

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-0770830-0116-04-01

Ohio State Trooper Association

GRIEVANT: Christopher M. Krantz

AND

The State of Ohio  
Ohio State Highway Patrol

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: May 26, 2009

APPEARANCES FOR THE PARTIES

Management:  
Lt. Charles J. Linek, Management Advocate  
Ashley Hughes, Office of Collective Bargaining

UNION:  
Elaine Silveira, Ohio State Trooper Association, Union Advocate  
Wayne McGlone, Chief Steward  
Grievant: Christopher M. Krantz

## **PROCEDURAL HISTORY**

Ohio State Highway Patrol is hereinafter referred to as "Management". Ohio State Trooper Association, OSTA, is hereinafter referred to as "Union". Christopher Krantz is hereinafter referred to as "Grievant".

Grievance No. 15-03-070830-0116-04-01 was submitted by the Union to Management in writing on August 30, 2007 pursuant to Article 20 of the parties' collective bargaining agreement. Following unsuccessful attempts at resolving the grievance, it was referred to arbitration in accordance with Article 20, Section 20.12 of the 2006-2009 Collective Bargaining Agreement.

Pursuant to the collective bargaining agreement between the Union and Management, the parties have designated this Arbitrator to hear and decide certain disputes arising between them. The parties presented and argued their positions on May 21, 2009 at the Office of Collective Bargaining. During the course of the hearing, both parties were afforded full opportunity for the presentation of evidence, examination and cross-examination of witnesses, and oral argument. Witnesses were sequestered during the hearing. The hearing was closed on May 21, 2009.

The parties stipulated that the grievance and arbitration were properly before the Arbitrator.

The parties stipulated that the issues to be resolved in the instant arbitration to be: Did the Grievant receive a three (3) day fine for just cause? If not, what shall the remedy be?

## **PERTINENT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT**

### **Article 19.01 Standard**

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause.

### **Article 19.05 Progressive Discipline**

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. One or more Verbal Reprimand(s) (with appropriate notation in employee's file);
2. One or more Written Reprimand(s);
3. One or more day(s) Suspension(s) or a fine not to exceed five (5) days pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.
4. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action.

The Employer, at its discretion, is also free to impose less severe discipline in situations, which so warrant.

### **Article 21- Work Rules**

#### **Section 21.03 Application**

All work rules and directives must be applied and interpreted uniformly as to all members. Work rules or directives cannot violate this contract. In the event that a conflict exists or arises between a work rule and the provisions of this Agreement, the provisions of this Agreement shall prevail.

#### **Work Rule 4501:2-6-02(B)(5)**

##### **(B) PERFORMANCE OF DUTY**

- (5) Members who fail to perform their duties because of an error in judgment or otherwise fail to satisfactorily perform a duty, of which such member is capable, may be charged with inefficiency.

**Ohio State Highway Patrol Policy Number: OSP –103.22 Rev 10/05/2006**  
**B. IN-CAR CAMERAS**

- (1) Operational Use – It is expected that officers operating patrol vehicles equipped with functioning recording equipment record traffic stops, pursuits, and other public contacts occurring within the operating range of the camera.
- (2) Officer Responsibility – Inspection, Maintenance and Repair
  - (a) Prior to each work shift, ensure the audio/video equipment is functional, then notify the dispatcher for notation on the HP-53B or enter into the computer if either functional or non-functional.
  - (d) It is not necessary to take a vehicle out of service because of a non-functional camera, but the in-car video system will not be used until repaired.
  - (e) Report equipment failure to a supervisor and arrange for repairs.  
Report equipment failure during a work shift to the dispatcher without delay, who will then record the malfunction on the HP-53B or enter into the computer to ensure there is a written record of the inability to use the audio/video recording equipment. Unless otherwise instructed the equipment should remain in the patrol car. Report equipment failures involving the car (camera, DVR, etc.) to a DHQ electronic technician. Equipment failures involving post equipment (servers, card readers, etc.) to LEADS Control for network administrator dispatch.

## **BACKGROUND**

Set forth in this background is a summary of undisputed facts and evidence regarding disputed facts sufficient to understand the parties' positions. Other facts and evidence may be noted in the discussion below to the extent knowledge of either is necessary to understand the Arbitrator's decision.

The facts in this case are largely undisputed and are hereinafter summarized. Where, however, relevant evidence regarding pertinent facts conflicts, the evidence is summarized.

On April 28, 2007, Grievant, a trooper, was involved in a motor vehicle pursuit of a suspected OVI driver. The suspect fled when Grievant activated his emergency lights, and was later apprehended without incident by the Grievant. Sergeant Tibbs was assigned to handle the response to resistance investigation. The response to resistance investigation revealed that there was no video of the incident because Grievant did not have the system in operation.

Prior to the above incident, Sergeant Scales performed a supervisory video review with Grievant on March 23, 2007, and discovered that the tape contained no audio. Sergeant Scales determined that the problem was with the cord of the body microphone and repaired body microphone on that date. Sergeant Scales advised Grievant to report to him any further malfunctions. The Unit History for the patrol car driven by Grievant indicated that on March 24, 2007, April 16, 2007 and April 28, 2007 an entry for a signal 4, highway patrol code for not functioning, was entered into the system.

On April 28, 2007 Sergeant Long performed a supervisory video review of Grievant's performance, and discovered that the tape contained no audio. The pursuit that brought the problem to the forefront occurred later the same shift. Sergeant Long determined that the visual system was activated

but no audio existed for stops on April 2, 2007, April 10, 2007 and April 13, 2007. Sergeant Long initially inquired about the location of the Grievant and learned that Grievant was responding to a crash. Sergeant Long made the decision to wait to discuss the matter with Grievant at the end of their shifts. Sergeant Long responded to a traffic violation, and then was called away to assist with a pursuit in Hamilton County. Sergeant Long contacted the dispatcher to have her email Grievant regarding whether or not the camera system in his patrol car was operational. While at the post area, Grievant responded to the email and stated that Sergeant Scales was aware that the system was not functioning, and that the radio technicians were unable to repair the system. Sergeant Long was unable to speak with Grievant at the end of the shift because Grievant worked overtime.

Sergeant Scales had repaired the body microphone on March 23, 2007. On March 24, 2007 a signal 4 was entered by Grievant. Grievant did not notify supervisor. Grievant became aware that the audio-visual camera system was again not functioning properly after he reviewed an OVI arrest on April 13, 2007. There was no audio present as part of the recording. Grievant did not notify his supervisor. Grievant stopped by the District 8 radio shop on his way to a Drum and Bugle detail on April 20, 2007. He attempted to get the body microphone repaired or replaced but the technician did not have the parts in stock and had to order the same. Although Grievant continued to use his patrol car with the inoperable system after notification was given on April 28, 2009, the system was not repaired until May 2, 2007 while Grievant attended training at the Wilmington District Headquarters.

Ohio State Highway Patrol Policy Number: OSP –103.22 sets forth the division policy on Audio/video monitoring. Grievant signed that he read said policy on September 4, 2003, December 18, 2003, November 13, 2004, June 23, 2005, August 17, 2005, October 15, 2006 and June 24, 2007.

Grievant testified that he did not test the audio-visual camera system on a daily basis. This is not unusual at this post and the witnesses agree that troopers were not disciplined for failure to perform daily tests of the audio-visual computer system. Grievant further testified that he did not notify his supervisors on March 24, 2007 and April 16, 2007 of the equipment failure when a signal 4 was entered, and on April 13, 2007 following an OVI arrest.

The Union filed its grievance on August 30, 2007 alleging a violation of Article 19.01 Standard. The grievance was not resolved within the procedure established by the collective bargaining agreement, and was properly advanced to arbitration.

## **POSITIONS OF THE PARTIES**

### **UNION**

The Union contends that Grievant did give actual or implied notice on eight separate occasions that his audio-video camera system was inoperable. There was no violation of the work rule 4501:2-6-02(B)(5), and therefore no just cause.

The Union requests the Arbitrator grant Grievance No. 15-03-070830-0116-04-01 and be paid back all lost wages, benefits and seniority, the suspension be removed from his department record and otherwise be made whole.

### **MANAGEMENT**

Management contends that Grievant failed to follow policy and procedure and was inefficient by failing to advise his supervisor that his audio-video camera system was not functioning properly in a timely manner. Said behavior constitutes a violation of the work rule 4501:2-6-02(B)(5), and the discipline was commensurate with the offense.

Management contends that documenting the need for repairs on the unit history or computer log does not constitute the supervisory notification contemplated by the rule.

Management contends that in consideration of the department record of the Grievant and his non-compliance to Division policy, the discipline imposed was not arbitrary, capricious or discriminatory and progressive in nature. Management requests the Arbitrator deny Grievance No. 15-03-070830-0116-04-01.

## **DISCUSSION**

It is well established in labor arbitration that where, as in the present case, an employer's right to discipline an employee is limited by the requirement that any such action be for just cause. The employer has the burden of proving that the suspension of an employee was for just cause. "Just cause" is a term of art in collective bargaining agreements. "Just cause" consists of a number of substantive and procedural elements. Primary among its substantive elements is the existence of sufficient proof that the employee engaged in the conduct for which he or she was disciplined. Other elements include a requirement that an employee know or reasonably be expected to know ahead of time that engaging in a particular type of behavior will likely result in discipline or discharge, the existence of a reasonable relationship between an employee's misconduct and the punishment imposed and a requirement that discipline be administered even-handedly, that is, that similarly situated employees be treated similarly and disparate treatment be avoided.

Ohio State Highway Patrol Policy Number OSP-103.22 Rev 10/05/2006 sets forth the policy for operations of the in-car camera system. "It is expected that officers operating patrol vehicles equipped with functioning recording equipment record traffic stops, pursuits, and other public contacts occurring within the operating range of the camera." The in-car camera system captures events for court evidence and administrative purposes such as crash investigations, professionalism assessment, protection of officers



from false accusations, and so forth. The policy also sets forth the responsibility of the officer in inspection, maintenance and repair. Grievant acknowledged by his signature that he read the policies, and specifically Ohio State Highway Patrol Policy Number: OSP –103.22. Rev 10/05/2006 on October 15, 2006 and June 24, 2007.

Once an officer has notice that the audio/visual camera system is not properly functioning, it the responsibility of the officer to do all of the following:

1. Report equipment failure to a supervisor and arrange for repairs
2. Report equipment failure during a work shift to the dispatcher without delay, who will then record the malfunction on the HP-53B or enter into the computer to ensure there is a written record of the inability to use the audio/video recording equipment.
3. Unless otherwise, instructed leave the equipment in the patrol car.
4. Report equipment failures involving the car (camera, DVR, etc.) to a DHQ electronic technician.
5. Report Equipment failures involving post equipment (servers, card readers, etc.) to LEADS Control for network administrator dispatch.

The responsibility to report to a supervisor requires actual and not implied or constructive notice. Notification to the dispatcher and/or entering the signal 4 into the computer satisfies the second aforementioned reporting responsibility but not the first responsibility to notify the supervisor. Upon actual reporting to a supervisor, it becomes the supervisor's responsibility to determine if the patrol car should be taken out of service or exchanged with another patrol car pursuant to district policy and to safeguard the stated interest of the Audi-Video-monitoring policy.

The Statement of Charges issued on August 16, 2007 states that "it was found that from April 13, 2007 to May 2, 2007, Trooper Krantz failed to report that the audio/video equipment in his patrol car was inoperative.

Grievant in response to a supervisor inquiry, reported that the audio video was inoperable and notified dispatch on August 28, 2007. Grievant informed the dispatcher in response to the email request that Sergeant Scales was aware of the malfunction and the technicians were not able to repair the system. Sergeant Scales was aware of the problem on March 23, 2007, and fixed the problem with instructions to Grievant to report any further problems to him. Grievant did not report any further problems. Grievant further gave notice before responding to the OVI of April 28, 2007 that the audio-visual camera system was inoperative, and management permitted his response. Prior to this date, March 24, 2007, April 13, 2007 and April 16, 2007, Grievant had knowledge that the audio-visual camera system was not working properly. The unit history shows that the Signal 4 was entered on March 24<sup>th</sup> and April 16<sup>th</sup>, and not April 13<sup>th</sup>. Grievant did not report equipment failure to his supervisor on any of the three occasions. Grievant reported equipment failure to the technician on April 20, 2009, twenty-seven (27) days after March 24<sup>th</sup>. There was no evidence that the equipment was removed from the patrol car. Management thus established that Grievant failed to report that the audio/video equipment in his patrol car was inoperative from April 13, 2007 to April 27, 2007.

In summary, the Arbitrator is persuaded and finds that Management satisfied its burden of proving that the Grievant failed to perform his duties in accordance with policy and procedure, and was inefficient by failing to report in accordance with policy and procedure in a timely manner that his in-car camera was inoperative.

As noted above, just cause requires that the determination of whether the Grievant's conduct warranted a three (3) day fine. Just cause requires that there be a reasonable relationship between an employee's misconduct and the punishment imposed for that misconduct. However, an arbitrator does not have unlimited discretion to substitute her judgment for that of

management regarding the magnitude of a penalty given. Rather, an arbitrator must determine if the penalty imposed by management was within the bounds of reasonableness. If the arbitrator is persuaded that the punishment was so excessive as to be beyond that limit, she not only, may, but must reduce the punishment. On the other hand, if an arbitrator is persuaded that the punishment imposed was reasonable, even if the arbitrator would have imposed a less severe punishment if he or she had the power to do so as in the instant case, the arbitrator must find the punishment was within the employer's managerial discretion and for just cause. In reviewing the reasonableness of punishment imposed, an arbitrator must look at all relevant circumstances including the seriousness of the offense and the employee's record.

The 2006-2009 Collective Bargaining Agreement provides that the "Employer will follow the principles of progressive discipline. The underlying principle of progressive discipline is to use the least severe action that an employer believes is necessary to correct the undesirable situation. The goal is to modify the unacceptable behavior or improve the performance. The goal is not to punish the employee but to more strongly alert the employee of the need to correct the problem. The degree of penalty should be commensurate with the seriousness of the offense.

Grievant has been working as a trooper for eight years. His performance evaluation for the review period of July 9, 2005 through July 9, 2006 indicates he meets expectations for equipment use and maintenance. The comments further indicate that Grievant takes exceptional care of all equipment assigned to him and leaves car clean and ready for the next unit. Grievant needs to remember to properly use his video camera at all time when performing his job duties. Grievant understands the importance of maintaining his assigned equipment and how it reflects upon the division. His performance evaluation for the review period of July 9, 2006 through

July 9, 2007 indicates he again meets expectations for equipment use and maintenance. The comments further indicate that Grievant properly uses and maintains all of his Division issued equipment. Grievant has shown improvement in notifying supervision of equipment related issues. Grievant understands the importance of maintaining his assigned equipment and how it reflects upon the division. The department record of Grievant indicates a one-day fine for failing to have videotape in his Mobile Vision recorder and was unable to record a critical incident, a one day fine for failing to fulfill a request from the prosecutor office to provide copies of an arrest video and a written reprimand to submit seized drug evidence to a crime lab in a timely manner.

Giving appropriate weight to all relevant factors, the Arbitrator finds the three-day fine of the Grievant was not so excessive as punishment as to be unreasonable, and contrary to Article 19.01 and 19.05 of the 2006-2009 Collective Bargaining Agreement.

In summary, the evidence persuades the Arbitrator that the Grievant violated Work Rule 4501:2-6-02(B)(5) on April 13, 2007, April 16, 2007 and March 24, 2007. The three-day fine was not excessive a punishment as to be beyond Management's managerial prerogatives. The Arbitrator must therefore deny Grievance no. 15-03-070830-0116-04-01.

### **AWARD**

Having heard or read and carefully reviewed the evidence and argumentative materials in this case and in light of the above Discussion, Grievance No. 15-03-070830-0116-04-01 is denied.

Dated: May 26, 2009

/s/ Meeta Bass Lyons

Meeta Bass Lyons, Arbitrator  
Steubenville, Ohio