

IN THE MATTER OF ARBITRATION
BETWEEN

OHIO STATE TROOPERS ASSOCIATION Unit 15
Employee Organization

And

STATE OF OHIO, DEPARTMENT OF PUBLIC SAFETY
Employer

GRIEVANT Trooper Marshall Williams

Case No. 15-03-20100513-0094-04-01

UMPIRE'S DECISION AND AWARD

Appearances:

For the Employee Organization:

Elaine Silveira, Esq.

For the Patrol:

Sgt. Anne Ralston

UMPIRE

Sandra Mendel Furman, J.D.
1119 South Cassingham Road
Columbus, Oh 43209

INTRODUCTION

This matter was heard before the undersigned on April 7, 2011 in Columbus, Ohio at the OSTA headquarters. Grievant was the union witness. Also present were OSTA President Larry Phillips, Unit 15 Release person Jeremy Mendenhall and Staff Representative Dave Riley. Elaine Silveira represented Grievant at the hearing.

The State's witness was Capt. Roger Hannaway who supervised Lt. Butts, the officer who conducted the administrative investigation. (AI)¹. Also present were Lt. Kevin D. Miller from central office of the Patrol and Marissa Harley from the Office of Collective Bargaining. Sgt. Anne Ralston represented the Patrol.

The contract, grievance trail and disciplinary notices and pre disciplinary papers were introduced and accepted as Joint Exhibits 1-3. The Patrol introduced exhibits. Exhibits will be discussed below as relevant.

There were no procedural arguments presented.

A request for separation of witnesses was granted. Each side was given the opportunity to call witnesses and cross-examine witnesses and present relevant materials in support of their position. All witnesses were sworn. Post hearing arguments were made at the close of the hearing. The decision is submitted within the time period agreed to by the parties.

ISSUE:

Was the Grievant suspended 1 day for just cause? If not, what shall the remedy be?

APPLICABLE CONTRACT SECTION:

Article 19.01

STATEMENT OF FACTS:

Grievant is employed as a Trooper at the Warren Post District 4 Post 78. He has been employed there for five years.

There is minimal factual dispute. Grievant was patrolling when he became involved in a high speed pursuit. The call was initiated by the Warren Police

¹ There were three (3) Troopers charged from the events on June 7, 2011. The results in their cases are not before the arbitrator. The Union did not argue disparate treatment.

Department located in Trumbull County. Grievant joined the pursuit first on state highways then the turnpike. . At that time he was flashing his lights and not sounding his siren according to his testimony. He claimed that his siren was on each time he entered an intersection. Once the chase entered the Ohio Turnpike Grievant did not have his siren on continuously and participated in the pursuit with the lights flashing.

Although the chase was in the very early morning hours of June 7th there were vehicles on the turnpike. Once the chase proceeded to the turnpike the Patrol became the primary law enforcement agency.² Grievant passed 6 vehicles on the turnpike and there were 5 on coming vehicles passed as well before his vehicle entered the pike.

He was travelling at speeds in excess of 90 mph until the suspect was stopped at the toll booth by other law enforcement officers. Grievant was never the lead vehicle in any portion of the pursuit. In contrast to the Grievant, Lt Butts as the investigating officer stated Grievant's siren wasn't activated at all while he is trying to catch up or when he is in close proximity of the pursuit. The in car video captured the entirety of the chase. It was made an exhibit at the hearing.

Grievant received training post incident in use of audio and pursuit policies. Grievant admitted that his siren was supposed to be on while engaged in pursuit.

Grievant did not have his body microphone on during the entire time of the pursuit. The body microphone is activated by a switch. He stated that he believed that had checked it when his shift began. He did not claim it was malfunctioning that date. He stated that there are occasions when it failed. Grievant acknowledged that the body mic is to be on the entire time he is out of the vehicle.

At the AI interview Williams stated there was no reason for his body mic to not be on when he left his cruiser during the stop. At the grievance meeting preceding arbitration he claimed he didn't activate it due to the stress of the moment. This claim was not repeated at the arbitration.

² Champion Township was the first law enforcement agency involved.

Grievant explained why he did not activate his siren during the portions of the chase noted in the investigation. He claimed that it made it harder to hear the dispatcher. He alternately had on the yelp and/or the wail feature per his statements during the AI.

Captain Hannaway agreed that sirens can make it hard to hear the dispatcher. He indicated it was not a *per se* violation to turn off the sirens when listening to dispatcher details.

Testimony made it clear that Trooper Williams was following others once he joined the pursuit and thus no longer needed direct instructions from the dispatcher as to location of the other law enforcement officers and the suspect. He was in visual contact with the lead vehicle once he entered the turnpike.

Grievant was not originally investigated or charged with the failure to activate his body microphone. (M-1 pg. 18) This charge was added at a later date.

After the investigation Grievant was charged with violation of work rule 4501:2-6-02 (Y) (2) Compliance to Orders

The rule states:

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. .

The Patrol also introduced OSP Policy number 200.06.³

A.4.a. When using patrol vehicles equipped with in-car video systems make every effort to document the traffic violation and/or criminal conduct through audio and visual recordings.

C. 1. "Emergency response" is defined as the response to a situation in which the physical safety and well-being of a person is directly jeopardized.

D. Emergency Equipment

1. Response Using Emergency Warning Equipment

a. Emergency warning equipment is defined as specialized equipment designed to warn highway user of an

³ The effective date of the policy revision was 2/25/10. It is unknown which sections were revised. The exhibit was admitted without objection.

approaching, existing, or pending hazard. This includes the rotating/flashing lights (emergency lights) and siren.

b. In those situations where the necessity for the officer's immediate arrival outweighs the hazards of emergency response operation, officers shall use emergency warning equipment in accordance with the Ohio Revised Code and Division directives.

c. Use emergency warning equipment

- During a pursuit;
- During an emergency response;..

Grievant received a one (1) day suspension on April 12, 2010. The specific allegations were:

...on June 7, 2009 you failed to comply with the Division's policies regarding the use of audio/visual and emergency equipment during a pursuit and the subsequent traffic stop.

Grievant's record of department lists the following:⁴

1. 2-9-2009 One (1) day suspension for failure/delay in reporting damage to his patrol vehicle.
2. 2-7-2009 verbal reprimand for a preventable crash.
3. 7-20-08 One (1) day fine for firing a round from his firearm while cleaning it.
4. 7-3-2008 written reprimand for issuing a citation when he wasn't sure the violator had committed the offense and for not having his audio on for the in car video
5. 4-7-2008 written reprimand for failure to search an OVI arrested suspect for weapons; tardy more than one hour for a court date and failure to be in uniform hat and tie for the court appearance.

EMPLOYER POSITION

Grievant violated a work rule. He failed to activate his body microphone and he failed to maintain his siren in the on function during a high speed

⁴ Grievant had a three day suspension issued in October 19, 2010 for violation of the same work rule He allegedly failed to turn on his in car camera for nine days. This matter was not taken into consideration by the arbitrator.

emergency pursuit. These are known rules. Grievant's department record illustrates that the discipline is progressive.

The grievance should be denied.

UNION POSITION

Grievant did not intend to violate the rules. It was reasonable and necessary for him to turn off the siren in order to hear the dispatcher. He was not the primary on the pursuit. The early morning hours lessened the traffic on the turnpike. The charge related to the body mic was an add-on; it was missed in the first investigative go-round. Williams' conduct did not cause harm to the public. Under the totality of circumstances in this matter the discipline is arbitrary and capricious.

The grievance should be granted in its entirety.

DECISION AND AWARD

The Umpire is deciding this case on the preponderance of evidence standard. Clearly Grievant violated the rules regarding use of the body microphone. Clearly Grievant violated normal operating procedure when he failed to activate his siren during a high speed pursuit. Grievant was aware of both of the rules. The question then becomes are there any mitigating circumstances present so as to require modifying the discipline?

Grievant offered no excuse for not turning on his body microphone.

Grievant's excuse for not turning on his siren was that it made it hard to hear the dispatcher. But the umpire doesn't understand why this was essential once he had visual contact with the other chase vehicles and he was on the turnpike. His siren wasn't on during many moments of silent radio traffic.

Although Captain Hannaway agreed the siren made it hard to hear the dispatchers this is a normal operating condition for Troopers. The solution is to turn up the radio and not violate the policy and training received concerning safety. The sirens are for the safety of all. The turnpike was not deserted. Grievant passed 6 cars while in high speed pursuit. The umpire reviewed the videos and confirmed the facts his siren went off and on for the pre turnpike portion of the chase. The siren wasn't on when he entered the turnpike. The siren

wasn't on during the turnpike chase for many, many long moments. It wasn't on when he approached the toll booth where the chased vehicle was stopped. There was dispatcher traffic while on the turnpike. But the Grievant identified no particular moments or barriers to his understanding of the dispatcher(s) at any point while on the turnpike.

Grievant's response when questioned originally about his failure to adhere to rules was that he was being "Monday morning quarterbacked." This response does not acknowledge any wrongdoing. Troopers conduct is subject to review under the circumstances here extant.

It isn't Williams' first failure to abide by this rule. (e.g. written reprimand concerning failure to have on his in car audio). The obvious need to sound the siren during this chase militates against a reduction of penalty. Grievant compounded his failure to comply with the rule by not activating his body mic- a known and routine procedure. There was no "equipment failure" claim. The discipline is progressive and not excessive under the circumstances.

AWARD

The grievance is denied.

IT IS SO HEREBY ORDERED

s/



Sandra Mendel Furman, Umpire

Issued in Columbus, Ohio on April 20, 2011