

In the matter of Arbitration between:

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

And

15-03-20120611-0057-04-01

Case #

Trooper

**Steven M. Schemine
Ohio State Troopers Association
Union**

In attendance for OSTA: Mr. Hershel Sigall-Advocate, General Counsel; Mr. Rick Estep (witness); Mr. Larry Phillips, OSTA President; Mr. Dave Riley, Staff Representative; Tpr. Steve Schemine (witness); Ms. Elaine Silveira, Asst. General Counsel.

In attendance for the DPS: Lt. Cassandra L. Kocab-Advocate; Ms. Aimee Szczerbacki-OCB, 2nd Chair; Lt. Jeffrey Davis (witness); Ms. Krysten McElfresh-ODPS/LRO1; Lt. R. E. Raines.

INTRODUCTION:

This matter was heard at the Headquarters of the Ohio State Troopers Association, Columbus, Ohio. The Hearing was held on August 23, 2012, at 9:00 am. 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 #0057; Jt. 3-Discipline Package composed of--Statement of Charges, Pre-Discipline Notice, Signed PD Waiver, Discipline Letter, Highway Patrol Rules & Regulations-4501:2-6-02(I)(1)(3) Conduct Unbecoming an Officer, 4501:2-6-02(B)(3)(5) Performance of Duty, & 4501: 2-6-02(B)(2) Use of Equipment, Department Record. The following were introduced into the Record as Management Exhibits: ME 1-Administrative Investigation(AI) 2012-0246; ME 2-OSHP Policy #400.01, COMMUNICATIONS/SIGNAL-40; ME 3-OSHP Policy #203.26, CUSTODIAL AND NON-CUSTODIAL CARE & SECURITY; ME 4-OSHP Policy #203.37, ASSISTANCE TO MOTORISTS.

The following were introduced into the Record as Union Exhibits: UE 1- Recorded interview of Bartender Chris Gray; UE 2- Recorded interview of Roadhouse 66's owner; UE 3-2nd interview of Roadhouse 66's owner; UE 4- Photos of inside of Roadhouse 66 Bar & Grille.

ISSUE:

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

Was the Grievant issued a three-day suspension for just cause? If not, what shall the remedy be?

FACTS:

The substantive facts in this case are well documented with evidence and testimony. On April 19, 2012 Tpr. Schemine worked the 7a-3p shift out of the Delaware Post. He received a phone call from his fiancée, Renee, in the late morning of April 19. At the time of the call, Tpr. Schemine was assigned to the I-71 line. His fiancée, while at a meeting, had locked her keys in her car. He agreed to meet her at the Roadhouse 66, Bar & Grille, in Worthington, to deliver the extra set of keys.

Upon his arrival at the Roadhouse near (I-270 & I-71), he was informed that Renee had fallen and was bleeding from a head wound (ME-1). She was there having lunch with a colleague and while leaving the bar & grill, she tripped and fell, hitting her head. He entered the establishment and found her being administered to by some customers, who were alleged to be qualified enough to be of assistance (ME-1). Per Tpr. Schemine's testimony, he intervened and ultimately, put her in his patrol car and took her to their residence.

Apparently, further wound examination caused him to determine that further medical treatment was needed. Trooper Schemine called dispatch and reported off on personal leave for the balance of his shift. Evidence and testimony showed Tpr. Schemine using one-hour and six minutes of

personal leave. He took his fiancée to the Dublin Hospital in his personal car, per his testimony.

On April 20, 2012, a complaint phone call was received at the Delaware Post from a Ms. Able. Ms. Able claimed that she was one of the attendees' to the fiancée at the Bar & Grill(ME-1). S/Lt Lee received Ms. Able's call. S/Lt. Lee communicated to Sgt. Pirrone the information received from Ms. Able(ME 1,Att.A). Ms. Able had been at Roadhouse 66 during the lunch period on 4/19/12. She witnessed a woman lying on the floor bleeding, and went over to assist others who were already there. The injured person (Renee) was using vulgar language and was intoxicated, per Ms. Able. According to Ms. Able, she helped the injured person to her feet and to the front door when a patrol car appeared(ME-1,Att.A). Trooper Schemine, per Ms. Able, took over and placed the injured Renee in his patrol car and drove off (ME-1,Att.1). Ms Able was unwilling to further participate with the OSHP on follow-up contacts(ME-1).

As a result of this phone complaint, S/Lt. Lee reviewed Tpr. Schemine's history for 4/19/12. Trooper Schemine's activity, including use of personal leave without prior approval, was of concern. An AI was initiated by Sgt. Davis. Trooper Schemine was found chargeable for two allegations: (1)-while on-duty, he used his cruiser for personal business, by picking-up his fiancée (allegedly intoxicated) and drove her home: (2)-he place himself on personal leave without approval of supervision(ME-1).

Trooper Schemine was notified on May 31, 2012, that a Pre-discipline meeting would be conducted on June 27, 2012. On May 31, 2012, Tpr. Schemine waived his rights to the P-D.

On June 4, 2012, Tpr. Schemine was notified that he was to be suspended for three (3) working days for violating OSHP Rules & Regulations #4501:2-6-02(I)(1)(3) Conduct Unbecoming an Officer, #4501: 2-6-02(B)(3) Performance of Duty and #4501: 2-6-02(B)(2) Use of Equipment. The effective dates were to be June 29, 30 and July 1,2012. It was found that you picked your girlfriend up at a bar and transported her in your cruiser to a residence. Additionally, you placed yourself on personal leave without the approval of a supervisor.

Trooper Schemine filed a grievance on 6/6/12. He maintained that the

pending discipline was without just cause, and not progressive in nature. If so, the OSHP violated Article 19, Section 19.01 Standard and Section 19.05 Progressive Discipline. He requested that the discipline be removed from the department record, and to be made whole for lost wages and holiday pay (if during that period). The grievance was denied at Step 2 on June 20, 2012. The Union referred the grievance to Arbitration on July 9, 2012. By mutual agreement between the parties, the Arbitration Hearing was scheduled for August 23, 2012.

DISCUSSION AND OPINION:

For all intent and purposes this matter should have simply ended with the passing of the keys to his fiancée, and Tpr. Schemine would be back on line. While retrieving the spare set of keys at his residence he issued a citation for a traffic violation, according to testimony. No evidence or testimony was introduced alleging that the detour off line to retrieve the keys was a violation of Rules or Policy.

There was no clear and convincing evidence that Tpr. Schemine's fiancée was intoxicated. In fact, creditable unchallenged testimony was introduced by Renee's lunch colleague, that she was not intoxicated.

But this is not about Tpr. Schemine's fiancée. It is about Tpr. Schemine's conduct. There is no evidence or testimony that Tpr. Schemine's conduct at the Roadhouse was disrespectful or unbecoming(ME-1). Furthermore, within fifteen minutes of picking up his injured fiancée, he reported off duty (ME-1).

What does a reasonable person do in this circumstance? Call EMT's, and go back to work? Not really, this was not a "girlfriend", but his fiancée, and now his wife. Apparently from his initial wound assessment, she could be safely transported from the scene. None of the witnesses interviewed, except the complainant, showed, at the time, a need for hospitalization(ME-1). Furthermore, the elusive Ms. Able's alleged phone statements regarding her actual on scene activity, are not corroborated by other witness and testimony (ME-1,pg.4-Att.A,pg.1).

The charges here are misstated, and don't accurately portray the circumstances, in the arbitrator's opinion. Roadhouse 66 is not just a bar,

but a frequently visited grill near I-71 and I-270. The woman was more than just a “girlfriend”, she was his fiancée. This was not a situation of simply removing a “girlfriend” from a bar scene as charged(Jt. 3). The charges did not reflect the importance of the relationships involved in the situation. This was Tpr. Schemine’s fiancée who had fallen and wounded her head, without substantive evidence of intoxication, as alleged by Ms. Able. It was a situation that needed immediate attention. Therefore, under the circumstances, the fifteen minute transport to their residence would not be much of a liability risk to the OSHP, in the arbitrator’s opinion.

Yes, Tpr. Schemine should have requested permission to transport his fiancée, and should have had prior approval for using personal leave. Would permission have been granted under the actual circumstances? A reasonable person would have approved it, in the arbitrator’s opinion. Furthermore, Trooper Schemine was docked the one-hour and six minutes of personal leave taken without prior approval(ME 1).

This is a twenty-two year trooper with a clear Department Record, and to suspend him for three (3) days with these circumstances is excessive, in the arbitrator’s opinion.

AWARD:

The discipline is to be reduced to a written warning. The Grievant is to be made whole for lost wages and benefits.

This concludes the Arbitration decision.

Respectfully submitted this 13th day of September 2013.

E. William Lewis
Arbitrator

