

**IN THE MATTER OF ARBITRATION  
BETWEEN**

Ohio State Troopers Association (OSTA),  
Union

And

Case no. DPS 2019-01266-01  
Nicholas C. Clemens, Grievant  
Three day suspension

State of Ohio, Department of Public Safety (OSP),  
Employer

**Umpire's Decision and Award**

**Introduction**

This matter was heard in Gahanna, Ohio on 2/18/20 at OSTA offices. Elaine Silveira represented OSTA along with multiple other OSTA representatives. Grievant was present and testified.

Lt. James Thompson represented the Ohio State Highway Patrol (OSP) along with other OSP representatives and the OCB representative as well.

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 all were admitted during the hearing.

The decision issued within agreed upon timelines.

**Issue**

Was the Grievant issued a Three (3) 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 4501:2-6-02(Y)(2). He was alleged to have failed to indicate in advance of use his intentions to deploy stop sticks; and then used them on a vehicle that was not fleeing.

He is a long term employee of the OSP: twenty (20) years at the time of the incident.

Grievant is assigned to the Medina post.

The instant discipline was timely grieved.

Grievant had active discipline in his file of a one-day suspension and written reprimand, for unrelated matters.

## **Summary of FACTS**

There is no dispute in facts.

Grievant was disciplined for violation of policy OSP-203.20-002 concerning placement of stop sticks.

He was in his patrol vehicle in the I-71 crossover when he heard radio traffic and observed trooper Harrison's lights and siren being ignored by a semi which continued its speed of 80 mph in a 70 mph zone. Grievant heard the radio traffic and discerned a change in Trooper Harrison's tone. Becoming concerned for the possible outcomes, Grievant sprang into action and laid down the stop sticks without prior advisement to the Post, his supervisor or Harrison. He said his decision was almost instantaneous, and he acted with 10-15 seconds of hearing Harrison's "concerned" tone. The sticks worked and the truck was stopped with four flats. There were no other cars/vehicles damaged. Grievant immediately removed the stop sticks after the truck was slowed/stopped. He then advised Dispatch that he deployed the stop sticks.

No signal "40" was given by Harrison signifying an active pursuit.

Discipline ensued and the grievance followed.

## **Employer Position**

Grievant violated a clear and established policy.

The discipline is within the grid; it is progressive. Per the witness Thomas, an instructor at the Training Academy, if no signal 40 was announced there is no

expectation that stop sticks would be deployed. 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**

Grievant was acting in good faith and in the moment. He perceived the Trooper on scene [Harrison] was concerned about the situation. He acted in the moment with the best of intentions and no desire to flaunt the rules and procedures. He noticed the semi truck was ignoring the sirens and lights and felt the only prudent response under all circumstances then extant was to use the stop sticks.

OSP never interviewed Harrison which should have occurred to be fair and impartial. Grievant acted appropriately in the moment with all the facts then known to him and his actions accomplished what the sirens and lights did not; a stop sought by Trooper Harrison. A policy violation does not automatically result in discipline and this case is such an instance.

The discipline is arbitrary and capricious. It is not commensurate. As such, it is not for just cause. It must be disaffirmed. Grievant should be made whole.

### **Opinion**

OSP bears the burden of proof. It met its burden.

The testimony of Harrison and/or a separate interview for him would not change the undisputed facts: Grievant put out stop sticks without following established training and procedures and Patrol policy. The circumstances were not so exigent that a quick radio to Dispatch/Harrison/his supervisor could not have occurred. Harrison was not "in pursuit" of a fleeing vehicle.

OSP took corrective action in two respects: it immediately did an in service for Grievant. It also issued a three-day suspension.

As is usual in this "mini arb" process, the decision maker is not a witness to testify why s/he levied the particular discipline. OSP argued it was progressive, building off of a one day issued last May. The Umpire agrees it was progressive, but the inquiry does not end there.

The Umpire believed that Grievant was acting out of an immediate and sincere sense of concern for the Trooper, the semi truck driver and all others traveling southbound on I-71 that date and time. He believed that 80 mph was unsafe for a semi who was ignoring lights and sirens. Was the unannounced use of the stop sticks following policy? No. Was Grievant a long tenured trooper who knew/should have known the policy? Yes. Was there an active pursuit as defined by OSp in progress? No. Was there a risk of harm in his failure to follow OSP policy under these circumstances? Yes. Was there a potential financial cost to the State from his actions? Yes. Was there harm under the extant facts? No.

Weighing all of those factors, the Umpire believed that under the facts and circumstances, just cause exists. The training received plus the short suspension should convey the clear and unambiguous message that the stop sticks must be deployed per policy, not per "in the moment" concerns. These were not exigent circumstances, and Grievant's sense of the Trooper's "tone" is not the standard for deploying this tool. His long tenure and training militates against a finding that this discipline was excessive. The discipline was progressive as the file had an active one day suspension [heard and decided by the undersigned.] Although a lesser discipline could have been imposed, weighing all the facts and circumstances, the three day suspension is not an abuse of discretion, nor is it arbitrary and capricious.

### **AWARD**

**The grievance is denied.**

IT IS SO HEREBY ORDERED.

*S/ Sandra Mendel Furman*

Sandra Mendel Furman, J.D. Umpire  
Issued 2/20/20 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*