

Decision and Award in the matter of Arbitration between:

The State of Ohio, Department of Public Safety

And

Ohio State Troopers Association, Inc., Unit 1

Case # 15-03-20091013-135-04-01

Grievant: Trooper Lia C. Black (Heidel)

E. William Lewis, Arbitrator

Hearing date: January 27, 2010
Briefs received: February 18, 2010
Decision Issued: March 11, 2010

Representing the Employer:

Lieutenant Kevin S. Miller
Council
Ohio State Highway Patrol
740 East 17th Avenue
Columbus, Ohio 43211

Representing the Union:

Herschel M. Sigall, Chief General

Ohio State Troopers Association
6161 Busch Blvd., Suite 130
Columbus, Ohio 43229

By mutual agreement, the Hearing was convened at 9:00am, on January 27, 2010. The Hearing was held at the Office of Collective Bargaining, Columbus, Ohio.

In attendance for the Union:

Mr. Herschel Sigall	OSTA Advocate
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MS. Lia C. Heidel(formerly Black)	Grievant (witness)
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Mr. Kyle Erdeljac	Extern
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Mr. Wayne McGlone	OSTA Staff Representative
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Mr. Larry Phillips	OSTA President
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Ms. Elaine Silveira	OSTA Attorney
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In attendance for the Employer:

Lt. Kevin D. Miller	OSHP Advocate
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Ms. Marissa Hartley	Labor Counsel, OCB
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Sgt. R. M. Hayslip	Post Sgt. (Witness)
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Lt. B. A. Rhodes	Post Commander (witness)
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The parties were asked to submit exhibits into the record. The following were

submitted as Joint Exhibits.

Joint Exhibit #1
Association, Inc.,

State Of Ohio 2009-

CBA-Ohio State Trooper

Unit 1 & 15, and The

2012

Joint Exhibit #2

Grievance Trail #135

Joint Exhibit #3
of-Statement

Discipline Package: composed

of Charges, Pre-Discipline

Notice, Suspension

Letter, Department

Record, HP Rules &

Regulations: 4501:

2-6-02(E) False Statements/

Truthfulness & 4501:

2-6-02(Y)(2)

Compliance to Orders

Joint Exhibit #4
re-instatement

AI 08-0367including request for

Approval letter,

re-instatement agreement &

Personnel action,

Stipulation: a-d, regarding

Tpr. Bradic. Plus multiple

AI's re: BAC testing

Joint Exhibit #5
09-0115

AI 06-6944, 08-0565, 08-1165 &

(including discipline

issued) Stipulations a)

None of the preceding

investigations resulted

in termination. b) None of

the subjects were

Charged with

False/Statements/Truthfulness

The following were submitted as Employer Exhibits:

Mgmt. Exhibit #1

AI #2009058UP, Re: Tpr. L. C. Black

Mgmt. Exhibit #2
&

OSP Policies: 200.05, 200.04, 203.18

history of Tpr.

Electronic Read & report

Black

Mgmt. Exhibit #3

Arrest Recap—Tpr. L. C. Black

The following were submitted as Union Exhibits:

Union Exhibit #1
Gregory

Brown County Asst. Prosecutor

character

Letter re. Tpr. Black's

Union Exhibit #2
re. Tpr.

Chief Asst. Prosecutor Little's letter

honesty

Black's reputation for

Union Exhibit #3
opposite

3 Pictures showing fatality memorial

Tpr. Black's property

Union Exhibit #4
neighbors

E-mails to OSTA, from Tpr. Black's

on Pleasant Hill Rd.

regarding excessive speeds

Union Exhibit #5

Diagram of grievant's property &

adjacent

Pleasant Hill Rd.

BACKGROUND:

The State Highway Patrol, a Division of the Ohio Department of Public Safety, hereinafter, known as the Employer(OSP), is responsible for highway safety within the State. The Ohio State Troopers Association, hereinafter, known as the Union(OSTA), represents bargaining unit employees in Units 1 & 15. Unit 1 is primarily composed of Troopers(Tpr.) and Unit 15 is composed of Sargeants. This particular case involves a Trooper assigned to Unit 1.

The grievant, Tpr. Lia Black, at the time of the incident was assigned to the Georgetown Post, in Brown County. Trooper Black served the OSP for nine years. Although the grievant has since changed her last name to Heidel, at the time of the incident leading to her discipline, her last name was Black.

On July 11, 2009, while leaving her residence to report to Post for the 3-11p shift, Tpr. Black observed a vehicle passing her property at an alleged high rate of speed. Trooper Black engaged her pursuit lights and apprehended the driver(ME-1). A citation was issued to the driver for excessive speed.

Somewhat later the same day, the driver (Greene) registered a complaint against Tpr. Black. He alleged that her manner was unprofessional and she estimated his speed without using radar(ME-1).

The Patrol instituted an investigation(AI-2009058), resulting in Tpr. Black being charged with violating OSHP Rules and Regulations. Specifically, Rule 4501: 2-6-02 (E) False Statement/Truthfulness and Rule 4501; 2-6-02 (Y)(2) Compliance to Orders. It was found that on July 11, 2009, Tpr. Black improperly issued a speed citation based solely on an estimate, and she falsely indicated on the citation that the violators speed was checked by radar. A termination letter was issued on October 9, 2009, to be effective at the end of the workday(JT-3).

A grievance was filed by Ms. Black on 10/13/2009, claiming that the Employer violated Article 19 DISCIPLINARY PROCEDURE, Sections 19.01Standard and 19.05 Progressive Discipline. The grievant requested to be reinstated to the

position of Trooper with full back pay, benefits and seniority, including all Holiday overtime and Fitness pay.

The grievance was processed and ultimately appealed to arbitration by the Union on November 12, 2009. The parties stipulated at the 1 /27/10 Hearing that there were no procedural issues, and that the grievance was properly before the arbitrator.

ISSUE:

In conformance with Article 20, Section 20.08 of the CBA, the parties jointly submitted the following statement of issue:

Was the Grievant terminated from her employment with the Ohio State Highway Patrol for just cause, If not, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE:

ARTICLE 19 - DISCIPLINARY PROCEDURE

19.01 Standard

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

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 (with appropriate notation in employee's

- file);
2. One or more written Reprimand;
 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.

The deduction of fines from an employee's wages shall not require the employee's authorization for the withholding of fines from the employee's wages.

EMPLOYER POSITION:

The Employer states that the case is a straight forward fact pattern. The grievant, a nine year veteran, while preparing to leave her residence for her shift, observed a vehicle passing her at a speed she estimated at 65mph. The speed limit for that roadway was 55mph. She did not activate radar or laser to confirm her visual, but stopped the vehicle anyway. Trooper Black issued a citation to the driver for 62mph in a 55mph zone.

A complaint was issued by the driver(Greene) within hours of the stop. He claimed that Tpr. was unprofessional, and it was visual estimate when the citation had radar checked. The OSP claims that Tpr. Black committed two unacceptable acts. First, a speed citation based solely on a visual estimate, and secondly, she falsified the affidavit to further the prosecution against the driver. The affidavit falsification is a terminable offense, declares the Employer.

The affidavit(ticket) shows that stationary radar was used to check the vehicle's speed. By signing the citation, Tpr. Black affirmed that under penalty of perjury and falsification, that the complaint(ticket) is true. She also placed the ticket in

the Post “court bin”, however, it was intercepted by a supervisor and not delivered, according to the Employer.

Although the Ohio Revised Code does not prohibit citations based on visual estimates, the Division does not teach or endorse that action. Trooper Black knowingly committed a serious rule violation related to her voracity, and dishonesty is taken very seriously. The OSHP is widely respected for its integrity and her actions were unacceptable. Troopers are historically terminated for False Statements/Truthfulness, therefore, the Employer requests the arbitrator to deny the grievance in its entirety.

UNION POSITION:

Trooper Black, a ten year employee, with a good reputation, lives on rural Pleasant Hill Road, in Brown County. The roadway, according to the Union, is a speedway area and speeders drive fast cars. Within the last year a speeding driver hit the wire pole across from Tpr. Black’s property, and was killed. Even with that tragedy, they still speed, per the Union.

Upon leaving her property, to report for her afternoon shift, Tpr. Black heard a “loud muffled” vehicle coming down Pleasant Hill Road. She observed the car passing her property at a visually estimated speed of 65mph(55mph limit). She commenced pursuit and stopped the car. Trooper Black told the driver that she estimated him at 65mph, and he admitted going 62mph. The driver claimed the car was overheating and he had to speed and coast to prevent overheating. The driver was cited for excessive speed.

The driver complained to the Post that same afternoon. He claimed that the ticket said radar checked, and the speed was estimated, and that Tpr. Black was unprofessional. The ticket was pulled by Tpr. Black’s shift Sgt., and the Union claims the ticket’s radar check was in error. However, no attempt to deceive was intended. The Tpr. readily admitted that she estimated the speed. Furthermore, OSTA claims that if deception were intended, laser would have been checked on the citation, which can’t be checked and can be done from a stationary position.

Additionally, she was professional during the stop, which the audio/video will sustain, argues OSTA. Trooper Black has two one day suspensions with the Department. This should have been a progressive discipline situation of a three or

five day suspension for the error, certainly not termination.

Also, per the Union, her Garrity rights may have been violated, since she was told to write a statement on an IOC, as to why she did not use radar, which is disciplinary in nature. She complied on an IOC, however, the IOC cannot be found.

The driver lied to Tpr. Black regarding his driving record, and his overheating car, which was not evidenced by Tpr. Black's cursory check. He filed a complaint, the ticket was dismissed, and she was fired. Joint Exhibit 5, stipulated to by the parties, lists a number of cases where the charged for Falsified Statement /Truthfulness, were not fired. To terminate her career is not supported by the evidence, argues the Union.

DISCUSSION AND OPINION:

The facts in this case are not in dispute. They are evidenced by the in-car video, audio recording and the citation(ME-1). Trooper Black, on July 11, 2009, while leaving her rural residence at approximately 2:20pm, observed a car passing by at a high rate of speed. She immediately instituted pursuit and stopped the vehicle. The driver claimed his car was overheating, which required him to speed-up and coast to prevent the malfunction. Trooper Black advised the driver that she estimated him at 65mph and he responded, admitting 62mph. The driver was issued a citation for over the limit speed of 62mph.

Later that same afternoon the cited driver called in a complaint to Sgt. Utter of the Georgetown Post, that Tpr. Black was unprofessional during a portion of the stop. He also stated that the citation had radar checked, but Tpr. Black stated that she estimated his speed at 65mph. Sergeant Utter pulled the citation from the "to court bin"(driver's 3rd moving within 12 mo.), for review(ME-1).

An AI was instituted, and it was determined that Tpr. Black had falsified the citation by checking the use of radar when she only estimated the speed. It was further determined that by only using an estimated speed, without substantiating the allegation with radar or laser, she was not in compliance with training or orders(ME-1).

Evidence and testimony showed a driver not being truthful to the Trooper

regarding his reasons for “speeding”, and his recent driving history(ME-1). The audio of the stop depicts a Trooper not particularly pleased with the incident. Rightly so, when one considers Union submitted evidence; neighbors’ e-mail showing concerns over speeding drivers. Plus, visual evidence of a recent fatality on the same road, opposite Tpr. Black’s property(UE-3,4). Trooper Black admits in her AI interview, that this may have been an attitude arrest. However, with no substantiating evidence, other than opinion, regarding Tpr. Black’s demeanor during the stop, I find her being curt but not necessarily unprofessional.

Trooper Black, according to unrefuted testimony, was asked by Sgt. Utter to complete an IOC regarding the incident. OSTA argues that the grievant’s Garrity rights may have been violated regarding the requested IOC. However, it would make sense to the arbitrator to ask for a written statement as a fact-finding tool from the recipient of a complaint. Testimony was introduced regarding the IOC and the concern for its mysterious disappearance. The elusive IOC does not appear to have been used to substantiate any discipline. Furthermore, this incident does not involve criminal procedures¹.

The evidence is clear and convincing that the grievant signed an inaccurate citation, under the penalty of perjury and falsification. There is no place on a traffic citation for an estimate to be checked. In fact, there were three entries made on her citation showing the use of radar. Troopers are trained and instructed to use a speed measuring device when making traffic stops(ME-2). Testimony by all the witnesses evidenced that they do not issue speeding tickets without some tracking device. The grievant testified that she has not heretofore, issued a speeding ticket based solely on an estimate.

The arbitrator is convinced that this was an emotional citation. Trooper Black was, in the arbitrator’s opinion, influenced by neighbor concerns, as exemplified by e-mails, and the recent fatality UE-3,4). This was her first ticket ever written based solely on an estimate, and he was cited for exceeding the limit by only seven miles per hour. A professional estimate, per training and OSP Brief, is accurate to the degree of +/- 5mph. This estimate could have resulted in a speed of 60mph or 70mph, an extremely consequential margin of error. Additionally, Tpr. Black in

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Elqouri & Elqouri 6th Ed., pg 1261

her first AI interview and affirmed in the second interview; stated that she knew when writing the citation she was checking radar and stationary when it was not used(ME-1).

Although the Union identifies numerous other Troopers not being terminated for falsification transgressions, they in the arbitrator's opinion, did not have a similar fact pattern(JT 4,5). They generally involved officers reducing the charges or being caught misbehaving on an internal Department issue.

This incident involves a citizen being ticketed with serious potential consequences, if found guilty. With his recent driving record, a major penalty as a civilian, and economically would have occurred. Law enforcement officers have extensive authority over citizens, and if not used properly can affect their livelihood and potentially their freedom.

In this incident, the falsification did not go to court, due the driver's complaint(ME-1). And just maybe it should have, when one considers the in-car video. Evidence and testimony shows that Tpr. Black, when questioned, immediately acknowledged her error when writing the citation. However, one wonders, had the ticket progressed to court, what her testimony would have been. The consequences for this type of officer behavior could have been very serious.

Policies, Rules and Laws assist law enforcement in their duties, but they also protect the citizens. Lasers, radar etc., assist officers of the law, but they also concurrently protect citizens from over zealous law enforcement personnel. Law enforcement officers must be held to higher standards, because the effects of their enforcement actions can have major impacts on civilians.

Evidence and testimony, in this case is clear and convincing to the arbitrator, that the Employer has met the tests for just cause. However, is the extreme level of discipline commensurate with the offense? At first glance the penalty might seem extreme. But, when the arbitrator considers the potential consequences for this type of officer action, termination is not unreasonable. In this case, the Employer has proved the charges alleged, and the discipline is not out of line to that imposed in other like cases(M Brief)². Furthermore, in the arbitrator's

²Elqouri & Elqouri-How Arbitration Works,6th Ed. Pg.960

opinion, the discipline is in line with the generally accepted standards for this type of offense³.

AWARD:

The grievance is denied.

This concludes the arbitration decision.

Respectfully submitted, this 11th day of March 2010.

E. William Lewis
Arbitrator

³Elkouri & Elkouri-Row Arbitration Works, 6th Ed. Pg 960,961

