

IN THE MATTER OF INTEREST ARBITRATION BETWEEN:

KCATA

and

FMCS FILE NO. 110419-01934-T

ATU Local 1287

Appearances:

For the Employer:

Mr. Jeffrey M. Place, Attorney
Mr. Bob Kohler, Director - Transportation
Mr. Gaylord Salisbury, Supt. - Transportation
Mr. Robert Garcia, Mgr. – Safety & Instruction
Mr. Thomas Hill, Mgr. – Road Supervision
Mr. Srinivasa Veeramallu, K. C. Traffic Engr.
Officer Sam Leslie, K.C. Police Department

For the Union:

Mr. Donald Aubry, Attorney
Mr. Freddy Ersery, VP – Local 1287
Mr. Jonathan Walker, Pres.-Elect, Local 1287
Mr. Gabriel Warren, Driver (Grievant)

PROCEDURAL HISTORY

Kansas City Area Transit Authority (KCATA) is hereinafter referred to as "Employer". The **Amalgamated Transit Union (ATU), Local 1287** is hereinafter referred to as "Union".

The Union has been certified as the representatives for the employees of the **Kansas City Area Transit Authority (KCATA)** and, as such, has an AGREEMENT with the employer. The agreement was executed on March 19, 2008 and expired on December 31, 2010. The parties agreed that this issue is covered by the AGREEMENT as the issue occurred during the terms of the agreement.

Using the services of the Federal Mediation and Conciliation Service, Richard E. Hurley, Ph. D., was appointed as Arbitrator.

The parties stipulated that the grievance and arbitration were timely and properly before the Arbitrator.

An arbitration hearing was held in the Large Conference Room in the KCATA's Breen Building at the corner of Forest and 18th Street in Kansas City, Missouri, on June 30, 2011. During the course of the hearing, both parties were afforded full opportunity for the presentation of evidence, examination and cross-examination of witnesses, and oral argument. Witnesses were not sequestered during the hearing.

The parties elected to file post-hearing briefs. The Arbitrator received timely postmarked briefs from both parties. The Arbitrator received both briefs on August 8, 2011.

PERTINENT ARTICLES OF THE AGREEMENT

The Articles are as follows:

ARTICLE 1

Section 1.1 Purpose of Agreement

The purposes of this Agreement are: to assure adequate and dependable local transit service to the public without interruption or impairment by labor disputes or controversies, it being recognized by the parties hereto as a fundamental principal of public utility operation that the public interest is paramount and is not to be adversely affected by any dispute or controversy which may arise hereunder between the parties hereto; to provide procedures for the adjustment of all grievances and disputes arising hereunder, including final resort to arbitration if necessary, to recognize the Union as the duly certified collective bargaining agency for the classifications of employees in the collective bargaining unit and to provide for its security, to prescribe the wage rates, hours of work, working conditions and other conditions of employment for said classifications of employees; and to set forth various other provisions relative to the rights, privileges, duties and obligations of the contracting parties hereto and of those affected hereby; all upon the terms and conditions hereinafter stated.

Section 1.12 Management - Discipline (in part)

(b) The Union further recognizes that the power of discipline is vested exclusively in the Authority, and it will not attempt to interfere with or limit the Authority in the discharge or discipline of its employees for just cause; subject, however, to the right of any employee to whom this Agreement is applicable and who may be discharged or disciplined, to present as a grievance, for action in accordance with the grievance procedure hereinafter in Section 1.13 set forth, the question whether he has been discharged or disciplined for just cause; but neither (a) the appointment, promotion, demotion, discharge or discipline by the Authority of any individual to or in any official, supervisory or other classification excluded from the collective bargaining unit of employees to which this Agreement is applicable, nor (b) the retention in service, discharge or suspension by the Authority of a probationary or temporary employee (as defined in

Section 1.5), shall present a grievance hereunder or be subject to the provisions hereof, and the Authority's action in relation thereto shall be final; nor shall any other discipline imposed upon a probationary or temporary employee present a grievance hereunder or be subject to the provisions hereof unless it is claimed that the discipline thus imposed violates any other provision of this Agreement.

Section 1.13 Grievances (in part)

Any employee to whom this Agreement is applicable and who claims to be aggrieved by any action of the Authority or its officials, whether occasioned by discharge, suspension or other discipline or whether because of alleged unjust treatment or failure to apply to him any of the benefits of this Agreement to which he believes himself entitled, may proceed in accordance with the following grievance procedure.....

...5. All costs for the hearing and service of the Arbitrator shall be borne by the parties jointly. Each party will bear the expense of its representatives and for the presentation of its own case.

OTHER PERTINENT DOCUMENTS

Co-exhibit number 2. Manual of Instruction Operating Rules and Discipline Code

Co-exhibit number 3. Policy Bulletin No. 1-95. Revised Accident Remediation and Discipline Policy

Co-exhibit number 4. Department of Revenue *Driver Guide*

Co-exhibit number 5. Special Safety Rules

Co-exhibit number 7. Introduction/Table of Contents (from training manual)

Co-exhibit number 10. KCATA Occurrence Report (grievant)

Co-exhibit number 11. KCATA Occurrence Report (other driver)

Co-exhibit number 13. KCATA Supervisor's Special Report

Co-exhibit number 14. Transportation Department Operator's Report Form (Other driver eye witness account)

Co-exhibit number 15. KCATA Road Supervisor's Accident Report (Holman)

Co-exhibit number 17. KCATA Supervisor's Special Report (Tommy Hill)

Co-exhibit number 21. K. C. Police Department Uniform Accident Report

Co-exhibit number 22. K. C. Police Department Investigative Report

Co-exhibit number 24. KCATA Avoidable Accident Analysis

Co-exhibit number 27. KCATA Formal Disciplinary Notice

Co-exhibit number 28. ATU 1287 Grievance Form

Co-exhibit number 29. KCATA Third step grievance response

BACKGROUND

This Arbitration hearing is being used to resolve an issue that resulted due to a recommendation by the Employer to terminate Mr. Warren, the Grievant, from his position of Bus Driver as a result of a vehicle accident allegedly caused by inappropriate action of the Grievant. On Sunday, November 7, 2010, Mr. Gabriel Warren was a Bus Operator for KCATA and in the conducting of his job responsibilities; he was the driver of a KCATA bus that was involved in an accident with a 2nd KCATA bus.

ISSUE

The issue to be resolved in the present arbitration is whether or not the Grievant was terminated for just cause and, if not, what is the appropriate remedy.

POSITIONS OF THE PARTIES

UNION

The Union contends that the Agency did not properly consider the causes of the accident and the involvement of the Grievant.

The Union contends that the Agency did not provide "just cause" for their determination to terminate Mr. Warren.

The Union contends that the manner in which the Agency determines discipline does not treat similar incidents consistently and is arbitrary in determining the factors which, for the most part, are outside the conduct of the driver.

The Union contends that although Mr. Warren does not have lengthy seniority service, he does have extensive experience at operating other types of heavy equipment and vehicles.

The Union contends that Mr. Warren has consistently avowed that he did have the green light in his favor. He also states he had a restricted view of cross traffic and by the time he saw the other bus, he had almost no time to react.

The Union contends that when the accident did occur, Mr. Warren exhibited skill and reactions to minimize further damage and injuries in spite of the bus being inoperable.

The Union contends that the Agency's determination that this accident was a "major avoidable accident" is flawed and based upon poor audio/video presentation and witness testimony that followed the flawed evidence.

The Union contends that the Agency has failed to prove that the accident was avoidable and that it was caused by Mr. Warren's incompetence.

Therefore, the Union contends that the discharge is inappropriate and the grievance should be upheld and Mr. Warren reinstated.

COMPANY

The Company contends that the Grievant had been properly and extensively trained in the correct operation of his vehicle.

The Company contends that the Grievant's actions of either intentionally running a red light or being sufficiently inattentive to his surroundings caused the accident.

The Company contends that the Grievant's actions were so egregious that the accident was clearly "avoidable" in nature, thus justifying termination on his first offense.

The Company contends that the Grievant, even though he maintains that he had the green light in his favor, ignored the training that he should carefully enter an intersection and look for cross traffic.

The Company contends that their investigations were extremely thorough and complete to insure that they render an accurate depiction of what happened to cause the accident.

The Company contends that the community served by the Employer expects that they be safely transported at all times and for the Employer to take appropriate actions to assure that safety.

The Company contends that the Grievant does not have long seniority tenure or a history of successful operations to justify a "second chance" for his actions.

The Company contends that the Company is justified in its decision to terminate the employee and that their decision does not violate the terms or intent of the Labor Agreement. As such, they feel the Arbitrator must deny the grievance.

DISCUSSION

As previously stated, On Sunday, November 7, 2010, Mr. Gabriel Warren was the driver of a KCATA bus that was involved in an accident with a 2nd KCATA bus.

Both busses entered an intersection of two cross streets at the same time, creating a very severe accident with resultant injuries to several passengers and both drivers. The accident caused several individuals to be taken to the hospital for treatment and observation for injuries sustained. Due to the extent of damage and injuries, several separate accident investigations were conducted by KCATA personnel and by the Kansas City police department.

The investigators were aided by the presence of several cameras located in and on the bus which was struck by the Grievant's bus. The first evidence showing that the incident was the fault of the Grievant was that the video showed that the 2nd bus had a green light an instance prior to it entering the intersection, thus providing logical evidence that the Grievant's signal must have been red. While the Grievant maintained emphatically that he had observed a green light in his direction, the investigators enlisted the assistance from the Kansas City traffic department. The traffic engineer, Mr. Srinivasa Veeramallu, testified about the timing of the lights and gave lengthy descriptions of how the light changes are coordinated electronically by internal computers and how there are test parameters which could reveal in, in fact, that the light might have malfunctioned on the day and time of the incident. He reiterated that he had never seen an occurrence of that type malfunction (*by showing green in all directions*) and that the system is programmed to not allow for a malfunction and, as such, is "almost impossible to happen". He did also state that when the system detected a malfunction of any kind, the system would cause the lights to flash RED in all directions.

Further, there was a 3rd KCATA bus driver (co-exhibit #19) who wrote in his Transportation Department Operator's Report Form that he was travelling the same direction as Grievant's bus and he saw a "red light on the south bound route" (the direction of Grievant's bus).

The irrefutable evidence and testimony of the bus videos, the police officer investigation, the traffic engineer, and the eye witness report of a fellow bus driver is overwhelmingly convincing that the Grievant did, in fact, run a red light and, consequently, cause the traffic accident. The KCATA management staff, based upon rules and calculations used for the determination of disciplinary sanctions then calculated that the appropriate sanction for such a serious, avoidable accident was termination.

AWARD

Having heard or read and carefully reviewed the evidence, testimony, and argumentative materials in this case and in light of the above discussion, the grievance is denied and the termination upheld.

The Arbitrator maintains jurisdiction regarding any issues arising from this award for a period of 30 days from the issuance of the decision.

Dated: August 15, 2011

Richard E. Hurley, Ph. D., Arbitrator