

Arbitration Between:

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

And

Ohio State Troopers Association

Grievance of Jeffery J. Huffman, DPS-2019-02246-01

State Highway Patrol Representatives

Lt. James Thompson, Ohio State Highway Patrol

Mike Wood, Ohio State Highway Patrol, Labor Relations Officer

OSTA Representatives

Larry Phillips

Elaine Silveira

Witnesses for the Grievant: Grievant, Trooper Jeffery Huffman

Witnesses for the OSHP: Sgt. Jennifer L. Burkhart, Sgt. Shawn Fosgate

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OSHP), issued a one-day suspension to Trooper Jeffery Huffman (Grievant) for a violation of Ohio State Highway Patrol Rules and Regulations, Rule 4501:2-6-02(B)(5) – Performance of Duty and Rule 4501:2-06-02 (Y) (2) – Compliance to Orders. OSHP issued this discipline because the Grievant, while transporting an unrestrained prisoner, chose to involve himself in a chase of a fleeing suspect, attempting to slow the suspect down. In the course of so doing, the suspect's car collided with the Grievant's vehicle, causing minor damage.

OSHP has employed the Grievant for two and one-half years as a trooper and he was, at the time of the incident, assigned to the Bowling Green Post. On January 8, 2019, the Grievant was involved in a prisoner relay – receiving a prisoner from a Trooper assigned to the Findlay Post, and transporting him to the Lucas County Jail. When he met the Findlay Trooper to receive the prisoner, he observed that the prisoner was not restrained in that Trooper's car. Although he knew that the prisoner should be restrained, he concluded that due to the prisoner's size, he could not restrain the prisoner without putting the seatbelt around his neck and he also believed he did not have to restrain the prisoner because the other Trooper failed to do so. He acknowledged that he is aware of the policy that requires prisoners to be restrained when in a police vehicle.

After the transport began, the Grievant heard on the radio that a pursuit was in progress and that it was coming near his vehicle. Grievant reported over the radio that he had a prisoner in his vehicle. A more senior sergeant, Sgt. Grizzard, told him to disregard the chase, i.e. not engage in the pursuit. As the fleeing vehicle approached, however, the Grievant chose to deliberately move his vehicle to the other lane of traffic on a two-lane highway in order to slow the suspect down. As the suspect approached the Grievant's vehicle, he hit a dump truck and ricocheted into the Grievant's vehicle, causing minor damage that was ultimately buffed out.

As a result of this incident, the Grievant received a one-day suspension because he violated policy by failing to restrain the prisoner, and then participated in a chase knowing that he was violating OSHP policy by doing so with a prisoner in his vehicle. Grievant claims that the punishment was not progressive in nature, that the other Trooper (from Findlay) was not disciplined for failure to restrain the prisoner, and that he did not "initiate" the chase and thus

was not in violation of OSHP policy that prohibits a Trooper from initiating a pursuit when transporting a prisoner.

I find that the discipline was appropriate under the circumstances. Simply because the Grievant saw another Trooper breaking a rule, a rule he knew to exist, does not justify disregarding the rule as well. The prisoner was a larger person, but a man of that size (6'1" and 250 pounds) is not impossible to transport safely. Although the Grievant testified that he was concerned about a seatbelt choking the prisoner, it was not at all clear that choking would occur – the Grievant made no effort to restrain the prisoner, and thus did not test where the seatbelt would hit the prisoner if engaged. That the other Trooper was not referred for discipline by the Administrative Investigator, Burkhart, who was investigating Grievant's case, does not undermine the discipline here – even if Burkhart should have reported the other Trooper's violation, a conclusion that is not obvious from the evidence presented, I find that there is sufficient evidence to support the discipline without making a finding on this issue.

That is because the great risk Grievant took when, after being told to stand down, he chose to deliberately attempt to block the fleeing suspect's vehicle while transporting an *unrestrained* prisoner. The result of the Grievant's decision could have been much worse – his decision to participate in this chase, with an unrestrained prisoner on board, was foolhardy and dangerous. The trooper here put himself, a state vehicle and, most importantly, a prisoner who could not protect himself, in harm's way. And he did so after being told not to by a more senior Trooper.

The Union's final contention, that the Grievant did not violate the OSHP Policy on Vehicular Pursuits (ME #2) because the Grievant did not initiate the pursuit, is not persuasive.

The policy states: “A pursuit shall not be initiated while an officer is transporting a prisoner . . .”

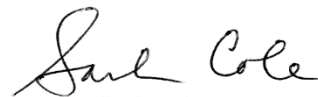
The Union’s interpretation would allow Troopers to engage in pursuits with a prisoner in the vehicle any time the Trooper did not start the pursuit. Such an interpretation would result in great risk to prisoners being transported as, under the Union’s view, only one Trooper could be the initiator of the pursuit. Because that interpretation would, in effect, void the policy, a policy designed to protect the well-being and safety of prisoners, I reject the Union’s interpretation and find that the policy applies to all Troopers who initiate their own involvement in a pursuit while transporting a prisoner.

Grievant’s actions in this situation were unwise and quite risky. It is fortunate that the consequences of his decision were not catastrophic. As a result, I conclude that the discipline of a one-day suspension satisfies the just cause standard and should be upheld.

Conclusion

The discipline shall be upheld.

December 10, 2019



Arbitrator Sarah R. Cole