

Before  
**PETER R. MEYERS**  
Arbitrator

In the Matter of the Expedited  
Arbitration between:

**ILLINOIS FRATERNAL ORDER  
OF POLICE LABOR COUNCIL,**

Union,  
And

**SHERIFF OF COOK COUNTY,**

Employer.

Grievant: **Donald Harris**

Case No.: **181128-AAUJ**

**DECISION AND AWARD**

**Appearances on behalf of the Union**

Gary Bailey—Attorney  
Jennifer Sexton—Attorney

**Appearances on behalf of the Employer**

Peter Kramer—Special Counsel for Labor Affairs

This matter came to be heard before Arbitrator Peter R. Meyers on the 4<sup>th</sup> day of June 2019 at the offices of the Fraternal Order of Police located at 5600 South Wolf Road, Suite 120, Western Springs, Illinois. Mr. Gary Bailey presented on behalf of the Union, and Mr. Peter Kramer presented on behalf of the Employer.

**Introduction**

Grievant Donald Harris was issued a written reprimand on October 31, 2018, for displaying erratic driving behavior by flashing his takedown lights at vehicles in front of him while traveling at more than ninety miles per hour on I-94 on October 4, 2018, in violation of Cook County Sheriff Police Department – Law Enforcement Services Manual Policy 101 – Conduct: 101.5 – Conduct which may result in discipline, specifically Sections 101.5.5 – Performance and 101.5.6 – Safety. The Union filed a grievance on November 28, 2018, challenging the discipline. The parties were unable to resolve the matter through the grievance procedure and this matter came to be heard before Arbitrator Peter R. Meyers on June 4, 2018, at Western Springs, Illinois.

**Issue**

Was the discipline issued to Grievant Donald Harris by the Cook County Sheriff for just cause? If not, what should be the appropriate remedy?

**Relevant Contract Provisions**

**ARTICLE II**

**Employer Authority**

**Section 2.1. Employer Rights:**

The Union recognizes that the Employer has the full authority and responsibility for directing its operation and determining policy. The Employer reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon it and vested in it by State and Federal statues and Constitutions, and to adopt and apply all rules, regulations and policies as it may deem necessary to carry out its statutory and constitutional responsibilities. Employer rights shall be limited only by the specific and express terms of this Agreement. The Employer’s rights include, but are not limited to:

- A. The exclusive right to determine its policies, standards or services and to operate and manage its affairs and to direct its work force in accordance with its responsibilities. The Employer has all the customary and usual rights, power and functions of management.
- B. The exclusive right to hire, transfer, and promote; discipline, suspend or discharge employees for just cause.
- ...
- E. The right to make, publish and enforce reasonable general orders, rules and regulations; and, the Employer has the right to reclassify existing positions based on assigned duties and responsibilities, or make changes in assigned duties and responsibilities.

**Evidence**

**Cook County Sheriff's Evidence**

The Cook County Sheriff presented no witnesses but relied solely on both the electronic data retrieved from the electronic transponder at the toll booths on I-294, which indicated that the Grievant was operating his vehicle at an average of seventy-four miles per hour and also upon a telephone call from a citizen who reported that the Grievant was operating his vehicle at ninety miles per hour and was driving erratically. The Cook County Sheriff presented no other evidence.

**Union's Evidence**

The Union called as its only witness the Grievant, Donald Harris. The Grievant testified that on August 4, 2008, he drove his vehicle to work from the south suburbs to his work location in Skokie on I-294. He started his shift at 6 a.m. and was driving in the hour before that. The Grievant was driving a squad car which he is allowed to take

home.

The Grievant testified that the drive to work was normal that morning but there were construction sites along the way that slowed him down. The Grievant testified that he never drove ninety miles per hour and that he did not use his takedown lights at any time. He also testified that he has never used his takedown lights. The Grievant testified that he did not drive erratically and he did drive approximately seventy miles per hour or slightly more than that during the entire trip.

### **Arguments**

#### **Cook County Sheriff's Argument**

The Cook County Sheriff argues that the Grievant's average speed was clocked at over seventy miles per hour that morning; and since there was construction slowing him to fifty miles per hour in certain areas, it is very possible that the Grievant was driving ninety miles per hour as reported at certain times during the trip to make the average seventy-four miles per hour. With respect to the failure to call the citizen who reported the incident, the Cook County Sheriff argues that there is no requirement for a formal inquiry into this matter and that the electronic evidence is sufficient to support the discipline of the Grievant. The Cook County Sheriff argues that the grievance should be denied.

#### **Union's Argument**

The Union argues that the Cook County Sheriff has failed to call as a witness or even take a sworn affidavit from the alleged witness who called in. Consequently, the Cook County Sheriff has failed to support its case with sufficient evidence. The Union

points out that the electronic transponders for the toll collection show that the Grievant was averaging seventy-four miles per hour, which is well within the appropriate speed on I-294. There is no evidence that the Grievant was driving at ninety miles per hour. Moreover, other than the telephone call from the individual who did not testify, there is no evidence of any erratic driving on the part of the Grievant or any evidence that he had operated his takedown lights.

The Union argues that the investigation was not thorough and there was simply insufficient evidence presented by the Cook County Sheriff to support the issuance of the written reprimand to the Grievant. The Union requests that the grievance be sustained and that the written reprimand be removed from the Grievant's record.

### **Decision**

It is fundamental in cases of this kind that the Employer bears the burden of proof to show that the Grievant acted in violation of the rules and, therefore, there was sufficient just cause for the issuance of the written reprimand to the Grievant. In this case, the Cook County Sheriff has simply failed to call any witness or present any evidence at the hearing before this Arbitrator to support the issuance of the discipline. The Cook County Sheriff points to the call that it received from a citizen who allegedly observed the Grievant operating his vehicle erratically and at ninety miles per hour, but the Cook County Sheriff failed to call that witness to testify to those facts. The only evidence that the Cook County Sheriff had was the electronic evidence that was taken from the transponder at the toll collection booth, which indicated that the Grievant averaged approximately seventy-four miles per hour on his trip into work that day. That

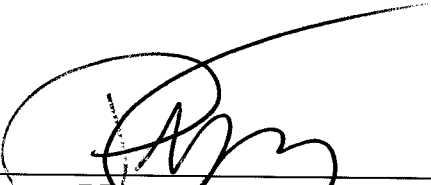
speed was simply not a violation of the rules with which the Grievant was charged.

The Grievant testified, without rebuttal, that he operated his vehicle at approximately seventy miles per hour that morning and did not drive erratically. He also testified, without rebuttal, that he did not operate his takedown lights. He also stated that he never has operated those takedown lights as long as he has been working for the Cook County Sheriff.

This Arbitrator has the responsibility of determining whether or not there is sufficient evidence to support that there was just cause for the issuance of the written reprimand of the Grievant. In this case, the Cook County Sheriff has simply not met its burden of proof that there was sufficient evidence for the issuance of the written reprimand. Therefore, this Arbitrator has no choice other than to sustain the grievance and find that all evidence of the written reprimand of the Grievant shall be removed from the Grievant's record.

**Award**

The grievance is sustained. There was no just cause for the issuance of the written reprimand to the Grievant. The written reprimand shall be removed from the Grievant's record.



---

**PETER R. MEYERS**  
**Impartial Arbitrator**

**Dated this 5<sup>th</sup> day of June 2019 at  
Chicago, Illinois.**