

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association,
Union

And

Case no. DPS 2018-000034-01
Trevor A.T. Jasper, Grievant
One 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. Larry Phillips represented the Union. Other Union persons present were Elaine Silvera, Bruce Elling and Jeremy Mendenhall.

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

Each side called one witness 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 one (1) day suspension for just cause? If not, what shall the remedy be?

Applicable CBA Provisions

Article 19

Background

Grievant is assigned as a Trooper at the Batavia Post. He is a two year employee.

Grievant has a disciplinary history consisting of a verbal warning and written reprimand.

He was charged with violation of Rule 4501:2-6-05(D)(1).

The one-day suspension was issued in December 2017. Grievant took a loss of vacation leave instead of the suspension by agreement of the parties. Jt. Ex. 3.

It was timely grieved.

Summary of FACTS

Grievant was disciplined for events arising subsequent to a pursuit. His cruiser was damaged in the amount of \$ 1183.08. The Patrol claimed it was a preventable accident. It issued a one-day suspension as it was progressive from his two earlier disciplines. Those prior disciplines occurred during his first year of employment.

Grievant testified.

The Patrol's witness was Lt. Hayslip from Grievant's post.

There is no dispute in facts -just how the facts should be interpreted.

Employer Position

Grievant was involved in a preventable accident when he drove into a private driveway on November 7, 2017 and damaged his cruiser. The car went into a culvert at the turning in causing damage to his right front bumper and undercarriage area.

Grievant's conduct violated the rules regarding equipment operation; he was involved in a one car crash which was deemed preventable by the investigator.

The discipline is within the grid; is commensurate; is progressive 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 did not have a preventable accident. The road condition was unknown to Grievant. The defect in the driveway was not visible at night; it was not a lit area and it was hard to see because there were flashers from other

police/sheriff vehicles making vision even more difficult. He was turning at an appropriate rate of speed during the turn.

The road's condition was one which was not visible from the driver's position while turning, as was demonstrated by Grievant's video [taken as a copy from his car camera] and photograph. The A pillar in the cruiser blocked his view of the culvert. Union. Ex.2. Grievant was acting in a reasonable and prudent manner; the accident was unavoidable under all the circumstances extant. The fact the area was a hidden hazard was indicated by the fact that another vehicle that same night was damaged at the same spot.

The grievance should be granted in its entirety.

Opinion

The Employer bears the burden of proof.

The Umpire is unconvinced by the necessary quantum of proof that Grievant was involved in a preventable accident.¹

The Patrol has not prescribed a model or template for determining what the preventable/unpreventable accident elements are. The Umpire is not suggesting this is possible. Nor is she stating that setting forth such definitions would be definitive in all respects. The defining of preventable/unpreventable thus is currently on a case by case basis, and necessarily involves a subjective assessment of then extant facts and circumstances.

Unless an accident reconstruction expert is available – a most unlikely occurrence and expense-the person concluding that an accident falls in one or the other category is evaluating the events without fixed standards/guidelines. Discretion of the reviewer will dictate the initial determination. A form exists which must be filled out and a narrative prepared. Common sense and ordinary experience would many times dictate the conclusion. The recommendation of the reviewer then is processed up through a series of higher level reviews until it ends with Professional Standards. It is of course possible that a decision at a

¹ The accident report cites in the "contributing circumstance" section [M. Ex. 1] that the cruiser was involved in an improper lane change/passing off road. Neither of those reasons were present based upon the evidence at hearing. The report was not prepared the night of the incident.

lower review level would be modified or reversed. But a preventable accident will result in discipline.

This issue of preventable/unpreventable accident is apparently according to the witnesses not a matter that is typically grieved.² This issue is a matter of first impression for this Umpire.

When asked Hayslip indicated Grievant had two choices that night: wait until the exiting vehicle left the private parking lot then turn in with lots more room to enter the private lot or illuminate with additional lights beyond the cruiser headlights and overhead lights [that he did have on] to further light up the area before entering the private lot.

The Traffic Crash Report was prepared by Joseph Westhoven, the then Shift supervisor. It was checked and reviewed by Lt. Hayslip. The report states in relevant part:

...He was not in emergency response when the crash occurred, however *his overhead lights were activated....Trooper Jasper exited the roadway in a controlled manner* into a private drive and struck the culvert. The bottom right portion of the front bumper bottomed out *in a steep grade near the culvert.*³After the culvert was struck, Trooper Jasper moved the vehicle to a controlled final rest back on the traveled roadway. *The private drive begins to slope downward when entering and the pavement is very low at the edge of the culvert.*
There is no posted speed limit for the parking lot/private drive. [Emphasis added]

Nothing in here suggests negligence, carelessness or failure to control the vehicle. Grievant indicated his own vehicle obstructed his view while making the turn, which was reinforced by his photographs. Evidence at hearing indicated the driveway was wide enough for two vehicles to pass through at the same time.

The Umpire concluded under the then extant circumstances Grievant acted neither negligently nor carelessly nor imprudently. The road condition was

² The Umpire agrees with the Patrol that Grievant's failure to grieve the two prior disciplines was not determinative of any matter in issue herein. The cba limits appeal rights for lesser disciplines.

³ The Patrol's Crash information report describes at p. 8. M.Ex.1 that the road contour was straight grade. It is certainly not true that the driveway had a straight grade, so the umpire is not sure which road is being referenced in this report. The investigator earlier referenced there was a steep grade near the culvert. On pg. 9 of the report it states the contributing circumstance was

not readily apparent or visible from the pictures. The vantage point of Grievant while driving did not permit him to notice the area in the dark. In the absence of established protocols to never enter a driveway on private property at night without waiting for another car to first exit a driveway or to illuminate all available car lights before entering a driveway, it is deemed in this case to be arbitrary and capricious under the circumstances to charge Grievant with an avoidable accident. The discipline cannot stand.

AWARD

The grievance is granted.

IT IS SO HEREBY ORDERED.

Issued May 16, 2018 in Columbus, Oh

S/ Sandra Mendel Furman

Sandra Mendel Furman, J.D. Umpire

“driver inattention”. There was no evidence that Grievant was inattentive except to the extent he did not see the culvert in the dark.