

Arbitrator places conditions on reinstating officer

sequoyahcountytimes.com/news-newsletters/arbitrator-places-conditions-reinstating-officer

September 16, 2021

SEQUOYAH COUNTY TIMES

Published Year In And Year Out For Home Folks By Home Folks

Oliver must get protective order removed

Oliver

While former Sallisaw Police Officer Billy Oliver may have “displayed poor judgment,” an arbitrator in his case said in an analysis that his actions weren't bad enough to justify firing him.

Oliver was placed on paid administrative leave in June of last year and fired in November, based on a number of allegations that included use of excessive force, falsifying arrest reports, failing to report the use of a tazer, not employing his body camera, criticizing the chief and being in an off-duty fight.

In an arbitration report obtained by Your TIMES, arbitrator Charles R. Greer of Fort Worth, Texas, heard the grievance filed by Oliver on those accusations and ruled in Oliver's favor.

In the award to Oliver, Greer said, “The city lacked just cause and thereby violated the CBA (Collective Bargaining Agreement) when it terminated the grievant. While the city lacked just cause for termination, the grievant's behavior warrants severe discipline. The city is directed to reinstate the grievant to his previous position but without back pay, benefits or accumulated seniority. Moreover, his reinstatement is conditioned on the modification or removal of the protective order such that the grievant can possess firearms and ammunition. Should he not be able to meet this condition within a reasonable period of time, the arbitrator's directive to the city will be withdrawn and the city's termination of the grievant will be upheld.”



The protective order stems from an incident where Oliver was arrested in February on allegations of rape. The Sequoyah County Sheriff's office investigated the case in which a woman accused Oliver of raping her at Applegate Cove Recreation Area. The incident occurred three days before Oliver was terminated.

The rape charge against Oliver was dropped in District Court after Oliver argued that he was a member of a federally recognized tribe. As a result, Oliver's rape case has been turned over to federal authorities and has not yet been resolved. A hearing on the protective order is scheduled for Oct. 26.

Sallisaw City Manager Keith Skelton issued the following statement:

“The city has received the award issued by Arbitrator Greer regarding Billy Oliver. The city does not agree with portions of the award including the directive of potential reinstatement of Oliver. As the award currently stands, the discipline imposed by the Arbitrator includes up to 11 months without pay, no benefits and no seniority rights. The award recognized that Mr. Oliver is currently the subject of a permanent protective order issued by the District Court. The award provides that reinstatement is conditioned on modification or removal of the protective order so that Mr. Oliver may carry a firearm and ammunition. It further states that should this condition not be met within a reasonable period of time, the Arbitrator's directive regarding reinstatement will be withdrawn and the city's termination upheld. A hearing on the protective order is set for Oct. 26,” Skelton said.

Greer said to its credit, “the city assigned two officers. Capt. Gabbert and Captain Weber, and a detective to investigate charges of policy violations by the grievant. The investigations were comprehensive and detailed reports of their findings were provided.

“The city's rationale for terminating the grievant reflects a cumulative or totality of misconduct approach in which the individual actions may not justify termination, but the accumulation of misconduct could possibly justify termination. To the city's credit, the city manager's actions reflect patience and deliberation. Moreover, the city manager had previously demonstrated fairness for the grievant when he directed Capt. Jeff Murray to revise his performance evaluation of the grievant. Moreover, City Manager Skelton had to administer discipline in the context of local television coverage of the Charles Day incident and, as speculated by a calm witness at the scene, there may have been an accusation of mistreatment by Charles Day reflecting awareness of the George Floyd incident.”

In June of last year, Sallisaw police responded to a report of a man with a gun, but no gun was found. At that time, Charles Day approached the officers and body cam footage from another officer showed Oliver pointing his finger at Day and then grabbing Day's wrist and putting him in a choke hold before another officer intervened and helped put Day on the ground.

A report filed by Officer Josh Rogers appeared to show discrepancies in that the report said Day began screaming at Oliver, then shoved him. He said Oliver ordered Day to put his hands behind his back and Day did not comply, thereby causing officers to place him on the ground.

Greer said in his analysis that the city's rationale for terminating the grievant is “weakened by the fact that some charges of misconduct were not substantiated or were not serious infractions, such as the criticism of the police chief.”

Oliver has served as a police officer for 14 years without substantive discipline and has risen in the chain of command to the rank of lieutenant, Greer said. “Some of his action in incidents from May 27, 2020, through July 4-5, 2020, violated police department policy, but some of these violations could have been dealt with by the application of relatively mild forms of progressive discipline. For example, while the grievant should not have voiced his criticism of the chief in front of Charles Day and another citizen, the city failed to establish damage of any consequence to its reputation among the citizens of Sallisaw. However, multiple rule violations in a short time period of five or six weeks were a cause for concern.”

Greer said Oliver violated several policies, one in which Oliver failed to report in his narrative that he used a taser when arresting Ethan Branham and the other in which the report written by Officer Rogers (based on the information told to him by Oliver) incorrectly stated that Charles Day shoved him. “Unfortunately, these failures can undermine the grievant's credibility as a police officer,” Greer wrote.

During the arbitration, Greer said Oliver expressed concerns that the city's efforts to hold him accountable for his policy violations were a result of political animosity toward him. “Admittedly, the city's staffing procedure in which the chief of police is elected is unusual and has the potential for fostering perceptions of favoritism and retaliatory behavior based on officers' support for successful and unsuccessful candidates. The grievant expressed these concerns (about both present and past incidents) in interviews with investigators, during his pre-determination hearing and at the arbitration hearing,” he said.

He said Oliver attributed favoritism and animosity toward him as factors encouraging investigations of him and allegations against him regarding policy violations. Greer said Oliver also blamed others for his actions that led to a citizen complaint, such as an incident at a party in which guests were inebriated.

“A police officer exercising the good judgment required for the job would not place himself in a situation in which bad things such as this are likely to occur. While there may have been favoritism toward others and animosity toward him, it would have been helpful to see the grievant accept more responsibility for his behavior that led to policy violations and other difficulties that provided challenges for the city,” Greer said.

Greer said the award provides no back pay as a message to Oliver that he needs to change his behavior. "During a short period of time, the grievant displayed poor judgment that needs to be corrected in the future...in the future, the grievant needs to manage his life off the job in manner that does not bring discredit and embarrassment to himself and the police department. The grievant's behavior must change if he intends to continue his career as a police officer," Greer said.

Oliver has been directed not to comment at this time.