

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

Ohio State Troopers Association (OSTA)  
Union

And

Case no. DPS 2018- 01649-01  
Caleb E. Cox, Grievant  
One day suspension

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

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

#### **Introduction**

This matter was heard in Gahanna, Ohio on November 21, 2018 at OSTA headquarters. Larry Phillips represented the Grievant. Bruce Elling and Robert Cooper were also present as OSTA staff. Grievant was present and testified.

Michael D. Wood, Labor Relations Officer 3 ( LRO) represented the State Highway Patrol. (OSP) OSP also had Lt. Darrell Harris, OSP and Chris Haselberger and Eric Eilerman from the Office of Collective Bargaining (OCB) 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 and all were admitted during the hearing.

The decision issued within stipulated time limits.

#### **Issue**

Was the Grievant issued a one (1) day working suspension for just cause? If not, what shall the remedy be?

#### **Applicable CBA Provisions**

Articles 19; 20

## **Background**

Grievant was assigned as a Trooper at the New Philadelphia Post in July 2017. At the date of the arbitration hearing, he was working at the Mount Gilead post, beginning there October 1, 2017. His date of hire was in April 2016.

Cox was charged with violation of DPS 4501:2-6-02(B)(5): Performance of Duty. He was alleged to have failed to file a citation for a juvenile with the New Philadelphia juvenile court for a traffic citation.<sup>1</sup> Discipline of a One (1) day working suspension issued in May, 2018.

Grievant has a disciplinary history consisting of two (2) written reprimands. His prior disciplines issued in December 2016 and May 2017. Jt. Ex.3. Tab E.<sup>2</sup>

The one day suspension was issued in May 2018. Jt. Ex.3.

It was timely grieved.

## **Summary of FACTS**

Grievant was disciplined for events arising occurring during a review by the New Philadelphia Post commander of filings on the Ohio Trooper Information System [OTIS] computer. Multiple other troopers at the post were involved in the investigation. Information as to the discipline issued to the others was not in evidence.

OSP's witnesses were Sgt. David Bailey who conducted the Administrative Investigation (AI) and Lt. Mark Glennon, Post Commander.

This matter had its genesis when Trooper Maddock came to Lt. Glennon and self-reported that some of his juvenile traffic citations had not been filed with the Juvenile Court. This alerted the Lieutenant to a situation which resulted in the AI of Grievant and several others.

Lt. Glennon detailed the process used to determine that the Post had between twenty-four to twenty-six (24-26) citations that were not filed with the

---

<sup>1</sup> There was detailed explanation concerning the differences in filing methods at the juvenile courts in contrast to municipal courts. Juvenile citations are rarer than adult citations. The local juvenile courts have not all transitioned to e-filing- the norm for adult citations. There was also testimony concerning distinctions between process for Carroll and Tuscarawas counties. The umpire appreciated the details provided.

juvenile court in New Philadelphia. Of that number, nine (9) were past the statute of limitations. (SOL) This meant that those nine (9) citations were null. The remainder citations located by Glennon were filed by him before the SOL expired. Of those nine (9) null citations, one (1) was issued by Grievant.<sup>3</sup>

Lt. Glennon explained that if a citation has been properly cleared the OTIS system would not reflect a yellow highlight.<sup>4</sup> He provided at the umpire's request a step by step explanation of the OTIS process.

Both sides concurred that missing citations occur in the ordinary course of business. Citations have been misplaced in vehicles. Citations have been misplaced at the courthouse. Citations have gone missing from the basket used to collect citations. Practice at the post was that citations were placed in a basket and a sergeant [usually] would deliver the citations to the court on a frequent basis. Not one person in the post was routinely charged with this responsibility. It was clear that a variety of weekdays *not scheduled* were involved for transportation and delivery of the citations and that multiple staff *not regularly assigned* were transporting citations.<sup>5</sup>

There was no routine system of auditing the citation basket or the OTIS to make sure all citations are timely filed. Lt. Glennon indicated that a system was instituted post these events. He described its operation.

### **Employer Position**

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**

---

<sup>2</sup> Grievant provided brief testimony about the prior incident regarding the metal citation holder and HP-7 blank citations.

<sup>3</sup> Grievant's notice of discipline erroneously refers to "citations"; he only was found to have not filed one. See Jt. Ex.3. Tab A. and B.

<sup>4</sup> Yellow highlighting can mean a voided citation; a citation that has not been printed or a citation needing additional documentation prior to being further processed. Significantly Lt. Glennon indicated that at that time, a yellow highlight in OTIS could still appear even though a citation had in fact been filed in court.

<sup>5</sup> In the AI the Tuscarawas County Juvenile Prosecutor described the missing juvenile citations as "truly an anomaly." She stated the New Philadelphia post usually does a good job with filings. She has taken proactive steps to make sure her office is aware of upcoming charges.

It cannot be established with any degree of certainty that Grievant failed to deliver the citation as charged. Grievant may not be “guilty as charged.”

The discipline is overly harsh and punitive, if any discipline is merited. As such, it is not for just cause. The grievance should be granted in its entirety.

### **Opinion**

The Employer bears the burden of proof. The fact that Sgt. Bailey stated he couldn’t prove Grievant failed to file the citation is in no way binding on the umpire. It is her determination to make if the burden of proof exists sufficient to sustain a discipline.

The burden in a discipline case such as this is preponderance of the evidence.

The umpire believes that a claim something is “possible” does nothing to advance a standard of proof. What is more compelling for the umpire as an inquiry follows: In consideration of all the known facts and circumstances, is it more likely than not that it is reasonable to conclude an event occurred? Therefore the Umpire’s query is: Is it more likely than not that Grievant failed to file one citation resulting in a missed deadline for a juvenile speeding ticket? The umpire cannot state that it is.

The events described in the AI happened sometime between seventeen to eleven (17- 11) months before the arbitration. When asked, Grievant stated more than once that it is possible but not probable that he neglected to file the citation. He described his custom and practice of printing two (2) copies of the citation from his cruiser terminal. Cox would give one to the offender and place the other in the car visor for further processing once he returned to the post. Grievant lacked a specific recollection about this ticket (and the offender) that resulted in his discipline.

Others involved in the investigation admitted that s/he forgot to file the citations with the court. Grievant did not and has not made such an admission.

Lt. Glennon did not ascribe deliberate intent to anyone at the post who was involved in the investigation. He never interviewed Grievant himself because Grievant was no longer working in New Philadelphia in December 2017.

It was not shown that Grievant was routinely or even allegedly careless on more than a single occasion with regard to citations. It was shown that missing citations were not isolated events. The post investigated multiple troopers beginning in December 2017.

It was not shown that audits were routine and that employees were on direct notice that audits will occur. Employees do not have to produce evidence of a checklist s/he needs to follow to ensure timely filing of citations. There is not even a fixed protocol; third shift doesn't file their own tickets. The post does not have a designated day or days for filing juvenile citations. There is no set "chain of custody" for a citation.

Having commented above, the umpire in no way is derogating from the OSP expectation and standard that citations must always be processed in a timely manner. That responsibility belonged to Grievant and on one occasion, a citation he issued did not get properly filed in court. By the date of discovery of the missing citation, no legal recourse existed for prosecution. The fact a speeding ticket rather than a felony level juvenile offense was not involved is not determinative; the harm or lack thereof is not the standard for review.

However, this one occasion that *may* be attributable to Grievant is surrounded by enough other factors and possibilities to make a discipline untenable. There was no showing that he was specifically cautioned or warned about this matter in the past. There was no showing that he did fail to file the citation as there was no eyewitness or accuser who saw the citation neglected or mishandled. In the system then used at the post, any number of others could have taken-or not taken the citation from the basket to the courthouse. Employees were not required to make periodic self-audits to catch possible mistakes.<sup>6</sup> Grievant did not have a specific recollection as to this citation. He was interviewed on March 8, 2018 about a ticket written on July 13, 2017.

OSP argued that Grievant's prior written reprimand discipline for misplacing his metal file and HP-7 citations proves a greater likelihood he was

---

<sup>6</sup> It isn't even certain that a self-audit could have solved the concern- as Grievant may have properly and timely processed the citation but it didn't make it from the bin to the courthouse.

again careless on this occasion in July 2017. This “prior bad acts” argument was not deemed to be relevant by the umpire. [It is noted that the metal file and packet were found.] Grievant was “sliding cars” during this period. That discipline was not grievable to arbitration and thus is noted as existing in the record; nothing more. It is noted for purposes of progression.

Nor was the umpire swayed by OSTA’s argument that Grievant’s appeal of a working suspension somehow enhances his innocence. The umpire notes that anyone can file a grievance if the CBA provisions allow for a grievance. Motivation behind the filing is largely irrelevant. Either a CBA violation exists-or not.

What was absent from the record is if there exists a norm or progression of corrective action for failure to file citations.<sup>7</sup> Mistakes happen and it was at that time-at that post-overly unusual. Nor is the standard of care or diligence exercised so low as to require discipline as corrective action in this case with this Trooper.

Although the AI makes reference to reporting period, there was no explanation in the testimony. Perhaps the “reporting period” is a type of audit, perhaps not. This was not explained. The record thus leaves an open question as to when Grievant was expected/required to check to make sure all his citations were appropriately filed.

The OSP reverts to its grid; OSTA reverts to its position that the grid is not negotiated. The Union argued no discipline at all was appropriate.

The umpire understands and appreciates the utility of the grid as a guideline for the OSP deciding certain discipline may be imposed. But just cause also must exist.

The umpire concludes that under all the circumstances herein the discipline is cannot stand.

The umpire also has some concern with the Hearing Officer’s report at step 3, as it deals with others in addition to Grievant. [The record is also silent as to what discipline the others involved received. This was unusual when

---

7

contrasted to other arbitrations.] The Hearing Officer also erroneously stated that a yellow highlight in OTIS indicated the documents were not printed. Clearly that is not always true, from testimony given at the arbitration.

There is no just cause for the discipline as the burden of proof does not exist in sufficient measure to indicate Grievant violated the work rule.

**AWARD**

**The grievance is granted. Grievant is to be made whole for any loss due to the suspension.**

**IT IS SO HEREBY ORDERED.**

*S/ Sandra Mendel Furman*

Sandra Mendel Furman, Umpire

Issued November 25, 2018 in Columbus, Oh

**Certificate of Service**

The Award was issued by electronic email to the parties' representatives on November 25, 2018.

*s/ Sandra Mendel Furman*