

#2004

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

and

**Case # 15-03-20071210-0180-04-01
Charles Gannon, Grievant**

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

In attendance for the Highway Patrol--Lt. Douglas Eck(witness); Lt. Charles Linek, DPS-2nd Chair; Ms. Ashley Hughes, OCB Labor Counsel--Advocate

For OSTA--Sgt. Christopher A. Colbert(witness); Tpr. Charles Gannon(witness); Mr. David Riley, Staff Rep.; Mr. Herschel Sigall, OSTA Attorney; Ms. Elaine Silveria, OSTA Attorney--Advocate

INTRODUCTION:

This matter was heard in Columbus, Ohio, at the Ohio State Troopers Association, on November 20, 2008, at 9:00am. All witnesses were sworn. No procedural issues were raised, and the parties agreed that the issue was properly before the arbitrator. Exhibits submitted were as follows: Jt. 1- Unit 1 Collective Bargaining Agreement(2006-2009); Jt. 2-Grievance Trail; Jt. 3-Discipline package, composed of--Statement of Charges, Pre-disciplinary Notice, PD Meeting Officer's Findings, Notice Letter of 5 day fine, Highway Patrol Rules & Regulations 4501: 2-6-02(Y)(2) Compliance to Orders, Department Record. The Employer introduced the following exhibits: ME 1-Administrative Investigation (AI) #2007-8744; ME 2-OSHP RESPONSE TO RESISTANCE POLICY; ME 3-PATROL CAR/MOTOR VEHICLE OPERATION POLICY. The Union introduced the following exhibits: UE 1-IOC dated September 24, 2007, Re-Tpr. Gannon; UE 2-Response to Resistance Review Guide and Committee findings; UE 3-OSHP Policy, ADMINISTRATIVE INVESTIGATION; UE 4-ORC 4511.03 Emergency Vehicle at red signal or stop sign; UE 5-CD, Step 2 Hearing; UE 6-Tpr. Gannon's Life Savers Award October 2006; UE 7-Tpr. Gannon's commendation letters; UE 8-Evaluations, Tpr. Gannon.

ISSUE:

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

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

FACTS:

Trooper Charles Gannon has been employed by the Ohio State Highway Patrol since 1/1/91. He has been a trooper since 6/25/93. At the time of the alleged incident, he was and is currently, assigned to the Dayton Post 57, working the 11p to 7a shift.

On September 1, 2007, at approximately 3:40am, Tpr. Gannon observed a car traveling at a high rate of speed (105mph), north on I75. Trooper Gannon instituted pursuit with lights and siren, without appropriate response from the suspect vehicle. The fleeing car turned onto US35, with Tpr. Gannon pursuing, and in radio contact with the Post. Sgt. Colbert, Tpr. Gannon's shift supervisor, via radio, said "if the suspect blows any of those red lights out there, disregard".

The fleeing car exited US35 and turned onto Gettysburg avenue, still at a high rate of speed, running a red light. Tpr. Gannon was asked by Post Sgt. Bernard, "how fast is he going?". Tpr. Gannon, due to distance behind could not estimate speed. Via radio, Sgt. Colbert said "why don't you just disregard if your going to lose sight of him, if he's running red lights it's not worth it". Immediately thereafter, Tpr. Gannon slowed and turned off his lights and siren, however, his in-car camera still had the suspect in view. Tpr. Gannon, with lights and siren off, turned left through a red light onto Hoover avenue, following the path of the suspect vehicle. He located the suspect vehicle at a private drive on Marvine avenue, and parked behind the vehicle, allegedly with the attempt to apprehend. Suddenly the suspect rammed the patrol car and fled. The patrol car was disabled, however the suspect was subsequently arrested by the Miamisburg P. D.. The overall incident occurred over a span of three minutes and twenty seconds.

On September 5, 2007, Post Commander Lt. Eck initiated an AI, after a review of Tpr. Gannon's in-car video tape. The videotape review was in conjunction with a Response to Resistance review, commenced on 9/2/07. Tpr. Gannon was interviewed on 9/10/07 and 10/4/07 regarding three allegations: (1) Trooper Gannon failed to terminate the pursuit after being instructed to do so, by a supervisor; (2) Trooper Gannon failed to communicate his actions after being instructed to terminate the pursuit; and (3) trooper Gannon failed to advise his location prior to making contact with the suspect who was found parked in a private drive.

It was determined by Post Commander Eck, that Tpr. Gannon disregarded his Sgt's. radio communications to disregard the pursuit. He ran a red light and failed to radio the Post how the situation was evolving or give his location, prior to contacting the suspect.

Tpr. Gannon was notified on November 30, 2007, that a P D would be conducted on December 4, 2007. Pre-disciplinary Meeting Officer S/Lt. Schaffner's findings were, that there was just cause for discipline. Tpr. Gannon was charged with violating OSHP Rules & Regulations # 4501: 2-6-02(Y)(2), Compliance to Orders, to wit: it is charged that on September 1, 2007, you failed to follow proper procedure regarding the operation of your patrol car during a pursuit. Therefore, he was to be fined the equivalent of (5) working days pay.

A grievance was filed on December 4, 2007, charging the Employer with violating **Article 19-DISCIPLINARY PROCEDURE, 19.01, Standard** (just cause). The Step 2 Hearing was held on December 27, 2007, and on January 8, 2008, the grievance was denied. An appeal was made to Step 3 , Arbitration on January 9, 2008.

DISCUSSION AND OPINION:

Evidence and testimony show that Tpr. Gannon initiated a pursuit while on IR75. A vehicle passed by Tpr. Gannon's parked patrol car at a high rate of speed. Tpr. Gannon initiated the pursuit with lights and siren, and notified post of his activity at 03:40. The suspect vehicle exited west on US35, and radio traffic from shift supervisor Sgt. Colbert was heard saying if suspect runs any red lights out there, disregard. After suspect vehicle exited US35,

Tpr Gannon was heard (radio) identifying two red lights run at a high speed. Sgt. Colbert was again heard saying, "why don't you just disregard, if going to lose sight, and if he is running red lights, it's not worth it." Momentarily, Tpr. Gannon turned off his lights and siren, however, he continued to follow the suspect vehicle at a slower, but a quick rate of speed. He entered an intersection with some light traffic, and quickly turned left through a red light. He accelerated strongly, ultimately turning into a private drive, where the suspect vehicle rammed his patrol car and fled. No radio traffic was heard from Tpr. Gannon after turning off his lights and siren (ME-1).

A Response to Resistance Review was initiated and it was alleged that Tpr. Gannon had made three Policy violations while conducting his pursuit ME-1 & UE-2). The in-car video and the Freedom Audio show, in the arbitrator's opinion, that Tpr. Gannon continued the pursuit, albeit without light and siren, and at a slower, but aggressive speed. He also failed to communicate to Post at regular intervals, during the pursuit(OSHP 203.20).

The Union brought to the arbitrator's attention, that the AI interview was initially done by Sgt. Colbert(witness). However, Lt. Eck took over the AI, correcting the potential violation. Unrefuted testimony, stated that the grievant's previous active discipline, of a three day suspension was reduced to a day and one-half. Twelve hours of compensatory time was reinstated to his payroll record. Although Tpr. Gannon's actions have violated policy, he is a well respected and decorated employee (UE-6,7,8). Considering his fifteen years of Trooper experience, and his last effective discipline of one and one-half days suspension, I find the maximum fine of five days to be excessive(19.05).

AWARD:

The five-day fine is to be reduced to a three-day fine, and the appropriate remuneration and benefits adjustment are to be made.

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

Respectfully submitted,

A handwritten signature in cursive script, reading "E. William Lewis".

E. William Lewis
Arbitrator