

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-20091220-0174-07-15

Ohio State Trooper Association

GRIEVANT: Jeffery Ruddle

AND

The State of Ohio
Ohio State Highway Patrol

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: February 8, 2011

APPEARANCES FOR THE PARTIES

Employer:

Sergeant Anne R. Ralston, Ohio State Highway Patrol
Employer Advocate

Lieutenant Kevin D. Miller, Second Chair
Marissa Hartley, Office of Collective Bargaining

UNION:

Elaine Silveira, Ohio State Trooper Association
Union Advocate

Wayne McGlone, OSTA Representative
Grievant: Jeffery Ruddle

PROCEDURAL HISTORY

Ohio State Highway Patrol is hereinafter referred to as "Employer". Ohio State Trooper Association, OSTA, is hereinafter referred to as "Union". Jeffery Ruddle is hereinafter referred to as "Grievant".

Grievance No. 15-03-20091220-0174-07-15 was submitted by the Union to Employer in writing on December 28, 2009 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 2009-2012 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 27, 2011 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 witness, and oral argument. The hearing was closed on January 27, 2011.

The parties stipulated that the grievance and arbitration were properly before the Arbitrator, and submitted joint documents consisting of Contract, Grievance Trail#0163, and Discipline Package, and other individualized exhibits.

The parties stipulated that the issues to be resolved in the instant arbitration to be: Was the Grievant issued a five-day 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) Performance of Duty

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.

Work Rule 4501: 2-6-03(A)(1) Responsibility of Command

A member who is in command of any post, district, section, unit, detail or assignment, or part thereof, either on a temporary or permanent basis, shall be held responsible for the efficiency, discipline, performance and welfare of the persons under his/her command, for facilities assigned under the command, and for the performance and condition of all equipment and the effective discharge of the duties and responsibilities of the division within the scope of this command.

BACKGROUND

On August 30, 2009, Grievant was the supervisor of the 11p.m.-7a.m shift at the Hiram Post. During the shift, the office of Immigration and Customs Enforcement (I.C.E.) reported a vehicle traveling the Ohio turnpike that was suspected in illegal activity and may have had a large amount of currency in the vehicle. Trooper Head, a trooper at the Hiram Post stopped the vehicle for a marked lane violation. Grievant, Trooper Weiss and Trooper Burkey responded to the stop to provide assistance. Grievant conducted the probable cause search of the vehicle because of his prior membership with the Division's Drug Team. The other troopers provided security for the three suspects. Grievant located a vacuum sealed bag that contained \$34,720.00 in U.S. currency after a K-9 alert on a vehicle. A small amount of marijuana and paraphernalia were also found.

I.C.E. agents were contacted and requested that the vehicle be taken back to the post to be processed and the money held. Grievant and the other troopers arrived back at post between 7:00 and 7:18a.m with the three suspects who were held in detention. The money was surrendered to the I.C.E. agents with no internal documentation. The I.C.E. agents interviewed the suspects for several hours. Prepaid cell phones were seized and no internal documentation was completed.

Grievant instructed Trooper Head to complete a case investigation on the incident. Grievant answered questions of Trooper Head when presented to him. Grievant eventually instructed Trooper Head to enter the case into the system, and bring it back down for completion during his next shift. Trooper Head failed to file the original marijuana and drug paraphernalia charges on the suspect with the Ravenna Municipal Court. The court contacted the Hiram Post on August 31, 2009 and advised the only item they had was a photo copy of the charges. They also advised the original charges, statement of facts and anything else associated with the arrest needed to be at the court by the close of business on August 31, 2009. Said

information was completed and provided to the Court with the assistance of another supervisor.

Grievant was charged with violation of work rule 4501:2-6-02(B)(1) Performance of Duty for failure to carry out all duties completely and without delay, and work rule 4501: 2-6-03(A)(1) Responsibility of Command for failure to supervise a fellow trooper under his command. The Union filed its grievance on December 28, 2009 alleging a violation of Article 19. 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 on the date of the incident, Grievant failed to properly handle evidence seized in a traffic stop. Departmental policy requires all evidence seized and released to be documented on agency-specific forms. The failure of the Grievant to complete said documentation created an unnecessary gap in the chain of custody for evidence. Further Grievant failed to conduct a count of the money seized, and released the same to the federal agents without internal documentation. Said behavior constitutes a violation of work rules 4501:2-6-02(B)(1).

Employer contends Grievant failed to properly supervise a trooper under his command. Grievant concluded the overtime shifts without ensuring that the trooper under his command completed the case investigation summary and associated documents including the filing of criminal charges which necessitated other supervisors to intervene in the following shifts. Said behavior constitutes a violation of work rules 4501:2-6-03(A)(1).

Employer maintains that the discipline is progressive. Grievant has had issues related to his supervisory role in the past. He has been trained and has completed three (3) courses to address his deficiencies. Supervisory

related issues have been addressed in his performance evaluation. Grievant has a one-day suspension and two-day suspension on his department record. These disciplines stem from three prior charges of Failure to Supervise or Perform Supervisory Duties and one charge of Responsibility for Orders/Command. It is the position of Employer that the behavior of Grievant had not changed, and, it was necessary to advance to the next step in progression. Employer had just cause to issue a five-day suspension. Employer requests the Arbitrator uphold the discipline, and deny Grievance No. 15-03-20091220-0174-07-15 in its entirety.

UNION

Union contends that Grievant supervised the other troopers in his command. The traffic stop occurred close to the end of their midnight shift. Grievant and other troopers provided assistance to the I.C.E. agents; overtime was necessary. Grievant had seventy two (72) hours to complete the Records Information Management Report System (RIMS) consistent with policy, and it was his intention to return to work to complete the same. Grievant was contacted at home the same day, and questioned about the records information, and the actions being taken to complete the case. Supervisors often work together to ensure that matters are processed in a timely manner at the Hiram Post. There is no just cause to discipline.

Union contends that agency specific forms were not completed because it was I.C.E.'s case. The forms required by I.C.E. were completed, and a copy was provided to the post upon request. The I.C.E.'s agents gave specific instructions not to handle money, and the Grievant complied. The I.C.E.'s agents were pleased with the cooperation and assistance provided by Grievant and the other troopers. No issue of chain of custody presented itself, and neither case was jeopardized by the lack of internal documentation. Grievant was disciplined because the Ohio State Highway

Patrol was not entitled to any forfeiture funds because I.C.E. processed the money. This is not a cause for discipline.

Union contends that if just cause is found, the discipline imposed is excessive. It is contemplated by the Collective Bargaining Agreement that the penalties can be repeated; it is not necessary to advance to the next step in progression. The discipline must be commensurate with the offense, and, based upon the facts of this case, should be reduced.

Union requests the Arbitrator grant Grievance No. 15-03-20091220-0174-07-15, and that his five (5) days of wages and benefits returned to him, his department record be cleared and to be made whole.

DISCUSSION

Grievant is charged with a violation of Work Rule 4501: 2-6-03(A)(1) Responsibility of Command, specifically failure to supervise a trooper who was in his command in the performance and effective discharge of their duties. On the date of the incident, Grievant was the midnight shift supervisor. The hours for midnight shift are 11-7, and 10-6. The traffic stop which is the subject of the administrative investigation was made by Trooper Head at 5:39a.m. Grievant, Trooper Weiss, and Trooper Burkey responded to the scene. There is no allegation that Grievant failed to properly supervise the troopers at the scene.

Employer raised concerns about the overtime. The schedule shifts of Grievant and Trooper Weiss on that date were 11-7. The scheduled shifts of Trooper Burkey and Trooper Head were 10-6. The Grievant and other troopers arrived at the post between 7:00-7:18a.m. At the time of their arrival, Trooper Burkey and Trooper Head are in overtime status. If the actual arrival time is after 7:00a.m., Grievant and Trooper Burkey are also in overtime status. The I.C.E. agents conducted separate interviews of the three suspects, and the troopers maintained surveillance of the suspects.

The Step II response indicates that "For the next several hours, I.C.E. agents interviewed the suspects." Trooper Weiss incurred four and half (4½) hours of overtime and Trooper Burkey incurred four (4) hours of overtime. Agent Bodo stated that the separation of witnesses and security provided by the post were beneficial to the interrogation process. Additionally no statements were taken of Trooper Weiss and Burkey. Grievant incurred five and half (5 ½) hours of overtime. Grievant testified that he monitored the troopers watching the suspects, assigning day shift units tasks, and talked with the I.C.E. Agents. Grievant also answered questions posed by Trooper Head. There was no evidence of any time study of the duties performed by Grievant. The administrative investigation does not delve into questions related to the time allocation of his work product on that date. Trooper Head worked six and one quarter (6¼) hours of overtime. His administrative investigation statement states that to the best of his knowledge he worked five and half (5 ½) hours on the RIMS report. There was no evidence introduced that the time allocation of duties for Trooper Head was unreasonable. Grievant testified that the RIMS report was not completed due to overtime concerns, and he instructed Trooper Head to upload and bring the report back down to complete on his next shift. The overtime concern is not persuasive to support a just cause determination.

The employer argues that Grievant instructed Trooper Head to complete a case investigation, and then failed to properly supervise and oversee the quality of RIMS report generated by Trooper Head. Trooper Head did not testify. In his administrative investigation statement, he affirms that Grievant instructed him to complete the report. Trooper Head stated that he did not have any difficulty entering the case. Grievant answered all questions to the best of his knowledge. Grievant told him to work on the case the following night when he returned to work. Grievant did

not review the report before he "secured". The testimony of the Grievant does not conflict with the statements of Trooper Head. Grievant further testified that he instructed Trooper Head, knowing that the report was incomplete, to "upload the file and bring it back down" to work on the case the following night.

Employer and Union stipulated that policy provides for seventy two (72) hours for entering a case investigation. Employer argues that Grievant was not scheduled to return to work five (5) days later outside of the seventy two (72) hours for completion, and therefore, could not comply with policy. Grievant testified that he often goes to the post to complete work related duties, and it was his intention to return on his day off. He was concerned about the overtime when he ended the overtime shift that day. However, Grievant received a call from the post regarding the incompleteness of the reports, and was told that the matter was being handled by the supervisor on staff resulting in an inability of Grievant to comply with policy.

Trooper Head also failed to file the original charge and statement of facts under the command of Grievant. The court contacted the post to request the original charges and statement of facts by the close of the business day on August 31, 2009. Trooper Head stated that the charge could have been filed during the overtime shift. Grievant was the supervisor at that time, and was not aware that the charge was improperly filed with the Court.

There was no evidence concerning the years of service of Trooper Head, and the level of supervision that was necessary. Is he a trainee or a veteran? Grievant responded to all questions asked by Trooper Head. Without such evidence, filing charges should have been a routine matter for Trooper Head.

In summary, the Employer did not satisfy its burden of proving that the Grievant failed to supervise troopers under his command. There is no just cause to discipline Grievant for responsibility of command.

Ohio State Highway Patrol Policy Number OSP-103.10 (J) provides in pertinent part that "recovered money and money seized as evidence shall be counted separately by two officers. A release receipt (HP-60) shall be given to the person from whom the money is seized, and a property control form (HP-28) shall be completed." It is not disputed that Grievant seized possession of six bundles of U.S. currency in a vacuum sealed package. It is not disputed that Grievant did not complete any of the Agency specific forms. Grievant stated that he had forgotten to complete the property control form, and did not have the Agent sign a release receipt for the money. Grievant testified that he released the money to the I.C.E. agent pursuant to his instruction. Said conduct does constitute a failure to carry out all duties with neglect, and is a violation of work rule 4501:2-6-02(B)(1).

There must be a reasonable relationship between an employee's misconduct and the punishment imposed. Just cause requires that the determination of whether the conduct of the Grievant warranted a five (5) day suspension. 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 goal is not to punish the employee but to more strongly alert the employee of the need to correct the problem.

Chain of custody is an important element in a criminal or civil case. Grievant failed to complete documents maintaining the chain of custody of seized property. However, similar documents were completed by federal agents. Money was not counted per instructions of the federal agents but contrary to departmental policy. There was no evidence that the lack of the internal documentation affected the liability in the municipal court case or in

the federal case. And to the contrary, Agent Bodo praised the cooperation and assistance of Grievant and the post in his investigation. Union was quick to point out that since the money count was not conducted, the Ohio State Highway Patrol did not receive a portion of the forfeiture funds. Forfeited funds are a source of revenue for the Patrol.

Grievant has been working as a trooper for twenty four years, nine of which as a sergeant. His special performance review for the review period of March 17, 2008 through September 3, 2008 indicates an overall rating of satisfactory with partially meets for Quality and Quantity/Timeliness dimensions. His annual performance review for the review period of September 3, 2008 through July 3, 2009 indicates a rating level of meets or partially meets with an overall rating of satisfactory. Both reviews express a concern that Grievant needs to focus on task at hand in an accurate and thorough manner. Grievant has attended three management training programs to improve recognized deficiencies in his supervisory role. Grievant has prior disciplines, a one day fine for compliance to direct orders/policy, a three day fine for failure to supervise or perform supervisory duties, a one day fine for intentional discharge or misuse of firearm, and several reprimands.

The Collective Bargaining Agreement provides that disciplinary action shall include one or more verbal reprimand(s); one or more written reprimand (3); or one or more day(s) suspension(s) or a fine not to exceed five (5) days pay. It is contemplated by the Collective Bargaining Agreement that the penalties can be repeated; it is not necessary to advance to the next step in progression.

Giving appropriate weight to all relevant factors, the Arbitrator finds that the Grievant violated Work Rule 4501:2-6-02(B)(1) Performance of Duty on August 30, 2009. The five-day suspension of the Grievant was

excessive as punishment as to be unreasonable. The Arbitrator therefore sustains the Grievance no. 15-03-20081120-0170-04-01, in part.

AWARD

Having heard and read and carefully reviewed the evidence and argumentative materials in this case and in light of the above Discussion, Grievance No. 15-03-20091220-0174-07-15, is sustained in part for Performance of Duty. There was just cause to discipline Grievant for failure to complete documentation. The five-day suspension is hereby modified to a three-day suspension. Grievant is to be made whole including being given back pay and benefits less the period of the suspension. The grievance is sustained as to the charge of Responsibility of Command. There was no just cause to discipline.

Dated: February 8, 2011

/S/ Meeta Bass Lyons _____
Meeta Bass Lyons, Arbitrator
Steubenville, Ohio