

In the matter of Arbitration:

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

And

Case # DPS 2017-03945-01

Trooper Alexander Pater

**Ohio State Troopers Association
Union**

In attendance for the Ohio State Patrol: Lt. Darrell Harris-Advocate, Lt. Jacob Pyles-2nd Chair, Ms. Jessie Keyes-OCB, Lt. Terry Bush(witness), Sergeant Anthony Percy(witness).

In attendance for the Ohio State Troopers Association: Mr. Larry Phillips-Advocate, Ms. Elaine Silveira-2nd Chair, Mr. Bob Cooper-Staff Representative, Mr. Jeremy Mendenhall-OSTA President, Trooper Alexander Pater(witness).

INTRODUCTION:

This matter was heard at the Ohio State Troopers Association Office, Gahanna, Ohio. The Hearing was held on March 15, 2018, 9:00am. 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 -DPS-2017-03945-01, Electronic Grievance, Step 2 Response, Intent to Arbitrate; Jt. #3-Discipline Package composed of-Statement of Charges, Pre-Disciplinary Notice, Discipline Letter, Highway Patrol Rules & Regulations: 4501:2-6-02(I)(1)(4)-Conduct Unbecoming an Officer, Department Record. The following was introduced as a Management Exhibit: ME-A Administrative Investigation(AI) #2017-0422; Sgt. N.A. Ward, Unit 916, Sgt. M. R. Beccaccio, Unit 1114, Tpr. A. J. Pater, Unit 359,

Tpr. J. L. Lipscomb, Unit 966, D8, Post 31. The following were introduced as Union Exhibits: UE-1 Pater Time Line-March 24 to August 28; UE-2 Recorded Interview regarding Tpr. Pater 8/9/17(2:55pm); UE-3 Recorded Interview regarding Tpr. Pater 8/9/17(3:46pm); UE-4 Recorded Interview regarding Tpr. Pater (2:24pm), 8/31/17; UE-5 Recorded Interview regarding Tpr. Pater, 8/28/17(9:04am); UE-6 Department Record, Jeremy Lipscomb(1/26/2018); UE-7 Field Training Evaluations-Jeremy Lipscomb; UE-8 Unit History Report-Jeremy Lipscomb(8/22/17&8/23/17); UE-9 Payroll Entry Summary-Jeremy Lipscomb(8/22/17); UE-10 Common Pleas Case Summary-Maurice Peretson; UE-11 Inter-Office Communication(IOC)(2/6/18) Regarding Tpr. Lipscomb getting gas free, inappropriately; UE-12 Performance Review, Tpr. Pater(9/24/2016); UE-13 IOC-November 13, 2017, to Cpt. Combest-re: Training for Tpt. Pater.

ISSUE:

In conformance with Article 20, Section 20.08 of the Collective Bargaining Agreement the parties submitted the following statement of issue for resolution:

Did the Grievant receive a Five (5) day suspension for just cause? If not, what shall the remedy be?

BACKGROUND:

An Inter-Office Communication(IOC) was sent to Captain Arthur Combest Academy Commandant, on July 24, 2017, from then Tpr. Jeremy Lipscomb(ME-A, Att. B). Trooper Lipscomb claimed that he was a victim of a hostile workplace while assigned to the Cincinnati Post. As a result of Tpr. Lipscomb's IOC, an extensive AI was conducted. During the AI Tpr. Lipscomb singled out his Cincinnati Post Field Training Officer(FTO), Tpr. Pater, as being particularly troublesome to him(ME-A). Trooper Lipscomb alleged that Tpr. Pater shouted at him and told him to "get his head out of his ass".

The AI identified two troublesome incidents of interaction between Tpr. Pater and then Tpr. Lipscomb. These particular incidents led to management suspending Tpr. Pater for five days(Jt. 3).

The AI was conducted by Lt. Bush regarding Tpr. Lipscomb's complaint of a hostile workplace. During the AI, Lt. Bush reviewed 39 traffic videos of Tpr. Lipscomb's. One of those, per Lt. Bush, showed unprofessional behavior on the part of Tpr. Pater. Trooper Pater was at the time acting as Tpr. Lipscomb's FTO. This alleged unprofessional behavior occurred during a traffic stop and arrest of a Maurice Peterson. This traffic stop was for excessive speed and involved the interaction between FTO Pater and Tpr. Lipscomb(ME-A).

Additionally, while interviewing then Tpr. Lipscomb, the Investigator was made aware of a text sent by Tpr. Pater to Tpr. Lipscomb, on 8/22/17. The text, per the AI, was first viewed by Tpr. Lipscomb's wife and then by Tpr. Lipscomb upon his return from court testimony(ME-A, pg. 11-12). Both of the Lipscombs viewed the text as a threat.

Trooper Pater was charged with violating OSP Rules & Regulations specifically 4501: 2-6-02(I)(1)(4) Conduct Unbecoming an Officer(JT. 3). It was found that Tpr. Pater spoke unprofessionally to Tpr. Lipscomb during the OVI arrest(Maurice Peterson). Trooper Pater sent Tpr. Lipscomb a threatening text message. The suspension was to be effective from October 26 through 30, 2017.

Trooper Pater waived the scheduled Pre-Disciplinary Hearing on 10/19/17. A Grievance was filed on 10/19/17, challenging the pending suspension(JT.-2). The Employer was charged with violating Section 19.01 Just Cause, and Section 19.05 Progressive Discipline. The Grievance requested that the Grievant's Department Record be cleared, he be made whole for lost wages and benefits. The Step 2 meeting was held by tele-conference on 11/2/17. Management denied the

Grievance and it was appealed to Arbitration. The Arbitration Hearing was scheduled for March 15, 2018. The parties agreed that the Grievance was properly before the arbitrator.

DISCUSSION AND OPINION:

Most of the AI focused on investigating then Tpr. Lipscomb's claim of a hostile workplace at the Cincinnati Metro Post(ME-A). This complaint resulted in him being transferred to the Dayton Post. Additionally, Tpr. Lipscomb's probationary period was extended. Evidence and testimony showed Tpr. Lipscomb ultimately being terminated. Much of the testimony and evidence brought before the arbitrator also focused on the complainant and his truthfulness(U Exhibits-ME-A).

However, the issue before the arbitrator is whether Tpr. Pater's actions and behavior, while officially associating with Tpr. Lipscomb, violated OSP Policy. The specific Policy 4501: 2-6-02(I)(1)(4) Conduct Unbecoming an Officer, reads as follows: (1) For conduct, on or off duty, that may bring discredit to the division and/or any of its members or employees. A member shall not engage in any conduct which could reasonably be expected to adversely affect the public's respect, confidence, or trust for Ohio State Highway Patrol troopers, and/or the division.

(4) A member shall perform his/her duties in a professional, courteous manner.

These two policy directives were allegedly violated by Tpr. Pater according to the AI, and led to his discipline. The first alleged violation occurred during a traffic stop on May 21, 2017. Trooper Pater(FTO) and Tpr. Lipscomb(Trainee) stopped a Mr. Maurice Peterson for excessive speed. During this stop which resulted in an OVI arrest, it was alleged that Tpr. Pater used language in an unprofessional manner(ME-A, Att.-C + D video). The second alleged incident of violation was a text generated by Tpr. Pater and sent to Tpr. Lipscomb(ME-A, att. E). This text's content was threatening, according to the Employer.

The traffic stop was recorded on the patrol car's video and audio system. This video with recorded sound was watched during the Hearing and by me subsequently. During the first twenty five minutes of this stop Tpr. Pater is heard cussing at least seven times, mostly using the F word. Trooper Pater did not use the F word in referencing Tpr. Lipscomb. However, he did use the F word in directing Tpr. Lipscomb about things he should have been doing(ME-A, Att. D video). Furthermore, these same disparaging remarks were made in front of a third trooper who arrived on the scene. This same video was viewed by the Court Prosecutor, who found Tpr. Pater's language while working with Tpr. Lipscomb inappropriate(ME-A, pg. 11). The video shows Tpr. Pater to be very frustrated with Tpr. Lipscomb, in the arbitrator's opinion. However, you are ultimately responsible for your own behavior.

Additionally, Management claimed that a text sent by Tpr. Pater to Tpr. Lipscomb on August 27, 2017 was a threatening type message(Jt. 3 & ME-A,att. E). At this particular time Tpr. Pater was no longer Tpr. Lipscomb's FTO. The text reads as follows: " I'll keep this short and simple. I took a lot of personal time and dedication to see I gave you everything I had. And the(y) way you've reacted by your own failures are wrong and you know it. You can get out of this district and think your home free. If you stay with organization you're going to see us again at in service. You'll see us at the fair. Be careful of what bridges you burn this early in your career."

The Grievant testified that he was giving Tpr. Lipscomb some good advise, and that the text was not a threat or intended to be(ME-A,pg 16). Management did review the text to determine if the content met the elements of criminal offense, and it was not found to be criminal in nature. The recipient of the text and his wife, who first read it, took it as a threat(ME-A).

At the time the text was sent(8/22/17) Tpr. Lipscomb had already filed his IOC complaint about an allegedly hostile workplace at the Cincinnati Metro Post.

Trooper Pater works at the Cincinnati Post and was one of the subjects of Tpr. Lipscomb's complaint. The content of the text, at minimum, cautions Tpr. Lipscomb to be aware of his actions. Texts can be risky business, in the arbitrator's opinion. Especially when you may have had an adversarial relationship with the recipient.

The Grievant was charged with two violations of OSP Policy. Both of his actions exhibited evidence of poor behavior and/ or judgement. The arbitrator finds just cause for the discipline, and therefore a violation of Section 19.01 of the CBA.

Did the two infractions rise to the level of discipline imposed by Management? Trooper Pater's Department Record identifies an active one day's suspension(JE-3). Section 19.05, Progressive Discipline, reads as follows: The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.

1. NA
2. One or more day(s) Suspension(s) or fine not to exceed five (5) days' pay, for any form of discipline, to be implemented only after the approval from the Office of Collective Bargaining.
3. NA
4. NA

However, more severe discipline (or combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action.

In this situation, the OSP imposed more severe discipline than the normally followed steps of progression for suspensions. A one day suspension is usually followed by a three day suspension, and then a five day suspension. This progression procedure can be found in the OSP Sworn Officer Discipline Grid, a matter of public record.

The arbitrator believes that there are some mitigating circumstances in this case.

Trooper Trainee Lipscomb, per evidence and testimony was not progressing well. FTO Pater, a three-year employee, was doing his first assignment as an FTO. The OSP acknowledged a concern by providing additional FTO type training to Tpr. Pater(UE-13). Furthermore, evidence showed that Tpr. Lipscomb was failing at most of the fundamental duties of a Trooper(ME-A, pg.18).

AWARD:

The suspension is to be reduced from a five (5) days suspension without pay, to a three (3) day suspension without pay. The Grievant is to be made whole for the two (2) days lost direct compensation and benefits.

This concludes the Arbitration decision.

Respectfully submitted this 26th day of March 2018.

E. William Lewis
Arbitrator
/s/

