

#1879

**In the matter of Arbitration between:**

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

**Case # 15-03-050628-59-04-01  
Bradley K. Huffman, Grievant**

**Ohio State Troopers Association  
Union**

**In attendance:** For the Highway Patrol---Mr. Matthew Banal, 2<sup>nd</sup> Chair OCB; Sgt. Christopher A. Colbert (witness); Mr. Michael Duco, OCB; Sgt. Kevin A. Miller, OSHP---Advocate

For OSTA---Mr. Dennis Gorski, President OSTA; Tpr. Bradley K. Huffman (witness); Sgt. Lori A. Landacre (witness); Mr. Wayne McGlone, Staff Rep. OSTA; Tpr. Edgar C. McKenny (witness); Ms. Elaine Silveira, OSTA Attorney---Advocate.

**INTRODUCTION;**

This matter was held in Columbus, Ohio at the Ohio State Troopers Association offices on May 18, 2006, 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-Unit 1 CBA; Jt. 2-Grievance Trail; Jt. 3-Discipline Package, composed of---Statement of Charges, Pre-discipline Notice, Suspension Letter, Department Record, Highway Patrol Rules & Regulations 4501:2 -6-02(B)(5) Performance of Duty. The Employer introduce the following Exhibits: ME 1-AI 2005-5418---Tpr. B. K. Huffman, Tpr. A. M. Williams, and Dispatcher S. E. Hamilton; ME 2-Ohio State Highway Patrol Policy 400.08 Radio Signals; ME 3,4, 5-HP53B OSHP Daily Phone & Radio Log Supplements, dated 1/08/05, 1/07/05, 1/06/05-for all three shifts at Xenia Post 29; ME 6-HP 70A, Statement Form of Sgt. L. A. Landacre, dated March 18, 2005. The Union submitted the following Exhibit: Un. 1-Tpr. Huffman's Evaluations dated 9/16/02, 10/7/04, and 9/13/05.

## **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 Bradley K. Huffman has been employed by the Ohio State Highway Patrol since May 10, 1998. At the time of the alleged incident he was (and is) working the 11p to 7a shift at the Xenia, Ohio Post.

On January 8, 2005 at 0350 Tpr. J. D. Williams called in a pursuit. Sgt. Landacre, in relief of the Dispatcher, attempted to raise Tpr. Huffman on the radio to back-up Tpr. Williams. She received no response from Tpr. Huffman. Evidence and testimony showed that Tpr. Huffman was on lunch break, in an area where radio contact was garbled and difficult. The pursuit was discontinued shortly after initiation, however, Tpr. J. D. Williams raised concerns regarding the lack of support response.

Sgt. Landacre was instructed by Post Commander Colbert to conduct an Administrative Investigation (AI) regarding the January 8, 2005 incident. The request for assistance by Tpr. Williams and the lack of accessibility of Tpr. Huffman, was of concern. Other Post employees were also investigated along with Tpr. Huffman regarding their activities on the night in question. The Employer determined, through AI 2005-5418, that Tpr. Huffman failed to notify Post of taking a lunch break and his location while eating. This alleged error by Tpr. Huffman jeopardized the safety of the pursuing Officer, alleges the Employer.

Trooper Huffman was notified on June 6, 2005 that he had been found in violation of OSHP Rule 4501: 2-6-02(B)(5) Performance of Duty. The Employer charged that on January 8, 2005, Tpr. Huffman failed to follow procedure for reporting his location during a lunch break. He was also notified that a one (1) day suspension would be imposed, and that a Pre-disciplinary hearing would be conducted on June 17, 2005. Trooper Huffman waived his rights to a Pre-disciplinary hearing. The Director of ODPS

notified Tpr. Huffman on June 23, 2005, that he would be suspended for one (1) day effective June 24, 2005.

A grievance was filed by Tpr. Huffman on June 22, 2005 protesting the pending one (1) day suspension. The grievance alleged that the Employer violated ARTICLE 19, Section 19.05 Progressive Discipline, and ARTICLE 7 NON- DISCRIMINATION of the Collective Bargaining Agreement. The grievant requested to be made whole for the one day suspension, due to the fact that it was common practice for personnel not to call-in their lunch break. The requested remedy alleged that progressive discipline was not followed, since the grievant had not been disciplined for this violation in the past. The grievance was denied at Step 2 and ultimately appealed to Arbitration by the Union on October 19, 2005.

#### **DISCUSSION AND OPINION:**

Evidence and testimony showed that a number of Post 29, 11p to 7a employees were involved as a result of the 1/08/05 short pursuit incident (AI 05-5418). Not only was the grievant a subject of the AI, but Tpr. Anna Williams and Dispatcher Hamilton were also included. Evidence and testimony showed that Troopers' Huffman and Anna Williams were eating at Subway, 20 miles away, at the time the pursuing Officer made his back-up request. Not only were they an extended distance from the pursuit activity, they were in an area where radio contact was difficult. The radio Dispatcher **may** have known where they were but she was on lunch break. Sgt. Landacre, filling in for the dispatcher, was unaware of the location and signal status, according to testimony.

The grievant claims that it was a common practice for Troopers at this Post not to call-in signal 38's. However, Employer evidence (ME 3, 4, 5) does not substantiate that claim. Furthermore, Sgt. Landacre (shift Supervisor) testified that many times she ate with some of her shift Troopers and one of them would call-in signal 38, for all. All of the witnesses testified that they reported lunch break locations in one form or another. In addition, all witnesses, including the grievant, testified that they were aware of the Policy requirement to call-in their signal 38.

Evidence and testimony does show a common practice of Troopers being reachable during their shift, whether they are on lunch break or not. Union

witnesses as well as Management testified, through examination, that even if no direct signal 38 was made, Post was aware of their location. Section 26.03-Meal Breaks, of the Collective Bargaining Agreement, states that Troopers shall be subject to emergency call during meal breaks. In order to be subject to emergency calls they must be accessible when taking a meal break. In the arbitrator's opinion, Tpr. Huffman was not accessible on his meal break on January 8, 2005 and was in violation of the CBA as well as Policy.

I do not find that the Employer discriminated against the grievant (ARTICLE 7), nor do I find that the Employer violated Section 19.05 Progressive Discipline.

**AWARD:**

Considering the grievant's Department Record, with a one (1) day suspension still in effect, the one (1) day suspension in this incident was commensurate with the offense.

The grievance is denied.

This concludes the arbitration decision.

Respectfully submitted this 27<sup>th</sup> day of May 2006.

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

E. William Lewis  
Arbitrator