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VOLUNTARY ARBITRATION PROCEEDINGS
GRIEVANCE NO. 15-03-080122-0004-04-01

THE STATE OF OHIO

The Employer

and

THE OHIO STATE TROOPERS
ASSOCIATION, INC., UNIT 1

The Union

OPINION AND AWARD

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LICENSED TO PRACTICE LAW IN THE STATE OF OHIO AND COMMONWEALTH OF KENTUCKY

APPEARANCES

For the Employer:

Lt. Charles J. Linek, Advocate
Marissa Hartley, 2nd Chair
Aimee Hage, legal intern
Sgt. Larry Firmi, Witness
Sgt. Chuck Mendenhall, Witness
Lt. Joe Dragovich, Witness
Staff Lt. Chet Engle, Witness

For the Union:

Herschel M. Sigall, General Counsel
Elaine Silveria, Assistant General Counsel
Larry Phillips, Union President
Bob Cooper, Staff Representative
Greg Allen, Grievant

I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having been unable to resolve this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted on May 6, 2008, at the Office of Collective Bargaining in Columbus, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would be filed. The parties further agreed as to the issue which is stated as follows:

“Was the Grievant removed for just cause? If not, what shall the remedy be?”

It was upon the evidence and argument that this matter was heard and submitted and this Opinion and Award was thereafter rendered.

II. STATEMENT OF FACTS

The contract of collective bargaining by and between the parties contains an Article 4 entitled “Management Rights”. Under Paragraph 2, first sentence of that article, the following language is stated:

“Accordingly, the Employer retains the rights to: 1) hire and transfer

employees, suspend, discharge and discipline employees;”

On January 14, 2008, the grievant was terminated from his seniority. The letter advising the grievant of that activity revealed the following:

“January 14, 2008

Gregory T. Allen
2814 Hood Street SW
Warren, OH 44481

Dear Mr. Allen:

You are hereby advised you are being terminated from your employment with the Ohio Department of Public Safety, State Highway Patrol division, effective immediately, January 14, 2008.

You are being terminated for violation of OSP Rules & Regulations Rules, 4501:2-6-02(E), False Statement/Truthfulness, and 4501:2-6-02(Y)(2), Compliance to Orders.

Sincerely,

/s/

Henry Guzman, Director
Ohio Department of Public Safety”

The rule violated revealed the following:

“(E) **False statement, truthfulness**

A member shall not make any false statement, verbal or written, or false claims concerning his/her conduct or the conduct of others.”

To that, a Grievance Report Form was filed and signed off by the union. That grievance revealed the following:

“I was terminated without just cause & in violation of the principles of progressive discipline.”

The requested remedy of the union revealed the following:

“To be reinstated as a Trooper with no loss of seniority & benefits & with full back pay. To be made whole.”

To that, management filed an answer and the answer as revealed by the Human Resource Management Officer, Lt. Linek, revealed the following:

“MANAGEMENT POSITION AND FINDING

It is the Employer’s contention that a violation of the labor agreement did not occur. Instead of “doctoring” video tape evidence, all Grievant had to do was advise his Sergeant that he had made a mistake and had not conducted the audio visual check of the system. Grievant tarnished his credibility by altering the video tape instead of being forthright with the truth. Grievant turned a minor policy infraction into a situation where the Employer has lost all trust.”

The facts reveal that on June 8, 2007, the grievant stopped an alleged traffic violator. The

violation claimed, as a result of that stop, that he was racially profiled. The end result of that activity, as a result of an investigation, caused the grievant to be sent to a sensitivity training class held by the employer. The grievant was thereafter questioned as to whether or not he complied with the audio visual policy of the State Highway Patrol. The grievant said that he had complied, when in fact he admitted, at a later time in the investigation, that he had not. As a result of his untruthfulness and his activity in not honestly answering an initial inquiry made of him during an investigation, the grievant was thereafter terminated from his seniority and this particular hearing has the basis in the "untruthfulness" of the grievant. It might be noted that the grievant admitted his untruthfulness in this particular matter.

The history concerning the grievant reveals that he worked at the Trumbull County Correctional Institution for six years; that prior to that he had been in the U.S. Navy for four years; and that he was a nine and a half year veteran of the State Troopers of Ohio. On a review of his performance summary during a period of his activity, the following is noted.

In 2005, the grievant in his proficiency examination was rated "satisfactory" with the following comments:

"Rater Comments: To justify overall rating.

Trooper Allen continues to be a productive member of the Warren Post. He demonstrates his leadership abilities almost

daily. He is not hesitant to get involved in any situation he encounters. He is performance driven in the areas of Criminal Patrol and Blue Max. He is encouraged to increase his administrative knowledge in preparation for future advancement.” (Emphasis ours)

In 2006, the grievant was rated “satisfactory” with the following comments:

“Rater Comments: To justify overall rating.

Trooper Allen is a quality officer. While working midnights he was very active in the Criminal Patrol Program and the Blue Max Program. His aggressive participation in these programs led him to take unnecessary risks. He has since moved to dayshift. His decision making has improved and his focus has moved to other special programs of the patrol, especially LifeStat 1.0.”(Emphasis ours)

In 2007, the grievant was rated “satisfactory” with the following comments:

“Rater Comments: To justify overall rating.

Trooper Allen continues to be a very effective trooper. Although he has changed shifts from midnights to day turn, he continues to stand out by leading the day shift in OVI arrests. He was the post leader in Criminal Patrol Points in 2006 and leads the way in 2007. He realizes the importance of LifeStat 1.0 and has conformed his goals and patrol efforts around aggressive driver enforcement.” (Emphasis ours)

The record further revealed that the grievant was married, had two children, and his son was autistic causing many problems to the grievant as a result of his condition. The department record of the grievant as a highway patrol trooper revealed that the grievant was involved in a preventable patrol car crash; that he was suspended for three days for refusal to comply with a direct order; that he failed to utilize car-mounted video unit policies; that he failed to timely file citations and reports; that he was guilty of negligence in an investigation on one occasion; and that he on a further occasion failed to show up for duty claiming that he misread the schedule. On the other hand, the grievant was on occasion cited for his criminal patrol activity and received an award in that regard as well as the "satisfactory" ratings as cited above.

The grievant did believe that he was entitled to retirement and, as a result of that, a psychiatric evaluation for the Ohio State Highway Patrol Retirement System was made by a psychiatrist. That psychiatrist stated the following discussion in her report:

"DISCUSSION: Trooper Allen meets the diagnostic criteria for major depressive disorder. He has some symptoms of posttraumatic stress disorder, but does not meet diagnostic criteria. He has anxiety about his children. Trooper Allen's depression is severe and in my opinion would significantly interfere with his ability to perform his job as a state highway trooper.

Trooper Allen has only been in treatment a short while and has been prescribed antidepressant medication that may take longer to work. At this point, Trooper Allen has had minimal response to the medication. Further medication adjustments consisting of increasing the antidepressant medication and prescribing a non-addicting anti-anxiety medication instead

of Xanax are recommended in addition to stopping caffeine use.

Trooper Allen's psychiatric symptoms are severe enough to significantly interfere with his ability to function. Given the severity of Trooper Allen's psychiatric symptoms, his paucity of activities, his impaired concentration as noted on testing for dementia, and his mental status during the clinical psychiatric evaluation, it is my opinion that Trooper Allen is currently disabled based on psychiatric evaluation and is unable to work safely as a state highway patrolman at the present time."

The recommendation of the examining physician revealed the following:

"RECOMMENDATION: Trooper Allen is currently unable to work safely as a highway patrol trooper. His symptoms would be expected to and should respond to treatment and would not be expected to persist for an entire year. Therefore, Trooper Allen is not permanently or presumed to be permanently disabled based on psychiatric evaluation. Continued psychiatric treatment is recommended."

From all of this, the employer insists on the dismissal of the grievant and the employer's argument is probably best summed up in the final paragraph of the written opening statement of the employer in the following was stated:

" Arbitrator Feldman, the evidence will show that Grievant failed to conduct the required audio visual test as required by policy. He was untruthful when questioned by Sgt. Firm and S/Lt. Engle. To make matters worse, he attempted to cover up his untruthfulness by "doctoring" the videotape to make it appear he had conducted the test. Grievant's department record contains reprimands, a one-day suspension and two (2) three-day suspensions. The instant discipline was commensurate with the

offense and the Employer will ask that you deny the grievance in its entirety.”

It was upon these facts, statements and allegations that this matter rose to arbitration for Opinion and Award.

III. OPINION AND DISCUSSION

The facts of this case were closely reviewed. It is noted that the grievant is a nine and a half year veteran of the Ohio State Troopers and a realization that that occupation is extremely stressful is understood by this writer. Prior to serving nine and a half years as a trooper, the grievant was a six year seniority corrections officer and prior to that served four years in the United States Navy having been honorably discharged. He was married and the father of two, one of the children being autistic causing further stress upon him. The stress was so great that at the time of discharge, the psychiatric examiner, appointed by the Ohio State Highway Patrol Retirement System, found the following:

“RECOMMENDATION: Trooper Allen is currently unable to work safely as a highway patrol trooper. His symptoms would be expected to and should respond to treatment and would not be expected to persist for an entire year. Therefore, Trooper Allen is not permanently or presumed to be permanently disabled based on psychiatric evaluation. Continued psychiatric treatment is recommended.” (Emphasis ours)

It might be noted that the examination was within days of the termination of the grievant

from his seniority.

There is good reason to believe that the grievant's activity as a state trooper was exemplary. He received three satisfactory performance summaries and his rating officers fully agreed that he had a bright future as a state trooper in Ohio.

In order to protect his employment, the grievant told an untruth to his investigative officer, later admitting to the truth that he never checked his audio visual as he was supposed to do as part of his duties at work each day. The grievant's prior discipline record does not buttress any untruthful activity on his part and it can be said that the activity involved in this case, which triggered the termination of his seniority, was a first time event in that regard. The prior discipline record of the grievant over nine and a half years in his occupation in which he has been involved, is really minimal and I cannot find a termination to lie in this particular matter as a result of his prior record.

The evidence does reveal that he was a good trooper for nine and a half years and that he was suffering from stress of his occupation, especially after the racial profiling charge. The stress at work buttressed by the stress at home, simply appeared to be too much for the grievant at this time and his inactivity at this time away from active duty as a trooper would be best suited for the grievant. I don't believe that discharge is an answer in this particular case, not only because there is insufficient evidence to substantiate that termination notice, but because the grievant gave many years of his life as a state trooper and was exemplary in his workload. That was revealed by his rating officers in the

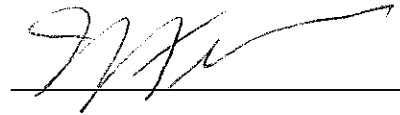
rating as indicated in the grievant's personnel file for the last three years.

It is understood that the state troopers are a paramilitary organization and cannot stand for lying to a superior officer especially during an investigation. However, it appears that the grievant was under extreme stress from his workload, from his family, from the racial profiling charge, and that the grievant must be given time off for his present stressful situation as revealed in the psychiatric report. It is noted that the psychiatric exam was initiated by the retirement board, not by the grievant. Based upon all of the evidence of the case and based upon the grievant's background and activity, it is found that the grievant is entitled to a discipline.

IV. AWARD

The grievant is reinstated without back pay or benefit. The grievant shall be granted immediate retirement. The grievant requested retirement and his request, in that regard, is granted. The employer shall make every effort for the grievant, to assist him in receiving his retirement and take an affirmative and active role in such activity on the grievant's behalf with the Retirement Board System. Failure to be placed into the retirement rolls shall trigger a discharge for the grievant without further recourse.

This arbitrator shall retain jurisdiction of this matter for a period of sixty days from the date herein indicated to determine any questions that may arise as a result of this award.

A handwritten signature in black ink, appearing to read 'M. J. Feldman', is written over a horizontal line.

Marvin J. Feldman, Arbitrator

Made and entered

this 20th day

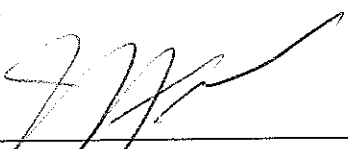
of June 2008.

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The arbitration award under date of June 20, 2008 rendered an Opinion and Award, which, among other things, retained arbitral jurisdiction for a period of sixty days therefrom to determine any questions that may arise as a result of this award. Such request for clarification by the union is attached hereto and made part hereof (2 pages) as if fully written herein.

The union, according to its clarification request demanded why, in the final analysis, a discharge was sustained when in fact the grievant was identified as an exemplary employee for a portion of his work years as a State Trooper. The description of the grievant's behavior pattern during many of his years was exemplary and that is the reason and predicate for allowing time to appear before the Retirement Board without a discharge in his background. In the final analysis, the grievant was not candid to his superiors in an investigation during his employment. Simply put, the grievant committed a gross act of misconduct and was terminated from his seniority. The language of the award was meant to aid the grievant in obtaining retirement benefits.

The award stands as is and the request for clarification is fully answered.


Marvin J. Feldman, Arbitrator

Made and entered
this 15th day
of August 2008.