

#1714

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

And

**Case # 15-00-030205-0025-04-01
Tiffany L. Tuck, Grievant**

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

In attendance: For the Highway Patrol—Lt. Ronald E. Kuszmaul
(witness); Sgt. Charles J. Linek; Ms. Amy Tait, LRS/OCB; Lt. Reggie
Lumkins-Advocate

For OSTA—Mr. Dennis Gorski, OSTA President; Mr. Herschel Sigall,
General Council; Mr. Robert Stitt, Staff Representative; Tpr. Tiffany L.
Tuck (witness); Ms. Elaine Silveira, Attorney-Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on September 25, 2003. The hearing began at 12:30pm and all witnesses were sworn. No procedural issues were raised and the parties agreed that the issue was arbitrable. The following exhibits were presented and entered into evidence by the parties: Jt. 1-Unit 1 Collective Bargaining Agreement; Jt. 2-Grievance Trail; t. 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 (Y)(2), Compliance to Orders, Department Record; Mgm't. Ex.1-Administrative Investigation 2002-2459; Mgm't. Ex. 2-Ohio State Highway Patrol Policy # OSP-103.22; Mgm't. Ex. 3-IOC dated 12/17/99 Re-counseling of Grievant on 12/3/99, on use of patrol car video cameras.

ISSUE:

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

FACTS:

The grievant, Trooper Tiffany Tuck, has been employed as a Trooper by the Highway Patrol since July 25, 1997. She is currently assigned to the Delaware Post. On October 11, 2002 at the time of the alleged incident the grievant was assigned to the Delaware Post.

On October 11, 2002 Tpr. Tuck worked the 7:00am to 3:00pm shift at the Quarter Horse Congress located in the Ohio State Exposition Center. While returning to her Post in Delaware the grievant made a vehicular traffic stop on Interstate 71, south of S R #161. The detainee fled from the rear seat of her patrol car and a search ensued involving multiple units of the Highway Patrol and the Columbus Police Department. The suspect was apprehended by the Columbus Police shortly thereafter and returned to Trooper Tuck's custody. During the traffic stop Tpr. Tuck did not activate the patrol car's audio/video equipment and she was charged with violating Highway Patrol Policy # 103.22, Audio/Video Monitoring and Recording.

Sergeant S. M. Click conducted an Administrative Investigation on November 8, 2002 regarding the alleged non-activation of the audio/video equipment and the disconnected child safety locks. The AI was followed by a Pre-disciplinary hearing on January 23, 2003. The grievant was charged with violating 4501: 2-6-02(Y)(2) of the Rules & Regulations of the Ohio State Highway Patrol, Compliance to Orders. A grievance was filed by Trooper Tuck on 1/31/03 protesting the one-day suspension to be effective February 3, 2003. The grievant claimed that the employer violated Article 19.01 and 19.05, Disciplinary Procedure.

OPINION:

The facts in this case are not in dispute. The grievant does not deny the traffic stop and the failure on her part to activate the available audio/video system. However, the grievant's testimony and grievance claims that the inactivation of the camera was an oversight and unintentional. Trooper Tuck testified that, in her opinion, the discipline of suspension was for those Troopers who intentionally did not activate vehicle audio/video. Reference was made through the grievant's testimony to the Human Resource IOC of December 30, 2002. The IOC (Jt. 2) recommended discipline of suspension for intentional violations of audio/video policy. Since the non-activation

was unintentional, the grievant and union argued that, the suspension should be reduced to a written warning.

The employer argues through testimony and evidence that the suspension was for violation of policy and was in compliance with progressive discipline. Lt. Kuszmaul testified with substantiating evidence that the grievant had already been counseled regarding patrol car audio/video use, in December 1999. The December 1999 counseling of the grievant, according to testimony, was precipitated by a failure on her part to activate audio/video equipment on a previous occasion.

In the arbitrator's opinion the grievant was well aware of the audio/video policy and all evidence substantiates the violation. The grievant's Department Record shows a written warning within the last twelve month and therefore, I find no employer violation of progressive discipline. It is the predominant view of arbitrators that the determination of the penalty for misconduct is properly the function of management provided they adhere to the accepted criteria for determining just cause¹.

I do not find the employer in violation of Article 19.01 & 19.05-DISCIPLINARY PROCEDURE.

AWARD:

The grievance is denied.

This concludes the arbitration decision.

Issued this 2nd day October 2003.

Respectfully submitted,



E. William Lewis
Arbitrator

DISCIPLINARY PROCEDURE

¹ Elkouri & Elkouri, 5th Edition; Pg. 910