

**OPINION AND AWARD**

**OF**

**DAVID S. PAULL**

**In the Matter of the Arbitration Between**

**AMALGAMATED TRANSIT UNION,  
Local Union No. 1005**

**AND**

**METRO TRANSIT of Minnesota  
(a division of the Metropolitan Council)**

**(Lee Roy Carter, Grievant)**

**Date Issued: December 11, 2010  
Minnesota Bureau of Mediation Services 10 PA 1428**

# OPINION

## Preliminary Matters

The Arbitrator was selected by mutual agreement from a list provided by the Bureau of Mediation Services, State of Minnesota. A hearing was conducted in Minneapolis, Minnesota, on November 9, 2010. The Amalgamated Transit Union, Local Union 1005 (AFL-CIO) (Union) was represented by Roger A. Jenson. Metro Transit, a division of the Metropolitan Council (Employer or Metro Transit), was represented by Anthony G. Edwards. Both representatives are lawyers with offices in Minneapolis, Minnesota.

At the hearing, the testimony of witnesses was taken under oath and the parties presented documentary evidence. No stenographer was present.

After the witnesses were heard and the exhibits were presented, the parties summarized and argued their respective positions. Thereafter, the case was deemed submitted and the record was closed.

## Issue

The parties are agreed on the statement of the issue:

Was the discipline issued to Lee Roy Carter on December 31, 2009, just and merited, and if not, what is the appropriate remedy?

Neither party has raised an issue of procedural arbitrability.

## **Relevant Contract Provisions**

The following contractual provisions are deemed pertinent to this grievance:

### **ARTICLE 5 GRIEVANCE PROCEDURE**

**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.

**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. [Additional provisions not relevant].

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

**Section 5.** When an employee's grievance is sustained in whole, all negative narratives related to the incident, shall be removed from all records.

## **SUMMARY OF FACTS**

### The Parties

Metro Transit is a political subdivision of the state of Minnesota located in and serving the Minneapolis/St. Paul metropolitan area. The entity is the largest provider of transit service in the seven-county geographical area and one of the nation's largest transit systems. Metro Transit employs approximately 1390 bus and train operators. These operators drive approximately 900 passenger buses over 127 different routes.

In addition to operating passenger buses, the Employer operates a light rail train system. In November of 2009, the Employer placed in revenue service a commuter rail line extending between downtown Minneapolis and Big Lake, Minnesota.

For many years, the Union has served as the sole and exclusive bargaining representative of employees of Metro Transit, as well as their predecessors in interest, engaged in a variety of job classifications including the operation of buses. The Employer and the Union are signatory to a collective bargaining agreement effective for the period beginning August 1, 2008, and ending July 31, 2010 (CBA).

The Grievant, Lee Roy Carter, has worked for Metro Transit for in excess of 17 years. He has been operating a bus for approximately 15 years and is currently assigned to the East Metro station in St. Paul.

The only evidence of prior discipline is a previous accident occurring on September 19, 2009. On this occasion, a bus mirror attached to the bus Mr. Carter was operating struck a fixed object and was damaged. The collision was determined to be chargeable to Mr. Carter and no challenge to this decision was made by the Union. Brian Motari, a Safety Specialist assigned to East Metro, reported that Mr. Carter did not call in this accident immediately, but continued to drive the bus without the right mirror. As a result of this event, Mr. Carter was obligated to attend a safe driving class on October 22, 2009.

On January 21, 2010, Mr. Carter was determined to be responsible for a second collision, occurring on December 31, 2009. Because this event comprised the second chargeable accident within a rolling three year period, Mr. Carter was issued a written warning, referred to by the Employer's transit policy as a Record of Warning.

The Union filed a grievance on Mr. Carter's behalf on January 27, 2010, seeking the removal of the record from his performance file, in accordance with the CBA at Article 5, Section 5. The parties pursued the matter through the procedural steps contained and set forth in Article 5. The matter was not resolved and this grievance arbitration resulted.

The Events of December 31, 2009.

On December 31, 2009, at approximately 12:32 p.m., Mr. Carter was operating Bus Number 3244 along Route 16 in St. Paul. Bus Number 3244 is an articulated bus. According to the evidence, the Employer's articulated vehicles consist of two separate passenger cabins joined together by a flexible fabric structure. The fabric covering permits passengers may navigate between the two compartments at will. Because it consists of two separate cabins, the vehicle is considerably longer than the non-articulated models.

Bus 3244 is equipped with four video cameras that provide real time moving pictures and audio. The video discloses that at 12:32:40, Mr. Carter was driving the bus eastbound in the right lane on University Avenue towards North Aldine Street. From the video, it is possible to discern the lighting and road conditions. The view on this particular day appeared to be clear and bright. University Avenue is a straight and level section of road as it approaches Aldine Street. The road showed evidence of a prior snow storm. Both driving lanes were narrowed by snow banks. Unoccupied cars were parked on the right. The snow banks caused these cars to be positioned a little further away from the curb than normal, affecting the width of the lane. At the center of the road

was a cement island which prevented traffic from operating in the opposite lanes. In the lane in which Mr. Carter was traveling, the curb side was packed with patchy snow.

There was no snow on the driver's side of the lane.

The video begins several blocks before the collision takes place. It depicts Mr. Carter making several stops to pick up and discharge passengers. The bus appears to be appropriately positioned at this time, well into the right lane. As the bus approaches North Aldine Street, the video shows a tall adult male standing in the open doorway of his car. His arm appears to be bent, as if he was holding a cell phone to his ear. From the video, it appears that unless Mr. Carter slowed down or moved toward the left, contact with this pedestrian might have been imminent.

In addition to the pedestrian's car, there were three cars were parked in succession behind him. The distance between the last of the parked cars and the bus appears to be in excess of the length of the four cars, perhaps 1 ½ or even twice the distance of the four parked cars. Mr. Motari testified that Mr. Carter had five second to identify and react to the hazard the pedestrian represented.

At approximately 12:32:42, a blue truck appears at the driver's rear quarter. Within a second, Mr. Carter begins to gradually direct the bus toward the left lane to avoid contact with the pedestrian. As the bus shifts over to the left lane, the blue truck begins to slow down and it makes contact with the bus.

The video shows that, at the time of the collision, over half of the total width of the bus was in the left lane of traffic. The device that operates the cameras also show whether or not any signal light had been activated by the operator. There is no indication that Mr. Carter signaled the lane change.

The blue pickup truck was later identified as a 1994 Ford F-150, driven and owned by Daniel V. Foss, a resident of Apple Valley, Minnesota. The evidence indicates that Mr. Foss has a commercial driving license. The collision damaged the rear wheel molding of the bus, as well as the rear panel extending from the rear wheel toward the back. The truck driven by Mr. Foss sustained damage to the passenger side front bumper, the front quarter panel and a side mirror. Both vehicles were operable after the collision and no one needed medical attention. Neither driver was under the influence of alcohol or drugs. The video does not establish whether the bus first made contact with the truck or whether the truck first struck the bus.

It does not appear that Mr. Carter was even aware of the collision. He proceeded to North Aldine Street and stopped for a red light. The video then shows the truck driven by Mr. Foss pulling in front of the bus and stopping, so that the bus could not move forward. Mr. Foss is then shown exiting his vehicle and walking to the front of the bus door. As Mr. Carter opened the door, Mr. Foss asked Mr. Carter “You cut off my lane and side-swiped me . . . What were you thinking?”

### Applicable Driving Standards

Metro Transit drivers are obligated to drive safely and observe certain rules of safe operation. These rules are contained in the Bus Operator’s Rule Book and Guide. This manual, which Mr. Carter has acknowledged receiving, is a comprehensive guide to safe and defensive driving.

Under the heading “Operator Fundamentals,” operators are required to exercise “sound judgment, dependability, and good problem solving skills . . . Safety should

always be the most important consideration for any decision,” operators are advised, even before the best interests of the passengers.

Rule 510 discusses the term “defensive driving,” as it is applied in the Metro Transit transportation system. The rule specifically defines the term as “being continually alert to hazards around your bus and taking action to avoid them . . . The defensive operator assumes responsibility for the safety of his/her own customers and vehicle, as well as the safety of other street and highway users who have less skill, less training and less practice.” Operators are asked to constantly observe five “safety keys” which include (1) Aim high in steering; (2) Get the big picture, (3) Keep your eyes moving, (4) Leave yourself an out, and (5) Make sure they see you.

There was no evidence by either party that the standards incorporate the concept of who may “at fault” for a collision, either in a legal or factual sense. Rather, the driving performance of each individual bus operator is judged on the basis of the five keys to safety, as set forth in Rule 510.

### Investigation

The first person to arrive at the scene was a Metro Transit Supervisor, Chang Yang. Mr. Yang did not testify. However, his report was entered into evidence. Mr. Yang’s report indicates that he spoke with Mr. Carter and a passenger on the bus, Mr. Osman. The report indicates that both Mr. Carter and Mr. Osman advised Mr. Yang that he observed the blue truck “swerve” into the rear of the bus. Mr. Yang also interviewed Mr. Foss, who advised that the bus “tried to cut him off” by moving into his lane of traffic.

Metro Police force Officer Erin Bertsch then arrived. The report filed by Officer Bertsch indicates that she also interviewed Mr. Carter, Mr. Foss and Mr. Osman. As he reported to Mr. Yang, Mr. Carter advised Officer Bertsch that he was “driving the bus straight in his lane when they were struck.” Mr. Osman and Mr. Foss repeated what they had stated to Mr. Yang.

The report indicates that Mr. Carter did not appear to have any firsthand information about what had occurred. He told Officer Bertsch that he had been approached by a witness [Mr. Osman] who had informed him of what had occurred. Officer Bertsch cleared from the scene and without having the benefit of viewing the video, concluded that the accident was not due to any actions by Mr. Carter. Mr. Carter subsequently authored a separate accident report in which he again contended that the blue pick-up truck “swerved” into the rear of the bus.

These reports, together with several pertinent photographs of the vehicles and the video from the bus cameras, comprised the investigation of this matter.

### Safety Specialist Report

Mr. Motari reviewed the investigation and issued his report on January 19, 2010.

His conclusions, as stated in the report, are as follows:

The operator failed to “Aim High in Steering.” The operator had 5 seconds to identify and react to the hazard of a person standing in the street with their vehicle door open. The operator failed to “Get the Big Picture.” The operator should have been prepared to stop or clear the left lane and signal before cutting into the left lane. The operator is being held responsible for this accident. The operator reported the pickup truck swerved into the bus . . . on his Accident report. The operator swerved and cut into the left lane to avoid hitting the person standing the street with their vehicle door open. These are facts the operator was aware of and should have reported.

Mr. Motari did not personally conduct interviews with Mr. Carter, Mr. Foss or Mr. Osman. Metro Transit did not attempt to contact or interview any of the other 30 passengers on the bus. Mr. Carter collected the names and addresses of three other potential witnesses who were riding the bus at that time. Metro Transit did not attempt to contact any of these potential witnesses.

### The Discipline

On February 15, 2010, Mr. Carter was issued a written warning, formally entitled “Record of Warning Operating Policy.” The warning was signed by the manager of the East Metro garage and stated as follows:

Leroy Carter, Operator 3493, was involved in an avoidable accident on December 31, 2009. Mr. Carter stated a truck side swiped the bus. According to Safety Specialist Brian Motari, the bus was traveling in the right lane, did not signal and cut into the left lane. There was a truck in the left lane and contact was made. This is Mr. Carter’s second responsible accident in less than a 4 month time frame. On September 18, 2009, Mr. Carter hit a fixed object with the bus mirror. He was held responsible for this accident. According [to] the Metro Transit Policy, a second responsible accident in less than a three year period is cause for a Record of Warning.

The warning from further notifies the recipient that “[A]nother warning in Customer Service, Adherence Code, or Safety will automatically . . . be just cause for termination providing one of the three (3) warnings was a final.”

Throughout the grievance step resolution process, the Employer consistently relied on the report and the contentions of the Safety Specialist. Metro Transit’s memo of the Step 1 meeting on January 28, 2010, indicates that Mr. Carter took the position that no signal or mirror check was necessary because

he was already in the left lane when the bus left the bus stop. According to the report, Mr. Carter also stated that the “person in the street had nothing to do with this” and indicated his reliance on Mr. Osman’s observation. Mr. Carter also stated his belief that the Employer edited the video in a manner unfavorable to him.

At the hearing, Mr. Carter repeated his contention that Metro Transit modified the video in some way unfavorable to his position on the accident. In his testimony, Mr. Carter refers to the pedestrian standing next to his car, arguing that he was distracted by a cell phone call and placed himself in danger by moving toward the line of traffic.

### **Positions of the Parties**

#### Metro Transit

The Employer begins its statement of position by referencing the video evidence produced in this case. It is not necessary to rely on the memories of individuals to determine the sequence of events, the Metro Transit states, because the video recorded the entire sequence.

To the Employer, the statements of Mr. Foss summarize its contentions. After the collision, the Agency notes, Mr. Foss drove up ahead of the bus, which at the time was stopped at a traffic light, and cut-off the bus. Mr. Foss then appeared at the front door of the bus and stated to Mr. Carter, “You cut off my lane and side-swiped me . . . What were

you thinking?” The Employer contends that Mr. Carter did not seem to know what to say because he was not even aware that the collision had occurred.

Metro Transit asserts that the collision was caused by Mr. Carter’s carelessness. Mr. Carter did not signal, the Employer maintains, and did not check his mirror before he moved out into the left lane of traffic. Mr. Carter, the Employer notes, confirms that he never attempted to sound his horn. The evidence, the Employer contends, indicates that the bus hit the truck and not the reverse. The front bumper of Mr. Foss’ truck was pulled forward, not pushed.

Mr. Carter, Metro Transit submits, was not “paying attention” and his inconsistent testimony supports this view. Mr. Carter never mentioned the pedestrian moving to the left during the investigation, the Employer points out, and he never took the position that the visibility conditions were anything but perfect until the hearing. In point of fact, the Employer contends, Mr. Carter stated that the pedestrian “had nothing to do with it.” The Employer asserts that Mr. Carter is engaging in “revisionist history,” rather than attempting to recall the events in an accurate sequence.

The correct sequence submits the Employer, was that Mr. Carter stopped at the bus stop and briefly activated his left hand turn signal as he left the curb. He proceeded forward about half a block. As he did so, Mr. Foss was driving in the right lane. Then, without any type of warning, Mr. Carter moved the bus into the left lane. Mr. Foss tried to avoid a collision by slowing down, but was unable to do so. The truck “had nowhere to go,” according to Metro Transit, and all of the evidence establishes that this is what occurred.

It was Mr. Carter's duty to "look high . . . aim high," an expression used by the Employer to refer to the existence of a duty to anticipate accidents. Here, the Employer argues, Mr. Carter testified that he was not even aware of the pedestrian until he was about "twenty feet," away. That is not possible, the Agency argues, according to the video. Mr. Carter had sufficient opportunity to bring the vehicle to a stop. There was no evidence of black ice on the roadway. Mr. Carter took no measures to become aware of the situation that was developing to his left. Mr. Carter's testimony, that he was proceeding straight ahead and the truck hit him, are inconsistent with his prior statements, states the Employer, including his statements to the bus supervisor and the accident report he completed.

Metro Transit takes the position that the investigation was sufficient and complied with the CBA. It was not necessary, the Employer argues, to conduct further interviews with the witness who thought he saw the truck veer into the bus. Especially in an articulated bus, views can be deceiving and witnesses can be fooled. The video is the best evidence, the Employer contends, and the video shows that the bus was moving into the truck at the time of the collision. The Employer notes that the Union takes the position that witnesses would have supported its theory, but did not call them at the hearing, which was its option.

The Employer emphasizes that Mr. Carter cannot be relied on as a witness. His statements, the Employer contends, are "all over the map." Mr. Carter does not know what happened, the Employer submits, because he was not paying attention. The Employer submits the evidence supports the conclusion that Mr. Carter must be charged with responsibility for this accident. The pedestrian was not referenced when Mr. Carter

spoke with the police. The pedestrian was not referenced when Mr. Carter completed his accident form. At one point, the Employer notes, Mr. Carter took the position that the video had been edited was not a reliable representation of what occurred. There is no evidence to suggest such a thing happened, the Employer maintains.

Mr. Foss is not reckless, as the Union suggests, the Employer contends. Rather, the video displays a driver with a Class A license driving in his lane in wintry conditions. His indignation toward Mr. Carter was proper, argues the Agency, given what took place.

Finally, Metro Transit notes that it is a common carrier and as such, is held to a high standard in terms of the conduct of its operators. Mr. Carter, the Employer suggests, did not make all reasonable efforts to avoid this accident and is now attempt to lay the blame elsewhere. The discipline should be permitted to stand, the Employer contends, and the grievance should be denied.

### The Union

The Union begins its statement of position by asserting that the investigation did not comply with Article 5, Section 2. The provision, the Union notes, requires the Agency to make a full investigation of any charge brought against a bargaining unit member. However, asserts, the Union, nothing like a “full investigation” was conducted. Mr. Matari did not “move from his desk,” the Union asserts, and a thorough investigation cannot be achieved unless all of the eye witnesses are personally engaged.

A witness can determine whether or not a car is moving in the direction of the bus, as the Union contends is the case here. The witness was in a position to actually see the background and the median as it existed on that day, the Union contends. The Union

submits that the statement of the witness, indicating that the truck veered into the bus, was not based on an optical illusion, as the Agency contends, but was instead grounded on actual observation of the events and conditions. The Union argues that the Agency's reason for not conducting these interviews, to avoid the creation of liability claims, is not reasonable and should not be credited.

Mr. Carter's testimony as to how this collision occurred is persuasive and must be considered determinative, the Union asserts. As the bus approached the three cars parked on the right, the Union contends, the pedestrian moves away from the open door of his car toward the left. His arm was up, the Union maintains, as if he was distracted by a call on a cell telephone. He virtually "stepped into the line of traffic," the Union asserts, and placed himself in an area of potential danger.

Mr. Carter was literally faced with an impossible "Hobson's Choice," according to the Union. The Union submits that a person cannot determine, from the video, whether or not the bus could have made a safe stop. If black ice were encountered, states the Union, the articulated section of the bus might have swung out and caused a serious collision. Clearly, argues the Union, a minor altercation with a truck on the left is preferable to striking the pedestrian. Mr. Carter had no reasonable alternative, the Union states, and reasonably chose the safest course. As a result, the Union states, the accident was a minor one which did not involve an injury to a person. Sounding the horn was not an option, the Union contends, since that might have had the undesirable effect of causing the pedestrian to move further toward the left.

In the alternative, the Union argues, the witness statement indicates that the truck moved toward the bus, a result likely caused by the build-up of ice on and near the median strip.

The Union compares the evaluation of Mr. Carter's responsibility for this accident to a civil case, in which the theory of comparative negligence is utilized. The Union submits that Mr. Carter is less than 50% responsibility for the accident and that the primary share of the blame must be placed on Mr. Foss and the pedestrian. The video demonstrates that Mr. Foss is a reckless person, the Union maintains, as evidenced by his conduct when interacting with Mr. Carter. Mr. Carter explanation of why he did not refer to the pedestrian during the investigation or grievance step meetings should be credited, the Union asserts. That explanation, the Union notes, was that Mr. Carter did not discuss the pedestrian because the questions were focused on how the collision occurred.

The Union notes that the Agency has the burden to prove that Mr. Carter was at fault for the collision. This, asserts the Union, the Agency has failed to do when measured by the proper standard. The Union asks that Mr. Carter be absolved of chargeable responsibility for the accident and that his record be adjusted.

## **Discussion**

### Applicable Standards

The positions of the parties to this case are quite straightforward. Metro Transit contends the written warning is justified because Mr. Carter changed lanes without a signal and without first checking the lane change for clearance and availability. Mr.

Carter had an obligation to stay in his lane, slow down and attempt to stop prior to making an emergency lane change, Metro Transit contends.

The Union, by contrast, suggests that Mr. Carter's testimony in the case must be considered determinative. Mr. Carter had two options, maintains the Union – change lanes and risk a collision with a vehicle or proceed ahead and risk injuring the pedestrian who was stepping from his car. Mr. Carter was faced with a Hobson's Choice, asserts the Union, and he made the best and most reasonable choice to assure that contact with the pedestrian did not occur.

The evidence suggests two applicable criteria by which Mr. Carter's driving must be evaluated. The first is contained within the CBA at Article 5, Section 1, providing that any discipline issued by Metro Transit must be "just and merited." The parties reasonably use these terms as virtually synonymous with the term "just cause," the traditional terminology used in labor arbitration.

The second criterion is contained within the Metro Transit Bus Operator's Rule Book & Guide. These rules require operators to apply the principles of defensive driving, as defined in Rule 510, at all times. The concept of "fault" or "legal fault" is not used in the rules describing the operator's driving responsibilities. Rather, operator driving is measured by a less rigorous standard, requiring that the "Five Safety Keys" be consistently observed.

#### Cause for Discipline

Based on this record and the applicable criteria, there is sufficient evidence to support the conclusions of Metro Transit and justify the discipline. The best evidence is

the video supplied by the on-board cameras. Four simultaneous views are provided through the lenses of these cameras.

These recordings clearly show that at the greatest point, Mr. Carter had guided approximately half the width of the bus he was operating to the left lane of traffic. There is persuasive evidence to show that he did not signal this maneuver. If he had activated a turn signal, the video would have so indicated.

The evidence is also sufficient to show that Mr. Carter did not check the lane for availability prior to entering it. The video shows that the truck driven by Mr. Foss was parallel to the rear quarter of the bus at the time the lane change was commenced. Mr. Carter was not aware of Mr. Foss' location. The indications are that Mr. Carter changed lanes without signaling and without checking the outside rear view mirror.

It is certainly true that a review of these recordings fail to resolve the question of whether the bus struck the truck or the truck struck the bus. But this is not the issue in this case. Even if the video could prove beyond question that the truck swerved into and struck the bus, this could not end the analysis, given the criteria binding on the parties.

In his report, Mr. Motari concludes that Mr. Carter failed to "aim high in steering," that is, failed to properly react to a potential hazard. Mr. Motari further finds that Mr. Carter failed to "get the big picture," referring to the evidence indicating he was unaware of Mr. Foss' location. The evidence is more than sufficient to support these conclusions. In reaching its decision, the Employer did not find it necessary to resolve the question of which vehicle struck first.

The Union persuasively argues that moving into the left lane was Mr. Carter's only reasonable choice, given the potential hazard created by the pedestrian. The Union

notes that the road surface was partially covered with snow and ice. Mr. Carter could not have attempted to stop the bus, the Union maintains, without placing the pedestrian in danger in the context of the road conditions.

However, the evidence fails to sufficiently support this contention. The road is only partially covered with snow. Additionally, the snow is confined almost exclusively to the curb side of the lane. The majority of the lane appears to be without snow and relatively dry. Mr. Carter had time to react. However, Mr. Carter did not even attempt to slow or stop the bus. Rather, he maintained speed and moved into the left lane of traffic without checking and without warning, placing Mr. Foss in an impossible position.

The Union also suggests that Mr. Carter's testimony is persuasive and ought to be considered determinative. Again, the record does not support this contention. It is not because Mr. Carter did not present himself as a credible witness who testified with sincerity and conviction. He certainly did.

However, the problem is not with Mr. Carter's credibility, but what he knew firsthand. The record establishes that Mr. Carter did not actually observe what occurred. He was unaware of Mr. Foss' location at the time he began to change lanes. Rather than rely on firsthand knowledge, Mr. Carter's testimony was based on the observations of Mr. Osman and his subsequent review of the video.

#### Propriety of the Investigation

The CBA at Article 5, Section 2, provides that no employee "shall be suspended without pay or discharged" unless a "full investigation" has been completed. Regardless

of what Article 5, Section 2 provides, Mr. Carter is clearly entitled to a full and fair investigation based on the principles associated the concept of just cause.

In this case, the Employer complied with this requirement. The driver supervisor and the Metro Transit police officer interviewed the principle witnesses, Mr. Carter, Mr. Foss and Mr. Osman. The reports containing these interviews were then forwarded to the Safety Specialist, Mr. Motari, who carefully examined them and reviewed the video before rendering his evaluation.

The Union's contentions appear to focus on Mr. Motari's report. The Union asserts that a "full" investigation requires that all eye witnesses be personally interviewed. Mr. Motari, the Union asserts, did not "move from his desk" and relied on interviews conducted by others.

The fact that the other bus passengers were not interviewed does not necessarily require the conclusion that the investigation was procedurally flawed. Investigations are not measured solely by the number of witnesses interviewed or by whether all potential witnesses were interviewed. Rather, investigations are evaluated on the amount and quality of evidence produced.

Discipline is often reversed in cases where the investigation is conducted in such a way as to deny the grievant fair consideration. *McCartney's Inc.*, 84 LA 799 (Nelson, 1985) [grievant denied the opportunity to speak in his own defense]; *Marion Power Shovel*, 82 LA 1014 ((Kates, 1984) [Employer refused to grant Union's request to produce a critical witness]. *See generally, Osborn & Ulland, Inc.* 68 LA 1146 (Beck, 1977).

Here, however, there is no reason to conclude that Mr. Carter was treated unfairly in the investigation. Mr. Motari did not function as an investigator in this case, but as an evaluator of the facts that had been produced. He relied on the previously conducted interviews of Mr. Carter, Mr. Foss and Mr. Osman. But his greatest reliance was not on the statements of a witness, but on the video. This video clearly shows that Mr. Carter's directed the bus into the left lane of traffic without signaling or checking the lane. This is the central fact of this case and it was established, not by a witness, but by a video recording.

Having carefully considered the testimony and exhibits received into evidence, as well as the positions of the parties, it must be concluded that the discipline issued to Lee Roy Carter by Metro Transit was just and merited.

The grievance is therefore *DENIED*.

## **A W A R D**

1. **IT IS THE OPINION** of the Arbitrator that the discipline issued by Metro Transit to Lee Roy Carter was just and merited.
2. **IT IS THE AWARD** of the Arbitrator that the grievance is *DENIED*.

December 11, 2010  
St. Paul, MN

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David S. Paull, Arbitrator