

ARBITRATORS' DECISION

IN THE MATTER OF ARBITRATION)

Between)

KANSAS CITY AREA TRANSPORTATION)
AUTHORITY)

) FMCS NO. 12-01729-T

AGENCY)

) GLEN MICHEAL RICHARDSON
) GRIEVANT

AMALGAMATED TRANSIT UNION)
LOCAL 2187)

Union)

HEARING: JULY 26, 2012

BRIEFS EXCHANGED: FILED SEPTEMBER 4, 2012

DECISION: OCTOBER 24, 2012

APPEARANCES:

FOR THE AGENCY: JEFFREY M. PLACE, ESQ.
LITTLER MENDELSON, P.C.
KANSAS CITY, MISSOURI

FOR THE UNION: SCOTT A. RAISHER, ESQ.
JOLLEY WALSH HURLEY RAISHER & AUBRY
KANSAS CITY, MISSOURI

NEUTRAL ARBITRATOR: JAMES M. O'REILLY, ST. LOUIS, MISSOURI

AGENCY ARBITRATOR: FERN KOHLER, KCATA

UNION ARBITRATOR: JONOTHAN P. WALKER, SR., ATU LOCAL 1287

ISSUE (Stipulated)

Did the Agency have just cause to discharge the Grievant Glen Micheal Richardson ? If not, what is the appropriate remedy?

SUMMARY POSITIONS

Position of the Agency:

1. The Grievant's actions on January 20, 2012, as recorded by camera's located on the bus assigned to the Grievant along with statements made by the Grievant to the investigating police officer and Agency Supervisor James Frazier established that the Grievant was the cause of his bus being involved in an accident with a car driven by a Tequa Welch at the intersection of Swope Parkway and 5th Street:
 - A. After boarding a passenger before the subject intersection, the Grievant pulled his bus into that intersection while the stop-light in his direction was on red.
 - B. The left side center section of the Grievant's bus was struck by a car driven by Ms. Welch who had a green light and had attempted to stop her vehicle.
 - C. The accident resulted in damage to the bus, the car and injury claims estimated to total between \$40,000 and \$55,000.
2. The Agency has established and published its Accident Remediation and Discipline Policy which has been in place, in some form, for at least fifteen (15) to twenty five (25) years. Under the Policy, the Agency determines if the accidents are then classified as minor, moderate, or major. When the Grievant's accident was determined to be a major avoidable accident, he became subject to termination. Additionally, the Grievant violated an electrical signal which subjected the Grievant to immediate termination.
3. The Collective Bargaining Agreement provides that the prior discipline of the Grievant

beyond twelve (12) months old may be used to consider moderation of discipline but not for progression of discipline. The Grievant had been issued the following discipline for prior avoidable accidents:

A. Minor avoidable accident on January 20, 2006

B. Minor avoidable accident on May 15, 2008

C. Minor avoidable accident on July 10, 2008

The Grievant's non-accident work record included written warnings for attendance, for pulling out of the garage late and driving without his seat belt fastened. He received one (1) day suspensions for listening to a radio while driving and for running seven (7) minutes ahead of schedule.

Director Kohler considered the Grievant's non-accident work record and determined that there was no reason to consider mitigating the discharge decision.

4. Arbitrators Steve Zimmerman and Richard Hurley in previous discharge cases supported the Employer's decision to have terminated Employees for violating traffic signals and being involved in a collision.

5. The Agency request the Arbitrator to find that the Grievant was terminated for just cause and that the Grievance of G. Michael Richardson be denied.

Position of the Union:

1. The Agency has the contractual responsibility to issue discipline in a fair manner and only for "just cause".

2. The manner in which the Agency determines discipline for operators involved in an accident fails to meet the "just cause" standard in the following ways:

(A) because it does not treat similar conduct similarly;

(B) because it is arbitrary in that the majority of the factors leading to discharge

have nothing to do with the conduct of the operator, but with factors out of the operator's control

© because the accident policy deprives operators the benefits of progressive discipline

3. Arbitrator Moeller in 2009, Prate in 2007, Moberly in 2007, Potter in 2007 and O'Brien in 2007 reviewed cases where penalties were modified by those Arbitrators. In the instant arbitration, the Agency must prove that in addition to any misconduct that the discharge was warranted or required.

4. The Agency's accident policy recognizes that an operator being involved in an accident which is found to be avoidable and where the operator may be at fault does not normally warrant discharge based upon point totals.

5. The severity of circumstances outside the control of the Grievant should not excuse the Agency from applying progressive discipline to all drivers involved in avoidable accidents. Most of the considerations on whether an accident should be a "major avoidable" accident are factors beyond the control of the driver.

6. In consideration of the Grievant's length of service and good work record, the Union submits that his discharge was excessive and unreasonably severe. None of the discipline issued to the Grievant would preclude his return to work.

7. The Union respectfully request that its Grievance of Mr. Richardson's discharge be sustained and that the Grievant be reinstated to his former position of bus operator and that all seniority, pay and benefits lost be restored. The Board is requested to retain

jurisdiction over the implementation of the AWARD.

DISCUSSION AND FINDINGS

The Grievant, Glen Michael Richardson, was employed by the Agency (Kansas City Area Transportation Authority) on or about April, 2005. Mr. Richardson was provided upon hire with a six (6) week bus operator training program after which he progressed from a part-time driver to full time.

On January 30, 2012 the Grievant was terminated for the following rule infractions (Ex. No. 9):

- Rule 1.5 Reckless driving in buses anywhere or on Authority lots in private automobile or Authority Vehicles is prohibited.

First offense: Severe suspension

Policy Bulletin #1.95 - Revised Accident Remediation and Discipline Policy. The accumulation of 24 or more points within a 12-month period.

Subject to discharge

Subpoint 1.10 - Involvement in an accident event while violating an electrical signal or stop sign.

Discharge, subject to

The Grievant was a member of the bargaining unit under the collective bargaining agreement between the Agency and Local 1287, Amalgamated Transit Union (Ex. No. 1). On January 30, 2012 the Union filed Grievance No. TR-6-2012 (Ex. No. 10) which was processed through the grievance procedure to arbitration with no procedural claims being

made.

James M. O'Reilly was selected by the parties as a Neutral Arbitrator from a panel of arbitrators provided by the Federal Mediation and Conciliation Service, Case Number 12-01729-T. An arbitration hearing was held on July 26, 2012 before: Neutral Arbitrator, James M. O'Reilly; Agency Arbitrator Fern Kohler and Union Arbitrator Jonothan P. Walker, Sr. At the hearing, the parties were competently represented, had the opportunity to present and cross examine witnesses and to offer exhibits into evidence. The parties were permitted to and did file post hearing arguments.

Accident:

The Company's investigation, including the video from the on board cameras, clearly established that on the morning of Friday January 20, 2012 the Grievant was driving his bus on Swope Parkway when he stopped before the Fifty-Ninth (59th) cross street to pick up a passenger. Once the passenger boarded, the Grievant pulled into the intersection of 59th Street and Swope Parkway, failing to recognize that he had a red light signal.

The Grievant's inattention to the red light signal resulted in a 2001 Blue Ford Taurus car hitting the left side of the bus, resulting in damage to the bus and car along with claimed injuries (Ex No. 13).

There were no adverse conditions at the time of the accident that would have prevented the Grievant from recognizing that he had a red light signal. At the hearing, the Grievant claimed that he was dealing with personal problems which affected his attentiveness.

Revised Accident Remediation and Discipline Policy (Ex. No. 3)

The Agency's accident policy has been in existence at least since 1995, and sets forth guidelines for handling "avoidable accidents" which are accidents that the bus operator could have prevented by applying proper driving techniques. The policy provides for determining three (3) categories of avoidable accidents: minor; moderate; and major. The determination is made by considering the operator's conduct, injuries and property damage.

With respect to the Grievant's accident, the analysis performed by the Safety Officer placed the accident as "major" with significant vehicle damage, an injured person and not obeying a red light.

With regards to discipline, the accident analysis placed the Grievant at four (4) points over the threshold for a major accident and thus firmly at twenty four (24) points which subjected the Grievant to termination with those points having accumulated within a 12-month rolling year. Additionally, the Grievant violated the red light signal causing the accident which, under the Agency's accident policy, Section 1.10 (Ex. No. 3), subjects the Grievant to termination.

Termination Penalty

The Agency's contractual responsibility with regards to discipline is found within the "just cause" provision of Section 1.12 Management-Discipline sub-Section (b).

The Arbitrator, based upon all the testimony and evidence, finds that the Agency was not arbitrary or inconsistent in applying their accident and discipline policy. While it appears from Exhibit No. 21 that running a red light or stop sign itself subjects a driver to discipline, it does not result in termination. However, in those cases there were no

accidents as a result of the red light or stop sign violations which would have placed those employees under the accident policy. Most recently, Arbitrators Zimmerman and Hurley sustained the Agency's discharge of two (2) bus operators that ran a red light which resulted in accidents.

Additionally, the Agency reviewed the Grievant's total work record of :

- 1, Three (3) minor avoidable accidents
2. Four (4) first level attendance warnings
3. Suspended one (1) day for listening to a radio while driving a bus
4. Written warning for driving without a seatbelt attached.
5. Written Warning for pulling out of garage late
6. One (1) day suspension for running seven minutes ahead of schedules

The Arbitrator believes that driving a bus and dealing with traffic, schedules and customers is not an easy job. It is a job however, that requires good driving skills and attention to the road as the driver is responsible for the safety of the passengers, safety of the public, property of the Agency and reputation of the Agency.

The Grievant's seven (7) years of seniority along with the above record did not provide the Arbitrator with a foundation to consider reinstating the Grievant after having run a red-light and causing a major accident.

Based upon all the above discussion, the Arbitrator finds that the Agency had just cause to terminate the Grievant.

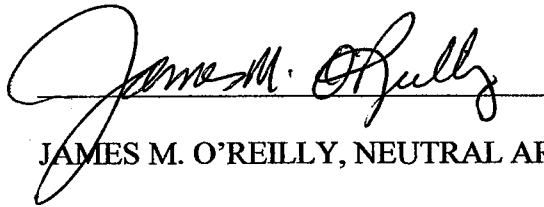
AWARD

The Agency had just cause to terminate the Grievant, Glen Micheal Richardson.

Accordingly, the Union's Grievance (Ex No. 10) must be denied.

IT IS SO ORDERED

DATED THIS OCTOBER 24, 2012



JAMES M. O'REILLY, NEUTRAL ARBITRATOR

Without agreeing or disagreeing with the rationale of the Neutral Arbitrator, the Board members concurs or dissents with the Award.

Concurs _____ Dissents _____

Agency Arbitrator _____

Date: _____

Concurs _____ Dissents _____

Union Arbitrator _____

Date: _____