

In the matter of Arbitration between:

**State of Ohio, Department of Public Safety
Employer**

**Case # 15-2011726-0085-04-01
Kristopher M. Massey-Grievant**

**Ohio State Troopers Association
Union**

In attendance: For the Highway Patrol--S/Lt. Charles J. Linek, Advocate; Mr. Jim Miller, OCB/2nd Chair; Lt. L. H. Roseboro. Dist. 6, LCU Unit Commander(witness).

In attendance: For OSTA--Ms. Elaine Silveira, Advocate; Mr. Kristopher Massey, grievant(witness); Mr. Jeremy Mendenhall, Staff Rep.; Mr. Jeffrey Williams, ET-2(witness).

INTRODUCTION:

This matter was heard in Columbus, Ohio, at the Ohio State Trooper Association(OSTA) offices, on November 15, 2012, at 9:00am. All witnesses were sworn. No procedural issues were raised and the parties agreed that the issue was arbitrable. The following exhibits were submitted as Joint Exhibits: JE-1-Unit 1 & 15 Collective Bargaining Agreement, 2009-2012(CBA); JE-2-Grievance Trail # 0085; JE-3-Discipline Package, composed of-Statement of Charges, Pre-discipline Notice, Meeting Officer Reply, Highway Patrol Rules & Regulations: 501.01 (C)(10)(d) Failure of Good Behavior, Deportment Record. The Employer introduced the following exhibits: ME-1-Administrative Investigation(AI) #11-0386 involving ET-2, Kristopher M. Massey, and ET-2, Jeffrey Williams, with accompanying CD.

ISSUE:

A jointly signed issue statement was submitted by the parties and reads as follows:

Was the Grievant issued a one (1) day suspension for just cause? If not, what shall the remedy be?

FACTS:

Kristopher Massey has been employed by the OSHP since July 3, 2000. At the time of the alleged incident, he was (and is) assigned to the Columbus District Headquarters. He was classified as an Electronic Technician 2.

On Thursday June 2, 2011, the grievant and a co-worker(Jeffrey Williams), had a verbal altercation. The issue was over the repair of a radar unit(ME-1). That same morning the grievant reported the incident to his supervisor. He claimed that co-worker Williams had made threats to him. The threats, per the grievant's testimony, included Williams saying he was going to "kill and disintegrate him" . Both parties, during this altercation used expletives, that is; F___ Y___, according to their testimony and evidence(ME-1).

As a result of Mr. Massey reporting the incident to supervision, an AI was conducted. On July 21, 2011, ET-2 Massey was notified that it was being recommended that he be suspended for one (1) day. He would be charged with violation DPS Work Rule 501.01(C)(10)(d), Failure of Good Behavior. Therefore, a Pre-disciplinary Hearing would be held on July 27, 2011. On August 1, 2011, because of the AI and PD, Mr. Massey was notified that he was being suspended for one (1) day for violating DPS Work Rule 501.01(C) (10)(d)-Failure of Good behavior(JE-3).

Mr. Massey filed a grievance on July 22, 2011, protesting the pending one (1) day suspension. He alleged that the Employer violated Article 19, Sections 19.01(Standard), and 19.05(Progressive Discipline). A remedy of reimbursement for lost time, removal of file discipline, and to be made whole, was requested. The grievance was denied at Step 2, and ultimately appealed to Arbitration by the Union.

DISCUSSION AND OPINION:

Evidence and testimony showed that both disputants received a one (1) day suspension. However, Jeffrey Williams still has two (2) days being held in abeyance, resulting from this dispute.

This dispute ended rather quickly, according to the participants' testimony. Both admit to having used the "FU" words during the heat of the argument. The necessary apologies were exchanged soon thereafter. However, the arbitrator is convinced that Mr. Williams did make threatening statements to the grievant (ME-1). According to the grievant's testimony, the threats were alarming, and caused him to talk Lt. Roseboro. The threats of "Kill you & bury you" have no place in the workplace. They cannot and should not be taken lightly. Mr. Williams also testified, that he provoked the incident.

Although there was no workplace violence in this incident, threats of this nature are troubling in today's society. To discipline an employee this severely for reporting such a threat, sends the wrong message to others, who may actually be in danger in another situation.

Testimony and evidence does not show the grievant making any threatening statements. Discipline should never be so harsh to discourage the reporting of a potentially dangerous workplace incident, in the arbitrator's opinion. Because the grievant is not absent of all guilt in this incident, and he responded in kind to the FU's, it was an action of Failure of Good Behavior. Therefore, some discipline is appropriate.

AWARD:

Considering the grievant's clean Department Record, the grievance is reduced to a Written Warning. He is to be made whole for lost wages and benefits.

This concludes the Arbitration decision.

Respectfully submitted, this 23rd day of November.

A handwritten signature in cursive script, appearing to read "E. William Lewis".

E. William Lewis, Arbitrator