

#1733

**In the matter of Arbitration between:**

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

**And**

**Case # 15-00-030724-0103-04-01  
Michael Shimko, Grievant**

**Ohio State Troopers Association  
Union**

**In attendance:** For OSTA—Mr. Dennis Gorski, OSTA President; Tpr. Michael Shimko (witness); Ms. Elaine Silveira, Attorney-Advocate

For the Highway Patrol—Ms. Renee Byers, HRM-Attorney; Ms. Erica Brown, HRM(observer); Mr. Andy Shuman, OCB-LRS; Sgt. John J. Tibbs (witness); Sgt. Chuck Linek-Advocate

**INTRODUCTION:**

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on December 9, 2003. The hearing began at 11:30am and all witnesses were sworn. No procedural issues were raised and the parties agreed that the issue was arbitrable. The following exhibits were presented by the parties and entered into evidence: Jt. 1-Unit 1 Collective Bargaining Agreement; Jt. 2-Grievance Trail; Jt. 3-Discipline Package, composed of-Statement of Charges, Pre-discipline notice, Meeting Officer Reply, Suspension Letter, Highway Patrol Rules & Regulations: 4501: 2-6-02(B)(1)(5) Performance of Duty and 4501: 2-6-02(W) Evidence and Recovered Property, Deportment Record; Mgm't. 1-Administrative Investigation # 2003-3158(with tape); Mgm't. 2-OSHP Policy re: Collecting, Processing and Preserving Physical Evidence (8/13/2002); Union 1-OSHP Policy re: Search & Seizure; Union 2-Trooper Shimko's Evaluations (2001,2002); Union3-Post activity sheet showing arrests and # of cases.

## ISSUE:

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

## FACTS:

On April 30, 2003 District staff was conducting a quarterly performance review of randomly selected video tapes at the Batavia Post. While reviewing a traffic stop on 12/28/02 by Tpr. Shimko the reviewing officer detected some alleged Policy & Procedure violations. The traffic stop was for speeding. However, the detainee was ultimately charged and convicted, by plea, for possession of marijuana and drug paraphernalia.

As a result of the alleged violations viewed on the tape, an Administrative Investigation was commenced on May 20, 2003. The grievant was advised that the allegations prompting the AI were: (1)-Failure to accurately document the facts in a criminal investigation and, (2)-Improperly handling of evidence. The AI conclusion was to recommend appropriate discipline. On July 16, 2003 a Pre-disciplinary Hearing was conducted and the employer subsequently charged the grievant with violating Ohio State Highway Patrol Rules & Regulations. The alleged violations were: Rule 4501: 2-6-02(B)(1)(5) Performance of Duty and Rule 4501: 2-6-02(W) Evidence and Recovered Property. The alleged aforementioned violations were observed during the December 28, 2002 traffic stop.

Trooper Shimko was suspended for one-day on August 3, 2003. A grievance was filed by the Trooper on July 20, 2003 claiming the employer violated Article 19, Section 19.05 **Progressive Discipline**. The grievant alleged that the employer did not follow progressive discipline and requested the removal of the one-day suspension from his record.

## OPINION:

Trooper Shimko has been employed by the Ohio State Highway Patrol since September 2000. He has been assigned to the Batavia Post since completing Academy Training.

The grievant and the union are not challenging the employer's right to discipline. They are challenging the failure to follow the progressive discipline procedure as outlined in Section 19.05. Section 19.05 also provides that more serious discipline (or a combination of disciplinary actions) may be imposed if the infraction or violation merits more severe action.

In this particular traffic stop the trooper is charged with two distinct infractions. The Evidence & Recovered Property charge accuses the grievant of not collecting a powdery substance (small amount) along with the marijuana and paraphernalia. The suspect alleged that the powdery substance was Zanax and was the property of a friend. The substance was returned to the suspect by Tpr. Shimko. According to the employer the powdered substance could have been a controlled substance and should have been collected and tested, per ME #2(OSP Policy # 103.07). Furthermore, argues the employer, there was no mention of the powdery substance's existence in the HP-25(Report of Investigation). As to the Performance of Duty charge, testimony and arguments from the employer focus on video tape activity versus the HP-25. In the opinion of the employer they identified, through Sgt. Tibbs (witness) and evidence (ME #1), a number of discrepancies on the report when compared to the video tape. The type of search, according to Sgt. Tibbs, was not a plain view search and the suspect, contrary to the report narrative, did not hand the grievant the marijuana and paper. The video tape shows the grievant reaching into the suspect's pocket and removing the contraband. There was no mention of the marijuana joint(console ash tray) in the report or the accompanying narrative. Contrary to the grievant's testimony, the joint did not appear to be included in the tested material.

The employer claims that these infractions and discrepancies would have caused major problems if the case had gone to court. Although the arbitrator saw no intent on the part of the grievant to be dishonest, I am convinced that this traffic stop was handled inefficiently. Considering the potential seriousness and the number of infractions identified through testimony and evidence, I do not find that the employer's discipline was excessive or violates Article 19, Section 19.05.<sup>1</sup>

#### **AWARD:**

The grievance is denied.

---

<sup>1</sup>Elkouri & Elkouri, 5<sup>th</sup> Ed., pgs. 910,911 & 916

This concludes the arbitration decision.

Issued this 15<sup>th</sup> day of December 2003.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "E. William Lewis". The signature is fluid and extends to the right with a long, sweeping tail.

E. William Lewis  
Arbitrator