

## In the matter of Arbitration between

Ohio State Troopers Association,  
Union

And

Case no.15-03-20130426-0028-04-01  
Grievant Bertha L. Toton

State of Ohio, Department of Public Safety,  
Employer

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### Umpire's Decision and Award

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#### Introduction

This matter was heard in Columbus, Ohio on December 18, 2013. Lieutenant Heidi Marshall represented the Employer. Associate General Counsel Elaine Silveira represented the Union. All witnesses were sworn. No procedural matters were raised. There were several joint exhibits presented: Jt. 1- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package. Additional exhibits were introduced by the parties and admitted during the hearing. These will be discussed as appropriate.

The decision was issued upon an agreed date.

#### Issue

Was the Grievant issued a five (5) day fine for just cause? If not, what shall the remedy be?

#### **Applicable CBA Provision: Article 19 Sections 19.01 and 19.03**

#### **Facts**

Grievant's mistakes are not in dispute. The facts that may bear on the appropriateness of the instant discipline are disputed.

Grievant is assigned as a Dispatcher at Post 52. She has been employed for nine (9) years by the Patrol. She formerly served as a Trooper but became a Dispatcher in 2011.

Untrauer testified that she conducts random audits of other employees under her supervision. Untrauer supervises twenty-nine (29) employees but at the time of the events she supervised thirty-nine (39) employees.

Due to direction from management Untrauer was reviewing Grievant's work on a monthly basis. Grievant is the only dispatcher under her supervision that is checked each month.

The reviews from November and December 2012 prompted the instant discipline.

Discrepancies were found with the Computer Aided Dispatch (CAD) entries and other routine dispatching process steps.

Specific examples follow:

- No CAD regarding a robbery report from Trooper McClain She made an incorrect recording of the suspect's license plate. This occurred after her "training" session on 12-21-12. Grievant admitted this infraction.
- Repeated (three times in November; five times in December) failure to advise troopers of duplicate license plates during rest area checks and to make appropriate CAD entries. Grievant admitted this infraction.
- Calls transferred to outside agencies but no CAD created. The documents support this allegation.
- Incidents entered didn't match the call received. The documents support this allegation.
- CCall but no documentation as to why no unit responded to the scene. The documents support this allegation.
- Incomplete information recorded regarding a hazardous vehicle. The documents support this allegation.
- Failing to edit out duplicate entries on the CAD. The documents support this allegation.
- Failing to timely complete monthly review of training and policies on a repeated basis. The documents support this allegation.

Each dispatcher fills out a self-checklist. Had the list properly been filled out by Grievant her errors would have been caught according to Untrauer.

According to Untrauer she conducted an extensive training session with Grievant on December 21, 2012 at the Medina post to go over the proper procedures for CAD entries. Untrauer also was directly performing Dispatcher duties alongside Grievant that date due to staff shortages. According to the AI Untrauer herself characterized the dispatch center as "crazy" that evening.

Grievant was handed a checklist to review. (HP22) The document is attachment C in M1. Untrauer described Grievant as receptive to the training but that she reviewed the documents quickly due to bad weather and a high volume of calls. Untrauer characterized the training session as a one to one. On cross-examination she stated that she went over the HP 22 for ten to fifteen minutes.

Grievant stated that Untrauer gave her the HP 22 to read while she was actively working. Grievant stated that Untrauer did not go over the document point by point. She stated that Untrauer did not even spend fifteen (15) minutes alone with her. Grievant in no way considered her interaction with Untrauer on 12-21-12 to be training.

Three (3) days after the session Grievant committed similar errors to those previously noted. Untrauer described her improvement as minimal.

Grievant attended Premier CAD training twice before; in 2007 and most recently in July 2011.<sup>1</sup> It is a five (5) day class.

During the AI Grievant stated the CAD training in July 2011 was not useful as the instructor spent much time on his cell phone. She repeated this assertion at the arbitration hearing. Grievant rated the instructor favorably in the training evaluation form. She explained the discrepancy as she was trying to be nice. She claimed she told the instructor that she did not feel proficient in certain areas. She claimed she did not see her instructor's comments about her at the time he made the comments.

Grievant has had in service training on dates reflected in M-2. Use and practices for the CAD are covered in the annual in service. Grievant has had three (3) in service trainings since she became a dispatcher.

According to Untrauer Grievant has not requested additional training or sought any clarification regarding the issues pointed out in her monthly reviews.

Grievant claimed that she asked for her 2011 CAD thirty (30) day training to be extended and was denied her request. She further claimed that she asked Untrauer three (3) separate times to sit with her and give her direct feedback and training and this has never occurred. Grievant was not sure of the dates of her requests.

Grievant stated that she has had to make corrections for other dispatchers during her shift. She stated that there are frequent errors for location by pass reports, where the actual location must be noted. She stated that she has made dozens upon dozens of corrections for other who has not entered license plate numbers.

She stated that she has made corrections hundreds of times for others with no resultant discipline being issued for others.

Grievant said she did read the policy memos but may have not acknowledged signature. She mistakenly thought that she could not return to read a read and sign so she left a number open in order to re-read them at a later date. She had no purposeful desire to evade reading the policies.

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<sup>1</sup> All of her training is set forth in M2. The Patrol took the position that taking the course "Seven Habits of Highly Effective people" was designed to assist her in time management. HR recommended she take the course. She had dispatcher in service training in September 2011; October 2012 and September 2013.

Grievant said the issue regarding duplicate plates at a rest area is a frequent issue with all dispatchers. She stated that she has frequently corrected this for other dispatchers.

Grievant requested additional CAD training. She commented that the training she had in 2007 was of no current value due to constantly evolving practices and procedures.

Grievant described her work area and duties. She has six computer screens to monitor; two LEADS screens; six phone lines; receptionist duties at the post and depending on the day she is responsible for one or two posts' activity.

Grievant was charged with not entering information into the Computer Aided Dispatch. (CAD) She was also charged with failing to advise Troopers of duplicate license tags when the Troopers were at a rest area and made inquiry. Grievant was charged with violation of Rule 5.01 (C) (10)(b) Neglect of Duty.

Her department record reflects a one (1) day fine for failure to dispatch a Trooper and create an incident for the CAD when receiving a report of a reckless driver. (December 2012) She had a written reprimand for failure to do required seven minute check ups, confirm a felony warrant and run a gun through NCIC in a timely manner. (March 2012). An earlier verbal reprimand issued in October 2011 for being seven (7) minutes tardy for an Academy training session.

#### **Employer Position**

The Employer followed its disciplinary grid and issued a five (5) day fine.

Grievant has been repeatedly trained. She has had training memoranda, in service training and informal training. It is the opinion of her supervisors that further training would be a waste of time as Grievant knows what to do but chooses for whatever reason not to do it. Untrauer testified that Grievant has had more training than anyone else on the CAD. Grievant instead blames others for her errors. She cannot learn from her mistakes.

Grievant does not understand the seriousness of mistakes. Dispatchers are essential to the safe performance of Troopers and citizens. Grievant's errors are not nit picking and the Patrol is not discriminating against her in issuing discipline.

The fact that her three (3) day suspension pending was subsequently reduced to a one (1) day in arbitration is non-determinative for purposes of progression.

The discipline is for just cause and the grievance must be denied.

#### **Union Position**

Grievant did not receive appropriate training on December 21, 2012. Untrauer was not devoting six and one half-hours straight to training Grievant. She in fact spent much less time with her per Union Ex. 1-less than three hours. Actually it turned out that Untrauer says she spent 10-15 minutes with her. Untrauer was also performing dispatcher duties with her side by side. Union Ex. 2. This is a far cry from a one on one training session since the distractions were many. In fact all Untrauer did was leave Grievant with a checklist.

The Patrol has thrown up its hands and decided to let Grievant sink. It has not invested effort in making her succeed. Grievant needs and deserves more training. From December 2012 to April 2013 she had received no training.

There is no real showing that Grievant error rates are worse than any other employee's. Correcting errors is an on going routine part of a dispatcher's duties. The volume and pace of work results in errors. Grievant does not stand out in any more dramatic a way than her co-workers. Untrauer's own reports show the incidence of errors is not uncommon. None of the other dispatchers has been disciplined for error rates. There is no way to get a meaningful comparison between Grievant's error rates and those of others similarly situated because others errors aren't documented. Untrauer's notes show posts fail to record read and signs; posts have errors on deconflictions; there are often errors on missing license plate reports and incarcerated persons reports. Union Ex. 3 shows that errors are made all the time. But there is no standard of measurement as to how many errors are made and who is making them.

The grievance should be granted and Grievant made whole. In the alternative, the discipline must be reduced to a three (3) day suspension in conformance with progressive discipline language in the Agreement.

### **Opinion**

The arbitrator read all exhibits and listened to the entirety of the interviews in M-1. She observed the demeanor of all witnesses under oath at the arbitration hearing. The case is not clear-cut and the burden of proof is on the Employer. It is only required to prove its case by a preponderance of evidence.

It is clear to the arbitrator that in no way can Grievant's interaction with Untrauer on December 21, 2012 be considered a training session. The parties were both engaged in work duties. It was a very busy night at the Post. HP22 "Training issues" was handed to Grievant to review but the review could not happen that night. Attachment C to M-1.

Grievant claims she was told to look it over. Untrauer wanted to review it with her but it was too busy to do that that night.

The Patrol insisted it was a training session but the arbitrator disagrees. It is much more akin to a counseling session. There was no notice that if the items were not attended to discipline would be a possible outcome. It is the lack of notice that affects the outcome of this case.

During the AI Grievant stated that she looked it over "a little." Then she said she looked at it after a second question from the investigator. There was no additional follow up from Untrauer with Grievant prior to the discipline. Nor does it appear that Grievant took the matter of the issues seriously and made any appreciable effort to address the valid concerns.

According to testimony of both Grievant and Untrauer errors made by dispatchers are daily and are commonly corrected by dispatchers on the same or following shift. There was no testimony provided as to how many errors are tolerated and what is the baseline for counseling or discipline being initiated.

The Union has the burden of proof on disparate treatment. Although it is clear that others made errors and did not get disciplined it was not quantified in a manner that made it possible to determine if Grievant was being held to a higher, different standard.

Overall Grievant's demeanor both in the AI and at the arbitrator hearing was very guarded, defensive and there were many instances of "I can't remember" "I don't recall." In her defense the investigator would challenge her answers. He would ask her the questions, get her answer then tell her she gave an answer but didn't answer. He was looking for answers that conformed to answer he expected. His questions were not neutral in multiple instances. In fairness to Grievant her defensiveness was not out of proportion to the circumstances at the AI. But her demeanor at hearing was not confident either.

What was insufficiently demonstrated in the hearing is that Grievant is committing errors in quantities or scale sufficiently egregious to merit a five (5) day suspension. There was no standard articulated that sets a minimal area of competency and if its not met discipline will result. Grievant is being monitored due to performance issues. She should know how to do CAD; rest area checks; acknowledge trainings (read and signs); editing duplicate CAD entries and the other issues cited above.

The Union argues strenuously that Grievant should get more training. Grievant herself has requested training but Untrauer did not corroborate this. The dates and times she requested more training are not evidenced by emails or other documents.

The Patrol's attitude is that she is beyond training. The arbitrator is unsure that this is an appropriate conclusion at this point. The arbitrator was concerned that other dispatchers get sixty days on CAD training when starting and Grievant asked for this extension and was not approved. Untrauer stated during the AI that another Dispatcher benefitted greatly from a sixty-day training but this option appears closed to Grievant. Regardless ordering training is beyond the scope of the arbitrator's authority.

Grievant's demeanor did not make a strong impression on the arbitrator that she values her job and is actively engaged in improving work performance. A three-day suspension puts her on notice that she must be more meticulous and attentive to her very essential job duties. There is no question whatsoever that the dispatcher has a very important role for both Ohio citizens and her co-workers on the roads. Grievant must actively step up to the many challenges of her intense job responsibilities or risk future discipline. She is on full notice that her work is being monitored- something she may not have known before according to the record.

AWARD

**The grievance is denied in part and granted in part. The five (5) day fine is modified to a three (3) day fine.**

IT IS SO HEREBY ORDERED.

Issued this 6th day of January 2014 in Columbus, Ohio.

*S/ Sandra Mendel Furman*

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Sandra Mendel Furman, Arbitrator