

Arbitration Between:

Ohio Department of Public Safety, Division of the State Highway Patrol

And

Ohio State Troopers Association

Grievance of Michael Roth; DPS-2018-02601-15

State Highway Patrol Representatives

Lt. Darrell Harris

Michael D. Wood, LR 3

Robert W. Patchen, OCB

OSTA Representatives

Elaine Silveira

Larry Phillips

*Witnesses for the Grievant:* Grievant, Sgt. Michael Roth, OSTA Staff Representative Bruce Elling

*Witnesses for the OHSP:* Sgt. Jennifer Burkhart and Lt. Amy Ivy

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OHSP), issued a one-day suspension to Sergeant Michael Roth (Grievant) for a violation of Ohio State Highway Patrol Rules and Regulations, Rule 4501:2-6-02(B)(5) – Performance of Duty. OHSP issued this discipline because the Grievant did not fully comply with his supervisor's expectations to conduct an all out day on April 20, 2018, which included insuring that those under his command comply with this expectation as well.

OHSP has employed the Grievant for thirty years and the Grievant has been a sergeant for 20 years. He supervises several troopers and works on the day shift at the Mansfield post.

Just before 2 p.m. (the end of his shift) on April 19, 2018, the Grievant's supervisor, Lieutenant Amy Ivy, informed him that the next day would be a district "all out day", which meant that all troopers as well as all sergeants, lieutenants etc., would join troopers in the field to make traffic stops and other activities normally handled primarily by troopers. All out days for the OHSP are not uncommon. Yet, normally, all employees are notified of these events via e-mail or other communication process. This was the first all out day for which the troopers and the Grievant did not receive advance notice. Sergeant Jeffrey Redden was present when Lt. Ivy informed the Grievant about the all out day. Both Redden and the Grievant recalled that Ivy informed the Grievant about the event and her expectation that Grievant and the troopers he supervised would all be out on patrol the next day.

On April 20<sup>th</sup>, the Grievant arrived at the post and informed his four units that it was an all out day. Troopers Adkins and Nelson needed to finish crash investigations. The Grievant told the troopers to finish their work and then get out on the road. The Grievant testified that on state all out days, administrative work must still be completed. It is unclear what administrative work Troopers Hall and Doerfler were engaged in, yet neither of them went out on the road for over an hour.

On that same day, Lt. Ivy, who had reported directly to the road rather than coming into the post, realized that the Grievant and the troopers he supervised were not on the road, 1.5 hours after their shifts began. Lt. Ivy believed that the Grievant had disregarded her order to engage in an all out day and called Grievant on the unrecorded line to give him a direct order to go out on the road. The Grievant asked Lt. Ivy if she wanted him to stop working on the crash report he had been working on. Lt. Ivy told him to stop working on the report and get out on the road.

The Grievant and the only remaining trooper at the post, Trooper Adkins, stopped working on their respective reports and went out on the road.

The Grievant and his troopers engaged in considerable activity on the road on April 20<sup>th</sup>. The day shift logged more activity on the all out day than any other shift. Following the incident, Lt. Ivy reported the Grievant's actions to her supervisor, Staff Lt. Vinson, because Lt. Ivy viewed the Grievant's disregard of her order as another example of his reluctance to follow her direction. Vinson initiated an administrative investigation of the incident, which ultimately resulted in the one-day suspension for failure to perform his duty that the Grievant challenges here.

The Grievant contends that the discipline he received should be reversed because he received discipline when other supervisors who should have been off post during the all out day were not. For example, he notes that Sgt. Holloway did not go out on the road until 1.5 hours of his shift had elapsed. He also contends that in past all out days, it was common for some troopers and supervisors to finish other important work before going out on the road. He states that the crash report Troopers Adkins and Nelson were working on had to be completed that day because Adkins was going on vacation and the crash report would not be completed on time, consistent with OHSP procedures, if Adkins did not work on it that day, under Grievant's supervision. The Grievant also claims that the discipline was discriminatory because the AI Report did not include a discussion of how the investigation was initiated and because Staff Lt. Vinson, who initiated the investigation after a conversation with Lt. Ivy, was not interviewed.

Although I agree that the AI should have included an interview with Staff Lt. Vinson, that advance notice of the all out day would have been helpful, and that the investigation should

have covered the entire all out day, I nevertheless uphold the discipline for the following reasons. First, the Grievant's decision not to go out during the all out day impacted the units he supervised as well as himself. After his conversation with Lt. Ivy on April 19<sup>th</sup>, he knew it was important to his supervisor that everyone engage in the all out day. Instead of ensuring that his units headed out at the start of the shift, he told them they could finish their administrative work before heading out. While that may have been justified for Troopers Adkins and Nelson, due to their important crash investigation work, it was not justified with respect to Hall and Doerfler. Moreover, it was unclear whether it was justified for the Grievant to remain on post until he received a call from Ivy directing him to go out. Even if the other Sergeant who stayed on post for 1.5 hours at the start of his shift was not investigated, the decision to examine the Grievant's actions alone was justified because he chose not to go out at the start of the shift and breached his supervisory responsibility with respect to the two troopers under his supervision who did not have important administrative work to do before they went out.

Second, although advance notice of an all out day was common, there is no evidence that the failure to notify the troopers and/or the Grievant much in advance impacted the Grievant's decision-making processes, nor the decision-making process of those whom he supervises. Minimally, troopers Hall and Doerfler, the other two troopers, and probably the Grievant, had sufficient notice that they could have been out on the road right away on April 20<sup>th</sup>.

Finally, while it would have been wise to focus on the entire all out day to see if any other employees failed to fulfill their all out day obligations, the failure to include this in the investigation and the failure to interview Vinson was, under the circumstances, neither discriminatory nor significant to the outcome of the investigation of the Grievant's actions. The Grievant knew it was an all out day, yet failed in his supervisory duty to encourage those

troopers who did not have significant work to do, to get out on the road as soon as possible.

And, it would appear that the Grievant should have been out on the road sooner as well – rather than staying on post until he received a call from his supervisor.

### Conclusion

I uphold the decision to issue a one-day suspension for Sergeant Michael Roth for a violation of Ohio State Highway Patrol Rules and Regulations, Rule 4501:2-6-02(B)(5) – Performance of Duty.

February 8, 2019

A handwritten signature in black ink, appearing to read "Sarah R. Cole", written over a horizontal line.

Arbitrator Sarah R. Cole