

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association,
Union

And

Case no. 2017-02386-15
Sgt. Matthew Robinson, Grievant
One Day suspension

State of Ohio, Department of Public Safety,
Employer

Umpire's Decision and Award

Introduction

This matter was heard in Columbus, Ohio on December 11, 2017 at the OCB Conference Center. Larry Phillips represented the Union. Other Union persons present were Elaine Silvera, Jeremy Mendenhall, Kari Root and Brian Perry.

Lt. Jacob Pyles represented the Patrol. The Patrol also had Lt. Cassandra Brewster present as well as Abigail Barr from the Office of Collective Bargaining.

Each side called witnesses in support of their position. The Patrol called Sgt. Laura Taylor and Major Richard Fambro. Grievant testified in his own defense and Sgt. Colbert from the Dayton Post also supported the Union case with testimony.

All witnesses were sworn.

There were several joint exhibits presented: Jt. 1- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package. The issue was stipulated. Additional exhibits were introduced by the Patrol and Union and all were admitted during the hearing.

Issue

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

Applicable CBA Provisions

Article 19

Background

Grievant is assigned as a Sergeant at the Dayton Post. He is a ten-year employee. At the dates in question he worked the third shift. He has been a Sergeant for approximately two years.

Grievant has a written reprimand in his disciplinary history. Jt-3. This discipline was in part for an apparently similar violation: allegedly not terminating the pursuit of another Trooper involved in a high speed pursuit. Details regarding the prior event were not part of the record. Written reprimands are not grievable. The rule violations cited in the November 2016 written reprimand were not the same as the current case.

In this case, Grievant was charged with violation of Rule 4501:2-6-03 (C)-Responsibility for Orders.

The one day suspension was issued on June 21, 2017.

It was timely grieved.

Summary of FACTS

Grievant was disciplined for events arising from a high speed chase on I-75 occurring on January 28, 2017. Grievant was the Sergeant on duty at the Dayton post. He became aware of the chase from radio transmissions from Trooper Hoerst, the officer involved.

Grievant gave multiple instructions for Hoerst to cease the high speed chase. Each direction was ignored by Hoerst. The AI indicated that Hoerst heard the initial order to terminate. Reviewing the AI as to Hoerst it is clear that Hoerst was not being forthcoming about his communications with Grievant. He does in the main acknowledge multiple instructions from Grievant to terminate. See p.3. of M-1. [See e.g. "I disobeyed his order because I thought it was still just to continue." ... "I disobeyed his order. There's a difference between being insubordinate and disobeying a just order."]

Grievant was questioned about the series of events and likewise became the subject of an AI.

The Patrol's witnesses were Sgt. Taylor who conducted the AI and Major Fambro who is not in the chain of command but is assigned to administration (Personnel).

The instant discipline ensued.¹

Employer Position

Grievant did not effectively supervise and manage the pursuit. He needed to do more than was evidenced by the record.

Grievant needed to give a direct order and verify that Trooper Hoerst heard the order by seeking an acknowledgment.

Grievant's conduct violated OAC 4501: 2-6-03 (C) –Responsibility for Orders.

The discipline is within the grid; is commensurate and progressive and no abuse of discretion exists such as to mitigate the discipline.

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

Union Position

Grievant acted at all times appropriately: he gave four direct orders to terminate the pursuit. It is redundant and unnecessary to state: this is a direct order. Hoerst was acting in a rogue manner; Grievant had no expectation based upon prior experience that Hoerst would be complaint despite multiple requests.

In the alternative, the discipline should be modified to a less harsh level. A written reprimand would be commensurate or additional training offered as a remediation.

Opinion

The Employer bears the burden of proof.

The Umpire is of the opinion that giving both Trooper Hoerst and Grievant the same discipline- a one day suspension- is problematic. The culpability is not equivalent and represents an arbitrary and capricious imposition of discipline.

¹ Hoerst received a one day suspension for his role in the chase. There is no evidence that the discipline was grieved. Hoerst was ultimately removed as an employee of the Patrol. The removal

This imposition of discipline is surprisingly at odds with the District's own findings:

Sergeant Robinson directed the pursuit to be terminated and was ignored. Sergeant Robinson then continued to monitor and direct the pursuit that was continued by the Trooper Hoerst, since he did not terminate. He aptly tracked and continued to monitor providing for updates and ultimately reiterates termination once it gets back onto surface streets. Emphasis added
M-1 pp13-14.

Grievant made four distinct, undisputed attempts to get Hoerst to abort the high speed chase. Tellingly, in Union Ex. 1, the Patrol states: "Trooper Hoerst failed to terminate a pursuit after being ordered to do so by his supervisor several times." In the notice of discipline issued to Hoerst it stated: "Trooper Hoerst failed to terminate the pursuit after being ordered to do so." Hoerst was charged with a violation of the compliance to orders rule: 4501:2-6-02 (Y)(1). Once this charge to Hoerst had been made- then Grievant's discipline for failing to give proper orders to terminate becomes highly suspect.

Reviewing OSP Policy 203.20 approved date 11/20/17 [after the date of the incident] it appears as though there is no specific part of the policy that Grievant abnegated or failed to follow.

What Robinson didn't do is use words: "This is a direct order" or make a specific request that Trooper Hoerst acknowledge that he heard the four orders given. That may indeed have been the better practice; but the record is insufficient to support a finding that Grievant knew this was the expected protocol. Absent evidence of rule, policy, direct instruction or training that Robinson knew he had to do more than give direct orders- in this case four- the discipline lacks just cause. Robinson indisputably also stayed connected and monitored the situation from start to finish; the record is clear on that point.

Major Fambro thought Grievant should have done more and followed a series of actions that would have demonstrated an active intent to get the pursuit terminated. But there is no evidence that Grievant received that training or

reasons were not stated in the record. His current status was unstated and not part of the record. It is unknown if there is a grievance pending on either/both disciplines.

instruction on/before the date of the pursuit. Absent notice to Grievant that was the correct protocol, he cannot be faulted by discipline for what the record does not make clear he knew or should have known.

Summary

The record does not support that Grievant received direct training, instruction or reminders about being more involved and in what specific manner he should be involved in terminating a pursuit as a supervisor. It is established without doubt that he supervised Hoerst through the chase and ordered him four times to cease pursuit. If a different protocol was expected, then training or instruction needed to occur before any discipline would be appropriate. The Patrol's written procedures do not demand any more than Grievant did. To argue that getting a "23" response from Hoerst was required is unreasonable; Hoerst clearly admitted he heard and understood the instructions to terminate but disagreed that he had to comply. There is no just cause for discipline.

AWARD

The grievance is granted. Grievant should be made whole in lost pay and benefits.

IT IS SO HEREBY ORDERED.

Issued this 18th day of December, 2017 in Columbus, Ohio.

S/ Sandra Mendel Furman

Sandra Mendel Furman, ESQ. Arbitrator