

In the matter of Arbitration between:

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

And

**Case # 15-00-040317-0029-04-01
June A. Clark, Grievant**

**Ohio State Troopers Association
Union**

In attendance: For OSTA-Sgt. Steven Belyus (witness); Ms. Krista Boom, Adm. Asst. (Observer); Trooper June A. Clark (grievant); Mr. Dennis Gorski, OSTA-President; Mr. Herschel Sigall, OSTA General Council; Ms. Elaine Silveira, Attorney-Advocate

For the Highway Patrol: Lt. Reggie Lumkins, 2nd Chair; Mr. Andrew Shuman, OCB/ Labor Relations Specialist; Sgt. Jeffrey Welch (witness); Trooper Brian Welling (witness); Sgt. Charles J. Linek-Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on September 23, 2004. 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 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, Department Record, Highway Patrol Rules & Regulations: 4501: 2-6-05(D) Motor Vehicle Operation; Mgm't. Ex. 1-OSHP Vehicle Crash Routing Guide(crash report); Mgm't. Ex. 2-OHIO CRIMINAL AND MOTOR VEHICLE LAWS, 2003 Edition; Mgm't. Ex. 3-OSHP VEHICLE CRASH REVIEW COMMITTEES FINDINGS; Union Ex. 1-Three photographs of crash scene area; Union Ex. 2-ORC- 4511.39. Turn and stop signals; Union Ex. 3-AI Traffic Investigation(10-19-00); Union Ex. 4-Trooper Clark's O.P.E.R.A.T.I.O.N.S. Evaluations 2003-2002- 2001

ISSUE: (Jt. 4)

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

FACTS:

The grievant, Trooper Clark, has been employed by the Highway patrol since November 1993. Trooper Clark was, at the time of the alleged incident, and is currently assigned to Post 5- Athens, Ohio, working the 3pm to 11pm shift.

On December 27, 2003, Trooper Clark was on patrol west bound on U. S. Route 33. She was in Hocking County near mile post 17 when she observed and checked a speeding (66-67 mph) east bound vehicle. Trooper Clark attempted to make a U-turn to pursue the speeding vehicle when she was struck by a pick-up truck that was behind her, also traveling west on U. S. 33. The grievant's patrol car was struck in the driver's door area by the pick-up's right front fender and bumper. Both crash vehicles continued off the road on the south side and came to a stop in a grassy area. There was meaningful damage to both vehicles, with Trooper Clark sustaining some injuries requiring transportation to the Hocking Valley Hospital. No traffic citations were issued to either party involved in the accident.

The accident was investigated and a Traffic Crash Report was filed (ME-1). A Crash Review Committee was appointed (1/21/04) to further investigate the accident. The Review Committee determined that Trooper Clark's accident was preventable (ME-3).

As a result of the accident investigation and the Crash Review Committee's determination the grievant was notified that she was being charged with violating Rule 4501: 2-6-05(D)(1) of the Ohio Highway Patrol Rules & Regulations; being involved in a preventable patrol car crash. The Trooper was further notified that the discipline would be a one (1) day suspension.

A Pre-disciplinary hearing was conducted on March 1, 2004. Trooper Clark

was notified on March 12, 2004 that her one (1) day's suspension would be effective on March 15, 2004. Trooper Clark filed a grievance on March 15, 2004 charging the employer with violating Article 19, Section's 1901 (Standard) and 1905 (Progressive Discipline). The grievant requested that the one (1) day's suspension be removed from her Department Record and to be reimbursed for one day's wages.

OPINION:

There is no dispute between the parties as to what occurred in this patrol car crash on 12/27/03 involving the grievant, Trooper Clark. The grievant was west bound and made a pursuit U-turn on route 33 west of Nelsonville. While making the U-turn the Grievant was struck by a west bound pick-up truck (ME-1).

The union contends that the pick-up truck driver was at fault and that Trooper Clark did nothing wrong. Trooper Clark, before making the pursuit U-turn, activated her overhead lights and turned her left turn signal on, per testimony and evidence. The oncoming driver failed to maintain an assured clear distance and was unable to stop before striking the patrol car. This failure to maintain an assured clear distance by the oncoming driver made the accident not preventable by the grievant, argues the union.

The Accident Crash Report (ME-1) and testimony from the reviewing Technical Crash Investigator, Sgt. Welch, charge the grievant with being involved in a preventable accident. It is the duty of an emergency vehicle operator to drive with due regard for the safety of all persons upon the highway, argues the management (ME-2). Management contends, through evidence and testimony, that Trooper Clark's U-turn was improper because she failed to check for oncoming traffic immediately before making the turn. The crash was reviewed by a Crash Review Committee and it was determined that the accident was preventable (ME-3).

Trooper Clark was performing the pursuit U-turn in the line of duty and the crash, unfortunately, caused her to be injured. No citations were issued to either driver, however, both drivers could have been cited, in the arbitrator's opinion. Testimony did show that Trooper Clark checked her rear view mirror and saw

oncoming traffic (ME-1). Ohio Motor Vehicle Laws, specifically, ORC 4511.39 (A) states: "that no person shall turn a vehicle or move right or left upon a highway unless and until such person has exercised due care to ascertain that the movement can be made with reasonable safety". In the arbitrator's opinion, although the grievant activated her pursuit lights and turn signal, she should have checked the whereabouts of the oncoming traffic immediately before or executing the pursuit U-turn. If the grievant had determined the proximity of oncoming traffic she could have delayed the turn or pulled off, allowing the pick-up to pass.

The arbitrator finds that the employer complied with the criteria for just cause and did not abuse its discretion or impose an unreasonable penalty¹. Furthermore, the imposed discipline was in accordance with the Progressive Discipline procedure outlined in Article 19.05.

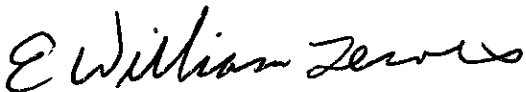
AWARD:

The grievance is denied.

This concludes the arbitration decision.

Issued this 1st day of October 2004.

Respectfully submitted,



E. William Lewis
Arbitrator

¹Elkouri & Elkouri, 5th Ed., pgs. 910-911