

In the Matter of the Grievance Arbitration Between

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Amalgamated Transit Union, Local 1005

and

**BMS Case #12 PA 0300**

Metro Council, Metro Transit Division

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**Before:** Arbitrator Harley M. Ogata

**Date and Place of Hearing:** April 3, 2012  
Metro Transit Operations Support Center  
Minneapolis, MN

**Advocates:**

**For the Union:**

Kelly Jeanetta  
Miller O'Brien Cummins, PLLP  
One Financial Plaza  
120 South Sixth Street  
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Minneapolis, MN 55402

**For the Employer:**

Ann Bloodhart  
Metropolitan Council  
390 North Robert St.  
St. Paul, MN 55101

This is a grievance arbitration between the above named parties in accordance with procedures outlined in the collective bargaining agreement. The grievance involves a discipline imposed upon Larry Rogers, a bus operator employed by the employer. Under the collective bargaining agreement, discipline can only be imposed on unit personnel if it is "just and merited." The parties agreed that the matter was properly before the arbitrator.

The discipline in question involves an alleged class B violation, as that term is understood between the parties.

### **FACTUAL BACKGROUND**

The grievant has been employed as a bus operator for Metro Transit since June of 2007. The incident in question concerns what the parties call a Class B violation. A class B violation is a lesser form of discipline under the applicable policy. Procedure 4-7d. Nonetheless, four class B violations in a rolling calendar year will result in termination under this policy.

On July 20, 2011, the grievant was operating a bus while on the job. He stopped to pick up passengers on the corner of Olson Memorial Highway and 7th Street. He was stopped for a period of time while passengers loaded onto the bus. After the last passenger entered the bus, he proceeded on 7th Street across the intersection at Olson Highway. The light turned yellow at some point early in his entry onto Olson Highway and turned red before the front of the bus

crossed the median. The bus then proceeded across the intersection under a red light.

The grievant was issued a class B violation for the above circumstances. Much of the facts in this case are not in dispute because the bus is equipped with five video cameras that recorded the entire episode. At issue in this case is whether the circumstances as described above and in more detail below, provide discipline that is "just and merited" under the collective bargaining agreement.

### **DISCUSSION**

The video is obviously revealing. It shows the bus as it begins to move forward after first picking up passengers. A car appeared to pass the bus while it was stationary and proceeded to execute a right turn from the lane on the left of the bus. The bus was beginning its forward movement as the car turned right in front of it.

At 14:27:05.24 on the video, the light turns yellow. The bus stop sign on the sidewalk is visible in the middle of the right front window of the bus. The parties generally agree that the pole is about 6 feet from what the employer calls the crosswalk at this point. That would put the front of the bus at about 4 ½ feet in front of what the employer calls the crosswalk.

The evidence submitted at hearing undisputedly confirms that there are three lines at this crosswalk area. The tapes indicate that the bus had crossed the first line, but had not crossed the second line when the light turned yellow.

There is a dispute between the parties as to which line constitutes the first line of the crosswalk.

The union contends that the first line is the first line of the crosswalk. The employer contends that the first line is what is known as the stop line and the second line is the first line of the crosswalk.

Both parties contend that this dispute is significant in that it could determine whether the grievant violated a policy of the employer. Metro Transit Policy Number 52 states that when starting from a stopped position, a bus must not proceed into the crosswalk or through the intersection when the light has changed from green to yellow. The video clearly shows that if the first line demarcates the beginning of the crosswalk, the bus was already past that line. If the second line demarcates the crosswalk, the bus had yet to enter the crosswalk.

A crosswalk cannot be marked by three lines. There is no question that the crosswalk in this matter is comprised of the second and third lines and does not include the first line, which marks the vehicle stop line. The first line only extends half way across the span of the intersection, whereas the actual crosswalk extends the full length. The first line demarcates the "stop line" where cars are required to stop so that they do not stop in the intersection and block traffic.

This finding leads to the conclusion that the bus was not in the crosswalk when the light turned yellow, leading to the potential conclusion that the policy

was violated and a potential subsequent finding that the discipline should be upheld.

The arbitrator is persuaded by the union's argument that this matter shouldn't be judged by a frame by frame, after the fact judgment based on a technological analysis of the facts. However, the arbitrator is persuaded that the grievant made an error in judgment here based on other factors.

First, when the light turned yellow, the bus was proceeding at a low rate of speed. This is not a case where the bus was almost in the crosswalk going at or near the speed limit, which would give the bus a better opportunity of crossing the intersection safely before the light turned red. Additionally, the slow rate of speed would give the operator a better opportunity to stop before entering the intersection.

Second, the size of the intersection comes into play in this discussion as well. If this was a two lane road that the bus had to traverse, it would be more reasonable for the grievant to believe that he could safely cross the intersection, given his stated understanding that there would be a delay between the red light and the onset of the green light for the cross traffic. Here, the bus had to cross seven lanes and a median in order to cross the entire intersection.

Indeed, in reviewing the video, the light turned red when the front of the bus was only one lane or one lane and a half into the first section of the intersection. The time on the video at this point was 14:27:08.71. The rear of the bus was about at the entrance of the intersection at this point. The video then

shows the rear of the bus crossing the entire intersection at 14:27:15.67. The video thus shows that the bus was in the intersection for about 7 seconds while the light was red. That's a considerable length of time.

The arbitrator is persuaded by the union's position that the grievant could not have stopped the bus in time so as to avoid entering the crosswalk. Indeed, at least one of the employer's witnesses agreed with this assessment (Jeff Wostrel). However, given a choice between stopping in the crosswalk and traversing through seven lanes for seven seconds on a red light, the better choice would have been to stop.

Both parties agree that safety is a paramount issue for operators. However, the union asserts that there are additional mitigating circumstances here that should call for some lesser form of discipline being imposed. It argues that the lesser form of discipline would still serve the purpose behind the safety goal.

In order for this arbitrator to sustain a plea for a lesser form of discipline, the grievant would need to show that he has an understanding of what is expected of him, what he did wrong, and what he would do in the future to avoid a recurrence.

None of that is present here. The grievant's position at hearing was that he made a judgment call and once he committed to going through the intersection, he carried forward on that judgment. At no point in the hearing did the grievant indicate that his initial decision might have been in error.

As stated earlier, the tapes clearly show that the bus was vulnerable to cross traffic for a period of seven seconds while it traversed across a major intersection under a red light. The raw footage of the video supports the notion that the safety of the passengers was at risk. Nevertheless, the grievant held firm in his position that his actions were justified under the circumstances. Thus, there is every indication to believe that he would do the same thing, given a like set of circumstances in the future. Imposition of a lesser form of discipline would therefore encourage this mistaken position and is therefore not justified under these facts.

Every driver makes these types of decisions regularly on our roadways. With enough time on the roads, every driver has faced the same decision that the grievant had to make, within a split second. The judgment and decision made under the instant facts is one under which an ordinary driver should have realized that they should have stopped rather than proceeding across the lengthy intersection. The grievant is not an ordinary driver. He is a professional bus operator entrusted with the safety of numerous passengers and should have exhibited some understanding of the error of his judgment call, at least in retrospect.

Finally, the union argued that the grievant was being subjected to disparate treatment because other operators have not been disciplined with Class B violations in the past, even under circumstances where they proceeded across intersections under red lights.

The employer agreed that there may have been instances where that was true, but could not testify as to the reasons why because they were not familiar with the circumstances. The arbitrator is of the same opinion on this point. There is not enough information in evidence to indicate the similarity in factual circumstances to make a fair comparison of the various disciplines in question so as to formulate a basis to determine if the grievant is being treated disparately here.

### **CONCLUSION**

For the foregoing reasons, the grievance is denied.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "H. Ogata", with a stylized flourish at the end.

Harley M. Ogata

Dated: April 25, 2012