

#1826

In the matter of Arbitration between:

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

And

**Case # 15-00-040824-0089-04-01
Penny Beaty, Grievant**

**Ohio State Troopers Association
Union**

In attendance: For the Highway Patrol---S/Lt. J. R. Allard, OSHP/HRM;
Sgt. C. L. Brewster, OSHP/AI Unit (witness); Sgt. C. W. Enderby,
OSHP/Ashland Post (witness); S/Lt. Shawn T. Lee, OSHP/Trng. Academy
(witness); Lt. C. J. Linek, OSHP/HRM; Ms. Michele Ward, OCB/2nd Chair;
Sgt. Kevin D. Miller, OSHP/HRM-Advocate

For Ohio State Troopers Association--- Tpr. Penny Beaty (witness); Ms.
Elaine Silveira, OSTA-attorney; Mr. Bob Stitt, OSTA Staff Representative;
Mr. Herschel M. Sigall, Chief General Council—Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on May 24, 2005 at 2:05pm. 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- Discipline Package, composed of—Statement of Charges, Pre-discipline Notice, PD Meeting Officer finding; Suspension Letter, Department Record, H. P. Rules & Regulations; 4501:2-6-02 (B)(1)(5) Performance of Duty/Inefficiency and 4501: 2-6-02 (Y)(1) Compliance to Orders; Jt. 3- Grievance Trail. The Employer submitted the following Exhibits: Mgm't. 1- Administrative Investigation # 2004-4440; Mgm't. 1A- Videotape of traffic stop Re. AI 2004-4440; Mgm't. 2- Administrative Investigation 2004-4487; Mgm't. 3- OSHP Policy- Search and Seizure; Mgm't. 4- ODPS Policy & Procedure Management Reports for Tpr. Beaty; Mgm't. 5-Arbitrator's Decision, Case # 15-00-040603-0055-04-01, Penny Beaty (Grievant). The Union submitted the following Exhibits: Un. 1-OSHP Record of AI Cases, (2004-4440-highlighted); Un. 2-OSHP

Investigative Notes Report, Re. Tpr. Beaty (2/25/03); Un. 3-OSHP EARLY INTERVENTION PROGRAM; Un. 4- IOC from Early Intervention Review Committee, regarding Tpr. Beaty; Un. 5-Union Brief for Tpr. Beaty's Arbitration # 15-00-040603-0055-04-01.

ISSUE:

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

Did the Grievant receive a five (5) day suspension for just cause? If not, what shall the remedy be?

FACTS:

The grievant, Trooper Penny Beaty, has been employed by the Highway Patrol since November 17, 1995. During her nearly ten years of service she received training in drug interdiction and served as part of TDIT and was also a K-9 handler. Trooper Beaty is currently assigned to Post 3, Ashland. At the times of the alleged incidents leading up to the discipline Tpr. Beaty was also working out of the Ashland Post.

On April 17, 2004 Sgt. Fulmer was assisting Tpr. Beaty with traffic stop that she had initiated. Sgt. Fulmer alleged that Tpr. Beaty advised him that she was going to conduct a probable cause search based on the plain smell of cocaine or crack cocaine. The videotape of the 4/17 stop was reviewed by Post Commander Lt. Miller on April 19 & 20. The result of the review was to conduct an Administrative Investigation regarding the reasons for the stop and probable cause search.

In addition to the above 4/17/04 traffic stop and the alleged violations, Sgt. C. L. Brewster was instructed to review an in-car videotape of a February 20, 2004 traffic stop made by Tpr. Beaty. Ashland Post Commander Lt. Miller alleged that Tpr. Beaty had made an improper search during the 2/20 traffic stop. Sergeant Brewster was also instructed to initiate an AI regarding the incident (2/20) and include an operations overview of Tpr. Beaty's in-car videotapes.

The two Administrative Investigations were combined (AI # 04-4440 & - 4-4487) according to the Statement of Charges, dated 7/20/04. Trooper Beaty was charged with violating the Rules & Regulations of the OSHP, specifically Rule 4501: 2-06-02 (B)(5)(1), Performance of Duty/Inefficiency and Rule 4501: 2-06-02 (Y)(1), Compliance to Orders. It was charged that between December 3, 2003 and April 17, 2004 Tpr. Beaty engaged in a pattern of operational inefficiency during traffic stops. It was also charged that the Trooper failed to comply with policy and procedures related to search and seizure. A Pre-disciplinary hearing was held on July 30, 2004 and the Meeting Officer found just cause for discipline. Trooper Beaty was suspended for five (5) working days effective August 19-23, 2004. A grievance was filed by Tpr. Beaty on August 14, 2004 requesting to be made whole and receive back pay for five days and any overtime or off duty details lost.

DISCUSSION AND OPINION:

This case involves a disciplined trooper based on a combination of two Administrative Investigations. The parties submitted a large quantity of evidence including seven videotapes. The employer claims that Tpr. Beaty was rapidly heading down the wrong path relative to search and seizure and officer safety issues. The union, on the other hand, claims that the imposition of a five day suspension on this trooper constituted double jeopardy. Multiple disciplines, according to the union, were given to Tpr. Beaty for basically the same offense.

The grievant's Department Record was unblemished until October 7, 2003. However, on October 7 a written warning was issued for failure to take custody of evidence (Jt.-2). Further discipline of a one-day suspension was issued on April 17, 2004 for an earlier incident for failure to conduct a proper pat down of a suspect. A weapon was found on the suspect when being checked in to the jail. On March 5, 2004 a complaint was filed by a detainee alleging that Tpr. Beaty conducted an improper search. This complaint generated an AI and Tpr. Beaty was issued a three-day suspension effective June 1, 2004 (Jt. 2). The first of two AI's involving this case was commenced on April 23, 2004 and concluded on May 27, 2004 (Mgm't 1). The Early Intervention Review Committee (Un. 4) met and on April 30,

2004 recommended corrective steps be taken to assist Tpr. Beaty in her quality of work. She was ordered to begin Academy refresher training on May 10, 2004, which was grieved by the union and arbitrated on February 5, 2005 (Mgm't. 5). The training lasted for three weeks. On May 5, 2004 the second of the two AI's was commenced and completed June 16, 2004 (Mgm't. 2). This AI, according to evidence, was initiated because of a videotape review of a February 20, 2004 traffic stop by Tpr. Beaty. The 2/20 tape was being reviewed by Lt. Miller before submitting it to court as evidence. According to Management's Exhibit 2, Lt. Miller detected what he considered an improper search by Tpr. Beaty during the 2/20 traffic stop. As part of this AI an operations overview was conducted on Tpr. Beaty by Sgt. Brewster. This overview included a review and analysis of six of the ten available in-car videotapes.

When one reviews the work record and experiences of this employee from October 2003 through August 2004 she appears to be on a fast track to no where. However, testimony revealed to the arbitrator that Tpr. Beaty has had no incidences since the completion of her refresher training. Although the union argued that the training was more than enough discipline, it appears to have had some positive impact on Trooper Beaty's work experience. One wonders, when you review the happenings to this grievant between October 2003 and August 2004, if someone was out to get her. However, there was no evidence, or creditable testimony, produced to sustain such an opinion. Furthermore, there was no substantive evidence to discount the accuracy of the charges. In the arbitrator's opinion, there was clear and convincing evidence and testimony that the violations leading to the charges in AI 2004-4440 and 2004-4487 did occur.

Did the five-day suspension received by the grievant in August 2004 constitute double jeopardy, as claimed by the union? It certainly was unfortunate that the refresher training was necessary and that a post training salvage yard assignment was made. However, the arbitrator must confine his decision to the five-day suspension issue. In the arbitrator's opinion, the historical incidents contained in AI 2004-4487 were close enough in relation to the problem involved to warrant consideration and the videotapes were submitted as, and are considered, official records of the grievant's past record¹. Double Jeopardy occurs when an employee receives additional

¹ Elkouri & Elkouri, 5th Ed. Discharge and Discipline, Pg. 925-929.

discipline for the same offense, not when an employee repeats the same offense at a different incident and/or at a subsequent time².

It is unfortunate of the timelines in this case, however the arbitrator does not find that the employer violated either the just cause provision contained in Section 19.01 Standard or Section 19.05 Progressive Discipline.

AWARD:

The grievance is denied.

This concludes the arbitration decision.

Issued this 3rd day of June 2005.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "E. William Lewis".

E. William Lewis, Arbitrator

² Elkouri & Elkouri, 5th Ed., Discharge and Discipline, Pgs. 923-925.