

#1715

**In the matter of Arbitration between:**

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

**And**

**Case # 15-00-20020905-138-07-15  
Douglas Bradley, Grievant**

**Ohio Troopers Association  
Union**

**In attendance:** For OATA--- Sgt. Douglas Bradley (witness); Mr. Dennis Gorski-President; Mr. Edwin C. Richardson, Staff Representative; Mr. Robert Stitt, Staff Representative; Ms. Elaine Silveira, Attorney; Mr. Herschal Sigall, General Council-Advocate

For the Highway Patrol--- Lt. Reggie Lumkins; Lt. Daniel E. Springs (witness); Ms. Amy Tait, LRS-OCB; Sgt. Charles J. Linek-Advocate

**INTRODUCTION:**

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on September 25, 2003. The hearing began at 9:00am 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 15, Collective Bargaining Agreement; Jt. 2-Grievance Trail; Jt. 3-Discipline Package, composed of—Statement of Charges, Pre-discipline letter(including signed waiver of Pre-discipline meeting), Suspension Letter, Highway Patrol Rules & Regulations 4501: 2-6-02(B)(1)(5) Performance of Duty/Inefficiency, Department Record; Mgm't. Ex. 1-Administrative Investigation # 02-1809; Mgm't. Ex. 2-Miami County Sheriff's Office investigative file, Re-Ray W. Minkner; Mgm't. Ex. 3-Ohio State Highway Patrol, Administrative Reporting System Policy; Mgm't. Ex. 4-OSP Case Investigation Re-Ray Minkner; Union Ex. 1-Miami County Jail, incident report.

**ISSUE:**

“Was the Grievant’s one-day suspension issued for just cause? If not, what shall the remedy be?”

## **FACTS:**

Sgt. Bradley (grievant) has been a Sergeant since March 1993 and at the time of the traffic stop incident he was assigned to the Piqua, Post. On May 17, 2002 at 23:55 the grievant initiated a traffic stop of an apparent impaired driver. There were two occupants in the car, a female passenger and a male driver. Both were determined to be impaired and the driver was arrested for DUI and the passenger for public intoxication. The female passenger was observed as having her hands tied behind her back and her legs bound together. She also made numerous statements to Sgt. Bradley at the scene.

The grievant radioed for back-up and assistance was provided by two West Milton Police Officers and fellow OSP Trooper J. P. Eldridge. The vehicle was inventoried by Sgt. Bradley at the scene and a wrecker was employed to transport the vehicle. The female passenger was transported to the Miami County Jail by back-up Tpr. Eldridge. While the grievant was transporting the DUI driver to the Miami County Jail, dispatch informed Sgt. Bradley that the driver was a convicted sexual predator. As a result, Sgt. Bradley placed a call to District Plain Clothes Investigator Trooper Deanna Anverse for advice in handling the situation.

Because of some alleged occurrences during and after the traffic stop, an Administrative Investigation was conducted by Lt. Daniel Springs. The grievant was charged with violating Highway Patrol Rules & Regulations 4501: 2-6-02(B)(1)(5), Performance of Duty/Inefficiency. Sgt. Bradley was suspended for one-day on September 5, 2002. A grievance was filed by Sgt. Bradley on September 25, 2002 at Step 2. The grievant claimed the employer violated Article 19.01 & 19.05-DISCIPLINARY PROCEDURE (Just Cause and Progressive Discipline). The grievant requested to be made whole for all lost pay and benefits as a result of the suspension.

## **OPINION:**

In the instant case the grievant, Sgt. Bradley, was charged with violating Rules & Regulations of the Highway Patrol, specifically Performance of Duty/Inefficiency as a result of the May 17<sup>th</sup> traffic stop. Evidence and testimony showed that the stop involved two people, a male driver and a female occupant, both under the influence of alcohol or drugs, not officially determined. During the stop it was determined by the grievant that the

female was tied up & partially clothed, unusual even to the grievant (per testimony) with his eighteen years of service. It is maintained by the employer, that Sgt. Bradley committed certain inefficiencies (error in judgement) during and after the stop. Because of the unusual nature of the stop the employer maintains that the grievant should have contacted the District Duty Officer for guidance. The union maintains that Sgt. Bradley did contact District Plain Clothes Tpr. Anverse for advise and that should suffice. The union also maintains that the Highway Patrol Administrative Reporting Policy (A.1) allows the on-duty supervisor (Sgt. Bradley) to make the determination of what constitutes a significant occurrence. Therefore, argues the union, it was within the grievant's purview to contact Tpr. Anverse for advise because of her expertise in sexual offense matters.

The conversation between the grievant and Plain Clothes Tpr, Anverse had a difference in content based on evidence and testimony submitted. Trooper Anverse did not recall information coming from the grievant regarding the female occupant's allegations of the driver threatening to kill her. Sgt. Bradley testified that the conclusions from Tpr. Anverse were that no victim existed in this stop and it would be doubtful that any criminal charges could be brought. However, it was confirmed through testimony and evidence that Sgt. Bradley was advised to get written statements from both occupants, even if he or others had to return later for sober statements. Evidence and testimony clearly showed that no written statements were taken. Furthermore, an interview of the female occupant on 5/22/02 by the Miami County Sheriff's Department depicts a different story than on the night of the traffic stop.

Another area of the charged inefficiency on the part of the grievant was the on-scene inventory of the vehicle. Evidence and testimony showed that the engine compartment and trunk were not inventoried and that the vehicle was not put on hold. One auto key was inventoried by Sgt. Bradley, when evidence and testimony identified at least two or more keys were at the scene.

It was not learned by Sgt. Bradley that the driver was a convicted sexual predator until after leaving the scene. While transporting the DUI charged driver to the Miami County Jail, a private cell phone call from the grievant to dispatch alerted him to the driver's identity. The arbitrator wonders what procedure might have been followed by the grievant if he had contacted dispatch privately while at the scene. As a result of the incident, the Miami

County Sheriff's Department did conduct a criminal investigation (Mgm't. 3) on the driver and he pleaded to Attempted Aggravated Assault.

The arbitrator does not find that the employer violated arbitral criteria of disciplinary incidents<sup>1</sup>. Considering the significance of the situation the arbitrator does not find that the employer violated the principles of progressive discipline.

**AWARD:**

The grievance is denied.

This concludes the arbitration decision.

Issued this 3<sup>rd</sup> day of October 2003.

Respectfully submitted,

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

E. William Lewis  
Arbitrator

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<sup>1</sup> Arbitration in Practice, Arnold M. Zack-editor; (Pg. 91-discipline & discharge)