

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

And

**Case # 15-00-040804-0079-04-01
Ronald E. Anderson, Grievant**

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

In attendance: For OSTA—Tpr. Ronald Anderson(witness); Mr. Bob Cooper, OSTA Staff Representative; Tpr. Shane Johnson(witness); Mr. Dennis Gorski, OSTA President; Mr. Ed Richardson, OSTA Staff Representative; Ms. Elaine Silveira-Advocate

For the Highway Patrol—Mr. John Allard, OSHP/HRM; Lt. Greg Greggila, Post Commander(witness); Sgt. Brent Meredith, Assistant Post Commander(witness); Sgt. Kevin Miller, OSHP/HRM; Mr. Andrew Shuman, 2nd Chair/OCB; Lt. Charles Linek, OSHP-Advocate

INTRODUCTION:

The matter was heard in Columbus, Ohio at the Office of Collective Bargaining on March 15, 2005. All witnesses were sworn. No procedural issues were raised and the parties agree that the issue is arbitrable. There were several exhibits presented: 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, Department Record, Highway Patrol Rules & Regulations: 4501: 2-6-03 (D) (3) Military Courtesy and Respect for Rank—Insubordination. The employer introduced two additional exhibits during the hearing: Mgm't. 1-OHSP Policy, Military Courtesy; Mgm't. 2-Administrative Investigation #2004-4509. The union submitted the following exhibits: Un. 1-ODPS Policy, Workplace Violence Prevention; Un. 2-Department Record (Tpr. Anderson); Un. 3-OSHP Evaluation (Tpr. Anderson, dated 10/02, 9/03, 9/04); Un. 4-Tpr. Anderson's written version of the incident; Un 5-Commendation letters regarding Tpr. Anderson.

ISSUE:

A jointly signed issue statement was submitted and stipulated to as follows:

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

FACTS:

Trooper Ronald Anderson (grievant) has been employed by the Highway Patrol since April 26, 2002. At the time of the alleged incident the grievant was working out of the Walbridge Post. The grievant is currently assigned to Post 87 (Walbridge).

Trooper Anderson was working the 3-11pm shift on May 1, 2004 when the alleged incident occurred. Trooper Anderson made a traffic stop on his way to work at the Walbridge Post (HP-53B). Trooper Anderson arrived on Post at 1518 per (HP-53B). Shortly after the grievant's Post arrival Sgt. Meredith (Asst. Post Commander) requested that the grievant talk with him in the Sergeant's office. The subject of the discussion revolved around Tpr. Anderson's May 1st reporting time (1518) and other times reporting to work. During the discussion a shouting incident occurred between Sgt. Meredith and the grievant. As a result of the alleged incident, Tpr. Anderson was suspended for one day on July 29, 2004.

An Administrative Investigation was conducted by the Post Commander during the weeks of May 3 and May 10, 2004. The AI was submitted to the District Commander on June 2, 2004. Trooper Anderson was notified, by letter dated July 8, 2004, of the employer's intent to suspend him for one (1) day. The employer charged Tpr. Anderson with violation of Rules & Regulations of the Ohio State Highway Patrol- Rule 4501: 2-6-03 (D) (3) Military Courtesy & Respect for Rank-Insubordination—to wit: it is charged that on May 1, 2004 you became loud, argumentative during a counseling session with Sgt. Meredith. A Pre-disciplinary hearing was held on July 15, 2004 and the DPS Director issued Tpr. Anderson a letter of suspension to be effective July 29, 2004. A grievance was filed by Tpr. Anderson on July 30, 2004 alleging that the employer violated Article 19, sections 19.01 and 19.05, Disciplinary Procedure.

OPINION:

Testimony and evidence showed that the alleged incident occurred shortly after Tpr. Anderson arrived on Post at 3:18pm. On the date of the incident there was no 3-11pm-shift sergeant on duty and therefore Sgt. Meredith (7-3pm) was still on Post. Evidence and testimony showed that a dispatcher alerted Sgt. Meredith that Tpr. Anderson was on a traffic stop and would be late for work. Sergeant Meredith testified that he reviewed some other HP-53B's of Tpr. Anderson's and he decided to discuss the Trooper's arrival to work time and times with him. When the grievant arrived on Post Sgt. Meredith asked Tpr. Anderson to come back to his office. The two of them proceeded to the Sergeant's office, according to testimony.

According to Sgt. Meredith's testimony, as the conversation continued in his office the grievant became visibly upset and began yelling at him. The door was slammed by the grievant and ultimately they were both yelling, albeit, the Sergeant declared his yelling was to calm down the grievant. The Sergeant further testified that Tpr. Anderson left the office without being dismissed and refused to obey his directive to come back into the office. Trooper Anderson further stated that Sgt. Meredith was not his supervisor, according to witnesses. Evidence showed that Sgt. Meredith secured Tpr. Johnson's (Union Steward) assistance, who was on Post, in bringing the grievant back to his office to conclude the conversation.

On the other hand, Tpr. Anderson's testimony refutes Sgt. Meredith's version and he declares that the Sergeant was the perpetrator and started the "yelling". He, the grievant, only raised his voice in a manner of self-defense for being unjustly accused. The grievant, in his testimony, did acknowledge that Sgt. Meredith was not without authority to discuss a tardiness issue with him. There were three employees identified as being on post at the time of the incident. All were interviewed during the AI. Two of the three acknowledged in the AI interview that either the grievant was first to yell or was the louder. They all acknowledged in the interview that they were disturbed by the incident and the grievant's behavior.

In the arbitrator's opinion, it is unfortunate that the issue led to such a confrontation. The evidence is clear and convincing that an incident did occur and that the behavior on the part of the grievant was in an insubordinate manner towards the supervisor, Sgt. Meredith. Certainly, the

behavior was not in compliance with OSHP Policy on appropriate military courtesy. The arbitrator does believe that this type of violation is serious in nature, especially in a law enforcement organization. Had the grievant sought union assistance and initiated a return to the Sergeant's office the arbitrator might have considered some form of mitigation. However, the Contract, per Article 19.05 (Progressive Discipline), allows the employer to impose more severe discipline if the infraction merits more severe action.

AWARD:

Considering the seriousness of the offense, I find that the discipline was commensurate with the offense and not in violation of Article 19, Sections 19.01-Standard and 19.05-Progressive Discipline. I do not find that the penalty was excessive or unreasonable or that the employer abused its discretion¹.

The grievance is denied.

This concludes the arbitrator's decision.

Issued this 22nd day of March 2005.

A handwritten signature in cursive script that reads "E William Lewis". The signature is written in dark ink and is positioned above a horizontal line.

E. William Lewis, Arbitrator

¹ Elkouri & Elkouri(fifth edition) Review of penalties imposed by management.