

**IN THE MATTER OF ARBITRATION
BETWEEN**

Ohio State Troopers Association (OSTA),
Union

And

Case no. DPS 2020- 1392-1
Sgt. Bryan R. Hayes, Grievant
One 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. Larry Phillips represented OSTA along with Elaine Silvera. Grievant was present and testified.

Michael Wood represented the Ohio State Highway Patrol (OSP) along with OSP representative Lt. Thompson 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 One (1) 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(B)(5):
Performance of Duty.

He has been employed by the OSP for 8 years at the time of the incident.

Grievant is assigned to the Portsmouth post.

The instant discipline was timely grieved.

Grievant had no active discipline in his file but the record shows a written reprimand on the same charge as in the instant matter at a date subsequent to the current incident giving rise to this grievance.

Fact Summary

Grievant was disciplined for allegations that he failed to properly investigate a reported accident. It was Thanksgiving Day 2019. Grievant was at his meal break when he was dispatched to the scene of a reported accident. While in route he heard from a friend/neighbor that his dog had been hit by a car. Grievant stated that he would handle it on scene and that he should report it to the post.

The GPS system mapped Grievant's route and stops. He stopped in route to issue a citation to a motorist that cut him off. He also stopped in route due to a need to use the bathroom.

By coincidence, two other members of the post passed by the accident scene in the relevant time period: Sgt. Stuart who was off duty and Lt. Kelley, likewise off duty. Kelley prepared a report.

Grievant stated that he did not see the wrecker, the debris, the car or the guardrail damage. He passed the scene at 5:50pm. He saw nothing and asked the post if there was a better description of the area or the location. He did not retrace his path back to the Divide Carryout lot. He proceeded to the scene of his friend's dog event.

The investigation ensued and resulted in the discipline.

Employer Position

Grievant violated a clear and established policy. It is extremely unlikely that Grievant could not see the emergency lights of the tow vehicle and/or the car and/or the debris and/or the guardrail. He failed to perform his assignment.

The discipline is within the grid. 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 not see the car involved in the accident. The road debris was sufficiently scattered; it was dark. The involved vehicle had already been towed by the time he arrived on scene. He did nothing wrong at all.

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. This case involves credibility determinations: did Grievant deliberately avoid looking for signs of the crash [debris; guardrail damage]? Is it more likely than not that the tow truck with flashers was in the parking lot of the closed carry out or not when he passed? Was Grievant in such a hurry to get to the dog-car collision that he failed to handle the dispatched call he received first? Was it likely that with the coincidence of times presented by the evidence that Grievant would have passed by visual evidence of the wreck-the debris; fluid streak and bent guardrail, if not the tow truck?

OSP believes the "timeline" mitigates against the likelihood that Grievant would have missed the crash.

But on the other hand, Grievant called back in and asked if there was a better site location. That action makes no sense if he was deliberately avoiding doing the report.

OSP had the burden of proof to show the timeline made it more likely than not Grievant deliberately passed the carry out lot and/or the tow truck. That burden was not met as there is a confusion of conflicting reports. The two off

duty OSP members saw the crash and the debris; Grievant did not. Neither of those individuals was under a duty to stop and investigate and make a specific note of the time he passed the wreck scene. The tow truck operator is on the scene from around 5:50 until 6:30pm. The Umpire has no reason to fault the company records. No one reports seeing a Trooper's car go by. Grievant sees/hears no debris, and it's twenty minutes past sunset at the time his GPS places him in the area. The debris was either utterly ignored on purpose by Grievant-and the guardrail as well, or the dark made it hard to see and the passing of traffic dispersed the debris sufficiently so as to make its sound less audible. The record is sufficiently conflicting so as to make a finding of preponderance inappropriate. Clearly Grievant did not "race" to the scene. He stopped twice en route. But he is not being disciplined for that.

The crash occurred about an hour earlier than the attempt by Grievant to report to the scene. So it is *possible* that the scene cleared by the time he was passing; and the scales were "evened out" by the Union. It is the call back to the post to ask for the accident location that tipped the scales to even. Thus OSP did not meet the necessary burden of proof.

AWARD

The grievance is granted. Grievant's record is changed to reflect the voided discipline and his vacation day balance restored.

IT IS SO HEREBY ORDERED.

S/ Sandra Mendel Furman

Sandra Mendel Furman, J.D. Umpire
Issued 4/16/21 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*