

ARBITRATION OPINION AND AWARD

KANSAS CITY AREA
TRANSPORTATION AUTHORITY

and

AMALGAMATED TRANSIT UNION
Local No. 1287

* FMCS File No.: 060223-02221-7
*
* Hearing Date: July 20, 2006
*
* Briefs Received: October 10, 2006
*
* Award Date: November 17, 2006

Before the Board of Arbitration

Ms. Fern M. Kohler for the Authority

Mr. William L. Wilson for the Union

Mr. Josef Rohlik, neutral arbitrator

Appearances:

For the Company: Jeffrey M. Place, Esq.
For the Union: Scott A. Raisher, Esq.

BACKGROUND

This grievance comes from the Kansas City Area Transportation Authority (hereinafter referred to as the Authority). The Union protests the two and one half day suspension of Ms. Twynette Yates, the Grievant, as being without just cause, in violation of the August 26, 2005 Agreement between the Parties. The arbitration hearing was held in Kansas City, Missouri. The Parties waived the 30 day time limit on the issue of the award, and the neutral arbitrator so noted in the record.

The Parties stipulated that the issue was “whether the Authority had just cause for the November 1, 2005 suspension of the Grievant, and, if not, what should the proper remedy be?”

Article 1 of the Agreement reads in part:

Section 1.12. Management - Discipline.

(...)

(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...

(...)

(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.

(...)

(g) If, after discussion with the employee, it is evident disciplinary action is indicated, the employee will be told to contact a Union representative before finalization of the disciplinary action. It is understood that the employee has the right to waive Union representation if he so desires.

(h) Employees shall be called in and notified in writing of any disciplinary actions placed in the employee's record. Customer complaints that have not been investigated and verified shall not be used as a basis for disciplinary action.

(...)

(b) Regular Arbitration. Each party shall, within five (5) days of the Union's notice of intent to arbitrate, appoint a member of said Arbitration Board and deliver written notice thereof to the other party, or otherwise forfeit its case. The two (2) members thus appointed shall forthwith proceed to select an additional member of the Board (who shall be an impartial and disinterested person)...

There is a 1995 Manual of Instruction, Operating Rules and Discipline Code (Jt. E 2): The

"Discipline Code" has multitude of rules followed by penalties (pp. 36-46). It reads in part:

SECTION VII - ATA DISCIPLINE CODE

A discipline code has been developed to standardize types of penalties for various violations and to inform ATA employees of penalties that may be imposed for successive violations of rules and regulations. It should serve as a guide to employees and supervisors involved in disciplinary matters. The code should be regarded as indicative of the various types of violations and not enumerative of the entire range of possible violations. The code should not be considered a hard and fast limitation upon supervisory personnel in dealing with disciplinary matters. Penalties for multiple violations occurring at the time or similar time will be dealt with only after a review by the Director of Transportation. Whenever disciplinary action is contemplated, the supervisor should consider the employee's total record and work history before determining the penalty. It is most important that supervisors review the entire work record and determine whether a particular violation is an isolated instance in an otherwise good work record or is indicative of a continuing pattern of violations.

OVERVIEW OF DISCIPLINE AND EXPECTATIONS

(...)

- 2.3 Conduct unbecoming an Authority employee, such as threatening, intimidating, coercing fellow employees and passengers, distracting attention of others, shouting, use of profanity will not be tolerated. (This list is not all-inclusive.)

First Offense:	Suspend one (1) day to three (3) days, depending upon severity
Second Offense:	Discharge

(...)

- 2.5 Customer service reports (complaints) when investigation reveals report is valid will result in discipline.

First Offense:	Written warning
Second Offense:	Suspend one (1) day to be served in the Training School at the student rate with an Instructor.
Third Offense:	Suspend three (3) days
Fourth Offense:	Discharge

(...)

3.1 Running one (1) minute or more ahead of schedule or pulling vehicle into garage early is a schedule violation.

- First Offense: One (1) minute up to three (3) minutes ahead of schedule: Written warning
- First Offense: Four (4) minutes or more ahead of schedule. Suspend one (1) day
- Second Offense: Suspend three (3) days
- Third Offense: Suspend five (5) days
- Fourth Offense: Discharge

(...)

3.5 Operators will not sleep while on duty without permission.

- First Offense: Suspend three (3) days
- Second Offense: Discharge

(...)

6.5 Operators will not refuse to allow a passenger to board bus at designated stop or at the end of the line while bus is taking layover or on specified loops on certain routes.

- First Offense: Written warning
- Second Offense: Suspend three (3) days
- Third Offense: Discharge

(...)

CONCLUSION

No manual of instruction could possibly cover all acts of improper behavior. Therefore, a lack of knowledge of rules or failure to exercise reasonable judgment will not be an excuse for improper, immature behavior. In addition, any employee engaging in illegal, immoral, indecent, improper, dishonest or offensive acts, although said action is not specifically named in this manual, will be subject to discipline or discharge if, in the opinion of management, such action is deemed necessary.

The Authority provides bus transportation in the Kansas City area. It has close to 300 buses, one hundred of them have a camera inside. There are some 500 full time and part time operators.

In the downtown Kansas City area there is a multitude of one way streets. Consequently, the buses drive on different streets inbound to the end of the line than on the outbound streets; in other words buses drive through a loop. This leads to the situation where a passenger who wants to ride to an outbound location may want to enter the bus at an inbound stop downtown. It is undisputed that customers may pay only once going through the loop. There is a monthly pass. The following is written on the monthly pass (Jt. E 23):

PASS good for unlimited rides during month of issue. Additional fare may be required. Holder not entitled to a transfer. Retain pass throughout ride. The Metro has right to collect or exchange pass. No refunds. No replacement. Reduced Farecard holder must show reduced farecard when buying and using reduced fare pass.

The Authority uses “secret riders” to monitor operators on selected buses. Secret rider is a paid part time job. Secret riders make notes while they are on buses. Ultimately, they prepare reports which are given to Sharon Teague who is the Customer Service Supervisor.

The Grievant has July 2003 seniority. Throughout her employment she has been a part time operator.

The undisputed evidence documents that the Grievant was specifically instructed on loop riding (apart from the provisions of the Manual) in March of 2004 (Jt. E 15), in November of 2004 (Jt. E 18), and again in March of 2005 (Jt. E 19). Joint Exhibit 19 is “Bus Operator Performance Review.” It reads in part:

Superintendent (reviewer) comments: Operator Yates has received several complaints. I called her in on the majority of the complaints. She always has a poor excuse. I have talked to her about loop riding in the downtown area several times. I also have given her a page out of the instructors office about loop riding. I explained about customers with bus passes.

Superintendent (reviewer) signature: Sharon Teague
Date: 3-7-05

On February 9, 2005 the Grievant was suspended for one day for talking on her cell phone. She did not grieve that suspension. On the same day she was suspended for three days for sleeping on duty (Jt. E 7). This suspension was grieved; it was ultimately settled and the Grievant received a one day suspension (Jt. E 8). On May 18, 2005 the Grievant received a one day suspension for running ahead of her schedule (Jt. E 9). This suspension was not grieved. On October 16, 2005 the Grievant got lost and was running late. This resulted in a Customer Service Report. The Grievant also failed to contact a dispatcher (Jt. 12). She received a written warning for the Customer Service Report and a verbal warning for failure to contact a dispatcher, for not following her assigned route, etc. This discipline was also not grieved.

The discipline at issue herein was based on the events of October 19, 2005. The Grievant testified that prior to that date and after that date she has been usually assigned buses with cameras. There was no camera in the bus she was operating on October 19, 2005 on the Blue Ridge express route. In the downtown Kansas City the layover point is at the intersection of Admiral and McGee streets.

Sharon Teague assigned Julliette Breaux as a secret rider for the Grievant's route. Breaux boarded the bus near the intersection of 13th and Cherry streets. Breaux's report to Teague (Jt. E 13) reads as follows:

An investigation was conducted on October 19, 2005. It was bus #9636, 51st Blue Ridge Bus. I caught the bus on 13th Cherry in front of the Federal Building. I entered the bus at 6:55 a.m.

The driver was an African American female in her mid thirties. She was wearing glasses and had a short styled hair-cut.

The following factors were reviewed

Was the driver wearing a seat belt?
Was the driver rude to passengers?
Did the driver call out streets?
Did the driver pick up all passengers?
Was the driver on a cell phone?

The results are as follows

The driver was wearing a seat belt.

The driver was short with me as I entered the bus. She asked me where I was going and I informed her to Blue Ridge. She stated that I could not ride, that she would pick me up on her way back. I informed her that when I called the information line they informed me that I had a bus pass and could ride a complete trip which included the layover. I informed her they told me I did not have to get off the bus. She said great they want to put my safety at risk. She proceeded to drive until the end of her route. At that time she informed me that it was time to get out of the bus. She told me to get off the bus at least two to three times. I suggested that she call her supervisor as they, information line, directed me to suggest. At that point she called her supervisor. The supervisor arrived shortly thereafter. She left the bus and talked with her supervisor. I couldn't hear the entire conversation, however I did hear the supervisor direct her "to apologize to the lady." When the driver returned to the bus, she gave me a smirk. She asked me what was my last name? I asked her why that was important. She said something sarcastic. I said I did overhear your supervisor tell you to apologize to me. She stated that she didn't do anything. I told her she was rude to me, but she said she didn't think so, but she would apologize anyway.

The driver used automated system

The driver picked up all passengers

The driver did not use a cell phone

It must be noted that the driver's speed was fast and she frequently slammed on brakes to the point at times passengers lost their balance.

I exited the bus on 11th and Grand at 8:30 am

An investigative meeting was conducted on November 1, 2005 by Superintendent of Transportation Tom Morgan, with the Grievant and the Union President Willie Wilson present. Morgan's report of the meeting (Jt. E 3) reads in part:

EMPLOYEE Twynette Yates BADGE NO. 558 DATE November 1, 2005

(Describe in detail): On October 19, 2005, a secret rider was assigned to ride with operator #558 Twynette Yates. This action was in response to multiple customer complaints. The secret rider states that the following factors were reviewed:

- Was the driver wearing a seat belt?
- Was the driver rude to passengers?
- Did the driver call out streets? .
- Did the driver pick up all passengers?
- Was the driver on a cell phone?

The secret rider boarded bus #9635 - at 13th and Cherry - at approximately 655am. Upon boarding the bus, the secret rider reports that the bus operator was short with her. The operator asked the passenger where they were going. The passenger replied to Blue Ridge. The operator stated that the passenger could not ride and would be picked up on the way back. The passenger informed the operator that the information center had stated she could ride with a pass (loop riding is permitted) and that she was not getting off the bus. The ::::: replied, "Great they want to put my safety at risk". The operator proceeded to the end of the. line and informed the passenger that she needed to get off the bus (two or three times). The passenger suggested that the bus operator request for a supervisor, at which point a supervisor was dispatched, arriving a short time later. The supervisor talked to the operator off the bus. The passenger heard the supervisor tell the operator to apologize. The operator boarded the bus, gave a smirk, asked for the passengers name, and stated she didn't have anything to apologize for.

Additional Results/Report from the Secret Rider:

- Automated ADA Stop Annunciation System Worked.
- The operator picked up all passengers.
- The operator did not talk on a cell phone.

Finally, the secret rider stated, "It must be noted that the driver's speed was fast and she frequently slammed. on brakes to the point that at times passengers lost their balance".

Meeting: A meeting was scheduled and conducted on Monday, November 1, 2005. In attendance; Willie Wilson (Local 1287, President), Twynette Yates (Bus Operator) and Tom Morgan (Superintendent of Transportation KCATA).

Ms. Yates was about 5 minutes late for the scheduled 10 am meeting Ms Yates inquired about why I was holding her off work and if I had the authority to hold her

off I explained that I was holding her off pending my final determination and processing of the secret rider report dated October 19, 2005 Mr Wilson informed Ms Yates that I had the authority to hold her off without pay.

I gave Ms. Yates a copy of the secret rider report dated October 19, 2005. Ms. Yates read the secret rider report and I asked her to respond. Ms. Yates responded that most of the secret rider report was inaccurate.

Mr. Wilson inquired as to why a secret rider was assigned to ride with Ms. Yates. I explained that I did not assign the secret rider; I believed that Sharon Teague (Customer Service Representative) assigned the secret rider due to the customer service complaint received on October 13, 2005, alleging that Ms. Yates braked hard and sharply each and every time she stopped on October 6, 2005.

Ms. Yates asked what the automated system was? I explained it was the automatic stop enunciation system calling out streets in accordance with ADA.

Ms. Yates inquired about what "The driver was short with me as I entered the bus" as noted by the secret rider report meant. I replied that I have no idea what that means.

Ms. Yates stated that she asks all passengers who board where they are going? Ms. Yates stated that she asked this passenger who boarded at 13th and Cherry where she was going. Ms. Yates informed the passenger that she was inbound and told the passenger where to catch the bus for her outbound trip. The passenger refused to get off the bus. Ms. Yates contacted the radio dispatcher #8 at about 700am Ms. Yates requested a supervisor because she wanted this passenger to catch the bus outbound at 10th and Main. The radio dispatcher informed Ms. Yates that she was required to transport this passenger. Mr. Bell (District Supervisor) arrived and talked to Ms. Yates. He informed her that she needed to apologize to the passenger and transport her. Ms. Yates complied with the instructions of #8 and the road supervisor.

Ms. Yates claims this is the first time that she was made aware of the fact that a passenger can ride around on the Blue Ridge Route. I inquired if the passenger had a transfer or possibly a monthly pass. Ms Yates stated that she did not remember. The secret rider did have a pass and should have been allowed to ride without Ms. Yates asking her on numerous occasions to board elsewhere. Ms. Yates continues to treat our passengers (in this case a secret rider) as if they are a burden. Ms. Yates states that she was unaware that passengers could ride around (loop) and that nobody informed her of this. I informed Ms. Yates that it was her responsibility to know and understand KCATA rules and regulations. She stated, "Show me where it states that I need to let passengers ride around on Blue Ridge." She waived the Manual of Instruction, Operating Rules and Discipline Code (Blue Book) asking me to show

her.

I asked Ms. Yates what a monthly pass entitles a passenger to. She stated that there are routes that passengers may or may not be allowed to ride around on. She stated that is what Sharon Teague told her. I informed Ms. Yates over and over again that we are in business to pick up passengers. Ms. Yates has on numerous occasions been informed about loop riding and, she continues to ignore her basic responsibilities in customer service and safety.

When questioned about the hard braking, Ms. Yates responded by asking if I was familiar with the retarders on the buses. Mr. Wilson stated the retarders are connected with the transmissions and slowed the buses considerably when the accelerator was released. This was the explanation given for Ms. Yates rough stops.

I reviewed Ms. Yates record from about January 2005. Customer service and safety are reoccurring themes with Ms. Yates. I informed her that if her continues that her job was very much in jeopardy.

At that point Ms. Yates stated that this was all about retaliation.

Mr. Wilson stated that the secret riders are sent out to scrounge up something on the bus operator, in other words to find rule infractions. I stated that was not the case and that the KCATA would prefer that the secret rider find no discrepancies. In many cases operators receive commendations based on secret rider reports.

Ms. Yates stated that we were "harassing her, because of Tommie Hill". She claimed I was trying to protect him (Tommie Hill) and building up a case to terminate her. "You are harassing me, taking money out of my pockte," she said.

I would not respond and informed Ms. Yates that was not an appropriate (or relevant) time to discuss matters that did not apply to the secret rider report.

Ms. Yates stated that all I discuss are complaints and never mention her commendations.

Mr. Wilson asked if Ms. Yates could be extended the benefit of doubt and that no other customers had I complained about the day in question when the secret rider rode the bus. I informed Mr. Wilson that I had reviewed Ms. Yates record and if this pattern continues that her job status with the KCATA would be in jeopardy.

Ms. Yates asked me about a Form 288 that she had filed on October 7, 2005. I informed her that I was not aware of this Form 288. She stated that it was sent to Sharon Teague and asked why weren't we responding to her problem passengers

(allegedly calling Ms Yates a bitch) I informed Ms Yates that was unacceptable for her passengers to call her names and that I would follow up with Sharon Teague.

Ms. Yates also requested a complete copy of our records (file) on her. I informed her that she could review the files we have but that I would have to check to see if our procedures dictate copying our files on her and providing copies.

Conclusion: On of the most valuable tools available to operators is the, MANUAL OF INSTRUCTION, OPERATING RULES AND DISCIPLINE CODE. The manual has been discussed with Ms. Yates on numerous occasions. Some of the important areas that Ms. Yates needs to review are;

(...)

DECISION:

Specific Rule Infractions: Safety of others in the performance of duties; Discourteousness; Conduct unbecoming an employee; Violation of rules.

Ms. Yates continues to ignore KCATA's basic operating procedures. Ms. Yates needs to acquire the skills, habits and attitude that will allow her to respond to ATA's customers courteously. Ms. Yates essentially blames management and states that all of the customer complaints are untrue or unfounded. Ms. Yates response and actions towards the secret rider were unacceptable. Ms. Yates, it would seem, does not represent a particularly good fit as a bus operator. Again, the expectation is that Ms. Yates routinely and consistently provides safe, reliable and courteous service. Her overall record supports that she is not fulfilling those expectations. Ms. Yates is hereby suspended for two and one-half days. Days suspended are: 1/2 day on October 31, 2005, 2- days November 1 and November 2, 2005. Ms. Yates will also be scheduled for one day of re-medial training and special instruction from Safety Manager, Ms. Gloria Young. The training will be tailored to help Ms. Yates with customer service skills, KCATA's policies and procedures and basic safe driving skills. The one-day of remedial training will be at Ms. Yates current rate of pay and will be scheduled by Ms. Gloria Young.

In Morgan's "Second Step Response" sent to the Union President (Jt. E 5), Morgan notes that he said "... that she was not being charged with a customer service report" (*id.* at 3). Morgan's Third Step Response (Jt. E 6) includes the following (at 3):

During the hearing, the Union stated that the secret rider was not a customer as such, and therefore the report should not be treated as valid for the purpose of imposing

any appropriate disciplinary measures.

It should be noted that Breaux is also African American. She works for the State of Missouri. She testified that she prepared over 100 reports as a secret rider. Breaux testified essentially as she wrote in her report.

Sharon Teague testified that she had previous discussions with the Grievant on loop riding, and specifically told her that she had to allow passengers to enter the bus inbound when their destination is outbound. Teague received the Breaux report from Breaux and passed it to Tom Morgan. Morgan testified that he mentioned "other things" in his report but that he suspended the Grievant "for doing what she did to Breaux."

It is undisputed that when Breaux insisted on staying on the bus the Grievant called a dispatcher. Such telephone calls are monitored. The transcript of the Grievant's first conversation with the dispatcher reads:

Yates: This is 2863 for a supervisor out at Tenth and Main, I mean Tenth and Walnut.

Dispatcher: Tenth and Walnut. What have we got going there Ms. Twynette?

Yates: I have a passenger on the bus that called me at, um, Eighteenth and Cherry, she is going to 51st and Blue Ridge on the out-bound rout. I have a layover at Admiral and McGee, and I asked her to catch me at Tenth and Main when I come back around. She was informed she was told she was gonna stay on the bus this whole time.

Dispatcher: That is 100% correct.

Yates: Okay. 10-4.

Dispatcher: Okay. Do you still need the supervisor? Twynette, do you still need the supervisor?

It is further undisputed that the Grievant waited for the supervisor to arrive at 10th and Walnut. The

Supervisor's report (Jt. E 21) reads:

I was asked by #8 [the dispatcher] to respond to a call that had come from this operator at 10th and Walnut. After arriving at 10th and Walnut operator Yates was sitting in the seat. I inquired as to what the trouble was on her bus. Yates stated she had a female passenger on the bus that boarded the bus at 13th and Cherry wanting to ride back out on her bus. Yates stated that she told the passenger she had to walk down to 10th and Main and board the bus and the passenger refused. Yates called #8 and ask what she should do about this problem. #8 made it clear the operator was to transport this passenger to her destination. The reason operator Yates stated she was still at 10th and Walnut was she did not want to arrive at Admiral and McGee ahead of schedule. Operator Yates also asked me (Bell), what the rule was about this matter, and I repeated the same thing #8 had told her earlier. Operator Yates then asked, why is it that no one knows what the rules are until they get into trouble. I responded by telling her she may or may not have been told these things in class. The operator felt comfortable with what I had told her and stated she had no problem in transporting the passenger to her destination.

Because the Grievant waited at 10th and Walnut she did not have time to wait at the end of the line.

The Grievant testified that she did not ask Breaux to get off of the bus when Breaux entered it. The Grievant testified: "As I was approaching Walnut other passengers exited. I and the secret rider were only ones on the bus. I asked where are you going, she said Blue Ridge. I said that she should exit and walk a block and catch me in some seven minutes on the outbound part."¹

The Grievant testified that she was concerned about her safety, that she was uncomfortable with "her" on the bus.

The Grievant testified that when Breaux suggested that she call supervisor she called the dispatcher and asked for a supervisor.

The Grievant testified that it was unusual for a passenger to stay on the bus over the layover, that she had concern about her safety and so told the supervisor. The Grievant confirmed that the Supervisor asked her to apologize to the customer. However, the Grievant also testified that loop

¹Transcribed verbatim by the arbitrator.

riding was quite ordinary.

The Grievant testified that she said “you can get off here and catch me outbound, I did not tell her to get off the bus.”

The Grievant confirmed that she did not ask the supervisor to follow her although she was afraid. She added that she was uncomfortable with “this woman,” that she would not be uncomfortable with everybody. The Grievant confirmed that every bus is equipped with radio and a silent alarm.

Union Vice President Freddy Ersery testified that several operators have been assaulted. He also testified that the transmissions of the buses are equipped with retarders which abruptly slow buses when the accelerator is released. Ersery also testified that operators get conflicting advice on loop riding.

The Authority claims that the Grievant was advised several times about the loop riding, and knew what was expected of her. The Authority emphasizes that its primary role is to serve its customers, and that the Grievant has repeatedly failed to pursue this goal.

The Authority claims that the secret rider was credible, and that the undisputed evidence demonstrates that she told Breaux to leave the bus and to walk to an outbound stop. Consequently, the Authority claims, the Grievant committed the act for which she was disciplined. The Authority argues that it cannot accommodate “irrational fears” of its operators and prays that the grievance be denied.

The Union Brief reads in part (at 2):

Frankly, it would be a very simple matter for the Arbitrator to give this case short shrift and simply deny the grievance. After all, we are dealing with a 2 ½ day suspension, a relatively junior employee with a less than perfect work record and a

set of facts that are, for the most part, not seriously in dispute. This case, however, is not as simple as it may first appear to be. Consider the fact that Mr. Morgan chose not to charge Ms. Yates with a customer service complaint in connection with Ms. Breaux's report; as we will point out, the consequences that flow from his choosing not to do so are significant. Consider his unwillingness to cite to specific rules in the Discipline Code to support the suspension, consider the fact that he failed to conduct any investigation whatsoever, consider the fact that he failed to follow the corrective discipline policy reflected in the rules.

Consider the fact that, despite the points raised by Ms. Yates and Union representatives in their meeting with him, Morgan chose not to meet with Ms. Breaux to discuss her report; or anyone from the Maintenance Department or Mr. Adcock, her Instructor, to discuss either the operation of the "retarders" or her driving skills. He could have done all of these things and more in an effort to fully and fairly investigate Ms. Yates response to the charges. Instead, he did nothing.

The Union claims that the Grievant's discipline was based on the Breaux report, namely that the Grievant "(1) was rude and discourteous, especially having asked her to exit the bus and, (2) frequently slammed on brakes to the point that passengers lost their balance." The Union points out that Morgan never interviewed Breaux, and claims that the Authority failed to prove that the Grievant was engaged in any improper driving, and failed to rebut the Union evidence on retarders. The Union points out that Morgan did not cite specific rules the Grievant violated; consequently, in Union's view, the discipline in question is unsupported by specific rules and specific penalties in the Manual.

The Union claims that the Grievant's "record is far better than the Authority suggests."

The Union further claims that Breaux and Morgan "have an interest - and a stake in defending their actions..." That, the Union argues, should be considered in assessing their credibility.

The Union Brief reads in part (at 16-19):

- C. The Authority Has Failed To Prove, By A Preponderance Of The Evidence, That Ms. Yates Violated The "Rules" With Which She Was Charged And Upon Which Her Suspension Was Based.

The Union submits that, whatever Ms. Yates may have done on October 19th, it does not warrant a 2 ½-day suspension. In an effort to justify imposing a suspension of that length, Mr. Morgan charged Ms. Yates with four (4) violations or infractions, although he chose not to rely upon the specific rules set out in the Code (Jt. Ex. 3). The Union submits that Mr. Morgan's doing so was nothing more than a subtle attempt to manipulate the rules so as to impose a suspension not otherwise authorized or supported by the progressive discipline policy. Moreover, reliance upon the alleged violations is a telling admission as to the weaknesses of the Authority's case.

1. Ms. Yates' Alleged "Discourteousness"

In his Step II Decision (Jt. Ex. 5 at 4), Morgan stated that Ms. Yates "was being suspend because of her continual poor interpersonal skills with passengers, specifically, for her inappropriate actions towards the secret rider on October 19, 2005." Based upon the evidence, we do not believe that Ms. Yates acted in an inappropriate manner toward Ms. Breaux. As we will discuss later in this brief (see Section D, pages 21-24), we believe a fair reading of the evidence confirms that Ms. Yates' actions toward Ms. Breaux were not inappropriate. We do not believe her asking Ms. Breaux to exit the bus at 10th and Walnut - even if it was a mistake to do so - was so egregious or rude or offense that it warranted a 2 ½ day suspension. Frankly, we believe Ms. Breaux's recollection of what Ms. Yates' said is either mistaken or overstated.

(...)

What is of particular interest with respect to the charge of "discourteousness" is what Mr. Morgan did not do. Although he frequently referred to Ms. Breaux as both a passenger and a customer - which she was - Morgan chose not to treat her criticism of Ms. Yates' or her report as a customer service report. Indeed, he specifically stated in his Step II decision that Ms. Yates "was not being charged with a customer service report" in connection with the suspension. It becomes readily apparent why Morgan chose not to charge Ms. Yates with a CSR when we look at the relevant rule. Rule 2.5 of the Disciplinary Code (Jt. Ex. 2 at 41-42) specifically provides:

Customer service reports (complaints) when investigation
reveals report is valid will result in discipline.

First Offense:	Written Warning
Second Offense:	Suspend one (1) day to be served in the Training School at the student rate with an Instructor.
Third Offense:	Suspend three (3) days.

We urge the Arbitrator to consider what we believe becomes obvious when we look at the rule. Ms. Yates had only one other customer service report - the CSR of October 6 for which she received a written warning. Had Morgan considered Ms. Breaux's October 19 report to be a CSR, it would have been Ms. Yates second offense for which the appropriate penalty would have been only a one (1) day suspension - not a 2 ½ - day suspension.

(...)

In addition, whether viewed as contractually required or required as a component of just cause, there can be little dispute that the Authority is obligated to conduct a thorough and impartial investigation before imposing discipline. In this case, Morgan conducted no investigation whatsoever, he simply looked at the report submitted by Ms. Breaux and did nothing else. Did Morgan question Ms. Breaux regarding her report to clarify what she had said, especially after meeting with Ms. Yates? He did not. Did he talk to the mechanics or any other Maintenance Department personnel about the retarders, in general, or about the retarders on Ms. Yates bus, in particular? He did not. Did he talk with Mr. Adcock - Ms. Yates' remedial instructor, about her driving? Although he had every opportunity, he did absolutely nothing. He simply chose, in a rather cavalier fashion, to disregard whatever was said by Ms. Yates and her Union representatives. The Union submits he did nothing because Mr. Morgan had no interest in conducting a full, fair and impartial investigation. Mr. Morgan was going to give Ms. Yates a 2 ½ day suspension regardless of what the mechanics or Mr. Adcock had to say.

The simple fact is that the Authority has failed to prove that Ms. Yates drove in an unsafe manner. The Authority failed to identify a single safety rule, procedure or common safety practice that Ms. Yates violated or ignored on October 19th or at any time. Indeed Ms. Breaux noted that Ms. Yates was wearing her seatbelt, a requirement for which an operator can be disciplined for failing to do so. The fact that one or two passengers may have lost their balance when the bus was in motion hardly compels the conclusion that Ms. Yates did anything improper or unsafe. Indeed the "hard braking" described by all the witnesses appears to be the result of the retarders engaging when the operator takes her foot off the accelerator and not the result of Ms. Yates poor driving skills.

In summary, because the Authority failed to prove Ms. Yates' alleged disregard for the "safety of others" - an alleged violation upon which the discipline was based - the Union submits that suspension must be set aside.

The Union equates the charge of "violation of rules" with double jeopardy.

The Union stresses that the Grievant did not order Breaux to leave the bus, but rather politely

asked her, and did “what was required to resolve the confusion - she contacted the dispatcher.”

The Union prays that the grievance be sustained and the Grievant be made whole.

FINDINGS

1. The Union is certainly correct that the Company did not prove that the Grievant “slammed” on the brakes. The Company did not raise this issue at the hearing. While the Union raised the issue of retarders in the testimony of the Grievant and Ersery, the arbitration hearing focused on the Grievant’s effort to have Breaux exit the bus. Morgan testified that he disciplined the Grievant for that action. The arbitrator finds that the Grievant was indeed disciplined for her interaction with Breaux.

2. Breaux was obviously not a “passenger” as the term is used in the provisions covering customer complaints, and as the Union recognized in the Third Step meeting (supra). As a secret rider Breaux was an agent of the Authority with a specific task to evaluate the operator. That is very different from a passenger whose complaint cannot be credited without, at the very least, a discussion with that passenger. The key charge by Breaux, that she was asked to exit the bus, was, of course, corroborated by the Grievant, by the Supervisor, and by the telephone conversation between the Grievant and the dispatcher.

3. The arbitrator concluded that this is not a credibility case. There is no difference between asking a passenger to exit the bus and go to an outbound stop to catch it, and instructing or ordering the passenger to do so. Most ordinary passengers would be hardly able to respond as Breaux did, and would have exited the bus. The arbitrator concluded that having to leave the inbound bus and having to walk a city block and wait for the outbound bus is, to say the least, an obviously unpleasant experience. The key to this case is that the Grievant has been repeatedly instructed on loop driving.

In fact she did not contradict the Company testimony on that point even though she tried to create an impression that she did not know what was expected of her. At one point she testified that nobody, before October 19, 2005, stayed on the bus over the downtown layover. Later, she testified that loop riding was rather ordinary.

4. Essentially, the Grievant's only defense was that she was afraid to be alone with Breaux. In this arbitrator's view the defense of fear could be a weighty affirmative defense if supported by strange behavior of the passenger, a weapon, etc. In this case, however, that defense utterly fails because the Grievant in her discussion with the dispatcher and with the supervisor who arrived to the bus said nothing which could objectively substantiate fear.

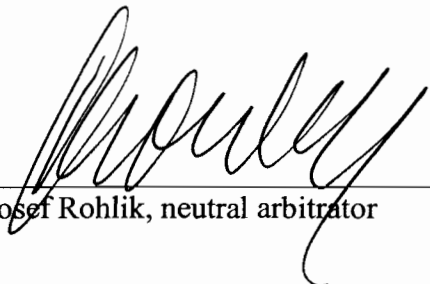
5. The Union claim of lack of investigation has no merit. Excerpts from the record of a lengthy investigative meeting on November 1, 2005 are quoted above. There was no need to meet with Breaux because her principal charge was corroborated.

6. The Discipline Code must be ^erad in its entirety. The arbitrator finds that the Grievant's request to Breaux that she exit the bus and wait for it on the outbound route constituted a Code violation. Given the repeated instruction to this Grievant on loop riding and given her disciplinary record during one year of her short seniority the arbitrator finds that the Authority had just cause for the imposition of the two and one half day suspension. This grievance must be denied.

AWARD

The grievance is denied.

In University City, Missouri
November 17, 2006



Josef Rohlik, neutral arbitrator

Date: _____

I concur _____

I dissent _____

Fern M. Kohler,
Authority Member

Date: _____

I concur _____

I dissent _____

William L. Wilson
Union Member