
In Re the Arbitration Between:

Metropolitan Council, Metro Transit Division,
Employer,

BMS File No. 14- PA-0194

and

Amalgamated Transit Union (ATU),
Local 1005,

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

Union.

- Pursuant to **Articles 5 and 13** of the collective bargaining agreement effective August 1, 2012 through July 31, 2015, the parties have brought the above grievance to arbitration.
- The parties agree that there are no procedural issues relating to the above grievance and the above matter is properly before the arbitrator for a final and binding determination.
- The grievance was submitted on July 1, 2013.
- The parties appointed James A. Lundberg as their neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services.
- An arbitration hearing was conducted on January 23, 2014.
- Oral arguments were made at the end of the hearing and the record was closed on January 23, 2014.

APPEARANCES:

FOR THE EMPLOYER

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FOR THE UNION

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ISSUE:

Whether the Employer had cause that was just and merited to impose a verbal warning on grievant, Johnny Bradley, for a responsible accident on June 25, 2013.

If not, what is the proper remedy?

FACTUAL BACKGROUND:

The grievant, Johnny Bradley, has been employed as a bus driver by Metro Transit, which provides bus and light rail transportation for the greater Minneapolis and St. Paul metropolitan area, for fifteen (15) years. Prior to June 25, 2013 Mr. Bradley had no history of discipline, including no accidents for which he was found to be responsible. Mr. Bradley has been and is an excellent, reliable employee and a conscientious and safe driver.

Shortly before 12:45 P.M. on June 25, 2013 the grievant, Mr. Bradley, was driving his bus on Route 18, traveling North on the Nicollet Mall near 10th Street South in downtown Minneapolis. The pedestrian and bicycle traffic on the mall at the time of the incident leading to Mr. Bradley's discipline was busy but could not be characterized as heavy for the particular traffic zone.

As Mr. Bradley drove North on the Mall, a pedestrian carrying a large bag came into view roughly 100 to 150 feet in front of the bus on the right (East side) walk way.

The pedestrian continued to walk toward the approaching bus at a slight angle so that he approached between lampposts and the curb. The pedestrian was walking very near the curb of the roadway as the bus passed next to him.

As the bus passed the pedestrian, the pedestrian continued to walk very close to the curb and the bus and his bag struck the bus causing the pedestrian to fall to the ground. When the pedestrian fell, Mr. Bradley immediately stopped his bus and took appropriate measures to assure that the pedestrian was safe. Mr. Bradley properly reported the incident. An investigation of the incident was started at the scene of the collision. The pedestrian was not injured and acknowledged that he had walked into the bus. The pedestrian said that he had caused the collision.

Metro Transit buses are equipped with video recording equipment, which captured the approach of the pedestrian and actions by the driver and investigators following the collision.

The reports of investigators, including Mr. Bradley's statement and the video, were reviewed by management. The incident review resulted in a determination that the collision was not a Pedestrian accident, which would most likely have resulted in Mr. Bradley's discharge, but it was an accident for which Mr. Bradley had responsibility. Consequently, Mr. Bradley was given a verbal reprimand for a "chargeable" accident, under the disciplinary policy.

Mr. Bradley did not believe that he was in any way responsible for the accident and grieved the discipline.

The parties were unable to resolve the grievance and the matter was brought to arbitration for a final and binding determination.

SUMMARY OF EMPLOYER'S POSITION:

Mr. Bradley is a highly trained, skilled and seasoned driver who is well aware of the rules of the road. He has been trained using the Five Safety Keys, which require that a driver: "aim high in steering, get the big picture, keep your eyes moving, leave yourself an out, and make sure they see you." Mr. Bradley is also fully aware of the special rules that drivers must follow on the Nicollet Mall, such as, driving no faster than 10 miles per hour and leaving a full four (4) feet of clearance when passing a bicyclist. Company documents support the fact that Mr. Bradley has received skill training.

The rules governing driver conduct, in this case, the five keys, are not only reasonable but essential to the safe operation of a bus on the streets of a large city. Bus drivers are held to a higher standard than other drivers because of the trust the community places in them to safely transport its citizens. Furthermore, the potential harm from a collision with a passenger vehicle, bicyclist or pedestrian is extreme. Hence, the requirement that drivers follow the five safety keys is a reasonable rule.

The investigation into the collision on June 25, 2013 was conducted in a fair and even handed manner. Mr. Bradley was asked about the collision, the pedestrian was asked about the collision and the video was reviewed. Only after a thorough review of the evidence, which included the pedestrian's statement that he caused the accident, was the discipline imposed.

As Mr. Bradley's bus approached the pedestrian on June 25, 2013, he failed to take in the big picture by not considering the pedestrian to be a safety threat, he did not leave himself an out and he did not make sure that the pedestrian saw him. In fact, Mr. Bradley did not follow all of the five safety keys before his bus collided with the pedestrian. The question is not whether Mr. Bradley caused the accident but whether Mr. Bradley took all steps necessary to avoid the accident. In this case, Mr. Bradley could have and should have honked his horn to

alert the pedestrian of his approach and he could have and should have moved the bus to the left. The “out” Mr. Bradley failed to leave himself was the open left traffic lane. No other vehicles were approaching and had Mr. Bradley given the pedestrian a little more room by moving the bus to the left, there would have been no collision.

In determining what discipline to impose, the Employer followed Procedure 4-7d, which provides for the following discipline within a rolling three (3) year period:

1st responsible accident – verbal warning

2nd responsible accident – written warning

3rd responsible accident – final written warning

4th responsible accident – termination

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

The Employer consistently follows the above procedure and applied it to Mr. Bradley's situation just as it has applied the disciplinary procedure to other employees. Mr. Bradley's treatment under the disciplinary policy was fair, even-handed and consistent with discipline imposed on other employees. Moreover, the policy is progressive in nature and designed to correct driver error rather than punish drivers.

The Employer demonstrated that the discipline imposed on Johnny Bradley was just and merited and asks that the grievance be denied.

SUMMARY OF UNION'S POSITION:

The focus of the Union's argument is on whether Mr. Bradley had any responsibility for the June 25, 2013 accident. The facts should be reviewed from the driver's perspective. Unlike

the review of statements and video that can be in slow motion and retrospectively, drivers must act in real time. In this case, the time frame that Mr. Bradley was working with was about three (3) seconds.

In fact, Mr. Bradley followed the rules that govern operation of a bus on the Nicollet Mall. He was traveling at 10 miles per hour or less. He was scanning the scene and followed the five safety keys. He knew that the pedestrian was approaching but did not consider him a safety threat. In fact, the pedestrian's collision with the bus was completely unexpected. If, for example, Mr. Bradley would have moved the bus to the left, a bicyclist may have been passing the bus, which may have resulted in a very serious accident. Mr. Bradley simply could not have foreseen that the pedestrian would step off the curb at the last second and collide with his bus.

In this case a pedestrian carelessly let his bag hit the bus and was knocked to the ground. The driver, Mr. Bradley, could not have avoided the collision and should not have been disciplined. Mr. Bradley was not responsible in any way for the illogical and irrational conduct of the pedestrian.

The Employer should have taken into consideration the short time frame in which Mr. Bradley had to act, the unexpected conduct of the pedestrian and Mr. Bradley's long and excellent service as a Metro Transit driver. Despite his long and successful service, Mr. Bradley did not perceive a threat from the pedestrian that morning.

The Union asks that the grievance be upheld and the discipline of Johnny Bradley be rescinded.

OPINION:

While Mr. Bradley's driving record of 15 years without a chargeable accident is remarkable and on June 25, 2013 he drove with great care, all bus drivers assigned routes passing through the Nicollet Mall know that hyper vigilance is required to safely navigate that

section of the city. After reviewing the video and testimony in this matter, the arbitrator agrees with the Employer's conclusion that Mr. Bradley failed to get the big picture, did not make sure that the pedestrian saw him and failed to leave himself an "out".

It is true that the incident occurred over a very short time span. However, the few blocks that comprise the Nicollet Mall are routinely congested with pedestrian and bicyclist traffic. The pedestrian who ultimately collided with Mr. Bradley's bus came into view and was moving toward the curb long enough before the collision for Mr. Bradley to have honked his horn in warning. Mr. Bradley testified the horns do not always function on Metro Transit buses but there is no evidence that the horn on Mr. Bradley's bus was not functioning on June 25, 2013. Furthermore, Mr. Bradley did not testify that he attempted to make eye contact with the pedestrian that day by honking his horn.

Immediately before the collision, the Southbound traffic lane of Nicollet Avenue was wide open. There also was little but ample time for Mr. Bradley to check for cyclists who may have been passing the bus on his left. As the pedestrian and bus moved toward each other, it was clear that the pedestrian would be moving very close to Mr. Bradley's bus. Nothing prevented Mr. Bradley from moving a few feet into the left (oncoming) lane of Nicollet Avenue. The five safety keys require that an operator leave himself/herself an out. On June 25, 2013, Mr. Bradley did not leave himself an out. While he did not expect the pedestrian to walk into his bus, the pedestrian was moving very close to the bus and Mr. Bradley did not, as he normally does, expect the unexpected. Unfortunately, the lapse occurred on the Nicollet Mall at a time when a pedestrian was not paying attention to his surroundings. Had Mr. Bradley moved the bus a short distance to his left, contact would not have been made with the pedestrian.

The Employer's disciplinary policy, relating to safety issues, is progressive and designed to correct operator errors. In this case, Mr. Bradley did not recognize a potentially dangerous

situation and took no action that could have led to a different outcome. Mr. Bradley could have and should have honked the horn to be certain that the pedestrian saw him. He also could have and should have moved his bus toward the left traffic lane, after verifying that no cyclists were passing his vehicle. His response to the oncoming pedestrian was not based on the normal level of vigilance that Mr. Bradley has displayed over the past fifteen (15) years. The written warning was issued to Mr. Bradley so that he can modify his driving practices. In Mr. Bradley's case, there is no question that his normal driving practices are safe and the June 25, 2013 incident was isolated. All that Mr. Bradley needs to do is make a small adjustment to return to the high level of care that he has demonstrated over the past fifteen (15) years.

The oral warning in this case was appropriate, imposed for just and merited cause and should be upheld.

AWARD:

- 1. The arbitrator finds that the Employer had just and merited cause to give grievant Johnny Bradley an oral warning for a responsible accident on June 25, 2013.***
- 2. The grievance is hereby denied.***

Dated: January 31, 2014


James A. Lundberg, Arbitrator