

#2003

In the matter of Arbitration between:

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

and

**Case # 15-03-20071108-0150-04-01
Bion Shaw, Grievant**

**Ohio State Troopers Association
Union**

In attendance for OSTA--Mr. Bob Cooper, Staff Rep.; Ms. Mackenzie Peck, Extern; Tpr. Bion Shaw, (witness); Ms. Elaine Silveria, Ass't. Gen. Counsel; Mr. Herschel Sigall, Gen. Counsel--Advocate

For the Highway Patrol--Lt. William C. T. Butts. Post Commander(witness); Mr. Anthony L. Davis, Retired Sgt.(witness); Lt. Chuck Linek, 2nd Chair; Mr. Ryan Sarni, OCB Labor Counsel; Ms. Ashley Hughes, OCB Labor Counsel--Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio, at the Ohio State Troopers Association, Headquarters, on November 20, 2008, at 1:00pm. All witnesses were sworn. There were several exhibits submitted: Jt. 1-Unit 1 Collective Bargaining Agreement(2006-2009); Jt. 2-Grievance Trail # 150; Jt. 3-Discipline Package composed of---Statement of charges, Pre-discipline Notice, Meeting Officer Reply, Highway Patrol Rules & Regulations: 4501:2-6-02(Y)(1) Compliance to Orders and 4501:2-6-02(I)(1) Conduct Unbecoming an Officer, Department Record. The Employer introduced the following exhibits: ME 1-Administrative Investigation(AI) 2007-8614. The Union introduced the following exhibits: Un 1-Communication Equipment Breakdown Reports; Un 2-Administrative Investigation 2006-7119, Tpr. Parm; Un 3-INTER-OFFICE COMMUNICATION(IOC)-Patrol Car Radio(Tpr. Shaw); Un 4-Post 91, diagram; Un 5-Trooper room bulletin board comical picture; Un 6-Trooper room bulletin board comical picture; Un 7-Evaluations,05-08 Tpr. Shaw; Un 8-various recognition awards, Tpr. Shaw.

ISSUE:

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

Was the Grievant's three-day fine issued for just cause? If not, what shall the remedy be?

FACTS:

Trooper Bion Shaw has been employed by the Ohio State Highway Patrol, for over thirteen years. He was, at the time of the alleged incident, and is currently, assigned to the Hiram Post 91. Trooper Shaw works the 7a to 3p shift.

On July 18, 2007, at approximately, 1415, at the Hiram Post, an altercation occurred between Tpr. Shaw and Tpr. Parm. The dispute was over the subject matter contained in an IOC, written to Trooper Shaw's supervisor, Sgt. A. L. Davis.

The IOC, alleged that Tpr. Shaw was not responding to calls made to his patrol car radio and portable radio. Therefore, raising concerns regarding Officer safety. Tpr. Shaw inquired about the author of the unsigned IOC. The inquiry led to Tpr. Shaw posting the IOC on the Troopers' room bulletin board with his additional comments made on the IOC. He alleged the author of the IOC to be cowardice, excepting the Post's only female trooper.

When Tpr. Shaw determined that Tpr. Parm was the author, a verbal dispute occurred. The dispute began in the Troopers' room. Sgt. Davis became involved, attempting to calm down the situation. The Dispute was moved out of the building by Sgt. Davis, eventually ordering the disputants to be silent.

The next day, Post Commander Butts commenced an AI. He interviewed the disputants and a number of witnesses. Both participants were disciplined. Tpr. Shaw was charged with violating OSHP Rules & Regulations, specifically: 4501: 2-6-02(Y)(1) Compliance to Orders, and 4501: 2-6-02(I)(1) Conduct Unbecoming an Officer. To wit: it is charged

that on July 18, 2007 Tpr. Shaw was involved in a verbal altercation with another trooper and failed to comply with a sergeant's order. It is also charged that Tpr. Shaw wrote derogatory comments on a posted Inter-Office Communication. A Pre-disciplinary hearing was held on October 10, 2007, with a finding of just cause for discipline. Tpr. Shaw was notified that a three (3) day fine would be imposed, effective the pay period of October 28, 2007.

A grievance was filed on 10/16/07, by Tpr. Shaw, claiming that the Employer violated **ARTICLE 19-DISCIPLINARY PROCEDURE, 19.05-Progressive Discipline**. The grievance claimed that the proposed discipline was too severe and not progressive in nature, therefore, it should be completely removed or significantly reduced. The Step 2 Hearing was held on November 29, 2007, with a response of denial on December 4, 2007. The Union appealed the grievance to arbitration on December 6, 2007. There were no procedural issues brought forward, and the parties stipulated that the issue was properly before the arbitrator.

DISCUSSION AND OPINION:

In the arbitrator's opinion, the handling of the radio response issue was not prudently done. All parties, both labor and Post supervision, are not blameless. This workplace situation should offer an excellent training opportunity of the don'ts, of workplace management and behavior.

Was there an order of silence given to the participants? Tpr. Shaw testified that he heard none. Sgt. Davis testified that he gave an order of silence when the disputants were outside. The incident between Tpr. Shaw and Tpr. Parm was witnessed by a number of post employees. Tpr. Benett and Sgt. Matos witnessed the incident outside the building, and stated in their interview, that Sgt. Davis gave a direct order to the disputants, to be quiet. Their interview comments were that a short silence occurred, then Tpr. Shaw called Tpr. Parm a coward (ME-1). The altercation ended "without coming to blows", however, testimony and evidence depicted Tpr. Shaw leaving soon thereafter, but behaving confrontationally. His latent anger, subsequently occurred in the company of another colleague, Tpr. Finsen, on July 19, 2007.

Trooper Shaw, through testimony and evidence, admitted to posting the IOC on the bulletin board. His added comments of cowardice and remarks regarding the Post's only female trooper, were certainly acts of unbecoming to a law enforcement officer. Especially, Officers of such a prestigious organization as the OSHP.

Furthermore, the altercation, although initiated by Tpr. Shaw, was preventable in the arbitrator's opinion, and was unbecoming behavior on the parts of the two participants. Although we sometimes would like to perceive that someone else is to blame, we are ultimately responsible for our own behavior. This fact should be well known to law enforcement officers. This discipline was not progressive, however, in the incident case, I find the disciplinary action commensurate with the offense.

AWARD:

The grievance is denied.

This concludes the arbitration decision, this second day of December, 2008.

Respectfully submitted,

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

E. William Lewis
Arbitrator