

**In the matter of Arbitration between:**

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

**And**

**Case # 15-00-050623-57-04-01  
Scott R. Tanner, Grievant**

**Ohio State Troopers Association  
Union**

In attendance: for OSTA—Mr. Larry Phillips, OSTA President; Tpr. Michelle Rayot(witness); Mr. Dave Riley, Staff Representative; Mr. Herschel Sigall, General Council; Mr. Steve Staley, Observer; Tpr. Scott Tanner(witness); Ms. Elaine Silveira, Attorney—Advocate

For the Highway Patrol—Sgt. Stephen P. Babich(witness); Mr. Matt Banal, OCB/LRS; Tpr. Jason Lankey(witness); Lt. Charles Linek, HRM; Maj. Bruce Ludlow, HRM; Sgt. Kevin D. Miller—Advocate

**INTRODUCTION:**

This matter was heard in Columbus, Ohio at the Ohio State Troopers Association, Headquarters, on August 30, 2006 at 1:45p. All witnesses were sworn. No procedural issues were raised, and the parties agreed that the issue was arbitrable. There were several exhibits submitted: Jt 1-Unit I Collective Bargaining Agreement (2003-2006); 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)(1)(5) Performance of Duty & 4501: 2-6-02(Y)(2) Compliance to Orders. The Employer introduced the following exhibits: ME 1-HP 70B Impaired Driver Report; ME 2-Administrative Investigation(AI) #2005-5577; ME 3-OSHP Policy, TRAFFIC CRASH INVESTIGATION; ME 4-OSHP Policy TRANSPORTATION AND SECURITY IN PATROL VEHICLES; ME 5-OSHP Policy SEARCH AND SEIZURE; ME 6-OSHP Policy IMPAIRED DRIVER REPORT. The Union introduced the following exhibit: Un 1-Court History Information File, Jason Vanalstine.

## **ISSUE:**

The parties submitted a jointly signed issue statement, which reads as follows:

Was the Grievant issued a three day suspension for just cause? If not, what shall the remedy be?

## **FACTS:**

Trooper Scott Tanner has been employed by the Ohio State Highway Patrol for over twenty five years. He was, at the time of the alleged incidents, assigned to the Swanton Post, on the Ohio Turnpike. Trooper Tanner still works out of the Swanton Post on the 11p to 7a shift.

On the night of February 27, 2005, around 3:30a, Tpr. Tanner was dispatched to a crash scene on the Turnpike. Upon arrival, Tpr. Tanner located the vehicle, crashed into a center post in an under-pass. There were two persons on the immediate scene, but not the driver. Tpr. Tanner located the driver, somewhat nearby, in an intoxicated condition. Back-up was called for and a crash scene investigation was conducted by the troopers. The driver was transported to the Swanton Post, where he tested a .10 alcohol level. During the process the appropriate citation was issued to the driver, who ultimately pled no contest to a DUI charge.

A patrol car tape review was conducted by a Post Sergeant, of the crash scene incident, and discrepancies were found regarding Tpr. Tanner's activities. An Administrative Investigation was commenced on March 3, 2005 and Tpr. Tanner was interviewed, along with other troopers, regarding Tpr. Tanner's activities surrounding the crash. The Post interviewed Tpr. Tanner on March 7, 2005, regarding their concerns of him inefficiently handling the OVI arrest and transportation.

During the interview of Tpr. Tanner, the interviewer allegedly asked the trooper some questions that were, in Tpr. Tanner's words, offensive. Subsequent to Tpr. Tanner's AI interview, he approached the interviewing Sgt. regarding the alleged questions. Trooper Tanner asked to review the written AI questions and answers, but no interviewer's records produced, contained the alleged offensive question. Trooper Tanner alleged to the

interviewing Sgt. that he had an audio tape of the AI interview, implying the tape would reveal the "offensive question". When the Post requested a copy of his tape, it was ultimately determined that no audio-tape existed.

As a result of Tpr. Tanner's alleged conduct surrounding the crash and OVI arrest, and subsequent behavior regarding the AI interview, the OSHP determined that he was to be suspended. He was notified on May 10, 2005, that the Highway Patrol intended to suspend him for three working days. Trooper Tanner was charged with violating OSHP Rules & Regulations 4501: 2-6-02(B)(1)(5) Performance of Duty/Inefficiency and Rule 4501: 2-6-02(Y)(2) Compliance to Orders. To wit: it is charged that on February 27, 2005, you displayed operational inefficiencies in relation to a crash investigation and subsequent OVI arrest. It is also charged that you behaved in an unprofessional manner with your supervisor after his interview for this Administrative Investigation. A Pre-disciplinary Meeting was conducted on May 13, 2005, and the Meeting Officer found just cause for discipline. Trooper Tanner was notified on June 10, 2005, that he was to be suspended for three (3) working days, effective June 13-15, 2005.

A grievance was filed by Tpr. Tanner on 6/20/05, alleging that the Employer violated Article 19 DISCIPLINARY PROCEDURE, Section 19.05 Progressive Discipline. The grievant requested to be made whole for 3 days lost wages and to reduce the penalty to a written reprimand with any and all reference to a suspension removed. A Step 2 hearing was conducted on July 1, 2005, and the Employer denied the grievance. The Union appealed the grievance to Step 3 on July 15, 2005, without response, and ultimately to arbitration (Step 4) on July 21, 2005. There were no procedural issues brought forward, and the parties stipulated that the issue was properly before the arbitrator.

## **DISCUSSION AND OPINION:**

How these incidents evolved into a disciplinary situation and arbitration just exemplifies how much attitudes and relationships are part of the workplace. There was a labor relations video produced in the mid-seventies called "You can't negotiate and attitude", that brings to the mind of the arbitrator, this case. However, why this issue is before me is not my charge, I am to evaluate the facts as presented and to determine, as best I can, whether these facts justify the action taken.

There were two charges brought against the grievant, by the Employer. The first, focuses on the patrol car tape and the alleged deficiencies observed and reported around the crash scene, and the handling of the OVI arrest. The Employer claims that there were a minimum of six violations of policy and procedures observed on the patrol car tape. The Union claims these alleged violations are bogus, since the result was a DUI conviction of the driver. However, evidence and testimony support the Employer's allegations, and in the arbitrator's opinion, the ends don't always justify the means. Even though Tpr. Tanner is a seasoned veteran, he still needs to follow policy and procedures, which are generally intended to provide security and safety for all parties. The evidence is clear and convincing to the arbitrator, that safety, as well as evidence gathering and retention of data policies, were violated in this crash and arrest incident.

The second charge against Tpr. Tanner was the violation of the Rule of Compliance to Orders. He was charged with behaving in an unprofessional manner with a supervisor. This situation, unfortunately, was driven by an attitudinal reaction. Be that as it may, according to evidence and testimony, the actions on the grievant's part are not in dispute. After the grievant's AI interview regarding the crash scene, he was ordered to produce the audio tape of the interview, which he alleged he possessed. Trooper Tanner did not produce the tape and ultimately admitted, and testified to, that it did not exist.

The Employer claims, that because of Tpr. Tanner's length of service and clean Department Record, he was not charged with a more severe violation, regarding the allegedly taped interview. This is a "quasi" military organization, declares the Employer, and untruthfulness cannot be tolerated. The grievant and the Union also admit, by the requested remedy that Tpr. Tanner erred. Even the grievance remedy request exacerbates the Agreement's Section 19.05, Progressive Discipline. Furthermore, the Agreement's Section 19.05, provides for more severe discipline, if the infractions or violations merit such. Although the arbitrator might believe leniency could apply here, the powers of leniency, in the arbitrator's opinion, resides with management. The Employer, in the arbitrator's opinion, has met the tests for just cause, and considering the number of

infractions involved, mitigation of the discipline would be minor and therefore, inappropriate<sup>1</sup>.

**AWARD:**

The grievance is denied.

This concludes the arbitration decision this 14<sup>th</sup> day of September 2006.

Respectfully submitted,

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

E. William Lewis  
Arbitrator

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<sup>1</sup> Elkouri & Elkouri, 6<sup>th</sup> Ed. Review of penalties imposed by management.