

#1837

In the matter of Arbitration between:

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

and

**Case # 15-00-050121-08-04-01
Ryan S. Wilson, Grievant**

**Ohio State Troopers Association
Union**

In attendance: For OSTA—Mr. Dennis M. Gorski, OSTA President; Mr. Ed Richardson, Staff Representative; Ms. Elaine Silveira, OSTA Attorney; Mr. Tim Stockman, OSTA Staff Representative; Tpr. Ryan Wilson(witness); Mr. Herschel Sigall, General Council, OSTA—Advocate

For the Highway Patrol—Mr. John Allard, OSHP/HRM; S/Lt. Robert J. Dunn(witness); Mr. Andrew Shuman, 2nd Chair/OCB; Sgt. Kevin Miller, OSHP/HRM—Advocate

INTRODUCTION:

The matter was heard in Columbus, Ohio at the Ohio State Troopers Association headquarters on August 23, 2005 at 2:40pm. 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-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, Deportment Record, Highway Patrol Rules & Regulations: 4501: 2-6-02 (B)(1) Performance of Duty and 4501: 2-6-02 (Y)(2) Compliance to Orders; Jt. 4-Administrative Investigation #04-4887; Jt. 5-Response to Resistance Cases/Deportment. Management submitted the following exhibits: ME. 1-AI. #2004-4850 / Tpr. R. Wilson + Tabs. A thru Z; ME. 2-Roll Call Training Record; ME. 3-ODPS- Policy and Procedure Management print-out Tpr. Wilson. The Union submitted the following exhibits: Un. 1-ODPS Policy and Procedure Management print-out S/Lt. Dunn; Un. 2- Ohio State Highway Patrol Policy—CASE INVESTIGATION.

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 the remedy be?”

FACTS:

Trooper Ryan Wilson has been employed by the OSHP since April 2, 1999. Trooper Wilson is currently assigned to Post 32, Findlay. At the time of the alleged incidents which gave rise to the discipline, Tpr. Wilson was also working out of Post 32 on the 11p-7a shift.

On August 8, 2004 Tpr. Wilson, as well as, shift Sgt. Shultz responded to calls from the Findlay Police Department and the Hancock County Sheriff's Department for assistance and back-up. There was a basketball tournament in town with players and others from various places throughout the state. According to the local paper (ME-1) there were major disturbances at three locations, Wooley Bulley's, Nickies Bar and the Travel Inn. Fighting and violence occurred at all three places resulting in three people being hospitalized and fourteen arrested for rioting and assault (ME-1).

Trooper Wilson responded first to Wooley Bulley's, then to Nickies and ultimately to the Travel Inn. At the first two establishments he provided only verbal direction and officer presence. The Travel Inn location required Tpr. Wilson to physically assist two Police Officer's in subduing a suspect. During this altercation Tpr. Wilson used the stun gun of his taser to help subdue the suspect. All of these events occurred between 0200 and 0300 hours.

During all three of these events it was alleged by the employer that Tpr. Wilson failed to record the events on his patrol-car video equipment. Furthermore, alleges the employer, at the conclusion of the Travel Inn tasing incident Tpr. Wilson used unprofessional language regarding the Post's dispatcher.

An Administrative Investigation was conducted by S/Lt. Dunn and submitted to the Findlay District Commander Collins on September 9, 2004. As a result of the AI, Tpr. Wilson was notified on November 4, 2004 that he was to be suspended for one (1) day for violation of OSHP Rules & Regulations 4501: 2-6-02(B)(1) Performance of Duty and 4501: 2-6-02(Y)(2) Compliance to Orders, to wit: it is charged that on August 8, 2004, you made an unprofessional comment about a dispatcher and failed to properly utilize your in-car video equipment. A Pre-disciplinary hearing was held on December 7, 2004 and cause for discipline was determined by the Hearing Officer. Trooper Wilson was notified on December 28, 2004 that he would be suspended for one (1) day, effective December 29, 2004. A grievance was filed by Tpr. Wilson requesting to be made whole for all lost wages and benefits. Trooper Wilson charged the employer with violating Article 19, Section 19.01 & 19.05 (Just Cause and Progressive Discipline).

DISCUSSION AND OPINION:

The basic facts are not in dispute in this case. Trooper Wilson and Sgt. Shultz were assisting Findlay Police Officers' and Hancock County Deputies in handling a near riotous situation (ME-1). In reviewing Hancock County and Findlay law enforcement officers' incident reports, all three locations had incidences of assault and near riotous behavior (ME-1).

Trooper Wilson was present at all three locations in an assistance mode. There was no dispute as to the lack of use of the video camera by Tpr. Wilson. He stated in his testimony and during the AI that he did not activate his camera because he was in an assistance role to other agencies and deemed it inappropriate or not necessary. Evidence and testimony was brought forward by the employer showing the existence of an in-car A/V policy. The policy, supplemented by the Post Commander's IOC, requires the audio/video equipment to be used during these types of incidents, in the arbitrator's opinion. Furthermore, evidence was submitted identifying Tpr. Wilson as having been issued the policy as well as having been trained in the policy.

Regarding the unprofessional behavior, Sergeant Shultz's in-car video records a comment by the grievant about the on-duty dispatcher (ME-1). The primary issue contributing to Tpr. Wilson's unprofessional remarks focuses on a dispatched

signal 40. The signal, allegedly, emanated from Tpr. Wilson while assisting at the Travel Inn (ME-1). Trooper Wilson denied the requesting of a signal 40 or the need for broadcasting the signal (ME-1). Testimony and evidence showed that Tpr. Wilson directed his comments to Sgt. Shultz as the conclusion of the Travel Inn altercations. No threat or derogatory comment was made to the dispatcher.

The evidence is clear and convincing to the arbitrator that the alleged incidents' occurred. These incidents, in the arbitrator's opinion, were violations of known existing Rules & Regulations. Therefore, I find just cause for discipline and no violation of Article 19, Section 19.01.

In considering the union's allegation of the penalty not being commensurate with the offense the arbitrator is persuaded by the mitigating evidence in this case. The unprofessional comment was made to a fellow officer and not to the subject or directed to the public. In the arbitrator's opinion, the comment was difficult to detect on the tape, with all the noise, and was not in any way taken to be serious by the sergeant to which made. The comment was made at the conclusion of a very stressful hour for the grievant. The broadcast of a signal 40 by "mistake" is serious, in the arbitrator's opinion. After reviewing Jt. 5 and considering the grievant's clean Department Record the arbitrator finds the penalty to be excessive and not commensurate with the offense according to Article 19, Section 19.05.

AWARD:

The one (1) day suspension is reduced to a written warning in accordance with Section 20.12. The grievant is to be made whole for all lost wages and benefits.

This concludes the arbitration decision.

Issued this 2nd day of September, 2005.

Respectfully submitted,

A handwritten signature in cursive script that reads "E. William Lewis". The signature is fluid and elegant, with the first letter of each word being capitalized and prominent.

E. William Lewis
Arbitrator