

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-20110120-0023-04-01

Ohio State Trooper Association

GRIEVANT: Edward Weirrick

AND

The State of Ohio
Ohio State Highway Patrol

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: December 21, 2011

APPEARANCES FOR THE PARTIES

Employer:

Staff Lt. Charles J. Linek, Ohio State Highway Patrol

Employer Advocate

Lt. Kevin D. Miller, Ohio State Highway Patrol, Second Chair

Marissa Walter, Office of Collective Bargaining

UNION:

Elaine Silveira, Ohio State Trooper Association

Union Advocate

Herschel Sigall, Ohio State Trooper Association, Second Chair

Dave Wiley, Staff Representative

Larry Phillips, President

Grievant: Edward Weirrick

PROCEDURAL HISTORY

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

Grievance No. 15-03-20110120-0023-04-01 was submitted by the Union to Employer in writing on January 20, 2011 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 December 7, 2011 at the Office of the Ohio State Troopers Association, 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 December 7, 2011.

The parties stipulated that the grievance and arbitration were properly before the Arbitrator, and submitted joint stipulations of fact.

The parties stipulated that the issues to be resolved in the instant arbitration to be: Did the Grievant receive a one (1) day fine 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 501:01(C)(10)(b) Neglect of Duty

Failure to perform job duties as specified; failure to appear for work without notification to, or approval of, the employee's supervisor; absenteeism; tardiness, excessive use or abuse of sick leave; leave without pay, without an approved leave of absence.

BACKGROUND

On October 11, 2010, Grievant was the sole dispatcher working at Van Wert Dispatch Center. Grievant was responsible for dispatching for units assigned to the Lima Post and the Van Wert Post. Grievant requested a restroom break shortly before 5:01p.m., and the Sergeant indicated that he would relieve Grievant as soon as he finished some paperwork. Within minutes, the post received a Signal 31A call (an accident with injuries). The Sergeant immediately responded. Grievant remained at his post without the restroom break. Due to the nature of the accident, Grievant became busy monitoring the accident and performed tasks related thereto.

The Sergeant and Trooper at the accident scene called for printouts; Grievant attempted to print the requested information but the printer was out of copy paper. About the same time, a unit at a traffic stop requested credit card information but there was no paper in the printer. Grievant arose from his chair to get the copy paper, and had an urgent need to urinate. Grievant placed the desk on Signal One (desk out of service) without transferring full communications to another facility, and went to the restroom first and then the kitchen area to get the copy paper. When he returned Grievant placed the desk on Signal Two (desk back in service), and resumed his duties at the desk. Grievant was away from his desk for fifty-one (fifty one) seconds.

Grievant was charged with violation of work rule 501.01(C)(10)(b) Neglect of Duty. The Union filed its grievance on January 20, 2011 alleging a violation of Article 19.01 Disciplinary Procedure Standard. 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 argues that Grievant left the dispatching station unattended and failed to transfer the Computer Aided Dispatch (CAD) and radios to another facility while he used the restroom and retrieved copy paper in violation of Ohio State Highway Patrol Policy Number: OSP-403-14. Grievant had knowledge of said policy, and failed to comply with its provision. There is just cause to discipline Grievant.

Employer contends that the discipline imposed was not arbitrary, capricious or discriminatory. At the time that the discipline was imposed the department record of Grievant already contained a written reprimand for failing to follow proper procedure. A one (1) day fine is the next step in progressive discipline.

Employer argues that mitigation was not warranted. It was the original intention of Grievant to leave his station unattended in order to retrieve copy paper from the kitchen area before he realized that he had to urinate. Grievant who suffers from a medical condition with symptoms of frequent urination knew he had to urinate prior to 5:01 when his Sergeant left the post, but he did not manage to take the restroom break until 6:20p.m, and hour and nineteen minutes. Employer contends that somewhere between that timeline Grievant could have taken a restroom break in accordance with procedure. More importantly, Grievant left his station while another trooper was conducting a traffic stop. A dispatcher is the lifeline for the officer on the road. A situation can go bad instantly while on the road. The discipline was commensurate with the offense.

Employer requests the Arbitrator to deny Grievance No. 15-03-20110120-0023-04-01.

UNION

Union contends that progressive discipline requires that discipline be commensurate with the offense. Grievant suffers from a medical condition which is known to Employer. Grievant had a personal emergency, an exigent need to urinate, to prevent the soiling of his clothes. Grievant made a decision that he believed was best at that time. Grievant was away from his desk for fifty-one seconds, and nothing happened during his absence. The fifty-one seconds included time to urinate and to locate copy paper in order to obtain print outs for the trooper on the road. The one day fine is not commensurate with the offense when no harm occurred.

Union contends that although Grievant had a written reprimand on his record, a one (1) day fine for a fifty-one (51) second violation of policy is excessive.

Union requests the Arbitrator to grant Grievance No. 15-03-20110120-0023-04-01, and that the one day fine be reduced to a written reprimand.

DISCUSSION

Article 19.01 of the 2009-2012 Collective Bargaining Agreement states that no bargaining unit member shall be reduced in pay or position, suspended or removed except with just cause. The just cause standard of review requires consideration of whether Grievant did in fact violate or disobey a known rule or order of Employer. If a violation is proven, other considerations relate to fairness and whether the severity of the disciplinary action is reasonably related to the seriousness of the proven offense and the employee's prior record.

Grievant is charged with violation of Rule 501.01(C)(10)(b) neglect of duty for leaving the dispatch station unattended and failing to transfer the CAD and radios to another facility while he urinated and retrieved copy paper in violation of Ohio State Highway Patrol Policy Number: OSP-403.14 which states:

“...(6) Facilities with a single CAD will implement a full communications transfer for breaks. Full communications transfer consists of transfer of all public phone lines, transfer of full radio/CAD/LEADS operations, and remote video monitoring of the transferring dispatch facility by the receiving dispatch facility.”

The policy covers breaks, and not the retrieval of paper. Grievant was assigned and read the policy on August 30, 2010. It is not disputed that Grievant did not implement a full communication transfer when he went restroom, but instead increased the volume of the radio, and placed the desk on a signal one. Thus, the Arbitrator is persuaded and finds that Employer satisfied its burden of proving that the Grievant failed to implement a full communication transfer in accordance with policy and procedure. The reasonableness of the rule and fairness in the investigation is not at issue. There is just cause to discipline Grievant for violation of Rule 501.01(C)(10)(b) Neglect of Duty.

The next issue is to determine the appropriateness of the remedy. Just cause requires that the discipline imposed reasonably be related to the misconduct or infraction. Grievant was the only dispatcher at the Van Wert Dispatch Center that evening. As a dispatcher Grievant maintains communications with patrol units on duty as well as with other law enforcement agencies. He has a critical role in the safety of the troopers on the road and the public. The Sergeant described a dispatcher as a trooper's "lifeline on the road." Grievant, a four year dispatcher, knew the rule in issue and policy considerations behind said rule.

Grievant requested a restroom break shortly before the Sergeant was dispatched at 5:01p.m. There was no relief for a restroom break after the Sergeant was dispatched unless Grievant transferred all communications to another facility. Grievant elected to continue to work. Grievant received a request from a trooper on the road to complete credit card information, and a request for printouts at the accident scene. There was no paper to print out the information. When Grievant arose from his chair to get the copy paper, he felt an urgent need to urinate. Grievant said "it hit" when he stood up to look for paper for the CAD Printer. Grievant felt that he was either "going to have one unbelievable mess and go home" or put the desk on Signal One. Grievant placed the desk on Signal One at 6:20p.m. Grievant was away from his desk for fifty- one (51) seconds.

Grievant who suffers from a medical condition which results in frequent urination withheld urination for approximately one hour and nineteen minutes to perform his responsibilities at the desk. The exigent circumstances caused him to deviate from policy in a manner he thought would address all concerns. The approximate time to transfer full communications to another facility is approximately a minute to a minute and a half if the facility responds in a timely manner. Due to the urgent need to urinate, Grievant instead increased the volume of the radio and left the restroom door opened so that any communication would be heard. The

restroom and kitchen are relatively close in proximity to his work station as indicated in Exhibit U2, and communications can be heard, and the phone is accessible in these areas.

The supervisor of the dispatchers testified that she has conducted spot reviews of calls. She testified that she has not found any incidences where the desk was placed on Signal one without the CAD being transferred. On the other hand the Sergeant testified that it is common to have the desk on signal one but not when someone is on a stop. This is the reason why he verbally reprimanded Grievant as soon as he cleared his traffic stop. There was no clarification of his response to determine if the CAD and/or full communications are also transferred.

The Arbitrator finds that the discipline imposed is not commensurate with the offense. The conduct of grievant warrants a reprimand. The Collective Bargaining Agreement further 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 October 11, 2010 Grievant violated Work Rule 501.01(C)(10)(b) Neglect of Duty. The one-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. 15-03-20110120-023-04-01 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., 15-03-20110120-023-04-01. There was just cause to discipline. The one-day fine is hereby modified to a written reprimand. Grievant is to be made whole including being given back pay.

Dated: December 21, 2011

/s/ Meeta Bass Lyons

Meeta Bass Lyons, Arbitrator
Steubenville, Ohio