

In the Matter of Arbitration Between:

OHIO DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE HIGHWAY PATROL

and

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL

Re: Grievance 15-03-941209-0110-04-01
Vetter termination

Hearing held July 18, 1995, in Columbus, Ohio

Decision issued August 8, 1995

APPEARANCES

Employer

Staff Lt. Richard Corbin, Advocate
Pat Mogan, OCB, Second Chair
Anne Van Scoy, OSHP

Union

Paul Cox, Esq., Chief Counsel
Ed Baker, Staff Representative
Kurt R. Vetter, Grievant

Arbitrator

Douglas E. Ray

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I. BACKGROUND

Grievant was employed by the Ohio State Highway Patrol as a Trooper and had been so employed for approximately 2 years when, on December 9, 1994, he was discharged. He was a member of a bargaining unit represented by the Fraternal Order of Police, Ohio Labor Council, Inc. The unit includes, among other classifications, both troopers and dispatchers of the Ohio State Highway Patrol. Grievant's discharge occurred after an investigation begun after Ohio Turnpike Commission employees complained to Patrol officials about monies being missing from an honor system snack bar maintained in the break room of a Turnpike maintenance building. The complaints led to installation of a hidden video camera in the snack bar, the taking of statements from the two Turnpike maintenance employees in charge of the snack bar cash drawer, monitoring cash drawer balances before and after Grievant had access to the snack bar and the taking of a statement from Grievant in which he admitted that he had taken some change on a number of occasions but had intended to pay it back, although he had not always done so.

The Employer placed Grievant on paid administrative leave effective November 30, 1994, pending a departmental investigation. After the completion of the investigation, Grievant was terminated on December 9, 1994, on the basis that he had allegedly committed acts of petit theft on three occasions in November, 1994, "stealing money and/or candy"

from a maintenance building on the Ohio Turnpike. A grievance was filed on December 9, 1994, in which Grievant requested that he be reinstated and made whole.

Criminal charges were filed against Grievant as well but these charges were dismissed on May 3, 1995, based on the judge's finding that the prosecution had not complied with the speedy trial statute.

The matter was processed to arbitration by the parties and a hearing held July 18, 1995 in Columbus, Ohio, before the undersigned arbitrator. At hearing, the parties stipulated that the matter was properly before the arbitrator.

II. ISSUE

The parties stipulated the issue to be:
Was the removal of Grievant for just cause? If not, what shall the remedy be?

III. COLLECTIVE BARGAINING AGREEMENT

Among the provisions of the Agreement referred to by the parties and consulted by the arbitrator are:

Section 18.01, "Purpose," which provides in part that:

The parties recognize that the State has the right to expect that a professional standard of conduct be adhered to by all Highway Patrol personnel regardless of rank or assignment. . . .

Section 19.01, "Standard," which provides:

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause.

IV. POSITIONS OF THE PARTIES

The parties made a number of detailed arguments during the course of the hearing. Their positions are only briefly summarized below.

A. The Employer

The Employer argues that the termination was for just cause and asks that the grievance be denied. The Employer argues that the Employer and society have a right to hold law enforcement officers to a higher standard of conduct and that the evidence in this case establishes that Grievant breached this relationship of trust by stealing money from the snack bar. The Employer argues that the matter was carefully investigated before charges were made and that the evidence establishes Grievant's guilt. Further, the Employer argues that Grievant was on notice of the standards to which law enforcement officers are held and particularly aware that stealing from a snack bar could lead to discharge. The Employer argues that the amount taken is not the appropriate issue in that no amount of theft in the workplace can be tolerated. It notes that troopers often testify in court where their credibility is crucial and are often put in situations where they must be trusted to inventory and protect valuable property. The Employer stresses that the theft in this case occurred on duty and that Grievant is a relatively short term employee. In support of its position, it provided two arbitration decisions. The first, by Arbitrator Smith, involved the

Ohio Department of Transportation and the OCSEA and upheld the discharge of a 21 year employee for taking State property valued at \$30. The second was Food Giant Inc., 79 LA 833 (Dallas 1982), a case upholding discharge of a truck driver for taking a single damaged tomato. In summary, the Employer asks that the grievance be denied.

B. The Union

The Union argues that the discharge was not for just cause. The Union argues that there were flaws in the proof submitted by the Employer and that management ignored evidence that it could have been other people who were responsible. The Union attacked the process by which statements were taken as well. The Union asserted that management claims as to impact on the Patrol were exaggerated and noted that there had been no publicity and no conviction in the public record.

Further, the Union notes that the amount taken was not substantial and that the most Grievant was charged with was \$6.75, an amount that it asserted was not substantial enough to warrant termination. The Union points out that Grievant did not, at hearing, attempt to deny the statements he had made to investigators and asks that arbitrator to credit his testimony that he intended to pay the money back and that he had, indeed, returned most of it on other dates.

The Union notes that the contract calls for progressive discipline and argues that the penalty was far too severe. In support of its position, the Union points to a decision

by Arbitrator Feldman involving this Employer, (15-03-930927-088-04-01) overturning the demotion of a sergeant for falsifying his arrest totals and a decision by this arbitrator under this contract (15-03-930618-0044-04-01) modifying the discharge of a dispatcher charged with off duty theft to a reinstatement without back pay. The Union asks that the grievance be granted and that Grievant be restored to duty with full back pay.

V. DECISION AND ANALYSIS

In reaching a decision in this matter, the arbitrator has considered the testimony and exhibits presented at hearing, the collective bargaining agreement and the arguments of the parties.

The first issue to be resolved is whether Grievant committed the offenses with which he was charged. On this issue, the Employer had the burden of proof. The arbitrator finds that it has been clearly established that Grievant took a number of quarters from the break room snack bar operated by employees of the Turnpike Commission. At hearing, Grievant admitted that he had, on more than one occasion, taken some quarters from the cash drawer to use to buy a soft drink while on the road. He seemingly made a similar admission to a Patrol investigator. Even without his statements, there was evidence to support the charges. The videotapes, while not absolutely proving that he took money, did show him in the snack bar, opening the cash drawer, putting his hand in the change area and moving it

about and removing his hand. The tapes did not appear to show him purchasing a product at the time or putting bills or other money into the drawer. In addition, the testimony of the two Turnpike employees who maintained the snack bar was credible and persuasive. They testified that after they reported their initial suspicions to the Patrol about money missing in October, they carefully monitored the cash drawer. After this monitoring began, they established three separate occasions when Grievant had access to the snack bar and money was missing. These were the same times shown on the videotape. They testified that they had left a specified amount of change in the drawer, having just emptied it of monies paid in for purchases and, after Grievant left the room, much of the change was missing. On one occasion, nine quarters were missing with no additional dollar bills added. Because no record of purchases was made and no inventory of product maintained, there was no way of telling whether monies had been removed at other times when there was more money in the drawer from purchases. Grievant was charged only with the three occasions occurring shortly after the cash drawer had been emptied and an exact record of change remaining made. The arbitrator finds that he did take monies from the snack bar without permission.

The issue remaining, then, is the propriety of the penalty and whether a lesser penalty was called for under the contractual progressive discipline standards. As the Union argued, Grievant did not attempt to deny anything he

had done or anything he had said previously. He did make a good impression at hearing. Despite the good impression he made, however, the arbitrator feels compelled to deny the grievance based on the contract's just cause standard and the limitations placed on the arbitrator by the contract. Given the meaning that the term "just cause" has come to have in negotiated contracts, Grievant did commit acts that gave the Employer the contractual discretion to remove him from duty without interference from an arbitrator. The reasons for this ruling follow.

1. Although the Union argues that the sum involved, less than \$7.00 and probably less, is not sufficient to justify discharge, taking the property of others while on duty has been uniformly regarded as a serious offense. Even in cases not involving law enforcement officers, discharge has often been upheld in similar situations. See, e.g., Union Tank Car, 104 LA 699 (Fullmer 1995) (upholding discharge for taking two M&M boxes from vending machine.)

2. Grievant was a sworn law enforcement officer in uniform and on duty at the time of the incidents in question. He had access to the maintenance building and the snack bar because of his status as a trusted on duty highway patrol trooper.

3. Although Grievant testified that he intended to pay the money back, it was not his money. This is not a case of a co-op snack bar in which members regularly borrow and add money with the explicit or implicit permission of other

members. This was a snack bar maintained by Turnpike employees. It was their money. Grievant did not ask permission to "borrow" money nor did he even leave an IOU in the cash box in lieu of money. Although he testified that he intended to pay it back, he admitted that he had not always done so. This was not a single isolated incident.

4. Grievant was on notice from his Academy training that Troopers must obey the law and that he would be held to a higher standard as a law enforcement officer. In addition, he was present at a November, 1993, meeting at which his Post Commander had specifically stated that taking candy or snacks from the Turnpike maintenance snack bar without paying could lead to discharge.

5. As the Union argues, this arbitrator recently issued a decision under this contract which directed that a dispatcher charged with taking money from a roommate and convicted of a misdemeanor be reinstated without back pay. The arbitrator does not believe that the instant case calls for the same result for at least two reasons. First, that was an off duty offense and this case involves an on duty taking by a uniformed law enforcement officer. In the case of off-duty offenses, the term "just cause" has been interpreted to require proof of a link between the job and the charged conduct. That link is more easily established in an on duty case. Second, there was evidence in that case that the Employer had not always discharged employees for off duty misdemeanors. There was no evidence in this case


that the Employer had allowed Troopers to continue to work under circumstances similar to those of this case.

Under all the circumstances of this case, the arbitrator believes that Grievant committed acts serious enough to give management discretion to determine whether to discharge Grievant and that it would not be appropriate for the arbitrator overturn that decision.

VI. AWARD

The grievance is denied.

August 8, 1995



Douglas E. Ray
Arbitrator