

#1863

**In the matter of Arbitration between:**

**Ohio State Troopers Association  
Union**

**Case # 15-00-050617-55-04-01  
Jeffrey A. Fide, Grievant**

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

**In attendance:** For OSTA---Mr. Robert Cooper, OSTA Staff Rep.; Tpr. Jeffrey A. Fide, OSHP-Elyria Post(witness); Ms. Elaine Silveira, OSTA Attorney—Advocate

For the Highway Patrol---Cpt. John H. Bistor, Dist. Hdq.(witness); Sgt. Ronald Cross, OSHP-Elyria Post(witness); Mr. John Kinkela, Labor Counsel/OCB; Sgt. K. D. Miller, OSHP/Labor Relations; S/Lt. C. J. Zurcher, OSHP(witness); S/Lt. J. R. Allard, OSHP/Labor Relations—Advocate

**INTRODUCTION:**

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on January 9, 2006 at 3:00pm. All witnesses were sworn. No procedural issues were raised and the parties agreed that the issue is arbitrable. There several exhibits presented: Jt. 1-Unit 1 Collective Bargaining Agreement; Jt. 2-Discipline Package composed of—Statement of Charges, Pre-discipline Notice, Meeting Officer Reply, Suspension Letter, Highway Patrol Rules & Regulations 4501: 2-6-03 (D)(3) Insubordination, Deportment Record; Jt. 3-Grievance Trail; The Employer introduced the following exhibits: ME. 1-Administrative Investigation # 04-5240; ME. 2-Interview Tape, Sgt. Cross of Tpr. Fide. The Union introduced the following exhibits: Un. 1-OSHP Policy, ENFORCEMENT GUIDELINES; Un. 2-OSP Policy, TRAFFIC CRASH INVESTIGATION; Un. 3- 47-1550-47 crash photos; Un. 4- 47-1919-47 crash photos; Un. 5-Tpr. Fide's EVALUATIONS signed 1/03, 1/ 04, 1/05.

## **ISSUE:**

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

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

## **FACTS:**

Trooper Jeffrey A. Fide has been employed by the Ohio State Highway Patrol since September 7, 1985. At the time of the alleged incidents, he was (and is), working the day shift at Elyria Post 47.

As a result of a supervisory review of some of Tpr. Fide's crash reports, specifically, 47-1550-47, 9/29/04 and 47-1919-47, 11/18/04, certain deficiencies were alleged. Supervision alleged that the reports were lacking in crash scene sketches, and they had potential for issuance of citations. An Administrative Investigation (AI) was instituted on November 23, 2004 as a result of alleged interactions between Tpr. Fide and Lt. Zurcher on 11/22/04. Trooper Fide was initially interviewed on 12/1/04 for inefficiently completing traffic crash investigations. Captain Bistor, of District 3 Headquarters, determined that the crash investigations inefficiencies were insufficient to merit discipline, and instructed Post management to train and monitor. However, a follow-up investigation was conducted and subsequently submitted on January 27, 2005, regarding insubordination issues.

On May 9, 2005, Tpr. Fide was notified that he had been found in violation of OSHP Rules & Regulations # 4501: 2-6-03 (D)(3)-Military Courtesy and respect for rank. He was also notified on May 17, 2005, that the Employer intended to suspend him for one (1) day. A Pre-disciplinary meeting was conducted on May 26, 2005. The Meeting Officer found just cause for discipline, and Tpr. Fide was notified on June 21, 2005, that he was suspended for one (1) day effective June 22, 2005.

Trooper Fide filed a grievance on June 14, 2005 claiming that the Employer violated Article 19, Section 19.01-just cause and Section 19.05-Progressive Discipline, of the CBA. He requested that the one day pay and benefits be

repaid and he be made whole. The request was also made to remove the suspension reference from his Department Record. A Step 2 response of denial was made on July 8, 2005, and the grievance was ultimately appealed to arbitration on September 27, 2005.

## **DISCUSSION AND OPINION:**

The charges in this case identify alleged insubordination on the part of the grievant on two occasions, November 22, 2004 and December 1, 2004. On 12/14/04 the Administrative Investigation was sent back by Cpt. Bistor of District Hdq's., advising Post management that the alleged infractions did not rise to a level of discipline (ME-1). Captain Bistor recommended training and monitoring and instructed them that if future behavior continues (possible insubordination), it would be addressed properly. The initial review of the AI did not include a taped interview of the grievant (ME-2). The audio tape recorded an interview on 12/1/04 of Tpr. Fide by Sgt. Cross. A later review of the tape (ME-2) by Cpt. Bistor prompted him to approve appropriate discipline (ME-1, Route Slip 1/28/05).

The arbitrator's review of the taped interview, is troubling. Trooper Fide needed only to answer Sgt. Cross's questions, without being argumentative and disruptive. Highway Patrol law enforcement Officers receive training on how to give testimony in response to an investigation.

Captain Bistor, according to his testimony, instructed Post management to re-do the AI regarding the tape and potential insubordination. A second interview of Tpr. Fide was conducted by Sgt. Cross, on January 20, 2005. However, no new questions were asked regarding the Trooper's behavior on 11/22/04 and the taped interview of 12/1/04. Captain Bistor had already determined that training and monitoring would be appropriate for the crash reporting issues. The follow-up investigation did not re-address the incident on 11/22/04 between Tpr. Fide and Lt. Zurcher.

In the arbitrator's opinion, the 11/22/04 event between Tpr. Fide and Lt. Zurcher, without further requested investigation, had already been reviewed by Headquarters, and no discipline was recommended. The Ohio State Highway Patrol is a quasi military organization and respect for rank is a duty. Trooper Fide's behavior in the 12/1/04 taped interview was disrespectful and insubordinate in nature, in the arbitrator's opinion.

However, the AI follow-up did not present any further evidence of insubordinate type conduct, other than the already submitted tape. Therefore, the charge of behaving in an insubordinate manner on 11/22/04 was not substantiated by further investigation.

**AWARD:**

Considering the grievant's more than twenty years of service and the lack of clear convincing evidence regarding the 11/22/04 incident, I find that the Employer violated Section 19.05-Progressive Discipline of Article 19.

The one (1) days suspension is reduced to a written warning and the Grievant is to be made whole for lost wages and benefits.

This concludes the arbitration decision.

Respectfully submitted this 23<sup>rd</sup> day of January 2006.

A handwritten signature in cursive script, reading "E. William Lewis".

E. William Lewis  
Arbitrator