

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-20100226-015-04-01

Ohio State Trooper Association

GRIEVANT: Donald E. Walker

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:

Lieutenant Kevin D. Miller, Ohio State Highway Patrol
Employer Advocate

Sergeant Anne R. Ralston, Second Chair
Marissa Hartley, Office of Collective Bargaining

UNION:

Elaine Silveira, Ohio State Trooper Association
Union Advocate

Wayne McGlone, OSTA Representative
Grievant: Donald E. Walker

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. 15-03-20100226-015-04-01 was submitted by the Union to Employer in writing on March 3, 2010 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# 10-015, 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(Y)(2) Compliance to Orders

A member shall conform with, and abide by, all rules, regulations, orders and directives established by the Superintendent for the operation and administration of the division.

Work Rule 4501: 2-6-05(D)(1) Motor Vehicle Operation

A member shall operate all division motor vehicles in accordance with all applicable laws and directives.

BACKGROUND

On September 26, 2009 Grievant was involved in a patrol car crash involving a deer. Grievant lives about thirty-five (35) miles from the post. Grievant left his home approximately 5:00a.m., and his shift starts at 6:00a.m. Grievant routine stops at the Circle K in Randolph Township on Waterloo Road, SR 44 to get coffee and to talk with the other patrons. The distance from Circle K to the Warren Post for the route that Grievant travelled is 31.14 miles. Grievant is not aware of the time that he frequented the Circle K; he left his home around 5:00p.m. and believed that he stopped and remained at the Circle K for approximately twenty-five (25) to thirty (30) minutes. Grievant left the Circle K, and was travelling on State Route 5 in Portage County on his way to work when a deer darted in front of his cruiser. Grievant was not injured. The estimate to repair the patrol car was in excess of \$10,000 and the vehicle was not repaired.

Grievant did not provide a rate of speed at the time of the accident, investigation or hearing. The route travelled by Grievant has various speed limits. SR 44 at Waterloo Road starts out as a 45 mph zone, changes to a 55 mph zone after 9miles, changes back to a 45mph zone after 3.5 miles, changes to a 40mph zone after 4 miles and then back to a 55 mph zone after 6.3 miles where it merges to SR 5. State Route 5 is a 55mph zone up to the crash scene. Grievant reported the crash at 5:49a.m.

A civilian travelling behind Grievant for approximately a minute estimated the speed of Grievant at 54-57 miles per hour. The Automated Vehicle Locator (AVL) information from the patrol car of the Grievant was utilized to provide the location and speed of the vehicle from 5:00a.m to 6:00a.m on the date of the incident. An AVL History Report indicates the vehicle travelled at 0 miles per hour from approximately 5:05a.m. to 5:30a.m. The GPS Report indicates the patrol car was in the lot at the Circle K at this time. The first speed the AVL History Report shows is 78 miles per hour at approximately 5:32a.m. The GPS Report indicates that Grievant

location is SR44 north of Waterloo Road. The last speed shown on the AVL Report is 88 miles per hour. The GPS report indicates that Grievant location at that time is SR 5 near SR225, west of the location where Grievant struck the deer. Grievant reported the crash over his radio at 5:49a.m.

The investigation showed that Grievant was operating his patrol car at excessive speeds prior to the crash and the patrol car crash was determined to be preventable. Grievant was charged with violation of work rule 4501:2-6-02(Y)(2) Compliance to Orders, and work rule 4501: 2-6-05(D)(1) Motor Vehicle Operation. The Union filed its grievance on March 3, 2010 alleging a violation of Article 19.01 and 19.05 Standard. The grievance was not resolved within the procedure established by the collective bargaining agreement, and was properly advanced to arbitration.

EMPLOYER POSITION

Employer contends that routine deer crash reports are normally coded as a non-preventable crash and the officer is not disciplined. This grievance is different because Grievant was travelling at excessive speed as captured by the GPS-AVL locator in the patrol car. A preventable crash is defined by policy as when an employee fails to reasonably do everything to prevent a crash. The employer maintains that if Grievant is not obeying the speed limit then Grievant is not doing everything to prevent a crash. There is just cause to discipline Grievant.

Employer contends that Grievant was travelling at excessive speeds in violation of policy. It is impossible to travel the distance from the Circle K to the Warren Post at the posted speed limits (reduced zones) from the time Grievant left and arrive at the post prior to the start of his shift. The AVL is accurate, and the radio traffic on the vehicle correlates with its location. The system shows Grievant on the exact routes he takes for his commute. The witness to the crash stated that he was only behind the patrol car for

approximately one minute and was approximately 200 yards behind him. Damages to the patrol car totaled \$10,000.00; the excessive damage is an indicator of excessive speed. There is just cause to discipline Grievant for excessive speed.

Employer contends the discipline imposed on Grievant was not arbitrary, capricious or discriminatory. The department record of Grievant department includes two reprimands, two one-day suspensions, and a three-day suspension. Employer levied the next step in discipline process, a five day suspension. The discipline was progressive in nature, and grievance should be denied.

UNION POSITION:

Union contends that a deer crash is not-preventable regardless of speed. Deer crashes totaled 25,258 in 2009. Portage County, the county in which the crash occurred, had 468 crashes. Trumbull County, where the Warren Post is located and Grievant is assigned, had 429 deer crashes in 2009. The crash should not have been classified as preventable. Discipline should not be imposed for a non-preventable deer crash.

Union contends that the GPS AVL report is not reliable. There was also a witness to the crash that had been travelling behind him and noted his speed at approximately 55 mph. In 2009 a reconstruction was conducted for an investigation. The conclusion of the crash reconstruction work indicated that the speed at the time of impact was closer to 70mph statement given by the driver rather than the 84mph GPS reading. Grievant was not travelling 88mph as indicated by the GPS AVL, and there was no just cause to discipline.

Union contends that this case is one of disparate treatment. This administrative investigation is the only administrative investigation conducted on a deer crash in 2009. The administrative Investigation was

coded differently to invoke greater discipline. There was no just cause to discipline.

Union contends that five (5) days is excessive and in light of the evidence of disparate treatment, it is arbitrary capricious and discriminatory. If it is determined that the accident was preventable, then in six other preventable car crashes in 2009, only a verbal reprimand was issued. Grievance should be granted, his department record cleared, his wages and benefits restored; and otherwise be made whole.

DISCUSSION

Ohio Department of Public Safety Policy Number: DPS-100.01 provides in pertinent part:

“ When a DPS employee is involved in a traffic crash while operating a State-owned or leased motor vehicle, the crash will undergo a DPS administrative review to determine if the crash is preventable or non-preventable. 1) Definition – Regardless of any negligence of any other parties involved, a preventable crash is defined as “when an employee fails to reasonably do everything to prevent a crash”... a.) Exception- Clearly non-preventable crashes, such as crashes involving collision with animals or debris on the roadway, are not generally reviewed. If there are no extenuating circumstances, a supervisor will submit the report as non-preventable and not send it to AIU or any Division-established crash review committee.”

Grievant was involved in a patrol car crash involving a deer. In accordance with policy absent extenuating circumstances, the crash should not have been reviewed. Grievant failed to provide the rate of speed that he was travelling which necessitated a review of the GPS/AVL locator. The AVL indicated that Grievant was driving well in excess of the posted speed limit in violation of Ohio State Highway Patrol Policy Number: OSP -200.06. OSP -200.06 states that all traffic laws will be obeyed. Lawful speed limits should not be exceeded during motor vehicle operation with exceptions. No exception existed in this case for excessive speed. The violation of the

patrol motor vehicle operation policy is an extenuating circumstance, and the crash is subject to review.

Union argues that this is the only deer car crash investigated in 2009. The policy provides that these types of cases are generally not reviewed unless there are extenuating cases. There were no comparables presented with deer crashes involving speed in order to consider this argument of disparate treatment.

Speed does not prevent a deer from darting in the path of an approaching vehicle. The deer is just there, and there is nothing a driver can reasonably do. The crash is non-preventable.

Notwithstanding speed in excess of lawful speed limits is a violation of departmental policy. The AVL history indicates speeds of 78 to 88mph in speed zones from 45 to 55mph. Grievant does not recall his speed. There was no evidence that AVL locator was not properly operating on September 26, 2009. The statement of the driver observing the patrol car for a minute approximately 200 yards behind the patrol car is not persuasive evidence of the speed of Grievant from the time Grievant left Circle K to the crash.

In summary, the Arbitrator is persuaded and finds that Employer satisfied its burden of proving that the Grievant failed to travel at a lawful speed in accordance with policy and procedure. There is just cause to discipline.

The next issue is to determine the appropriateness of the remedy. The Employer levied a five-day suspension for speed and preventable crash. Union submits six preventable car crash cases in 2009 where the penalties imposed were verbal reprimands. The summary of AI Case Number 20090324 in particular states that a preventable crash occurred while Grievant was travelling 70mph in a 45 mph zone responding to a call for assistance from another agency with no light and siren, and struck a vehicle; the discipline was a verbal reprimand. The complexion of this case has

changed from a preventable accident to a non-preventable accident. The inquiry is limited to noncompliance to work orders, and specifically, motor vehicle operation.

Just cause requires that the determination of whether the conduct of Grievant warranted a five (5) day suspension for excessive speed. Grievant has been working as a trooper for a little over thirteen (13) years. Grievant was speeding at an excessive rate in his patrol car while travelling to work to start his shift. A non-preventable crash occurs. The Lieutenant attributes the excessive damage to the patrol car to speed but a reconstruction was not done. If the determination was preventable, and it is not, there is a separate disciplinary track. Grievant has prior disciplines, a three day suspension for negligent loss of equipment, a one day fine for compliance to direct orders/failure to file reports, a one-day fine for negligent damage of equipment, a verbal reprimand for failure to properly handle recovered property and a written reprimand for mishandling of an event.

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

Giving appropriate weight to all relevant factors, the Arbitrator finds that on September 26, 2009 Grievant violated Work Rule 4501:2-6-02(Y)(2) Compliance to Orders and Work Rule 4501: 2-6-05(D)(1) Motor Vehicle Operation. The five-day fine of the Grievant was excessive as punishment as to be unreasonable, and contrary to Article 19.01 and 19.05 of the 2009-2012 Collective Bargaining Agreement. The Arbitrator therefore sustains the Grievance no.15-03-20100226-015-04-01 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., 15-03-20100226-015-04-01 is sustained in part. There was no just cause to discipline as a preventable car accident. There was just cause to discipline Grievant for Motor Vehicle Operation on said date. In consideration of his department record, the five-day suspension is hereby modified to a one-day suspension. Grievant is to be made whole including being given back pay and benefits less the period of the suspension.

Dated: February 8, 2011

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