

**In the matter of Arbitration between:**

**State of Ohio, Department of Public Safety-Ohio State Highway Patrol  
Employer**

**And**

**Ohio State Troopers Association  
Union**

**Case # DPS-2018-02789-15  
Sergeant David Francway**

In attendance for the Ohio State Troopers Association: Mr. Larry Phillips-Advocate, Ms. Elaine Silveira-2<sup>nd</sup> Chair, Mr. Bob Cooper-Staff Rep., Sgt. David Francway(witness), Mr. Jeremy Mendenhall-OSTA Pres.(witness), Ms. Kari Root-OSTA VP.

In attendance for the Ohio State Patrol: Mr. Darrell Harris-Advocate, Lt. James Thompson-2<sup>nd</sup> Chair, Sgt. Chad Bass(witness), S/Lt. Chad Enderby(witness), Mr. Cullen Jackson-OCB.

**Introduction:**

This matter was heard at the Ohio State Troopers Association, Gahanna, Ohio. The Hearing was held on March 19, 2019 at 11:30am. All witnesses were sworn. There were no procedural issues raised, and the parties agreed that the issue was properly before the arbitrator. The following were submitted as Joint Exhibits: Jt.-1 Collective Bargaining Agreement, Units 1 & 15(CBA); Jt.-2 Electronic Grievance 2018-02789-15, Step 2 Response, Intent to Arbitrate; Jt.-3 Discipline Trail, Statement of Charges, Pre-discipline Notice, Discipline Letter, Highway Patrol Rules and Regulations-4501:2-6-02(B)(5)-Performance of Duty, 4501:2-6-02(Y)(2)-Compliance to Orders, & 4501:2-6-05(D)(1)-Motor Vehicle and Aircraft Operation; Department Record.

The following were introduced as Management Exhibits: ME.-1 Administrative Investigation(AI)(with Video) Sgt. Francway; ME.-2 ORC 4511.041 Exceptions to traffic rules for emergency or public vehicle responding to emergency call. The following was introduced as Union Exhibits: UE.-1 IOC-Response to Resistance, Sgt. Roberts.

## **ISSUE:**

In conformance with Article 20, Section 20.08 of the Collective Bargaining Agreement the parties submitted a jointly signed issue statement, which reads as follows:

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

## **BACKGROUND:**

On February 20, 2018, Sgt. Francway was on a traffic stop on I480 at approximately 18:21(6:21p). This location was adjacent to the merging ramp from I71 northbound(ME-1). During the traffic stop He received a call from dispatch regarding a pursuit by Brunswick PD. The chase was heading north on I71. According to evidence and testimony, Brunswick PD was requesting assistance.

In order to provide assistance, Sgt. Francway chose to drive the wrong way up the I71 exit ramp, on the berm with lights engaged. Sergeant Francway crossed over onto I71 north. He positioned himself to deploy stop sticks to stop the oncoming fleeing vehicle. The fleeing vehicle missed the stop sticks, by swerving, but crashed at the scene. The suspects were arrested and taken into custody(ME-1)

The Ohio State Patrol(OSHP) conducted a Response to Resistance investigation. The RTR was initially conducted by Sgt. Francway's Post Commander, followed by

District Headquarters and Review Committee. After reviewing the RTR in this case, and AI was conducted regarding Sgt. Francway's actions. The AI determined that there were two areas of concern regarding Sgt. Francway's actions(ME-1).

On August 22, 2018, Sgt. Francway was notified that it was recommended that he be suspended for one (1) day for violating OSHP Rules and Regulations. Sergeant Francway was cited for violating Rule 4501:2-6-02(B)(5)-Performance of Duty and 4501:2-06-02 (Y)(2)- Compliance to Orders and 4501:2-6-05(D)(1)- Motor vehicle and Aircraft Operation(Jt.-3).

Sergeant Francway was notified on September 4, 2018 that he would be suspended for the aforementioned violations, effective September 9, 2018. Specifically, as a result of AI 2018-0323, it was found that you used poor judgement and drove the wrong way down the interstate berm to assist in a pursuit. You failed to activate your sirens as well(Jt.-3).

A Grievance was filed on 8/26/2018, anticipating this discipline. The Grievance claimed that the Employer violated the CBA, specifically, Section 19.01-STANDARD. Section 19.01 reads as follows: No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause. The Step 2 Hearing was conducted on 9/18/2018. The Hearing Officer denied the Grievance. He found that the Grievant endangered not only himself, but possibly the motoring public by driving the wrong way on the interstate and taking a poor position while deploying stop sticks(Jt,-2).

The Union appealed the Grievance to Arbitration on 10/2/2018. By mutual agreement between the parties, the Arbitration Hearing was scheduled for March 19. 2019.

#### **DISCUSSION AND OPINION:**

The facts in this case are not in dispute. Nearly all of the incident activities of Sgt.

Francway were on the audio and video recording of the patrol car and the hand mic(ME-1,att. D). By notification by the Grievant's dispatcher on 2/20/18, at approximately 6:22p, Sgt. Francway responded to a Brunswick PD request for assistance. Brunswick PD was in pursuit of a drug suspect on I71 northbound. Sergeant Francway, per his testimony, was the only OSHP unit in the area that could provide immediate help. For emergency assistance reasons, according to the Grievant, he drove carefully the wrong way up the berm of I71 exit ramp. In so doing, he activated his emergency lights without the siren(ME-1).

The plan, per Sgt. Francway was for him to deploy the stop sticks ahead of the fleeing vehicle. When he retrieved the stop sticks from his trunk he found that they would not operate as designed. The pull-string was broken. Thus, he would have to toss them and manually retrieve them. Sergeant Francway's actions, per the RTR, put him in poor position while deploying and retrieving the stop sticks. He was also found to be in bad position during the felony stop(ME-1, att. A).

The Union argues that the Grievant was not in pursuit, and therefore, not required to use the emergency siren. However, OSP 200.06 (D)(1)(c)(ii) requires use of emergency equipment during an emergency response, including siren and lights(Jt.-2). This, in the arbitrator's opinion, was an emergency response. Furthermore, when the Grievant crossed over the exit ramp to go up the outside berm, two cars flashed by during the actual crossover. Unnecessarily dangerous, in the arbitrator's opinion(ME-1,video).

The Union introduced evidence of another incident where a Sgt. Roberts ran the wrong way on an exit ramp. Sergeant Roberts's situation was more dangerous than this situation. The Robert's incident was without discipline, thus, per the Union, disparate treatment. However, Sgt. Roberts was in active pursuit of a violator with emergency equipment on. The violator also went up the wrong way on the exit ramp and was followed by Sgt. Roberts. This incident was terminated soon thereafter. This was not a comparable situation in the arbitrator's opinion.

Also, when Sgt. Francway saw that the stop sticks would not operate properly, he should have abandoned their use. Using the stop sticks without the pull string he put himself in harms way.

Although the identified infractions were somewhat subjective in nature, Sgt. Francway did violate a specific policy by not using his siren when going the wrong way on the ramp. Traffic was heavy as exemplified by the volume of vehicles he passed going the wrong way on the ramp(33/arbitrator's count). Also, by using malfunctioning stop sticks, Sgt. Francway jeopardized his own safety, in the arbitrator's opinion.

As a result of the aforementioned reasons, I do not find that the Employer was arbitrary or capricious in this matter. The principles of progressive discipline were followed.

**AWARD:**

The Grievance is denied.

This concludes the Arbitration decision.

Respectfully submitted this 28<sup>th</sup> day of March 2019.

E. William Lewis  
Arbitrator

