

IN THE MATTER OF ARBITRATION BETWEEN

Ohio State Troopers Association (OSTA),
Union

And

Case no. DPS 2019- 00969-01
Grievant Tara M. Yurek
Three day Suspension

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

Umpire's Decision and Award

Introduction

This matter was heard in Columbus, Ohio on 11/7/19 at OCB offices. Larry Phillips represented OSTA. Other OSTA staff present were Elaine Silveira, and Robert Cooper. Grievant was present. She did not testify for reasons explained below.

Michael Woods represented the State Highway Patrol. (OSP) OSP also had Lt. Jacob Pyles and Lt. Aaron Williams from DPS and Thomas Dunn from the Office of Collective Bargaining (OCB) present. There were no OSP witnesses called for reasons explained below.

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.

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 19; 20

Background

Grievant is assigned as a Trooper at the Medina Post. She was a short term employee: 2.5 years at the time of the discipline.

Yurek was charged with violation of 4501:2-6-02(B)(1) Performance of Duty. The specific claim was that Trooper Yurek reported herself on duty and misrepresented her actual status on 10/18/18. She was not reachable for 19 minutes therefore was deemed tardy. There was an additional concern regarding her alleged failure to clear permission to report directly to Akron for in-service training the morning of the incident.

Grievant had an active disciplinary history of a written reprimand and a one day suspension. Jt. Ex. 3.

The three-day suspension issued 3/11/19. Jt. Ex.3.

It was timely grieved.

Procedural Motion

The parties have a cba sanctioned practice of witness list exchanges; these occur in writing no later than five days before the scheduled hearing.

OSP inadvertently failed to deliver the witness list prior to the hearing. There were no special extenuating circumstances present other than a clear error.

The Union argued the failure to provide the cba mandated notice was fatal to the OSP ability to call witnesses. The parties' cba language is clear and there is a long history of strict interpretation of such language by the parties. The Union presented its five day list to the Umpire to verify its compliance with the cba.

The Union orally moved to dismiss the charges.

OSTA countered with its arguments about inadvertence and mistake; it had no intent to surprise or sabotage the Union. It stated that OSP *always* called the person conducting or directly involved in the AI as one of its two allowed witnesses and it should be allowed to proceed.

Opinion

The Umpire has powers set forth and limited by the cba language. The Umpire has long experience with the parties both on the main panel and on the

expedited panel. The parties despite a very cordial and professional relationship, are parties who hold each other to strict compliance with language: be that in the cba, rules or policy. This is not surprising due to the nature of the organization and its mission.

The Umpire is mindful that the cba language was written to be followed; that its language was arrived at in a give and take. Both sides are familiar with its intent and scope due to a very long history of the labor-management relationship. An alleged breach of the express language is the very reason for a grievance. In order to grant or deny a grievance, the cba is the first place of reference.

The Umpire has under relevant facts been asked to deny a grievance when a Union failed to timely follow the procedural steps. The Umpire has done that when facts present-albeit in other cases with other parties. Such a ruling denies a grievant any recourse to be heard on the merits. It is a default win by the employer in those instances. But time limits are in the cba as part of the orderly, predictable resolution of disputes.

This case presents a further extension of the very same principle: the cba language clearly states a mutual obligation to timely, in writing, apprise the other side of who it plans to call to present its case. Failure to do so amounts to a cba breach. See Article 20.08.para.7.

The Umpire concluded that the OSP could not call any witnesses at the hearing. Absent witnesses, there is no evidence of the facts and circumstances supporting a discipline. Statements in the grievance trail do not standing alone support a discipline.

The Union argued that the discipline must fail absent evidence in the record.

The Umpire agreed under these particular circumstances.

AWARD

The grievance is Granted. Grievant is to be made whole for all lost wages/benefits from the three day suspension.

IT IS SO HEREBY ORDERED.

S/ Sandra Mendel Furman

Sandra Mendel Furman, J.D.

Issued 11/10/19 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