

#1789

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

And

**Case # 15-00-040123-007-04-01
Robert G. Ruth, Grievant**

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

In attendance: For the Highway Patrol—S/Lt. Jeffrey Greene(witness);
Sgt. Charles Linek, Agency Rep.; Mr. Andrew Shuman, OCB/ 2nd Chair; Lt.
Reggie Lumkins, Advocate

For OSTA—Ms. Krista Boone, Adm. Asst.(observer); Mr. Dennis Gorski, OSTA
President; Trooper Robert G. Ruth (grievant); Ms. Elaine Silveira, 2nd Chair; Mr.
Robert Stitt, OSTA Staff Rep.; Mr. Herschel Sigall, OSTA General Council-
Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on September 23, 2004. The hearing began at 12:40pm 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, Highway Patrol Rules and Regulations: 4501: 2-6-02(B)(1)(5) Performance of Duty/ Inefficiency and 4501: 2-6-02(Y)(2), Compliance to Orders; Jt.4-OSP 400.08 Radio Signals; Mgm't. Ex.1-Administrative Investigation 03-3532—Trooper R. G. Ruth; Mgm't. Ex. 1A-Video Tape; Union Ex.1-Portable Scale Activity 2002 & 2003; Union Ex.2-OSP - 200.05 ENFORCEMENT GUIDELINES; Union Ex.3-AI 2003- 3837 Staff Lieutenant J. W. Greene; Union

Ex.4-Deportment Record, Greene, Jeffrey W.; Union Ex.5-Ohio Map-depicting District 8 Headquarters & approximate location of Trooper Ruth's residence; Union Ex.6a- 2002 Tpr. R.G. Ruth's- Performance Review, 6b- 2001 Performance Review, 6c- 2003 Performance Review

ISSUE:

"Did the Grievant receive a three-day suspension for just cause? If not, what shall the remedy be?"

FACTS:

The grievant, Trooper Ruth has been employed by the Highway Patrol since September 1988. Trooper Ruth is currently assigned to the Chillicothe Post, as a Road Trooper. On August 12, 2003 he was a Portable Scale Trooper assigned to District 8 Headquarters, Wilmington, Ohio. Tpr. Ruth was a Portable Scale Trooper from 1999 until January 2004 when he was removed from the Speciality Position and reassigned to his current position. Certain events occurred on August 12, 2003 involving S/Lt. Greene that lead to the current dispute before the arbitrator.

Staff Lieutenant Greene on or about 7:30am on 8/12/03 noticed the two Load Limit Civilians who work with Tpr. Ruth, on the 7-3pm shift, still in the Commercial Enforcement Section and not out on their portable scale van. Since the Civilians are directed by Tpr. Ruth contact was made with him by S/Lt. Greene regarding the Civilians lack of activity. Trooper Ruth's location and intent were ascertained. First contact with Tpr. Ruth indicated his location to be Washington Court House and second contact around 8:00am located him at I-71 at the rest area. Trooper Ruth was in Fayette County heading to District Headquarters for a scheduled appointment for his patrol car radio. In the mean time the Load Limit Civilians were reassigned for the day to another Portable Scale Trooper.

A review of Tpr. Ruth's activity logs (HP-53B) was conducted by S/Lt. Greene, which coupled with the events of August 12, 2003, led to S/Lt. Greene conducting an Administrative Investigation of the Trooper's activities. The AI was completed

on October 20, 2003 and submitted to Captain Kolcum. On November 18, 2003 Captain Kolcum, District 8 Commander, submitted the AI to Major Goldstein, claiming that the Trooper was guilty of daily operational inefficiencies and procedural violations. Captain Kolcum recommended that the appropriate discipline be administered.

Notice was given to Trooper Ruth that he was to be suspended for three working days and that a pre-disciplinary hearing would be conducted on 1/9/04. The grievant was charged with violating Rule 4501: 2-6-02(B)(5) and Rule 4501: 2-6-02(Y)(2) of the Ohio State Highway Patrol to wit: It is charged that between May 1, 2003 and August 12, 2003 you were negligent in the performance of your duties as a Portable Scale Trooper. It is also charged that you failed to properly utilize the patrol car audio/video recording equipment during traffic stops. On January 12, 2004 Trooper Ruth was notified that he would be suspended for three working days effective January 13-15, 2004. Trooper Ruth filed a grievance on 1/20/04 claiming the employer violated Article 19 and Article 19.05/ Article 23 Speciality Positions. The grievant requested that the three days be returned to him and he be returned to the District 8 portable scale team and to be made whole.

This particular case being heard before this arbitrator is in accordance with Article 20, Section 20.12 Alternative Dispute Resolution. Therefore, this arbitrator's jurisdiction is limited to the determination of the appropriate discipline, if any, regarding the suspension.

DISCUSSION:

Testimony and evidence showed that the events that occurred on August 12, 2003 were instrumental in causing the subsequent activities on the employer's part.

Testimony also showed that on the 12th of August Sgt. Gentry, the grievant's immediate supervisor, was absent and therefore S/ Lt. Greene became the next in line of command. S/Lt. Greene testified that while passing through the Commercial Enforcement Section at 7:30am he observed the civilian LLI's unoccupied. According to S/Lt. Greene, this inactivity of the LLI's caused him to wonder about the location of their supervisor, Tpr. Ruth. The LLI's, according to S/Lt. Greene, should have been out of the headquarters by 7:15am. S/Lt. Greene did a checkup on Tpr. Ruth and radio located him in the vicinity of Washington

Court House. According to testimony, Tpr. Ruth advised S/Lt. Greene that he had a radio scheduled for check up by the Technicians at 9:00am. The Load Limit Inspectors were dispatched elsewhere, and according to testimony, around 8:00am plus Tpr. Ruth was at I-71 & SR 41, checking on a construction site. He was directed to return to District Headquarters by S/Lt. Greene and Portable Scale Trooper Ruth responded to the directive. The employer, namely S/Lt. Greene, apparently acting on concerns regarding the LLI's and Tpr Ruth's circuitous route to headquarters, began reviewing Tpr. Ruth's shift activity logs (HP-53B's). According to S/Lt. Greene's testimony and evidence (Mgm't. Ex.1) the HP-53's from July and August revealed an abnormal amount of unaccounted for time.

An AI was instituted with the District Commander's approval by S/Lt. Greene. The HP-53B's, video tapes and logs were reviewed of Portable Scale Trooper Ruth. Fifteen un-erased tapes were found of tpr. Ruth's activities dating back to May of 2002. S/Lt. Greene along with other District Headquarters leadership reviewed the video tapes and S/Lt. Greene reviewed Tpr. Ruth's HP-53B's back through May of 2003. According to S/Lt. Greene's testimony, the investigation of Portable Scale Tpr. Ruth revealed large blocks of unaccounted for time along with unprofessional behavior and deviation from Policy. A composite video tape of 24 minutes in length was prepared for this hearing that included seven of Tpr. Ruth's traffic stops. This composite tape, according to S/Lt. Greene, was an example of Trooper Ruth's violations. Essentially, the grievant was charged with being gruff and sarcastic (unprofessional), using error in judgement, unsatisfactory performance of duty (inefficient) and failing to comply with all rules, "regs", orders and directives (Compliance to orders). S/Lt. Greene, in his testimony, identified these inadequacies on Trooper Ruth's part as large blocks of unaccounted for time, failure to cite some stopped drivers, failure to identify reasons for stopping a driver and being rude towards the stopped citizens.

The union maintains that S/Lt. Greene was "out to get" Trooper Ruth because the Trooper was not cooperative with the Lieutenant when he was a Post Commander. The union contends that the then Portable Scales Tpr. Ruth was stopping county trucks for overload and it was causing a PR problem for Post Commander Greene. Evidence substantiates a potential concern by the grievant. According to Un. Ex3. (AI-2003-3837, S/Lt. Greene) testimony of Lt. Knauff and Trooper Davis, that they recalled a statement by then Post Commander Greene that "Trooper Ruth had better watch his step".

The grievant testified that on 8/12/03 he did check on his children on his way to check out a construction site at I-71 and SR 41. This all occurred prior to him delivering his patrol car to headquarters for radio work. Trooper Ruth testified that S/Lt. Greene failed to ask him, on August 12 the reasons for his whereabouts.

Allegations were also made during the AI by S/Lt. Greene that the grievant was having an affair while on duty with a Ms. Brown, argues the union. However, there was no creditable evidence brought forward at the hearing to substantiate any such activity.

OPINION:

If one looks at the events of August 12, 2003 one might wonder how the lack of assignment of two LLI's in the AM resulted in such an extensive investigation. S/Lt. Greene, in his own AI(2003-3837), is reported by two witnesses as having stated that Portable Scales Trooper Ruth had better watch his step (UN Ex.3). However, S/Lt. Greene in his testimony did not recall having made the declaration.

After reviewing all the evidence and testimony the arbitrator does not find clear and convincing evidence that the grievant was dishonest or that he meaningfully used his job flexibility for his own interests, as alleged in the AI (Mgm't. Ex.1). However, the voluminous evidence and extensive testimony convinced the arbitrator that the were large blocks of unreported or accounted for time (HP-53B's). The grievant did not follow, at all times, highway Patrol Policy & Procedures regarding demeanor and use of audio/video recording devices.

The grievant was employed as a Portable Scale Trooper for approximately four years. During his tenure he worked for a least two supervisors without being declared deficient in his reporting (UN. Ex.6a&b). It appears to the arbitrator that the Specialty of Portable Scales Trooper requires elusiveness, flexibility and self-motivation. A difficult activity, I am sure, to supervise when over communication can possibly cause lack of ability to enforce the law.

The arbitrator does find reporting deficiencies and lack of Policy compliance by the grievant. However, considering the Trooper's sixteen years of service and his clean Department Record the arbitrator believes that the three day suspension is

excessive.

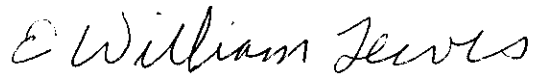
AWARD:

In accordance with Article 19.05 and Article 20.12 the three (3) day suspension is reduced to a written warning. The grievant is to be made whole for the lost wages and benefits.

This concludes the arbitration decision.

Issued this 11th day of October 2004.

Respectfully submitted,

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

E. William Lewis
Arbitrator