

In the matter of Arbitration between:

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

**And
Case 3**

15-03-20121231-0111-04-01

Trooper

Christopher J. Appollonio

**Ohio State Troopers Association
Union**

In attendance for the DPS: Lt. Cassandra L. Kocab-Advocate; Lt. Gurjit Grewal(witness); Ms. Jessie Keyes, 2nd Chair-OCB; S/Lt. Charles J. Linek(witness); Lt. R. E. Raines.

In attendance for the OSTA: Ms. Elaine Silveira-Advocate, Attorney; Tpr. Christopher Appollonio(witness); Mr. Larry Phillips, President; Mr. Dave Riley, Staff Representative; Mr. Herschel Sigall, Chief Counsel.

INTRODUCTION:

This matter was heard at the Headquarters of the Ohio State Troopers Association, Columbus, Ohio. The Hearing was held on September 24, 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 Collective Bargaining Agreement(2012-2015); Jt. 2-Grievance Trail #0111; 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(I)(4) Conduct Unbecoming an Officer, Department Record. The following were introduced into the Record as Management Exhibits: ME 1- Administrative Investigation(AI) 2012-0719; ME 2-Ohio State Highway Patrol Sworn Officer Discipline Grid; ME 3-Roll Call Training Record-Chris Appollonio, year 2012. The following were introduced into the Record as Union Exhibits: UE 1-Evaluations(Tpr Appollonio years 2010,2011 & 2012.

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

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

FACTS:

The facts in this case are not in dispute. On October 11, 2012, Tpr. Appollonio was investigating a two vehicle accident. A fender bender, without injury. At the time, he was functioning as an FTO, and was accompanied by trainee, Tpr. May(ME-1).

The crash was between a dump truck and an automobile, and occurred within a construction zone. The location was on US 23, north of Delaware. During there investigation, the truck driver offered them the opportunity to view his dash-cam. While viewing the dash-cam with truck driver Custer, they observed erratic driving activity on the part of Mr. Custer. Trooper Appollonio, while viewing the cam, was heard saying that Mr. Custer was driving like a dick. Mr. Custer was issued a citation for his actions in this crash(ME-1).

On October 12, 2012, Mr. Custer called the Delaware Post to complain about the citation. During the call he alleged that Tpr. Appollonio told him that he was driving like a dick. His complaint triggered an Administrative Investigation regarding Tpr. Appollonio's conduct(ME-1). It was determined through the AI, that Tpr. Appollonio's conduct was unprofessional. He was charged with violating OSHP Rules & Regulations #4501:2-6-02(I)(4) Conduct Unbecoming an Officer. Specifically, it was found that you were unprofessional with a citizen during a crash investigation.

On December 5, 2012, Tpr. Appollonio was notified that a Pre-disciplinary meeting would be held on December 11, 2012. He waived his rights to the PD on December 6, 2012. Trooper Appollonio was notified on December 11, 2012, that he would be suspended for one (1) day without pay, effective December 14, 2012(Jt.-3D).

Trooper Appollonio filed a grievance on 12/127/12, alleging that the OSHP violated Article 19--Grievance Procedure, Sections 19.01 Standard and 19.05 Progressive Discipline. He requested that the suspension be overturned since he had a clean Department Record. The grievance was denied at Step 2, and the Union appealed the grievance to Arbitration on January 16, 2013. By mutual agreement between the parties the Arbitration Hearing was scheduled for September 24, 2013.

DISCUSSION AND OPINION:

Trooper Appollonio does not deny that he told Mr. Custer, during the traffic stop, that he was driving like a dick. Thus, there is no dispute that the grievant was unprofessional in his behavior. Evidence showed that Tpr. Appollonio should have been aware of the rule regarding Conduct Unbecoming an Officer, and the Discipline Grid for violation of such(ME-2,3).

The Union argues that the Discipline Grid is not in the CBA, and therefore, it cannot supersede it. However, Article 4-Management Rights, grants the Employer the right to make any and all rules and regulations. Additionally, Section 18.01 of Article 18 recognizes that the State has the right to expect that a professional standard of conduct be adhered to by all Highway Patrol personnel(JE-1).

The Union claims that the OSHP is not consistent in its application of discipline, per S/Lt. Linek's responses to their cross examination. However, there was no evidence involving similar cases of discipline submitted to substantiate their claim.

The Discipline Grid for Conduct Unbecoming-Unprofessional on-duty, permit's a discipline penalty from a one-day suspension to removal for use of profanity(ME-3). The Employer determined that Tpr. Appollonio used profanity when he told Mr. Custer he was driving like a dick. The determination that the use of the word "dick" in this situation was profane by the Employer, was not substantively challenged by the Union. And it was further affirmed by the Employer referencing the categorization of it being profane, through Dictionary.com.

However, the arbitrator is disappointed that the OSHP chose to categorize

this incident as use of profanity, rather than that of discourteous conduct.

Management's decision in this case is within broad parameters of reasonableness, and is in accordance with the Discipline Grid. Therefore, I do not find that the Employer has been arbitrary, capricious or discriminatory¹.

AWARD:

The grievance is denied.

This concludes the Arbitration decision.

Respectfully submitted, this 7th day of October, 2013.

E. William Lewis
Arbitrator

¹ Elkouri & Elkouri-How Arb. Works, 6th Ed. Pgs. 960 & 961