

IN THE MATTER OF GRIEVANCE ARBITRATION

BETWEEN)	
KANSAS CITY AREA)	FMCS No. 130129-01122-8
TRANSPORTATION AUTHORITY,)	
)	Grievant, Charmane Johnson
Employer,)	
)	ARBITRATION BOARD:
AND)	Hugh J. Perry, Arbitrator
)	Fern Kohler - For the Employer
AMALGAMATED TRANSIT UNION)	Jonothan P. Walker, Sr. - For the Union
LOCAL NO. 1287,)	
)	Award Issued August 10, 2013
Union.)	

APPEARANCES:

FOR KANSAS CITY ATA:
JEFFREY M. PLACE, ATTORNEY

FOR ATU LOCAL 1287:
SCOTT A. RAISHER, ATTORNEY

BACKGROUND

Amalgamated Transit Union Local No. 1287 represents a bargaining unit comprised of drivers, mechanics, clerical and maintenance employees of the Kansas City Area Transportation Authority, including Charmane Johnson, a driver who grieves her discharge on November 9, 2012 for accidents which occurred on October 16th and 31st, 2012. A hearing was held on April 26, 2013 at the KCATA offices in Kansas City. Following testimony and the submission of written and visual exhibits on that date, the parties submitted written arguments which were received by July 7, 2013 on which date the hearing was closed. The parties agree that the matter is properly before the Arbitration Board for an award.

ISSUE

Whether the Employer had just cause to discharge Charmane Johnson for accidents which occurred on October 16th and 21st, 2012 and, if not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Article I - General Provisions

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.....

Manual of Instruction, Operating Rules and Discipline Code

Section I - The Bus Operator

b. Duties:

...

(2) Operate a city transit bus safely, with proficiency, and in a reliable manner.

Section VII - Accidents

KCATA recognizes that public confidence and support depend upon the safe operation of our coaches, the quality of service and the reliability of the operation. The safe operation of our coaches is KCATA's highest priority. A major accident impacts the confidence and support of the general public. To maintain our system's image, it is necessary to increase efforts to improve the safe operation of the coaches. KCATA also recognizes a good operator is a long-term investment. Operator training should provide a high return in performance. Every reasonable effort will be made to provide the necessary training and encouragement to operators so they may be able to operate the coaches safely.

Avoidable accidents are considered major infractions. Major infractions could result in discharge unless KCATU determines that there are unusual circumstances in which other actions may be appropriate.

Of course, suspension or discharge is not appropriate after every accident. Therefore, avoidable accidents will be divided into three categories: minor accidents, moderate accidents and major accidents. If an operator has a major accident or has accumulated enough points to have reached 24 or more points in a rolling 12-month year, the operator will be subject to discharge. If an operator has a minor/moderate accident or enough points, he/she will receive counseling, ride check, retraining, suspension or discharge depending upon his/her current and past record.

1. Accident Prevention

The standard Accident Prevention Formula is:

"See the hazard; Understand the defense; Act in time."

FACTS

KCATA provides bus service to the residents of the Kansas City Metropolitan Area. Local 1287 represents drivers, mechanics, clerks and maintenance employees of the KCATA. There are over 500 bus drivers (450 full time and 100+ part-time) who operate 220 buses per day transporting over 55,000 passengers in the Kansas City area. There are three categories of buses, large (40 capacity), small (30 capacity) and Metroflex, van like buses which carry a handful of passengers. Prior to operating a bus on his/her own, an operator undergoes an extensive seven week training program consisting of classroom work, field work with an experienced operator and finally a one week assessment period to determine if a driver is ready to operate a bus on his/her own. Safety is stressed throughout the training program. The safe operation of buses is considered the highest priority of the KCATA. Accidents involving a KCATA bus are characterized as avoidable or unavoidable. A driver is not faulted for an unavoidable accident. An avoidable accident is assessed against a driver the degree of which is measured by the conduct of the driver, injuries sustained and property damage. A minor accident is assessed 5 points, a moderate accident 7 points and a major accident 24 points. Following an accident, the Safety Manager makes an assessment of a driver's point total over the most recent 12 months to determine appropriate disciplinary action. Progressive remediation and discipline is: 1) All avoidable accidents - counseling, First avoidable accident for each rolling 12-month period - Counseling and Written Warning; 2) 6-10 points - Ride Check and Counseling; 3) 11-17 points - Retraining; 4) 18-23 points - Five Working Days' Suspension; 5) 24 or more points - Subject to Discharge. A KCATA driver averages one avoidable accident every 3 ½ years. Buses are equipped with audio/video cameras for the protection of the drivers and passengers. They record operator and passenger conduct, accidents, road and light conditions and other pertinent data.

The Grievant was a full time operator in October of 2012. She drove a Metroflex, the smallest of KCATA's buses. She was initially hired as a part time driver on August 23, 2010. She undertook the KCATA's 7 week extensive training program. Grievant initially worked as a part time driver. She became full time and had been a full time driver for 18 months prior to October 16, 2012, the entire time driving Metroflex buses. Prior to the accidents on October 16 and 31, 2012, Grievant had no significant disciplinary or accident record.

On October 16, 2012 Grievant was operating her Metroflex in an illuminated YMCA parking lot. At approximately 6:30 AM she took a wide turn in the lot and drove the left corner of her vehicle into the concrete base of an illuminated light. The audio/video on the bus reflected her surprise at this: *What the hell? Did I really do that? and Oh my God, can I believe I just did that?* The total

damage to the vehicle was \$8,096.79. The Employer determined that the accident was avoidable and determined it to be a moderate accident, just barely, giving Grievant the benefit of the doubt (Grievant later claimed it was dark and that her vision was obscured) and because Grievant had no adverse driving record at the time. The Employer assessed 7 discipline points which generated a written warning and required that Grievant undergo *ride check and counseling*. The avoidable accident analysis was completed on October 23rd.

Before the *ride check and counseling* was administered, Grievant was involved in another accident. On October 31, 2012 at 8:45 AM she was driving her Metroflex in a Wal-Mart parking lot. She made a left hand turn and struck a pedestrian parking sign, shearing the sign from its concrete base, causing substantial damage to the fiberglass body of the bus including ripping a hole in the body of the vehicle. The impact caused the vehicle's video equipment to temporarily lose power which resulted in the loss of 90 seconds of video. The conditions that morning were clear and bright. Shortly following the accident, the audio/video recorded Grievant stating to a passenger on the bus: *What is the deal, what is the deal? I do not believe this. I don't even know how I did that. I'm turning. What's wrong with me? I can't drive in parking lots? I cannot believe I just did that. How in the hell did I do that? Oh my-god! It's not dark outside today. I don't have no excuse. How the hell did I do that?* Grievant later suggested that she might have been distracted by a discussion with a passenger. Also, later, in defense or mitigation of her conduct, she raised a medical condition (eye infection), some personal problems that she was having at home and problems she was having adjusting her bus seat that date. The Employer took into account Grievant's claims in its investigation (Grievant did not mention the eye infection until later in the investigation, it was diagnosed on November 26th and Grievant showed up for work on the 31st to drive. A driver can ask for assistance with a bus if there is a problem before it leaves the garage. Grievant did not do this with respect to the seat. She indicated the seat was somewhat uncomfortable but didn't pose a safety hazard. Grievant's personal problems are unfortunate, but when a driver shows up to work, personal problems must be set aside and a driver must concentrate on the task at hand, i.e., the safe and competent operation of his/her bus.) Again, the Employer determined that the October 31st accident was avoidable. Damage to Grievant's vehicle was \$10,165.50. The Employer characterized this as a major accident and assessed Grievant 24 discipline points, bringing her total to 31, all incurred within a period of 15 days. Based upon two avoidable accidents within such a short period of time and a disciplinary point total of 31, the Employer concluded that it would not be safe to put Grievant back in a bus. She was discharged effective November 9, 2012. A grievance was filed on her behalf that same day, contending that the discharge was unjust and requesting that Ms. Johnson be reinstated with all wages, benefits and seniority restored.

POSITIONS OF THE PARTIES

The **Employer** contends that it had just cause to discharge the Grievant. She was the sole cause of both accidents which raises serious doubt regarding her ability to operate a bus safely. Both accidents involved collisions with fixed objects, one in an illuminated parking lot and the other in broad daylight. Both occurred in parking lots which call for special alert because of pedestrians and the absence of sidewalks. KCATA can't wait until someone is seriously injured to remove Grievant from her position. She has demonstrated that she cannot be relied upon to operate KCATA's buses safely. There is no rational excuse for either accident. Her claims of an eye infection, personal problems and problem adjusting her seat were considered and found to be without merit. Grievant's termination is regrettable. It was not undertaken lightly. However, when considering the safety of the public and Grievant's responsibility for two serious avoidable accidents within a short period of time, the Employer has no real alternative. KCATA had just cause to terminate Charmane Johnson. The grievance must be denied.

The **Union** notes that both accidents were unfortunate and regrettable, however, accidents do not provide an exception to the requirement that Grievant's discharge must be for just cause. The Employer must establish not only is Grievant guilty of the misconduct charged, but must also establish that her discharge, instead of some lesser penalty was warranted and required. Despite the fact that the video was viewed the next day following the October 16th accident and that the Employer had opportunity to speak with the Grievant after that, two weeks elapsed without counseling or intervention. Yet it took only 8 days following the October 31st accident to investigate and assess the accident and determine that Grievant should be discharged. Fairness and the principles of progressive and corrective remediation required that KCATA promptly meet with Grievant, share concerns with her and give her an opportunity to remedy her mistakes. Had KCATA promptly met with Grievant following the first accident and given her the opportunity to correct her mistakes, the second accident might not have happened. The grievance should be sustained. The discharge should be set aside and Grievant should be reinstated with restoration of seniority, pay and benefits.

DISCUSSION

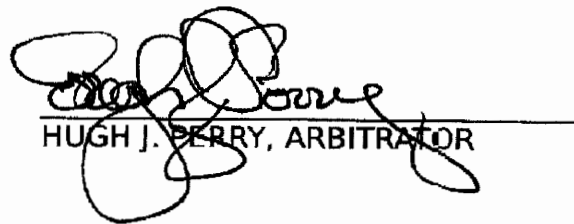
Grievant was involved in two serious avoidable accidents within a period of 15 days. I have reviewed the testimony and exhibits, including the videos taken from the bus camera on the two dates in question. I can observe no reason for the accidents, both in relatively uncrowded parking lots during early morning hours. In contemporaneous remarks following each

accident, Grievant herself was at a loss for why the accidents occurred. The reasonable conclusions that can be reached are that Grievant was either careless in the operation of her bus on those dates or that she lacks the required driving skill, ability and judgment to navigate her bus through a parking lot. Reaching either conclusion draws into serious question Grievant's ability to safely operate a KCATA vehicle. I agree with the Union that the Employer should as soon as possible administer the discipline imposed following an accident, here *ride check and counseling*. However, I don't find a two week period to be inordinate or unreasonable. It is regrettable that Grievant had these accidents. It is fortunate that there were no personal injuries. It is unfortunate that they resulted in her termination. However, safety is of paramount concern to the KCATA. KCATA must have confidence in the ability of its drivers to safely and competently operate its buses. Grievant was a relatively short term employee. She was operating the smallest of the buses in KCATA's fleet, a Metrofiles, presumably the least difficult bus to operate. An average driver has one avoidable accident every 3.5 years. Grievant had two avoidable accidents, one major, within 15 days. Her disciplinary point total was 31. A total of 24 or more points subjects a driver to discharge. KCATA was justified in concluding that it would not be safe to place Grievant back on the road in one of its buses. It had just cause to discharge her.

AWARD

Based upon the above discussion, it is concluded that the KCATA had just cause to discharge the Grievant, Charmane Johnson, for accidents which occurred on October 16 and 31, 2012. The Grievance should be and is hereby denied.

Signed this 10th day of August, 2013.


 HUGH J. PERRY, ARBITRATOR