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In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

And

**Case # 15-00-050531-50-04-01
Bion Shaw, Grievant**

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

In attendance: For the Highway Patrol—Mr. Matt Banal, OCB/LRS; Sgt. Bret Henderson, Canfield Post(witness); Maj. Bruce A. Ludlow, HRM; Sgt. Kevin D. Miller, HRM Labor; Sgt. George Williams, Warren Post(witness); Lt. Charles J. Linek, HRM—Advocate

For OSTA—Mr. Robert Cooper, Staff Representative(witness); Mr. Larry K. Phillips, OSTA President; Tpr. James Quinlan, Warren Post(witness); Tpr. Bion Shaw(witness); Ms. Elaine Silveira, OSTA Attorney; Mr. Steve Staley, observer; Mr. Herschel Sigall, Osta General Council—Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Ohio State Troopers Association, Headquarters, on August 30, 2006 at 9am. All witnesses were sworn. No procedural issues were raised, and the parties agreed that the issue was arbitrable. There were several exhibits presented: Jt. 1-Unit 1 Collective Bargaining Agreement (2003-2006); Jt. 2-Grievance Trail #0050; Jt. 3-Discipline Package, composed of---Statement of Charges, Pre-discipline Notice, Meeting Officer Reply, Suspension Letter, Department Record, Highway Patrol Rules & Regulations: 4501: 2-6-02(B)(5) Performance of Duty/Inefficiency. The Employer introduced the following exhibits: ME 1-Administrative Investigation (AI) # 2005-5552; ME 2-OSHP Procedure Number: HP-7; ME 3-OSHP Policy Number: OSP 200.13 DUTY ASSIGNMENTS. The Union submitted the following exhibits: Un 1-Traffic Crash Report, Tpr. Shaw 07/31/04; Un 2-Doctors statement Re. Tpr. Shaw (8/2/04); Un 3-Circle Rehabilitation, Discharge Summary Re: Tpr. Shaw.

ISSUE:

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

“Did the Grievant receive a five (5) day suspension for just cause? If not, what shall the remedy be?”

FACTS:

Trooper Bion Shaw (grievant) has been a trooper since November 1995. He is currently assigned to the Hiram Post. At the time of the alleged incident he was working the 2p-11p shift at the Warren Post (91).

On February 15, 2005, while Tpr. Shaw was on vacation, a Ms. Wagner showed up at the Warren Post. She requested information necessary to pay her traffic citation issued to her on 2/7/05, by Tpr. Shaw. Ms. Wagner had gone to the Newton Falls Court to pay her fine, however, she was not permitted to pay without the required paperwork from the Highway Patrol. The necessary paperwork (HP-7) was located in Tpr. Shaw's patrol car's "pinch book", and delivered to the court by Post 91 personnel.

An AI was commenced by the Employer on February 21, 2005, as a result of Tpr. Shaw's unavailable traffic citations. As a result of the AI, Tpr. Shaw was notified on April 12, 2005, that he was to be suspended for five (5) working days for allegedly violating OSHP Rules & Regulations 4501: 2-6-02(B)(5), Performance of Duty/Inefficiency. It was charged that on February 9, 2005, Tpr. Shaw failed to properly process and file arrest affidavits with Girard Municipal Court in a timely manner.

A Pre-disciplinary hearing was conducted on April 21, 2005, and the Meeting Officer found just cause for discipline. Trooper Shaw was notified on May 9, 2005, that he would be suspended for five (5) working days, effective May 10-14, 2005. A grievance was filed on 5/19 or 20 (dates "boxed"), claiming that the Employer violated Article 19 DISCIPLINE, Section 19.01 Standard (just cause). The grievant requested to have the five day suspension returned to him, and to be made whole, plus compensation for overtime opportunities missed. The grievance was denied at Step 2, on June 20, 2005, and ultimately appealed to arbitration by the Union, on July 21, 2005.

DISCUSSION AND OPINION:

The facts are not in dispute in this case. Trooper Shaw went on vacation from February 9 through February 23, 2005. Evidence and testimony showed that while he was on vacation, a ticketed citizen (Ms. Wagner) came on Post 91 seeking information on how she could pay her traffic citation. Ms. Wagner had been directed to the Post by the Newton Falls Municipal Court because they could not find their copy of the citation.

According to ME 1 and witness testimony, it was determined that the citation in question was issued by Tpr. Shaw on 2/7/05. Therefore, not finding the court copy of the citation in the appropriate "bin", the Post Sergeant checked Trooper Shaw's patrol car. According to evidence and testimony, the Post Sgt. found the citation in question, along with other citations that were written on 2/7 and 2/8, in the grievant's patrol car in his "pinch book". Trooper Shaw testified that his normal procedure was to turn in HP-7's (citations), along with his HP-54, at the end of each shift, according to Policy (ME 3). Evidence further showed that one of Tpr. Shaw's citations (Girard Municipal Court), had a court date set before the grievant was to report back to work, from vacation.

Although the Union argues that there is not a rule or regulation as to when court copies of citations (HP-7) have to be filed, internal Highway Patrol Policy (OSP 200.13) does clearly outline the end of shift requirement of report filing. Furthermore, all witnesses, including the grievant, testified as to knowing and understanding the Policy. The consequences of not following such a policy could be chaotic.

The grievant was counseled regarding the HP-7 policy only six months prior to this incident. The arbitrator does see relevancy, even though the Union argues that the counseling was not deserved. Employer, employee discussions were had on the topic of HP-7 filings, which should have created a heightened awareness on the grievant's part. Furthermore, there was no evidence presented showing a formal protest (grievance) or withdrawal of the disciplinary counseling session.

Was there desperate treatment in this case? In the arbitrator's opinion, there was no preponderance of evidence presented to sustain desperate treatment. Although some Union witnesses' testimony stated that they were aware of similar occurrences without discipline, no evidence with specificity was

submitted. Testimony was also introduced by the Union, of finding five other allegedly similar incidents, without suspension. However, that is a small number, from a large sampling, that did not include evidence of Department status.

It is clear, in the arbitrator's opinion, that the grievant made a mistake, albeit, unintentional. An operational policy requiring end of shift report filing, is absolutely necessary to efficiently conduct business in a law enforcement agency, in the arbitrator's opinion. Although it is disappointing to see a person suspended for five days, the arbitrator can find no justification to mitigate. The evidence is clear and convincing to the arbitrator, that the incident did occur, and it was in violation of known policy and procedures. Considering the grievant's Department record and the progressive nature of the discipline, the arbitrator finds that the Employer had just cause for discipline.


AWARD:

The grievance is denied.

This concludes the arbitration decision.

Submitted this 13th day of September 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. William Lewis". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

E. William Lewis
Arbitrator