

In the matter of Arbitration between:

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

And

Case #

15-03-20121219-0104-04-01

Dispatcher

**Bertha L. Toton
Ohio State Troopers Association
Union**

In attendance for the DPS: Lt. Ronald Raines-Advocate; Ms. Jesse R. Keyes-2nd Chair, OCB; Lt. C. L. Kocab, OSHP; S/Lt. C. J. Linek, OSHP; Mr. Monte R. Morgan(witness); Ms. Christine L. Untrauer, Dispatch Supervisor(witness).

In attendance for the OSTA: Mr. Hershel Sigall-Advocate, Chief Counsel; Mr. Robert Cooper, Staff Representative; Mr. Larry Phillips, President; Ms. Elaine Silveira, Attorney; Ms. Bebee Toton, Dispatcher(witness).

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 10:20am. 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 introduced into the Record as Joint Exhibits: Jt. 1-Unit 1 Collective Bargaining Agreement(2012-2015); Jt. 2-Grievance Trail #0104; Jt. 3-Discipline Package composed of--Statement of Charges, Pre-discipline Notice, PD waiver-dated 12/10/12, Discipline Letter, Highway Patrol Rules & Regulations-501.01(C)(10)(c) Dishonesty and 501.01(C) (10)(b) Neglect of Duty, Deportment Record. The following were introduced into the Record as Management Exhibits: ME 1-Administrative Investigation # 2012-0568(AI); ME 2-Training Summary-Bertha Toton; ME 3-Copies of training overheads regarding Failure to Dispatch and Liability issues; ME 4-OSHP Policy-Handling Telephone Calls at Dispatch Centers; ME 5-Copy of Read and Report Summary for Dispatcher Toton.

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:

On August 9, 2012, Dispatcher Bertha Toton was working the 2p to 10p shift, at the Medina Post. Ms. Toton had been dispatching for approximately two years. At approximately 6:40p she received a call from an irate citizen. He was driving west on US Route 2 in Lorain County. The call lasted for approximately one minute. The citizen, Mr. Lawson, was complaining about an 18-wheeler driving at a high rate of speed(70-75mph), and nearly running people off the road(ME-1, CD). Ms. Toton ended the call by stating that she had an emergency call coming-in and hung-up.

Mr. Lawson called back approximately one minute later, requesting to speak to a supervisor. Sergeant Brock took the call, which lasted approximately nine minutes. After an number of minutes, Sgt. Brock finally got Mr. Lawson to define the 18-wheeler's actions as reckless and high speed. During this call Mr. Lawson became further agitated, making numerous threats while complaining that the Highway Patrol was not doing anything to stop the 18-wheeler(ME-1-CD). Sergeant Brock instructed Dispatcher Toton to transfer the call to the Sandusky Post. The Sandusky Post dispatched a cruiser, but no reckless operation was found.

As a result of this incident an AI was initiated by Sgt. Smith(ME-1). Sergeant Smith, through his investigation, determined that Dispatcher Toton failed to create an incident(CAD); did not send a trooper to the caller; did not transfer Lawson's call to the appropriate Post, and ultimately hung-up on him. The investigation was continued by S/Lt. Morgan over a concern that Dispatcher Toton had been untruthful during the AI by claiming there was an emergency call received while she was talking to caller Lawson(ME-1).

Dispatcher Toton was notified on December 5, 2012, that a Pre-disciplinary

meeting was scheduled for December 10, 2012. It was recommended that she be suspended for three (3) days for allegedly violating DPS Rules and Regulations #501.01(C)(10)(c) Dishonesty, and #501.01(C)(10)(b) Neglect of Duty. Ms. Toton waived her rights to the PD on December 14, 2012. Dispatcher Toton was suspended for three (3) days effective December 17 through 19, for allegedly violating the aforementioned Rules and Regulations. Specifically, it was found as a result of the AI that you failed to create an incident and dispatch a trooper to a report of a reckless driver. Additionally you were untruthful when questioned about the facts of the incident.

Ms. Toton grieved the alleged charges and suspension on 12-9-12(Jt.-2). She denied the allegation of Dishonesty and Neglect of Duty. She maintained that the discipline was issued without just cause and was not progressive in nature. Thus the Employer violated Article 19, Sections 19.01 Standard and 19.05 Progressive Discipline. The Union demands the Grievant be made whole in every way. Including full back pay lost to three days served on suspension and absolute removal of any and all mention of this matter in her Department Record, Personnel File, or any other form of record kept by the OSHP.

The grievance was denied at Step 2 on January 10, 2013. President Phillips appealed the grievance to Step 3, also on January 10, 2013. By mutual agreement between the parties, the Arbitration Hearing was scheduled for September 24, 2013.

DISCUSSION AND OPINION:

In review of the audio recording of this incident the arbitrator is convinced that there are crazy people on our highways. Some of whom don't even know that speed limits have changed in the recent past(ME-1,CD).

The initial call taken from Ronald Lawson by Dispatcher Toton depicts an agitated person, upset with a semi-driver. Lawson reports the semi speeding and running people off the road, and driving half nuts. Although he was abusive in nature, it was a call for service in the arbitrator's opinion. Lawson reported more activity than just speeding, even though he emphasized speeding. Dispatcher Toton should have created an incident

and dispatched a cruiser and/or transferred to the Sandusky Post. She

should not have hung-up without obtaining location information to dispatch a trooper, even though Lawson sounded like a “nut-case”.

The second part of this charge and discipline revolves around an allegation of untruthfulness. While reviewing the audio of Ms. Toton’s phone conversation with complainant Lawson, she alleges an emergency call coming in. The AI investigator S/Lt. Morgan, testified that he could find no evidence of a 911 call coming into the Medina Dispatch Center during Lawson’s initial call. During Dispatcher Toton’s AI interviews, she alleged a 911 call coming in during Lawson’s call(ME-1). Evidence and testimony showed that a 911 call was received by the other Center’s Dispatcher, Ms. Case(ME-1). However, Management claims that the 911 call occurred after Dispatcher Toton hung-up on Lawson. Thus, per Management, Ms. Toton was untruthful during her interviews.

Unfortunately, Dispatcher Case’s phone records were automatically expunged after thirty days. Thus the 911 call did not show on the Post’s records. However, S/Lt. Morgan did obtain verification of a 911 call coming into the Medina Post Dispatch Center regarding a potential OVI. The verification came from the Lorain County Sheriff’s Department. The Sheriff’s Department did acknowledge a CAD 911 incident received by Lorain County 911 Dispatch at 6:40p. It was transferred to the Highway Patrol Medina Post(ME-1.pg5). This transferred call was received by Dispatcher Case at 6:42p, per the AI and witness testimony. Dispatcher Case did not recall the call when interviewed more than thirty days later.

To discipline an employee over a matter of twenty-eight seconds, the evidence must be clear and convincing, in the arbitrator’s opinion. The Highway Patrol’s Cybertec System automatically expunges phone time records after thirty days, per witness testimony. Thus the Highway Patrol had to rely on another law enforcement’s phone record’s time stamp to determine guilt. Could there have been a time discrepancy with their records? The Union questioned their accuracy. However, there was no evidence or testimony submitted by Management substantiating there accuracy.

It was first alleged by investigative personnel that there was no 911 call received by the Medina Dispatch Center. Once the Sheriff’s Department

verified that a call was transferred to the Lorain County side of the Medina Post, Management claimed that it wasn't received at the right time.

It is extremely coincidental that Dispatcher Toton would disconnct for a bogus emergency call. Then luckily for her there actually was an incoming call, but twenty-eight seconds too late to be considered in this situation. Did she have ESP?

The arbitrator is not convinced that there could not have been a discrepancy in the Sheriff's Department's time stamp. Evidence showed the 911 call received in the Sheriff's Department at 6:40p, was it transferred at 6:42:05, or twenty-eight seconds earlier(ME-1)? Evidence and testimony is not clear and convincing to the arbitrator that this employee lied. However, she should have dispatched appropriately, the call received from citizen Lawson.

AWARD:

The suspension discipline of three(3) days is to be reduced to one (1) day. The Grievant is to be made whole for the two days of lost wages.

This concludes the Arbitration decision.

Respectfully submitted this 10th day of October, 2013.

E. William Lewis
Arbitrator