

**IN THE MATTER OF ARBITRATION BETWEEN:**

<b>Kansas City Area Transportation Authority</b>	)	
	)	<b>Ronald Love Grievance</b>
	)	<b>Suspension</b>
<b>and</b>	)	
	)	
<b>Amalgamated Transit Union. Local 1287</b>	)	<b>FMCS No. 060426-03229-7</b>
	)	
	)	

Hearing held January 24, 2007

**APPEARANCES FOR COMPANY:**

Jeff Place, Attorney  
Bob Kohler, Director of Transportation, KCATA  
Tommie Hill, Senior Supervisor of Transit Operations, KCATA  
Gloria Young, Mgr. of Safety and Instruction, KCATA  
Terry Storey, Secret Rider, KCATA

**APPEARANCES FOR UNION:**

Scott Raisher, Union Attorney  
Ronald Love, Grievant  
William Wilson, President/Business Agent

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**I. ISSUE**

Whether the Authority's suspension of the Grievant, Ronald Love, was for just cause; and, if not, what remedy shall issue?

**II. APPLICABLE CONTACT PROVISIONS**

**ARTICLE I General Provisions**

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**Section 1.12 - Management - Discipline**

- a. The Union recognizes that the management of the business, including the right to direct the working forces, to prescribe, effectuate and change service and work schedules consistent with and not contrary to any specific provisions contained in this Agreement, to plan and control corporate operations, to introduce new or improved facilities or operating methods, to relieve employees from duty because of lack of available work or for other legitimate reasons, to transfer them, to determine the minimum qualifications of experience, health and physical and mental fitness for any job covered hereby and to appraise the qualifications of any individual therefor, is vested exclusively in the Authority; subject, however, to the seniority rules and grievance procedure hereinafter set forth as concerns any employee to whom this Agreement is applicable and who may be relieved

from duty or transferred or whose qualifications may be questioned.

- 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.
- e. Warning slips may remain in an employee's file but shall not be considered after twelve (12) months for the purpose of progressive discipline, but may be considered in reviewing the employee's record only for determining whether moderation of discipline is warranted.

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### **Manual of Instruction, Operating Rules and Discipline Code**

#### Overview of Discipline and Expectations

The work rules and policies provide a framework of guidance to accomplish our primary goal of quality transit service. The myriad of rules may seem haphazard. However, these expectations all support one of seven performance areas. Therefore, for a successful and rewarding career with the Metro, an operator should strive to meet objectives in the following areas:

1. Safety
2. Courtesy and Professionalism
3. Reliability
4. Honesty
5. Observing the Law
6. Operating Procedures
7. Meeting Employment Qualifications

### 1. Safety

1.4 An operator shall not violate or disregard safety rules or common safety practices (This includes failure to wear seat belt.)

First Offense - One (1) day suspension, or warning notice and special instruction from Safety Officer.

Second Offense - Suspended three (3) days.

Third Offense - Discharge.

### 6. Operating Procedures

6.8 Operators will announce major street intersections and stops as required by the Americans With Disabilities Act, as well as comply with all requirements of the Act as set forth in Policy Bulletin #58-94.

First Offense - Written Warning.

Second Offense - Suspend one (1) day.

Third Offense - Suspend three (3) days.

Fourth Offense - Discharge.

## **III. FACTS**

Kansas City Area Transit Authority (Authority) and the Amalgamated Transit Union Local 1287 (Union) are parties to a collective bargaining agreement (Joint Exhibit 1). The Union represents most of the Authority's hourly employees, including bus operators. The Grievant, Ronald Love, is a bus operator with over 29 years of service with the Authority. The Grievant is also a member of the Union's Executive Board and possesses an overall excellent performance record. (Joint Exhibit 15).

The Authority promulgated in 1995 a Manual of Instruction, Operation Rules and Discipline Code for the Authority's Bus Operators. In the manual's section on Safety, Rule 1.4 reads that "[a]n operator shall not violate or disregard safety rules or common safety practices. (This includes failure to wear seat belt.)." Under the Operating Procedures section, Rule 6.8

states that “operators will announce major street intersections and stops as required by the Americans With Disabilities Act, as well as comply with all requirements of the Act as set forth in Policy Bulletin #58-94.” (Joint Exhibit 2).

The Authority also published a Bulletin on January 8, 2001 and on March 1, 2004 reminding bus operators “to announce the major intersections” to comply with the American’s With Disability Act (ADA). The Bulletin required “the announcement to be loud enough for persons sitting in the disabled sitting area to hear.” On October 8, 2004, the Authority reminded bus operators of Rule 6.8 and the requirement to make intersection announcements (Joint Exhibit 3). The Union also advised its members that the ADA requires bus operators to “call out all major intersections and transfer points it’s not the K.C.A.T.A.’s rule, it’s the LAW!!!” (Joint Exhibit 4 and Joint Exhibit 14).

On June 17, 2004, Secret Rider Storey, a Captain in the Independence Police Department, was employed by the Authority “to conduct an investigation of a complaint of a bus driver not calling out major streets or stops.”<sup>1</sup> Secret Rider Storey told the Authority that the Grievant failed to call out stops or wear his seat belt (Joint Exhibit 5). On June 30, 2004, the Authority issued the Grievant a written warning for failure to announce stops and for failure to wear his seat belt (Joint Exhibit 6). The Union filed a grievance on the Grievant’s behalf, but the Grievant did not deny that he failed to wear his seat belt. The Grievant and the Union ultimately withdrew the grievance.

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<sup>1</sup>Secret Rider Storey reports that the Authority advised him that as a secret rider he was to check for bus operator compliance with calling all stops, wearing seat belts, speaking courteously with customers, not using a personal cell phone, and not eating or drinking while driving.

On October 21, 2004, Secret Rider Storey was assigned to “monitor the job performance of [the Grievant].” Secret Rider Storey reported to the Authority that “the trip was uneventful” (Joint Exhibit 7).

On January 13, 2006, an assault occurred on an Authority bus after a rider (Osborne) had a verbal exchange with the bus operator. Another passenger on the bus confronted Osborne and punched Osborne in the mouth. The Authority decided to conduct an investigation into the assault on Osborne in an attempt to identify and apprehend Osborne’s assailant and to determine whether the assailant had any relationship to the bus operator. The Authority was concerned that perhaps the bus operator did not stop the bus and call for assistance after the assault because she had a relationship with the assailant.

On January 18, 2006, Senior Supervisor of Transit Operations Hill assigned Secret Rider Storey to investigate the assault that had occurred on January 13, 2006. Secret Rider Storey was to accompany rider Osborne on the bus route he had ridden on January 13, 2006 to see if they could identify the assailant. However, the regularly scheduled bus driver was absent on January 18, 2006 and the Grievant, who was working the extra board, was assigned the run.

At about 5:20 p.m. on January 18, 2006, Supervisor Hill and Secret Rider Storey met rider Osborne at 11th and Grand. At about 5:30 p.m., Osborne and Storey boarded the Grievant’s bus. Osborne sat behind the Grievant and Secret Rider Storey sat down “near Osborne.” Storey reported that the Grievant “did not have his seat belt on, nor did he put it on while [Storey] was on the bus.” Secret Rider Storey also reported that “the driver never called out any streets or stops” (Joint Exhibit 8).

On January 25, 2006, Supervisor Hill met with the Grievant to discuss Secret Rider Storey's report concerning the bus trip on January 18, 2006. The Grievant told Supervisor Hill that the Secret Rider "was lying, that he wore his seat belt, and that the Annunciator (sic) called out the stops."<sup>2</sup> The Grievant also told Supervisor Hill "that he was certain he was wearing his seat belt because he saw [Supervisor Hill] at 11<sup>th</sup> and Grand and he then knew that a Secret Rider was on his bus" (Joint Exhibit 8).

On January 26, 2006, the Grievant was suspended one day for the seat belt violation and scheduled for one day of remedial training for the calling out violation (Joint Exhibit 8).

On February 1, 2006, the Union filed a grievance on the Grievant's behalf regarding his failure to wear a seat belt and his failure to call out stops (Joint Exhibit 9). On February 8, 2006, a second step hearing was held. The Grievant told the Authority that he had called out the stops. On February 10, 2006, the Authority denied the grievance (Joint Exhibit 10). On February 17, 2006, a third step hearing was held. The Grievant told the Authority he wore his seat belt and called out stops. The Grievant also claimed at the hearing that the AAS was working, but that he also called out the stops. On February 23, 2006, the Authority once again denied the grievance.

On January 24, 2007, the parties submitted this matter for final and binding arbitration. At the arbitration hearing, the parties stipulated that the matter was procedurally properly before

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<sup>2</sup>The Authority busses have a digital radio system which includes a Global Positioning Satellite based automatic vehicle location feature. This system supports an Automated Annunciation System (AAS) that is capable of announcing all of the required intersection transfer points. However, the AAS is not entirely reliable and therefore the Authority has instructed bus operators that they must make voice announcements of intersections and transfer points whenever the AAS is not working.

the Arbitrator.

#### **IV. POSITION OF THE PARTIES**

##### **A. Authority**

The Authority argues it has demonstrated by the preponderance of the evidence that the Grievant was not wearing his seat belt and that he failed to call out stops on January 18, 2006. The Authority insists that Secret Rider Storey was a credible, reliable witness who had no motive to fabricate allegations concerning the Grievant. The Authority notes that Storey has filed reports both when a driver has or has not worn a seat belt.

As to the fact that Storey was the only witness to the events of January 18, 2006, the Authority asserts that there is no evidence that Storey made a mistake on this occasion or that Storey misperceived the events on January 18, 2006. The Authority posits that the Union is really asking the Arbitrator to invalidate the Authority's long standing use of the Secret Rider Program. The Authority vigorously concludes that if the Authority cannot rely on a one person Secret Rider's report of a violation, then the Authority would be striped of its most effective, long standing tool for monitoring the job performance of the Authority's bus operators.

The Authority maintains that an assessment of the comparative motives of Secret Rider Storey and the Grievant as well as the evidence demonstrate that it is far more likely the Grievant committed the violations with which he is charged than that he did not commit the violations.

In conclusion, the Authority contends it has established by the preponderance of the evidence that the Grievant violated its work rules. Accordingly, the Authority requests that the



grievance be denied in its entirety.

### **B. Union**

The Union submits that there is reasonable doubt raised by the evidence which causes the Authority to fail to meet its burden of proof in this suspension arbitration. In particular, the Union points out that there are only two witnesses who recollect what occurred on January 18, 2006. The Union insists that it is the Grievant's testimony concerning the events on January 18, 2006, which is the more credible testimony.

The Union suggests that although the Grievant may have an interest in the outcome of this arbitration, the Secret Rider also has a very real interest in the arbitration's outcome. Specifically, the Union claims that Secret Rider Storey is not a disinterested, neutral witness as Secret Rider Storey is a paid Authority employee as well as a long time friend of Supervisor Hill.

The Union does not question Secret Rider Storey's veracity, but the Union does assert that Storey is not immune from making a mistake or from misperceiving the events of January 18, 2006. The Union insists that Storey may have misperceived the events on January 18, 2006 because of noise or where he was sitting on the bus. As to whether the Grievant was wearing his seat belt, the Union points out that the Grievant's jacket or sweater may have partially covered the seat belt and obstructed Secret Rider Storey's ability to see the seat belt clasp.

The Union argues the Grievant's suspension should not depend solely on the word of a single witness, especially the unsubstantiated recollection of an Authority witness. Therefore, the Union requests that the grievance be sustained as the Authority has failed to meet its burden of proof. The Union requests that the Grievant's suspension be set aside and that all pay and

benefits lost by the Grievant be restored to him. The Union also requests that the Arbitrator retain jurisdiction to address any questions that may arise regarding implementation of the award.

## V. ANALYSIS AND DECISION

The issue to be decided in this arbitration is whether the Authority had just cause to suspend the Grievant, Ronald Love, for one day for failure to wear his seat belt and to assign the Grievant to remedial training for failure to announce intersections and transfer points. As this is a discipline case, the authority bears the burden of proving that the Grievant committed the misconduct for which he was disciplined and that the penalty imposed was reasonably related to the misconduct. Greater Dayton Regional Transit Authority, 123 LA 948 (Bell, 2007).

At the outset, it is important to note that this arbitration is not about whether the Authority's rules on seat belts and intersection announcements are reasonable. Further, this arbitration is not about the validity of the Authority's Secret Rider Program. As Arbitrator Nicholas has discussed in a Metropolitan Transit Authority, arbitrators have upheld bus surveillance programs as these programs are "essential for the safety of the public" and "open identification of the spotters would destroy the effectiveness of the system". Metropolitan Transit Authority, 88 LA 361, 365 (1987) (citing Elkouri & Elkouri, *How Arbitration Works*, 270 (3rd Ed.)).

What this arbitration is about is the credibility of the only two witnesses who testified as to the events on January 18, 2006. Only Secret Rider Storey and the Grievant testified and so this case hinges on the credibility of their testimony and the surrounding evidence. As

Arbitrator Najita has written, a determination of witness credibility involves an evaluation of the witnesses' interests, their perceptions, any inconsistencies in their testimony or the evidence, and their demeanor. Oahu Transit Services, Inc., 122 LA 161 (2005).

Both the Union and the Authority acknowledge that bias is a factor to evaluate in this credibility determination. But as expected, the parties disagree as to how these interests should be evaluated by the Arbitrator. The Authority points out that Secret Rider Storey had no motive to fabricate that the Grievant was not wearing a seat belt or that he failed to call out intersections. Moreover, the Authority insists that there was no evidence that Secret Rider Storey held any animus toward the Grievant. As to the Grievant, the Authority reasons that he has a vested interest in the outcome of the arbitration as he desires for the suspension to be removed from his record. Accordingly, the Authority submits that Secret Rider Storey's testimony should be deemed the more accurate and fair testimony. The Union, on the other hand, challenges the disinterestedness of Secret Rider Storey as the Union asserts Storey has a motive to misperceive as he is a paid Authority employee and his close friend is Supervisor Hill. This is a close call but it is not the only or determining factor in this credibility decision.

As to the witnesses' ability to perceive reliably the events of January 18, 2006, the Union notes that Secret Rider Storey could have misperceived the events due to the noise and the crowded conditions on the bus as well as Secret Rider Storey's vantage point for observing the Grievant. The Union points out that Secret Rider Storey most likely was seated past the seats reserved for disabled riders and so his view of the Grievant's seat belt buckle may have been obscured and his ability to hear the announcements may have been significantly diminished. This latter proposition is especially important, the Union argues, as the Grievant's verbal

announcements needed only be audible to the riders in the disabled riders section. Furthermore, the fact that the events occurred in the Winter suggest the Grievant may have worn apparel which could have covered and concealed the seat belt buckle. Finally, Secret Rider Storey should have been focused on trying to identify rider Osborne's assailant rather than focusing on the Grievant's driving performance as this was not his job assignment for this trip.

As to inconsistencies, the Grievant's declaration to the Authority at the second and third step meetings were inconsistent as to whether the AAS system was operating and whether the Grievant or the AAS system called out the stops. Otherwise, both the Grievant and Secret Rider Storey's testimony at the hearing was clear and convincing.

As to the demeanor of the Grievant and Secret Rider Storey, both witnesses presented their testimony in a credible fashion. The Grievant has a long, solid work record and reputation at the Authority and within the Union. The Grievant's honesty is underscored by his admission on June 17, 2004, that he was not wearing his seat belt. The Grievant also testified credibly that he encouraged his fellow Union members and bus operators to be sure to announce intersections and transfer points. On the other hand, Secret Rider Storey also has a solid reputation as a Captain with the Independence Police Department. Moreover, Secret Rider Storey testified credibly and consistently.

Thus, on the critical issue of credibility, this is a very close call. Both the Grievant and Secret Rider Storey were credible and believable. Under normal surveillance circumstances, the Authority might prevail in its burden of proof but under these circumstances, including that the surveillance was not originally designed to focus on the Grievant's driving performance and that there was a potential collaborative witness in rider Osborne, the Arbitrator holds that the

Authority has failed to meet its burden of proof that the Grievant failed to wear his seat belt or announce the intersections.

As a consequence, the grievance must be sustained.

#### VI. AWARD

The grievance is sustained. Grievant Love will be set aside and all pay and benefits lost as a result of this suspension will be restored. The Arbitrator will retain jurisdiction to address any questions that may arise regarding implementation of the award.

A handwritten signature in cursive script, appearing to read 'R. G. Bailey', is written over a horizontal line.

Robert G. Bailey, Arbitrator

June 18, 2007