

## **IN THE MATTER OF ARBITRATION BETWEEN**

Ohio State Troopers Association (OSTA),  
Union

And

Case no. DPS 2019- 00920-01  
William Head, Grievant  
Three day Working Suspension

State of Ohio, Department of Public Safety (DPS),  
Employer

### **Umpire's Decision and Award**

#### **Introduction**

This matter was heard in Columbus, Ohio on September 20, 2019 at OCB offices. Larry Phillips represented OSTA. Other OSTA staff present were Elaine Silveira, Jeremy Mendenhall, Bruce Elling and Robert Cooper. Grievant was present and testified.

Lt. Jacob D. Pyles represented the State Highway Patrol. (OSP) The Employer also had Lt. Darrel Harris from the OSP and Cullen Jackson and Scott Steenrod from the Office of Collective Bargaining (OCB) present. Lt. Robinson Hiram Post Commander and Sgt. David Zatvarnický were the OSP witnesses. Zatvarnický conducted the AI. [Mgt. Ex. 1]

All witnesses were sworn.

There were several joint exhibits presented: Jt. 1- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package. The issue was stipulated. Additional exhibits were introduced by the OSP and all were admitted during the hearing.

The decision issued within agreed upon timelines.

#### **Issue**

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

#### **Applicable CBA Provision**

Articles 20

## **Background**

Grievant is assigned as a Trooper at the Hiram Post. He was a long term employee [20 years] at the time of the discipline.

Head was charged with violation of OAC 4501:2-6-02(B)(2) "Performance of Duty" [A member shall submit all required reports without delay and in accordance with directives established by the superintendent". The specific allegation was "...you failed to deliver a citation to the Stow Municipal Court, which resulted in the case being dismissed."

Grievant had an active disciplinary history consisting of two written reprimands and a one day fine. Jt. Ex.3.

The three-day working suspension issued 3/4/19. Jt. Ex.3.

It was timely grieved.

## **Summary of FACTS**

There is no dispute in facts.

Grievant was assigned to the day shift: 6am-2pm at the Hiram Post all dates relevant.

Grievant issued a traffic citation to a driver [Galdamez] on 12/23/18 for a minor misdemeanor. He entered it into O.T.I.S. and printed the citation at 2:08pm the same day. Grievant stated he believed but could not specifically recall if he followed his usual and regular practice of putting the citation in the folder destined for delivery to Stow Municipal Court.[Stow herein] The citation either never made it into the folder or was lost in transit or was lost by the Stow Clerk of Courts. A Trooper whose signature was not identified signed the log and presumably delivered the six citations referenced on 12/26/18.

It is undisputed that Stow had been known by the Post to lose citations. The original Galdamez citation never appeared again.

Due to the non-filing, Stow dismissed the case on 1-10-19. Lt. Robinson tried to forestall that result but his efforts were just moments too late.

Although there is individual responsibility for each Trooper to file his/her own citations, the practice -well established at Hiram post- is different. The usual and normal delivery system for citations for jurisdictions wherein the citation

cannot be electronically uploaded is for hard copies to be placed in a basket/folder; and a day shift Trooper will take the tickets for direct filing at the court. Even this does not occur daily, but rather when time permits so long as it is done expeditiously before time limits for filing expire.

Grievant was not the Trooper responsible for delivery of the folder contents to Stow during the relevant time period.

In addition to the practice of hand delivery by a day shift Trooper of citations that cannot be uploaded, the Post maintained a log for all citations going to Stow. This practice was begun in July 2018 due the problem of Stow losing citations. Stow would charge the Post for “no shows” and this practice was designed to be a means of tracking Stow destined citations.

Per Post practice, citations for Stow are to be recorded by the individual Trooper issuing the citation. As per M.Ex.1 Attachment D, it appeared that a Trooper may “checkoff” all the citations in a batch; or may not. Trooper Brian Shaw on 1/3/19 checked off the citations that he delivered to Stow but there was no testimony that was required.

There was no stated/written Post rule other than 1. log the citation and 2. deliver the ticket to the appropriate court that does not accept uploaded files in a timely manner. Who delivers it appeared to be an ad hoc responsibility, based upon Post needs.

### **Employer Position**

Grievant admittedly could not explain the whereabouts of the affected citation. Grievant was responsible for the logging and filing of said citation. The citation was never filed with Stow; and the case was dismissed. Despite the fact others may transport citations in a batch, each Trooper is personally responsible for ensuring his/her citations are timely and appropriately filed.

The discipline is within the grid; is commensurate; and is progressive. Timely and efficient filing of citations is essential to a Trooper’s job performance.

The discipline is for just cause and the grievance must be denied.

## **Union Position**

Grievant admittedly did not log the citation. He placed it in the basket wherein the normal course of business the ticket would have been filed along with others with Stow. Grievant did not have individual responsibility for delivery. The system in place at the post was to allow for batch deliveries and he was not charged with the batch delivery duty.

Tickets getting lost/misplaced are not unusual or extraordinary occurrences. Stow in particular is known as a jurisdiction that loses citations. That prompted the log. Tickets have been found in Patrol cars. This was the first occasion where Grievant did not file a citation.

Grievant was improperly charged and thus the discipline cannot stand. Grievant was not the individual Trooper who was to deliver the Stow citation. He did everything that is usual and required of him, with the exception of placing the citation on the log and signing for it. The very same day, he logged another citation [Tokala] to Stow. That citation did make it to Stow on 1/2/19. The Employer could not prove Grievant didn't place the citation in the basket.

The discipline is not for just cause and should be reversed.

## **Opinion**

The Employer bears the burden of proof.

The Umpire noted that despite the log system, which Grievant admittedly did not follow for one of his two citations for Stow issued on 12-23-18, Grievant was not personally charged with delivery of that citation by the Post's custom and practice. In other words, he could properly be charged for failure to log the citation but his responsibility for actual delivery that date and/or on 1/3/19 was delegated to an unnamed other. The Post would not be as efficient if each Trooper had to personally batch and file all his/her citations, and that has not been the practice per the record. The *ultimate* responsibility for filing was Grievant's but to insist that he be disciplined so harshly in light of the custom and practice of "collective" responsibility [for at least Stow] is unjust and therefore arbitrary -with these particular facts. Grievant did not claim he remembered putting the citation in the folder either at the time of the AI or at

hearing. He just had no specific recollection-which struck the Umpire under these circumstances as an honest response.

No one making the delivery checked with any other Troopers to make sure all citations were in the folder before delivery. There was no evidence that this was a stated practice at the Post. Neither is a check off required to make sure all logged citations are in the folder. No one testified as to who did make the delivery of the Stow folder on 12/26/18. Despite Grievant's lack of firsthand recollection as to what he did do with that citation both in March 2019 during the AI and again at the September arbitration, all the OSP can prove is that he didn't log the citation as required. Granted it is true that he did not deliver the citation to Stow. But that was not in practice required of him to personally deliver that citation. That is seen by AI Ex. D. It is patently unreasonable to insist under these circumstances absent egregious or persistent neglect that Grievant receive a significant discipline in this matter.

Missing in this case is any explanation other than progression and the disciplinary grid for the level of discipline imposed. It is established by both the Post's witnesses that missing citations do occur. This was the very first instance of record of Grievant's citation not making it to Stow. He has never been warned or cautioned about this in all his twenty years of service.

The umpire concludes that under all the circumstances herein, the discipline is without just cause. An oral warning would have been sufficient under all these circumstances. It is a serious issue that a citation get to the Court for administration of justice and the safety of the public. It is an essential function of a Trooper. But an unintentional act in an otherwise unblemished history of properly getting his citations timely filed, the three day working suspension is overly punitive, it is arbitrary and capricious and thus is not sustainable.

#### **AWARD**

**The grievance is granted. Grievant's record is to be expunged so that there is no reference to a three day working suspension for the events described herein.**

IT IS SO HEREBY ORDERED.

Issued September 25, 2019, in Columbus, Oh

*S/ Sandra Mendel Furman*

Sandra Mendel Furman, J.D.

Umpire

**Certificate of Service**

A copy of the foregoing was sent by email to the parties' representatives this date.

*s/ Sandra Mendel Furman*