

STATE OF WISCONSIN

BEFORE THE PERSONNEL BOARD

Marvin E. Egle, )

Appellant, )

vs. )

Norman Clapp, Secretary )

Department of Transportation, )

Respondent. )

#432

MEMORANDUM DECISION

Appellant is a Trooper II, assigned to District No. 5, Wisconsin State Patrol.

On November 22, 1970, he was operating a cruiser on County Trunk Highway A in Rusk County. The day was a very miserable day, with slippery road conditions. It was snowing heavily.

Appellant had brought his vehicle to a stop at a stop sign in a rural area. While at the stop sign, Appellant noticed some condition in the area which he felt he should notify the farmer of. The maneuver that he wanted to make involved backing the cruiser. This he did and after backing no more than three feet, the cruiser came into contact with a private vehicle which Appellant did not know was behind him. The damage caused by the impact was minor, being no more than \$25.

The inside rear vision mirror of the cruiser was of no use to Appellant for the rear window was packed with snow. The vehicle at the rear of the cruiser was so far to the right of the cruiser that the outside rear vision mirror on the driver's side of the cruiser would not reveal its presence. Appellant made no attempt before he backed to ascertain what was behind him other than to use the rear vision mirror.

The matter was presented to the Accident Classification Board of the Patrol, the members of which unanimously concluded that the accident was preventable. The episode was described as a violation of s. 346.87, Wis. Stats. which reads:

"Limitations on backing. The operator of a vehicle shall not back the same unless such movement can be made with reasonable safety."

The Board members made their decision on the basis that a citation under similar circumstances would issue to a private citizen.

The Board recommended a one-day suspension to the Chief of Enforcement who, eventually, with the concurrence of the Administrator, reduced the penalty to one-half day to conform it to previous actions.

Appellant produced as witnesses, four experienced Troopers in the Patrol who testified that under similar circumstances they would not have issued a citation to a private individual. Their reasons given were bad weather conditions, the fact that it occurred on a rural road where it would be unlikely that another car on such a day would be where it was, that the damage done was slight and that there was no explanation of how the second car got into position behind the cruiser. Each of these officers conceded that their decision that a citation should not issue was a judgment decision.

It is true that the consequences of the Appellant's act were minor and that there were extenuating circumstances. However, if this Board should find that there was just cause for any degree of discipline, the Board cannot question the discipline that was meted out. There is no power to ameliorate or increase the punishment.

The four Troopers who testified for the Appellant have the right, when they investigate an accident, to use their own judgment as to whether or not a

citation should issue. This Board has no right to use its own judgment in evaluating matters before it. The Board may not substitute its judgment for that of the administrator. It may reverse the administrator only if his action was arbitrary and a capricious or if there be no substantial evidence that what is specified actually happened.

The conclusion to discipline the Appellant certainly was attendant with due process of law. The Accident Classification Board considered the matter twice; the second time Appellant was present and was given a hearing. The Chief of the Enforcement Division conferred with Appellant after he received the Board's recommendation.

The test of whether or not a citation for a similar involvement would issue to a private citizen is a good one, for apparently troopers are immune to citation for violation of the Rules of the Road unless there are serious consequences of the violation. The discipline is intended to substitute for a court-imposed penalty.

The Accident Classification Board and the Chief based their judgment that there should be discipline on the fact that Appellant did back his vehicle without ascertaining what was behind him. He could not see out of the back window. He should have known that the outside left rear view mirror would not pick up all areas into which his vehicle would back. He did not get out and look. He did not try to maneuver in a fashion which would not put him into an area that was blanked out to him. He did back up on the assumption that nothing was behind him. He probably under the circumstances could have gotten away with it innumerable times. This time he did not. It is rather like the most regrettable of all accidents - children run over in their own driveways.

There is never anyone in the driveway - well, almost never.

This Board realizes that there can be an honest difference of opinion as to what should be done about the Appellant's actions, but there is certainly sufficient substantial evidence to warrant a judgment decision that the instant action is one for which Appellant should be penalized.

Counsel for Respondent shall prepare Findings of Fact and Conclusions of Law consonant with this decision.

Dated: September 15, 1971.

STATE PERSONNEL BOARD

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