

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association,
Union

And

Case no. 2017-02605-15
Jason Bonar, Grievant
Three Day suspension

State of Ohio, Department of Public Safety,
Employer

Umpire's Decision and Award

Introduction

This matter was heard in Columbus, Ohio on January 11, 2018 at the OSTA headquarters in Gahanna, OH. Elaine Silveira represented the Union. Other Union persons present along with Grievant were Larry Phillips, Jeremy Mendenhall, Kari Root and Robert Cooper, Staff Representative.

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

Each side called a witness in support of its position. The Patrol called Sgt. Zatvarnický who conducted the Administrative Investigation (AI). Robert Cooper testified on behalf of the Union.

Both witnesses were sworn.

There were 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 three (3) day suspension for just cause? If not, what shall the remedy be?

Applicable CBA Provisions

Article19

Background

Grievant is assigned as a Sergeant at the Canfield Post. He is a long tenured employee: 17 years. At the dates in question he worked the first shift. He has been a Sergeant for approximately two years.

Grievant has two verbal reprimands in his disciplinary history. Jt-3. Verbal reprimands are not grievable.

In this case Grievant was charged with violation of Rule 4501:2-6-05(D)(1) Motor Vehicle and Aircraft Operation. It states:

A member shall operate all division motor vehicles and aircraft in accordance with all applicable laws and directives. A member shall operate motor vehicles and aircraft in a careful prudent manner.

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

It was timely grieved.

Summary of FACTS

Grievant was disciplined for driving at excessive speeds on thirteen different tracked, documented occasions at ten discrete dates from 1-1-17 to 3-27-17. The speeding occasions were tracked through the CAD as Grievant's MCT was operating at the times cited.

The facts are uncontroverted. The driving was at all cited occasions well over the posted speed limit; anywhere from twenty to forty-nine miles over the posted limit.¹ Driving also was at excessive speeds through a construction zone, albeit not at times when workers were likely present. The hours involved were before first shift, which begins at 6 am. Grievant lives approximately twenty miles from the Canfield Post, an estimated twenty-five minute drive.

The Union's request for information in preparing for arbitration indicated one other person similarly situated to Grievant [Sergeant Buscey at the Canfield

¹ Speeds tracked were always at least 20 mph over the limit. On six occasions, he was driving over 100 mph. None were the occasions related to a pursuit. What was not part of the evidence is the minimum amount of speed over limit that merits discipline from the Patrol's perspective. Clearly it appeared at least in this case that twenty miles over the posted limit is a matter of concern. The policy and procedures create no such "bright line" demarcation.

post], who also was a speeder at excessive speeds during the similar time period. He was not disciplined.

Grievant did not testify. From his statements during the AI, it was indicated that due to a rigorous and challenging school schedule, he was tired, overslept on each of the occasions and was racing to get to work on time. He was embarrassed and made no excuses for his behavior.

The Patrol's witness was Sgt. Zatvarnicki who conducted the AI. He explained how Grievant's actions were captured: during an audit that was gathering data as to the feasibility of troopers and sergeants driving to work directly from home. Grievant was not charged with improperly using his patrol car to start work from home.

There were no citizen or supervisory complaints about his speeding; the discipline related to the random audit results being reviewed.

Although the Union objected to an exhibit indicating the posted speed limits on the 13 areas where Grievant was determined to be travelling at excessive speeds, it was admitted. All of the areas would have under traffic laws caused varying levels point accumulations and significant fines.

Grievant was aware of the pertinent rules and regulations regarding safe driving. Management Ex. 2-3, 5.

The instant discipline ensued.

Employer Position

Grievant definitively was speeding on the cited dates and times reflected in the A-I. This driving at excessive speeds violates known policies and procedures.

Driving at such high speeds is inherently dangerous, especially in the dark and through construction zones. Deer are also an obvious hazard. This was in no sense a necessary or allowable amount of speed caused by any exigent circumstances; the high speeds were in response to Grievant trying to get to work on time.

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

The claim of disparate treatment fails because the Patrol was unaware of the other individual's actions when it determined discipline was appropriate.

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

Union Position

Everybody speeds in the Patrol. Even at the same post and within the same time period, a co-worker Sgt. Buscey [Unit 110] likewise was documented as speeding on three separate dates within a like time period but receive no discipline whatsoever. Union Ex.3. There is therefore disparate treatment. The Patrol's inconsistency with respect to level of discipline for speeding is further demonstrated by review of the department record of Lt. Wollifer.

No one was injured and there was no property damage.

The discipline should be modified to a less harsh level.

Grievant is a long-term employee with a nearly discipline free record. This level of discipline is harsh and punitive.

A one day suspension would be commensurate.

Opinion

The Employer bears the burden of proof.

The Umpire is of the opinion that giving Grievant a three day suspension in light of all the facts is not progressive and is therefore punitive. As such, it will be modified. Grievant did not try to mitigate/explain his conduct, which also supported modification. According to the AI he was embarrassed at his actions.

Although the Union made a disparate treatment argument, the evidence does not support that the Patrol knew the other Canfield post employee [Buscey] was speeding and chose to single out Grievant. Disparate treatment requires direct employer knowledge and it cannot be imputed.

The Union's claims that "everybody speeds" is not a compelling defense. But if everyone speeds *and* the Employer tolerates it knowingly, then that would be a different case. Here it is clear that the Employer cannot and does not accept speeding outside of the circumstances delineated in the policy. It is noted also that Union Ex. 4 further indicates that speeding can be an offense resulting in discipline.

A one day suspension suffices to put Grievant on notice that behavior such as was documented herein is neither safe, appropriate, consistent with rules and regulations.

OSP-200.06 B.3. states in relevant part:

Lawful speed limits should not be exceeded during motor vehicle operation except while checking a suspected violator's speed,...while observing a traffic violation,...while overtaking or intercepting a violator, or under emergency conditions. ...

None of these circumstances existed at the date/times cited by the Patrol.

Here Grievant did not have justification or excuse for not obeying the speed limits on the cited dates/times. The speeds were dramatically over limit. The fact that no one was injured or that no property damage occurred in no way lessens the infraction. The umpire has no problem imagining the harm, danger and destruction that may have resulted from these actions.

He now is reminded through this appropriate and non-arbitrary discipline of the consequences of that choice to disregard the speed limits without mitigation or excuse.

AWARD

The grievance is granted in part. The discipline is modified to a one day suspension. Grievant should be made whole in lost pay and benefits.

IT IS SO HEREBY ORDERED.

Issued this 16th day of January, 2018 in Columbus, Ohio.

S/ Sandra Mendel Furman

Sandra Mendel Furman, ESQ. Arbitrator