

Before the Arbitrator Nancy D. Powers

In the Matter of:

Metropolitan Transit Authority, Employer

And

BMS 13-PA-0713
Grievant Todd Bennett

Amalgamated Transit Union, Local 1005, Union Date: July 11, 2013

Appearances

For the Union: Timothy J. Louris
Miller, O'Brien Jensen
120 S. 6th St., Suite 2400
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For the Employer: Marcia Padden
Labor Relations Specialist
Metropolitan Council
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Statement of Jurisdiction

Grievant Todd Bennett timely filed a grievance alleging a Class A Violation he received was without just cause. The grievance was processed to arbitration. The undersigned was selected from a list of arbitrators provided by the Minnesota Bureau of Mediation Services. A hearing was conducted on May 5, 2013 Both parties had an

opportunity to present evidence and arguments in support of their respective positions.

Statement of the Issue

Whether the Class A Violation Todd Bennett received was just and merited. If not, what should be the remedy?

Relevant Contract Provisions

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.

Statement of Facts

The facts in this case are not in dispute. Grievant Todd Bennett, a rail operator for Metropolitan Transit on the light rail system, has been employed by MTA for almost 20 years. He has worked on light rail for six years. He has no discipline on his record.

On November 16, 2012 he was working his regular shift of 3:30am to 11:30am. He was on the last run of his shift from the Mall of America to downtown Minneapolis. After arriving at the Mall of America on his southbound run, at 11:06 am, he pulled the train up to the "bump post", then repositioned the train in the Northbound direction. Realizing this was

his last run for the day, he got off the train and walked to the other end to check to see if any of his personal possessions were left there. He returned to the North end of the train and entered the cab. Bennett sat in his seat and started to address the enunciator panel where he entered the appropriate codes for his run. The panel was located to his left of his seat in the cab. While looking at the enunciator, Bennett moved the train forward with the control . The train moved past a red signal and a crosswalk. Bennett forgot that he had already repositioned his train. Travelling past the red signal triggered a Red Signal Overrun alarm in the Rail Control Center. When Bennett was called by the Center, he had already stopped the train. An investigation of the incident culminated in a Class A written record of warning violation for Bennett, which prevents his ability to apply for other positions at MTA for a one-year period.

Positions of the Parties

The Union

The Union admits that Bennett drove past a red signal and crosswalk. Part of a just cause analysis includes a determination that discipline is appropriate for the situation at hand. Bennett has an excellent work record and a long history with MTA. A Class A violation is too severe a penalty for the seriousness of the offense. MTA has a zero tolerance for cell phone use on the job, yet another arbitrator reduced a

penalty for a technical violation of the policy with no danger to passengers. Such an approach should be taken here. No one was injured. There was no misconduct, just a temporary inattention. To give Bennett a Class A violation is punitive and not designed to improve his performance. The grievance should be sustained and the discipline reduced.

The Employer

Bennett was aware of the rules and the consequences of their violation. The rule is reasonable and designed for the safety of all. MTA has consistently applied the rule. MTA conducted a fair investigation. Bennett was given an opportunity to explain what happened. He admitted his mistake. Bennett was distracted. A written record of warning for a Class A violation was the appropriate discipline. There were no mitigating circumstances. Other arbitrators have upheld the Employer's discipline for similar incidents. The grievance should be denied.

Discussion and Conclusions

The issue for determination is whether the discipline was "just and merited" under the parties collective bargaining agreement. The contract language of "just and merited" is the same standard of just cause, by agreement of the parties.

In this case there is no question that Bennett knew he was not to go past a red signal or crosswalk when he did. He had been thoroughly trained on procedures. He admitted it was because "he had a mental lapse".

MTA has been consistent in applying its standard on Red Signal Overrun. The Union presented no instances when the Employer did not discipline drivers for such action. Nor did the Union offer any evidence which would argue for a modification of the penalty.

Violation of a Red Signal Overrun could have catastrophic consequences. As it could have had in this case, had any pedestrians been present. MTA is serious about upholding the highest standards to protect public safety. There is no mitigating argument in this case.

Award

The grievance is denied.

A handwritten signature in black ink, appearing to read "Perry J. Swas". The signature is fluid and cursive, with a large loop at the end.

July 11, 2013