

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

Ohio State Troopers Association (OSTA),  
Union

And

Case no. DPS 2018- 01867-01  
Jennifer J. Moore, Grievant  
Three 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 offices. Larry Phillips represented OSTA. Other OSTA staff present were Bruce Eling and Robert Cooper. Grievant was present and testified.

Lt. Darrell Harris represented the State Highway Patrol. (OSP) The Employer also had Michael Wood LRO (DPS) 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 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 Provisions**

Articles 20; 19

## **Background**

Grievant is assigned as a Dispatcher at the St. Clairsville Post. She was a fifteen (15) month employee at the time of the discipline and an eight (8) month employee at the time of the incident. She had three (3) months off for childbirth during her first months of employment.

Moore had had fifteen (15) years prior employment as a Dispatcher at a local law enforcement agency. That agency used different radio codes than the Patrol.

She was charged with violation of DPS 501.05-1.30(A); "failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment." The incident occurred before Grievant had reached her one (1) year anniversary date.

Grievant has a disciplinary history consisting of a one (1) day Fine. Her prior discipline issued in 3/17/18 for an unrelated offense [verbal confrontation/profanity/improper or inappropriate remarks]. Jt. Ex. 3.

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

It was timely grieved.

## **Summary of FACTS**

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

Grievant was disciplined for events arising occurring during a traffic stop. The stop occurred in February 2018.

The discipline issued because her initial transmission of the radio code signal "62" to Trooper Corey was in error. Moore originally conveyed that the suspect had a CCW permit; he did not. The suspect instead had a warrant with a caution related to a domestic violence situation. The code should have been announced as "76" with a caution. This was information that Trooper Corey also would have had displayed on his screen inside his vehicle, had the code been sent initially in a correct manner. At this date and time however the Trooper in car computer was not operating as designed. There was no evidence that the Trooper's problems with his in-car computer were known by the Dispatcher.

The information that should have been dispatched originally would have likely required a different initial approach and an immediate back up dispatch as well. By the time the code was corrected by Grievant-within a total time span of a minute and 2/10th, Trooper Corey was approaching the suspect and was out of radio contact. Corey did not hear the first attempt at correction. Within two minutes nine seconds later, Grievant had relayed the correct code a second time and Trooper Corey received from Grievant the information about the warrant but not about the Protective Order. Back up was dispatched by Grievant according to protocol due to the corrected code.

The arrest and jail transport occurred without incident. When the suspect arrived at the jail, persons at the jail were waiting with restraints due to his known status as someone who may/has resisted arrest.

The Patrol's witnesses were Sgt. David Bailey who conducted the Administrative Investigation (AI) and Dispatcher Supervisor Jennifer Moran.

Grievant testified. She admitted that she made a mistake with her initial "code 62" signal to the Trooper. She stated that she corrected her error promptly; within two minutes of the original dispatch the Trooper had relayed to him the correct information about the suspect. She indicated that the suspect had a warrant for his arrest but she did not mention the "caution" [a protective order with specific application to a named party not then present]. Back up was dispatched after the error was noticed and corrected. No explanation was offered for the failure to provide the information about the Protective Order.

Grievant described the level of activity and stress related to dispatching as did the OSP witness Moran. The process for making and receiving dispatches for a traffic stop were described by Moran. Both Grievant and Moran discussed the additional on-going, contemporaneous duties of the dispatchers at post.

Both Moran and Grievant concurred that making mistakes is not unusual but that mistakes regarding codes can have serious adverse effects. Moran indicated that the Trooper receives the same information on the car screen as the Dispatcher. Troopers are likewise required to acknowledge receipt of

information from the Dispatcher. Moran further stated that Trooper Corey should have ensured that Grievant knew his in car system was not working properly.

### **Employer Position**

Grievant despite her training failed to timely and accurately advise Trooper Corey regarding necessary and essential information regarding the suspect during a traffic stop. This was a serious matter which could have had adverse consequences.

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 made an admitted error which she promptly corrected. The stresses and demands of the dispatcher position are well established. No harm occurred.

The discipline is overly harsh and punitive. As such, it is not for just cause.

### **Opinion**

The Employer bears the burden of proof.

The Umpire is convinced by the necessary quantum of proof that Grievant made an error on her initial dispatch. The error was promptly corrected, but not before Trooper Corey made his approach. Nor did Grievant inform Corey about the Protective Order. Even though it was a no harm situation because there was no passenger, that is not her decision to edit any relevant information.

Corey had not indicated to the post-or at least to Grievant- he had issues with his in-car computer. Corey did not hear the initial prompt correction of the code originally given in error.

Although the suspect was quiescent and had no passenger in the car making the "caution" particularly important, Grievant could not have known that and was duty bound to make that information known. She also failed to scroll all the way down her queues which would have made the information about the caution known. Had Trooper Corey notified her that his computer was on the

fritz earlier in the shift that would have perhaps heightened her awareness of his need to have verified full information about the stop.

The umpire is not modifying the discipline because in this case no harm occurred due to the tardily corrected dispatch. The umpire is modifying the discipline in part because of the relatively short tenure of the Grievant prior to the incident; her initial and prompt correction of the original code error; her forthright testimony and demeanor at hearing and her acknowledgement of the importance of the correct dispatch procedures needing to be followed all the time with no room for error.

Missing in this case is any explanation other than progression and the disciplinary grid for the level of discipline imposed. It is established by the witnesses that dispatcher errors do occur and that errors can have dangerous consequences. The expectation is that errors will be at the lowest possible occurrence due to the often life and death potential scenarios relative to a traffic stop. Although not stated by any witness, the unstated expectation is likely no errors at all. That is not possible for reasons not requiring more explanation.

What was likewise absent from the record is if there exists a norm or progression of corrective action for dispatchers to reinforce the need for accurate dispatching. In other words, although both sides said dispatchers make mistakes and it is not unusual, neither side posited a standard for correction. The OSP reverts to its grid; OSTA reverts to its position that the grid is not negotiated. OSTA suggested no discipline at all was appropriate.

The umpire understands and appreciates the utility of the grid as a guideline and perhaps even a baseline for understanding why certain discipline may be imposed. But just cause also must exist.

The umpire concludes that under all the circumstances herein, the discipline is too harsh. As it is overly punitive, it is arbitrary and capricious and thus will be modified. A shorter suspension is commensurate with all the facts and circumstances herein extant. Had Grievant scrolled all the down her queue this may have been averted. Grievant is on notice.

**AWARD**

The grievance is granted in part. The discipline is modified to a One (1) Day Suspension. Grievant is to be made whole for any loss due to the Three (3) day suspension.

IT IS SO HEREBY ORDERED.

Issued November 25, 2018 in Columbus, Oh

*S/ Sandra Mendel Furman*

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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*

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