

**In the matter of Arbitration between:**

**State of Ohio, Department of Public Safety-Ohio State Highway Patrol  
Employer**

**And**

**Case # DPS 2017-03737-01**

**Trooper Bion Shaw**

**Ohio State Troopers Association  
Union**

In attendance for Ohio State Highway Patrol: Lt. Jacob Pyles-Advocate, Lt. Darrell Harris 2<sup>nd</sup> Chair, Ms. Jessie Keyes OCB, Sgt. David Zatvarnicky-(witness), Sgt. Ron Schneider(witness).

In attendance for OSTA: Ms. Elaine Silveira-Advocate, Mr. Larry Phillips-2nd Chair-Staff Representative, Mr. Bob Cooper-Staff Representative, Sgt. Charles Ivory(witness), Sgt. William Lee(witness), Mr. Jeremy Mendenhall, OSTA President, Trooper Bion Shaw.

**INTRODUCTION:**

This matter was heard at the Ohio Stat Troopers Association, Gahanna, Ohio. The Hearing was held on March 15, 2018, at 1200 noon. All witnesses were sworn. There were no procedural issues raised, and the parties agreed that the issue was properly before the arbitrator. The following were submitted as joint Exhibits: Jt. #1-Collective Bargaining Agreement, Units 1 & 15(CBA); Jt. #2-Grievance Trail #2017-03737-01, Step 2 Response, Appeal to Arbitration; Jt. #3 Discipline Package, Statement of Charges, Pre-discipline Notice, Discipline Letter, Deportment Record, Work Rule-4501:2-6-02(B)(5)-Performance of Duty. The following were introduced as Management Exhibits: ME-#1 Administrative Investigation(AI)(Trooper Shaw);

ME-#2 OHIO STATE HIGHWAY PATROL SWORN OFFICER DISCIPLINE GRID; ME-#3 Sign Off Report By User(OSP-103.19); ME-#4 OSP Policy 100.01 OFFENSE AND INCIDENT REPORTS/REPORTS OF INVESTIGATIONS; ME-#5 Sign Off Report By User-OSP 100.01. The Union did not submit any Exhibits.

**ISSUE:**

In accordance with Article 20, Section 20.08, the parties submitted a jointly signed issue statement, which reads as follows:

Was the Grievant issued a five (5) day suspension for just cause? If not, what shall the remedy be?

**BACKGROUND:**

On 7/22/2017, at 1940 hrs., a Mrs. Sherry Gaj arrived at the Hiram Patrol Post. She stated that she wanted to file a complaint regarding Trooper(Tpr.) Shaw's conduct while he was investigating her vehicle crash(ME-1(B)). Mrs. Gaj stated that Tpr. Shaw was unprofessional. At approximately 7:30a that same day (7/22), Mrs. Gaj was traveling west on the Ohio Turnpike, and her car was struck by a round white object. The object shattered the windshield in the lower left section(ME-1)(B) pg.14). She proceeded to the Rout 8 Exit and went into the office, and called for assistance. Trooper Shaw arrived at approximately 0800, and took a traffic crash report(ME-1, pgs. 6-12).

The complainant, in her statement, claims that Tpr. Shaw was short and curt while doing his report. After completing the report Mrs. Gaj asked Tpr. Shaw if he was going to look for the object or investigate if something came from the overpass. Trooper Shaw said he was not going to investigate because the object was probably gone. Mrs. Gaj also claims that Tpr. Shaw told her, while doing his report, that she could not report that the object came from an overpass(ME-1, pg. 15).

An AI was conducted regarding this complaint. Sgt. Zatvarnick, of the AI Unit, interviewed Mrs. Gaj on 8/7/17. She stated that she did not want to move forward with the formal complaint(ME-1). However, the AI resulted in TPR. Shaw being charged with violating OSHP Rules and Regulations, specifically 4501:2-6-02(B) Performance of Duty. To wit: It was found that you completed a crash investigation on an incident which should have been a case investigation. You failed to take any investigative action related to the incident. Trooper Shaw was suspended for five (5) days on October 5,2017, to be effective on October 17 through 21, 2017(Jt.-3)

A Grievance was filed on 9/29/2017, claiming that the OSHP violated Section 19.01, the Just Cause Standard. A Step 2 tele-conference was conducted on 10/14/2017. Management denied the grievance on 10/16/17. The Hearing Officer determined that Mrs. Gaj was certain that the object came from an overpass. There were three overpasses within close proximity to where the object hit the vehicle. The Grievant had the duty to investigate the complainant's allegations. Therefore, a case investigation should have been initiated. The Grievance was appealed to Arbitration. By mutual agreement, the Arbitration Hearing was scheduled for March 15, 2018.

## **DISCUSSION AND OPINION:**

Evidence shows that Mrs. Gaj's vehicle was struck by an object, that damaged her windshield on the lower left side. The event occurred near mile marker 181 and she drove to the nearest exit to report it. The report was taken as a Crash Report by Tpr. Shaw(ME-1). According to Mrs. Gaj's signed complaint statement, she asked Tpr. Shaw if he was going back to look for the object or to check if something came from an overpass. Trooper Shaw, per Mrs. Gaj, said no, the object would be gone by now(ME-1).

Did Tpr. Shaw violate policy by allegedly misfiling his report on Mrs. Gaj's traffic incident? Should he have initiated a Case Investigation rather than filing this

incident as a Crash Report? Evidence shows that Tpr. Shaw should have been aware of the Incident Reports Policy(ME-5). Policy OSP 100.01 establishes methods and reporting forms for investigating and reporting criminal offenses and incidents within the jurisdiction of the Ohio State Highway Patrol. Management claims that Tpr. Shaw, in this situation, should have filed an HP-24, a criminal offense initial Incident Report(ME-4). J. 7. Objects Thrown -780- Offense Report of OSP 100.01, reads as follows: "Complete a criminal offense Initial Offense Report and necessary HP-24 forms on those incidents where objects are thrown or dropped on vehicles resulting in injury to an occupant or damage to a vehicle.

The complainant, according to the AI, suspected that the object may have come from an overpass, but there is no conclusive evidence that she was certain it came from the overpass. Her signed written Complaint Statement identifies her saying "if something came from the overpass"(ME-1). There was no evidence that she claimed the object was thrown or even dropped from the overpass. Evidence does show that there were three overpasses in the vehicle's proximity at the approximate time of the incident. The weather, per the AI and people interviewed within, identified it to be raining and sometimes hard(ME-1).

Sergeant Lee of the Hiram Post, who took the complaint, testified that the complainant did not claim that an object was thrown, but one may have possibly dropped from an overpass. He also testified that two of the three possible overpasses sources were being worked on. The Crash Report, according to Sgt. Lee and supervising Sgt. Ivory's testimony, was the proper report to be used in this situation.

This incident occurred at approximately 7:30a, on a rainy morning. There was damage to a windshield. There was no traffic reported in the area per the Crash Report. This might increase the suspicion of something coming from an overpass. However, there is no submitted substantive evidence or testimony to believe that a criminal offense incident may have occurred in this situation. Furthermore, testimony depicted no reports of any overpass criminal activity in the area.

Testimony identified that crash reports are generally used for windshield damage. Troopers make frequent value judgements while performing their mission. In this case, in the arbitrator's opinion, Tpr. Shaw's decision or judgement to take a crash report did not violate OSP policy.

**AWARD:**

The Grievance is sustained. Trooper Shaw is to be made whole of all direct compensation lost and benefits. The five (5) day suspension is to be expunged from his Department Record.

This concludes the Arbitration decision.

Respectfully submitted this 25th day of March 2018.

E. William Lewis  
Arbitrator  
/s/