

IN THE MATTER OF THE ARBITRATION BETWEEN

Amalgamated Transit Union, Local 1005

UNION

-and-

Metropolitan Council
Metro Transit System

EMPLOYER

ARBITRATOR: Christine Ver Ploeg

DATE AND PLACE OF HEARING: May 18, 2012
Metro Transit Operations Center
Minneapolis, Minnesota

DATE OF AWARD: June 6, 2012

ADVOCATESFor the Union

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Abdirashiid Haji, Grievant

ISSUE:

Was the Employer's issuance of a verbal warning to the Grievant just and merited? If not, what shall be the remedy?

BACKGROUND

This case has been brought by the Amalgamated Transit Union Local 1005 (hereinafter “Union”) on behalf of the Grievant, a Metro Transit operator who is challenging the issuance of a verbal warning to him by the Metro Transit System (hereinafter “Employer”). The Union is the Grievant’s exclusive representative.

This Arbitration stems from the Employer’s issuing a verbal warning to the Grievant for what it has characterized as a “responsible accident” involving the Grievant’s failure to properly secure a wheelchair passenger on a bus that he was operating. The Union submits that the Employer’s discipline of the Grievant was not “just and merited,” as the parties’ Agreement requires (Art. 5, Sec. 1). The Employer submits that it was. The evidence has established the following:

In June of 2006 the Employer hired the Grievant as a part-time bus operator; he became a full time operator in 2008. The parties agree that the Grievant’s overall record has been very good.

The incident that gives rise to this arbitration occurred on September 19, 2011. On that date the Grievant was operating Bus 628 on Route 21. One block prior to the termination of his route a customer in a wheelchair boarded the bus, and the Grievant proceeded to secure the wheelchair by attaching two restraints to its wheels. The Grievant then proceeded to complete his route, and in doing so he made a left hand turn. Although the Grievant properly performed the turn, the passenger (who has one leg) and the wheelchair tipped and the passenger fell to the floor. The Grievant immediately attended to the passenger, but the passenger indicated he was not hurt. The passenger has not followed up with any complaint to Metro Transit.

Immediately after this event occurred the Grievant properly reported it to the Control Center. In doing so the Grievant indicated the passenger had fallen, but that the wheelchair had not. This was not correct; the video of this incident clearly shows that both the wheelchair and the passenger fell. Nevertheless, it is likely that this misstatement was a matter of poor communication rather than deceit for two reasons: English is not the Grievant's native language, and he knows that the incident would have been recorded on videotape. In addition, the Grievant told the Control Center (and wrote on the Incident Report) that the passenger "was drunk to me." By contrast, the passenger does not appear at all intoxicated on the videotape and there is no evidence that even if he had been intoxication played any role in this event. Although this comment is self-serving it also cannot be characterized as deceitful. The Grievant abstains totally from alcohol, and it is not surprising that if he thought he smelled alcohol on the passenger's breath he would comment on that.

In any event, there is no question that the Grievant failed to follow proper procedure in securing the passenger's wheelchair. He and the Union concede as much. However, the Union argues that charging the Grievant with a "responsible accident" is overkill given the Grievant's prior excellent record and the fact that this event should more properly be characterized as an Adherence Code violation. The difference is found in the amount of time this discipline stays on the Grievant's record. As a "responsible accident" it remains on his record for three years,ⁱ while as an Adherence Code violation it would be removed after one year absent further occurrences.

ⁱ Metropolitan Council's Operating Policy, Appendix B states:

Safety-within a rolling three (3) year period:

- 1st responsible accident – verbal warning
- 2^d responsible accident – written warning
- 3^d responsible accident – final written warning
- 4th responsible accident – termination

On behalf of the Grievant the Union filed a timely grievance protesting this action. The Union submits that the Employer's policy permits the exercise of discretion, and that a verbal warning is too harsh a penalty given all of the circumstances. The Union seeks to have this "responsible accident" removed from the Grievant's record.

The parties were unable to resolve their differences concerning this matter in earlier steps of the grievance process and have agreed that this dispute is now properly before the arbitrator for resolution. The parties and the arbitrator met for a hearing on this matter on May 18, 2012, following which the record was closed.

DISCUSSION AND DECISION

In this case the Employer has had the burden of proving that the Grievant's discharge was "just and merited." For the following reasons I find that the Employer has met that burden.

1. Wheelchair Securement Policy and Grievant's knowledge thereof

There is no question that the Employer's wheelchair policy is reasonable and that the Grievant had ample notice of its provisions. The Union and the Grievant do not suggest otherwise, and thus it is not necessary to itemize the policy or the number of times the Grievant was provided training regarding its terms. There is no question that on September 19, 2011, the Grievant was required to, but did not: (1) Use a four point securement (he used only two), (2)

This policy will continue the practice of the safety guidelines, including the practice of taking mitigating circumstances into account in determining whether to issue a warning for minor accidents.

Attach the securement straps to a welded portion of the wheelchair rather than the wheels, and
(3) Advise the passenger that the Grievant could provide him with a lap belt.

2. *Did the Employer properly characterize the Grievant's violation of its wheelchair policies as a "responsible accident?"*

Although the Union and the Grievant acknowledge that the Grievant failed to secure the wheelchair properly on the day in question, the Union submits that the Employer has the discretion to characterize this event as an Adherence Code violation (which stays on the Grievant's record for one year) rather than a "responsible accident," (which stays on his record for three years). The Union argues that the Employer should exercise its discretion under these circumstances given that (1) it has previously done so with other employees, and (2) given the Grievant's exemplary record.

I have considered the Union's evidence and argument on this matter and cannot agree that the Employer's charging the Grievant with a "responsible accident" was not "just and merited." First, there is no question that safety is the Employer's top priority. This unquestioned premise has been articulated and affirmed in so many arbitration decisions by this and other arbitrators that it will not now be reiterated.

Second, the evidence does not support the Union's claim that the Employer has a practice of characterizing wheelchair incidents of this type as Adherence Code violations. At best, the Union offered one possible comparable situation. However, little is known about that other event. Moreover, one event—in the context of so many other cases of this type which the Employer has charged as a "responsible accident"--does not a practice make.

Finally, although the passenger who fell to the floor on September 19 was not injured, the video of the unfolding events is shocking. This passenger had only one leg. All of the bus's

securement devices were designed to safeguard just such a passenger. As the bus turned and the improperly secured wheelchair started to tip, the passenger tried but was helpless to stabilize himself. If the Grievant had adhered to his training, as he testified he always does, this would never have happened.

There is no question that the Grievant is a good employee. Indeed, it is because he is such a good employee that he has taken this discipline very hard and has pursued this matter to arbitration. It is unlikely that the Grievant will ever again be involved in such an event. Nevertheless, the Employer has acted reasonably in responding to this very serious event. There is no basis upon which to overturn the finding of “responsible accident.”

AWARD

For the above reasons this grievance is hereby denied.

May 23, 2012



Christine Ver Ploeg, Arbitrator