

#1825

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

And

**Case # 15-00-041019-123-04-01
Christopher Appollonio, Grievant**

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

In attendance: For the Highway Patrol---Ms. Ashley Hughes, OCB-Intern;
Lt. Charles J. Linek, OSHP/HRM; Sgt. Kevin D. Miller, OSHP/HRM; Sgt.
V. G. Pringle, OSHP/Delaware Post(witness); Ms. Michele Ward, OCB/2nd
Chair; Lt. D. A. Williard, Statehouse Post Commander(witness); S/Lt. John
R. Allard, OSHP/HRM—Advocate

For Ohio State Troopers Association--- Tpr. Christopher
Appollonio(witness); Mr. Wayne McGlone, OSTA Staff Representative;
Ms. Elaine Silveira, OSTA-attorney; Mr. Bob Stitt, OSTA Staff
Representative; Mr. Herschel M. Sigall, Chief Legal Council—Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on May 24, 2005 at 9:00am. All witnesses were sworn. No procedural issues were raised and the parties agreed that the issue was 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, Suspension Letter, H. P. Rules & Regulations; 4501:2-6-02 (I)(3) Conduct Unbecoming an Officer; Department Record. The Employer submitted the following Exhibits: Mgm't. 1- Administrative Investigation # 2004-4682; Mgm't. 2- Photos A thru J; Mgm't. 3- IOC dated December 15, 2003-Subject Riffe & Rhodes Security Detail. There were no Exhibits submitted by the Union.

ISSUE:

A jointly signed issue statement (Jt.-4) was submitted and stipulated to as follows:

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

FACTS:

Trooper Christopher Appollonio (grievant) has been employed by the Highway Patrol since October 14, 1998. The grievant is currently assigned to Post 21, Delaware. At the time of the alleged incident he was working out of Post 21 but on detail to Post 97, the Statehouse (Riffe Building) Security Team.

On June 21, 2004 the grievant, along with Tpr. Nguyen were assigned to the Statehouse Security Detail. The two troopers were working the Riffe Building day shift detail. Between 9:00 and 11:00am they were allegedly involved in an incident at the State Street lobby security desk. The incident was characterized by management charges as "horseplay" with a United Management Security Guard. The alleged "horseplay" was recorded by a security camera.

A call was made by management of the United Management Security Service to the grievant's supervisor, regarding the alleged incident. An Administrative Investigation was commenced on June 24, 2004 by the Delaware Post's Supervisor, Sgt. Pringle. His AI summary found both Troopers being involved "horseplay". Trooper Appollonio waived his rights to a Pre-disciplinary hearing and he was notified on October 1, 2004 that he was to be suspended for one (1) day on October 4, 2004. He was charged with violating OSHP Rule 4501: 2-6-02 (I)(1), Conduct Unbecoming an Officer. The charge further stated that Tpr. Appollonio was engaged in "horseplay" on June 21, 2004 while working the Statehouse Security Detail.

A grievance was filed by Tpr. Appollonio on October 12, 2004 charging the employer with violating Article 19-DISCIPLINARY PROCEDURE,

Sections 19.01 Standard and 19.05 Progressive Discipline. The grievant requested that he be made whole and be given his one day back. A Step 2 hearing was conducted on November 9, 2004 resulting in the denial of the grievance. The grievance was appealed to arbitration on December 22, 2004.

DISCUSSION AND OPINION:

According to evidence and testimony the June 21st incident at the State Street lobby post of the Riffe Building involved three persons. They were the two Highway Patrol Officers, Nguyen and Appolinio, and one security service guard. The incident of concern was termed "horseplay" by the persons involved and the Highway Patrol. The incident was recorded by a video camera and the photos involving the charged wrongdoing were made available for review by the arbitrator (Mgm't. #1). Both Troopers received a disciplinary one-day suspension according to evidence and testimony.

According to photo evidence, 34 in all, there were three occurrences of the "horseplay" activity. Occurrence one (Photos 16-24) show Tpr. Nguyen and the grievant behind the State Street station desk and Tpr. Nguyen puts the security guard in a restraining hold while the grievant seems to be standing in observance, a few feet away. This activity occurred over a period of 26 seconds between 9:26:34 and 9:27:00. Three citizens are seen in the lobby area and one takes a two-second look.

The second occurrence, in the same location, involving the same persons occurs between 9:44:09 and 9:44:31 (22 seconds). Photos between 9:44:12 and 9:44:26 are not included in the submitted evidence. The submitted photos, according to evidence and testimony, shows Tpr. Nguyen restraining the security guard with the grievant leaning on the desk counter close by. In three frames (9:44:27 thru 28), two seconds, the grievant appears to jab the guard in the rib area. The rib jab was corroborated by testimony.

The third and final segment of fifteen photos, also in the same area with the same participants, occurs between 10:22:10 and 10:25:02. Photos 10:22:14,15,17 thru 28, 10:22:32 thru 10:23:08, 10:23:10 thru 10:24:04, 10:24:06 thru 10:24:46, 10:24:48 thru 10:24:59 are not included in the evidence. However, the submitted photos show Tpr. Nguyen hand-cuffing the security guard to a desk drawer, also corroborated by testimony. During

this activity the grievant is a few feet away leaning on the desk counter, appearing to observe.

The grievant testified that he was not assigned to the State Street lobby station during the photographed occurrences. He was assigned to the High Street station but was in the roving mode and may have been at the State Street lobby to give Tpr. Nguyen a break.

Management charged the grievant with Conduct Unbecoming an Officer, To Wit: engaging in "horseplay". The "horseplay" was admitted to by both troopers and the interviewed security guard. The Riffe Building houses many government offices of the legislature and executive branch. The image of the Highway Patrol and the building security could have been compromised by such activity, claimed the employer.

The union and the grievant do not deny that the activity occurred. They also argue that the grievant was not charged with anything but "horseplay" and that the grievant was not the perpetrator or major participant in the "horseplay". They claim that the one-day suspension was excessive.

The arbitrator recognizes the employer's concern regarding the visibility and importance of such an assignment. However, the major activists in this "horseplay incident were Tpr. Nguyen and the security guard. With the exception of a two-second jab to the ribs (no injury or complaint) the grievant appeared to be an on-looker. Although the grievant could have walked away or stopped the inappropriate activity, he claimed that it happened too quickly to react differently and the arbitrator concurs. The grievant's involvement was minimal when compared to Tpr. Nguyen's. Although the employer did not violate the disciplinary progression process, in this case, the arbitrator finds the discipline not to be commensurate with the offense.

AWARD:

The one (1) day suspension is reduced to a written warning. The grievant is to be made whole with regard to lost wages and benefits.

This concludes the arbitration decision.

Issued this 1st day of June 2005.

Respectfully submitted,

A handwritten signature in black ink, reading "E. William Lewis". The signature is written in a cursive style with a large, stylized "E" and a long, sweeping underline.

E. William Lewis, Arbitrator