

#1827

THE STATE OF OHIO, OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF THE STATE HIGHWAY PATROL AND
OHIO STATE TROOPERS ASSOCIATION
LABOR ARBITRATION PROCEEDING

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE STATE OF OHIO, OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF THE STATE HIGHWAY PATROL

-AND-

OHIO STATE TROOPERS ASSOCIATION

GRIEVANT: DALLAS R. HAYES

GRIEVANCE NO.: 15-00-050128-0010-04-01

ARBITRATOR'S OPINION AND AWARD
ARBITRATOR: DAVID M. PINCUS
JUNE 19, 2005

APPEARANCES

For the Employer

Chuck Linek

Andrew Shulman

Krista Weida

Lieutenant

Labor Relations Specialist

Advocate

For the Union

Dallas R. Hayes

Elaine N. Silveira

Robert Cooper

Dennis Gorski

Herschel M. Sigall

Grievant

Assistant General

Staff Representative

President

Advocate

INTRODUCTION

This is a proceeding under Article 20 – Grievance Procedure, Section 20.07 – Grievance Procedure of the Agreement between the Ohio Department of Public Safety, Division of the State Highway Patrol (hereinafter referred to as the “Employer”) and Ohio State Troopers Association, Inc. (hereinafter referred to as the “Union”). The parties had selected Dr. David M. Pincus as the Arbitrator.

An arbitration hearing was held on April 6, 2004, at the Union's office at 6161 Busch Blvd., Suite 130, Columbus, Ohio. At the hearing, the parties were allowed to present and introduce documents, testimony and evidence. They were, moreover, allowed to examine and cross-examine witnesses. At the conclusion of the hearing, the parties were asked if they wished to provide post-hearing briefs. Both parties supplied briefs in accordance with guidelines established at the hearing.

PERTINENT CONTRACT PROVISIONS

ARTICLE 19 – DISCIPLINARY PROCEDURE

19.01 Standard

No bargaining unit member shall be reduced in pay or position, suspended or removed except for just cause.

(Joint Exhibit 1, Pg. 26)

19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. One or more Verbal Reprimand (with appropriate notation in the employee's file);
2. One or more Written Reprimand;
3. One or more day(s) Suspension(s) or a fine not to exceed five (5) days pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.
4. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action. The Employer, at his discretion, is also free to impose less severe discipline in situations, which so warrant.

(Joint Exhibit 1, Pgs. 28-29)

STIPULATED ISSUE

Was the Grievant removed for just cause? If not, what shall the remedy be?

CASE HISTORY

The facts for the most part are not in dispute. On September 28, 2004 the Grievant was subpoenaed to testify in a case involving civilian Joshua Paynor. His fiancé, and future wife, went into labor on the day in question, which caused the Grievant to call the prosecutor assigned to the above-mentioned court case. The matter was continued, and the Grievant selected childbirth leave as of September 28, 2004.

On October 12, 2004, while still on leave, the Grievant arrived at the Post knowing he had a case scheduled. He rummaged through miscellaneous files and pulled Joshua Paynor's case material. The Grievant did not, however, review the court book maintained by the Dispatchers. If he had, a potential error would have surfaced. The Grievant had been subpoenaed for the Joshua Hutchison case.

Upon arriving at the Portage County Municipal Court, the Grievant located Assistant Prosecutor Erik Jones. The Grievant informed Jones that he was there for the Joshua Paynor case. Jones advised the Grievant that the Paynor case was not scheduled for hearing.

The Grievant departed to the Clerk's office to determine the status of the Paynor case. The Clerk advised the Grievant that the Paynor case had been continued to December 1, 2004. Thinking the case he had been subpoenaed for had been continued, the Grievant headed back to the Post.

After the Grievant departed, Assistant Prosecutor Jones reviewed the docket and observed that the Joshua Hutchinson case was scheduled for 10:00 a.m. Jones

surmised the Grievant had erred and should have been in court for the Joshua Hutchinson case. He called the Post and advised the Dispatcher the Grievant still needed to appear. The Dispatcher called the Grievant who was told he needed to contact Prosecutor Jones.

The Grievant eventually returned to the Post at approximately 10:19 a.m. He called Jones, but he was unavailable. At 10:22 a.m. Jones called the Grievant; who at the time still believed he had been subpoenaed for the Joshua Paynor case. He declared this statement even though Dispatcher Amy Daquelente placed the court book in front of the Grievant, which he pushed away.

Information in the court book clearly exposed the Grievant's error. The Grievant, however, never confirmed his error with Prosecutor Jones. Rather, he inquired about a continuance and whether he should return to the Municipal Court. Neither option was selected by Prosecutor Jones as appropriate.

Dispatcher Daquelente informed Sergeant Brown about the discussion the Grievant had with Prosecutor Jones. On November 4, 2004, Post Commander Girts conducted an Administrative Interview regarding the missed court appearance on October 12, 2004.

The Grievant's actions exposed two obvious misstatements. He never admitted to Prosecutor Jones that the court book contained the name Hutchinson rather than Paynor. During the interview, however, the Grievant maintained he told Prosecutor Jones that the Joshua Hutchinson case was referenced in the court book rather than the Joshua Paynor case.

The Grievant departed from the Post, but felt guilty regarding several misstatements. He called the Post and inquired whether Lieutenant Girts was available. Approximately twenty-five minutes after his initial departure, the Grievant returned to the Post and conversed with Lieutenant Girts. The misstatements surfaced during the course of the second interview.

The parties were unable to settle the disputed matter in subsequent portions of the grievance procedure. Neither party raised procedural nor substantive arbitrability issues. As such, the Grievance is properly before the Arbitrator.

The Employer's Position

The Employer asserted it had just cause to remove the Grievant for violating Rule 4501:2-6-02 (E) False Statement, Truthfulness. The work rule states that a member shall not make any false statement, verbal or written, on false claims concerning his/her conduct or the conduct of others. The Grievant lied to Prosecutor Jones and Lieutenant Girts; a direct violation of this Rule. In doing so, the Grievant violated a critical core value held by the Patrol: honesty. His actions resulted in lost credibility as a law enforcement officer, which can never be re-established.

In this particular instance, the Grievant admitted to lying to his Post Commander, but also lied to the Portage County Assistant Prosecutor. His actions, more specifically, caused the dismissal of criminal charges and reduced the Patrol's credibility in the Portage County Common Pleas Court. Any form of lying or dishonesty is unacceptable. It becomes especially onerous when a Patrol Officer lies to a member of the general public. This form of misbehavior reaches new heights when the person being lied to is an Assistant Prosecutor who is an ally to law enforcement.

Judge Lanzo's support of the Grievant's position was not unanimous. Judge Lanzo testified the Grievant's credibility has not been damaged in his court, yet he stated his judgment would have been altered if the Grievant had been found to have lied in his court. Judge Lanzo, moreover, affirmed the Grievant's misconduct could jeopardize future performance. Any defense attorney could use the Grievant's misconduct to discredit him in future court cases.

The Grievant admitted to lying on two occasions. He then recanted. The case in question, however, was dropped which could have been avoided. If he had been truthful with the Assistant Prosecutor, the case could have been rescheduled and the entire matter dropped.

Various attempts to mitigate the Grievant's misconduct were viewed as unpersuasive. Many other bargaining unit members have personal issues, still fulfill their duties in a responsible manner, and are not untruthful. On the day in question, the Grievant had a choice and decided to place his ego ahead of his professional responsibility to the Ohio State Highway Patrol. His actions were unacceptable and termination is the only appropriate remedy. The Employer will never be able to trust him since his integrity has been shattered.

The argument dealing with the administrative separation is viewed as equally flawed. The separation took place in December of 2004 because of non-compliance with the Employer's Health and Physical Fitness Program. This action, however, did not ban the Grievant from further discipline, which was administered in January of 2005, and involved the disputed matter in front of the Arbitrator. The Grievant still had potential reinstatement rights since he had not had the final weigh-in and the Employer

was paying its share of the Grievant's health benefits. The Grievant, moreover, uttered the false statement before he was given the Notice of Administrative Separation.

The Union's Position

The Union argued the removal was not for just cause. The transgressions in questions do not require termination, but should have resulted in the imposition of some progressive discipline option. This option is dictated by the Grievant's department record, which is clear of any discipline, other mitigating factors, and the Grievant's ultimate recantment.

Several witnesses admitted other bargaining unit members miss appearances of trials and hearings. They are subject to discipline such as counseling or suspension, but are rarely removed.

The Grievant did in fact correct a misstatement uttered at the Administrative Interview. He told the Post Commander that he had advised the Assistant Prosecutor, during the course of a telephone call, that Hutchinson was noted in the court book. Approximately one half hour after his interview the Grievant returned to the Post and corrected his original statement.

The Grievant is capable of effective service and is deserving of continued employment. He overcame serious challenges to reach his eventual goal of being a Trooper. The Grievant's prior performance is unquestioned as he has led his Post in criminal case activity and arresting drunk motorists. His clean department record evidences the unique and unprecedented nature of the disputed misconduct.

The Grievant's disarray on the day in question was caused by a series of related circumstances. He was wrestling with the consequences of having a child out of

wedlock. On or about the day of the disputed incident, his daughter had been crying for three straight days and nights. These circumstances caused a great deal emotional difficulty and sleeplessness. They under-pinned the Grievant's physical and emotional state on October 12, 2004.

At the arbitration hearing, the Grievant's demeanor portrayed his honest disposition. He was able to project his true nature, which reinforces his ability to grow and mature into an outstanding Trooper.

On December 16, 2004, the Union received an e-mail from Lieutenant Chuck Linek, which stated the Grievant has to weigh under 218 pounds to be in compliance with policy. On December 20, 2004, the Grievant weighed 224 pounds. He was later informed that he was separated due to non-compliance with the established weight standard.

On December 29, 2004, the Grievant received a letter from the Training Academy in Columbus authored by Academy Commander, Major Payton Watts. Watts stated the Grievant would be weighed on December 22, 2004 and not December 20, 2004.

Knowing the flawed separation could be a problem if the termination was not upheld, the Employer ordered the Grievant to be re-weighed at the Academy. On February 14, 2005, the Grievant was weighed once again. His weight was well within his allotted 218 pound limit.

The separation incident impacts the desired remedy. The Union maintained any imposed suspension should run from December 20, 2004, the date of improper

separation. February 17, 2005, the date the Grievant was re-weighted, should not be used as the referenced starting point.

THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony adduced at the hearing, a full and impartial review of the record, including pertinent contract provisions and the parties' briefs, this Arbitrator finds the Employer had just cause to remove the Grievant from State Service. Clearly, his actions comport with transgressions in violation of Rule 4501:2-6-02 (E). The imposed penalty was not excessive in light of the circumstances surrounding the disputed matter. Based on this ruling, the Union's remedy argument dealing with the Administrative Separation date is viewed as immaterial in this specific instance.

The Grievant's own admissions provide just cause for removal. As such, the Employer obtained sufficient evidence or proof that the employee was guilty as charged. The Grievant's attempt to subsequently recant his falsified initial version to Post Commander Girts in no way minimizes this conclusion.

The Grievant had several opportunities to set the record straight. His initial misconduct could have been remedied if he had been honest with Assistant Prosecutor Moore. The Grievant merely continued his deception by remarking the court record had been wrong. His decision becomes more egregious and intolerable because he refused the help of Dispatcher Daquelente. She had quickly identified the Grievant's error, but was ignored.

Even if the Grievant was facing a personal moral dilemma or suffering from sleep deprivation and not thinking clearly, Dispatcher Daquelente offered her assistance, which should have been sought rather than ignored. As such, the Arbitrator views these

proposed mitigating events as after the fact contrivances constructed as ego defenses. They would have been viewed as plausible, but for Daquelente's attempt to intervene and the Grievant's inappropriate response.

Fear of humiliation can not be used as justification for lying, especially when the one being lied to is an Assistant Prosecutor relying on the Grievant to play a pivotal and honest role in the judicial process. Here, the Grievant's non-appearance resulted in a DUI case being dismissed. The dismissal was the Grievant's sole responsibility and any attempt to taint the Assistant Prosecutor's decision making conduct is clearly misplaced. The Grievant, moreover, further compromised the process by deflecting his actions by uttering intentional statements to bury his humiliation.

The misstatement directed toward Assistant Prosecutor Moore is extremely egregious. Both the Assistant Prosecutor and the Grievant play critical roles in the judicial process. Their duties and responsibilities interplay and must be soldered with mutual trust and honesty. Misrepresentations of this type admitted to by Grievant nullify his ability to engage in future discussions where his veracity would be questioned continually. The misstatement, moreover, involved an individual outside the Patrol, which led to a case dismissal. The Assistant Prosecutor and similarly situated individuals help the Patrol attain specific mission goals which can not be attained without mutual trust and confidence. Misconduct of the type engaged in by the Grievant erode the necessary fabric of this relationship hampering his ability to engage in Trooper responsibilities.

His ability to properly perform duties and responsibilities is further hindered by another obstacle. If returned to work, any resourceful defense attorney would be willing

to question the Grievant's credibility in any future legal forum. This would also interfere with the successful operation of the Ohio State Highway Patrol.

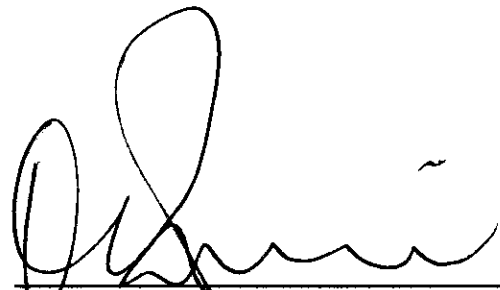
Approximately three weeks after the triggering event, the Grievant had an opportunity to set the record straight, but he did not. He could have fully advised his Post Commander of his prior misstatement, but further muddied the waters by insisting he had rectified his prior misstatement with Assistant Prosecutor Jones. The record eventually became transparent when the Grievant returned to the Post and recanted. He recanted, however, after lying twice and the Hutchinson case was eventually dropped.

The Grievant's conduct is so blatantly destructive to the employee-employer relationship as to authorize summary discharge. Progressive discipline is not warranted here. The Grievant has substantially compromised his credibility both in and out of court, which limits the Employer's ability in conducting a critical aspect of its mission.

AWARD

For all the foregoing reasons, the grievance is hereby denied. The Employer had just cause to remove the Grievant.

June 19, 2005
Beachwood, Ohio



Dr. David M. Pincus
Arbitrator