

OPINION AND AWARD

IN THE MATTER OF ARBITRATION

BETWEEN

THE OHIO STATE TROOPERS ASSOCIATION

AND

THE OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF OHIO STATE HIGHWAY PATROL

Grievance #: DPS-2017-03464-01

Grievant: Christopher Jeffers

Date of Hearing: July 8, 2019

Place of Hearing: Gahanna, Ohio

Arbitrator: Sherrie Passmore

Date of Award: September 18, 2019

APPEARANCES

Advocate for the State: Lieutenant James M. Thompson

Advocates for OSTA: Elaine N. Silveira, Esq.

INTRODUCTION

This arbitration arises pursuant to the collective bargaining agreement (“Agreement”) between the parties, The Ohio Department of Public Safety, Division of State Highway Patrol (“Employer”) and The Ohio State Troopers Association (“Union”). Sherrie Passmore was appointed as the Arbitrator under the authority of the Agreement.

A hearing was held on July 8, 2019. Both Parties were represented by advocates who had a full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make arguments. Post-hearing briefs were timely filed electronically on or before August 19, 2019.

STATEMENT OF ISSUES

1. Was the grievance timely filed under Article 20.07 of the Agreement?
2. Did the Employer violate Article 36 when it failed to grant the Grievant’s service time during the time he was not employed? If so, what shall the remedy be?

RELEVANT PROVISIONS OF THE AGREEMENT

Article 20 – Grievance Procedure

20.07 Grievance Procedure

Agency Step

An employee having a grievance shall file a grievance in the electronic system within twenty (20) calendar days of the date on which the grievant knew or reasonably should have had knowledge of the event giving rise to the grievance. The

parties shall reference the date the grievance was submitted in the electronic filing system to confirm timeliness.

Grievances submitted beyond the twenty (20) day time limit will not be honored.

Article 36 - Seniority

36.01 – Definitions

For bargaining unit 1, seniority shall be defined as the total length of continuous service in a permanent full-time position or succession of positions with the Employer. Continuous services also will not be interrupted if the employee was on approved leave of absence or if the employee is reemployed within two (2) years from the date of a layoff.

For all employees entering bargaining unit 1 after March 29, 1989, any time previously served as an employee of any state agency shall not count toward the employee's continuous service.

In the event of a layoff or a reduction in position, a Sergeant who enters bargaining unit 1 shall have the seniority to which his/her length of continuous service with the Highway Patrol Division as a law enforcement employee entitles him/her.

Unit 15 seniority shall be calculated by taking one-half (1/2) of the actual time served as a Trooper and the actual time served as a Sergeant counted from the most recent date of promotion to Sergeant.

BACKGROUND

The Grievant, Christopher Jeffers, was employed by the Ohio State Highway Patrol on March 7, 2016 as a Dispatcher. He was terminated from his employment on December 29, 2016 after he was arrested and incarcerated on a first-degree felony charge by the Newark, Ohio Division of Police.

A grievance was filed alleging the Employer did not have just cause to terminate the Grievant. The arbitration of the grievance was tabled pending resolution of the criminal charges against the Grievant. On June 26, 2017, the Employer, the Union, and the Grievant entered into a Grievance Settlement Agreement to return the Grievant to work, after he was acquitted of the felony charges in a jury trial. The Grievance Settlement returned the Grievant back to his position at the Lancaster Dispatch Center, reestablished his seniority date to his original hire date, credited his leave balances for what would have been earned back to May 9, 2017 and cleared his department record of any reference to the investigation related to the grievance. The settlement did not provide for back pay.

The grievance herein was filed on September 6, 2017. It alleges that the Employer violated Article 36 when it failed to restore Grievant's state service time for the gap in his employment from December of 2016 through June of 2017. The grievance proceeded to arbitration on July 8, 2019. As a preliminary matter at the hearing, the Employer objected to the timeliness of the grievance.

POSITIONS OF THE PARTIES

Position of the Union

The Union's position is that the Grievant is entitled to receive service credit for the time he was wrongfully terminated. The Employer implicitly acknowledged it should not have terminated the Grievant when it entered into the Grievance Settlement. Based on the terms specified in that Agreement, it's inconceivable that the Employer did not intend for the Grievant's service time to be restored.

Seniority versus service time has never been an issue. The Union points to the grievance settlements of Trooper Bertha Toton and Trooper Nate Towns as evidence of this. Neither Toton nor Towns ever raised the issue of their service time not matching their seniority date.

The Union argues that the testimony of DAS HR Manager Jenny Wright makes no sense. Wright testified that if a removal is changed to a suspension, then service credit would be given. In the Union's view, it defies logic that but for the Grievance Settlement clearing Grievant's department record rather than reducing it to a suspension, he would have received service credit.

The Union further argues that the lack of back pay in the Grievance Settlement should not be construed to eliminate the need to restore service credit. In support, the Union contends it has never seen a termination arbitration award specifically state that a member's service time was to be credited, but that seniority is always mentioned.

According to the Union, seniority is bridged back to the date of termination even in cases where the arbitrator does not award back pay. By way of example, the Union cites the awards in the cases of Sergeant Randall Peterson, Trooper Gary Odom

and Trooper David Ellis. The Union asserts that none of those grievants have reported a discrepancy in their seniority time and service time. It argues that Trooper Jeffers should be treated equally and, therefore, his service time should be restored.

The Union speculates that arbitrators view seniority time and service as one in the same.

Position of the Employer

The position of the Employer is that the grievance filed in this case is untimely. Under Article 20.07, grievances must be filed within 20 days of the date on which the grievant new or reasonably should have had knowledge of the event giving rise to the grievance. This grievance was not filed until 47 days after that event. Grievant should have known when he received his first paycheck after his reinstatement on July 21, 2017, that his service time had not been restored. Service time is clearly listed on each pay stub.

Nothing in the contract prohibits a party from raising procedural issues at arbitration. There is no prohibition or waiver of a procedural issue that was not raised at the Step Two Hearing.

On the merits, the Employer's position is that there is no violation of Article 36. The Grievance Settlement Agreement in this case required Grievant to be reinstated with no loss of seniority, but does not make any mention of state service time.

State service time is not addressed or defined in Article 36. The Article does address seniority, but seniority and service time not interchangeable terms under the contract. State service time is accrued by state employees in an "active pay status" whereas seniority is tied to an employee's time in the bargaining unit. The Union

presented no substantive reason why the Employer was wrong to deny state service time to an employee not in an active pay status.

DISCUSSION

The Employer claims this grievance was not timely filed. As the moving party, the Employer has the burden of proof as to this claim.

Article 20.07 of the Agreement mandates that grievances be filed within twenty days of the date on which the grievant knew or should have reasonably had knowledge of the event giving rise to the grievance. It further provides that grievances submitted beyond the twenty day time limit “will not be honored.”

The grievance herein is that the Employer failed to restore Grievant’s service time when he was reinstated pursuant to a Grievance Settlement that provided for no loss in seniority. The Grievant was reinstated on June 26, 2017, but the grievance was not filed until September 6, 2019.

The grievance states that Grievant did not discover that his service time had not been restored until he was looking at paystubs in reference to a separate grievance concerning restoration of vision benefits. The record is unclear as to when Grievant made that discovery,¹ but supports a finding that Grievant should have known that more than twenty days before the grievance was filed on September 6, 2017. He received his first paycheck after his reinstatement on July 21, 2017 and his second paycheck on August 4, 2017. His service time is clearly listed on those

¹ The Union notes that the settlement of the vision benefit grievance was entered into on August 17, 2017 and the grievance herein was filed on September 6, 2017, exactly 20 days later. That does not prove when Grievant was looking at his paystubs and discovered his service time had not been restored.

paystubs and those paystubs were admitted into evidence. Because Grievant should have known prior September 6, 2017, that his service credit had not been restored, he failed to meet the contractual time limit for filing this grievance.

The Union argues that the Employer waived the issue of timeliness by not raising it until the day of hearing, but cites no contractual authority allowing an arbitrator to ignore the parties' explicit 20-day limitation. Although the issue could have been raised at the Step 2 Hearing, there is nothing in the Agreement that prohibits timeliness from being raised at arbitration. Nor was there any showing that the Employer's decision to raise the issue at arbitration prejudiced the Union.

Adherence to arbitration procedures, including time limits for processing grievances through the various steps of the procedure, serves to advance peaceful and constructive labor relations and should be enforced. The failure of Grievant to meet the time limit for filing this grievance precludes the Arbitrator from considering the merits of this dispute.

AWARD

For the reasons stated above, the grievance is denied.

A handwritten signature in black ink, reading "Sherrie J. Passmore". The signature is written in a cursive, flowing style.

Sherrie J. Passmore
Arbitrator

September 18, 2019

