

IN THE MATTER OF GRIEVANCE ARBITRATION

AMALGAMATED TRANSIT UNION
LOCAL 1005

UNION,

-and-

ARBITRATOR'S AWARD
BMS Case No. 09-PA-0844
Discipline – Just Cause

METROPOLITAN COUNCIL
METRO TRANSIT,

EMPLOYER

ARBITRATOR:	Rolland C. Toenges
GRIEVANT:	Benjamin Poole
DATE OF GRIEVANCE:	March 9, 2009
DATE OF ARBITRATOR SELECTION:	April 3, 2009
DATE & PLACE OF HEARING:	June 22, 2009 300 First Avenue North, Suite 200 Minneapolis, MN 55401
DATE HEARING RECORD CLOSED:	July 13, 2009
DATE OF AWARD:	August 11, 2009

ADVOCATES

FOR THE EMPLOYER:

Anthony G. Edwards, Attorney
Parker Rosen, LLG

FOR THE UNION:

Roger Jensen, Attorney
Jensen, Bell, Converse & Erickson

WITNESSES

Robb Nevenschwander, Passenger
Marisa Johnson, Passenger
Anthony Harris, E. Metro Asst. Manager
Sam L. Jacobs, Director, Bus Operations

Michelle Sommers, Business Agent
Benjamin Poole, Bus Operator

ISSUE¹

Did the Employer have just cause to discipline the Grievant for the incident that occurred on February 4, 2009?

JURISDICTION

The Parties to the instant matter are covered by a Collective Bargaining Agreement effective August 1, 2008 to July 31, 2010. The matter at issue, regarding interpretation of terms and conditions of the Collective Bargaining agreement (CBA) came on for hearing pursuant to the grievance procedure contained in said agreement. The Grievance procedure (Article 5) provides as follows:

“Section 1. Metro Transit reserves to itself and this Agreement shall not be construed as in any way interfering with or limiting, its right to discipline its employees, but Metro Transit agrees that such discipline shall be just and merited. [Emphasis Added]

Section 2. No employee shall be suspended without pay or discharged until the employee’s immediate superiors have made a full investigation of the charges against that employee and shall have obtained the approval of the applicable department head. No discipline excepting discharge without reinstatement shall be administered to any employee that shall permanently impair the employee’s seniority rights. When contemplating disciplinary action, Metro Transit shall not give consideration to adverse entries on an employee’s disciplinary record involving incidents occurring more than thirty-six (36) months prior to the date of the incident which gives rise to the contemplated discipline. Prior to a suspension of more than two (2) days, the ATU must be notified. If a case of discipline involves suspension or discharge of an employee and such employee is not found sufficiently at fault to warrant such suspension or discharge the employee shall then be restored to their former place in the service of Metro Transit with continuous seniority rights and shall be paid for lost time at the regular rate of pay. [Emphasis Added]

Section 3. Any dispute or controversy, between the Metro Transit and an employee covered by the Agreement, or between Metro Transit and ATU, regarding the application, interpretation or enforcement of any of the provisions of this Agreement, shall constitute a grievance.”

The CBA between the Parties provides for the arbitration of grievances that cannot be resolved through the normal grievance procedure (Article 13, Arbitration Procedures). This provision provides that the Arbitrator shall weigh all evidence and arguments on the points in dispute, that the decision shall be final and binding and shall be rendered within forty-five (45) days, (exclusive of Saturdays, Sundays and Holidays) from the date the arbitration hearing is complete.²

The Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The Arbitration hearing was conducted as provided by the terms and conditions of the CBA and the Public Employment Labor Relations Act (MS 179A.01 – 30). The Parties were afforded full opportunity to present evidence, testimony, examine and cross-examine witnesses and present argument bearing on the matter in dispute.

The Parties stipulated that the matter in dispute is arbitrable and properly before the Arbitrator.

All witnesses were sworn under oath. There was no request for a stenographic record of the hearing. The Parties presented closing arguments and waived the filing of post hearing briefs.

BACKGROUND

The Employer operates and maintains a vast fleet of passenger buses and a light rail system used in public transportation throughout the Metropolitan Twin City area. The Amalgamated Transit Union, Local 1005 (Union) represents some 1550 employees who operate equipment, maintain equipment and perform administrative support functions.

² Article 13, Arbitration Procedures

The instant dispute involves discipline administered to bus operator Benjamin Poole (Grievant), who is charged with misconduct for refusing to board passengers, forcing passengers off the bus, getting out of the drivers seat, confronting passengers and intentionally leaving a layover late.

On the morning of February 4, 2009, the Grievant was on duty #8071 and driving bus #375. Duty #8071 involves operating bus #375 on two trips between the Guardian Angels Park and Ride in Oakdale, Minnesota and downtown Minneapolis.

The Grievant arrived at the Guardian Angels Park and Ride location at 7:42 a.m. and parked the bus behind another bus already there. The bus was scheduled to arrive at the Guardian Angels boarding site at 7:45. Since there was approximately 25 minutes between his arrival and scheduled departure time of 8:07 a.m., the Grievant shut of the lights and proceeded to lie down in the bus.

At this time, the outdoor temperature was sub-zero and passengers had begun arriving at the boarding site. There is no heated shelter at the boarding site and passengers attempted to board the bus, but the Grievant told them they could not as he was not their driver. Although passengers knocked on the windows asking to get on the bus, the Grievant would not let them on and continued to lie down. The Grievant informed them it was his break time and they could not get on until he was scheduled to depart the boarding site. At least one passenger unsuccessfully attempted to force open the bus door setting off an alarm, which the Grievant ignored and continued to lie down.

The Grievant's reason for not letting the passengers on is that, if he let them on, he could not continue to lie down as he needs to protect himself when passengers are on board.

The Grievant pulled the bus forward to the boarding site at 8:05 a.m. and the passengers ran up to the front door of the bus. The Grievant then allowed the passengers to board. While boarding, some passengers made derogatory comments to the Grievant about not

being allowed to board earlier. Two of the passengers continued talking about the matter and the Grievant informed them he was not moving the bus until they were removed.

The Grievant then left his drivers seat and walked to the back of the bus inquiring of any additional passengers having an issue with him. The Grievant informed them that if they had anything to say he would not let them stay on the bus. The Grievant forced two or three passengers off the bus. Some additional passengers, being concerned about the attitude of the Grievant, voluntarily got off the bus and used alternate transportation.

The Grievant contacted the Transit Control Center to report the matter and departed the boarding site at 8:14 a.m., some seven (7) minutes after the scheduled departure time. Metro Transit has a GPS monitoring system that tracks the location of its buses at all times.

The Employer imposed a twenty (20) working day suspension without pay on the Grievant and a three-year final record of warning. The Employer also required the Grievant to undergo human relations training and set a limit of not more than two (2) verified customer service complaints filed for the record within a rolling calendar year.

The Union filed a grievance on behalf of the Grievant, which was processed through the CBA Grievance Procedure. The Parties were unable to resolve the disputed matter, resulting in the instant proceedings.

POSITIONS OF THE PARTIES

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The instant matter is a clear-cut case and the facts overshadow the Union's effort to warp them.
- The Grievant has admitted to the facts upon which Transit has based its discipline.

- By not allowing passengers on the bus, the Grievant violated Transit policy.
- By turning off bus lights, the Grievant violated Transit policy.
- By getting out of drivers seat, the Grievant violated Transit policy.
- By leaving bus stop late, the Grievant violated Transit policy.
- Transit's investigation found passenger complaints were essentially factual.
- The eighteen (18) policy violations of other employees, cited by Union, do not rise to the facts of the instant matter – over one third (1/3) of the total complaints in evidence are from the instant matter.
- The Grievant leaving the drivers seat and confronting passengers is in itself a sufficient violation to warrant a fifteen (15) day suspension.
- That passengers were very upset is reasonable, considering the Grievant's shocking behavior.
- The affluence of the passengers involved in the instant matter had nothing to do with the level of discipline administered to Grievant.
- The Grievant fails to recognize the seriousness of his violations.
- The Grievance should be denied.

THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The main motivation for the Employer's action is the media hype associated with the instant matter.
- The media hype resulted from passengers who know how to publicize an event.
- Layover time is only opportunity operator has to eat, smoke and take care of personal matters.
- Final warning is excessive – the next time he screws up he will be discharged.
- The number and nature of complaints was due to "Gold Coast" people who know how to make complaints.

- Transit violated its own policy by administering harsher discipline to the Grievant than it has to other employees with similar complaints.
- The Grievant had zero other complaints during the rolling calendar year.
- The evidence shows eighteen (18) similar incidents where operators would not allow customers on the bus and no discipline was administered.
- Most of the eighteen (18) incidents involved multiple passengers, the same as the instant matter, but only one complaint.
- Not suggesting Grievant should have done what he did, but discipline administered is overly harsh.
- The discipline administered to the Grievant amounts to disparate treatment when viewed with the other similar violations in the record, for which there is no evidence of discipline.
- Multiple complaints for the same incident should be treated no different than one complaint.
- The Grievant acknowledges that he did not handle the matter correctly, but he honestly believed his bus was not the correct bus for the passengers to board.
- When verbally abused by the passengers, the Grievant did the correct thing by refusing to transport them and asking TCC for a squad.
- There is no evidence that the Grievant verbally abused passengers – he only told them he was not going to leave if they kept talking.
- What the Grievant meant was he was not going to leave until the squad he requested had arrived.
- Passenger, Marisa Johnson, may have overreacted to his inquiry when walking to the back of the bus.
- Under the circumstances, it was reasonable for the Grievant to leave the drivers seat and do what he did.
- The discipline administered is excessive – it should be reduced to a written warning.
- The final warning is excessive and should be withdrawn.
- The Grievant's pay and benefits should be restored for the suspension period.

EXHIBITS**JOINT EXHIBITS:**

- J-1. Notice of Hearing – Incident On Route #375 on February 4, 2009.
- J-2. Fact Finding Notes – Benjamin Poole, 64303 incident of 2/4/09, route #375.
- J-3. Bus schedule, Route #8071, Weekday.
- J-4. Transit Master Playback Timeline for 2/4/2009, Route #375, Duty #8071, Bus #3235 and Operator \$64303.
- J-5. Final Record of Warning – Gross Misconduct, Benjamin Poole, 2/09/2009.
- J-6. Bus Operator’s Rule Book & Guide – receipt acknowledged by Grievant.
- J-7. Excerpts from Bus Operator’s Rule Book & Guide (1-3 through 5-12).
- J-8. Record of Suspension - Benjamin Poole, 2/7/2009 to 3/6/2009 (20 working days).
- J-9. Union Grievance - Benjamin Poole discipline, dated 3/9/09.
- J-10. Record of First Step Grievance Hearing, February 16, 2009.
- J-11. Record of Second Step Grievance response, dated February 27, 2009.
- J-12. Record of Third Step Grievance hearing, dated 3/09/2009.
- J-13. Metropolitan Council Procedure 4-7d. Discipline for Customer Service Violation.
- J-14. Verified Filed Work History of Grievant, including customer complaints.
- J-15. Collective Bargaining Agreement – August 1, 2008 through July 31, 2010.

EMPLOYER EXHIBITS:

- E-1a. Customer Feedback – Marisa Johnson, dated 2/4/2009.
- E-1b. Customer Feedback – Katherine Vanwyk, dated 2/4/2009.

- E-1c. Customer Feedback – Robb Neuenschwander, dated 2/4/2009.
- E-1d. Customer Feedback – Scott Graykowski, dated 2/4/2009.
- E-1e. Customer Feedback – Mark Spoto, dated 2/4/2009.
- E-1f. Customer Feedback – Katie Miller, dated 2/4/2009.
- E-1g. Customer Feedback – Philip Marquis, dated 2/4/2009.
- E-1h. Customer Feedback - Kalen Sternquist, dated 2/4/2009.
- E-1i. Customer Feedback – Danielle, dated 2/4/2009.
- E-1J. Customer Feedback – Erik Srigley, dated 2/4/2009.
- E-1k. Customer Feedback – Matt Hattenberger, dated 2/4/2009.
- E-2. Bus SSR 186062, dated 2/4/2009 – request for onboard tape recording.
- E-3. Accident/Incident Report – Statement of Grievant, dated 2/4/2009.
- E-4. Customer Feedback – James, dated 1/16/2009.
- E-5. Grievant Incident History – thirteen (13) complaints of rudeness/poor public relations.

UNION EXHIBITS

- U-1. Refused Boarding Complaints - 5/31/08 – 5/31/09

DISCUSSION

The instant case, being a matter of discipline, raises the standard inquiries:

- Are the Employer’s charges supported by facts?
- Should the Grievant have known that his actions were in violation of rules and policy?
- Was the Employer’s investigation conducted in a fair and impartial manner?

- Was the degree of discipline administered reasonably related to the seriousness of the offense?
- Was the discipline administered uniform and consistent when compared to that administered in other similar offenses?

Are the Employer's charges supported by the facts?

The record shows that the Grievant essentially admitted to the facts relied on by the Employer in determining the appropriate discipline.

The Grievant arrived at the bus stop some 25 minutes prior to the scheduled departure time. His early arrival is referred to as "layover," which is built into the bus route schedule to provide for timely departures. During layover, the bus operator is to reset the overhead destination sign, check lost and found and check the pay meter.³

The Grievant parked his bus behind a bus located at the boarding site when he arrived. The Grievant turned off the lights and lay down in the bus passenger seats. The bus located at the boarding site then left. Thereafter, passengers began arriving at the boarding site and attempted to board the Grievant's bus. There is no heat at the boarding facility and the outdoor temperature was well below zero.

The Grievant would not allow them to enter the bus until it was scheduled to leave at about 8:07 a.m., some 25 minutes after he arrived. Passenger complaints and the Grievant's own admission show that there were numerous attempts to board the bus, all of which were denied by the Grievant. One passenger attempted to open the door, which set off an alarm. Other passengers knocked on the bus windows and called out loudly to the Grievant to let them board.

The Arbitrator does not find creditable the Grievant's contention that he did not allow the passengers on his bus because he thought they were supposed to be on an earlier bus. There was a bus at the boarding site when he arrived at 7:42. Assuming this bus left

³ Testimony of Witness, Anthony Harris.

shortly thereafter (buses were scheduled to leave every 15 minutes), it is axiomatic that the Grievant's bus was next to leave at 8:07 a.m.⁴ Further, the next bus, like the Grievant's bus would likely have a "layover" built into its schedule and would not be scheduled to depart until after the Grievant's bus was scheduled to depart.

It is possible that the Grievant, having lied down, fell asleep and was not aware the bus ahead of him had departed. Even so, he could have looked when he was awoken to see if it was still there. Further, he should have known that it would be illogical for passengers to repeatedly try to board his bus when there was another bus ahead at the bus stop.

Even assuming there was another bus due, that had not yet arrived, it doesn't satisfactorily explain why he would leave passengers waiting out in sub-zero temperature when they could wait in the comfort of his bus. For the Grievant to lie down to rest inside the bus, when passengers were waiting outside in sub-zero temperature, indicates either seriously impaired judgment or a blatant disregard for the welfare of the passengers.

By not allowing passengers to board, the Grievant was in violation of Transit rules, which clearly provide that passengers must be allowed to board the bus when on layover:

[Emphasis Added]

“291 LEAVING BUS – LAYOVER PROCEDURES: If you must leave your bus, do so for the shortest possible time, and do the following:

e. YOU MUST ALLOW CUSTOMERS TO BOARD THE BUS AT THE LAYOVER TERMINAL. [Emphasis Added]

The Grievant violated Transit rules by shutting off the interior bus lights:

“265 LIGHTS: “. . . Interior lights must be on when laying over at a terminal. You are expected to comply with any special rules or exceptions posted for particular terminals.” [Emphasis Added]

The Grievant violated Transit rules in the way he treated the customers (passengers):

⁴ Witness, Robb Neuenschwander, testified that arriving at about 7:50 a.m., he missed the previous bus.

“270 CUSTOMER SERVICE. Customers are the reason Metro Transit exists. All employees are to treat the public with respect and consideration. See the section of this pocket guide dedicated to customer relations for more information.” [Emphasis Added]

“271 CUSTOMER COMFORT. Our customers deserve a comfortable hassle-free trip. Smooth starting and stopping contributes to this objective. Consider your customers when regulating the bus’s inside temperature. Dress for the season (sweater and/or jacket in cold weather, short sleeve shirt in warm weather) so you will be comfortable when your customers are.” [Emphasis Added]

“496 COURTEOUS CONDUCT. Employees must be courteous to others at all times. Patience and self-control must be used to avoid aggravating situations. In cases of misunderstanding arising from the enforcement of these rules, employees should politely and quietly request the person with whom they are dealing to discuss the matter away from customers or other employees so that the matter may be clarified without disrupting other persons or employees or Metro Transit service.” [Emphasis Added]

When the passengers were allowed to board the bus (about 8:05 a.m.), some made critical comments to the Grievant. The Grievant reacted by ordering them off the bus. He also left the drivers seat, walked through the bus and threatened anyone who would make a derogatory comment with being ordered off the bus. In addition to those ordered off the bus, a number of passengers left voluntarily, not wanting to be involved in what was taking places. The record shows no indication of any physical threat being made to the Grievant, only passengers expressing frustration with being kept out in the sub-zero temperature.

The Grievant violated Transit Rules by leaving the drivers seat, walking through the bus and threatening passengers:

“534 PHYSICAL ENCOUNTERS: Metro Transit bus operators should avoid physical confrontations wherever possible. This means refraining from leaving the bus operator’s seat to settle disputes unless, it is necessary to do so to defend yourself or customers from physical attacks. . . . “ [Emphasis Added]

Statements from a number of passengers say that the Grievant was sleeping on the bus seat when they arrived and wanted to board the bus. Sleeping on the job is a violation of Transit Rules and is classified as a “serious (Class A) offense:”

“497 SERIOUS OFFENSES UNDER THE RULES OF EMPLOYEE CONDUCT. The following are some of the offenses, which are considered serious. Violations may result in severe disciplinary action, including but not limited to suspension or discharge:

f. Sleeping or otherwise loitering on the job.” [Emphasis Added]⁵

The record is not conclusive whether the Grievant was actually sleeping while lying in the bus during the layover period or just resting. A number of the Passenger complaints reported the Grievant sleeping when they arrived and tried to board. A reasonable conclusion to be drawn is that the Grievant was sleeping when the first passengers arrived to board the bus, however, the repeated efforts of passengers to board thereafter prevented the Grievant from resuming his sleep.

The charges against the Grievant also included “intentionally leaving a layover late.” The record does not provide any reason why the Grievant could not have pulled up to the boarding site earlier, except for his wanting to lie on the seat and rest, without the presence of passengers.

Should the Grievant have known that his actions were in violation of Rules and Policy?

The record shows that the Grievant acknowledged receiving a copy of the Metro Transit Bus Operator’s Rule Book and Guide, from which the above rule quotations were derived.⁶ The acknowledgement is dated August 8, 2004.

⁵ Witness Anthony Harris testified that sleeping or resting is a class “A” violation, even if on a layover. See also Joint Exhibit #13, Appendix “C.”

⁶ Joint Exhibit #6.

Was the Employer's investigation conducted in a fair and impartial manner?

The record shows that the Grievant was given an opportunity to present his version of what happened on at least three occasions, the first via his own written statement on the day of the incident and later with the assistance of his Union when the matter was processed through the grievance procedure. The record also shows that the Employer interviewed at least ten (10) of the passengers who filed complaints to verify the accuracy and authenticity of comments received.⁷

Two of the complaining passengers appeared as witnesses in the instant proceeding and were subject to cross-examination.

Although there was an onboard recording device on the bus at the time of the incident, the tape was not sufficiently readable to be of value in the investigation.⁸

Was the degree of discipline administered reasonably related to the seriousness of the offense?

The record shows that the Employer's normal policy is to issue a verbal warning for the first customer service complaint *filed* within a rolling calendar year.⁹ The record shows that the instant matter is the Grievant's first customer service complaint *filed* within the rolling calendar year ending on the date of the incident.

The record shows that not all customer service complaints are *filed*. The Employer uses different codes to classify the recording of customer service complaints. The code "L" indicates the complaint was "Logged." The code "Y" indicates the complaint was

⁷ Witness, Sam Jacobs, testified that he talked to at least ten (10) of the passenger who had filed a complaint.

⁸ Testimony of Witness Anthony Harris.

⁹ Testimony of Witness Anthony Harris and Joint Exhibit #13.

verified by the Manager and *filed*.¹⁰ The code “N” indicates that the complaint was “Not Filed.”

The record shows that although the instant offense was the only one *filed* in the rolling year ending 2/4/2009, there were numerous customer service complaints against the Grievant within the past three (3) years, nineteen (19) of which were logged and two (2) were *filed*. Nine (9) of the “logged” complaints were within the rolling year ending February 4 2009. Ten (10) of the “logged” customer complaints were classified as rudeness toward customers, as were the two *filed*.¹¹

The Employer’s “Operating Policy” provides as follows:

“CUSTOMER SERVICE – VERIFIED CUSTOMER SERVICE COMPLAINTS
WITHIN A ROLLING CALENDAR YEAR:

- 1, - Verbal Warning
2. – Verbal Warning
3. – Written Warning
6. – Final Written Warning
8. – Termination

When more than one customer service complaint addressing the same incident is received and verified, they will be filed as one.

Management will notify the employee of any verified customer service complaint and allow the employee to sign their work history in TIS. Management may either file a verified customer service complaint or place the verified complaint on a log consisting of non-filed verified complaints. Management may use any verified complaint, whether filed or on the employee’s customer service log, as evidence in any disciplinary proceeding. The employee may grieve any filed complaint or complaint placed on their customer log.

A “verified complaint” is a complaint, which has either been confirmed by Customer Relations staff using SMARTCoM or confirmed by management staff through communication with the customer complainant and/or other witnesses by

¹⁰ Testimony of Witness Anthony Harris.

¹¹ The two (2) *filed* complaints were listed as “yelling at passenger” and “put passenger off bus/refused boarding.”

phone, in person, or by electronic mail. The complaint investigation process will include listening to the operator for his/her side of the story.”¹²

The Employer’s Operating Policy states that it “is designed to promote consistency and equal treatment,” but also qualifies that “Managers have discretion to depart from the Policy to take into account mitigating and aggravating factors.” It further states that, “In some situations, termination may be justified on the first offense.”

In the instant case, the Employer justifies going beyond a “verbal warning” for the first verified customer service complaint in the past rolling year, based on “aggravating” factors. The Union placed in evidence a record of some eighteen (18) incidents of customer service complaints it had obtained from the Employer’s record system and pointed out that there was no evidence of discipline in any, except for the instant case involving the Grievant.¹³ The Union contends this is evidence that the Employer’s discipline of the Grievant was excessive and inconsistent with the way other employees are treated when committing similar rule violations. The Union contends that the appropriate discipline would be a verbal warning.

An analysis of Union Exhibit #1 shows that there was some eighteen (18) customer service complaints received from 8/8/2008 through 4/16/2009 relating to bus boarding issues, but only one, besides the instant case, were verified and filed. Only one was logged and the remaining complaints were listed as “Not filed” or “Logged.”

The Employer counters the Union’s contention by pointing out factors in the instant case that distinguish it from the cases referenced in Union Exhibit #1. The Employer lists the following factors distinguishing the instant case:

- The Grievant was lying in the bus seat and either sleeping or resting in violation of policy.
- The Grievant shut off the bus lights in violation of policy.

¹² Joint Exhibit #13.

¹³ Union Exhibit #1.

- The Grievant denied he was the passenger's bus driver.
- The Grievant left the drivers seat and confronted the passengers.
- The Grievant forced passengers off the bus when there was no physical threat.
- There were some twelve (12) complaints received as compared to one in most of the referenced cases.¹⁴
- The Grievant left the layover late.
- Ordering passengers off the bus who were critical of him for not letting them on the bus.

Was the discipline administered to the Grievant uniform and consistent with that administered to other employees for similar offenses?

The only record of similar offenses is that shown in Union Exhibit #1. Although the customer complaints listed are similar to the instant case, in that they relate to bus boarding issues, there is no evidence that the distinguishing (aggravating) circumstances pointed out above existed in these other incidents.

FINDINGS

The Employer had just cause to discipline the Grievant.

The facts of the instant case are essentially not in dispute and support the Employer's charges.

The Grievant should have known Transit's Rules and Policies. He was issued a copy and acknowledged receipt. He was in possession of the Rules and Policies for several years prior to the incident-giving rise to the instant case.

¹⁴ Union Exhibit #1 shows only two (2) incidents had more than one complaint. One had two (2) and one had three (3).

The evidence shows that the Employer's investigation was reasonably thorough and consistent with accepted standards of due process.

Due to the aggravating circumstances in the instant case, a degree of discipline greater than the standard called for in the Operating Policy (verbal warning) is warranted.

Although the Arbitrator finds the Grievant's actions a very serious breach of acceptable customer relations, warranting greater than standard discipline, the length of the suspension administered is excessive when compared to the other boarding incidents in evidence where there is no evidence of discipline being administered.

AWARD

The disciplinary suspension is to be reduced from twenty (20) working days to ten (10) working days.

The other disciplinary sanctions imposed on the Grievant shall continue to apply.

CONCLUSION

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issue this 11th day of August 2009 at Edina, Minnesota.

Rolland C. Toenges, Arbitrator