

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-20071206-0169-04-01

Ohio State Trooper Association

GRIEVANT: Harrison Parm

AND

The State of Ohio
Ohio Sate Highway Patrol

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: May 27, 2009

APPEARANCES FOR THE PARTIES

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

UNION:
Elaine Silveira, Ohio State Trooper Association, Union Advocate
Robert Cooper, Staff Representative
Grievant: Harrison Parm

PROCEDURAL HISTORY

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

Grievance No. 15-03-20071206-0169-04-01 was submitted by the Union to Management in writing on November 27, 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(Y)(1)

Compliance to Orders

- (1) A member shall immediately and completely carry out the lawful orders of a supervisor or designated officer in charge, which pertain to the discharge of the member's duties.

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 that 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.

Grievant, a trooper of twelve years with the Ohio State Highway Patrol, is the post steward. Other troopers at the post approached Grievant with concerns of the job performance of Trooper Shaw. It was the opinion of the troopers that Trooper Shaw was not timely responding when called on the patrol car radio and his portable radio. The troopers were also concerned about resulting safety issues arising from his lack of response to radio calls. Grievant approached management with their collective concerns, and was instructed to submit an interoffice communication outlining their concerns. Grievant completed the interoffice communication and submitted the document to Management. Management in turn discussed and provided Trooper Shaw with a copy of the interoffice communication.

The next day Trooper Shaw approached individual coworkers in an effort to ascertain who was responsible for the interoffice communication. Grievant acknowledged that he authored the document, and a verbal altercation commenced. Grievant then went to management to address the unfolding situation, and was told to tell Trooper Shaw to come into the office. Grievant returned to the trooper's room, and was again confronted by Trooper Shaw. Sergeant Davis followed Grievant, and a verbal altercation ensued between Grievant and Trooper Shaw. Sergeant Davis gave a direct order to Grievant and Trooper Shaw to be silent. Trooper Shaw continued with gestures and name-calling; Grievant responded by stating verbiage to the effect of "I'll knock your ass out!" The two troopers were eventually

escorted to different areas to deescalate the situation with Trooper Shaw ultimately being instructed to go home.

The Union filed its grievance on November 27, 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 the imposition of three (3) day suspension was excessive.

The Union requests the Arbitrator grant Grievance No. 15-03-20071206-0169-04-01, be paid back all lost wages and benefits and the suspension be removed from his department record.

MANAGEMENT

Management contends that Grievant violated Work Rule 4501:2-6-02(Y)(1) Compliance to Orders, by continuing to argue with a coworker in an aggressive and menacing manner after being instructed to remain silent.

Management contends that the three-day fine was commensurate with the offense and progressive in nature in consideration of the department record of the Grievant.

Management requests the Arbitrator deny Grievance No. 15-03-20071206-0169-04-01.

DISCUSSION

Grievant openly admits that the order of silence was given to him and Trooper Shaw, and despite the order, he made the statement that "I'll knock your ass out!" or some similar language in response to the continuous comments and behavior of Trooper Shaw. After the statement was made, Trooper Shaw made aggressive behavior toward him. Grievant's own

testimony leaves no doubt that he engaged in the conduct for which he was disciplined. Moreover, a reading of the Compliance Work Rule shows Grievant's conduct constituted a violation of said rule as alleged in the notice of discipline letter of October 3, 2007. In summary, the Arbitrator is persuaded and finds that the Company satisfied its burden of proving that Grievant engaged in the conduct for which he was disciplined.

Management submits the Opinion and Award in the companion case no. 15-03-20071108-0150-04-0 to support its position that the discipline was commensurate with the offense. It is generally agreed that labor arbitrators acting within their respective jurisdictions are not strictly bound by the principles of stare decisis and res judicata.ⁱ The issue in labor arbitration is whether an arbitrator should resolve a grievance in accordance with a prior arbitral decision involving the same issue between the same parties at the same facility. The norm is that arbitrators respect and follow prior arbitral decisions involving the same issue between the same parties at the same facility with some exceptions. This is true even in some situations wherein the later arbitrator would have reached a different conclusion if she had resolved the issue in the first instance.

The norm is supported by various reasons. Foremost, deferring to prior arbitration decisions promotes stability in collective bargaining relationships and ordinarily avoids the expense of re-arbitrating the same issue. Re-arbitrating the same issue and obtaining a different result may only encourage arbitration of the same issue a third time. Furthermore, following existing arbitral decisions promotes similar treatment of similarly situated employees.

The situations in which arbitrators commonly decline to follow a prior arbitration decision between the same parties at the same facility and involving the same issue are those wherein: (1) the prior decision was an instance of bad judgment, (2) conditions existing at the time of the prior grievance and of the grievance being arbitrated are significantly different,

(3) there was not a full and fair hearing at the time of the earlier decision and (4) the prior decision was made without the benefit of some important facts or considerations.

In the instant case, Grievant and Trooper Shaw are not similarly situated in this circumstance. Trooper Shaw is the primary aggressor. Grievant is responding to a bad situation, which resulted from poor judgment by Management in the manner in which the concerns of the other troopers were handled. Trooper Bennett stated Grievant made several statements to the Sergeant to control Trooper Shaw who repeatedly called him a coward and made aggressive gestures toward Grievant. Sergeant Davis stated that during the verbal altercations "Trooper Shaw explained how everyone at the post was sick and tired of him failing to answer his radio and how he put the other units in danger. Trooper Shaw repeatedly disagreed and told Grievant that he should have come directly to him if he had a problem instead of writing an HP-22 to supervision." It was also determined by Arbitrator Lewis that Trooper Shaw was charged with, and violated Compliance to Orders and an additional work rule, Rule 4501:2-6-02(I)(1), Conduct Unbecoming of an Officer. Grievant was only charged with violation of the work rule Compliance to Orders.

Just cause requires that there be a reasonable relationship between an employee's misconduct and the punishment imposed for that misconduct. Grievant approached Management with the concerns of coworkers to address performance and safety issues at the post. After completing the interoffice communications as instructed by Management, Grievant is forced to deal with the outrage of Trooper Shaw. Trooper Bennett testified that Grievant exercised considerable restraint during this volatile situation. Grievant made one menacing statement toward the end of altercation. The 2006-2009 Collective Bargaining Agreement provides that the "Employer will follow the principles of progressive discipline." It further states, "in addition, the Employer, at its discretion, is also free to impose less severe discipline in

situations, which so warrant." The discipline is not commensurate with the conduct of this Grievant.

In consideration of the just cause standard and evidence introduced, the Arbitrator finds the three-day fine, although progressive in nature in consideration of the department record of the Grievant, was excessive as punishment as to be unreasonable in this circumstance, 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(Y)(1) on July 18, 2007. The three-day fine was excessive as a punishment as to be beyond Management's managerial prerogative. The Arbitrator must therefore grant Grievance No. 15-03-20071206-0169-04-01 in part.

AWARD

Having heard or read and carefully reviewed the evidence and argumentative materials in this case and in light of the above Discussion, the Arbitrator grants Grievance No. 15-03-20071206-0169-04-01 in part; the three-day fine is hereby modified to a one-day fine. Grievant is to be made whole including being given back pay.

Dated: May 27, 2009

/s/ Meeta Bass Lyons

Meeta Bass Lyons, Arbitrator
Steubenville, Ohio

ⁱ See generally, North American Rayon Corp., 91-1 ARB ¶8156, 95 LA 748 (1990) (Clarke, Arb.) and materials cited at footnotes 4, 5 and 6; see also Mead Corp., 83-2 ¶8585 (Clarke, Arb.).