

Thomas J. Nowel  
Arbitrator and Mediator  
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO  
AGREEMENT OF THE PARTIES  
**MINI ARBITRATION PURSUANT TO SECTION 20.12  
OF THE AGREEMENT**

|  |   |                 |
|--|---|-----------------|
| In The Matter of a Controversy Between:    | ) | Grievance No.   |
|  | ) | 15-03-20130627- |
| The Ohio State Troopers Association        | ) | 0055-07-15      |
|  | ) |                 |
| and  | ) | ARBITRATION     |
|  | ) | OPINION AND     |
| Ohio Department of Public Safety, Division | ) | AWARD           |
| Of the Ohio State Highway Patrol           | ) |                 |
|  | ) | Date:           |
| Re: Disciplinary Suspension                | ) | February 24,    |
| Michael K. Ramsey                          | ) | 2014            |

**APPEARANCES:**

Elaine Silveira, Esq. for the Ohio State Troopers Association; Lieutenant Cassie Brewster for the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol; and Aimee Szczerbacki for the Ohio Office of Collective Bargaining.

## INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the Ohio State Troopers Association and the State of Ohio. The parties are in disagreement regarding the disciplinary suspension of Sergeant Michael K. Ramsey who is assigned to the Milan Post located on the Ohio Turnpike. The Grievant was, at the time of the incidents, the midnight shift supervisor. He was suspended for three days without pay beginning on July 11, 2013. The suspension was appealed through the Grievance Procedure and then submitted to arbitration when the Employer denied the grievance.

The Arbitrator was selected by the parties, pursuant to Article 20 of the collective bargaining agreement, to conduct a hearing and render a binding arbitration award. The matter is arbitrated pursuant to Section 20.12, Alternate Dispute Resolution. This provision limits the parties to opening and closing statements, two witnesses each and no post hearing briefs. The arbitrator is directed to deliver a decision in five calendar days with minimal rationale. The parties agreed that the Award would be issued on February 24, 2014. Hearing was held on February 12, 2014 at the offices of the Ohio State Troopers Association. At hearing, the parties were afforded the opportunity for examination and cross examination of witnesses and for the introduction of exhibits. Witnesses were sworn by the Arbitrator. No procedural issues were raised by the parties.

## ISSUE

“In conformance with Article 20, Section 20.08 of the Collective Bargaining Agreement the parties submit the following statement of issue for resolution by the arbitrator. Did the Grievant receive a three (3) day suspension for just cause? If not, what shall the remedy be?

## WITNESSES

TESTIFYING FOR THE EMPLOYER:

Sergeant Chad Bass, Investigator

TESTIFYING FOR THE UNION:

Michael K. Ramsey, Grievant

## DISCUSSION

The Grievant has been employed by the Ohio State Highway Patrol for 11 ½ years and had been a Sergeant at the time of the incidents for 1 ½ years. Sergeant Ramsey had been assigned to the Milan Post on the Ohio Turnpike. He was assigned to the midnight shift at the time of the incidents which led to his disciplinary suspension. The Employer initiated an investigation of Trooper Richard Anderson in early 2013 based on a number of concerns resulting from “exceedingly high” time efficiency values (TEV) during the last quarter of 2012. Trooper Anderson was assigned to the Milan Post on the midnight shift. The Grievant was Anderson’s shift supervisor on certain days of the week from June 2012 through the time in January 2013 when the incidents, which caused the disciplinary suspension of the Grievant, occurred. The Employer determined that Trooper Anderson engaged in high rates

of speed when unwarranted, and he entered improper computer aided dispatch statuses (CAD) to misrepresent his work time. In addition, the Employer was concerned with excessive work status for court time and vehicle maintenance. Sergeant Chad Bass was assigned to the investigation of Trooper Anderson. Following an extensive investigation (Man. Exb.1), Trooper Anderson was issued a five day disciplinary suspension as part of a Last Chance Agreement which was entered into by the Union, Employer and Anderson. The Employer also determined that Sergeant Ramsey was likewise culpable as Anderson's immediate supervisor for failing to monitor his activity and providing a level of supervision which may have mitigated his violations of policy. The Grievant supervised three Troopers who were assigned to the Turnpike during the night shift including Anderson. While the investigation of Anderson included numerous incidents of unwarranted speeding and misrepresentations of work activity, the investigation of the Grievant focused on three specific dates, January 4, 2013, January 5, 2013 and January 12, 2013 (Man. Exb. 1, pg. 26). The Grievant was the midnight supervisor on these dates when Anderson spent significant time at two BP gas stations located off the turnpike. The Employer determined that Anderson had no reason to be in these locations based on the excessive amount of time he spent at each. Troopers are allotted 30 minute lunch breaks and are permitted to re-fuel at these locations, but time spent at the two gas stations far exceeded what was reasonable and permissible on the three dates in question. Anderson conducted no official business at the BP stations and should have been patrolling and providing service to the Ohio Turnpike. The Employer determined, by utilizing a GPS locator, that Anderson had spent one hour,

six minutes and 43 seconds at the BP gas station on Lorain Road on January 4, 2013 (Man. Exb. 1, pg. 569). Likewise, on January 5, 2013, Anderson spent one hour, thirty-two minutes and thirty-three seconds at the BP on State Route 53 located just off the turnpike exit ( Man. Exb. 1, pg. 575). On January 12, 2013, Anderson spent two hours, fifteen minutes and nineteen seconds at the BP on Route 53 (Man. Exb. 1, pg. 576). At hearing, it was determined that this number was not accurate and that Anderson had actually spent two hours, four minutes and twelve seconds on the third date in question. The Grievant, Sergeant Ramsey, was Anderson's direct supervisor on each of these dates. Testimony at hearing indicates that there were no complaints made by the Turnpike to the Grievant regarding Trooper Anderson, and he did not fail to respond to a call. The Grievant counseled Anderson in the fall of 2012 for a number of concerns which came to his attention, and he noticed his cruiser at a BP gas station in 2012 and stopped to inquire his reason for being at that location. When Anderson indicated he was on his 30 minute lunch break, the Grievant was satisfied with the explanation. The Grievant was trained on a number of technologies which allow for tracking and confirming the locations of Troopers while on duty (Man. Exb. 1, pg. 34). There are a number of techniques supervisors utilize to determine the location of Troopers who have not been heard from while on duty. In addition to supervising Troopers assigned to his shift, the Grievant is responsible for the LEEDS system, monitors accidents, reviews pending cases and numerous other activities. If a Trooper is unavailable for duty, the Grievant, from time to time, performs the regular duties of the absent employee. During the time the Grievant was assigned to supervise Anderson, he was never notified by

management to pay additional attention to his activity or normal work responsibilities. The Grievant served as a Trooper with Anderson for nine years and was never aware that he falsified his activity. Troopers regularly use the BP gas stations in question for re-fuelling and to purchase lunch. The Grievant received a satisfactory performance evaluation in February 2013. He went on an approved FMLA leave of absence beginning on January 15, 2013. Following the investigation of the Grievant, the Employer conducted a pre-disciplinary hearing on June 24, 2013 and then notified him of the three day suspension on June 27, 2013. He was charged with violation of Rule 4501:02-6-03(A)(1), Responsibility of Command which states the following. *A member who is in command of any post, district, section, unit, detail or assignment, or part thereof, either on a temporary or permanent basis, shall be held responsible for the efficiency, discipline, performance and welfare of the persons under his/her command, for facilities assigned under this command, and for the performance and condition of all equipment and the effective discharge of the duties and responsibilities of the division within the scope of this command.* The Grievant appealed the discipline through the Grievance Procedure, and the Union appealed the suspension to arbitration following the Employer's denial of the grievance.

The Employer argues that it was the responsibility of the Grievant to monitor the activity of Trooper Anderson. He failed to supervise Anderson, failed to carry out his responsibility as a shift supervisor and therefore violated policy. The Grievant served as the Assistant Post Commander. Furthermore, the Grievant knew that Anderson was a problem employee. He had seen him at the BP gas station in the past and admitted during the investigative interview that he was forced to

search for Anderson on two or three previous occasions. He was also forced to counsel Anderson during 2012. On the specific dates in question, January 4, 5 and 12, 2013, the Grievant failed to monitor the significant amount of time Trooper Anderson spent at the BP stations. At the very least, he could have called dispatch in an attempt to determine his whereabouts and activity. The Employer states that there are various resources available to supervisors including "time in status" summaries and unit histories to determine activities and time spent by Troopers in specific locations. The Employer argues that the Grievant failed in his responsibility to utilize these technologies and tools regarding Trooper Anderson, and he therefore did not hold him accountable for his actions which led to the three occurrences at the BP gas stations. The Employer states that the Grievant never confronted Anderson regarding his errant behaviors including unauthorized speeding and time spent not attending to his duties as a law enforcement officer on the Ohio Turnpike while on paid time. The Employer argues that the Grievant must be held accountable for this failure to supervise which is a significant part of his responsibilities as a Sergeant. The record of the Grievant includes a one day suspension for violation of the same Rule involved in the instant matter, Responsibility of Command. The Employer argues that the principle of progressive discipline has been followed in this case and asks that the Arbitrator sustain the three day disciplinary suspension and deny the grievance of the Union.

The Union argues that there is no just cause for the three day suspension of Sergeant Ramsey. When the Grievant observed Anderson at the BP gas station in 2012, he determined that he was legitimately taking his lunch break. The Union

states that he did not observe Anderson at that location at other times. The Union states that management apparently did not consider Trooper Anderson to be a problem employee as the Grievant was never notified to provide more than normal monitoring of his activities. The Union argues that the Grievant had no reason to believe that Anderson was a problem employee, and he provided the same level of supervision for him as other Troopers under his command. The Union states that the Grievant monitored the activities of all Troopers under his supervision by calling the dispatch center. He did not determine anything out of the ordinary regarding Trooper Anderson. The Union argues further that management failed to provide sufficient training regarding the Time Efficiency Value (TEV) program and could not expect the Grievant to access this tool in order to evaluate Anderson's overall activity. The Union states that two hours of training were provided on the program with no follow up. This was not a sufficient amount of time to create competency in utilizing the tool. The Union argues that the investigation by Sergeant Bass was flawed. He did not consider the activities of Trooper Anderson in 2012 or the level of supervision provided by the Grievant during that time. Instead the investigation of the Grievant only focused on the three dates in January 2013 when Anderson was found to be at the two BP gas stations. The Union argues further that there was no reason for the Grievant to focus on the activity of Anderson whose specialty was OVI arrests. During 2012, Anderson made 82 OVI arrests, the highest in the district (Union Exb. 2). In addition, his numbers for other activity compared well to other Troopers in the district. There was no reason for the Grievant to suspect that Trooper Anderson was essentially cheating on his work time. The Union states that



the Grievant received a satisfactory performance evaluation in February 2013 (Union Exb. 5) and received a number of “exceeds expectations.” The Union points out that an administrative investigation in 2012 determined that Trooper Masters had misrepresented his work time by spending significant periods of time at one or more residences of his parents and girl friend (Union Exb. 3). While the Trooper was disciplined for his behavior, the Sergeant in this case was not held accountable and was not the subject of disciplinary action. The Union argues disparate treatment. The Union asks the Arbitrator to find that the discipline of the Grievant was not for just cause and to therefore grant the grievance.

Although this case is about Sergeant Michael Ramsey, the volumes of exhibits make it clear that Trooper Anderson was a problem employee. He “gamed” the system and was able to spend work time away from the Turnpike and his assigned responsibilities. He essentially was loafing. The fact that he and the Union entered into a Last Chance Agreement confirms that his discipline was for just cause. In this matter, it must be determined if the Grievant failed to carry out his duties as a supervisory employee when he was not aware that Anderson spent a significant amount of time on January 4, 5 and 12, 2013 loafing and not carrying out his responsibilities as a Trooper. The Employer states that the Grievant knew that Anderson’s behavior was a problem, and he had seen him at the BP gas station on a number of occasions. The investigative interview of the Grievant, conducted by Sergeant Bass, is revealing (CD, recording of interview). The Grievant stated that he had called dispatch a number of times to determine Anderson’s location. He stated

in the interview that he never found Anderson to not be engaged in appropriate work activity. It was not unusual for Anderson to spend time at the dispatch center, as opposed to being on the Turnpike, as he was a trained expert in OVI and often completed forms and paperwork at the center. The Grievant found this to be an acceptable part of his duties. During the interview, the Grievant stated that he may have observed Anderson at the BP a couple of times, but he only remembered one occasion specifically when the Trooper had stopped to purchase lunch during his thirty minute break. Again, the Grievant found this to be acceptable. Later during the interview, the Grievant stated that he checked on Anderson two or three times but did not physically observe him. The Grievant stated that it was not unusual for Anderson to visit one of the BP stations for gas or food and then drive on highways off the turnpike as part of his OVI duties. This would account for longer time away from his duties on the Turnpike, but the Grievant found this activity to be acceptable and did not anticipate Anderson's behavior on the three dates in question. The Employer's argument, nevertheless, that the Grievant had a responsibility to determine the location of Anderson on the three dates in question, is meritorious. Anderson spent one hour, six minutes and forty-three seconds at the BP station not engaged in his duties and away from the Turnpike on January 4. He had not been heard from during this time. The Grievant had a responsibility to monitor Anderson, not because he necessarily expected policy violation and unacceptable behavior but because this was a significant amount of time for a Trooper not to be heard from. The same is true for the one hour, thirty-two minutes and thirty-three seconds on January 5 and two hours, four minutes and twelve seconds on January

12. Although the Grievant stated that, at the time, he was not proficient with the TEV and did not routinely check “time in status,” he admitted that there were other approaches he could have utilized to check on Anderson’s status. He could have asked dispatch to locate Anderson or could have called him on the radio himself. During the investigative interview, the Grievant stated that, during this period of time, he was “a bit distracted” as he and his fiancé were expecting the birth of their child, and she was overdue. He admitted, during the interview, that he could have called Anderson on the radio to determine his location and activity on the nights in question. At hearing, he testified that, following the incident and discipline of Trooper Anderson, he inquired of his Lieutenant and other senior Sergeants what he could have done to improve his supervision of Anderson. The Grievant was straightforward during the investigative interview; he attempted to learn from the incidents from other members of supervision; and he provided honest responses at the arbitration hearing. It is hoped that senior management has taken the opportunity to further instruct the Grievant regarding his approach to supervising Troopers and the available technologies. The Union’s argument regarding the Grievant’s satisfactory evaluation, which was completed following the Anderson episodes, has merit. Management, at the time, found the Grievant’s overall performance to be acceptable and above the norm in a number of areas. Although the Union raised the issue of disparate treatment based on the Masters case, this matter was inconclusive based on a lack of information and the fact that it was a singular incident. The Grievant’s record indicates a prior one day suspension, and the Employer argues that the three day suspension is in compliance with Section

19.05, Progressive Discipline. This section of the Agreement also states that “Disciplinary action shall be commensurate with the offense,” and multiple reprimands are possible. The Grievant had been Trooper Anderson’s supervisor for approximately seven months, but he was charged with failing to properly supervise his activities on only three dates. The Grievant was truthful during the investigation and at hearing and indicated that he made attempts to learn from the incident. The grievance is therefore granted in part and denied in part. The three day suspension is reduced to a written reprimand. The record of the Grievant will be so modified.

#### AWARD

The grievance is granted in part and denied in part. The three day suspension is reduced to a written reprimand. The record of the Grievant will be so modified.

Signed and dated this 24<sup>th</sup> Day of February, 2014 at Cleveland, Ohio.



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Thomas J. Nowel  
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 24<sup>th</sup> Day of February, 2014, a copy of the foregoing Award was served, by way of electronic mail, upon Elaine N. Silveira, Esq. for the Ohio State Troopers Association; Lieutenant Cassie Brewster for the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol; Aimee Szczerbacki for the Office of Collective Bargaining; and Alicyn Carrel for the Office of Collective Bargaining.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

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Thomas J. Nowel  
Arbitrator