

#1706

In the Matter of Arbitration *
Between *
FOP-OLC * Case Number:
and * 25-18-02-12-03-03-02-05
The State of Ohio, Department *
of Natural Resources *

Before: Harry Graham

APPEARANCES: For FOP-OLC:

Paul Cox
FOP-OLC
222 East Town St.
Columbus, OH. 43215

For Department of Natural Resources:

Sue Johnson
Department of Natural Resources
1930 Belcher Dr.
Columbus, OH. 43224

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter on July 29, 2003 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer have just cause to discipline the Grievant? If not, what shall the remedy be?

BACKGROUND: There is substantial agreement upon the events

that prompted the Employer to levy discipline on Jose Ramirez, the Grievant. Mr. Ramirez is a Wildlife Officer. He works in Holmes County, OH. From time-to-time Wildlife Officers receive requests to issue deer damage permits. These permit landowners to kill deer out of season to mitigate damage to their property. On September 11, 2002 the Wildlife Officer Supervisor in District 3 Peter Novotny, received a complaint from a citizen, Frank Giaque. Mr. Giaque complained that Mr. Ramirez had placed restrictions on the manner in which deer could be taken. Specifically, Officer Ramirez had indicated that "Supervisor Novotny allows use of rifles and no restriction of hours to take deer." Mr. Novotny contacted Mr. Ramirez and informed him that phraseology was inappropriate. Upon learning of the issuance of the deer damage permit to Mr. Giaque Supervisor Novotny reviewed other deer damage permits issued by the Grievant. He found a permit issued to one Lloyd Schlauch. Upon being contacted, Mr. Schlauch indicated that Mr. Ramirez had placed restrictions on the type of firearm that might be used to kill deer. These were undocumented on the permit. Mr. Ramirez had allegedly told Mr. Schlauch that a rifle could not be used to kill deer.

There was a second incident involving Mr. Ramirez. There is a program in Ohio for inspecting deer propagator

establishments. During that operation Mr. Ramirez requested assistance from his supervisor in completing his assignment. During a voice mail exchange the grievant was allegedly disrespectful towards his supervisor.

These actions prompted the Employer to impose a one day suspension on the Grievant. That was protested in the grievance procedure of the parties and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE EMPLOYER: In the months prior to this incident the Grievant received lesser forms of discipline. Thus, on May 13, 2002 he received a verbal reprimand for failure to work a law enforcement project in Ashland County. He was reprimanded for insubordination. On August 2, 2002 he was given a written reprimand for insubordination for failure to complete an assignment and failure to submit his assigned weekly schedule. This was in connection with the Goose Hunter/Harvest Survey in Holmes County. Then came the incidents which prompted the Employer to suspend Mr. Ramirez for one day. On August 16, 2002 Wildlife Officers were instructed on the manner in which to complete deer damage permits. They were told that any restrictions on the permit were to be listed on it for Mr. Novotny's approval. They were also told that he would not approve any permit if

restrictions on firearms usage were placed on it. Mr. Ramirez violated both those directives. He issued a permit indicating to Mr. Giaugue that he did not approve use of a rifle to kill deer. He verbally told Mr. Schlauch of restrictions on the sort of firearm that could be used to kill deer. Not only were his actions contrary to instructions, they violated Division Procedure 58.

Subsequently, during a voice mail exchange with Mr. Novotny the Grievant was disrespectful. When taken with his improper issuance of deer damage permits the State asserts its discipline in this situation was proper. It urges the grievance be denied in its entirety.

POSITION OF THE UNION: At arbitration the Union pointed to the disciplinary notice issued to Mr. Ramirez. It conspicuously omitted any reference to improper voice mail exchanges between him and his supervisor. The Union urged I dismiss that charge against him as he was not notified of it. I did so. Thus, there is one incident involved in this proceeding, not the two the Employer relied upon in its internal correspondence. (Jt. Ex. 6). If the Employer gave the Grievant a day off for two offenses, and one was dismissed, by definition the discipline is improper according to the Union.

In this situation Mr. Ramirez was confronted with a

predicament. His supervisor, Mr. Novotny, wanted deer damage permits to explicitly permit use of a rifle. In the course of his duties Mr. Ramirez appears in the Holmes County Court. Judge Jane Irving of that Court had expressed her concern over use of rifles to kill deer in the County. This was known to the Grievant. In essence, he was caught between the directive of his supervisor and pressure from the Judge. He accommodated to it by indicating that Mr. Novotny would have to approve use of a rifle. Had he acted otherwise he risked the wrath of Judge Irving. Mr. Ramirez did not prohibit use of rifles. He merely referred permit-seekers to Mr. Novotny. He cannot be disciplined for such activity the Union asserts. It contends the grievance should be sustained in its entirety.

DISCUSSION: Joint Exhibit 6 contains a memorandum to the Director of the Ohio Department of Natural Resources, Samuel Speck, from the Labor Relations Section. It indicates that Mr. Ramirez had been involved in two incidents warranting discipline. These were his actions regarding the deer damage permits and a second incident regarding a disrespectful voice mail he left for his supervisor, Peter Novotny. The memorandum to Mr. Speck is dated December 12, 2002. On November 7, 2002 the Department recommended Mr. Ramirez be disciplined. It charged him as follows:

Specifically, the Division alleges that you willfully disobeyed written and verbal direction regarding the issuance of deer damage permits. Additionally, you were allegedly dishonest when questioned.

No mention is made of any disrespectful voice mail. At arbitration the Union objected to this element of the allegations against Mr. Ramirez. It claimed that as it was raised belatedly no consideration should be given it. I agreed with the Union and dismissed that aspect of the discipline against Mr. Ramirez. That left one charge against the Grievant, the allegation involving improper issuance of deer damage permits. As discipline against Mr. Ramirez was approved by Director Speck for two charges and one now remains it is impossible to sustain it.


Employees of the Department are not automatons. They cannot be expected to blindly carry out directives, regardless of the consequences. In this situation Mr. Ramirez was caught between two conflicting authorities. On the one hand, he was expected to issue deer damage permits allowing people to use a rifle against deer. On the other hand the local judiciary in the person of Judge Irving had made her opposition to that practice known. She codified it in writing shortly after Mr. Ramirez was disciplined. Mr. Ramirez has dealings with Judge Irving on occasion. He did not wish to displease her. To accommodate his supervisor he directed persons granted deer damage permits to check with

Mr. Novotny for permission to use a rifle. In the circumstances facing Mr. Ramirez that was not unreasonable. He did not prohibit use of a rifle. He merely referred permittees to higher authority.

It is the case that the Grievant was trying to not literally comply with instructions concerning issuance of deer damage permits. In hindsight, he was trying to accommodate Mr. Novotny's wish people possessing deer damage permits be allowed to use rifles and the opinion of Judge Irving to the contrary. In those circumstances his referring of permittees to Mr. Novotny for explicit permission to use a rifle was not unreasonable.

AWARD: The grievance is sustained. The one-day suspension at issue in this proceeding is to be removed from Jose Ramirez' personnel file. Any pay lost by him as a result of this incident is to be made to him.

Signed and dated this 19th day of August, 2003 at Solon, OH.


Harry Graham
Arbitrator