
In the Matter of Arbitration

Between

Case No. 15-03-20080917-0135-04-01

Ohio State Troopers Association

and

Before: Harry Graham

The State of Ohio, Department of
Public Safety

APPEARANCES: For Ohio State Troopers Association:

Herschel Sigall
Ohio State Troopers Association
6161 Busch Blvd, Suite 130
Columbus, OH 43229

For the State of Ohio:

Lt. Charles J. Linek
Ohio State Highway Patrol
740 East 17th Ave.
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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 case was closed at the conclusion of oral argument in Columbus, OH on March 25, 2009.

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

Was the Grievant discharged for just cause? If not, what shall the remedy be?

BACKGROUND: This is one of a series of proceedings involving Troopers and others who worked for the Ohio State Highway Patrol at the Canton, OH. post. On April 4, 2008 the Ohio Department of Health administered a routine examination for recertification of the breath alcohol testing unit. Among those who took the test was Trooper David Blubaugh, the Grievant. It was the case that in 2007 another Trooper at Canton, Anthony Maroon, had copied the answer sheet for the test. On April 3, 2008 the Grievant overheard Maroon discussing the fact that he had a cheat sheet. He did nothing about it. On April 4, 2008 he arrived at the test room and was offered the cheat sheet by Trooper Maroon. He accepted it. He answered several questions and checked his responses against the cheat sheet. They matched. Satisfied that the cheat sheet was accurate he completed the test using the answers found on the cheat sheet.

The exam is administered and proctored by an Inspector from the Health Department. On April 4, 2008 it was Craig Yanni. Mr. Yanni spied Trooper Blubaugh using the cheat sheet. He confiscated it along with Trooper Blubaugh's answers and left the room, followed by Trooper Blubaugh. The Grievant asked him not to report the incident to the Health Department but to permit the Highway Patrol to deal with it. Later that day the Grievant received a phone call from Tony Maroon. He told Blubaugh that he had admitted his role in making and distributing the cheat sheet. Mr. Blubaugh was discharged. A grievance protesting that discharge was filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE EMPLOYER: The State points out that Trooper Blubaugh cheated on the exam. He has never denied it. He received the answer sheet on April 3, 2008 and used it on April 4, 2008. When confronted by Inspector Yanni he said he would inform supervisors in the Highway Patrol. He did not.

Further, he told Yanni the cheat sheet was his own, not in use by others. He knew better and lied to protect his colleagues. He told Maroon he would not implicate him in the scandal.

Trooper Blubaugh is an experienced officer. Prior to joining the Highway Patrol he served in the Myrtle Beach police department. He had more than seven years with the Patrol. He surely knew that his behavior in April, 2008 was improper. Further, he has incidents of discipline on his record. It is unnecessary to consider them as standing alone, the cheating he engaged in on April 4, 2008 warrants discharge.

The State is aware that the Union will emphasize the situation of Todd Bradic. He too took the exam in Canton on April 4, 2008. He cheated in 2007 and 2008. He acknowledged as much and was to be discharged. Before that occurred he resigned his position with the Patrol. He subsequently contacted the Superintendent of the Highway Patrol and the Director of Public Safety and asked for his job back. In fact, he was restored to employment. However, he did not have the record of prior disciplines brought to this proceeding by Trooper Blubaugh. There is no disparate treatment in this situation as the Grievant and Bradic were situated differently. As that is the case, the Employer contends the grievance should be denied.

POSITION OF THE UNION: The Union acknowledges that the Grievant cheated on April 4, 2008. That must be viewed in context. It is undisputed he was experiencing serious family problems. Those problems had prompted him to request a transfer to Canton so that he could be close to his parents. On the night of April 3-4, 2008 Trooper Blubaugh found sleep hard to come by. He was not well rested on April 4, 2008 when he arrived to take the test. He saw the cheat sheet provided by Maroon in widespread usage and he went along with his colleagues.

The situation of the Grievant should be considered in light of that another Trooper involved in this incident, Todd Bradic. Bradic secured a cheat sheet in 2007. He used it in 2007 and again in 2008. When the investigation of the April, 2008 events was conducted Bradic was not forthcoming. He did not acknowledge he had cheated until he was caught. He was due to be discharged but resigned before that discharge could be effectuated. Some time later he contacted the Superintendent of the Highway Patrol directly. He sought reinstatement. He was granted an interview by the Superintendent and by the Director of the Department of Public Safety. They were receptive to his plea for reinstatement and he returned to service on March 1, 2009. His record reflects a 90 day suspension. As he had resigned no such suspension was actually served. Rather, it was a paper suspension.

Cheating is difficult to quantify, but the Union asserts that Bradic's behavior was more serious than that of the Grievant. By his own admission, he cheated twice. Trooper Blubaugh cheated once. The Grievant cooperated with

the investigation and told the truth at all times. The former has been restored to employment. The latter has not. No reason exists for such discrepancy in the opinion of the Union. This is a clear-cut instance of disparate treatment in its opinion. As that is the case, the Grievant should be restored to employment in its view.

DISCUSSION: On occasion Union advocates in situations involving discharge for theft advance the proposition that the theft was minor. The value of the stolen goods was small. Thus, they assert the discharge should not stand. That proposition is rejected. The view of the arbitration community is that theft is theft. No consideration is given to the value of the stolen items. That view applies in this situation as well. Cheating is cheating. No consideration should be given to the notion that the cheating engaged in by Trooper Blubaugh was less extensive than that of others, e.g. Bradic. Standing alone, the conduct of the Grievant warrants discharge.

Trooper Blubaugh's conduct does not stand alone. There is the situation of Todd Bradic who also engaged in cheating. Bradic resigned. He was permitted to return to the Highway Patrol upon making a personal plea to its hierarchy. Bradic's treatment represents the Achilles Heel in the position of the Employer in this proceeding. Why he would be restored to employment and the Grievant not is impossible to fathom. The Employer overlooked Bradic's conduct but not that of the Grievant. Rules must be enforced with equality and evenhandedness. In this situation they were not.

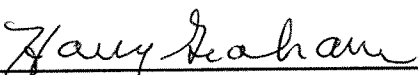
The standard of just cause requires that discipline be consistent. Employees who engage in the same sort of offense must be treated in the same fashion unless there is a substantial basis for difference. Here none was shown. It is the case that the Grievant has discipline on his record. Such discipline as he accumulated pales when set against the reinstatement of Trooper Bradic. It is recognized that absolute consistency in application of discipline is impossible. But, there must be some similarity, some identity of treatment allowing for mitigating or extenuating circumstances. None was shown in this situation. Bradic dealt with top-level management directly. He was rewarded. No basis was provided for his reemployment other than his personal dealings with management.

There is a difference in the behavior of the Grievant vs. that of Bradic. The latter used the cheat sheet in 2007 and retained it for use in 2008. He planned to cheat in 2008. Blubaugh did not. Blubaugh acknowledged cheating. Bradic was discovered by the Inspector General's investigation. In spite of that, Bradic came back to work, Blubaugh did not. But for the treatment of Bradic the discharge of the Grievant would be sustained. Bradic's reinstatement cannot be ignored or minimized. Thus, the Grievant must be restored to employment.

AWARD: The grievance is sustained in part and denied in part. The Grievant, David Blubaugh, is to be restored to employment with the Ohio Highway Patrol at the Canton post. His discharge is to be converted to a ninety (90) day suspension without pay. All remaining back pay is to be made to him at the straight time rate. The Employer may deduct from such amount any monies

received by the Grievant from Unemployment Compensation and interim wage and salary earnings. The Grievant, upon request of the Employer, is to furnish records of such payments. The personnel record of the Grievant is to be altered to reflect a ninety (90) day suspension. All seniority and pension credit that would have been earned but for this incident, less the ninety (90) day suspension, is to be credited to the Grievant. Jurisdiction is retained for sixty (60) calendar days.

Signed and dated this 17th day of April, 2009 at Solon, OH.



Harry Graham
Arbitrator