

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-20081215-183-04-01

Ohio State Trooper Association

GRIEVANT: Patrick A. Townsend

AND

The State of Ohio  
Ohio State Highway Patrol

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: January 11, 2010

APPEARANCES FOR THE PARTIES

Management:

Lt. Kevin D. Miller, Management Advocate

Aimee Szczerbacki, Office of Collective Bargaining

UNION:

Elaine Silveira, Ohio State Trooper Association, Union Advocate

Wayne McGlone, Chief Steward

Grievant: Patrick A. Townsend

## **PROCEDURAL HISTORY**

Ohio State Highway Patrol is hereinafter referred to as "Employer". Ohio State Trooper Association, OSTA, is hereinafter referred to as "Union". Patrick A. Townsend is hereinafter referred to as "Grievant".

Grievance No. 15-03-20081215-183-04-01 was submitted by the Union to Employer in writing on December 9, 2008 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 Employer, the parties have designated this Arbitrator to hear and decide certain disputes arising between them. The parties presented and argued their positions on January 5, 2010 at the Office of Collective Bargaining, Columbus, Ohio. 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 January 5, 2010.

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: Was the Grievant issued a one-day fine suspension 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.

### **Work Rule 4501:2-6-02(B)(1) (B) PERFORMANCE OF DUTY**

- (1) A member shall carry out all duties completely and without delay, evasion or neglect. A member shall perform his/her duties in a professional, courteous manner.

## **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 August 2, 2008, Grievant was assigned to the afternoon shift, from 2:45 pm through 10:45 pm at the Statehouse, Capital Operations Detail. The Capital Operation Details provides security coverage for the interior, exterior and grounds for the Supreme Court, Statehouse and Rhodes Building. The security encompasses fixed positions or points of entry into the building where troopers are assigned to monitor the locations for persons entering the building and threats to the building, and non fixed duty positions which require the troopers to roam the building to look for potential issues, to check for unlocked doors, to assist public with directions, to respond to panic alarms, to monitor hearings and special event details. During the weekends offices are closed and traffic of persons is greatly reduced. The number of open post is reduced to two. It is not uncommon to have only one trooper on duty.

On August 2, 2008 Trooper Amy James and Sergeant Mark Bocsy were working a special event detail, a wedding event at the Statehouse. Sergeant Bocsy entered into the radio room approximately three or four times between 7:00 pm and 10:00 pm. On each occasion Grievant was present in the radio room. The radio room is the control and command center at the Statehouse. The dispatcher is stationed in the radio room. There are ninety-six (96) cameras monitoring the Statehouse. Some cameras are fixed and others are mobile to provide for manual maneuvering of the cameras for specific areas. It is not uncommon to see troopers in the radio room

checking on the dispatcher and camera surveillance. Sergeant Bocsy became concerned when Grievant was present in the radio room each time that he was present. When asked by Sergeant Bocsy, Grievant responded that it was a matter of timing. Grievant entered the radio room at approximately 7:00 pm and remained in the radio for a period of three hours.

Sergeant Bocsy reviewed the video room cameras in real time from 7:00 pm through 10:00 pm in the course of said investigation. The videos depict Grievant observing the video wall of cameras, for a short amount of time on the computer, and texting on his cell phone now and then. Grievant responded to one call for assistance for approximately three minutes. The video did not show Grievant leaving the radio rooms to perform any line checks of the building. At approximately 10:00 pm Grievant conducted a physical check of the premise.

Grievant was charged with violation of work rule 4501:2-6-02(B)(1) Performance of Duty. The Union filed its grievance on December 9, 2008 alleging a violation of Article 19.01 Standard and 19.05. The grievance was not resolved within the procedure established by the collective bargaining agreement, and was properly advanced to arbitration.

## **POSITIONS OF THE PARTIES**

### **EMPLOYER**

Employer contends that Grievant failed to do periodic line checks from 7:00 pm until 10:00 pm, and said behavior constitutes a violation of the work rule 4501:2-6-02(B)(1).

Employer contends that such dereliction of duty rises well above a reprimand and could have been more severe than the one-day suspension in consideration that Grievant was assigned to the Statehouse. The Statehouse is the root of state government, and congressmen have an expectation of privacy, and their offices hold sensitive documents. The building houses multimillion-dollar artwork, and certain items are irreplaceable. The length of

time, the three-hour period, created another safety risk in the building. The discipline was commensurate with the offense.

Employer requests the Arbitrator to deny Grievance No. 15-03-20081215-183-04-01.

## **UNION**

Union contends that Grievant did not neglect, delay or evade his duties. Grievant worked the afternoon shift at the Statehouse on a weekend. Due to illness (migraines), from 7:00 pm to 10:00 pm Grievant monitored the posts via camera surveillance in the radio room rather than the performance of physical line checks, and responded to all calls for assistance. There was no violation of the work rule 4501:2-6-02(B)(1).

Union contends that if a violation is found, a one (1) day fine is excessive and severe. Grievant is almost a ten-year employee at the time of the incident, with no prior performance issues and no discipline on his record. There is no allegation that he failed to respond to calls for assistance. Grievant in fact responded to the only call that evening. There is no allegation of any incident that occurred during his shift. Grievant performed the surveillance by camera. The offense is not commensurate with the punishment.

Union requests the Arbitrator to grant Grievance No. 15-03-20081215-183-04-01 and be paid back all lost wages, the charge be removed from his department record and otherwise be made whole.

## **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 conduct of an employee violated certain work rules, directives or policy. The Employer has satisfied that burden.

Grievant is charged with a failure to perform work duties, specifically failure to conduct line checks and other physical surveillance of the

Statehouse. It is not disputed that Grievant failed to do the actual physical surveillance as required by his job duties but instead did camera surveillance of the posts for a three-hour period. The Grievant's own testimony leaves no doubt that he engaged in the conduct for which he was disciplined. Grievant admitted that he failed to do line checks for the three-hour period in question. During the course of his testimony at the arbitration hearing Grievant's own testimony persuades the Arbitrator that he did not tell Sergeant Bocsy that he was ill with migraines. Grievant testified that he had no discussions with Sergeant Bocsy about his presence in the radio room contrary to prior inconsistent testimony. Conversely, Grievant has no discussions about his migraines. Moreover, a reading of the work rule 4501:2-6-02(B)(1) shows the Grievant's conduct constituted a violation of the rule which requires Grievant to carry out all duties completely and without delay, evasion or neglect. In summary, the Arbitrator is persuaded and finds that Employer satisfied its burden of proving that the Grievant failed to perform his duties in accordance with policy and procedure.

There must be a reasonable relationship between an employee's misconduct and the punishment imposed. Just cause requires that the determination of whether the Grievant's conduct warranted a one (1) day fine. 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. Further, the parties to a collective bargaining agreement have agreed upon specific limitations on the employer's power to determine appropriate discipline, just cause requires that the employer abide by those limitations. 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 approximately for ten years. His performance evaluation for the review period of February 28, 2006 through February 28, 2007 indicates an overall rating for employee step advance as satisfactory. The comments state "Trooper Townsend continues to be a valuable asset to Capitol Operations. Trooper Townsend maintains a professional image and positive demeanor. He is polite and friendly with people he comes in contact with on a daily basis. Trooper Townsend exhibits, and follows the Division's Core Values on a daily basis both on and off duty. There is an added remark, which states: "Thanks for everything. Your consistent professional demeanor is greatly appreciated." His performance evaluation for the review period of February 28, 2007 through February 28, 2008 also indicates an overall rating for employee step advance as satisfactory. Although his performance evaluation for the review period of February 28, 2008 through February 28, 2009 indicates an overall rating for employee step advance as satisfactory, the comments state, "Trooper Townsend has a few deficient areas with regard to the Capitol Operations operating procedures... We are committed in helping you..." The description of goal/objectives states that Grievant should demonstrate knowledge of the rules and regulations and follow them without having to be reminded, and apply knowledge and perform duties appropriately". There is no department record.

Although Grievant appears jovial in the video, he is constantly rubbing his head. The video depicts Grievant observing the video wall of cameras and for a short period of time on the computer. Although the camera surveillance is not an ironclad substitute for physical surveillance, Grievant was not sitting around idle. There was no evidence introduced as to nature of the computer activity. There was no evidence of any incident arising due to the lack of line checks. He responded to the only call for assistance.



Giving appropriate weight to all relevant factors, the Arbitrator finds that Grievant violated Work Rule 4501:2-6-02(B)(1) on August 2, 2008. The one-day fine of the Grievant was excessive as punishment as to be unreasonable, and contrary to Article 19.01 and 19.05 of the 2006-2009 Collective Bargaining Agreement. The Arbitrator must therefore sustain the Grievance no. 15-03-20081215-183-04-01, 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, Grievance No. 15-03-20081215-183-04-01 is sustained in part. There is just cause to discipline for violation of work rule 4501:2-6-02(B)(1) Grievant. The one-day fine is hereby modified to a written reprimand. Grievant is to be made whole including being given back pay.

Dated: January 11, 2010

/s/ Meeta Bass Lyons

Meeta Bass Lyons, Arbitrator  
Steubenville, Ohio