

In the matter of Arbitration between:

**State of Ohio, Department of Public Safety-Ohio State Highway Patrol
Employer**

And

15-03-20120627-0061-04-01

Case #

Trooper

Michael K. Ervin

**Ohio State Troopers Association
Union**

In attendance for OSTA: Ms. Elaine Silveira-Advocate; Tpr. Michael K. Ervin(witness); Mr. Jerry Mendenhall, Staff Rep.; Mr. Larry Phillips, President; Mr. Herschel Sigall, Chief Counsel.

In attendance for the Employer: Lt. Cassandra L. Kocab-Advocate; Sgt. Terrells Barnes(witness); S/Lt. Charles Linek; Mr. Jim Miller, OCB-2nd Chair.

INTRODUCTION:

This matter was heard at the Headquarters of the Ohio State Troopers Association, Columbus, Ohio. The Hearing was held on July 30, 2013 at 9:00am. All witnesses were sworn. There were no procedural issues raised and the parties agreed that the issue was properly before the arbitrator. The following were submitted as Joint Exhibits: Jt. 1-Unit 1 & 15 Collective Bargaining Agreement(2012-2015); Jt. 2-Grievance Trail #0061; Jt. 3-Discipline Package composed of--Statement of Charges, Pre-Discipline Notice, Signed Pre-D Waiver, Discipline Letter, Highway Patrol Rules & Regulations-4501: 2-6-02(Y)(2) Compliance to Orders, & 4501: 2-6-02(B)(1)(5) Performance of Duty, Department Record. The following were introduced into the Record as Management Exhibits: ME 1-Administrative Investigation(AI) 2012-0261; ME 2-Original CD of phone call from crash person; ME 3-Report of Trooper Ervin attending Crash Policy & Procedure Training. The following were introduced into the Record as Union Exhibits: UE 1-IOC dated 6/22/12, Dispatcher Caudill's record of a Written Warning for failing to dispatch a Trooper to crash scene; UE 2- Tpr. Ervin's Evaluations dated January 2012 & 2011.

ISSUE:

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

Did the Grievant receive a three (3) day suspension for just cause? If not, what shall the remedy be?

FACTS:

Trooper Michael Ervin, employed by the Ohio State Highway Patrol(OSHP) since May 2007, is and was, at the time of the incident, assigned to Post 73, Portsmouth. At the time of the incident, Tpr. Ervin was working the 2p to 10p shift.

On April 7, 2012, on or about 6:14p, Portsmouth Dispatch received a phone call from a citizen(Ms. Lockhard) reporting as to having an auto accident at SR 125 and Mackeltree Road. At this particular time Tpr. Ervin was stationary on US 23 at mile post 15. This was approximately twenty-five minutes drive time away(ME-1). Both citizens involved in the crash had exchanged information and left the scene, by mutual agreement, per ME-1 & ME-2.

Ms. Lockhard, without a cell phone, called Portsmouth Dispatch using the phone of a nearby resident. She reported that she had never been in an accident before and she wanted to know what she should do(ME-2). After putting her on hold four times the dispatcher ended the call by telling her to contact her insurance company, and if a report was needed, to call back right away and he would get someone their(ME-2). No evidence of a call back by Ms. Lockhard was submitted.

While putting Ms. Lockhard on hold, Dispatcher Caudill called Tpr. Ervin by cell to advise him of the accident(ME-1). Two cell conversations were evidenced between Caudill and Tpr. Ervin(ME-1). Trooper Ervin did not go to the crash scene, and no crash report was filed by him. On April 20, 2012, Ms. Lockhard reported to the Portsmouth Post to report the traffic crash of 4/7/12, and get a written traffic Crash Report(ME-1).

As a result of Ms. Lockhard's crash report, an AI was conducted, and Tpr. Ervin was disciplined for failing to respond to an injury crash(Jt-3). He was charged with violating Ohio State Highway Patrol Rules 4501: 2-6-02(Y)(2) Compliance to Orders & 4501: 2-6-02 (B)(1)(5) Performance of Duty. On June 20, 2012, Tpr. Ervin was notified that he would be suspended for three (3) days.

Trooper Ervin filed a grievance on 6/19/12, claiming the Employer violated Article 19 Disciplinary Procedure, Section 19.01 Standard. The State, per Tpr. Ervin, has not met the just cause requirement. Trooper Ervin states that at the time of the incident he was not dispatched to the call. He requested that the discipline be removed from his Department Record and he be made whole regarding the three day suspension(Jt-2). The grievance was denied at Step 2 and the Union referred it to Arbitration on July 12, 2012. By mutual agreement between the parties, the Arbitration was scheduled for July 30, 2013.

DISCUSSION AND OPINION:

The evidence and testimony in this case established that a car crash occurred between two citizens. The crash occurred at SR 125 & Mackeltree Road at approximately 6:14 pm, on 4/7/12. After exchanging information the drivers left the scene. One driver, Ms. Lockhard, without a cell phone, went nearby to call OSHP by land line(ME 1 & 2). She contacted Dispatcher Caudill to report the crash and get advise, since this was her first experience with a car accident(ME-2).

Ms. Lockhard's phone conversation with Dispatch had at least four hold interruptions(ME-2). The last two interruptions occurred to allow Dispatcher Caudill to talk with Tpr. Ervin, regarding the accident(ME-1).

Was the information by dispatch enough to cause Tpr. Ervin, of his own volition to go to the scene or meet Ms. Lockhard, to prepare a crash report?

Evidence showed that Tpr. Ervin (1) was aware of the crash, (2) knew that the citizens had left the scene, and that Dispatch was talking with the alleged "no fault" driver. (3) The "no fault" driver said she may be going to

the hospital(ME-2). (4) She was going to report the accident to her

insurance company immediately, and (5) Dispatcher Caudill told her to call him right back after the insurance call. And if a report is needed he would get someone out to her for the report(ME-2).

Dispatcher Caudill, in his interview, stated that he did not tell Tpr. Ervin that Ms. Lockhard was going to the hospital(ME-1). Dispatcher Caudill told Tpr. Ervin that she may go to the hospital. Per Caudill, Tpr. Ervin instructed him to advise Ms. Lockhard to call back if insurance needs a report or she goes to the hospital(ME-1).

There is no clear and convincing evidence or a preponderance of evidence, to convince the arbitrator that Tpr. Ervin violated policy, in this incident. He was not dispatched to the scene. He instructed Dispatch to direct the “no fault” driver to call back if a report was needed, or she was injured enough to seek treatment(ME-1, pg. 14). No evidence was submitted that showed a hospital visit for crash injuries. Both crash participants left the scene, therefore they could not have been injured too badly. Dispatcher Caudill was not called to testify, although he was not really alleging that blame belonged to Tpr. Ervin. However, his testimony could have helped clarify his actual conversation with Tpr. Ervin.

AWARD:

The grievance is granted. The grievant is to be made whole for three charged vacation days.

This concludes the Arbitration decision.

Respectfully submitted this 12th day of August 2013.

E. William Lewis
Arbitrator