

**IN THE MATTER OF ARBITRATION
BETWEEN**

Ohio State Troopers Association (OSTA),
Union

And

Case no. DPS 2018-02026-01
Emma Fackleman, Grievant
One (1) 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 January 15, 2019 at OSTA offices. Larry Phillips represented OSTA. Grievant was present and testified.

Mark Woods, LRO represented the State Highway Patrol. (OSP)

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 the Union and all were admitted during the hearing.

The decision issued within agreed upon timelines.

Issue

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

Applicable CBA Provisions

Articles 20; 19

Background

Grievant was charged with violation of DPS Work Rule 501.05-1.30(A) "Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment."

Grievant has a written reprimand in her department record dated 4/24/17 for inefficiency. Two other written reprimands in her department record were for tardiness.

The instant discipline was timely grieved.

Summary of FACTS

Grievant was disciplined for two separate and unrelated set of circumstances.

The first allegation relates to an incoming call related to a fatal traffic incident occurring on Route 30 on 3/16/18. A pedestrian was fatally hit crossing the highway. The post received several calls concerning the matter. Grievant had taken earlier calls and heard the scanner regarding the matter. Her role that date was "call taker". An off duty trooper called in the crash indicating a vehicle was in the median. Another call was from a female caller but that call was not recorded. The female provided more information which Grievant did not specify. Per Grievant, the Richland Fire department was already on scene.

The call Grievant was charged with handling in an unacceptable manner was a 911 call. 911 calls are patched to the Mansfield Dispatch Center where Grievant is employed. Grievant received the call from a male caller, from whom she did not seek any identifying information: name, address, telephone number, the caller's opportunity to observe and/or involvement; the caller's personal safety at the time of the call or anything at all. She gathered no details whatsoever about the incident from the caller. She then placed a call to a supervisor Sgt. Gockstetter at the Norwalk post regarding this accident, and remarked that a pedestrian had gotten "creamed" on the highway. Sgt. Gockstetter then took command of the matter. He made no particular note of Grievant's comments but dealt with the situation at hand.

Grievant's response came to light when a public records request came in for calls related to the incident. The Secretary responding to the public records request [API Carrie Smith] brought Grievant's response to the attention of the Dispatcher Supervisor Reichelderfer.

The second aspect of the charges related to alleged failure to "check in" on a required seven minute cycle with Motor Carrier Enforcement Inspector (MECI) unit Christopher Baker. Dispatchers are required by policy and procedure to check in with MECIs and troopers on a routine scheduled basis for safety reasons. Dispatchers are trained in the check in procedure. Dispatchers are alerted to the seven minute cycle by an audible "ding" on their CAD terminal and also by a color coded green line on the text. The green color and the "ding" are a double reminder of the need to check in.

Grievant failed to alert MECIs at least three separate times on 4/6/18 on the seven minute cycle. Grievant indicated that one of the voices on the recording was not hers; so the logs showing there were four occasions are in error. This was explained as maybe the other dispatcher covered for her when she was not at her work area.

No incidents of harm occurred due to the failure.

When Dispatch Manager Linda Frye came to the MDC the next day, Grievant informed her that her keyboard was not regulation and it had a volume control key. The key may have been deactivated during the time calls came in. If the mute key was on her CAD would not have signaled audibly on a seven minute timer. Therefore Grievant's prompting notice of the seven minute cycle would be her visual scan of her CAD screen.

The keyboard was removed and replaced.

No one told investigating Sgt. Burkhardt that there was a potential issue with the keyboard at Grievant's workspace. Grievant was interviewed as part of the AI and said nothing regarding the keyboard at that time.

Employer Position

Grievant violated both standards of performance. She clearly used inappropriate language which became public as it was on a recorded line. She

failed to solicit routine, required information from the 911 caller. This is uncontroverted.

Regarding the second allegations, Grievant did not prove the mute button was depressed. Regardless the CAD screen would have signaled the need for a checkup. Three checkups at a minimum [possibly four] were missed for the MECI. The checkups are a required safety procedure.

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

Regarding the handling of the male caller on the 911 call, Grievant did not need to ask the caller for any identifying information. It was the third call received about the accident on Route 30. Her remark about a pedestrian being “creamed” was not such an offensive statement to rise to the level of a disciplinary event. The Sergeant hearing her say that did not remember the remark being made and did not see fit to counsel her at the time it was made.

Regarding the missed check ins, Grievant proved she had a defective keyboard. It likely muted out the “ding” sound that acts as a reminder. No investigation was made to determine anything about the keyboard. No investigation was made of the other Dispatcher to find out what her conduct was during the missed MECI checkups.

The discipline is overly harsh and punitive. It is arbitrary and capricious as the other Dispatcher ‘s conduct in handling one of the four check-ups was not investigated. The keyboard function was not investigated. As such, the discipline is not for just cause.

The grievance should be granted and Grievant made whole.

Opinion

DPS bears the burden of proof.

DPS proved notice of the work expectations and training regarding the work expectations.

Regarding the “creamed” comment incident, there is no doubt that comment is not appropriate. Nor can Grievant pick and choose whether or not she can gather information from a caller. If it was the first call or the fifteenth call, there was no showing made by the Union that the process expected can be waived by the Dispatcher. The process expected of a dispatcher is to obtain at a minimum: name of the caller; his/her phone number; what type of incident is being reported; the location of the incident being reported; if there is an injury; and what risk to the public exists. This basic inquiry is expected on every call: the first, third or tenth.

Training for the call protocol occurs at annual in-service training at a minimum and is discussed otherwise. Grievant received training on these protocols as recently as a 2018 training held in Bucyrus. (date unspecified) The training standard articulated by Reichelderfer is for radio/recorded traffic communications is: Is your wording sufficient to appear on the front page of The Dispatch?

The fact the call coming in from Gockstetter was recorded was known to Grievant. Grievant also had the ability to describe the situation with a code number (“30”), pursuant to training and practice. Grievant’s “creamed” comment may have gone undetected and unremarked upon but for the public records request. What was more concerning to the umpire was the failure to gather even basic information from the 911 caller. Nothing in the record allows a dispatcher discretion to pick and choose what information to gather from a caller. Grievant indicated on cross examination that a police/fire scanner does not relieve her of her duties and responsibilities regarding collecting caller information.

The umpire appreciated the explanatory testimony of Dispatch Supervisor Reichelderfer. It was helpful in understanding the technology, room contours and equipment layout information as well as the expectations of and stresses of the dispatchers. The umpire notes in this case as in earlier dispatcher cases that the demands of this position are very high as may be the activity level. Dispatchers take incoming calls, monitor road activity of troopers, deal with walk ins and post

issues and run LEADS checks and enter warrants, among other duties. Each task requires attention to detail and several activities may be necessary and critical at the same time. At Grievant's MDC on 4/6/18 there were two (2) dispatchers present. One dispatcher monitored traffic from Mansfield; the other from Norwalk. However by custom and practice as well as DPS expectations, a single dispatcher may have to on occasion cover two terminals. This might occur when a dispatcher takes a break for food or restroom or in other circumstances as well.

In this case the required tasks of performing seven minute MECI checks did not occur on 4/6/18.¹ These checkups were never performed on four separate instances for Baker; but arguably one of the four was not her responsibility. This was not completely clear from the testimony.

Checkups are protocol and are instituted for safety reasons. Grievant claimed she was entering warrants into the LEADS computer that night. But nothing in the record indicated that LEADS warrants preempt this checkup responsibility.

Union Ex. 2 indicated warrants were part of her job that date. She entered four (4) warrants that night; checked one (1)² and emailed one (1) warrant that date. Warrants take anywhere between fifteen (15) minutes to an hour to process per Grievant. The umpire expects that entering a warrant is more time consuming than either checking one or emailing. Grievant indicated that the timeline for entering warrants averages two weeks from receipt. She also indicated it was her personal practice to complete entry in one sitting of a single warrant. She characterized 4/6/18 as an extraordinarily busy day for warrant

¹ Interestingly, the record indicated that Grievant did perform Trooper checkups on 4/6/18. Checkups are to occur every sixty minutes during 6am-6pm and every thirty minutes from 6pm-6am. Checkups also occur every seven minutes for troopers if a traffic stop has been initiated; the same rule as for MECI stops.

It was not explained why she did this and didn't do the MECI checkups. Clearly of the mute button was on and she was distracted doing LEADS warrant entries, then no explanation exists in the record for her proper actions vis a vis the trooper checkups.

² Apparently the dispatchers check over the work of the first party entering the warrant; recording the checker by identification number and indicating the date and time.

entry. There was nothing in the record to compare a four warrant night as heavy, routine or light.

The Union failed to establish the length of time each entry made by Grievant took and/or that the LEADS entry was occurring at the same time the checkups were due. Even had that testimony been present, the umpire would be hard pressed to find that the MECI checks could be ignored or by-passed due to other duties.

The umpire found the keyboard to be a mystery. Was the keyboard brand new that night? Was the keyboard mute key in fact depressed that night? Grievant herself didn't know. Were only four calls missed for checkup and all others properly handled? Were there other calls for other MECIs that were properly handled by grievant? Why did Grievant not discuss the keyboard during her AI interview? Significantly, there was no showing a purportedly defective /engaged mute button on her keyboard would cause the other CAD not to "ding."

Considering both incidents alleged, the DPS met its burden of proof. There is insufficient evidence of mitigation or evidence of arbitrary or capricious actions by the Employer requiring a modification or disaffirmance of the discipline imposed.

AWARD

The grievance is denied.

IT IS SO HEREBY ORDERED.

S/ Sandra Mendel Furman

Sandra Mendel Furman, J.D. Umpire
Issued January 25, 2019 in Columbus, Oh

Certificate of Service

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

s/ Sandra Mendel Furman