

In the Matter of the  
Arbitration between

**FRATERNAL ORDER OF POLICE  
OHIO LABOR COUNCIL, INC., UNIT 2**

and

**THE STATE OF OHIO (DEPARTMENT  
OF NATURAL RESOURCES)**

Grievance #DNR-2018-04015-02

Grievant: Jennifer Brown

Arbitrator: Tobie Braverman

---

**OPINION AND AWARD**

---

**APPEARANCES:**

For the Employer:

Andrew Shuman, Labor Relations Advocate  
Eric Eilerman, Labor Relations Advocate  
Mark R. Smith, Major, Office of Law  
Enforcement

For the Union:

Kimberly A. Rutowski, Attorney  
Bret Vetter, Attorney  
Jennifer Brown, Grievant  
Matthew Kruse, Union Representative  
Charles Carlson, Witness

The State of Ohio Department of Natural Resources (hereinafter referred to as "Employer") and Fraternal Order of Police Ohio Labor Council, Inc., Unit 2 (hereinafter referred to as "Union") have submitted the grievance of Jennifer Brown (hereinafter referred to as "Grievant") to the Arbitrator for decision. Hearing was held at Columbus, Ohio on July 7, 2020. The parties submitted post-hearing briefs which were received by the Arbitrator on August 7, 2020, and the hearing was declared closed on that date. The parties stipulated that the grievance is properly before the Arbitrator for decision, and further stipulated that the issue for decision, is as follows:

Was the Grievant, Jennifer Brown, disciplined for just cause, and if not, what shall the remedy be?

### **FACTS**

The Grievant has been employed by the Employer since 1999, and has been employed in the position of Natural Resources Officer Investigator since 2015. The events which led to the three day working suspension which is the subject of this arbitration, began in December, 2017. Those events involve a number of officers arising out of the investigations of three separate but related incidents which took place at East Fork State Park, and which have come to be dubbed collectively as "Campergate".<sup>1</sup> This is the second disciplinary action heard by this Arbitrator arising out of those events.

Campergate began on December 29, 2017 when Investigators attempted to make contact with the resident of a camper which had been parked at Campsite 43 in East Fork State Park for thirteen days without payment of fees. After running the plates on both the camper and a BMW parked nearby, it was learned that the camper's plates had expired in 2005 and the BMW had fictitious plates registered to a Chevrolet. Ralph Cummings was ultimately arrested after leaving

---

<sup>1</sup> Only those portions of the Campergate events which are relevant to this matter are summarized herein.

the campground in the BMW. He was charged with theft relating to the campsite fees, obstructing official business when he gave a fictitious name to the officers, failure to produce a driver's license and operating a vehicle with fictitious plates. A search of the car revealed drug paraphernalia, and as a result, a search warrant to search the camper was obtained and executed later that evening. The camper itself was not removed due to issues with the ability to tow it at that time. Cummings remained in the Clermont County jail until some time in March, 2018.

After the investigation of a break in at the camper which is not relevant to this case, on January 22, 2018, the Employer received a complaint that the camper had been stolen. This information came to light while Investigators were gathered at a meeting unrelated to these events. The meeting was cut short, and Investigator Matthew Kruse was assigned as the "owner" of the investigation of the theft. The Grievant was instructed to begin an investigation as to the whereabouts of the camper together with Investigator Charles Carlson. The two were able to locate video footage from a gas station of a truck pulling a camper which appeared to be the camper in question driving past the gas station on Old State Route 32 at approximately the time that the camper was reported stolen. They downloaded the video to a thumb drive, and delivered it to Kruse. Neither the Grievant nor Carlson prepared a narrative report of these activities.

Carlson testified that on January 23, 2018, Kruse provided him with the name and address of an individual who was the last titled owner of the camper who may have sold it to Cummings. Carlson and the Grievant proceeded to the address given, and interviewed Kyle Thomas. The Grievant testified that there was a small child present who required attention while Thomas was interviewed. As a result, while Carlson conducted the interview, the Grievant was primarily engaged with the child to facilitate the interview. Carlson learned that the Thomas had indeed sold the camper to Cummings some time previously. He was able to obtain pictures of some documents which Thomas provided regarding the sale. Carlson testified that he gave those photographs to Kruse for inclusion in the investigatory file.

The testimony at hearing established that while the Employer was utilizing an electronic

system commonly referred to as “RMS” for the centralized storage of reports and evidence concerning ongoing investigatory matters, the system was still in its implementation stage at the time of these events. Both management and union witnesses agreed that the RMS system was unable to store large files, including more than a few photographs and videos. It had also experienced some difficulties causing it to be down for periods of time. As a result, hard copies of files were still maintained, and the file regarding the theft of the camper was maintained by Kruse as the assigned case “owner”.

On February 12, 2018 the Grievant and Carlson were leaving a grand jury proceeding on an unrelated matter, when they were notified that the camper had been located. They were advised that an individual by the name of Marvin Napier had attempted to obtain a transfer of the title to the camper, claiming to have purchased it. They were instructed to proceed to a residence on Reeder Road in Blanchester, Ohio in order to determine if the camper had been sold. When the Grievant and Carlson arrived, Sergeant Lawson, as well as a number of Clinton County Sheriff Deputies were already present. Carlson spoke to Napier, who stated that he had purchased the camper for \$2,500. cash. Carlson additionally interviewed another individual who verified that she had been present during that transaction. At some point during the conversation, Napier was able to contact Cummings on the phone, and it was learned that he was at the Clermont County Municipal Court. Carlson and the Grievant left the scene shortly thereafter to attempt to speak to Cummings.

Carlson testified that a Clinton County Sheriff Deputy suggested that the camper be towed, and offered to contact Fox towing. According to the Grievant, she understood that Sergeant Lawson made the decision to tow the camper. In either event, the camper was towed by Fox Towing to their lot. There were no photos taken before the vehicle was towed in order to verify the condition of the camper. The Grievant testified that since she and Carlson understood their assignment at that time to be to determine whether or not the camper had been sold, they left the property before the camper was towed in order to attempt to make contact with Cummings, who the Grievant described as transient and somewhat difficult to locate, while they had information on his whereabouts.

They were able to locate Cummings in the parking lot of the court. They interviewed him briefly at that location. Cummings denied selling the camper, but agreed to go to a nearby state patrol post for further discussion. After arrival at the post, while Carlson made a phone call, the Grievant asked Cummings if he wished to complete a written statement, which Cummings declined, stating that he could not read or write. Carlson interviewed Cummings further at that point. Cummings admitted that he was aware that the camper had been taken by friends of his and that he had not transferred the title to his own name since his purchase of the camper in 2005. Carlson prepared an Investigatory Report of the activities of that date. The Grievant admittedly did not. The camper was ultimately returned to Cummings, but the Grievant was not involved in that portion of the events.

After completing a rather extensive investigation regarding all of the events surrounding the multiple investigations surrounding the camper, the Employer issued discipline to several officers. The Grievant was issued a three day working suspension on November 7, 2018. The grounds for the suspension were a violation of Rule 82 for failure to file, submit or log a report and a violation of Rule 87 for failure to take proper enforcement actions. The instant grievance was timely filed and proceeded through the grievance procedure without resolution to arbitration.

## **RELEVANT CONTRACTUAL PROVISIONS**

### **ARTICLE 19 -DISCIPLINARY PROCEDURE**

#### **19.01 Standard**

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause. ...

#### **19.05 Progressive Discipline**

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. At the Employer's discretion, disciplinary action shall include:

1. One or more written reprimand(s);
2. One or more fines in an amount of one (1) to five (5) days pay for any form of discipline ...



3. Suspension;
4. Leave reduction of one or more day(s);
5. Working suspension ...

However, more severe discipline may be imposed at any point if the infraction or violation merits the more severe action.

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant. ...

### **POSITIONS OF THE PARTIES**

Employer Position: The Employer contends that it has demonstrated that it had just cause to discipline the Grievant with a three day working suspension for the two itemized rule violations. The evidence demonstrated that the Grievant was assigned to attempt to locate a camper which was believed to be stolen from East Fork State Park. She engaged in activities related to that investigation on three separate dates, but did not prepare an Investigatory Report on any of those dates. Despite the Union's contention that there was no rule requiring both officers involved in an investigatory act to prepare a report, basic training dictated that this be done, and the Grievant's supervisor, Captain Daniel Cox, when asked, indicated that he would expect both investigators to prepare a report of their activities when working together. Such documentation is basic police work, and the Grievant was aware of this expectation. She nonetheless failed to complete any reports, and the discipline was justified and reasonable. The Employer has additionally demonstrated that the Grievant failed to take appropriate enforcement action on February 12, 2018 at the Reeder Road property when the camper was located. It was still understood at that time that the camper was stolen, and it clearly was evidence in a criminal investigation. Despite that fact, the Grievant left the scene without taking any photographs, and without taking any action to secure either the trailer or its contents. The Grievant and Carlson left the scene and left that task to other law enforcement personnel on scene. This lack of action clearly warranted the three day working suspension imposed. The discipline in this case was clearly warranted and for just cause. The grievance should therefore be denied.

Union Position: The Union argues that the Employer has not demonstrated just cause for the discipline in this case. The Union notes initially that the Grievant, while she worked on the investigation of the theft of the camper, was not the “owner” of the case, and she was therefore not responsible for maintaining the file on the investigation. All of her activities were performed while working with Investigator Carlson. Both testified that he agreed to prepare the narrative reports since he was the individual who conducted the interviews of all of the witnesses interviewed on both January 23 and February 12. At that time, there was no requirement that all investigators present submit a report when working together. It was only after this disciplinary action that a policy requiring that both officers prepare reports was implemented and put in writing. The Union further contends that there is no just cause for the charge of failure to take enforcement action. When Carlson and the Grievant went to the Reeder Road address, it was with the purpose of determining if the camper had been sold. Their activity involved interviewing witnesses. When they left the property, it was to conduct another interview with Cummings, whose location was known at the time. There were other officers on site who were making decisions concerning towing the camper, and it was in fact towed by Fox Towing. There was no demonstration that the decision regarding towing the camper should have been made by the Grievant. The Union finally argues that the discipline is based on an investigation which was not fair and objective. Major Mark Smith, who conducted the investigation, notes in his remarks on the summary of his interview with the Grievant that the Grievant did not answer his questions, when she clearly did. Further, his questions concerning whether the Grievant had jurisdiction to tow the camper were unfair since he asked them without an understanding of the distinction between jurisdiction and authority. The Employer has not established just cause for the discipline, and the grievance should be sustained in its entirety.

## **DISCUSSION AND ANALYSIS**

This being a case of disciplinary action, it is clear that the burden of proof to demonstrate just cause for the discipline by a preponderance of the evidence is on the Employer. In order to meet that burden of proof it must be demonstrated initially that the Grievant committed the offenses with which she is charged and that the commission of those offenses warranted the degree of discipline imposed under all of the circumstances prevailing at the time. In this case, the Grievant is charged with two separate rule violations, both of which are related to the theft of the camper at East Fork State Park.

The initial charge against the Grievant is that she failed to properly complete and upload a narrative in RMS regarding the information which she obtained as a result of her activities in furtherance of the investigation of the theft of the camper on January 22, January 23 and February 12, 2018. The Grievant and Carlson both testified that the video and photographs which they obtained on the two dates in January were given to Kruse who, as owner of the case, was maintaining a paper file on the investigation. All witnesses who testified on the point agreed that the video and photographs would not have been uploaded into RMS due its limited data storage capacity. Both Carlson and the Grievant further noted that at the time, there was no clear rule or policy requiring that each officer submit a narrative when working together, and the two had agreed that Carlson would prepare a memorandum since he conducted the interviews. The Employer did not present any evidence to contradict this testimony. While Captain Cox, in response to an interview question, noted an expectation that both investigators would submit a report, there was no written rule or policy requiring it until after the events at stake in this case.

The Employer pointed out, however, that even if this was the case, the failure to upload information into RMS results in an inability of others to discern what work has been done on a case and to coordinate work. Since, as was the case here, multiple officers may work on



different aspects of a single investigation or related investigations, there is no doubt that maintaining information in a central accessible location is of vital importance. The Employer argues that this is basic investigatory work, and the Grievant clearly knew that she should submit a report despite the fact that she was working with another Investigator. While the Employer's point is well taken, the fact that best practices would dictate that a report should be prepared by every involved investigator does not alter the fact that there was no evidence that this expectation was ever clearly communicated to the Grievant.

It is significant that there were no clear written rules or policies regarding the preparation of narratives or the use of RMS at the time of these events. It is axiomatic that employees must be aware of what is required before being disciplined for their actions, or in this case, failure to act. Employees cannot be expected to conform their conduct to expectations which are not clearly spelled out in rules or policy. The failure to provide clear guidelines often results in confusion and a lack of understanding as to precisely what is expected. Without knowledge of clear expectations, employees simply cannot be held responsible for a failure to meet them. Thus, while it is entirely reasonable to expect that all officers involved in investigatory activities prepare a memorandum of those activities which is available for review by others who may need the information, it is not reasonable to impose discipline for failure to do so in the absence of a clear communication of those expectations.

In January, 2018, RMS was a new system which had recently been put into use. Significantly, there was no evidence that at that time there existed any written policy regarding either the preparation of written narratives or expectations for either the preparation of narratives or the use of RMS. The only policies on these activities submitted as evidence at hearing in this matter were implemented on December 1, 2018, almost a full year after these events. It was not until the December 1, 2018 policy was promulgated that there were any clearly defined rules for the preparation of narrative reports and the requirements for their uploading into RMS. In the absence of clear requirements for completing narratives and

uploading information into RMS, the Grievant did not have sufficient notice of what was expected in this regard, and the discipline for her failure to do so in this instance is therefore without just cause.

The Arbitrator must similarly reject the discipline on the charge of failing to take investigatory action on February 12, 2018. As the Union notes, Carlson and the Grievant testified without contradiction that they were charged with attempting to discern whether or not the camper had been sold on that date. There was no evidence that the Grievant was ever instructed to either photograph or arrange for the seizure and impound of the camper. She was not the assigned "owner" of the case, and there was no evidence presented at hearing to demonstrate that she had greater responsibility to determine what actions should be taken to document and secure the camper than any one of the other law enforcement personnel present at the scene.

While the Employer contends that photographing, arranging for the impound and documenting a chain of custody for the camper are the investigatory activities which the Grievant should have taken, in fact, she and Carlson took other investigatory actions in leaving the Reeder Road premises to interview Cummings while they knew his whereabouts. While the Employer apparently would have preferred that the Grievant stay at Reeder Road and document the camper's condition and arrange for its impound, there was no evidence that the Grievant was responsible for this activity or that her actions in leaving the scene were inappropriate. Further, it must be noted that there were other law enforcement personnel present, including an ODNR Sergeant, who could, and in fact did, arrange for the tow of the camper. The Employer has not offered any explanation as to why the Grievant should be held responsible for that activity in light of the Sergeant's presence on the scene.

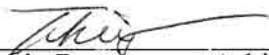
Having determined that the Grievant did not commit the offenses with which she is charged for the reasons noted above, the grievance must be sustained. This being a working suspension, however, the Grievant did not experience any loss of pay as a result of the

discipline. The only remedy warranted is therefore expungement of the discipline from the Grievant's work record.

**AWARD**

The grievance is sustained. The three day working suspension will be expunged from the Grievant's work record.

Dated: September 21, 2020

  
\_\_\_\_\_  
Tobie Braverman, Arbitrator