

**IN THE MATTER OF ARBITRATION
BETWEEN**

Ohio State Troopers Association (OSTA),
Union

And

Case no. DPS 2020- 928-15
Sgt. Adam Doles, 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 4/7/21 at OSTA offices. Elaine Silveira represented OSTA along with Larry Phillips. Grievant was present and testified.

Lt. James Thompson represented the Ohio State Highway Patrol (OSP) along with OSP representative Michael Wood and OCB representative Victor Dandridge.

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 OSTA 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 4501:2-6-03(A)(1):
Responsibility of Command.

He is a long term employee of the OSP: 22 years.

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 on the same charge as in the instant matter and written reprimands for unrelated matters.

FACT SUMMARY

There is no significant dispute in facts, except that one matter came up at hearing not previously mentioned. It will be discussed *infra*.

Grievant was disciplined for violation of the procedures specified in OSP-203.47¹ concerning the handling of currency confiscation due to a traffic stop made by Trooper David Pangburn on 12/2/19. Grievant was charged with not following policy in his failure to go to the scene of the traffic stop and supervise the completion of a variety of protocol steps in a currency confiscation.² He did not ensure that a copy of the Notice of Property Seizure form was provided to the individual at the time of seizure.

Grievant was working at the Medina post when he received a call from Trooper Pangburn. He had been a Sgt. there for two years at the time of the incident. Pangburn's seniority at the time of the incident was approximately seven months. They discussed the situation and spoke three times. Pangburn felt he had things under control. Doles was on line researching the drugs found

¹ The updated sections of the policy did not involve any matters in dispute/at issue herein. Reviewing Attachment B pertaining to Bulk Currency; the policies were not followed by Pangburn and not followed by Grievant. Duties of the on scene supervisory officer were not performed as Grievant never went on scene. The update to these procedures was done about one year prior to the incident giving rise to the discipline.

² OSP witness Lt. Hunter gave a detailed explanation of the protocols and the rationale for same. He pointed out that a failure to follow protocols relating to the HP 60 and/or the CIB could result in a high degree of liability for the OSP. His testimony was persuasive that the protocols are not just *pro forma* but essential to law enforcement efficiency and credibility. He stated that it was preferable for a Sgt. to witness the money being secured in the CIB but it was not required that it be a SGT; it did have to be witnessed on scene. He stated a Sgt was to be present to ensure that all procedures were completed.

The Union pointed out that the training regarding these procedures was not in all cases statewide performed by Hunter; that various supervisory personnel from differing regions were tasked with training. It contended [without evidence] there was no assurance that the training was covered in a uniform manner.

and trying to make a determination as to the jurisdiction for a chargeable offense: state or federal. He was researching the suspect's prior criminal record.

Pangburn stated that he spoke on the phone to Grievant three times. He stated Grievant never offered to come to the scene. His statement in his report prepared the date of the traffic stop says nothing about Grievant referring to the CIB when he told Pangburn to secure the confiscated cash. He told Pangburn to have the suspect follow him in his car to the Post for the HP 60 and Notification of Property Form. These forms could have been transmitted via the MCT. That was not mentioned at all.

At the arbitration hearing, for the first time in the sequence of investigation and grievance processing, Grievant stated that he did offer to come to the scene to assist Pangburn but Pangburn declined. It is telling that this assertion was made at the very end of his testimony and not at any date/time prior.

Pangburn did not follow protocol in securing the confiscated funds. He was not completely familiar with the process per his own admission. The funds were not placed within the CIB on scene-the CIB was not easily located in the vehicle at the time of the events: it was in the first aid kit.

OSP has trained both Pangburn and Grievant on appropriate use of the CIB. Grievant did not instruct Pangburn to place the funds in a CIB before bringing it to the Post.

The required HP 60 and Inventory Release/forfeiture forms could have been sent to the MCT by Grievant. This was not offered and not accomplished.

Another inaction faulted by the OSP was the directive given by Grievant to Pangburn to have the driver follow the Trooper back to the post.

The suspect made a not surprising choice of not returning to the post. Ultimately the needed forms were mailed to the suspect and received back at post with multiple communications necessary to make this happen.

The money was treated as "abandoned" and no criminal case ensued.

Discipline ensued for Grievant after the usual pre-disciplinary steps and the grievance followed.

Grievant did a search of other money confiscation arrests where there was no evidence of a supervisor on scene. These were presented at the hearing; Grievant had first hand knowledge due to overheard radio traffic on one of the incidents.

Employer Position

Grievant violated a clear and established policy. He lacked good cause not to directly supervise Pangburn on scene; the confiscation was not witnessed by a supervisor; there were consequences; the suspect made allegations that the OSP took the finds; the OSP did not timely on scene provide a signed inventory and release and do the collection of funds in the CIB according to established protocol.

The discipline is within the grid; it is progressive. Grievant had a one day suspension active in the same calendar year as this incident for failure to perform follow up yet he certified that he had done it. 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 did what was required: he worked the case on the telephone performing necessary and supportive functions to assist in the process. Thus he acted appropriately as an active supervisor with Pangburn. Doles was not requested to be on scene by Pangburn; his offer to go to the scene was turned down by Grievant. The HP60 form was signed and returned ultimately [Union Ex. 1]. The money was deemed abandoned. There was no prosecution. There was no harm resulting from Grievant's actions/inactions. The case against the suspects was not negatively impacted by any of Grievant's actions.

Union Ex. 4 is a series of incidents involving currency seizures where the records do not indicate that a supervisor was on scene. Union Ex. 3 is an incident report of a stop that Grievant overheard on the radio and testified that no supervisor was on scene, based upon his overhearing of radio traffic.

A policy violation does not automatically result in discipline and this case is such an instance. Just because OSP can issue discipline should not always mean that it must.

Grievant's most recent evaluation just three months before the events showed he exceeded expectations. [Union Ex. 5]

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.

Weighing all factors, the Umpire believes that under the facts and circumstances, just cause exists. The discipline was progressive as the file had an active one day suspension. It was for the same rule violation: it involved an allegation that Grievant stated that he had performed duties but had not in fact done so. As it happens, although Grievant belatedly claimed he offered to come to the scene, procedure required him *to be* on scene.

Pangburn was a rookie Trooper. Pangburn testified he did not have any prior experience with this sort of traffic stop. All the more imperative it was for Doles to have driven the seven miles to appear on scene.³ Pangburn's statements saying that he felt supervised via the three phone calls may very well be true, but the upshot was the policies/procedures were ignored and multiple required procedures were bungled. The phone calls/research done by Grievant on post [and assisted by another Trooper] were appropriate but not demanded by immediacy in making sure the securing of funds and receipts were "by the book".

The Umpire was unclear about the weight of the "research" done by Grievant. Although there was an allegation that Union Exs. 3-5 were all instances where no supervisor went to the scene of confiscated money, there was no

³ There was testimony about how a stop in Cuyahoga County is handled differently. Although this may be the case there was no explanation as to how this "waived" the procedures required by the OSP for its employees. If there is a Cuyahoga County "waiver" of the applicable rules, the Umpire was not convinced of this.

showing that these were in fact similar facts and circumstances. More facts and circumstances were needed to make a valid disparate treatment argument.

The Union maintained this was a case of no harm, no foul as the money was deemed to be abandoned; the claim that the money was mishandled/stolen by the suspect's girlfriend never was made formally; the suspect ultimately signed and returned the property forms. Grievant was actively assisting the Trooper via telephone communication with other aspects of the stop and gave him advice when asked. Per OSTA, Dole performed his duty under all the circumstances. None of these "assisted from the post" activities were within the expectation of the clear requirements of the stated policy. That is what is at issue in this case.

The three day suspension is not an abuse of discretion, nor is it arbitrary and capricious. The Umpire noted the very late claim that Grievant offered to come to the scene but Pangburn declined his offer. It was an eleventh hour claim-and it affected Dole's credibility. It would have been an obvious defense [and not necessarily a definitive defense] to non-site supervision and should have been made at the time of the AI. It wasn't.

For a more tenured trooper, there may have been some ability to supervise from afar- depending on all other circumstances. Union Ex. 3-5 made that clear- even if the evidence was not sufficiently developed to make a disparate treatment case.

The discipline was progressive and does not meet the standard for abuse of discretion nor was 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 4/13/21 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*