

**In the matter of Arbitration between:**

**The State of Ohio, Department of Public Safety—Ohio State Highway Patrol  
Employer**

**And**

**Case # DPS-2017-01495-1**

**Ashley Kawecky, Dispatcher**

**The Ohio State Troopers Association  
Union**

In attendance for Ohio State Troopers Association: Mr. Larry Phillips-Advocate; Ms. Elaine Silveria, General Counsel; Mr. Bob Cooper, Staff Representative; Ms. Michelle Higgins, Dispatcher(witness); Ms. Ashley Kawecky, Grievant(witness); Sgt. Jeremy Mendenhall, OSTA President; Mr. Brian Perry, External Intern.

In attendance for the Ohio State Highway Patrol: Mr. Michael D. Wood-Advocate; Staff Lt. Cassie Brewster, 2<sup>nd</sup> Chair; Ms. Dorothy O’Niel-Meleski, Dispatch Supervisor(witness); Sgt. David Zatvarnick, AI Investigator(witness).

**INTRODUCTION:**

This matter was heard at the Headquarters of the Ohio State Troopers Association, Gahanna, Ohio. The Hearing was held on October 17, 2017, at 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-2017-01495-1; Jt.#3-Discipline Package, compose of—Statement of Charges, Pre-Disciplinary Notice, Disciplinary Letter, Highway Patrol Rules & Regulations-501.05(1.6)(A) Failure of Good Behavior & 501.05(1.30)(A) Failure to Carry Out Work Assignment; Department Record. The following were introduced as Management Exhibits: ME-1, Administrative

Investigation(AI) #2017-0011(Dispatcher Ashley N. Kaweck); ME-2, Ohio State Highway Patrol, Policy: OSP-401.11 LEADS/COMPUTERIZED CRIMINAL HISTORY/OHLEG; ME-3, OHIO DEPARTMENT OF PUBLIC SAFETY, Policy DPS-501.05 EMPLOYEE STANDARDS OF CONDUCT; ME-4, OSHP Policy OSP-401.01 COMMUNICATIONS/SIGNAL 40; ME-5, OSP Policy And Procedure, Sign Off Report By User. The following were submitted as Union Exhibits: UE-1, 8x11 Photo of Warren Post Dispatch Center; UE-2, IOC (June 27, 2017) Regarding LEADS Post Security; UE-3, Evaluation, dated 7/27/2016-Ashley Kaweck; UE-4, Incident Report—Telephone Harassment of Grievant by Krista Viga(12/20/16).

### **ISSUE:**

The parties submitted a jointly signed issue statement, which reads as follows:

Was the Grievant issued a three (3) day suspension for just cause? If not, what shall the remedy be?

### **BACKGROUND:**

On 11/29/16, the Grievant, Ashley Kaweck, a Dispatcher was working the 10p-6a shift at the Warren Post. She was the only Dispatcher on duty that night. At the time of the alleged incident, she was alone at the Post. At approximately 12:10am, on 11/29/16, a Mr. Brian Viga appeared at the Post. He was permitted to enter through the side door my Ms. Kaweck. Mr. Viga was identified as Kaweck's friend or boyfriend through testimony and AI #2017-0011(ME-1).

Mr. Viga remained on Post for approximately three hours. During the three hour period, the two were the only ones on Post. Upon Mr. Viga's arrival he was given a tour of the Post, by Dispatcher Kaweck. Per testimony and evidence, the tour included both the main level and basement areas. While on tour and away from the Dispatch Center, Ms. Kaweck carried her portable radio(ME-1).

After the tour Mr. Viga was seated in the Dispatch Center. According to testimony, he was seated behind Dispatcher Kaweck, approximately ten feet away. He remained on Post until approximately 3:19am and Dispatcher Kaweck performed her duties.

During Viga's visit it was alleged that Dispatcher Kaweck failed to run vehicle registrations through LEADS, as required. These plate #'s were e-mailed to Dispatcher Kaweck by a Trooper as part of a rest area check(ME-1). Furthermore, according to Management, Mr. Viga was an unauthorized visitor on Post for over three hours, and the Grievant exposed him to law enforcement sensitive material(ME-1).

According to management, Mr. Viga's wife called the Post claiming He was on Post on 11/29/16, resulting in the AI being instituted on January 10, 2017 to look into this matter. As a result of the AI, Dispatcher Kaweck was suspended for three days(Jt-3). She was charged with violating DPS Work Rules 501.05-1.6(A), Failure of Good Behavior, and 501.05-1.30(A), Failure to carry out a work assignment.

Specifically, management determined that the Grievant permitted an unauthorized male subject into the Warren Post and Dispatch Center, where he was exposed to law enforcement sensitive material. Additionally, it was alleged that Dispatcher Kaweck failed to run vehicle registrations through the LEADS system, as required when advised by a trooper as part of a rest area check(Jt-3).

A Grievance was filed on April 10, 2017, challenging the three day suspension(JT-2). Dispatcher Kaweck claimed that she received a three day suspension without just cause, and in violation of progressive discipline. She requested that discipline be removed from her record and all pay and benefits to be restored and to be made whole. A Step 2 meeting was conducted by a telephone conference on 5/2/2017. The Grievance was denied on 5/5/2017. The Union appealed the Grievance to Arbitration(Jt-2). By mutual agreement between the parties, the Arbitration Hearing was scheduled for October 17, 2017.

## **DISCUSSION AND OPINION:**

The Grievant was charged with violating two Work Rules, although the investigation explored a number of potential violations of a more severe nature. Her third AI interview(3/7/17), queried whether she had intimate contact with Mr. Viga while he was on Post(ME-1). Although there was much time and suspicion raised at the Hearing on this issue, there were no charges brought forward(ME-1). Also, as a result of Mr. Viga being on Post and in the Dispatch Center, the AI explored whether Dispatcher Kawecky had violated Rule 401.11-LEADS Security. This Rule prohibits an unauthorized person from gaining access to sensitive LEADS information. A violation of this Rule would have been a fifth degree felony. However, the AI did not conclude that Dispatcher Kawecky violated Rule 401.11(ME-1 &2).

Dispatcher Kawecky was charged with violating Rule 501.05(1.30)(A), Failure to carry out a work assignment(JT-3). This charge was brought because a trooper on a rest area check e-mailed five license numbers to her, and she did not run them through LEADS, as required. Evidence and testimony showed that the Grievant was aware of this job requirement(ME-5). During the Hearing the Grievant and her Advocate acknowledged that she had erred on this job assignment. The penalty for a first offense violation of this nature would be a Written Warning to a one (1) day suspension(ME-3).

The other charge brought forward against Dispatcher Kawecky, was an alleged violation of Rule 501.05(1.6)(A) Failure of Good Behavior(JT-3). The AI determined that the Grievant permitted an unauthorized person (Viga) to be in the Warren Post where he was exposed to law enforcement sensitive material(JT-3). Section D(Confidentiality) of Rule 501.05 states, "All employees having access to privileged information in any form are required to take proper precautions to avoid any breach of privacy of all confidential information in the custody of the State".

The ODPS DISCIPLINE GRID, carries a Written Warning to Removal for a first

offense, and a one (1) day suspension to Removal for a second offense(ME-3). This Discipline would be applicable if an employee is found guilty of actions that could compromise or impair the ability of an employee to effectively carry out his/her duties as a public employee(ME-3, GRID, pg. 1).

Was the Grievant forewarned or have fore knowledge of possible disciplinary action based on her conduct? Yes, Dispatcher Kawecky read and signed off on Rule 501.05 on 12/1/15(ME-5). There certainly was a Rule requiring an employee to carry out their duties as a public employee. Additionally, there was an investigation conducted by a party independent of the involved parties.

The first part of the specific charge was that Dispatcher Kawecky permitted an unauthorized person on Post. This was not proven, in the arbitrator's opinion. There was no Rule in effect at the time of the alleged violation, prohibiting non-employees from being on Post. Evidence and testimony, acknowledged that non-employees were periodically if not regularly on Post(ME-3, UE-2).

Was the guest(boyfriend) exposed to law enforcement sensitive material? Mr. Viga was given a tour of the Post by Dispatcher Kawecky, according to the AI. The tour lasted approximately one-half hour(ME-1). Although Mr. Viga toured the facility, there was no evidence or testimony introduced that his Post tour exposed him to sensitive material(Att. A & Sgt's. Zatvarnick's testimony).

The remainder of Mr. Viga's visit, approximately 2.5 hours, he was in the Dispatch Center area(ME-1,pg.3). He was seated behind Dispatcher Kawecky in a chair normally used by the other District Dispatcher, however, that CAD system was shut down. Dispatcher Kawecky's LEADS console would have not been readily visible to Mr. Viga, since his vision would have been blocked by the Grievant, at her console(ME-1,pg.5&UE-1). Furthermore, additional checks were made questioning Viga's exposure to sensitive information while in the Dispatch Center, and they came up negative(Att. C & D). Testimony did not identify any sensitive material that Mr. Viga was exposed to or left with the night of 11/29/16, in the arbitrator's opinion.

I do question the Grievant's judgement by allowing her friend to remain on Post for three hours that night. But the specific charges are not sustained. There was no rule prohibiting non-employees on Post, and suspicions of him having access to sensitive material were not proven in this case. However, as previously discussed Dispatcher Kaweck, was guilty of failing to run five licenses through LEADS. Therefore she violated Rule 501.05(1.30)(A)-Failing to carry out a work assignment.

**AWARD:**

The three (3) day suspension issued to the Grievant is to be reduced to a one (1) day suspension. The Grievant is to be made whole for the two (2) days of lost wages and benefits.

This concludes the Arbitration decision.

Respectfully submitted this 24<sup>th</sup> day of October 2017.

E. William Lewis  
/s/

