

#1836

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

**Case # 15-00-041123-134-04-01
William W. Ward, Grievant**

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

In attendance: For the Highway Patrol---Cpt. J. R. Dickey, Executive Officer-Dist. Operations(witness); Sgt. J. J. Lumpcik(witness); Sgt. K. D. Miller OSHP/HRM; Mr. Andrew Shuman, OCB-2nd Chair; Lt. John R. Allard, OSHP/HRM-Advocate

For OSTA--- Mr. Thomas B. Faris, Dispatcher(witness); Mr. Dennis M. Gorski, OSTA President; Mr. Wayne McGlone, OSTA Staff Rep.; Ms. Elaine N. Silveira, OSTA Attorney; Tpr. William W. Ward, Grievant; Mr. Herschel M. Sigall, Chief General Council, OSTA-Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Ohio State Troopers Association Headquarters on August 23, 2005 at 9:00am. All witnesses were sworn. No procedural issues were raised and the parties agreed that the issue is arbitrable. There were several exhibits presented: Jt. 1- Collective Bargaining Agreement; Jt. 2- Discipline package, composed of—Statement of Charges, Pre-discipline Notice, Meeting Officer's Reply, Suspension Letter, Highway Patrol Rules & Regulations 4501:2-6-02 PERFORMANCE OF DUTY AND CONDUCT, Department Record; Jt. 3- Grievance Trail, Jt. 4-AI. 04-4677, Tpr. Shaw. The Employer introduced the following exhibits: ME. 1-A. I.# 2004-4861, Tpr. W. W. Ward; ME. 2-OSHP 4501:2-6-07 CODE OF ETHICS, OATH OF OFFICE; ME. 3-OSHP DUTY ASSIGNMENT ROSTER; ME. 4- OSHP Evaluation, Tpr. Ward. The Union submitted the following exhibits: Un. 1- Dispatcher's hand written Radio Log, dated 08-06-04; Un. 2- OSHP DAILY PATROL, PHONE AND RADIO LOG, dated 08/06/04.

ISSUE:

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

“Was the Grievant issued a three (3) day suspension for just cause? If not, what shall the remedy be?”

FACTS:

Trooper William W. Ward has been employed by the Ohio State Highway Patrol since July 8, 1994. At the time of the alleged incident of violation Trooper Ward was assigned to Post 29, Xenia, and he currently works out of Post 29.

On August 6, 2004 Trooper Ward was working the 3 to 11pm shift and was assigned to patrolling I-71 in the Fayette County area. Trooper Ward received two dispatches (1926 & 1928 hrs) from Post advising him of a reported OVI driver, southbound, approximately 20 miles north of I-71 and US-35. During the second service call (1928), Tpr. Ward said he was near Jamestown, nearly 28 miles away. He requested the dispatcher to check the County Sheriff's Office for a closer unit. A closer unit was confirmed and Tpr. Ward did not respond. Later that same evening (2223 hrs) Tpr. Ward received a service call from Dispatch advising of a citizen call reporting a possible road rage activity. The road rage activity was reported to be immediately north of him, southbound on I-71. Trooper Ward did not respond and records show that immediately after the dispatch call he arrested a driver for excessive speed (84 mph).

An Administrative Investigation was conducted by his shift Sergeant on August 20, 2004. The AI determined that Tpr. Ward should have responded to the service calls. Trooper Ward was notified on November 5, 2004 that he was to be suspended for three (3) days. He was charged with violation of OSHP Rules & Regulations, specifically: Rule 4501: 2-6-02 (B)(1)(5) Performance of duty/Inefficiency. A Pre-disciplinary Hearing was conducted on November 12, 2004 and Trooper Ward was notified by the DPS Director, on November 29, that he was being suspended for three (3) days effective November 30, 2004. Trooper Ward filed a grievance on

November 12, 2004 charging the employer with failing to comply with Section 19.05 (Progressive Discipline) of Article 19.

DISCUSSION AND OPINION:

Evidence and testimony show that on the first alleged failure to respond to a dispatched service call that Tpr. Ward was near Jamestown on route 35. His location, according to un-refuted testimony, was approximately 8 miles from I-71. The alleged OVI vehicle was, according to dispatch records, nearly 20 miles north of I71 & US35 southbound. During the dispatch radio calls of this incident Tpr. Ward asked HPRD Faris to check Fayette County Sheriff Office for a closer unit. This was done and closer unit was confirmed, per the evidence. There was no other reported siting of the OVI vehicle by either law enforcement or citizen calls, according to testimony.

The employer implied in its evidence and testimony that the grievant's failure to respond to the OVI call was motivated by his plans to take a dinner break in Jamestown. Radio logs do, in fact, show the grievant taking a dinner break 42 minutes after the first dispatch call. The grievant, in his AI interview, admitted to being in Jamestown and took a dinner break some 40 to 45 minutes later. However, there was no substantive evidence brought forward to convince the arbitrator that the response failure was due to the anticipated meal break versus a distance issue and the availability of another closer law enforcement unit. Furthermore, according to HPRD Faris's testimony, other service calls at this post have been passed on to other departments. The query of another closer unit implies to the arbitrator that the grievant would have responded had the query response been negative.

The second alleged incident of response failure occurred at 2223 hours on the same day, according to evidence and testimony. The particular incident involved a citizen cell phone report of alleged road rage. The reported road rage incident was occurring on I-71 south near mile post 60. Contact was made with Tpr. Ward at 2223 hrs. by dispatcher Faris and radio logs identified Tpr. Ward's location at MP 58 or 59 (U-2 & ME-1). HPDR Faris identified the perpetrators as being in a Mitsubishi, a van and some motorcycles. Evidence shows that Tpr. Ward made a traffic stop (excessive speed) at MP 58 at 2224 hrs. (ME-1). The employer maintains that the grievant should have ignored the speeder and searched for the reported road rage. Trooper Ward reported that he looked for the alleged road rage and

saw nothing, so he attended to the incident at hand, a speeder (ME-1). Posts 14 and 83 were notified by HPDR but no further road rage was seen or reported.

Again the employer implies in their evidence and testimony (ME-1 & 3) that the grievant had other interests (State Fair) in mind when not responding to the potential felony violation on August 6, 2004. However, there was no convincing testimony or evidence to demonstrate that by not avoiding the road rage call Tpr. Ward would be "inconvenienced" sufficiently to miss another assignment of interest.

Should the grievant have responded to HPDR Faris's calls at 1926 & 2223 hrs. probably? The grievant himself admits, in the first incident, that maybe he should have (ME-1). The road rage, although looked for, was not seen by Tpr. Ward so he attended to what was in front of him. Law enforcement personnel have a duty to follow organization policy and protect citizens from unlawful behavior. However, in this case the allegations that Tpr. Ward had ulterior motives for not responding, were unsubstantiated, in the arbitrator's opinion. Since the employers' evidence and testimony implicated a less than honorable intent by the grievant, the arbitrator must presume it impacted the severity of the discipline (three-v-one day suspension).

In addition, the arbitrator determined that the investigation process did not meet commonly accepted standards for just cause determination¹. In this case the arbitrator believes that an uninvolved employer authority, not the complainant, should have conducted the AI. Furthermore, not all the active participants in the alleged incident were interviewed for the AI report.

AWARD:

Considering Trooper Ward's Department Record and the aforementioned, the arbitrator finds that the employer violated Section 19.05 Progressive Discipline of Article 19.

¹ Principles Governing Just Cause Determinations, Barry Winograd (FMCS 2000)

In accordance with Article 20.12 (F) the three (3) day suspension is reduced to one (1) day. The grievant is to be reimbursed for the differential in lost wages and benefits.

This concludes the arbitration decision.

Issued this 6th day of September 2005.

Respectfully submitted,

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

E. William Lewis
Arbitrator