

Decision and Award in the Matter of Arbitration between:

Ohio State Troopers Association

and

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

Grievance #: DPS - 2016- 00923-01

Grievant: Trooper Sidney Steele

Arbitrator: Jack Buettner

Date of Hearing: January 18, 2018

Date Briefs Received: February 9, 2018

Date Decision Issued: February 18, 2017

Representing the Union:

Ms. Elaine Silveira, Advocate for the Grievant
Ohio State Troopers Association
190 West Johnstown Road
Gahanna, OH 43233

Representing the Employer:

Michael D. wood, LR03, Advocate for the Employer
Ohio State Highway Patrol
1970 W. Broad St.
Columbus, OH 43223

By mutual agreement, the Hearing was convened on January 18, 2018, 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 Union:

Ms. Elaine Silveira	Advocate/Attorney
Trooper Sidney M. Steele	Grievant
Dispatcher Kari Root	OSTA
Sgt. Jeremy Mendenhall	OSTA
Mr. Larry Philips	Staff Representative

In attendance for the Employer:

Mr. Michael D. Wood, LR03	State Advocate
Lt. Jacob Pyles	OSHA, 2 nd chair
Mr. Matt Telfer	DAS-OCB
Lt. Matt Hamilton	OSP, P 31

The parties were asked to submit exhibits into the record.

The following were submitted as Joint Exhibits:

Joint Exhibit #1	Contract between the State of Ohio and OSTA, Unit 1, 2012-2015
Joint Exhibit #2	Grievance Trail– DPS-2016-00923-01 A. Notification of Management Response B. Notification of Appeal C. Union Community

The following were submitted as Union Exhibits:

Union Exhibit #1	Payroll Entry Detail: Comp Time Used--Disapproved
Union Exhibit #2	Payroll Entry Detail: Personal Leave—Approved
Union Exhibit #3	OSHP Duty Assignment: 5/16/16-5/28/16
Union Exhibit #4	Payroll Entry Detail: Comp Time Used—Approved for Jacob Kunka
Union Exhibit #5	U.S. Court of Appeals for the 6 th Circuit, No. 02-3669, Robert Beck, et al., Plaintiffs-Appellants v. City of Cleveland, Ohio

The following were submitted as Management Exhibits:

Management Exhibit #1	Reporting Employee Off Due to Injury/Extended Illness/Maternity Leave: Jacob Kunka
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Background:

The Grievant, Trp. Sidney Steele, was commissioned as a trooper in December of 1999. On February 27, 2016, he submitted a request to use four (4) hours of compensatory time to be taken on May 21, 2016. The request was denied by his supervisor on February 29, 2016, citing that another employee was already on leave for that day.

The Grievant subsequently submitted a request for four (4) hours of personal leave to be taken on May 21, 2016. Personal leave was entered into the Time Management System on March 7, 2016.

Three days after the personal leave was approved, the Grievant submitted a grievance citing a violation of the Collective Bargaining Agreement (CBA), Section 27.07, Granting of Compensatory Time Off.

Issue:

The parties submit the following statement of issue for resolution by the arbitrator:

Did the Employer violate Article 27.07 when it denied the Grievant's request for four (4) hours of compensatory time? If so, what shall the remedy be?

Union Position:

The Union contends that the Grievant should have been granted his initial request for four (4) hours of compensatory time. Article 27.07 of the CBA states that: "Compensatory time off shall not be unreasonably denied in accordance with FLSA standards."

The Union cited Beck v. City of Cleveland (Union Exhibit #5) in support of their position. In this case it was deemed that the denial of police officers' timely requests to use compensation leave violated Section 207(o)(5) of the Fair Labor Standards Act (FLSA). FLSA states that the employer must make a "factual showing of undue disruption, financial or otherwise" in order to deny compensatory leave. A witness for the Union, Mr. Larry Phillips, testified that he is often the only trooper on a shift. The absence of other troopers on duty has not disrupted the service of that post. The Union contends that the Employer did not show justification for denial.

Further, Trp. Jacob Kunka, another officer at the same post, was granted compensatory leave (Union Exhibit #4) for the same date that the Grievant requested. Additionally, the Grievant's request for compensatory leave was made three (3) months in advance, which would have allowed time to circumvent any potential disruption of service. The Grievant was subsequently granted personal leave for that same period of time. Thus, the same "disruption" would have occurred whether compensatory time was used or personal leave.

Employer Position:

The Employer's position is that the denial of Trp. Steele's request for compensatory leave was strictly due to the operational needs of the post. Article 27.07 of the CBA specifically states, "Compensatory time off shall be granted subject to the operational needs of the facility."

In looking at the operational needs of the Grievant's post, another trooper had already been approved for leave that day. That would have left the post short-handed to cover an area that includes two heavily travelled interstate highways. Due to the nature of the Grievant's territory, urban with a large population along I-71 and I-75, this would have caused a disruption in service.

In reference to the case of Trp. Kunka, who was approved for compensatory time for the same date as the Grievant, the Employer states that he was on LD or "light duty" (Union Exhibit #3). He was performing desk duties and not cleared for regular duties. His leave did not impact the number of troopers available to respond to calls. Thus, his leave did not cause a disruption in service.

In reference to Beck v. Cleveland, (Union Exhibit #5) the Employer contends that the case has no impact on the present grievance. The court concluded that the payment of overtime to honor an officer's request for compensatory time does not qualify as "unduly disruptive" under Section 207(o)(5) of the FLSA. The Employer did not deny the request for leave based on payment of overtime; the leave was denied based on the needs of the post.

DISCUSSION AND DECISION:

This instant case revolves around the interpretation of the CBA, specifically Article 27.07. The Union contends that compensatory leave was denied “unreasonably in accordance with FLSA standards.” The employer contends that they were within their rights to deny the leave based on Article 27.07 in that compensatory time will be “subject to the operational needs of the facility.” Both parties cite the same article of the CBA, just different lines within it.

The Union referenced the case of Beck v. Cleveland to support their grievance. This case does, indeed, refer to the FLSA standards but focuses more on the aspect of avoiding the use of overtime payments to deny leave. Compensatory leave requests cannot be denied solely for financial reasons, i.e. payment of overtime. The Employer, however, did not use payment of overtime for the denial of the requested leave. Lt. Hamilton may have stated that the denial was made in part in order to be “fiscally responsible” but the denial itself, as printed on the Payroll Entry Detail (Union Exhibit #1), stated “U-546 already on approved leave.” Rather, the Employer focused on the “undue disruption” that the granted leave could potentially cause.

Another trooper was on leave at the same time that the Grievant requested which would have left the post short-handed and have caused undue disruption. The Union brought forth a witness, Mr. Larry Phillips, who stated that he was often the only trooper on duty so the Employer’s argument was not valid. The comparison between the two posts, however, did not support the Union’s stance. Mr. Phillips was the only trooper working a midnight shift in a rural county with a small population and two (2) U.S. highways. The Grievant’s post is in an urban area with a population three times the size, two (2) major interstate highways, and additional U.S. highways. The loss of a trooper during a busy day shift could conceivably disrupt the post activities.

The Union also argued that another trooper, Trp. Jacob Kunka, applied for compensatory time for the same date and was approved while the Grievant was denied. Since Trp. Kunka was on light duty as typified by desk work, it is conceivable that his absence would not have as great an impact on the daily operations and field work of the post. Hence, his leave was granted.

Provisions of the FLSA were brought forward by the Union to support the grievance. FLSA is referenced not only in the Beck decision but in the CBA in the article concerning compensatory time. FLSA Section 207(o)(2)(B)(5) provides, in part:

[a]n employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency---

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

Once again, the idea of unduly disrupting operations is brought forth as a reason for not approving compensatory time. Management put forth an argument that operations, would indeed have been disrupted at that particular time had the Grievant been granted the leave.

In Houston Police Officers' Union, et al. v. City of Houston, 330 F.3d298 (5th Cir. 2003), the court rejected the officers' argument that under Section 207 (o)(5) of the FLSA, compensatory leave must be made available upon an officer's request. It was concluded that the statute does not require a public employer to authorize comp-time use as specifically requested by an employee, subject to the undue disruption clause.

Ultimately, in reviewing the grievance, the issue as stated by both parties is did the Employer violate Article 27.07 when it denied the Grievant's request for four (4) hours of compensatory time. This Arbitrator must look at the language of Article 27.07 in its entirety. "There is no need for interpretation unless the agreement is ambiguous. If the words are plain and clear, conveying a distinct idea, there is no occasion to resort to technical rules of interpretation and the clear meaning will ordinarily be applied by arbitrators." (How Arbitration Works, Elkouri & Elkouri, 1985). Further, Article 20.08 - Arbitration, of the current agreement, limits this arbitrator in that, "The umpire shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall the umpire impose on either party a limitation or obligation not specifically required by the language of the Agreement."

Article 27.07 states, "Compensatory time off shall be granted subject to the operational needs of the facility." According to Article 4-Management Rights of the CBA:

The Union agrees that all of the functions, rights, powers, responsibilities and authority of the Employer, in regard to the operation of its work and business and the direction of the workforce which the Employer has not specifically abridged, deleted, grated, or modified by the express and specific written provision of the Agreement are, and shall remain, exclusively those of the Employer.

The Employer determines the operational needs of a facility and, therefore, retains the right to approve or disapprove the compensatory leave based on those needs.

AWARD:

In reviewing the denial of Compensatory Leave to Trp. Sidney M. Steele, I have analyzed the briefs and exhibits put forth by both sides. I believe that the Employer established their case, demonstrating they were within their rights to deny the grievance.

For the reasons stated above, the grievance is denied.

This closes the arbitration.

Respectfully submitted this day of 18st day of February, 2018,

Jack Buettner, Arbitrator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one (1) copy each of the Arbitration report was delivered via email on the 19st day of February, 2018, to

Ms. Elaine Silveira, Esq., Advocate for the Grievant

and

Mr. Michael d. Woods, Advocate for the Employer

Jack Buettner

Jack Buettner