

Testimony and evidence show that the complainant (Miss Luft) and Tpr. Simmons (grievant) had a romantic relationship a number of years ago (1995). The relationship ended abruptly and there had been no contact between the parties until August 4, 2002, at the Fair. Tpr. Simmons was working the 10:00am to 10:00pm shift. He saw the complainant unloading horse equipment at the Gilligan Complex between 6:00 and 7:00pm. A "small talk" conversation occurred, lasting from 10 to 45 minutes depending on the complainant's or grievant's testimony, and they parted company.

Contact and conversation was had again between the parties on Monday, August 5, 2002. Again, the number of contacts and their duration was never totally in-sync, however, the complainant and her friend, who was there on Monday, made no accusations of any unsuitable behavior by Tpr. Simmons. Miss Luft testified that, just by the grievant being around made her feel uncomfortable. The complainant also states that she observed the grievant in her area a number of times on Tuesday, August 6, 2002 (Mgm't. Ex.-3). At no time, according to testimony and evidence (Mgm't. Ex.-3), did the complainant or her friend advise the grievant that his presence was not preferred.

The complainant's testimony regarding the grievant's behavior alleges possible stalking (Report of Investigation), to being obnoxious (Mgm't. Ex.-3, Tpr. Bloomberg) to feeling uncomfortable in his presence. Nowhere in Mgm't. Ex. -3, or Miss Luft's testimony did I find any description of a conversation piece that exemplified obnoxious behavior by Tpr. Simmons. The stalking concern was withdrawn early on. Furthermore, the testimony of the complainant regarding Tuesday, August 6, 2002, of the grievant being at her stall three or four times standing and watching (Mgm't. Ex.3, pg. 7), does not corroborate with her testimony regarding the same date in Management Exhibit-3, pg. 32.

Although the grievant was out of his assigned duty area on occasion, being an adult fair attender myself and ex-horse owner, I would much rather pass through the animal barn's during my coming and going rather than the midway.

The grievant was not charged with being out of his assigned duty area. He was charged with Conduct Unbecoming an Officer, by having improper

contact with an Ohio State Fair patron. There was not a preponderance of evidence submitted to convince the arbitrator that the grievant's behavior on August 4, 5 and 6 of 2002 was unsuitable.

AWARD:

In accordance with Article 20.12 (F), the grievance is sustained. The grievant is to be made whole for lost wages and benefits.

This concludes the arbitration decision.

Issued this 24th day of June 2003.

Respectfully submitted,

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis
Arbitrator