

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association,
Union

And

Case no. DPS 2017-04438-01
Timothy S. Durham, Grievant
Three day suspension

State of Ohio, Department of Public Safety,
Employer

Umpire's Decision and Award

Introduction

This matter was heard in Gahanna, Ohio on May 11, 2017 at OSTA offices. Elaine Silvera represented the Union. Other Union persons present were Larry Phillips, Bruce Elling and Jeremy Mendenhall.

Lt. Darrell Harris, represented the Patrol. The Employer also had Lt. Jacob Pyles and Victor Dandridge from the Office of Collective Bargaining present.

Each side called witnesses in support of its position.

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 Patrol and Union and all were admitted during the hearing.

Issue

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

Applicable CBA Provisions

Article 19

Background

Grievant is a Trooper. He is a 16 year employee.

Grievant has no disciplinary history. He was charged with violation of Rule 4501:2-6-02(I)(4), Conduct Unbecoming.

A three-day suspension issued after the cba processes were followed. The discipline was timely grieved.

Summary of FACTS

Grievant was disciplined for events arising out of interactions with other law enforcement personnel from concurrent jurisdictions (German Township and Clark County Sheriff) at the site of an investigation. The incident occurred on September 18, 2017.

Grievant testified. He is assigned to the very busy Springfield Post.

The Patrol's witnesses were Lt. Terry Bush who conducted the Administrative investigation (AI) and Chief Michael Stitzel from the German Township Police Department.

There is no dispute in facts.

The actions of all involved parties were captured on several cameras/ video from the other jurisdictions which were made part of the record.

Grievant was dispatched to a site where other law enforcement personnel were already present. He had just left the scene of another accident [not assigned to him] when he was dispatched to the location involved. Upon arrival, he observed multiple law enforcement personnel but not an active scene. An abandoned car was present. Frustrated with what he deemed to be an overabundance of personnel dispatched to a non-emergency situation, Grievant began to verbally vent his frustration. He spoke in a direct, peremptory tone. He left and then returned to continue the conversation with Chief Stitzel. The conversation with Stitzel the second (or third) go around became the predicate for discipline.

There were multiple witnesses to the exchange; all were interviewed as part of the AI. The other witnesses worked for German Township, where Stitzel is the Chief of Police and for the Clark County Sheriff Department.

Chief Stitzel made a complaint to Lt. Aller at Grievant's Post while still at the scene. The report resulted in the AI and ultimate issuance of discipline effective December 7-9, 2017.

Employer Position

Grievant acted in an unprofessional manner. He was unnecessarily abrasive and aggressive to other law enforcement personnel. This conduct is outside of the professionalism expected by the Patrol. Interagency respect and cooperation are necessary to the proper performance of the Patrol's mission.

The discipline is within the grid; is commensurate and no abuse of discretion exists such as to mitigate the discipline.

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

Union Position

Grievant used his military like demeanor and training to handle a situation he thought was inappropriate. Anyone would be frustrated by the overload of law enforcement personnel around an abandoned car. He saw the situation as unprofessional and a waste of scarce resources. He reacted to the comments of the Chief appropriately. He never used profanity. The Chief was aggressive. The Chief was unprofessional. The Chief repeatedly used profanity in the AI. This Post is extremely busy in stark contrast to the German Township police force. Grievant's reactions were in line with the frustration felt at a surplus of persons at a non-injury, abandoned car scene.

Assuming *arguendo* he was somewhat brusque and too assiduous in his assertions, the discipline is over harsh and should be modified. Grievant has a pristine record. He is an employee who values his role and position and is very intent on doing his best at all times.

Another similarly situated employee at the Post received a one-day suspension, and his discipline was ultimately reduced via settlement to a written reprimand.¹

¹ This situation involved a state legislator overhearing a Trooper say "WTF [actual words used] is he doing here?" at the Springfield Post. The legislator complained and discipline ensued. The Umpire does not find this alleged disparate treatment to be in anyway determinative.

This incident was out of character for Grievant and is highly unlikely to recur. A one-day suspension at most is commensurate. The Umpire should disaffirm the discipline or in the alternative, modify it to a one-day suspension.

Opinion

The Employer bears the burden of proof.

The Umpire found watching the video was sufficient to conclude Grievant violated the cited work rule. Beginning with his second interaction with the others and most particularly with Stitzel, Grievant was out of line. He was talking in an aggressive, peremptory manner to fellow law enforcement personnel. No one was challenging his authority or professionalism or right to be on the scene. He was giving a "lecture"- like talking directed at others when there was no situation prompting such a response. The Umpire was concerned due to the stances and posture of the involved individuals that there might have been physical contact. Cooler heads prevailed and ultimately there was a walk away.

The frustration Grievant felt at the scene was acknowledged as understandable. However, there is a time and a place to express such frustration. At his command level, the prudent means of expressing frustration would have been to bring the over staffing situation to the attention of the command at the post, and let management assess and decide what if anything could/should have been done. Although he claimed at hearing to have done this in the past, it is still the only appropriate means of communicating. Rudeness and confrontation among persons who are generally trained to stand their ground and are armed is not the Patrol way.

He could have walked from the scene and calmed down. He did neither. Grievant merely needed to respond to the dispatch; any problems above his level to solve could/should be reported up the command. There were several "walk away" points in the interaction, yet Grievant persisted. There was no need for the persistence and all that was likely to occur was more aggravation, resentment, and increase in tempers. The "stand down" remark and the "high and mighty" comments were out of bounds. The remark that officers stand around with their thumbs up their rear ends while not profane was crude and unprofessional.

The Umpire also notes Grievant's defensive and unapologetic comments in his AI.

Grievant's hard working, committed nature plus his apparent sincerity and newly displayed remorse at the hearing were palpable. He is and has been a professional Trooper with an otherwise exemplary record. He had an unfortunate interaction with the German Township Police Chief which upon reflection embarrassed him. He received training at the Academy on an individualized basis to deal with communication issues. Union Ex. 2.

Grievant crossed an admitted line in his demeanor and actions on September 18, 2017. He had a pristine record. He was not known to be a rude or bullying Trooper. He displayed too much frustration and aggravation on one particular date and time. The basis for modifying a discipline is abuse of discretion. The Umpire while finding the discipline had the intended effect of reflection and correction, at the time the discipline issued it was not so clearly excessive as to meet the abuse of discretion standard.

AWARD

The grievance is Denied.

IT IS SO HEREBY ORDERED.

Issued May 16, 2018 in Columbus, Oh

S/ Sandra Mendel Furman

Sandra Mendel Furman, J.D. Umpire