
*
In the Matter of Arbitration *
* Case Number:
Between *
* 15-00-060331-0070-05-02
FOP-OLC *
* Before: Harry Graham
and *
*
The State of Ohio, Department *
of Public Safety *
*

APPEARANCES: For FOP-OLC:

Paul Cox, Chief Counsel
FOP-OLC
222 East Town St.
Columbus, OH 43215

For Department of Public Safety:

Krista Weida, Esq.
Department of Public Safety
1970 West Broad St.
Columbus, OH 43223

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument in Columbus, OH. on September 26, 2006.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer have just cause to fine the Grievant three days pay? If not, what shall the remedy be?

BACKGROUND: There is no controversy over the events prompting this proceeding. The Grievant, Ronald Robinson, entered State service as a Police Officer in November, 1998. In September, 1999 he became an Enforcement Agent with the Ohio Investigative Unit. On December 28, 2005 a number of items were found in the trunk of Mr. Robinson's car. It was determined that these items constituted evidence in various matters. These items were inventoried and turned-in to the State operated evidence facility in Columbus, OH. Mr. Robinson was responsible for the custody of all the items found in his trunk. Some of them were dated back to March, 2002 and had not been properly turned-in or accounted for by Mr. Robinson.

As a result of this scenario Mr. Robinson was assessed a three-day fine. A grievance protesting that fine was filed and processed through the procedure of the parties without resolution. They agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE EMPLOYER: Initially, the Employer points out that Mr. Robinson has a history of discipline. Prior to this event he had accumulated two written reprimands and a one day fine. That fine was for failure to properly handle evidence, the same offense that prompted the State to levy the three-day fine at issue in this proceeding. It is the case that the

three-day fine is progressive in nature according to the Employer.

There is no question that the items found in Mr. Robinson's state provided vehicle on December 28, 2005 constituted evidence. Mr. Robinson had been the person responsible for the evidence. That evidence could have been used in prosecutions. That it was not was solely the responsibility of Mr. Robinson. That people were convicted without use of the evidence in Mr. Robinson's possession is immaterial according to the State. He is responsible for properly handling evidence and he did not do so in this situation.

The Department of Public Safety has a comprehensive policy manual. At Joint Exhibit 3, page 13, A 1 the policies provide in relevant part that employees must carry out their duties "without delay, evasion or neglect." Mr. Robinson had evidence in his trunk. The existence of that evidence was known only to him. That falls squarely within the concepts of "delay, evasion or neglect" according to the State. So too does the policy regarding Evidence and Recovered Property. At U 1 the policy provides that "An employee shall carefully protect and preserve for proper disposition any article or property recovered or turned over to them after loss by its rightful owner, held as evidence, seized from a prisoner, or

otherwise entrusted to their care." Mr. Robinson had evidence. He did not "protect and preserve" it for "proper disposition" the State asserts. He did not turn it in. He did not account for it. Only he knew of its existence.

Similarly, Policy No INV 200.09 (Jt. Ex. 4) deals with this matter. At Section A 2 it provides that "All evidence, contraband, property or funds seized shall be properly secured...." Mr. Robinson did not properly secure the evidence in his possession.

The Department of Public Safety has recently been involved in two other arbitration proceedings with the Union. (Storey and Plummer disputes). In both cases the Arbitrator found on behalf of the Union. Both cases involve at least in part allegations that employees had violated a work rule. The Arbitrator found to the contrary. In the Storey case he relied heavily upon the findings of Highway Patrol Investigator Cassandra Kocab who found that there was not a policy dealing with property not associated with a criminal offense. (Storey, pp. 7-8). This dispute differs from Storey in that the Employer has policies dealing with the handling of evidence and in that there were criminal offenses involving the evidence found in Mr. Robinson's car. Under these circumstances the grievance should be denied the State insists.

POSITION OF THE UNION: The Union does indeed rely upon the Storey and Plummer decisions in support of its position in this dispute. Both were decided by Arbitrator N. Eugene Brundige. In Storey, Arbitrator Brundidge cites the decision of Arbitrator E. William Lewis in Case No. 15-00-05728-82-05-02 (2006). Arbitrator Lewis pointed out that the Employer did not have a written rule or policy regarding the use of agents of confiscated ID's. Neither does the Department have a specific rule regarding custody of evidence according to the Union. It asserts the rules and policies relied upon by the Employer in this instance are so imprecise and vague as to be inapplicable to this situation.

There were no adverse consequences to Mr. Robinson's failure to turn-in the evidence in his trunk. Prosecutions proceeded. Convictions were secured. The wheels of justice rolled on without obstacle from Mr. Robinson in the view of the Union. Hence, discipline is inappropriate it asserts.

As the Union urges policy INV 200.9 be read it is impermissibly vague. It cannot be applied to this situation due to its amorphous nature in the Union's view. For these reasons the Union contends the grievance should be sustained and Mr. Robinson's three days of lost pay restored to him.

DISCUSSION: Mr. Robinson is an experienced officer. He knows, or certainly should know, the procedure for handling

evidence. Keeping evidence for up to three years in the trunk of a state-supplied vehicle defies common sense and any notion of acceptable practice. Even without a policy regarding when evidence is to be turned-in a basic obligation of an officer must be to act properly and responsibly with respect to evidence. In this instance, Mr. Robinson did not. Withholding evidence, even inadvertently, cannot be termed as satisfactory performance.

That convictions were secured in the instances in which evidence was not turned-in is immaterial. Had all evidence been available to prosecutors perhaps different charges would have been levied. Perhaps different penalties would have been assessed. Speculation is worthless. The fact of the matter is that the justice system was compromised by the withholding of evidence by an experienced officer. That cannot be expected to escape consequences.

The assertion of the Union, that policies regarding handling of evidence are impermissibly vague, is rejected. Policy INV 200.09 A 2 provides that "All evidence, contraband, property or funds seized shall be properly secured...." That did not occur in this situation. Evidence was not secured at all. The Employer did not even know of the existence of evidence until it came to light by happenstance.

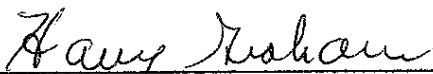
Policy DPS 501.02, A 1 (Jt. Ex. 3, p.13) indicates that

employees are to carry out their duties completely, without "delay, evasion or neglect." In this situation the Grievant certainly did not carry out his duties completely, without "delay, evasion or neglect." His behavior was precisely the sort that is prohibited by the policy. Both policies are specific enough to reach the event at issue in this proceeding.

That finding differs from that made by Arbitrator Brundige in the Storey and Plummer matters. He found the policies cited by the Employer not to be applicable to the matters before him. To the contrary, I find that the policies utilized by the Department deal with the conduct of the Grievant. Further, as an experienced officer Mr. Robinson had to know that leaving evidence in the trunk of his car was unacceptable behavior. Under these circumstances the Employer had just cause to act as it did.

AWARD: The grievance is denied.

Signed and dated this 11th day of October, 2006 at Solon, OH.



Harry Graham
Arbitrator