

AFSCME Local 65 ) **ARBITRATION AWARD**  
the Union. )  
)  
-and- ) Schramel Termination  
)  
ISD #2364 Belgrade, Brooten & )  
Elrosa School District, ) BMS Case No.08-PA-1360  
the Employer.)

Arbitrator: Barbara C. Holmes

Hearing Date: September 24, 2008 and  
December 2, 2008

Post Hearing Briefs due: January 15, 2009

Date of Decision: February 10, 2009

Appearances:

For the Union: Sarah Lewerenz  
AFSCME Council 65

For the Employer: Michelle D. Kenney  
Knutson, Flynn and Deans, P.A.

## INTRODUCTION

AFSCME Council 65 (herein the Union), as the exclusive representative, brings this grievance challenging the termination of its member Joseph Schramel. An arbitration hearing was held at which both parties had a full opportunity to present evidence through the testimony of witnesses, the introduction of exhibits and the submission of post-hearing briefs. A court reported attended the hearing and provided a transcript to both of the parties and the arbitrator.

## ISSUE

Did the Employer have just cause to discharge the Grievant. If not, what should be the remedy?

## **FACTUAL BACKGROUND**

The Employer is a public consolidated school district serving students in and around the Minnesota cities of Belgrade, Brooten and Elrosa. The Grievant has been a school bus driver for the Employer for the past 24 years.

On February 4, 2008, while the Grievant was driving his afternoon bus route he chose to modify the regular route because several students were not riding the bus that afternoon. One of the modifications was to cross State Highway 71 coming from the west and heading east on 240<sup>th</sup> Street. A short distance later he dropped off a student, turned the bus around, and headed back towards Highway 71. When the Grievant approached Highway 71 he applied the brakes but was unable to bring the bus to a stop at a stop sign and slid into the intersection. Because he had seen an automobile approaching from each direction, he accelerated to get across the highway and avoid a collision. Unfortunately, a semi-truck hit the school bus in its midsection. No serious injuries occurred to the five children on the bus, the Grievant or the semi-truck driver.

The Minnesota State Patrol investigated the accident. It did not issue a citation but listed "speed" as a factor in the cause of the accident. Both the bus and the semi-truck were "totaled" for insurance purposes.

During the Grievant's 24 years of employment as a bus driver for the Employer, he has never been disciplined or involved in an accident for which he was at fault. Nevertheless, the Employer felt that the severity of the accident constituted just cause for discharge. On April 8, 2008, the Grievant was discharged from employment. His grievance regarding the discharge was denied by the Employer and the matter was appealed to arbitration.

## **POSITION OF THE PARTIES**

**Employer:** The Employer argues that the Grievant failed to act in accordance with the various rules and regulations governing school bus drivers and that those actions ultimately led to the accident on February 4, 2008. The Employer's first specific allegation is that the modifications the Grievant made to his route on February 4, 2008,

led to an undue risk of having to cross Highway 71. It believes that the Grievant should not have deviated from the assigned route simply because several students were not on the bus that day. Furthermore, the Employer believes that when the Grievant was directed to add a stop to his route that day, he incorrectly added it at the end of his route so that he could stop at a nearby restaurant for coffee.

The Employer believes that the collision occurred because the Grievant took undue risks and failed to operate the school bus in a safe and efficient manner. Specifically, the Employer contends that the Grievant's inability to stop meant that he was driving too fast for the conditions. The Employer notes that because the Grievant had recently driven up the road in the opposite direction, he was aware of its condition. Furthermore, it believes that because the Grievant stated that he started applying the brakes at the top of the hill before the stop sign, he would have had enough distance to stop if he had not been going too fast. The Employer also points out that the Grievant's failure to see the semi-truck before the accident occurred suggests that he wasn't paying attention.

The Employer believes that the Grievant's actions and resulting accident constitute a severe situation that warrants discharge. It believes that the traumatic impact the accident had on some of the students riding the bus that day and the amount of the property damage resulting from the accident further support its decision. The Employer argues that it should not have to give the Grievant another chance to place students in danger before it can discharge him from employment.

Union: The Union argues that the "Seven Factors Test" set forth in the well known case of *Enterprise Wire Co.*, 46 LA 359 (1966), provides a thoughtful and organized way to look at whether there is just cause to support a termination. It argues that the Employer fails both the "Notice" and "Reasonableness" tests because it failed to provide information at the arbitration that it had a rule that informed the school bus drivers that they could not slide on bad roads and have an accident.

The Union also claims that the "Disparate Treatment" test has been violated because none of the Employer's bus drivers have ever been disciplined or received an oral warning for sliding on bad roads. It also points out that the Employer only issued a

three-day suspension when several of its employees were caught drinking and driving in a school vehicle.

Lastly, the Union argues that the penalty of discharge fails the “Appropriateness” test for the following reasons: 1) the Grievant had no accidents or discipline in his twenty-four years with the Employer, 2) given the nature of rural roads in Minnesota in the winter, having an accident on a bad road does not mean that a bus driver is a bad or unsafe driver, and 3) the Grievant has consistently admitted that the collision was a result of his error in judgment. The Union asks that the Grievant be restored to his position with the Employer, receive full back pay, and be made whole in all ways related to his employment terms.

## **DISCUSSION AND OPINION**

The Employer must have just cause to discipline the Grievant. The analysis to determine whether or not just cause exists typically involves two distinct steps. The first step is to determine whether the Employer has submitted sufficient proof to show that the employee engaged in the alleged misconduct or other behavior warranting discipline. If the alleged misconduct is established by a preponderance of the evidence, the next step is to determine whether the level of discipline imposed is appropriate, taking into account all of the relevant circumstances. *See Elkouri & Elkouri, HOW ARBITRATION WORKS 905 (5<sup>th</sup> ed. 1997).*

**A. The Alleged Misconduct.** The Employer’s “Student Transportation Safety Policy” states, in part, as follows:

### **IV. SCHOOL BUS DRIVER DUTIES AND RESPONSIBILITIES**

All school bus drivers shall be adequately prepared, both physically and mentally, each day to perform required duties. These shall include:

- A. Operating the vehicle in a safe and efficient manner.
  1. Safety. The primary concern of each driver is safety. Drivers will exercise extreme caution ... when driving.
  2. Defensive Driving. All drivers are to drive defensively at all times. Driving in a manner to avoid accident involvement despite adverse conditions created by roads, weather, traffic, errors of other drivers or pedestrians.

3. Driving Adjustments. Winter and wet weather driving may require adjusting speed and normal driving practices to compensate for road conditions.

...

8. Speeding and other Moving Violations. No bus will travel faster than road, traffic and weather conditions safely permit, regardless of the posted speed limit. Any driver convicted of a moving violation with a school bus will face disciplinary actions. Other reports or warnings regarding speeding will result in suspension and/or termination.

...

E. Communicating Effectively with school staff... .

...

5. Route Changes. No driver is to make changes in the pick-up or drop-off schedule for his or her route without prior authorization. No stops are to be added, deleted or moved without approval. No driver may deviate from the established route without prior permission except as required by an emergency or temporary road conditions.

...

The first allegation of misconduct raised by the Employer is that the Grievant made unauthorized route changes on the day of the accident. The Employer suggests that the Grievant chose to add a new stop at the end of his route so that he could conveniently go to a nearby restaurant to have coffee with friends. To support this allegation the Employer points to the testimony of a substitute driver who was familiar with the Grievant's route. The substitute driver testified that it made more sense to put the new stop at a different point in the route than at the end of the route. The Grievant stated that the new stop was for an "open enrolled" student and that it was the Employer's policy to put these students at the end of a route.

The facts show that when the Assistant Transportation Director (ATD) told the Grievant about the new stop he did not specify at what point in the Grievant's route it should be made.

ATD: ...Then the day of the accident we had a change, because they got a new girl on the route. [The Superintendent] called me. So I talked to [the Grievant] to make an adjustment on his route for that.

Q: And where did the new girl -- where was her pick-up location?

ATD: Hillcrest Restaurant. She's open enrollment.

Q: And so about where on the route is that stop?

ATD: Well, unloading it would be the last, because we've kind of had policy for the years -- I don't know about new administration, but usually open enrollments are supposed to be last so our regular kids get home first. (T. 104).

...

Q: -- did you assign it that way?

ATD: No, I just told Joe to, you know, make the adjustment so that would work on his route that day after [the Superintendent] called me. He told me the new student, and I assigned [the Grievant] to make that fit that in his route; and we always were doing it at the end of the route, so I just figured he was going to do it at the end of the route like normal. (T. 105)

Based upon this testimony I find that the Grievant had direct authorization from the Assistant Transportation Director to decide where the new stop would be placed on the route. Furthermore, while the route suggested by the substitute bus driver was logical, so was the Grievant's proposed route.

The Employer also faults the Grievant for the other changes he made to his route on the day of the accident. The Grievant testified that he modified the route because several of the students were not on the bus that day. The Employer argues that Section IV, E.5. of the "Student Transportation Safety Policy" requires that the Grievant have prior authorization to change his route. I find that the testimony was contradictory, and therefore inconclusive, as to whether or not the Grievant should have obtained prior permission to make a temporary change to his route on the day of the accident.

The Employer believes that the collision occurred because the Grievant took undue risks and failed to operate the school bus in a safe and efficient manner. Specifically, the Employer contends that the Grievant's inability to stop meant that he was driving too fast for the conditions. The accident report filed by the State Patrol indicated the statutory violations of "[t]oo fast for conditions" and "[f]ailure to yield right of way, stop sign, WEATHER RELATED." However, the State Patrol did not issue a ticket to the Grievant for any traffic violations. A letter from the Employer's insurance company stated, in part, as follows:

After review of the facts of the accident, the statement of Mr. Schramel, the accident report as well as the information from carrier for the trucking company, it is our determination that the actions and inaction of our insured driver, Joe Schramel were the proximate cause of this loss. Given the speeds of the vehicles involved along with the weather conditions, I cannot reasonably place any fault on the driver of the tractor trailer and am accepting 100% liability on behalf of our driver.

The Grievant testified that he had previously driven on the same road many times, including when it was snow-packed. He testified that he began slowing down as he approached the stop sign and engaged the ABS brakes. He stated that the ABS brakes began pulsating, which indicated that the bus was sliding. He stated that he kept pressure on the ABS brakes, which is the proper procedure with ABS brakes. Nevertheless, the interplay of the Grievant's actions and the snow-packed road prevented the bus from stopping at the stop sign.

If the roads had been unusually dangerous because of weather conditions – for example, a blizzard – the accident could be attributed to those conditions more than the Grievant's actions. However, other than being snow-packed, there was no evidence that the road conditions or visibility at the accident site were unusually dangerous. The Grievant also knew how to drive a school bus on snow-packed roads because of his years of experience as a bus driver. He was aware of the condition of the road because he had previously turned off of Highway 71 and driven east on 240<sup>th</sup> Street . The only reasonable conclusion that can be drawn is that the Grievant was driving the school bus too fast for the conditions. I therefore find that the Grievant's actions played a larger part in causing the accident than the road conditions.

Also of concern is the Grievant's testimony that he never saw the approaching semi-truck until right before it actually hit the bus. His explanation was that the large mirrors on the outside of the bus obstructed his view. Based upon a visit to the site of the accident during the arbitration hearing, I find that there was ample opportunity after the Grievant crested the hill to allow for an unobstructed view of traffic. While the mirrors could have obstructed the Grievant's view for a few moments, it is likely that the failure of the Grievant to see the approaching semi-truck was due to his inattentiveness – perhaps the same inattentiveness that led to him driving too fast for the conditions.

A final concern is the hours the Grievant worked at a second job. The Grievant testified that he delivers newspapers to other carriers and newspaper machines six days a week. He stated that he gets out of bed at 11:30 p.m. and drives to Willmar to pick up the newspapers, drive approximately 100 miles making his paper deliveries, and returns to Employer's bus garage around 4:00 a.m. At the bus garage he would get "half an hour of sleep, if not more." The Grievant testified he was up by 6:00 a.m. and started his morning school bus route at 6:40 a.m. After his route he stated that he would go home and sleep for two and half to three hours. He would be back at the bus garage around 2:30 p.m. for his afternoon and evening school bus routes. The Grievant testified that he arrived home at 7:00 p.m. and went to bed shortly after that. Although it appears that the Grievant slept approximately 8 hours a day, it was not in one period. It is reasonable to conclude that the Grievant's fragmented sleep schedule contributed to his inattentiveness.

Because the Grievant's overall actions violated the Employer's safety policies set forth above, he is properly subject to discipline.

**B. The Appropriate Sanction.** Article XII of the parties' collective bargaining agreement states, in part, as follows:

Section 6. Discipline: Both parties agree that the purpose of disciplinary action is to correct rather than punish. Accordingly, the School District will only discipline employees for just cause. *Except in severe cases*, disciplinary action or measures shall include the following:

- oral reprimand
  - written reprimand
  - suspension (notice to be given in writing)
  - discharge
- (emphasis added)

I find that this language means that in "severe cases" the Employer need not begin discipline at the oral or written reprimand stage, but can move on to the more harsh sanctions of suspension or discharge.

To determine if the Grievant's misconduct is a "severe case," the impact of the accident on the students and the extent of the property damage must be considered. Several of the students who were on the bus when the accident occurred testified at the hearing. A student in the 4<sup>th</sup> grade testified that since the accident "I don't like riding a bus, but it's my only ride to school." A student in the 6<sup>th</sup> grade testified that immediately

after the crash she felt “lucky to be alive, that I’m still here.” She also stated that it took several weeks before she felt comfortable riding on the bus. The first person to come upon the accident site testified that the children on the bus were “crying, screaming, and scared.” The substitute bus driver the next day testified that several of the students who were on the bus when the accident occurred were afraid to board the bus. It is clear that the bus accident was a traumatic experience for the students on the bus.

The school bus and semi-truck were “totaled” for insurance purposes. The Employer’s insurance company paid the Employer \$58,745.50 for the school bus and accepted 100% liability for the damages caused to the semi-truck.

I find that this is a “severe case” due to the emotional trauma suffered by several of the children riding the bus and the extent of the property damage to the bus and the other vehicle.

The final issue is whether or not the sanction of a suspension or a discharge is appropriate under all of the circumstances. That the Grievant is a long-term employee, has never been subject to discipline, and has never been involved in an accident in which he was at fault support the imposition of the lesser penalty of a suspension. Additionally, the Grievant has always received positive performance reviews and has provided training to new bus drivers over the years. Several parents of children who ride a school bus in the school district testified that they would have no difficulty with the Grievant resuming his duties. Everything in the record, except for the accident, shows that the Grievant has been an excellent, safe, respected, reliable bus driver for 24 years. Does a single accident outweigh a perfect record?

For the purpose of determining the appropriate sanction, the seriousness of this accident is not determined merely by looking at the extent of the personal injuries and property damage. The degree to which the Grievant caused the accident must also be taken into account. If the road conditions had been found to be the primary cause of the accident, a suspension would have been appropriate. Or if the Grievant’s bus had slid into the intersection but there was no oncoming traffic and no accident, a suspension would have been an appropriate sanction. But in this case I find that the emotional trauma suffered by several of the children riding the bus, the extent of the property

damage to the bus and the other vehicle, and the Grievant's primary role in causing the accident justify the sanction of discharge.

The Union argues that the action taken by the Grievant after he slid into the highway should act as a mitigating factor in determining the penalty. The testimony established that once the Grievant found himself in the middle of the highway he accelerated in an attempt to clear the intersection before oncoming traffic arrived. The Union argues that had the Grievant not taken this action the semi-truck would have impacted the front of the bus where the Grievant and students were sitting and resulted in serious injuries. While this may be true it does not negate the fact that, but for the Grievant's actions, he would not have found the need to take evasive action.

### **AWARD**

The grievance is denied.

DATED: \_\_\_\_\_

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Barbara C. Holmes  
Arbitrator