

IN THE MATTER OF ARBITRATION  
BETWEEN

OHIO STATE TROOPERS ASSOCIATION Unit 1  
Employee Organization

And

STATE OF OHIO, DEPARTMENT OF PUBLIC SAFETY  
Employer

GRIEVANT Hiram Morales

Case No. 15-03-20120329-0036-04-01

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UMPIRE'S DECISION AND AWARD

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Appearances:

For the Employee Organization:

Elaine Silveira, Esq.

For the Patrol:

Sgt. Corey W. Pennington

UMPIRE

Sandra Mendel Furman, J.D.  
1119 South Cassingham Road  
Columbus, Oh 43209  
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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 Lt. Glenn Peterson. 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. M-2 was a section of the Revised Code.

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 Milan Post. He had been employed by the Patrol for more than eight years at the date of the incident.

There is no factual dispute. Grievant was working a traffic stop on the Ohio turnpike. A car was driving at excessive speeds. When it was pulled over it was apparent through questioning that the driver and its one other occupant lacked proper identification as US citizens. US Customs and Border Patrol was called in by Morales. The Border Patrol took custody of the two suspects.

Grievant worked the accident with another trooper named Thurman Peterson who came in as back up. He observed the stop on his way into work. Peterson noticed a strong smell of marihuana in the vehicle. He found a small multi-colored glass pipe in the driver's side pouch on the door while checking the VIN.

Peterson informed Grievant about the pipe. Peterson and Grievant did a probable cause search of the vehicle. No marihuana was found. The US Border Patrol also assisted in the search.

Grievant moved the pipe to the passenger seat. He didn't take it and send it to the lab but left it on the seat. It did not appear on the inventory filed.<sup>1</sup> Trooper Peterson completed the inventory as Grievant was at the end of his shift.<sup>2</sup>

Grievant explained his actions in several ways. He said that after inspecting the pipe there was no residue on the pipe so he did not believe it was contraband. He indicated that since he did not find marihuana and there was no residue he saw no reason to take the pipe.

He stated that all of the occupants were illegals and based upon prior experience that would be sufficient for deportation and the drug charge would be superfluous. He stated the Oberlin Prosecutor would usually not be interested in such a charge.<sup>3</sup> He stated that all the occupants denied knowledge of the pipe

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<sup>1</sup> The pipe was found by the towing company and it was turned over by the company to the Patrol.

<sup>2</sup> The Union did not argue that the responsibility for listing the pipe and confiscating it shifted to Peterson. It was and remained Grievant's stop.

<sup>3</sup> Trooper Peterson's statement in the AI confirms Grievant's statements that he was of the belief that due to no finding of marihuana that Oberlin wouldn't take a paraphernalia charge. See AI p. 7.

Peterson's statement indicates his opinion that the charge would be ok due to the residue. Other than this comment there is no evidence that any residue was found in the pipe. Sgt. Reeder sent the pipe to BCI with a request to destroy it. There was no notation about residue. Reeder never stated he saw residue.

and that it was that of the vehicle's owner- who was not present at the stop. He denied noticing the smell of marihuana on either of the two suspects during questioning. He asked the suspects if they had been smoking and each denied it. He said the smell of marihuana was noticeable inside the vehicle which provided probable cause for the search conducted by the troopers.

Although two troopers worked the stop it is undisputed that Grievant was responsible for the paperwork and was "lead" on the stop.

During the AI Grievant said he didn't confiscate the pipe because he wasn't going to charge the suspects. He knew they were going to be deported and that local (Oberlin) prosecution was not going to occur. He admitted after hearing Lt. Peterson's point of view during the AI process that he made a poor decision in not securing the pipe. He did not think he needed to seize it at the time of the incident.

After the investigation conducted by Lt. Peterson<sup>4</sup> Grievant was charged with violation of work rule 4501:2-6-02 (W)

The Evidence and Recovered Property Rule states:

A member shall protect and preserve for proper disposition any article of property recovered or turned over to him/her after loss by its rightful owner, held as evidence, seized from a prisoner or otherwise entrusted to his/her care. A member shall exercise diligence in safeguarding vehicles, or property connected with a crash, or other incident, in order that such property shall be returned to its rightful owner without damage, loss or unnecessary delay. A member taking control of any such property shall secure that property and report its recovery according to directives established by the superintendent.

Grievant received a one (1) day suspension on March 28, 2012. The specific allegations were that he failed to properly seize and process drug paraphernalia located during a traffic stop.<sup>5</sup> Per the disciplinary grid the range of penalties for this rule violation is from a verbal reprimand to a one day suspension.

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<sup>4</sup> Lt. Peterson testified that he reviewed the situation with District management staff as to what to do about Grievant's failure to secure the pipe. The level of discipline to be imposed is not determined at the District level according to the Lt.

<sup>5</sup> M-2 is the definition of drug paraphernalia found at RC 2925.14. R.C.2925.14 (A) (13) is highlighted to support the Patrol's contention the glass pipe was drug paraphernalia.

No evidence was presented at hearing to explain why the level of discipline imposed was selected.

Grievant's record of department has a fine issued 1-31-12 for forty- eight (48) minutes of tardiness.

### **EMPLOYER POSITION**

Grievant violated a known work rule and failed to perform tasks he was required to perform under the circumstances. Grievant was a trained and long term employee who knew what needed to be done yet chose not to do the steps required of him regarding the securing and disposition of the pipe.

. Grievant was aware of his responsibility yet failed to meet it. The fact that Grievant admitted during the AI hearing that he should have secured the pipe indicates the appropriateness of the discipline. The Patrol maintains that he deliberately did not seize the pipe and that supports the level of discipline imposed. The discipline was commensurate with the offense.

The grievance should be denied.

### **UNION POSITION**

There was no strong odor of marihuana detected by Grievant. He did not see any residue in the pipe. The pipe did not meet the definition of contraband. A glass pipe without residue is not illegal. The Patrol should not seize anything it finds in a stop as that is contrary to established legal principles.

Grievant was not intentional in his actions; he made a mistake. The Union would not agree that Grievant acted wrongfully in not securing the pipe. Grievant admitted his mistake once the matter was explained to him by supervision but this was a situation where Grievant was under pressure. Grievant's actions caused no harm under the circumstances; deportation was the inevitable result of the particular traffic stop situation. The discipline is too harsh. A reprimand is more appropriate.

### **DECISION AND AWARD**

Grievant violated the work rule relating to keeping evidence without bad intention or negligence. For that reason and as more fully explained herein the Umpire finds that the discipline is not commensurate with the offense.

Grievant's demeanor was honest and forthcoming. He did not hide his role in the matter and after listening to his supervisor he agreed he made a wrong judgment call. He was not sloppy or negligent. He made a reasoned decision not to confiscate the pipe after considering the fact of no proof of ownership, no residue, no marihuana and a belief based upon experience that the charge might not stick and the Oberlin Prosecutor would not want to add the charge. Grievant knew the occupants were going to be deported.

The Patrol disagreed with his analysis. Grievant while being investigated became convinced that he should have taken the pipe. His admission is one of the facts considered by the arbitrator as well as the circumstances under which he made the admission. Grievant's actions fail to meet the level of careless disregard of the rules that would merit time off work.

The Patrol itself was at the lower levels of management not sure that the matter could not be handled by a training. There was no evidence presented as to why the Patrol felt a one day was the most appropriate choice of its range of possible disciplines on the grid.

In closing argument the Patrol stated that Morales intentionally violated the rule. The arbitrator disagrees. He violated the rule for good faith but ultimately wrong reasons. A written reprimand puts Grievant on notice of the consequences of failure to secure all evidence and meets the contractual requirement of progressive discipline and just cause.

#### **AWARD**

The grievance is granted in part. The discipline is modified to a written reprimand. IT IS SO HEREBY ORDERED

S/ *Sandra Mendel Furman*

Sandra Mendel Furman, Umpire

Issued in Columbus, Ohio on March 20, 2013