

In the matter of Arbitration between:

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

and

**Case # 15-03-20110602-0068-04-01
Trooper Troy Hale, Grievant**

**Ohio State Troopers Association
Union**

In attendance for OSTA--Mr. Hershel Sigall-Advocate; Ms. Elaine Silveria, Attorney; Mr. Robert Cooper, Staff Representative; Tpr. Troy Hale, Grievant(witness); Tpr. Keith Roe(witness).

For the Highway Patrol--S/Lt. Charles Linek-Advocate; Mr. Jim Miller, OCB/2nd Chair; Sgt. Clark Felix(witness); Major George Williams(witness).

INTRODUCTION:

This matter was heard in Columbus, Ohio, at the Ohio State Troopers Association, Headquarters, on November 15, 2012, at 10:25am. All witnesses were sworn. There no procedural issues raised and the parties agreed that the issue was properly before the Arbitrator. The following exhibits submitted as Joint Exhibits: Jt. 1-Unit 1 Collective Bargaining Agreement(2009-2012); Jt. 2-Grievance Trail # 0068; Jt. 3-Discipline Package composed of---Statement of charges, Pre-discipline Notice, Meeting Officer Reply, Suspension Letter, Highway Patrol Rules & Regulations: 4501: 2-6-02(Y)(2) Compliance to Orders and 4501:2-6-02(B)(5) Performance of Duty, Department Record. The Employer introduced the following exhibits: ME 1-Administrative Investigation(AI) #20110251; ME-2 Response to Resistance Training (OSP-203.20)

ISSUE:

The parties submitted a jointly signed issue statement, which reads as follows:

Did the Grievant receive a one (1) day fine for just cause? If not, what shall the remedy be?

FACTS:

Trooper Troy Hale has been employed by the Ohio State Highway Patrol since March 31, 2001. On April 14, 2011, at the time of the alleged incident, Tpr. Hale was assigned to the Zanesville Post, District 7.

On April 14, 2011, Tpr. Hale returned to his Post from training at District Headquarters in Cambridge on or about 4:40pm. After arriving at Post he went to his patrol car, intent on going home for some rest, prior to starting his 10p shift. When he got into his patrol car, he removed his taser from its pouch and proceeded to spark test it. He accidentally discharged the taser into the floor of the car. Soon thereafter, and before leaving the Post he reported the incident to his Post Commander.

An AI was initiated on April 15, 2011 for Tpr. Hale unintentionally discharging his taser. He was found guilty of violating Rules and Regulations of the OSHP, specifically: # 4501: 02-6-02 (B)(5) Performance of Duty, and # 4501: 02-6-02 (Y)(2) Compliance to Orders. On May 27, 2011, Tpr. Hale was notified that he was to be fined in the amount equivalent to one (1) day's pay(Jt.3).

On May 14, 2011, Tpr Hale filed a grievance challenging the pending discipline. He claimed that the OSHP violated Article 19, Sections 19.01(Standard) and 10.05(Progressive Discipline) of the CBA. The grievant requested he be made whole for the one day fine, and to reduce the discipline to a verbal reprimand. The grievance was denied at Step 2, and was appealed to Arbitration by the Union on June 20, 2011.

DISCUSSION AND OPINION:

The facts in this case are not in dispute. The grievant did accidentally discharge his taser in his patrol car. OSP Policy # 203.20, addresses maintenance and use of the (CEW) taser. E. (8) of Policy #202.20, states that tasers should be spark tested daily. Which was, per grievant testimony, what he was attempting to do when he accidentally fired the unit. The test firing of a taser, per E. (8) will be done at the designated area at the Post. There was and is a designated location at the Zanesville Post for test firing.

Per testimony, the spark testing is not a test firing operation. Therefore, it is not logical to expect Troopers to spark test CEW's at the Post's designated area. Nor did witness testimony identify spark testing of tasers being required to be in the test firing area. Trooper Hale did not expect the taser to fire. Unfortunately, Tpr. Hale committed an operator error. He was not test firing the CEW, certainly not in a patrol car. He was attempting to spark test, and it accidentally discharged because he did not remove the correct cartridge(Jt.-3). I do not find that Tpr. Hale was in violation of the Compliance to Order Rule, since the obvious intended exercise was not a test firing.

Trooper Hale did, in the arbitrator's opinion, commit an act of inefficiency, and therefore violated the Performance of Duty Rule(Jt.-3). Trooper Hale, by accidentally discharging his taser committed an error in judgment, by not satisfactorily performing a duty of which he is capable.

Union witness testimony, identified Troopers being disciplined for accidentally discharging their tasers. Trooper Roe stated that he received a verbal or written warning for committing the error. The Grievance and Union Counsel did not deny that discipline was in order. They only questioned the severity of the discipline.

Did Trooper Hale's error violate his Last Chance Agreement(LCA)? The actual LCA was not introduced in the Hearing, therefore, the arbitrator cannot evaluate its specifics. However, the Department Record showed it to be in effect time wise, and there was no arguments or evidence challenging the LCA still being effective.

In this situation, the Employer did choose to issue discipline of a less severe nature, than progressing from the LCA discipline level(Sec. 19.05-CBA). Under the circumstances, I do not find the penalty to be unreasonable, or that the OSHP was arbitrary, capricious or discriminatory¹.

AWARD:

The grievance is denied.

This concludes the arbitration decision, this 23rd day of November 2012.

Respectfully submitted,

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis
Arbitrator

¹Elkouri & Elkouri 6th Ed. Pg. 959