

IN THE MATTER OF ARBITRATION BETWEEN

| | | |
|----------------------------------|---|--------------------------------|
| AMALGAMATED TRANSIT UNION |) | OPINION AND AWARD |
| LOCAL 1005 |) | |
| AND |) | BMS 12-PA-0826 |
| |) | |
| METROPOLITAN COUNCIL |) | Grievance re: |
| METRO TRANSIT DIVISION |) | Accident/Verbal Warning |

ARBITRATOR: Charlotte Neigh

HEARING: May 10, 2012

NO POSTHEARING BRIEFS

AWARD: June 15 , 2012

REPRESENTATIVES

For the Union:

Justin D. Cummins, Esq.
Miller O'Brien Cummins
120 South Sixth St. - #2400
Minneapolis, Minnesota 55402

For the Employer:

Andrew D. Parker, Esq.
Parker Rosen
300 First Avenue North - #200
Minneapolis, Minnesota 55401

JURISDICTION AND PROCEDURE

Pursuant to the parties' collective bargaining Agreement and the procedures of the Minnesota Bureau of Mediation Services, Charlotte Neigh was appointed to arbitrate this matter. A hearing was held in Minneapolis, at which time both parties had a full opportunity to offer evidence and argument, and the record was closed.

ISSUE

Whether the verbal warning for being responsible for an accident was just and merited.

PERTINENT AUTHORITY

AGREEMENT

ARTICLE 5 - GRIEVANCE PROCEDURE

Section 1. Metro Transit reserves . . . its right to discipline its employees, but . . . such discipline shall be just and merited.

ARTICLE 11 - WORK RULES AND PRACTICES

All practices and agreements governing employees . . . not in conflict with nor changed by the provisions of this Agreement, may be changed subject to the following conditions:

(a) Work rules and or practices may not be in conflict with the contract . . .

BUS OPERATOR’S RULE BOOK & GUIDE

•••

Safety should always be the most important consideration for any decision. Doing the right thing for customers should be your secondary consideration and Standard Operating Procedures should also be considered . . .

SAFE OPERATIONS; GENERAL PRINCIPLES

241 SAFETY IS THE FIRST PRIORITY

Remember the Five Safety Keys. Following these driving rules at all times will give you the “space cushion” you need for operating buses safely in all conditions.

1. Aim high in steering.
2. Get the big picture.
3. Keep your eyes moving
4. Leave yourself an out.
5. Make sure they see you.

242 BRAKES

All stops should be made by “feathering” the brakes by depressing the pedal gradually and evenly. . .

510 DEFENSIVE DRIVING

The National Safety Council estimates that about 90 percent of motor vehicle accidents are preventable. Defensive driving is being continually alert to hazards around your bus and taking action to avoid them. . .

520 PREVENTING ON-BOARD CUSTOMER INJURIES

Rough starts or stops cause a large percentage of on-board customer accidents. A professional bus operator can eliminate these accidents by using defensive driving tactics:

- A. Clear mirrors before moving bus
- B. Keep proper following distance
- C. Brake and accelerate smoothly
- D. Monitor interior mirrors for customer movement

OPERATOR TRAINING MANUAL

Chapter 10: Defensive Driving

* * *

2. Get The Big Picture

* * *

Proper following distance is an important part of getting the big picture. Following distance is the distance allowed for the bus behind another vehicle. Proper following distance should be adequate to allow space for the vehicle, visibility for the operator, and time to make decisions.

It is important for the operator to know how far the bus is from the vehicle ahead and whether they are too close. Use timed interval following distance method to determine how far the bus is, in seconds, from the vehicle ahead.

To know how much space the operator has, wait until the vehicle ahead passes a shadow on the road, a pavement marking, or some other clear reference point. Then count off the seconds like this: “one thousand one, one thousand two, one thousand three, one thousand four” until the operator reaches the same spot.

Operator Training Manual - Defensive Driving - Get the Big Picture (continued)

Following distance needs to be appropriate for the length of the vehicle. There are three types of buses that operators drive at Metro Transit.

These buses are:

- 40-foot Gillig
- 45-foot MCI Coach
- 60-foot New Flyer Articulated Bus

When calculating following distance use these guidelines:

Under 40 MPH

Allow 1 second for each 10 feet of vehicle length. For example, if driving a 40-foot buse, the operator should leave 4 seconds between the bus and the vehicle ahead. . .

* * *

3. Keep Your Eyes Moving

* * *

Move eyes every 2 seconds by making quick glances . . .

4. Leave Yourself An Out

• • •

- Try to maintain space on all four sides of bus - keep the front open by adjusting speed

• • •

- Reduce speed if satisfactory room for error cannot be maintained

10.2 Hazards and Distractions

Hazards

A hazard is any road condition, other driver, or pedestrian that is a possible risk.

As a defensive operator and a professional, be prepared to react to the mistakes of others. . . .

One of the most important skills involved in defensive driving is surveying the area around the bus for possible hazards.

* * *

Remember, sudden braking or quick turning increases the chances of a collision or customer injury.

There are often clues that will help the operator recognize hazards. . .

Seeing Hazards Lets the Operator Be Prepared

An operator will have more time to act by seeing hazards before they become emergencies. . . An operator who did not see the hazard would have to do something very suddenly. Sudden braking or a quick lane change is much more likely to lead to a crash.

* * *

Chapter 11: Handling Special Situations

11.1 Accidents, Incidents, and Emergencies

• • •

An accident is an unplanned and unwanted event. These events are considered accidents:

- Collisions or contact with other vehicles
- Collisions or contact with objects
- Collisions or contact with pedestrians
- Passenger falls or injuries on bus

Chargeable Accident

An accident will be considered chargeable if the accident could have been prevented by the operator. Chargeable accidents are recorded on the operator's safety record.

Non-Chargeable Accident

A non-chargeable accident is one that was unavoidable, due to events beyond the operator's control.

BACKGROUND AND UNDISPUTED FACTS

The Grievant was hired as a part-time operator in September 2010 and underwent three months of training. On 10/22/11 as he was driving his route, he braked forcefully to avoid running into the rear of a car that had stopped to make a left turn at an intersection. The sudden stop jolted the passengers and caused a little girl, who had been sitting sideways in an aisle seat, to be thrown onto the floor. No claims were made for injuries.

Following established procedure, a Safety Specialist (SS) investigated the event by reviewing the video from the bus cameras and the operator's report, and interviewing the operator. The SS determined that the operator was responsible for the accident because he had a reasonable opportunity to avoid it but failed to do so. The Grievant was given a verbal warning, the lowest level of disciplinary action, for a first "responsible accident".

The Union grieved the warning, claiming that the accident should have been treated as non-chargeable. Successive levels of management at steps of the grievance procedure reviewed the video and concurred with the determination of the SS. The parties were unable to resolve this matter and it proceeded to arbitration.

SUMMARY OF THE PARTIES' ARGUMENTS

THE EMPLOYER ARGUES THAT:

- Progressive discipline for responsible accidents, starting with a verbal warning, is important to upholding safety standards, which is the primary focus of the operation.
- The video from the bus cameras shows that the following distance was too little, in violation of the most important safety key.
- This accident was preventable if the Grievant had reacted as he should have.
- The car in front of the bus slowed at an earlier intersection, showing its brake lights, and the distance between the bus and the car decreased. The Grievant failed to back off to maintain a proper following distance. When the car stopped to make a left turn at the next intersection, it did not do so abruptly and a proper following distance would have let the bus stop smoothly.
- There is no basis for the Union's claim that this disciplinary action was discriminatory. Other similar accidents have been treated in the same way, and the same SS previously found the Grievant not responsible for a similar abrupt stop.
- The grievance should be denied and the disciplinary action upheld to maintain the Employer's safety standards and the confidence of the public.

THE UNION ARGUES THAT:

- The video doesn't reflect the reality in the field, taking into account: the need for operators to be constantly scanning in every direction, which makes the failure to immediately see the car's brake lights understandable; and the minimum amount of reaction time necessary to apply the bus brakes.
- The Grievant reacted properly when he saw the stopped car and avoided a collision; although an abrupt stop was not ideal, it has happened in many similar incidents found not to be the fault of the operator.
- The disciplinary action is unduly harsh, given the circumstances and the lack of injury or property damage.
- The disciplinary action was also discriminatory, given that other employees in similar situations have not been disciplined.

ANALYSIS AND DISCUSSION

The Union has not challenged the validity of the Employer's policy of progressive discipline for chargeable accidents or its definition of what constitutes a chargeable accident. The fundamental question is whether this accident could have been prevented by the operator or was unavoidable due to events beyond the operator's control.

The Grievant testified that: he braked and slowed when he saw the car's brake lights; he assumed that the car would make the left turn without stopping; the car stopped suddenly, making it necessary to brake sharply; and he was surprised that the car stopped and waited for an oncoming car because it had sufficient time to make the left turn. Assuming that a turning car will not wait for oncoming traffic is risky; safe operation would dictate against relying on such an assumption.

The video from the bus cameras shows: the car in front of the bus slowed and signaled for a left turn at the intersection prior to the one where the accident occurred but the car proceeded forward; the distance between it and the bus had decreased; the Grievant did not back off to regain the required following distance while traveling another block; and the following distance/time decreased from the required four seconds to less than two seconds, contrary to the Grievant's testimony that his following distance was always good.

The Grievant also insisted that this was an "incident" and not an "accident". Chapter 11 of the training manual provides that events considered to be accidents include having a passenger fall, which happened to a small girl on the Grievant's bus. Although the Grievant suggested that the girl's fall was attributable to her sitting sideways rather than facing forward, the Employer points out that the operator is also responsible for seeing to it that passengers are properly seated. Furthermore, given the force of the jolt as reflected in the movement of the other passengers and some objects, the child likely would have been thrown to the floor even if she had been facing forward.

Analysis and Discussion (continued)

As the SS testified, the car's action at the previous intersection suggested that a left turn was being contemplated and was a red flag, signaling a perceived risk directly in front of the bus, which should have had the operator's primary attention. However, even when the car's brake lights appeared as it approached the next intersection, the Grievant was slow to take his foot off the accelerator. The SS concluded, and the video supports, that the car's stopping for a left turn was not abrupt and that the Grievant's report in this regard was not accurate. The SS reasonably concluded that the Grievant had more than enough warning to avoid slamming on the brakes and jolting the passengers, and so was responsible for the accident.

CONCLUSION

This accident could have been prevented by the Grievant and the verbal warning was just and merited.

AWARD

The grievance is denied.

June 15, 2012

Charlotte Neigh, Arbitrator