

IN THE MATTER OF ARBITRATION

BETWEEN

2010 SEP -9 PM 1:46

Ohio State Troopers Association  
Union

And

15-03-20091123-0156-04-01

3 Day Suspension

Colleen J. Coyne-Hall

Ohio Department of Public Safety  
Employer

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UMPIRE'S DECISION AND AWARD

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Appearances:

For the Union:

Herschel Sigall Esq.

For the Patrol

Sgt. Anne Ralston

Sandra Mendel Furman, Esq. Umpire

## **INTRODUCTION**

This matter was heard before the undersigned on August 26, 2010 in Columbus, Ohio at the OSTA offices.

OSTA President Larry Phillips and Staff Representative Bob Cooper were present. Union General Counsel Herschel Sigall represented the OSTA. Elaine Silveira was second chair. Grievant was present but did not testify.

The Ohio Department of Public Safety (Patrol) called Lt. James T. Sivak Chardon Post Commander as its witness. The Patrol was represented by Sgt Anne Ralston. Lt. Kevin Miller from the Patrol and Marissa Hartley (OCB) were present.

The collective bargaining agreement (cba) was Jt Ex 1; Jt Ex. 2 -the grievance trail; Jt. Ex. 3- the disciplinary package consisting of the statement of charges; the pre disciplinary notice; the meeting Officer response; the suspension letter, department record; and ODPS work rule 4501:2-6-03(D)(3); 4501:2-6-02(B)(1), 4501:2-6-02(Y)(2). The Patrol presented multiple exhibits. These additional exhibits are referred to in the discussion below.

Each side was given a full opportunity to call two witnesses (limitation opposed by the CBA), cross-examine witnesses and present relevant materials in support of its position. The witness was sworn. The hearing was closed after oral closing arguments. The decision issued within the dates stipulated by the parties.

## **ISSUE**

Was the Grievant issued a 3 day suspension for just cause? If not, what shall the remedy be?

## **STATEMENT OF FACTS:**

There is no factual dispute. Grievant is employed as a Trooper at the Chardon Post. She has eleven years seniority. During the relevant time period, she was assigned to the afternoon shift. On September 2, 2009 she had a heated discussion with Sgt. Biskup about rules and regulations regarding "returning to post" after start of her tour of duty. Grievant had been at the post for

a half hour at the start of her shift. She had a discussion with Biskup concerning paperwork for the "Cost Saving Day". In the AI Grievant stated she didn't remember this conversation. It was alleged that she responded to the request to prepare the paperwork with the comment: "That sounds like a threat to me." She did not remember that remark.

Five hours later she returned to the post. When asked why she was back on post by Biskup she replied stating that she needed batteries for her car video microphone. Biskup advised that she needed to ask permission to return to post after the start of her tour of duty and that batteries needed to be stocked in her car. Grievant left post without getting her batteries.

Two hours later she called back to the post and spoke to Biskup about his statement she needed permission to return to post after shift started. Listening twice to an audio recording of the exchange the Umpire concluded Grievant was quite agitated and emphatic. She raised her voice significantly. She stated twice that Biskup had lied to her and called him a liar twice. She stated he should get a ten day suspension for lying. By contrast Biskup sounded as though he remained in control of his temper. He spoke in a professional tone and manner throughout the exchange.

Three days later on September 5, 2009 Grievant pulled over a motorist for failure to signal when changing lanes. Her first encounter with the motorist was not audio recorded as she failed to turn on her body microphone for a minute and one half. The "on" status of the microphone is manually activated. If the equipment is on there is an amber light indicator in the patrol car. The administrative investigation (AI) indicated that she used her body microphone on multiple other traffic stops that same date. She did not claim that she activated her body microphone on her first approach.

After she returned to the car the motorist complained about Grievant's demeanor on the initial traffic stop. This second interchange was audio recorded on the body microphone. The Umpire reviewed the CD recorded exchange again after hearing. Grievant's tone of voice is best described as sarcastic and "snippy." The motorist did not accelerate her temper or become verbally

obnoxious or abusive. Her remarks about her brother may have been gratuitous but not provocative. A telephone complaint by the motorist that same date prompted an administrative investigation.

Als were conducted in both of the September 2 and 5, 2009 incidents by Lt. Spivak. Patrol Ex.1. Patrol Ex. 1. and 6.

Grievant received a three (3) day suspension effective November 12, 2009 for the telephone conversation with Sgt. Biskup; the failure to use equipment per Patrol policy during a traffic stop and for conducting the traffic stop in an unprofessional manner.

Grievant's department record indicates a "Last chance" from July 2009.<sup>1</sup>

### **PATROL POSITION**

The Patrol met its burden of proof. Grievant has spoken to both the public and a superior officer in an inappropriate manner. The Patrol is clear about respect for rank and the need for professionalism. Coyne-Hall did not meet the standards when she interacted with the citizen at the traffic stop. Grievant did not meet those standards when she spoke with her Sgt. on the telephone concerning her return to post.

Grievant violated policies and procedures in her failure to turn on her body microphone when she approached a vehicle for a traffic stop. Grievant violated procedures when she returned to post after the start of her shift for batteries for her microphone. The equipment should be in working order when she leaves the post at the start of shift. She should have called in for permission to return to post. Instead she took matters into her own hands.

The discipline is not punitive. The discipline is commensurate with the offense. Her conduct in the above situations did not meet professional standards.

The grievance should be denied.

### **UNION POSITION**

Grievant should not be punished for being assertive. She was not unprofessional in her heated exchange with her sergeant on September 2, 2009.

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<sup>1</sup> There was no explanation as to what the last chance said. The department record also refers to a ten day suspension for the same allegations but it was not imposed. The discipline related to allegations of dishonesty and failure to report to duty.

Grievant was challenging the existence of an IOC and/or a policy. That is her legitimate right. Troopers are required to sign an extremely long list of policies; no one should be expected to remember the details of all of these. The policy is ambiguous and may be fairly debated under these circumstances (equipment needs). Grievant did not consider this conversation to be out of bounds. She conducted it on a recorded line therefore knowing it could be replayed.

There was no act of insubordination as no order was given.

Admittedly Grievant was flip and caustic in her contact with the motorist. It is not appropriate to issue a three day suspension for this interaction. It is too harsh.

The failure to have on her body microphone when she approached the motorist is a minor infraction. There are sufficient instances of equipment failures to raise a question as to the efficacy of her microphone that moment.

Grievant is a long term employee who is loyal to the Patrol. The discipline is not commensurate with the offense.

The grievance must be granted or in the alternative a one day suspension should issue instead.

### **DECISION AND AWARD**

The Patrol conducted a fair and impartial investigation.

There was no allegation of disparate treatment. In an unusual twist the Patrol introduced over Union objection a three day suspension for a member of Local 11's unit for alleged disrespect of a supervisor. Patrol Ex.10. The umpire gave the exhibit no weight in her determination of this matter.

As a preliminary matter there was no direct order or request that Grievant was failing to honor. The existence/interpretation of a policy was being debated. At no point did Biskup give Grievant an order. Insubordination as an act implies disobedience to a directive or order.

But Grievant was not being charged with being insubordinate per se. She was charged with acting or speaking in an *insubordinate manner*. Insubordinate is a synonym for defiant. The Umpire found Grievant's tone and content to be defiant. Simply put Grievant spoke to Biskup in a rude and disrespectful manner.

There are few circumstances that would permit a subordinate in a command structure to call a supervisor a liar and also state that the supervisor is lying repeatedly. This was not a permissible circumstance in this writer's view. Her admittedly raised voice was also inconsistent with departmental standards.

Obviously there are instances wherein a supervisor is lying. However the manner, time and place in which his/her credibility is being challenged by a subordinate is the key. This case was no safe harbor situation for Grievant. Grievant may have been upset about her encounter with Biskup. She may as alleged in the AI think he is out to get her. Biskup may have been in error when he spoke of an IOC. But nothing in his conduct on the telephone that date could or should have provoked the outburst from Grievant. She was beyond "heated" and beyond assertive.

OSP-200.13 indicates a trooper must stay off post and on the road after shift starts.<sup>2</sup> As a long term trooper it is not possible that she was not aware of this expectation no matter how many directives and "read and signs" there might be. She admitted to awareness of the policy during her AI interview statement. There were no mitigating circumstances causing her to challenge the existence or interpretation of this policy in the manner she chose. Her conduct violated 4501:2-06-07 (D) (3).

The second incident is also a violation of known standards and rules. Grievant was not carrying out her duties on September 5, 2009 "in a professional, courteous manner." Her conduct violated 4501:2-6-02. The tone she used with the motorist was inappropriate. Even the Union acknowledged her actions were not pristine at that snapshot moment.<sup>3</sup> OSP policy 203.46 requires troopers to be courteous, polite and business in a traffic stop. Grievant was not.

Standing in isolation the failure to activate the body microphone would likely merit no more than a counseling or verbal warning. Likewise the return to post after shift start to pick up batteries was a minor rule infraction. It was unclear

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<sup>2</sup> The policy was listed in Patrol Ex. 5 as issued in November 2008 in Grievant's read and sign print out. The policy itself was Patrol Ex. 4.

<sup>3</sup> The Umpire found the exchange with Biskup to be more aggressive and inappropriate than her treatment of the motorist. Regardless both interactions failed to meet Patrol standards.

whether disciplinary progression has been followed. As noted in a footnote above there was no information provided as to the "last chance" of July 2009. The July 2009 discipline referenced two incidents being combined but no specifics exist for the other incident.<sup>4</sup> Without any information as to whether or not Grievant has been disciplined before for rude and unprofessional conduct the only inference made by the Umpire is that she had very recently been disciplined- just less than two months earlier- and was on notice that her department record was negatively impacted.

The significant conduct in these current two unrelated matters has a common thread: Trooper Coyne-Hall's failure to conform to the professionalism and courtesy expected. Her conduct with the motorist reflected adversely on the Patrol from a citizen's perspective enough so that she called in an informal complaint. No mitigating circumstances were offered to explain away her tone. Her conduct with Biskup was inappropriate and not excusable as a "heat of the moment" outburst.

The Umpire does not find that the discipline was excessive. The suspension was not arbitrary, capricious, and discriminatory or an abuse of discretion.

#### **AWARD**

The grievance is denied.



Sandra Mendel Furman, Arbitrator

Issued in Columbus, Ohio on September 7, 2010

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<sup>4</sup> Allegations for the other incident relate to failure to appear in court pursuant to a subpoena.