

Decision and Award in the Matter of Arbitration between:

**Ohio Department of Public Safety,
Division of the State Highway Patrol**

And

Ohio State Troopers Association

Grievance #: DPS-2016-04314-1

Grievant: Trooper Garry M. Odom

Arbitrator: Jack Buettner

Date of Hearing: November 28, 2016

Date Briefs Received: January 9, 2017

Date Decision Issued: February 1, 2017

Representing the Employer:

Lieutenant Marty Fellure, Advocate for the Employer
Ohio State Highway Patrol
1970 W. Broad St.
Columbus, OH 43223

Representing the Union:

Hershel M. Sigall, Advocate for the Grievant
Ohio State Troopers Association
190 West Johnston Road
Gahanna, Ohio 43230

By mutual agreement the Hearing was convened on November 28, 2016, at 9:00 AM. The Hearing was held at the Office of Collective Bargaining in Columbus, Ohio. Jack Buettner was selected by the parties to arbitrate this matter as a member of the panel of permanent umpires pursuant to Article 20, Section 20.8, of the Collective Bargaining Agreement which is effective from 2012-2015.

The parties each stipulated to the statement of the issue, a series of background facts, and the admission of joint exhibits. The parties have also agreed to the arbitration of this matter. No issues of either procedural or jurisdictional arbitrability have been raised, and the matter is now properly before the arbitrator for a determination of the merits.

In attendance for the Employer:

Lt. Marty Fellure	Advocate, OSHP
Staff Lt. Cassie Brewster	2 nd Chair, OSHP
Cullen Jackson	OCB Policy Analyst
Lt. Darren Halls	OSHP/Observer
LROCB Michael Wood	OSHP/Observer
Sgt. J.L. Burkhart	OSP/AIV/0178
Diana Coffman-Odom	Highway Patrol Radio Dispatcher
Sgt. Sean Ryan	Huron PD

In attendance for the Union:

Mr. Herschel Sigall	Advocate/Attorney
Ms. Elaine Silveira	2 nd Chair
Trp. Garry M. Odom	Grievant
Mr. Jeremy Mendenhall	OSTA President
Mr. Bruce Elling	Staff Representative

The parties were asked to submit exhibits into the record.

The following were submitted as Joint Exhibits:

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| Joint Exhibit #1 | 2012-2015 Bargaining Agreement between the State of Ohio and OSTA |
| Joint Exhibit #2 | Grievance Trail – DPS-2016-04314-1 |
| Joint Exhibit #3 | Discipline Trail <ul style="list-style-type: none">a. Statement of Chargesb. Formal Notice of Pre-discipline Meetingc. Letter of Terminationd. “Conduct Unbecoming an Officer”e. Department Record |

The following were submitted as Management Exhibits:

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| Management Exhibit #1 | Administrative Investigation #2016-0405, August 19, 2016, with 5 CDs <ul style="list-style-type: none">a. Coffman-Odom Interviewb. Dispatch Recording (ECSO)c. Text Messagesd. Interviews of Huron PD Officers and Reedere. Odom Interview |
| Management Exhibit #2 | OSHP Sworn Officer Discipline Grid |
| Management Exhibit #3 | Huron Police Department, Incident 20161069, Pictures dated 7/08/2016 |

The following were submitted as Union Exhibits:

Union Exhibit #1	Administrative Investigation #2012-0549
Union Exhibit #2	Garry Odom Annual Review, 3/27/13 to 3/26/14 and 3/26/2015 to 3/26/2016

Background:

The Grievant, Trp. Garry M. Odom, was commissioned as a trooper of the Ohio State Highway Patrol on March 26, 2004. The Employer acted to terminate him on October 19, 2016.

The incident that predicated the termination occurred on June 29, 2016. Trp. Garry Odom and his wife, Diana Coffman-Odom, attended a pool party at a nearby marina. Also in attendance were Garry's son Trevor and Diana's son Aiden. Both the Grievant and his wife consumed several alcoholic beverages. After approximately three hours, they returned home.

At home, the children went to clean up in the bathroom while the Grievant and Victim went to their bedroom to do the same. An argument ensued that escalated to unpermitted contact with Diana, assault, by Garry. Also, her cell phone was thrown across the room causing damage to the phone.

While the altercation was taking place, the Victim's son, Aiden, became frightened and called his father, Lt. Richard Reeder who then called the Huron Police Department. After investigation by the Huron PD, Trp. Garry Odom was arrested and incarcerated on a felony count of Disrupting Public Service and a Misdemeanor of the First Degree Domestic Violence.

In light of the revised charges to which Trp. Garry Odom later pled guilty, he was terminated for violating Rule 4501:2-6-02 (I)(1)(2), Conduct Unbecoming an Officer.

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Issue:

On October 19, 2016, Trp. Garry Odom was terminated from employment for violating Rule 4501:2-6-02 (I)(1)(2), Conduct Unbecoming an Officer. The parties submit the following statement of issue for resolution by the arbitrator:

Was Trp. Odom terminated from his employment with the Ohio State Highway Patrol for just cause? If not, what shall the remedy be?

Employer Position:

The Employer's position is that Trp. Odom was in violation of Rule 4501:2-6-02 (I)(1)(2), Conduct Unbecoming an Officer and rightfully terminated. The statement of charges read: "Through administrative investigation #2016-0405, it was found that Trp. Odom was arrested and incarcerated on charges of Domestic Violence (M-1) and Disrupting Public Service (F-4) after being involved in a domestic incident with his wife. On September 30, 2016, Trp. Odom pled no contest to persistent Disorderly (M-4) and criminal Mischief (M-1). Trp. Odom was found guilty on both charges." Further, the OSHP Sworn Officer Discipline Grid states removal is recommended for "Conduct Unbecoming—Elements of criminal violations or criminal convictions (M-1 or higher)" for a first offense with a clear department record.

The incident that gave rise to Trp. Odom's arrest occurred on June 29, 2016. He, his wife Diana, his son Trevor, and Diana's son Aiden attended a pool party at a nearby marine. Both consumed several alcoholic beverages. After returning home, the Employer contends that the Grievant made sexual advances toward the Victim which she rejected. He became angry and left the room. An argument ensued with Trp. Odom making profane remarks and throwing clothing from the Victim's arms across the room.

The Victim returned to their bedroom to change clothes with the intent of taking her son and leaving. The Grievant grabbed the victim's arm forcefully, leaving bruises, and pushed her down. The Victim told Trp. Odom she wanted to call the police at which time he threw her phone across the room damaging it. The altercation continued. The Victim's son became upset and called his father, Lt. Rick Reeder. The Victim reached her son and responded into his Gizmo Pal (phone device) that she was OK. The Grievant interrupted the conversation, continuing to use profanity, and threw the son's Gizmo Pal across the room thereby disconnecting the call. The victim then took her son and headed out the front door. The Grievant used his open hand to smack the Victim across the back of the head.

The Huron Police Department came to investigate after receiving a call from Lt Reeder. Based on information from the arresting officer and the Grievant's own admissions to "having lost it", the Grievant was incarcerated on a felony count of Disrupting Public Service and a Misdemeanor of the First Degree Domestic Violence.

On July 1, 2016, The *Sandusky Register* newspaper ran an article about Trp. Odom's arrest. The Employer contends this coverage tarnished the reputation of the Employer and impacted public confidence in the law enforcement agencies.

The deciding factor in the termination of Trp. Odom was the Employer's Sworn Discipline Grid. As stated previously, it recommends termination for elements of criminal violation or criminal convictions M-1 or higher. The Grievant's offenses clearly fit the category. Hence, his termination.

Union Position:

The Union's position is that Trp. Odom was wrongfully terminated.

On June 29, 2016, an incident did occur after Trp. Odom and his wife returned from a pool party where they had consumed several alcoholic beverages. An argument ensued that escalated into unpermitted contact by Trp. Odom with Diana. The assault is not at dispute.

Trp. Odom was also charged with "Disrupting Public Service" for throwing her cell phone and damaging it. ORC 2929.04 states that: "No person purposely by any means or knowingly by damaging or tampering with any property shall do any of the following: Interrupt or impair ...telephone...communications...being used for public service or emergency communications..." The Union contends that this charge was not applicable. First, the phone was not being used to communicate any emergency. The phone was off and in the charger, and no call was ever initiated even though Diana had the opportunity to do so. Secondly, the phone, which sustained a cracked screen, was fully operational should Diana have decided to make an emergency call.

The Union contends that the termination was based solely on the Employer's Sworn Discipline Grid and is in violation of the Collective Bargaining Agreement (CBA). The Employer's Sworn Discipline Grid is not a part of the CBA and is merely a guideline for action. It does not follow the grievance procedure, has no reference to "just cause", and does not allow for progressive discipline.

Additionally, the termination was based on off-duty behavior. Trp. Odom has no department record, no reprimands, and no suspensions in his 12-year career.

DISCUSSION AND DECISION:

In reviewing the termination of Trp. Garry Odom, I have analyzed the testimony and all evidence put forth by both sides. Different views of the incident that gave rise to the termination were put forth by Management and the Union. The end result, however, is not in dispute. Trp. Odom entered a no contest plea to Persistent Disorderly (M-4) and Criminal Mischief (M-1) and was found guilty. His termination was based on a violation of Rule 4501:2-6-02 (I)(1)(2), Conduct Unbecoming an Officer.

The identified issue for resolution in this instant matter is the just cause of the Grievant's termination. An arbitrator must determine whether an employer has clearly proven that an employee has committed acts warranting discipline and that the penalty of discharge is appropriate under the circumstance. In this case, both parties agree to the acts that were committed. It must then be decided if the penalty of discharge is appropriate.

The mitigating factors involved in this immediate case suggest that the penalty was too severe.

Article 19.05 of the CBA is a provision for Progressive Discipline. This provision was intentionally written to bring about positive change or rehabilitation in an employee so that experienced and willing employees would have an opportunity to reform and benefit from continued employment. "The concept of progressive discipline requires an employer to demonstrate an honest and serious effort to 'salvage' rather than 'savage' an employee." *Victory Mkt., Inc., 84 LA 354 (1985)*. In addition to this contractual commitment to progressive discipline, other factors pertinent to the Grievant should be reasonably considered such as length of service and performance reviews.

In reviewing the Grievant's employment history over the past 12 years, Trp. Odom has been an excellent employee with a clear record of deportment. He has served as an instructor at the Ohio State Highway Patrol Academy and was voted by his fellow officers as Trooper of the Year in 2012. Additionally, his Commanding Officer, in conducting his most recent annual performance evaluations, has found him to be an "...experienced and respected officer."

The Employer used the Ohio State Highway Patrol Sworn Officer Discipline Grid to substantiate the termination of Trp. Odom. The grid states the following:

Performance Track Violations	1st Offense (Clear Deportment)
Conduct Unbecoming—elements of criminal violations or criminal convictions (m-1 or higher)	Removal

Trp. Odom does fall into that category. The grid, however, is not a part of the CBA and is a recommendation, not a mandate, for action. Under Application, it states. "The offenses and associated penalties are to be used as a guide in an effort to maintain consistency in the disciplinary process; however, the Appointing Authority still retains the right to consider circumstances which may aggravate or mitigate a penalty. The penalties imposed for violating a rule or rules are determined by considering all relevant mitigating and aggravating circumstances."

Management cited the *Sandusky Register* newspaper article about Trp. Odom's arrest and contends this coverage tarnished the reputation of the Employer and impacted public confidence in the agency. While the article may have had an adverse effect on the image of the Patrol, it must be considered if this one-time news article would have a tarnishing effect on the statewide agency and is cause for termination. However, there is no evidence of a continuing notoriety related to this particular matter.

In discussing what constitutes just cause, I refer to Arbitrator Carroll Daugherty's definition (Brand, Norman, Editor. *Discipline and Discharge in Arbitration*. Washington, D.C.: BNA Books, 1998, pp. 31-33) which incorporates seven (7) questions for determining just cause. While these questions are not a definitive test, they provide a preliminary tool for determining just cause. Question #7 is pertinent to this case.

1. Was the degree of discipline administered by the employer reasonable related to (a) the seriousness of the employee's proven offense and (b) the record of the employee's service?

Discipline was warranted in this case and is not in dispute. Both sides have presented irrefutable evidence that Trp. Odom was found guilty of the charges.

While this Arbitrator does not by any means intend to downplay the severity of the charges against Trp. Odom, he does recognize that this was a one-time, off-duty incident that took place in highly emotional circumstances compounded by alcohol use. Trp. Odom did, however, take full responsibility for his actions, cooperated with arresting officers, and entered in an EPA Program. The Employer has invested considerable time and taxpayer money in Trp. Odom which would be lost if he was to be terminated.

AWARD:

For the reasons stated above, the Union's request to restore Garry Odom to his position as trooper is granted. He is to be reinstated without back pay or benefits, and his seniority should be bridged back to the date of his termination.

Based on the severity of the charges to which Trp. Odom pled guilty, he is to be put on a Last Chance Agreement as it relates to the specific charges. As an experienced and highly trained trooper, Odom needs to demonstrate that he can abide by the same laws and rules of conduct that he enforces against the general public.

This concludes the arbitration.

Respectfully submitted this 1st day of February, 2017.

John F. Buettner, Arbitrator