

**STATE OF MINNESOTA  
BUREAU OF MEDIATION SERVICES**

**IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN:**

METROPOLITAN COUNCIL, METRO TRANSIT,  
EMPLOYER,

-and-

AMALGAMATED TRANSIT UNION, 1005,  
UNION.

ARBITRATION AWARD  
BMS CASE NO. 12-PA-1256  
Employee Discipline

ARBITRATOR: Rolland C. Toenges

GRIEVANT: Carla Simonson

DATE OF GRIEVANCE: April 3, 2012

DATE ARBITRATOR NOTIFIED: June 8, 2012

DATE OF HEARING: September 19, 2012

DATE OF AWARD: October 19, 2012

**ADVOCATES**

**FOR THE EMPLOYER:**

Andrew Parker, Attorney  
Parker Rosen, LLC

**FOR THE UNION:**

Kelly A. Jeanetta, Attorney  
ATU, Local 1005

**ISSUE**

**Whether discipline of the Grievant was just and merited. If not, what is the appropriate remedy?<sup>1</sup>**

**WITNESSES**

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<sup>1</sup> The Parties stipulated issue.

**FOR THE EMPLOYER:**

Christy Bailly, Director, Bus Operations

**FOR THE UNION:**

Carla Simonson, Grievant

**ALSO PRESENT**

Marcia Padden, Labor Relations  
 Doyne Parsons, Transportation Manager

Mark Lawson, Secty/BA

**JURISDICTION**

The matter at issue, regarding discipline of the Grievant, came on for hearing pursuant to the Grievance Procedure contained in the Collective Bargaining Agreement (CBA) between the Parties. The Grievance Procedure, Article 5, in relevant part 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.”

“Section 2. . . .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. . . . 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.”

“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 provisions of this Agreement, shall constitute a grievance.”

The Arbitration Procedures, Article 13, in relevant part, provide as follows:

“In the event a dispute or controversy arises under this Agreement which cannot be settled by the parties within thirty (30) days after the dispute or controversy first arises, then Metro Transit or the ATU, whichever is

applicable, in accordance with Article 2 or 5 hereof, may request in writing that the dispute or controversy be submitted to arbitration. . . .“

“In making such submission the issue to be arbitrated shall be clearly set forth in writing. The Board so constituted shall weight all evidence and arguments on the points in dispute, and the written decision of a majority of the members of the Board of Arbitration shall be final, binding and conclusive and shall be rendered within forty-five (45) days from the date the arbitrations hearing is completed.”

“The parties thereto shall each pay the arbitrator of its own selection, and they shall jointly pay the third arbitrator. In any matter submitted to the Board of Arbitration, a stenographic record shall be made of the proceedings unless both parties otherwise agree and the cost of the record shall be divided equally between Metro Transit and the ATU.”

The Parties stipulated that the instant matter is properly before the Arbitrator and there are no procedural or substantive objections.

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

The arbitration hearing was conducted as provided by 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 and argument bearing on the matter in dispute. Witnesses were sworn under oath and were subject to direct and cross-examination. The Parties presented closing arguments and waived the filing of post hearing briefs. There was no request for a stenographic of the hearing.

### **BACKGROUND**

Metro Transit (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) represent

some 1500 employees who operate equipment, maintain equipment and perform administrative support functions.

The Grievant is a Bus Operator who has been employed by Metro Transit since 3/25/1996.<sup>2</sup>

Metro Transit has implemented a Policy regarding the use of personal electronic devices such as a cell phone (CP). The policy in relevant part provides as follows:

“Section II, Paragraph 4 in the first sentence states: “While operating any bus or light rail vehicle, **all cell phones and other personal electronic devices must be powered off** –not on vibrate or silent - stowed off the person in such a manner that it is not visible to either the operator or a passenger. Suggestions for stowing include but are not limited to placing the device in the approved operator bag, personal backpack or purse; stowing in a mesh pocket of such a item will not be considered a violation of this procedure.”<sup>3</sup>

A revised Procedure bulletin was issued by the Metropolitan Council (4-7f) dated June 4, 2011, which sets forth the Employer’s Policy. This bulletin titled “Restrictions Regarding Cell Phone and Personal Electronic Devices While Operating a Bus or Light Rail Vehicle” sets forth the terms and conditions of the Policy in considerable detail.<sup>4</sup>

Metro Transit issued bulletin NO. 40, effective June 11, 1011, titled “Revised Restriction Regarding Cell Phones and Personal Electronic Devices While Operating a Bus or Light Rail Vehicle Procedure” to all employees involved in operating a bus

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<sup>2</sup> Employer Exhibit #17.

<sup>3</sup> Joint Exhibit #2.

<sup>4</sup> Employer Exhibit #9.

or light rail vehicle. This bulletin also set forth the terms and conditions of the Employer's Policy in considerable detail.<sup>5</sup>

Provisions regarding adherence to policies and cell phone and personal electronic device use are also contained in the Employer's Personal Policies #99 and 119."<sup>6</sup>

Employees, subject to this Policy, including the Grievant, were provided a copy of the policy and signed a written acknowledgement of its receipt. The Grievant's latest acknowledgement was signed on June 9, 2011.<sup>7</sup> In addition to providing each employee with a copy of the Policy, the Employer has made numerous efforts to insure employees are aware of the Policy by issuing bulletins, posting the Policy in work areas and conducting informational meetings with employees.<sup>8</sup>

The Policy was implemented with the objective of avoiding unnecessary operator distraction. The effort to avoid unnecessary operator distractions is a matter of national concern and is supported by considerable research and experience. This concern is in response to public transportation accidents involving operators distracted by personal electronic devices. In several cases, such a distraction was responsible for multiple passenger deaths and enormous property damage. Based on research, the National Transportation Safety Board urges a near total ban on cell phones while driving.<sup>9</sup>

The Policy prescribes discipline for an employee failing to adhere to the conditions of the Policy. For a first offense, failure to comply with the Policy will result in a

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<sup>5</sup> Employer Exhibit #12.

<sup>6</sup> Employer Exhibits #14 & 15.

<sup>7</sup> Employer Exhibits #10 &13.

<sup>8</sup> Employer Exhibits #6, 7 & 8.

<sup>9</sup> Employer Exhibits #1 - 5e.

Final Record of Warning for 36 months and up to a 20-day suspension. A second offense within 36 months calls for termination of employment.<sup>10</sup>

In the instant case, the Grievant is charged with failing to turn off her cell phone while operating a bus on February 21, 2012. Although the Grievant had stowed her cell phone consistent with the policy, she had failed to shut it off. As consequence, the cell phone rang when the Grievant was operating the bus. The Employer considers this a Policy violation and an unnecessary distraction while the Grievant was operating the bus. The Employer imposed the full first offense discipline, which was a Final Record of Warning for 36 months and a 160-hour suspension.<sup>11</sup>

The Union filed a grievance on behalf of the Grievant. The matter was processed through the CBA Grievance Procedure without resolution.<sup>12</sup>

The disputed matter now comes before the instant arbitration proceeding for resolution.

### **EXHIBITS**

#### **JOINT EXHIBITS:**

- J-1. Collective Bargaining Agreement
- J-2. Final Record of Warning, dated 2/21/2012
- J-3. Record of Suspension, dated 3/12/2012
- J-4. First Step Grievance Response, dated 4/3/2012
- J-5. Second Step Grievance Response, dated 5/11/2012

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<sup>10</sup> Employer Exhibit #9

<sup>11</sup> Joint Exhibit #2 & 3.

<sup>12</sup> Joint Exhibits #3 & 4.

EMPLOYER EXHIBITS:

- E-1. Communication setting forth the US Dept of Transportation, Federal Transit Administration position on Cell Phones and other personal electronic devices.
- E-2. AFTA Bus Safety Policy – Recommended Practice.
- E-3. Recommended Practice – American Public Transportation Association.
- E-4. Hazard Analysis of Using Cell Phones While Operating A Transit Vehicle.
- E-5a. Safety Implications of ATIS Use With Cell Phones.
- E-5b. Research Article – Driven To Distraction.
- E-5c. A comparison of the Cell Phone Driver and the Drunk Driver.
- E-5d. Driving Performance During Cell Phone Conversations and Common In-Vehicle Tasks While Sober and Drunk.
- E-5e. NTSB Urges Near Total Ban On Cell Phones While Driving.
- E-6. Metro Transit – Cell Phone/Electronic Device Use While Driving a Bus or Light Rail Vehicle.
- E-7. Metro Transit Insights – RE: Cell Phone Use.
- E-8. Metro Transit Posting – Turn If Off. Stow It Away.
- E-9. Metropolitan Council – Restrictions Regarding Cell Phone and Personal Electronic Devices While Operating a Bus or Light Rail Vehicle.
- E-10. Metropolitan Council – Cell Phone Use Procedures, Verification of Employee Notification.
- E-11. Metro Transit – Cell Phone/Electronic Device Use While Operating a Bus or Light Rail Vehicle, dated 2/26/2010.
- E-12. Metro Transit – Revised Restrictions Regarding Cell Phone and Personal Electronic Devices While Operating a Bus or Light Rail Vehicle Procedure, dated 6/3/2011.
- E-13. Metropolitan Council Cell Phone Use Procedure – Verification of Employee Notification, signed by Grievant on 6/9/2011.

- E-14. Metro Transit Personnel Policy #97 – You are responsible for following all policies and rules and expected to exercise good judgment while on duty.
- E-15. Metro Transit Personnel Policy #119 – Cell Phone, Portable Device/Ear Piece.
- E-16. Arbitration Award – Metro Transit & ATU 1005, BMS CASE No. 10PA1030.
- E-17. Excerpt of Grievant's Personnel Record.
- E-18. Metro Transit – Bus Schedule Assigned to Grievant Showing Stops and Layovers.
- E-19. Map of Bus Route Operated by Grievant – Route 5 North, effective 12/20/2011.
- E-20. Metro Transit- Schedule of Cell Phone Policy Violations.
- E-21. Work History Report of Grievant showing personnel actions.
- E-22. Arbitration Award – Metro Transit & ATU 1005, BMS Case No. 12PA1174.
- E-23. DVD Video Recording.

UNION EXHIBIT:

- U-1. Arbitration Award – Metro Transit & ATU 1005, BMS Case No. 11PA0091.

**POSITION OF THE PARTIES**

**THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:**

- At issue in the instant case are cognitive distractions and the severe consequences on safety.
- The Union doesn't understand cognitive distraction and would have you believe it is not a big deal, but at issue is the safety of customers.
- Research has shown that distractions from cell phone use is equivalent to drug and alcohol distractions.
- When safety is the number one concern, cognitive distraction cannot be considered a minor violation.

- The Employer's Policy on personal electronic devices is a serious safety rule and stands with prohibition of drug and alcohol use as a critical safety issue.
- The Grievant violated the Policy twice – when she first failed to turn the phone off and when she later neglected to turn it off at the first opportunity.
- Operating the bus for some 57 minutes with the phone on makes it an egregious violation.
- There should be no question that having phone on for one hour creates an emergency condition.
- On the video it can be determined that the Grievant turned off the phone alarm, but failed to turn off the phone.
- In any event, it is the Grievant's responsibility to insure the phone is off when operating the bus.
- The Grievant had every opportunity to be aware of the Policy and acknowledges understanding the Policy.
- Upholding the Grievant's discipline is critical to maintaining consistent and uniform application of the Policy.
- The record consists of 14 discipline cases under the Policy where there was no talking or texting.
- Even when the phone was not on at all a 15-day suspension was administered.
- Exceptions to uniform discipline occurred when a case was settled without upper management involved and an arbitration award.
- The Arbitrators Award upholding the discipline Policy in the instant case will set the standard.
- That the Grievant was not talking or texting overlooks the matter of cognitive distraction.
- The Grievant's offense was exacerbated because she was operating on one of the busiest bus routes.
- The Grievant failed to tell her manager, thinking she would get away with it.

- The Employer requests that the grievance be denied and the Policy be upheld.

THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The Employer must support its position by a preponderance of evidence.
- There is no dispute that the Grievant failed to turn off the phone, but she did not do it intentionally.
- The Employer has no evidence that the Grievant intentionally left the phone on.
- It cannot be established via the video that the Grievant didn't attempt to turn her phone off as her back was to the camera.
- When the Grievant returned to the operator's position she was not looking at the phone and would not have noticed it was on.
- When the Grievant realized the phone was on, she had every reason to believe picking it up while operating the bus would get her into more trouble.
- Having a phone on is not a transit emergency that warrants interrupting the bus operation.
- The Grievant, at the time, thought touching the phone would be more of a problem and she just wanted to concentrate on operating the bus.
- The length of a suspension should be variable, depending on the facts of the case.
- The facts of the instant case are not as egregious as those involving talking or texting and do not warrant the same level of discipline.
- The Grievant does not deserve a 20-day suspension as has been administered to employees who have been talking or texting.
- The award of Arbitrator Imes establishes that the degree of discipline must be consistent with the degree of violation.
- Not only is a 20-day suspension excessive considering the degree of policy violation, but also in addition the 36-month Final Record of Warning means a second violation will result in the Grievant's termination.

- Based on the facts of the instant matter, the discipline administered is unreasonable and does not meet the condition set forth in the CBA, that discipline be just and merited.

### **DISCUSSION**

The Employer presented comprehensive and convincing evidence for the nexus between use of personal electronic devices and safety when operating buses and light rail vehicles.<sup>13</sup> Further, the record shows that the Policy has been well communicated to employees and employees have individually acknowledged receipt of the Policy in writing.<sup>14</sup>

The Grievant is not challenging the Employer's Policy, per se. The Grievant acknowledges that she understands the Policy and did violate the Policy by failing to turn her cell phone off when she began operating the bus. What is at issue in the instant case is whether, based on the facts, the discipline administered is "just and merited" in accordance with terms and conditions of the CBA.<sup>15</sup>

The record includes a video recording (VR) of what took place on the Grievant's bus relevant to the issue in dispute.<sup>16</sup> The relevant part of the VR begins at about 4:01 p.m. on the date of the incident. At that time the Grievant's bus schedule called for a layover, which provided a break period for the Grievant. The layover began about 4:01 p.m. and ended at about 4:26 p.m., at which time the Grievant resumed operation of the bus.<sup>17</sup>

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<sup>13</sup> Employer Exhibits #1 – 5e.

<sup>14</sup> Employer Exhibits #6 – 15.

<sup>15</sup> Joint Exhibit #1, Article 5, Section 1.

<sup>16</sup> Employer Exhibit #23

<sup>17</sup> Employer Exhibit #18.

At the beginning of the layover, the VR shows the Grievant receiving a phone call. After the phone call ended at about 4:07 p.m., the VR shows the Grievant lying down to rest on a bus seat near the front of the bus. Shortly before the end of the layover, the VR shows the Grievant arising from her rest and sitting on the seat for a brief period. While sitting on the seat, the Grievant appears to be holding and doing something with her cell phone. Because the Grievant's back is to the camera when sitting on the seat, it cannot be conclusively established what she was doing with the cell phone other than audibly turning off the alarm, which she had apparently set before lying down to rest.<sup>18</sup>

The VR then shows the Grievant getting up from the seat and returning to the front of the bus. The Grievant had the cell phone in one hand and a pillow in the other. The VR shows that at this time the Grievant was not looking at the phone. The VR indicates the Cell phone was on at this time by the glow of its face. The Grievant then placed the cell phone in her jacket, which hung behind the drivers seat.<sup>19</sup>

The layover period having ended about 4:26 p.m., the Grievant resumed operation of the bus. Sometime later, about 4:42 p.m., the cell phone audibly rang two or three times. Upon hearing it ring, the Grievant audibly commented to the effect – “I thought I turned it off.”<sup>20</sup> When the bus reached its next layover at about 5:40 p.m., the Grievant removed the phone from her jacket and turned it off.<sup>21</sup> There is no evidence that the phone rang again between 4:42 p.m. and when the Grievant's shift ended at about 7:40 p.m.

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<sup>18</sup> Employer Exhibit #23.

<sup>19</sup> Employer Exhibit #23.

<sup>20</sup> Employer Exhibit #23.

<sup>21</sup> Testimony of Grievant.

The Grievant did not mention the incident to her supervisor. The phone ringing matter was brought to the attention of Metro Transit management by a Metro Transit staff member who happened to be a passenger at the time the cell phone rang.<sup>22</sup>

The Grievant testified that when she shut off the cell phone alarm, she also thought she had shut off the phone. She had picked up a pillow in one hand and had the cell phone in the other and did not look directly at the cell phone while putting it away. The Grievant testified that she was surprised when the phone rang, but didn't do anything about it because she thought it would be more distracting to try to shut it off when the bus was in operational status. She testified that she did shut it off when the bus was in its next layover period.

The Grievant testified that she acknowledges the violation warrants some discipline, but feels the discipline administered is overly severe.

On cross-examination the Grievant testified that at times her phone, like that of another employee's, did not always shut off and sometimes it takes a little while for it to shut down. The Grievant also testified that she is not sure if the phone made a noise when shutting down, as she has not had that phone for some time. The Grievant acknowledged the phone ring was distracting, but didn't do anything about it at that time because doing so would have been more distracting.

The Employer argues that the Grievant intentionally left the phone on because she was expecting another call from her daughter in follow up to their conversation during the 4:01 – 4:26 p.m. layover. The VR shows the Grievant somewhat impatient during the phone conversation with her daughter, apparently wanting to

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<sup>22</sup> Testimony of Christy Bailly.

end it so she could rest during the layover. The Grievant ended the conversation telling her daughter they could talk more about the matter that night.<sup>23</sup>

The Employer also argues that the Grievant exacerbated the situation by not turning off the cell phone when the bus arrived at the 7<sup>th</sup> Street Garage. The phone rang at about 4:42 p.m. and would have been about the same time the bus was scheduled to leave the 7<sup>th</sup> Street Garage with passengers aboard. Further, the schedule shows that the loading and unloading time at the garage is only three (3) minutes (arrival at 4:39 p.m. with departure at 4:42 p.m.) When the Grievant later turned off the phone at about 5:40 p.m., the bus was on layover, the Grievant was on her rest period and the bus without passengers.<sup>24</sup>

The Employer introduced an Exhibit showing a record of disciplinary actions for violations of the Policy from January 20, 2010 through August 3, 2012. The Exhibit lists some 45 violations where discipline has been administered or is pending. <sup>25</sup>

- 30 of the cases are shown as involving talking or texting. The full discipline called for in the Policy was administered in 26 cases (36-month Final Record of Warning and a 20 day suspension). In one case involving talking, an arbitrator removed the 36-month Final Record of Warning and reduced the suspension to 10 days.<sup>26</sup> Another case involving talking is in the grievance process and another is pending arbitration. A probationary employee involved in talking was discharge via a Veterans Preference Proceeding.<sup>27</sup>

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<sup>23</sup> Employer Exhibit #23.

<sup>24</sup> Employer Exhibits #18 & 19.

<sup>25</sup> Employer Exhibit #

<sup>26</sup> Union Exhibit #1.

<sup>27</sup> The Employer's Policy calls for termination of a probationary employee for a first offense..

- Employer Exhibit #20 also shows 15 cases involving personal electronic devices not stowed properly, which could involve the phone being either on or off. The full discipline called for in the Policy was administered in 10 of these cases. However, one of the cases is actually a “talking” case where the arbitrator upheld full discipline.<sup>28</sup> In one case an arbitrator upheld the 20-day suspension, but removed the 36-Final Record of Warning. In another case settled by the Employer and Union, the 36 Final Record of Warning was upheld, but the suspension was reduced to 10-days. In two cases settled by the Employer and Union, the 36 month Final Record of Warning was upheld, but the suspensions were reduced to 15 days. The remaining case is to be resolved in the instant arbitration proceeding.

On cross-examination Employer witness, Christy Bailly, acknowledged that violations have been settled outside the Policy. Bailly testified that the Policy provides for up to a 20-day suspension and Metro Transit has discretion to impose less than a 20-day suspension.

On Cross-examination Bailly acknowledged that the Barbara Patterson case, shown as a stow case; with full discipline was actually a talking case.<sup>29</sup>

In the case of Pamela Harris, Bailly testified that the Employer and Union agreed to settle the grievance by reducing the suspension to 15-days.

On Cross-examination, Bailly acknowledged that although customers are discouraged from using phones on the bus it is not a requirement. Bailly acknowledged that there are many other distractions affecting the operator, including talking with passengers, talking among the passengers, traffic noise, horns honking, etc.

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<sup>28</sup> Employer Exhibit #22.

<sup>29</sup> Employer Exhibit #22.

The record shows several cases involving phones not properly stowed where lesser discipline was administered. With the exception of these cases, it cannot be determined from the record in remaining stow cases whether the phones were on or off, or whether the phone was accessible to the operator and within sight of the passengers.

The Employer argues that all violations of the Policy are equal and warrant the full discipline, due to the seriousness of any operator distraction.<sup>30</sup> Yet the <sup>31</sup>record shows that not all violations have received full discipline.<sup>32</sup>

In determining discipline that is just and merited, it is customary to consider factors that may mitigate or support full discipline.

- In the instant case it is axiomatic that the level of distraction caused by the phone ringing two or three times, but properly stowed and inaccessible, is less distracting than talking or texting on the phone.
- The Grievant's "Work History Report" shows numerous occasions where the Grievant has failed to conform to work rules, particularly tardiness and absenteeism. The record shows absenteeism warnings and several counseling sessions.

### **FINDINGS**

The Employer's Policy on the use of cell phones and personal electronic devices are supported by much research and actual experiences, where improper use of such devices has resulted in serious accidents causing death and destruction. While the

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<sup>30</sup> Testimony of Christy Bailly.

<sup>31</sup> Employer Exhibit #21.

<sup>32</sup> Employer Exhibit #20, Testimony of Christy Bailly and Union Exhibit #1.

Policy is not being challenged in the instant proceeding, it is appropriate to recognize the Policy as critically important to public safety.

The Employer's Policy has been sufficiently and effectively communicated to employees.

The Grievant acknowledged understanding and receipt of the Policy.

Although the Grievant's cell phone was properly stowed, the Grievant was in violation of the Policy by not having turned the phone off when operating the bus.

The Arbitrator does not find sufficient evidence that the Grievant intentionally left the phone on, but the Grievant was negligent in not insuring the phone was fully turned off.

The evidence does not support the Employer's contention that the Grievant intentionally left the phone because she was expecting another call. The Grievant closed the conversation stating that she would continue it that night. Further, if the Employer's contention were correct, the Grievant would have answered the phone when it rang, rather than let it ring.

The Grievant's decision to turn off the cell phone at the next layover following its ring is reasonable, considering the circumstances. To turn it off during the three minutes the bus was scheduled to be at the 7<sup>th</sup> Street Garage would have distracted the Grievant from proper attention to passengers. Further, turning off the phone at that time would have been required handling the phone in the presence of passengers, which the Policy prohibits.

The Grievant acknowledged the phone startled her when it rang, which was a distraction. There is no evidence that the phone rang again before she turned it off.

If the phone had rung again, the distraction would have been minimal, if at all, considering the Grievant would have known the circumstance.

Although the record shows full discipline has been administered in a majority of cases, there are sufficient cases, where less discipline has been administered, which establishes that mitigating factors are considered.

The degree of violation in the instant case is not comparable to violations involving such activity as talking or texting.

Considering the degree of violation in the instant case, the Arbitrator finds a full suspension of 20-days excessive when compared to violations where lesser discipline has been deemed appropriate.

Considering the Grievant's work history, the Arbitrator finds the 36-month Final Record of warning appropriate.

#### **AWARD**

**The 36-month Final Record of Warning is just and merited discipline.**

**The full suspension of 20-days shall be reduced to 15-days and the Grievant made whole.**

#### **CONCLUSION**

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

Issued this 19<sup>th</sup> day of October 2012 at Edina, Minnesota.

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Rolland C. Toenges, Arbitrator