

OPINION AND AWARD

In the Matter of Arbitration

Between

Ohio State Troopers Association, Inc.

And

State of Ohio, Ohio State Highway Patrol

Case Designation

DPS-2019-04026-01

Date of Hearing: November 3, 2020

Date of Briefs: December 21, 2020

Date of Award: January 26, 2021

APPEARANCES

For the Union

Elaine Silveira, Esq. OSTA, Advocate

Larry Phillips, OSTA, Second Chair

Bob Cooper, OSTA, Staff Representative

For the Employer

Lieutenant James Thompson, OSHP, Advocate

Lieutenant Jake Pyles, OSHP, Second Chair

Cullen Jackson, OCB Representative

Witnesses

Trooper Ricky Caraway, Grievant

Sergeant David Zatvarnický

Trooper Jacob A. Dickerson

Captain Michael D. Kemmer

Major Charles J. Linek III

An arbitration hearing was conducted on November 3, 2020, at the Ohio State Troopers Association office in Gahanna, Ohio.

The parties agreed that the matter was properly before the Arbitrator and ready for a final and binding determination. The issue is that of just cause. Specifically, was the Grievant issued a ten-day

suspension for just cause; if not, what shall the remedy be? Both parties were given full opportunity to examine and cross-examine witnesses, pose arguments, and present their respective cases.

The parties submitted the following joint exhibits: the Collective Bargaining Agreement between the parties designated as Joint Exhibit 1 (J1); the grievance trail consisting of the grievance and the step 2 response, designated as Joint Exhibit 2a&b (J2a & J2b); the discipline trail consisting of the statement of charges, the pre-disciplinary hearing notice, the cited rules and regulations, the notice of suspension, and the Grievant's department record at the time of the discipline, designated respectively as Joint Exhibit 3a-e (J3a-e).

The Employer submitted Administrative Investigation Report #2019-10195 as Employer Exhibit 1 (E1).

The Union submitted the following documents as exhibits: Lieutenant Jon Payer's disciplinary demotion packet dated October 30, 2019, designated as Union Exhibit 1 (U1); an internal email listing the disciplinary actions taken in association with IA #2019-10195, designated as Union Exhibit 2 (U2); performance evaluations from 2017-2019 for the Grievant, designated as Union Exhibit 3 (U3).

All exhibits were admitted into the record. Both parties timely submitted post hearing briefs. All materials were reviewed and considered by the Arbitrator in reaching this decision.

RELEVANT CONTRACT PROVISION:

Negotiated agreement between Ohio State Troopers Association, Inc. Unit 1 & 15 and The State of Ohio effective July 1, 2018 – June 30, 2021

ARTICLE 19 – DISCIPLINARY PROCEDURE (Relevant Sections)

19.01 Standard

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

19.03 Length of Suspension

No suspension without pay of more than ninety (90) calendar days may be given to an employee.

19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. One or more Verbal Reprimand (with appropriate notation in employee's file);
2. One or more Written Reprimand;
3. One or more day(s) Suspension(s) or a fine not to exceed five (5) days pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.

4. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) 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.

The deduction of fines from an employee's wages shall not require the employee's authorization for the withholding of fines from the employee's wages.

BACKGROUND

The Employer is the State of Ohio, Department of Public Safety, Highway Patrol Division. The Grievant, Trooper Ricky Caraway, had been a State Trooper for 20 years at the time of the incident giving rise to this discipline. For the past nine years the Grievant had served as a canine handler. At the time of the discipline, the Grievant had no prior discipline in his employment record and his recent performance evaluations document that he consistently meets or exceeds performance expectations.

The incident giving rise to the discipline occurred on May 22, 2019 at the canine training facility in Marysville, OH. The facility had newly opened in December 2018 and at the time of the incident the first class of canine handlers was underway. The 10-week class had started in March 2019. The class of trainees, which consisted of both Troopers and visiting officers from various police departments, were staying at the facility, housed in dormitory rooms. On the evening of May 22, 2019, the Grievant arrived at the facility at approximately 5:30pm with the intention of spending the night to shorten his morning commute to the Columbus Highway Patrol Academy where he was scheduled for firearms transition training on May 23, 2019.

Upon arrival at the facility, the Grievant engaged with the class trainees and joined with them in going out to dinner at a local restaurant. Two state-owned, unmarked vehicles were driven to the restaurant. At dinner, several of the individuals in the party drank beer with their dinner. The Grievant drank between 3-5 beers while at the restaurant. After dinner, the group went to a location for ice cream. Following ice cream, the vehicle the Grievant was riding in proceeded to a beverage drive thru to purchase beer to take back to the facility. The Grievant purchased a six-pack of Labatt Blue. While at the drive thru it is reported that the Grievant attempted to engage in banter with the female attendant making a comment about using a stolen credit card, followed by a comment to the female attendant having something to do with thong underwear.

When the vehicle arrived back at the facility, the Grievant joined with the others in a common room where the group was watching a movie on the TV and some were drinking beer. The Grievant drank the Labatt Blue he had purchased at the drive-thru and then retrieved an open bottle of vodka he had brought to the facility. He drank the vodka and offered it to others. One other Trooper consumed some of the vodka offered. It is reported that the Grievant became intoxicated, and he was loud and obnoxious in his comments to the others in the group. In particular, the Grievant is reported to have aimed much of his offensive talk at a visiting police officer from Norwood PD. It is reported that the Grievant was abrasive and disruptive in his comments; that he called the officer from Norwood a

“pussy” and poked him repeatedly in the back and said he would *“prison rape”* him. It was also reported that the Grievant said to the officer from Norwood that he would *“spit on his buttohole.”* In addition to these personally offensive remarks, it is reported that the Grievant spoke out negatively about the Patrol’s canine handling program, disparaging the quality of the training.

Having consumed the 6-pack of beer he had purchased and the bottle of vodka he had brought with him to the facility, the Grievant sought to return to the drive thru for more alcohol. His fellow Troopers at the facility intervened and refused to allow him to drive himself to the drive thru in his intoxicated condition. Instead, they voluntarily drove him back to the drive thru, once again using one of the unmarked state vehicles assigned to the training facility. At the drive thru for a second time, it is reported that the Grievant again made a comment to the same female attendant referencing thong underwear. The others in the car with the Grievant were embarrassed by his comments and apologized to the female attendant on the Grievant’s behalf. On this second trip to the drive thru the Grievant purchased a second 6-pack of Labatt Blue beer. It is reported that upon pulling out of the drive thru, the Grievant opened one of the beers, prompting another Trooper in the car to say, *“Hey dude, open container.”* It is further reported that the Grievant and the officer from Norwood PD consumed the second 6-pack of Labatt Blue and then continued drinking Busch Light beers that were in the refrigerator. When everyone finally ended the night of drinking and went off to their dorm rooms to sleep it was reported that the officer from Norwood PD was so concerned that the Grievant had possibly tampered with his bedding that he slept the night on his dorm room floor.

The next morning, evidence of the night of drink was apparent in the number of empty containers in the trash. The events of the night before were reported to the facility leadership when they reported to work. The reports were escalated through the OSHP chain of command and an internal administrative investigation was undertaken to discover all that had occurred on the night of May 22, 2019.

Administrative investigation #2019-10195 was begun on May 30, 2019 conducted by Sergeant David Zatvarnický. Subsequently, a full administrative investigation report was issued on July 25, 2019. As a result, six Troopers and one Sergeant were issued written reprimands for either consuming alcoholic beverages or failing to report the consumption of alcoholic beverages at the Patrol’s canine training facility. It was determined through the administrative investigation that the Lieutenant in charge of the facility had knowingly permitted the consumption of alcohol at the facility and was demoted in rank. The Grievant was issued a 10-day suspension for his conduct, which the Employer concluded violated the following OSHP rule and regulations:

- 4501:2-6-02 (I) Conduct unbecoming an officer – (1) Conduct, on or off duty, that may bring discredit to the division and/or any of its members or employees. A member shall not engage in any conduct which could reasonably be expected to adversely affect the public’s respect, confidence, or trust for Ohio state highway patrol troopers and/or the division.
- 4501:2-6-02 (J) Sexual harassment and discrimination – (1) No member shall sexually harass any person. “Sexual harassment” is defined as the unwelcome sexual advances, request for sexual

favours and other verbal or physical conduct or contact, or innuendo of sexual nature. No member shall, by his/her actions, create an intimidating, hostile, or offensive work environment.

- 4501:2-6-02 (Y) Compliance to orders – (2) A member shall conform with, and abide by all rules regulations, orders and directives established by the superintendent for the operation and administration of the division.

The Grievant served his 10-day suspension December 9-13, 16-20, 2019. The Grievant has also been reassigned from the canine unit and transferred to the Ashtabula Patrol Post. A grievance was filed on behalf of the Grievant claiming a violation of the just cause standard and progressive discipline provisions of the labor agreement. The grievance was denied by the Employer and appealed to arbitration by the Union. An arbitration hearing on the matter was convened on November 3, 2020.

POSITION OF THE EMPLOYER

The evidence revealed through the Employer's administrative investigation shows unequivocally that the Grievant has violated the Employer's rules; and has done so in such an egregious manner that the 10-day suspension is entirely appropriate. Indeed, had it not been for the Grievant's long tenure, he may well have been terminated for his unprofessional conduct.

The Grievant had no business being at the canine training facility on the night of May 22, 2019. Contrary to standard practice, the Grievant had not sought or received prior approval from his supervisor to visit or use the facility. Furthermore, the Grievant violated established rules when he transported an open bottle of vodka in his marked Patrol vehicle to the facility. Furthermore, the investigation revealed that the Grievant opened a bottle of beer in a moving, unmarked Patrol vehicle.

Testimony from all witnesses interviewed confirmed the Grievant drank so much beer and vodka on the night of May 22, 2019 that he became drunk; slurring his speech and conducting himself in a loud, obnoxious and rude manner. So much so that others had to prevent him from driving himself to the drive thru and apologize on his behalf to others for his behavior.

In his drunken state he harassed a civilian female attendant at a local drive thru by making sexually suggestive comments about her thong underwear. He also made violent and offensive comments of a sexual nature to a police officer trainee staying at the facility threatening to "*prison rape*" him and "*spit on his buttohole.*" In addition, he disparaged the Patrol's canine training program in front of the trainees in the program. There is no question that the Grievant's drunken behavior brought discredit on the OSHP and that he created a hostile and offensive environment for others.

Neither the Grievant's long tenure and heretofore acceptable performance in his assignment as a canine handler, nor the lax enforcement of the Patrol's standing order concerning no consumption of alcohol on Department property, exonerate the Grievant. His misconduct warrants every bit of the 10-day suspension that was issued to him. The grievance must be denied in its entirety.

POSITION OF THE UNION

Many department personnel consumed alcohol at the canine handler training facility on May 22, 2019 as well as on other occasions. Permission to do so was granted by the Lieutenant in charge of the facility. The other Troopers who consumed alcohol at the facility on the night of May 22, 2019 were issued written reprimands. The Grievant was singled out and treated differently than his peers when they all were found to have violated the same offense.

The conduct that the Employer has cited as violating the prohibition on conduct unbecoming an officer occurred while the Grievant was off duty. The allegation is that the Grievant's behavior brought discredit to the Division. The labor relations standard of review for discipline concerning off-duty conduct involves determining whether the conduct harmed the reputation or product of the employer; rendered the employee unable to perform his duties or appear at work; or resulted in the refusal, reluctance or inability of other employees to work with the employee whose off-duty conduct is in question. None of these factors have been established by the disciplinary record or the arbitration hearing record.

The inappropriate comments the Grievant made to the female drive thru attendant were off-duty conduct. Furthermore, the woman to whom the comments were made, when interviewed, stated that she could not fully remember the comments and that she was not offended by them. As for the inappropriate comments made at the facility to the officer from Norwood PD, the investigatory record indicates that mutual razzing was going on between the Grievant and the officer. Both had been drinking as they were permitted to do by the Lieutenant in charge of the facility. Given that the alleged offended officer was a participant in the razzing, and the female attendant was not offended by the comments made to her, a 10-day suspension is entirely too harsh. A lesser penalty, more proportionate to the actual circumstances of the May 22, 2019 incident, is sought by the Union on behalf of the Grievant.

DISCUSSION

There are three main elements of any workplace disciplinary case – notice, proof, and reasonableness. Each of these three elements is addressed below.

The Element of Notice

Generally, the element of notice in a disciplinary case is satisfied when there is evidence of a published rule and that the Grievant was aware of the rule before the matter arose. Included in E1, the investigatory report, is the Employer's Drug Free Workplace Policy as Attachment K (DPS-501.24), which states in relevant part: *"Alcohol is a restricted substance for purposes of this policy (see Appendix A, Definitions). Accordingly, except as provided below in Section 2.3.4, State of Ohio employees who are in active work status or otherwise in the workplace shall not manufacture, distribute, dispense, possess, purchase, transfer, or use alcohol."* Also included in E1 is the Employer's Standards of Conduct Policy as Attachment L (DPS-501.05), which states in relevant part: *"Employees are prohibited from using, possessing, purchasing, distributing, selling, or being under the influence of alcohol, illegal drugs, or*

controlled substances not legally prescribed for the individual while on state property and/or conducting state business. The provisions set forth in this policy shall be read in conjunction with policy DPS-501.24 Drug-Free Workplace.” Finally, included in E1 are sign-off records showing that the Grievant had received and reviewed both the Employee Standards of Conduct (Attachment M-signed 3/12/19) and the Drug-Free Workplace policy (Attachment N-signed 1/2/19). The Employee Standards of Conduct also contain an explicit prohibition against harassing and discriminatory conduct (DPS-501.05 VI). These policy statements serve as prior notice to the Grievant, over and above the specific Highway Patrol Rules and Regulations cited in the disciplinary documents (J3c) – Conduct Unbecoming of an Officer-4501:2-6-02(I), Sexual Harassment and Discrimination-4501:2-6-02 (J), and Compliance to Orders-4501:2-6-02(Y).

Ordinarily, the Employer’s written policies, rules and regulations would suffice as adequate notice. Indeed, in the case at hand, they do for the most part, serve as sufficient notice for holding the Grievant accountable for his conduct. However, it is acknowledged by the Employer, and evidence in the hearing record establishes, that the command staff at the canine handler training facility had given permission to those individuals using the facility to consume alcoholic beverages on the premises during off-duty hours. The hearing record is also clear that the individuals involved in the incident giving rise to the Grievant’s discipline acknowledge that they knew and understood the Employer’s standing order prohibiting consumption of alcohol on State property. They simply chose not to question the good fortune that had come their way under a permissive Lieutenant and quietly imbibed from time-to-time during the first eight weeks of the ten-week training program.

This failure of the command staff to properly enforce a standing order does weigh as a mitigating factor in the overall disciplinary analysis. Importantly however, the Employer itself uncovered the enforcement problem through its internal investigation, corrected the management problem, and duly considered the breakdown in command as a factor when meting out disciplinary penalties.

The element of notice has been sufficiently established through the documentary record and through hearing testimony. The extent to which the element of prior notice was compromised and how that fact impacts the reasonableness of the Grievant’s discipline is addressed below.

The Element of Proof

Trooper Dickerson testified credibly under oath that he observed the Grievant in an inebriated state, so much so that he and others at the facility felt compelled to intervene in the Grievant’s attempt to drive himself to the drive thru. He further testified from firsthand knowledge that on a trip to the drive thru the Grievant made a comment to the female attendant about thong underwear. Dickerson testified that he felt the comment was inappropriate and apologized to the female attendant on behalf of the Grievant. Trooper Dickerson also testified that on this trip to the drive thru, he ordered a six-pack of Labatt Blue beer for the Grievant and passed the six-pack to him in the front passenger seat. Dickerson went on to testify that the Grievant took one of the beers and opened it, prompting Dickerson to say, *“Come on dude, open container.”* Dickerson further testified that he heard the Grievant make negative comments about the Patrol’s canine training program, which prompted Officer Harvey, from an outside police department, to defend the quality of the training program. Dickerson testified that the

Grievant said that he would *"mess with Officer Harvey."* Dickerson testified that he observed the Grievant touch Officer Harvey by reaching his arm around where Harvey was seated. Dickerson testified that he heard the Grievant say to Officer Harvey that, *"he (Harvey) better lock his door that night"* and *"he (the Grievant) was going to prison rape him (Officer Harvey)"* and *"he (the Grievant) was going to spit on his (Officer Harvey's) butthole."*

There is documentary evidence in the form of witness statements from the Employer's internal administrative investigation (E1). Sgt. Zatvarnický, the Employer's investigator, testified to the contents of the statements. As hearsay these witness statements do not carry the weight of sworn testimony. They do however provide some additive weight to the overall hearing record to the extent that they corroborate sworn testimony establishing that the Grievant was intoxicated, that he drank multiple beers throughout the evening (perhaps as many as nine beers) and that he drank a portion of an open bottle of vodka that he brought to the facility. The statements also corroborate that the Grievant was loud and offensive in his comments, that he 'bad mouthed' the Employer's canine training program in front of trainees from outside police departments, and that much of his inappropriate behavior was directed at Officer Harvey, whom he poked on his low back, called a *"pussy"* and threatened with graphic sexualized statements. The statements report that Officer Harvey slept on the floor of his dormitory room on May 22, 2019 out of concern that the Grievant had, or would, enter his room and tamper with his bedding.

In the Grievant's testimony he admits that upon entering the facility he asked the trainees standing in the common room, *"Why don't you have a beer cracked yet?"* He admits to drinking three beers at dinner. The Grievant admits that on his first visit to the drive thru, he said to the female attendant that his *"credit card was probably stolen and that the only thing you (the female attendant) could buy with it is a thong."* He testified that he meant no offense, and that the attendant said nothing in response that indicated she took offense. The Grievant also admits that on his second visit to the drive thru he asked the same female attendant, *"What color is your thong?"* In his testimony the Grievant acknowledges that he brought an open bottle of vodka to the training facility in his marked Patrol vehicle. However, he qualifies his actions by saying he unknowingly brought the vodka, and that the bottle was safely stowed in his backpack in a locked inaccessible section of the vehicle. The Grievant testified to his lack of regard for the Employer's canine handler training program and that he had spoken out regarding his dissatisfaction with the program. He testified to a *"back and forth"* with Officer Harvey about the canine handler training program. In his testimony the Grievant acknowledged calling Officer Harvey a *"pussy,"* and though he did not recall specifically threatening to *"prison rape"* Officer Harvey, he acknowledged that it is something he would say. He did not deny making the comment. The Grievant testified that he felt free to make such a comment to Officer Harvey because, *"he (Officer Harvey) never seemed to get mad."* In his testimony, the Grievant acknowledged that he engaged in *"crude and rude"* comments. The Grievant denied opening a beer in the vehicle on the second trip to the drive thru. He admits to drinking several of the beers from his first six-pack of Labatt Blue, but not all of them. He admits to drinking one beer from the second six-pack of beer and he admits that he drank vodka.

The Grievant's own admissions, Officer Dickerson's sworn testimony and the additive weight of the written investigatory witness statements establishes that there is sufficient evidence to meet the

Employer's burden to show, by a preponderance, that the Grievant violated the referenced rules and regulations of the Highway Patrol.

The Element of Reasonableness

The reasonableness of discipline is judged on the proportionality of the disciplinary penalty in comparison to the proven offense, the employee's tenure and work record, as well as how the employee was treated in comparison to other similarly situated employees.

It is noted, as the Union points out, that the incident that forms the basis of this discipline occurred while the Grievant was off duty. Although this is true, unlike prior off-duty cases, in the case at hand the misconduct occurred on State property and in a state-owned vehicle, both locations reasonably understood to be the Grievant's workplace. This creates a direct nexus to the Grievant's employment and in this important way the case is entirely distinguishable from off-duty cases addressed in the past. The oft-cited W. E. Caldwell rubric for evaluating whether off-duty conduct is subject to the just cause discipline standard has limited relevance – nexus is established by virtue of the conduct occurring in the workplace. Furthermore, the record is clear that both a member of the public (who knew that the Grievant was a member of law enforcement) and an officer from an outside police department were the target of the Grievant's misconduct and thus they were drawn into the Employer's administrative investigation. This is another important way in which the Grievant's behavior is entirely distinguishable from that reviewed in other off-duty conduct cases. It is fair to say that the Grievant's misconduct (having occurred on State property and directly/actively having involved a civilian and an outside Police Officer) is conduct that brought discredit to himself and by extension to his Employer.

The breakdown in orderly command at the canine training facility, as it pertains to the prohibition on consumption of alcohol on State property, mitigates the Grievant's violation of that basic standing order. However, that mitigating factor does not extend to the Grievant's drunkenness and offensive and sexualized comments to a member of the public and a visiting Police Officer. Nor does it pertain to the Grievant having transported an open container of alcohol to the workplace in a marked Patrol vehicle, and his outspoken criticism of the Patrol's canine training program. Just as this discipline is distinguishable from other off-duty cases, it is distinguishable from the other disciplinary reprimands that resulted from the events of May 22, 2019. The Grievant's misconduct was wholly different from the other Troopers at the facility that evening. There is a magnitude of difference between those who simply, but wrongly, consumed alcohol on State property, and the Grievant, who compounded that offense by his drunkenness and offensive behavior. The other cases of discipline resulting from the May 22, 2019 misconduct are not fair comparators when it comes to identifying disciplinary penalties that have been issued in similar situations.

I concur with the Employer's charge that the Grievant's conduct was unbecoming of an officer, and I concur that his conduct violated the Employer's prohibition against sexual harassment and discrimination. It is no defense for the Grievant to claim that his behavior was not sexual harassment because the female attendant at the drive thru did not show any outward signs of being offended and said in her investigatory statement that she *"receives worse from other customers."* Targets of harassing

behavior often deny or downplay the seriousness of a situation; and among those who counsel and treat victims of harassment 'minimizing' is a recognized defense mechanism. The fact that other Troopers, present when the Grievant made his comments to the attendant, reported that they were offended by his comments and felt the need to apologize on his behalf, is a good indication that his behavior strayed from accepted norms. Likewise, it is no defense for the Grievant to claim that his offensive sexualized comments directed at Officer Harvey were not out of bounds simply because Officer Harvey did not display any outward signs of being mad. Calling a man, a "*pussy*" is a classic form of crude sexist hostility. Microaggressions of poking, name-calling and "*messing*" with someone are all common signs of bullying behavior. Just as with the Grievant's comments to the drive thru attendant, other Troopers who were present when the Grievant harassed and demeaned Officer Harvey, report that they found the Grievant's comments abrasive, offensive and embarrassing. Once again, this is a good indication that the Grievant's conduct was not simply harmless banter and razzing among peers.

Tenure and work record are important mitigating factors in the administration of workplace discipline. At the time of the incident the Grievant was a 20-year employee without prior discipline and recent performance evaluations indicating that he had been meeting all performance expectations. Although there is no hard and fast rule as to how many years of service are necessary to be considered a mitigating factor, certainly 20 years with no prior discipline is attention grabbing. Major Linek testified that the Grievant's tenure and work record were taken into consideration when the 10-day suspension was imposed. But for the Grievant's tenure, his employment would have been terminated.

When contract language does not expressly limit the Arbitrator's authority it is considered inherent within the Arbitrator's authority to modify a penalty. Nonetheless, Arbitrators are cautioned against substituting their own opinion for that of the Employer when reviewing the level of penalty. When an Arbitrator modifies a penalty, it must be supported by factors of mitigation or principles of fairness. In the case at hand, the Employer has rightfully given due consideration to factors of mitigation including the Grievant's long tenure and his clean work record. The fact that other Troopers, in related discipline, received written reprimands does not establish unfair treatment of the Grievant. Rather it shows that the Employer has rightly meted out discipline consistent with different levels of culpability in the events of May 22, 2019. Under the standard of just cause, a major suspension is reasonable for the proven offenses. Given that the Employer has acted within the range of reasonableness there is no basis to upset the Employer's penalty.

SUMMARY

Despite a regrettable breakdown in the enforcement of the Employer's standing order prohibiting the consumption of alcohol in the workplace, the Grievant was on notice of the Employer's rules and regulations pertaining to behavior unbecoming an officer, harassment, and compliance to orders. Even allowing for the fact that permission had been given permitting individuals staying at the canine handler training facility to consume alcohol during off-duty hours, the Grievant's drunken behavior on May 22, 2019 was so at odds with accepted norms that his fellow Troopers report being offended and embarrassed by his behavior. The Employer has established, with sufficient proof, that the Grievant made offensive, sexualized comments to a female attendant at a local drive thru and to a

visiting Police Officer. The Employer has further established that the Grievant transported an open container of alcohol in his marked Patrol vehicle. The Employer has properly taken into consideration the mitigating factors of the Grievant's long tenure and clean work record in the administration of the 10-day suspension. Neither factors of mitigation nor principles of fairness demand the Arbitrator substitute her opinion for that of the Employer's on the appropriate number of suspension days.

AWARD

For the reasons herein stated the grievance is denied.

Respectfully submitted at Columbus, Ohio, January 26, 2021.

A handwritten signature in cursive script, appearing to read "Felicia Bernardini".

Felicia Bernardini, Arbitrator