

In the matter of Arbitration between:

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

And

Case #

15-03-20120827-0076-04-01

Trooper

**Kyle E. Pohlabel
Ohio State Troopers Association
Union**

In attendance for Ohio State Highway Patrol: Lt. Ron Raines-Advocate; S/Lt. Charles Linek, 2nd Chair; Sgt. Colbert(witness); Sgt. Timothy C. Johnson(witness); Lt. C. L. Kocab; Ms. Krysten McElfresh, DPS/LRO1; Ms. Aimee Szczerbacki, OCB.

In attendance for OSTA: Ms. Elaine Silveira-Advocate; Mr. Larry Phillips, President; Tpr. Kyle Pohlabel(witness); Mr. Dave Riley, Staff Rep.; Mr. Hershel Sigall, General Counsel.

INTRODUCTION:

The matter was heard at the Headquarters of the Ohio State Troopers Association, Columbus, Ohio. The Hearing was held on August 23, 2013, at 11:15am. 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 Collective Bargaining Agreement(2012-2015); Jt. 2- Grievance Trail # 0076; 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(Y)(2) Compliance to Orders, 4501: 2-6-02(B)(5) Performance of Duty. The following were introduced into the Record as Management Exhibits: ME 1-Response to Resistance Investigation (12-010054-0557); ME 2-Addendum A1, In car video; ME 3-Mapquest picture of incident scene; ME 4-OSHP # 203.20 RESPONSE TO RESISTANCE; ME 5-ODPS Policy-Record of Tpr. Pohlabel having read RTR Policy; ME 6- Administrative Investigation(AI) #2012-0399, Tpr. Pohlabel(June 18, 2012-with CD's).

ISSUE:

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

Did the Grievant receive a five (5) day suspension for just cause? If not, what shall the remedy be?

FACTS:

The facts in this case are well documented through Tpr. Pohlabel's in-car video, evidence and testimony submitted, by the parties. Trooper Pohlabel, an eleven year employee of the OSHP, works the 11p-7a shift. He works out of Post 57, Dayton.

At approximately 2:45am., while on a traffic stop on Needmore Road in Montgomery County, a motorcycle passed by. It was trailed soon thereafter by two County Deputies. Trooper Pohlabel heard the cycle accelerate after passing. Shortly thereafter he heard, per his testimony, what he believed to be the same cycle coming back at an assumed high rate of speed(ME 1, 2).

Trooper Pohlabel terminated his traffic stop and decided to intercept what he presumed to be the same cyclist fleeing the Deputies(ME 1 & 6). With his pursuit lights still on, he crossed through the concrete road divider into the opposite traffic lanes, headed in the wrong direction(ME 1 & 2). He moved from the left(Ctr.) lane into the right lane. The oncoming cyclist attempted to stop, but he contacted the front bumper of the cruiser. A foot pursuit ensued, and Tpr. Pohlabel apprehended the suspect within forty yards. While he was apprehending the suspect, the County Deputies arrived and assisted in the arrest(ME 1 & 6).

As a result of this incident, a Response to Resistance investigation was conducted. Four areas of concern were identified relative to Tpr. Pohlabel's actions(ME 6). The RTR concerns precipitated an AI, which was conducted by Sgt. Johnson, of the AIU. Trooper Pohlabel was found guilty of making a bad decision(ME 6, pg. 22). Thus, he was charged with violating OSHP Rules & Regulations #4501: 2-6-02(B)(5) Performance of Duty, and 4501: 2-6-02(Y)(2) Compliance to Orders. To wit- Through AI 12-0399, it was

found that Tpr. Pohlabel made an error in judgment when he traveled the wrong direction on a roadway, and setup a roadblock. As a result of the roadblock, a motorcycle struck the cruiser. It was also determined that there was no probable cause to conduct a traffic stop with the motorcyclist(Jt. 3).

Trooper Pohlabel was notified on August 13, 2012, that a Pre-disciplinary meeting would be held on August 22, 2012. The PD was waived by Tpr. Pohlabel on August 13, 2012. He was notified on August 20, 2012, that he would be suspended for five (5) days without pay, effective September 13,14,15,16 and 19.

A grievance was filed on August 21, 2012, by Tpr. Pohlabel, claiming that the OSHP violated Article 19 DISCIPLINARY PROCEDURE, Section 19.01 Standard, and Section 19.05 Progressive Discipline. He maintained that the discipline was without just cause and not progressive(Jt. 2). The grievance was denied at Step 2. On September 22, 2012, President Larry Phillips referred the grievance to Arbitration. By mutual agreement between the parties, the Arbitration Hearing was scheduled for August 23, 2013.

DISCUSSION AND OPINION:

Nearly all the activities of Tpr. Pohlabel during this incident are visible on the cruisers video camera(ME 2). At approximately 2:46am., Tpr. Pohlabel was on a traffic stop along Needmore Road. While talking to the alleged violator, a motorcycle passed followed by two County Sheriff Deputies. The cycle accelerates after passing Tpr. Pohlabel, and he is seen looking towards the direction of the cycle(ME 2). Subsequently, it appears that Tpr. Pohlabel assumes that the cycle is running, and is moving fast in his direction. He terminates the traffic stop. With his pursuit lights still on, he pulls his cruiser into the center eastbound lane of Needmore Road facing west(opposite direction). Trooper Pohlabel moves from the center lane to the curb lane. The curb lane is also the lane that is being used by the speeding motorcycle(ME 2). Thus blocking the curb lane.

The cyclist is seen braking hard with the cycle skidding. The cycle strikes the front of the cruiser. Trooper Pohlabel exits the cruiser and pushes the cyclist off the bike, and a foot pursuit ensues. The suspect is subdued by Tpr. Pohlabel with the assistance of the County Deputies, who were

following at some distance behind the cycle(ME 2). Evidence showed that the Deputies were not in pursuit of the cyclist and there was no meaningful damage to either the cruiser or the motorcycle(ME 1).

Although it is 3:00am., there is traffic on this road. Three cars plus the cycle and the Deputies pass Tpr. Pohlabel while he is conducting his shortened traffic stop. While the cycle is down and the patrol car is in the eastbound curb lane, a number of cars are seen in the area. Three cars pass through the scene and a significant number of cars are seen detouring the area(ME 2).

Trooper Pohlabel was charged with violating two OSHP Rules during this incident. Performance of Duty, which states: (5) Members who fail to perform their duties because of an error in judgment, or otherwise fail to satisfactory perform a duty of which such member is capable, may be charged with inefficiency. Unsatisfactory performance may be demonstrated by a lack of job-related knowledge, an unwillingness or inability to perform assigned tasks, failure to take required action, or failure to take appropriate action at any time. And, Compliance to Orders which reads as follows: (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 Response to Resistance Policy, reviewed by this Officer(ME 5), reads as follows: 8. Use of Roadblocks - Roadblocks for stopping fleeing offenders may be used by Division officers only under the conditions in this policy.

a. Definition - A roadblock is a deliberate obstruction of traffic on a road or street at one or more selected points installed for a specific purpose. It does not necessarily mean a complete stoppage of traffic or a complete blockage of the roadway. There are several types of roadblocks that may be used. Since each situation is different, there is no step by step procedure to dictate when or what type roadblock is to be used.

b. Use Based on Safety - The primary fact to be considered is safety. If a roadblock will expose any person to a clear and unreasonable risk of injury, it will not be used. Safety to the public must be the determining factor; the risk of continuing a pursuit must be greater than the risks encountered when

using the roadblock. This is a decision that the pursuing officer or on-duty supervisor must make depending on the facts of each pursuit.

c. Non-standard Passenger or Commercial Vehicles - When the fleeing vehicle, is other than a standard passenger or commercial vehicle(e.g., motorcycle, moped, snowmobile, etc.) a roadblock should be avoided unless the offender is wanted for or charged with a life-threatening felony.

There was no evidence that the fleeing cyclist was wanted or charged with a life-threatening felony. In fact, Tpr. Pohlabel had no knowledge of who was driving the motorcycle. Trooper Pohlabel admitted in his interview that he had made a bad decision(ME 6, pg.22). He should have let the cycle pass and then pursue(ME 6). A choice also endorsed by both management witnesses.

Evidence is clear and convincing that Tpr. Pohlabel made an error in judgment, and violated the Roadblock policy regarding motorcycles. However, the Union argues that the discipline is not commensurate with the offense(Jt. 1). In the arbitrator's opinion, there was meaningful traffic in the area at even, this time. It should have been a safety concern to the Grievant. Although there was no meaningful property damage or injuries, the situation created by Tpr. Pohlabel could have easily resulted in severe injuries and/or property damage. Furthermore, he should have been knowledgeable of the roadblock restrictions for this type of incident. The whole situation should have been avoided. Tpr. Pohlabel should have chosen to initiate normal pursuit of a speeding violator, in compliance with Section 8(b) of the RTR policy. There was just cause for discipline, and in this case I do not find that the Employer Violated Section 19.05 of the CBA, by imposing more severe discipline.

AWARD:

The Grievance is denied.

Respectfully submitted, this 13th day of September 2012.

E. William Lewis
Arbitrator