IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 15-03-20110103-0001-04-01

Ohio State Trooper Association

GRIEVANT: Cory D. Harris

AND

The State of Ohio
Ohio Sate Highway Patrol

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: December 21, 2011

APPEARANCES FOR THE PARTIES

Employer:
Lt. Kevin D. Miller, Ohio State Highway Patrol
Employer Advocate
Staff Lt. Charles J. Linek, Ohio State Highway Patrol
Second Chair
Marissa Walter, Office of Collective Bargaining

UNION:
Herschel Sigall, Ohio State Trooper Association
Union Advocate
Elaine Silviera, Ohio State Trooper Association
Second Chair
Larry Phillips, President
Bob Cooper, Staff Representative
Grievant: Cory D. Harris

PROCEDURAL HISTORY

Ohio State Highway Patrol is hereinafter referred to as "Employer". Ohio State Trooper Association, OSTA, is hereinafter referred to as "Union". Cory D. Harris is hereinafter referred to as "Grievant".

Grievance No. 15-03-20110103-0001-04-01 was submitted by the Union to Employer in writing on January 3, 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: Was the Grievant issued a 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 4501:2-6-02(B) (1)(5)
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.

Members who fail to perform their duties because of an error in judgment or otherwise fail to satisfactorily perform a duty of which such member is capable, may be charged with inefficiency.

BACKGROUND

On October 18, 2010, Dispatch received a telephone call from a driver involved in a two car accident. The driver reported what he characterized as a "fender bender" with no injury. Grievant was dispatched to the scene. Upon arrival, Grievant observed the vehicles which were moved to the side of the road. There was no damage and no injury reported by drivers. One driver admitted to fault; the parties advised Grievant that they agreed to privately handle the matter with the exchange of insurance and telephone information. Grievant did not complete a crash report or conduct a crash investigation at the accident site.

On October 25, 2010, the other driver, an elderly man, came to the post and requested a copy of the crash report. He wanted to know if he was at fault for the accident. He did not recall the nature of his discussions with the other driver and Grievant. After a search for the information related to the accident, it was discovered that Grievant was the trooper who responded to the scene. The CAD entry stated "no damage, no report taken." Grievant was questioned about the incident, and was instructed to do the report. Grievant conducted a crash investigation, and issued a citation.

Grievant was charged with violation of work rule 4501:2-6-02(B)(1)(5) Performance of Duty. The Union filed its grievance on January 3, 2011 alleging a violation of Article 19.01 Standard and 19.05. 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 one of the primary goals of the Division is the prompt and professional investigation of traffic crashes. OSHP Policy dictates that traffic crash reports are completed regardless of the wishes or arrangements made by the parties involved. Grievant had notice of said policy and failed to complete the crash report in accordance to policy. There is just cause to discipline Grievant.

Employer maintains a strong stance on discipline for troopers who fail to complete crash reports when dispatched to the scene. Discipline for these types of infractions start at the suspension or fine level. The failure of the Grievant to take appropriate action at a crash scene created a significant inconvenience. Employer has routinely levied more severe discipline for these infractions, but only issued a one-day fine in this instance.

Employer contends that the Ohio Revised Code does not dictate its policy. As long as policy is not in variance with the statute, the policy controls. OSHP Policy dictates that at a minimum, a crash report should have been completed when there are observed damages.

Employer requests the Arbitrator to deny Grievance No. 15-03-20110103-0001-04-01.

UNION

Union contends that although Grievant failed to issue the report, Grievant was under the mistaken belief that Ohio law was the operative guideline when responding to the crash. Union argued the law requires that anyone involved in an automobile crash must report that the crash to the Bureau of Motor Vehicles if there is an injury or damages in excess of $400.00. Grievant misread the policy, and believed the law was adopted by the highway patrol. The discipline imposed is not commensurate with the offense.

Union contends that the discipline imposed, a one day fine, is excessive. Training, and not an economic loss, is an appropriate remedy to bring about correction in this instance. Grievant is a ten year trooper with no prior discipline record other than the instant issue. The Collective Bargaining Agreement provides for progressive discipline. Progressive discipline establishes a ladder of disciplinary measures which increase the level of discipline imposed for repeated or more serious violations. The conduct of Grievant does not warrant a jump in discipline.

Union contends that the Grievant is a technical crash investigator trained by the Patrol. Grievant responded to the scene of the accident, and observed, in his opinion, minimal damages to the vehicles. There was no personal injury. One driver had acknowledged liability, and insurance information exchanged. Both passengers agreed to resolve the matter between them. This case does not involve avoidance of any duties and responsibilities. A one day fine penalty imposed is not commensurate with the offense.

Union requests the Arbitrator to grant Grievance No. 15-03-20110103-0001-04-01, 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 rule or order of Employer. If a violation is proven, other considerations relate to fairness and whether the severity of disciplinary action is reasonably related to the seriousness of the proven offense and the employee's prior record.

Ohio State Highway Patrol Policy Number: OSP-200.01 (Crash Investigation) states in pertinent part:

> 3.) **Reported vs Investigated Traffic Crashes** -Ohio State Highway Patrol sworn officers will "investigate" all traffic crashes reported to the Division occurring outside municipal corporation limits, unless circumstances dictate that a "report" is all that is necessary or possible. Determining when to investigate or simply report is based on many factors, including when the crash occurred, where it is reported, and the type and circumstances of the crash…
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> 4.) **Enforcement** – If the investigating officer completes the investigation and determines there is probable cause to believe a person violated a traffic law, a citation should be issued…
>
> B.1) **Report-Only Scenarios** – A traffic crash report usually involves the completion of the OH-1. Complete a traffic crash report… When the crash involves very minor property damage (under$400) and facts surrounding the crash are not contested or are evident to officer and involved parties.

It is not disputed that Grievant did not complete a crash report. The defense of Grievant is essentially that he believed subjectively that his conduct did not violate the policy at the time of the incident, and the discipline imposed was excessive. The Union argues that Grievant had a mistaken belief that Ohio law was controlling, and did not know that the policy imposed more stringent requirements. No testimony was introduced

to support this argument. Grievant stated throughout the administrative process and testified at hearing that the report was not completed because there was minimal damage and no injury, the one driver readily admitted fault and the parties were handling the matter between themselves. This defense was not substantiated.

It was the opinion of Grievant that the damages were minimal at the scene. The elderly driver presented two estimates for the repair of damage to his vehicle. The first estimates totaled $1,363.20 of which $521.00 was for parts and the remainder represented labor costs. The second estimate totaled $1,676.54 of which $595.15 was for parts and the remainder represented labor costs. Grievant did not conduct the investigation at the scene. Employer argued that it is irrelevant whether Grievant did not conduct an investigation because he failed to complete a crash report.

Grievant was assigned Ohio State Highway Patrol Policy Number: OSP-200.01 on April 4, 2010, and read the same on May 1, 2010. Following the incident Grievant reread the policy and acknowledged that he should have completed a crash report.

In summary, Employer did satisfy its burden of proving that the Grievant had notice of Ohio State Highway Patrol Policy Number: OSP-200.01 and failed to complete a crash report in a timely manner. The reasonableness of the rule and the fairness of the investigation are not at issue. There is just cause to discipline Grievant for violation of Rule 4501:2-6-02 (B)(1)(5) Performance of Duty.

Just cause requires that the penalty imposed reasonably be related to the proven offense. The just cause standard incorporates principles of progressive discipline, which gives the employee an opportunity to correct behavior and provides notice that failure to do so will lead to more severe discipline. Progressive discipline generally requires an employer to use minor discipline such as reprimands before imposing more serious discipline such as fines, suspensions or discharge. The Collective Bargaining Agreement

provides that Employer will follow the principles of progressive discipline, and the discipline shall be commensurate with the offense. Pursuant to the Collective Bargaining Agreement, disciplinary action ranges from verbal reprimand(s); written reprimand (s); suspension(s) or a fine not to exceed five (5) days pay, and so forth.

The just cause standard does not require a mechanical application of each disciplinary measure sequence starting with a verbal warning, written warning, then fine or suspension, through discharge. The Collective Bargaining Agreement allows for the imposition of more severe discipline at any point if the infraction or violation merits the more severe action. The test is whether the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense; and (b) the record of the employee in his or her service with the Agency?

It is the position of the Union that Grievant is a ten year trooper with no prior discipline, and the appropriate remedy is a written warning. No harm occurred, and in consideration of the estimates provided a crash investigation was completed with a citation issued. The drivers requested that the Grievant allow them to privately handle this matter. Grievant did not attempt to shirk any responsibility. The conduct of Grievant only imposed an inconvenience with the investigation having to be conducted after the fact.

The evidence however suggests otherwise. Construing the facts in favor of Grievant, there was minimal damage less than $400.00 as observed at the scene, no personal injury, and the facts surrounding the accidents were not contested, the policy dictates that a crash report be completed. Defendant was aware of the policy. His CAD entry read “No Damage, No Report.” Defendant testified that he observed minimal damage but this is not reflected in the entry. The concepts of “no damage” and “minimal damage” are not synonymous. “No damage” does not require a report and

“minimal damage” does. When the dispatcher questioned the “no damage, no report”, Grievant responded in the affirmative. He explained that she was not his supervisor. Grievant attempted to evade his responsibilities.

Grievant attempted to accommodate the parties’ request. But for the forgetfulness of the elderly driver, the false CAD entry would have not been questioned by his supervisor. Employer maintains that a strong stance in discipline with this type of violation of policy. Unlike tardiness, this type of violation is difficult to track and monitor. Employer imposes a one-day fine or more for failure to complete a crash report. Grievant was issued a one day fine in consideration of his tenure and work record. Employer submitted to other disciplines where a one day fine was issued with no countable disciplinary record.

Employer asserts that a report must be completed in accordance with policy, and serves to protect the public interest. Parties do not know whether they need a report. Parties’ agreements at the scene may fall apart, thus creating a need for a report. Insurance company needs report. When a report is not completed on the scene, the report has to be generated after the fact. The parties have to be contacted, statements and the investigation or report have to complete after the fact. It disrupts the normal course of present business for previous work.

The work record and tenure of Grievant does not overshadow the policy considerations of the rule and penalty. The Arbitrator finds the penalty to be reasonably related to the seriousness of the offense; and the record of Grievant.

In summary, the evidence persuades the Arbitrator that Grievant violated the aforementioned work rules, as alleged by the Employer, and there is just cause to discipline. A one-day fine is not so excessive as a punishment as to be beyond the Employer’s managerial prerogatives. The Arbitrator must therefore deny Grievance no. 15-03-20110103-0001-04-01.

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. 15-03-20110103-0001-04-01 is denied.

Dated: December 21, 2011

_/s/_Meeta Bass Lyons_____

Meeta Bass Lyons, Arbitrator
Steubenville, Ohio