

IN THE MATTER OF ARBITRATION
BETWEEN

OHIO STATE TROOPERS ASSOCIATION Unit 1
Employee Organization

And

STATE OF OHIO, DEPARTMENT OF PUBLIC SAFETY
Employer

GRIEVANT Tara J. Barnhart

Case No. 15-03-20120405-0038-04-01

UMPIRE'S DECISION AND AWARD

Appearances:

For the Employee Organization:

Elaine Silveira, Esq.

For the Patrol:

Sgt. Corey W. Pennington

UMPIRE

Sandra Mendel Furman, J.D.
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INTRODUCTION

This matter was heard before the undersigned on March 12, 2013 in Columbus, Ohio at the Office of Collective Bargaining in Columbus, Ohio. Grievant was the union witness. Also present were OSTA President Larry Phillips and Staff Representative Dave Riley. Elaine Silveira represented the Union at the hearing.

The State's witness was Sgt. Matthew Crow. He conducted the administrative investigation (AI). The Patrol also called Grievant as if on cross examination. Sgt. /Lt. Charles Linek from central office of the Patrol was the management representative. Also present were Aimee Szczerbacki from the Office of Collective Bargaining and Lt. Cassie Kocab and Lora Manon from the Patrol. Sgt. Corey Pennington presented the Patrol's case.

The contract, grievance trail and disciplinary notice and pre disciplinary papers were introduced and accepted as Joint Exhibits 1-3 a-e. The Patrol introduced additional exhibits: M-1 was the AI and M-2 was a pertinent policy.

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 its position.

All witnesses were sworn.

Post hearing arguments were made at the close of the hearing.

ISSUE:

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

APPLICABLE CONTRACT SECTION:

Article 19

STATEMENT OF FACTS:

Grievant is employed as a Trooper at the Findlay Post. She had been employed by the Patrol for more than five years at the date of the incident. Grievant worked second shift.

There is no factual dispute. Grievant is required to take photographs at each traffic accident scene. The then existent policy (see M-2 policy # OSP-103.06 sec.C.1.d.) required the photos to be stored one accident per card.¹ Grievant acknowledged this expectation during the AI and at the hearing before the arbitrator.

Troopers had an option of turning in the photographs for other departmental personnel to upload or to do it themselves. There was a box at the post for dropping off the photos which is inside the sergeant's office.

On the dates/times in question Grievant chose to do the uploading herself.

Grievant failed to upload various cards on a timely basis. Several photos were well over a year old dating back to March 2010. She offered no explanation for the lack of timeliness. The photo cards found as part on the investigation were located in her citation book and were of an older model no longer in use. Eventually these photographs were uploaded. No explanation was offered by Grievant for her failure to upload the photos in a timely manner. She stated that she "forgot" about them.

It was the expectation but not a hard and fast rule that photographs were to be uploaded within five days of the accident. The policy states that photos should be uploaded on a timely basis. M-2 OSP 103.06 Sec. E.4.

Although Grievant noted that she had never been formally trained in the upload function, she learned how to do it; accepted responsibility for the items in dispute and failed to do so.²

She also misplaced twelve (12) sets of photographs from a four (4) month time period all allegedly loaded on one (1) card which Barnhart was never able to find. These photos dated from October 2011 to January 2012.

¹ The investigation noted that there are some instances such as a bad weather day where it would be permissible to upload more than one accident /crash per card. The supervisor stated there were no circumstances where twelve (12) crashes per card would be acceptable.

² Grievant stated that post the instant discipline she has turned over the function of uploading photographs from a crash to other departmental personnel. This option is consistent with post policy.

Grievant was directed to supplement her crash reports to indicate no photos for the missing twelve instances. She complied with that instruction.

Barnhart testified at the hearing that she also had an unstated number of loose photo cards in her car in various scattered locations. She gathered them up and turned them in for uploading. She took this action after she had been investigated for the current alleged infraction.

None of the accidents included in the survey made in the investigation was the subject of a trial/lawsuit.

The photo lab had never called the Post looking for the missing photos.

After the investigation conducted by Sgt. Matt Crow Grievant was charged with violation of work rule 4501:2-6-02 (Y) (2) [Compliance to Orders and 4501:2-6-05(A) (1) [Care of Equipment].

The Compliance to Orders rule states in part:

- (1) A member shall immediately and completely carry out the lawful orders of a supervisor, or designated officer in charge, which pertain to the discharge of a member's duties.
- (2) 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 Care of Equipment Rule provides:

- (1) A member shall be accountable for any equipment assigned or placed under his/her control.

Grievant received a one (1) day suspension on April 19, 2012 the specific allegations were:

You failed to process and upload crash photos in a timely manner and you lost a photo card which resulted in the loss of photos for several crashes.

Grievant's record of department has a verbal reprimand issued 8-24-11 for failure to maintain fitness-weight.

EMPLOYER POSITION

Grievant violated a known work rule and failed to perform tasks she was required to perform under the circumstances. Grievant was a trained employee who knew what needed to be done yet chose not to do the steps.

The Patrol places the highest importance on ensuring the safety of motorists. Maintaining a reliable and accurate record of traffic accident scenes is a necessary and required part of a Trooper's responsibilities. Grievant was aware of her responsibilities, failed to meet them and offered no excuse. The fact that Grievant admitted during the hearing that there were even more undocumented photos indicates the appropriateness of the discipline. Her demeanor does not support a modification. She "laughed it off." The discipline was commensurate with the offense.

The grievance should be denied.

UNION POSITION

The Post did not require Troopers to upload photos. It had not trained Grievant to do so.

The Sergeant and management were not diligent in monitoring the process and timeliness of the photo uploads. Post the discipline at issue here a new policy was established to monitor the uploading process. This shows there was a lack of diligence by management concerning photos.

. No one ever complained to the post that the photos were not uploaded. There was no harm in Grievant's omissions as none of the accidents involved a legal case or trial or insurance dispute.

Grievant was not intentional in her actions; she made a mistake. Grievant admitted her mistakes. The discipline is too harsh. A verbal reprimand is more appropriate.

DECISION AND AWARD

Grievant violated two work rules without justification or excuse. She offered no cogent explanation for the lost card. She offered no explanation for having twelve (12) accidents on one card. She offered no explanation for using an older version of the card.

She offered no explanation for her failure to enter photos many months after taking the pictures. This time lag was extreme and not just a few days or even weeks.

She apparently was unaware that she had unrecorded photos in her citation book as she failed to mention it to the Troopers who were relieving her during approved leave. She admitted without prompting that there were numerous other photo cards scattered in her car that she found during this investigation process.

Each and all of the above showed a lack of attention to one of her duties that merited corrective action.

The Union's defense that management was less than diligent in identifying the issue is not persuasive. Neither is it persuasive to the arbitrator that "no harm no foul" should govern the result. It matters little whether 11 or 12 photos were at stake. What was demonstrated in the record was a failure to be attentive to a task she undertook consistent with her responsibilities as a Trooper. Accident investigation is a core task of the Patrol. The Patrol referred to it as its "bread and butter." Once photos are taken, they like any other piece of evidence should be properly logged and stored according to existing OSP policy. The request for a modification to a verbal reprimand is not warranted by the facts and circumstances.

There is no basis for modifying the discipline to a verbal reprimand after considering all the facts and circumstances in this matter.

AWARD

The grievance is denied.

IT IS SO HEREBY ORDERED

SI *Sandra Mendel Furman*

Sandra Mendel Furman, Umpire

Issued in Columbus, Ohio on March 19, 2013