

**IN THE MATTER OF ARBITRATION  
BETWEEN**

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**Metropolitan Council/Metro Transit  
Division**

**Employer,**

**OPINION AND AWARD  
(Darrell Dixon)**

**and**

**BMS Case No. 11PA0623**

**August 25, 2011**

**Amalgamated Transit Union  
Local 1005**

**Union.**

**A. Ray McCoy  
Arbitrator**

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**Appearances**

For the Employer

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For the Union

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## **Jurisdiction**

The arbitrator has jurisdiction to resolve this matter pursuant to the Agreement Between Amalgamated Transit Union LOCAL 1005 Minneapolis and St. Paul and Metropolitan Council Metro Transit Division Effective August 1, 2010 to July 31, 2012 Inclusive. (Hereinafter “Agreement” or “CBA”) Article 13 (Arbitration Procedures) provides, among other things, that [t]he arbitrator’s decision shall be final, binding and conclusive and shall be rendered within thirty (30) days from the date the arbitration hearing is completed.” (Agreement p.13)

The Union filed two grievances. The Union filed the first grievance on August 27, 2010 and the second grievance on August 31, 2010. The Parties processed the grievances separately through the initial steps in their grievance process and then combined the grievances for consideration at the third step of their grievance process. This arbitration includes both grievances. The arbitrator was notified of his selection by letter dated January 28, 2011 and the Parties selected July 27, 2011 for the hearing in this matter. The hearing was held and concluded on that date at the Metropolitan Council’s Operations Support Center located at 725 North 7<sup>th</sup> Street in Minneapolis, Minnesota. The Parties had a full and fair opportunity to present their cases including the introduction of documents and the examination of witnesses. The record was closed following the conclusion of oral closing arguments and the Parties agreed the matter was properly before the arbitrator for resolution.

## **Issue**

Whether the Employer had just cause to discipline the Grievant as required by Article 5 of the Parties’ Agreement and the whether that discipline was reasonable in light of all of the circumstances.

## **Relevant Contractual Provisions**

### ARTICLE 5

#### GRIEVANCE PROCEDURE

**Section 1.** Metro Transit reserves to itself, and this Agreement shall not be construed as in any way interfering or limiting, its right to discipline its employees, but Metro Transit agrees that

such discipline shall be just and merited.

#### ARTICLE 10 – MUTUAL COOPERATION

Section 1. The ATU agrees that each of the employees now or hereafter represented by it shall render faithful service in their positions and shall to the best of their ability, observe the operating rules of Metro Transit and cooperate with the management in efficient operation of the system and in fostering cordial relations between Metro Transit and the public.

#### ARTICLE 11 – WORK RULES AND PRACTICES

All practices and agreements governing employees enforced by Metro Transit or its predecessors on or after November 1, 1957, 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;
- (b) Metro Transit must meet and confer with the ATU prior to making any such changes or new work rules;
- (c) New work rules and/or practices must be reasonable;
- (d) The Metro Transit will furnish the ATU with a copy of all bulletins or orders changing any such rules, regulations and practices;
- (e) Work rules and/or practices are subject to the Grievance Procedure.

#### **Background**

The Grievant worked as a light rail operator for Metro Transit. Prior to that time he served as a bus driver for Metro Transit. For the first seven (7) months of his employment as a light rail operator, the Grievant performed satisfactorily. However, on November 18, 2009, the Grievant committed a “Class A” violation, specifically a “red signal overrun” and was issued a warning. The Grievant understood that verbal authority is required to pass a “Stop” signal and that authority must be given by the Regional Control Center. On August 27, 2010, the Grievant committed his second red signal overrun. Just three days later, on August 31, 2010, the Grievant committed his third red signal overrun. The Employer, invoking its three strike policy with

regard to Class A violations, one of which is the red signal overrun, removed the Grievant from his position as a light rail train operator and sent him back to his former position as a transit bus driver. An additional consequence the Grievant is required to wait two years before reapplying for a light rail operator position.

### **Positions of the Parties**

#### **Employer's Position**

1. This is a case about complacency. The Grievant committed three red signal overruns, a violation that management considers one of the most serious a rail operator can commit. Metro Transit has designated red signal overruns as a "Class A" violation.
2. Metro Transit's policy states that when a rail operator commits three Class A violations during a rolling one year period, they are returned to bus operations. The Grievant committed three red signal overruns within his first year as a light rail operator and consequently was returned to bus operations.
3. The Grievant did not lose any pay or benefits and because the violations are exclusive to the light rail transit operation they do not carry over to his personnel record as a bus driver.
4. There were no mitigating circumstances.
5. Metro Transit lost confidence in the Grievant's ability to safely perform the duties of a light rail operator.
6. The Union does not dispute that the Grievant committed the red signal overruns.
7. The Grievant claimed the red signal overrun committed on August 27, 2010 was due to the sun being in his eyes and the Rail Control Center's failure to return the system to automatic which would have provided him with a permissive signal.
8. None of these reasons are mitigating factors because if the sun were in the Grievant's eyes he should have called the Rail Control Center for assistance instead of moving the train when he could not see.
9. Regardless of whether the Rail Control Center failed to return the system to automatic the Grievant is still required to look at the signal to make sure it is permissive before proceeding past

a signal.

10. The Grievant admitted that he did not look at the signal.

11. On August 31, 2010, the Grievant approached a red signal and then pulled forward past the red signal, realized his mistake and stopped the train.

12. The Grievant doesn't deny running the red signal on this occasion either but claims that he only ran the red light by a few feet, discovered his error himself and stopped the train before being told to do it by the Rail Control Center.

13. There were no mitigating circumstances on this occasion either. The sun was not a factor because it was at night so the signals could be easily seen. The Grievant had just committed a red signal overrun a few days earlier, was given a warning and training on how to avoid red signal overruns and should have been more vigilant.

14. The Grievant also blamed the stopping point delineators for creating additional stress for him and other drivers and argued that the light is permissive 99% of the time.

15. None of these reasons are mitigating factors because the Grievant is ultimately responsible as a primary part of his job to look at and observe the signals. He failed to do that on this occasion as well.

16. The Grievant's claim that the Employer did not give him enough time to implement a plan to avoid red signal overruns should also be discredited.

17. The Grievant did not follow his own procedure for avoiding red signal overruns.

18. Managers have discretion to consider mitigating and aggravating factors when fashioning discipline.

19. The short span of time between the 2<sup>nd</sup> and 3<sup>rd</sup> red signal overruns suggests the Grievant is simply unsafe.

20. The signals were functioning correctly and the Grievant simply ignored the red signal.

21. The operator performance plan was approved in 2008.

22. Deterrence is an important goal of the policy.

### Union's Position

1. The Employer's discipline of the Grievant was without just cause.

2. While a red signal overrun is a serious violation that is not what happened here.
3. None of the Grievant's red signal overruns created any unsafe conditions.
4. They were caused by circumstances over which the Grievant had no control.
5. For example, the Rail Control Center failed to return the signal control to automatic.
6. The Rail Control Center's normal practice after responding to an operator's request for a permissive signal is to grant it and then return to the automatic control. Had it followed its normal practice the signal would have been green or permissive.
7. The second red signal overrun at issue here was really just a false start and does not justify taking the Grievant's job away.
8. The Employer rigidly applied the rules in determining the level of discipline and did not have just cause to impose the final record of warning and remove the Grievant from his light rail operator position.
9. The Employer is required to look at the circumstances of each case.
10. The Grievant had a false start, hit the gas and immediately discovered the overrun and stopped his train. Had the Rail Control Center immediately returned the system to automatic running, the Grievant would not have been disciplined.
11. The Grievant's moving a few feet beyond the red signal did not create any unsafe condition.
12. There were numerous mitigating factors. The Grievant is not a high safety risk. The Rail Control Center's failure to return the system to automatic is another. The sun was a factor in the Grievant's inability to see the red signal on August 27, 2010. The video shows that the sun blocked out the color of the light. The Grievant's actions were entirely reasonable under the circumstances.
13. The Grievant's August 31, 2010, red signal overrun was due in part to the fact that all night the Rail Control Center had operated the system in such a manner as to allow the trains to run on approach signals in order to keep steady movement of the trains to transport baseball fans from the downtown area. All the stops prior to the one at which the Grievant committed the red signal overrun were yellow. The Grievant only moved forward a few feet and then stopped.
14. The Employer can't just play the safety card and must be certain that the discipline is just

under all the circumstances of each case. The discipline should be reversed and the Grievant made whole.

### **OPINION AND AWARD**

The Employer met its responsibility to demonstrate that it had just cause to discipline the Grievant. A simple comparison of the performance requirements and the Grievant's lapses in performance as well as his admissions regarding his performance support a finding of just cause. Metro Transit's 2008 Operating Policy establishes two classes of violations leading to discipline. Class A violations are considered the more serious of the two. The policy states that a rail operator who commits three Class A violations within a rolling one year period will be terminated. (Joint Exhibit 2A, hereinafter Jt. \_\_\_) Metro Transit's Rail Operations Rule Book, 5<sup>th</sup> edition, 2008 defines a "red signal overrun" or "RSO" as a Class A violation. Specifically, Rule 205.9 states:

A train must stop before any part of the movement passes any signal that displays a "Stop" aspect. When a "Stop" aspect is displayed, a train must not proceed, except by Rule 205.10. Rule 205.10 requires the rail operator to request verbal authority before proceeding beyond a signal displaying a "Stop" aspect."

Rule 205.10 also requires specific words to be communicated by the Rail Control Center and repeated by the train operator prior to proceeding. It is clear that the purpose of these rules is to impress upon the train operators, the need to first stop and to only proceed beyond the red signal after securing verbal authority to do so from the Rail Control Center. The rules are designed to take away discretion on the part of the train operator with regard to passing a red signal. This lack of discretion with regard to passing a red signal is designed to foster safety. As the Rail Operations Rule Book states:

"Safety is of the first importance in the discharge of your duties. The rules set forth here and the "authority rules" for track occupancy are all designed for the safety of everyone and must be obeyed. Metro Transit Light Rail service demands the safe, faithful, and courteous discharge of your duties. In the case of doubt or uncertainty, the safest course of action must be taken." (Jt. Ex. 2, Metro Transit Light Rail 2008, Rail Operations Rule Book 5<sup>th</sup> Ed., p. 7-8)

The Grievant committed the first red signal overrun on November 18, 2009. The

Grievant did not dispute his failure to adhere to the red signal and did not grieve the warning he received. After nine months on the job, on August 27, 2010, the Grievant committed his second red signal overrun. The Employer produced statements written by the Grievant demonstrating that the Grievant did not dispute the fact that he committed the red signal overruns. The Grievant wrote:

“I was stop at Signal #140 BCS Station, did my platform service of opening doors and closing looked up towards the signal with sunlight in my eyes and proceeded past signal #140 saw the horizontal bar and stopped my train in the pedestrian crosswalk.” (Jt. Ex. 3D)

The Union does, however, argue that mitigating circumstances exist to explain the Grievant’s overrun on that day. Those arguments are discussed below. As called for by Metro Transit policy, the Grievant received a final record of warning. Just a few days later, on August 31, 2010, the Grievant committed his third red signal overrun in the rolling twelve month period. This time the Grievant was transporting passengers at night. The Grievant recognized that he had committed the red signal overrun and stopped his train before being called by the Rail Control Center and told to do so. Again, the Grievant admits that he committed the red signal overrun. He said:

“Stop at V.A. Station signal #90 did passenger service stop, open and closed doors proceeded couple of feet beyond the rail signal and did a quick full service stop.” (Jt. Ex. 4C)

The Employer also produced evidence demonstrating that its system is structured in such a manner that an alarm is initiated when a rail operator commits a red signal overrun. The record shows that an alarm did sound on both the 27<sup>th</sup> and the 31<sup>st</sup> for the train being operated by the Grievant on each of those days. (Jt. Ex. 3E & 4D)

The Grievant acknowledged that he committed three red signal overruns within approximately nine months. The Grievant understood that the consequences for committing three red signal overruns within a rolling twelve month period were removal from his position and the inability to reapply for a two year period. However, the Policy is not in the nature of a strict liability rule. Procedure 4-7c gives supervisors discretion in determining whether to issue the stated discipline.

“The Operating Policy is designed to promote consistency and equal treatment. Managers have discretion to depart from the Policy to take into account mitigating and aggravating factors.” (See, Jt. Ex. 2A, p.1)

Even though the Policy states that termination will follow if an operator commits three (3) Class A violations within a rolling calendar year, it also gives supervisors the right to take into account mitigating circumstances. Even if the Policy did not so provide, it is clear that the collective bargaining agreement imposes an obligation on the Employer to make certain that any discipline is supported by just cause. Doing so requires consideration of mitigating factors.

Furthermore, in order for the Policy to be consistent with the collective bargaining agreement, the Employer must either prove there were no mitigating factors or that the conduct was so egregious that consideration of mitigating factors would not alter the need to remove the employee from the workplace.

The Union put forth several arguments regarding mitigation with respect to each of the red signal overruns. With regard to the August 27, 2010 red signal overrun, the Union argued that the Rail Control Center was partly to blame because it had granted the Grievant a permissive signal at the stop just prior to the one where the red signal overrun happened. Had the Rail Control Center returned the controls to automatic, the Grievant would have had a permissive rather than red light. Because it is normal practice for the Rail Control Center to return the controls to the automatic setting after granting an operator’s request, the Grievant expected to have a green rather than red light. The Union basically argued that it was the fault of the Rail Control Center that the Grievant committed the red signal overrun.

The arbitrator finds that the Rail Control Center’s failure to return the system to automatic running does not provide sufficient grounds to alter the discipline here. The simple, inescapable fact is that the operator is charged with making certain that he or she behaves in accordance with the lights and other devices designed to instruct the operators as to whether to proceed, proceed with caution or stop. These simple commands must be adhered to and when the operator acts on expectation rather than fact there is no one else to blame but the operator. To adopt the Union’s argument would require the arbitrator to find the Rail Control Center prevented the Grievant from looking at the signal to determine whether it was red. That is

obviously not the case. Here the Grievant assumed the light would be permissive and did not make sure it was before moving the train.

Similarly, the Union cannot make a reasonable claim for mitigation simply because the light the Grievant ran is usually “green 99%” of the time. The arbitrator cannot endorse the notion that the Grievant should be permitted the benefit of his expectation rather than be held to the simple standard requiring him to make certain the light is permissive before moving the train.

It is that simple standard of looking at the light and ascertaining its color before deciding on a course of action that also undermines the Union’s proffer of the sun as a mitigating factor. It is simply unthinkable that the Grievant would, in response to being blinded by the sun, move the entire train in order to gain a better view of the signal. This is especially true when being unable to see makes it impossible to know how far to move the train in order to avoid the blinding sun. Testimony demonstrated that the operator could have called the Rail Control Center to determine whether the light was red or green. The Grievant did not take this action but decided on a course of action that was especially unsafe given his admission that he could not see. The Grievant acknowledged during his testimony at the hearing that he should have called the Rail Control Center rather than pursuing the course of action that led to the red signal overrun.

The fact that no one was injured or that there was no accident is irrelevant. The distance that the Grievant traveled beyond the red light is also irrelevant. The valid work rules prohibit red signal overruns. One of the fundamental duties of the operator is to understand and obey the traffic signals. The Grievant simply failed to carry out a critical responsibility of his position. Running a red light because the operator expected the light to be green or because the operator could not see the light due to the sun represent a failure to follow the most basic instruction of the position and simply do not fit the definition of mitigating or aggravating factors. As stated in the work rules: “In the case of doubt or uncertainty, the safest course of action must be taken.” (Rail Operations Rule Book 5<sup>th</sup> Ed., p. 7-8)

With regard to the August 31, 2010 red signal overrun, the Union argued that a mitigating factor was that the Rail Control Center had the trains running on “approaches” or yellow lights all night in order to transport fans attending the Twins baseball game. The Grievant made his stop at the VA Station and immediately proceeded on the assumption or expectation that the light

would be yellow rather than red. The Grievant acknowledges that he overran the red light but argues that he quickly recovered and brought the train to a stop before the Rail Control Center could call and order him to stop his train. Again, the distance the Grievant ran past the red light is irrelevant. The most critical fact that informs the arbitrator's conclusion here is that the Grievant acted on an expectation rather than looking to the light for guidance. Further undermining, the Union's mitigation claim is the fact that the Grievant interacted with an instructor/trainer earlier on August 31, 2010, that very same day, regarding strategies for avoiding red signal overruns. The Grievant told the instructor that he thought it would be best if he kept his hands off of the master controller and observe the signal before moving the train. The instructor felt his suggestion was a good one because with his hand off the master controller, it would be impossible for the Grievant to move the train at all giving him all the time possible to observe the condition of the signal.

The Grievant should have taken his own suggestion seriously and he would have avoided acting on the assumption that all of the signals would be yellow that night. Furthermore, the yellow or approach signal means that the operator should proceed "prepared to stop." (Jt. Ex. 2b, p.10) The Grievant, however, treated the signal as if it were green which simply means "proceed." The Grievant testified that he made a quick start and stop when he saw the signal was red and only traveled a few feet beyond the red light. However, the Grievant did not say that he kept his hand off the master controller in order to observe the signal. Since the Grievant did not follow his own strategy devised during the training session earlier that same day, the arbitrator can find no basis for holding that because he was running on approaches most of the night he should be forgiven for running the red signal.

The Union also put forth two differential treatment arguments. First, the Union argued that implementation of "stopping point delineators" (the poles designed to indicate the point at which the operator should line up the front of the train when stopping as viewed from his side window) created variations in the location of the signals at the different stops. Therefore, the distance an operator would have to travel in order to commit a red signal overrun at one stop might differ from one stop to another. Therefore, the Union argued, the Grievant should not be punished for committing a red signal overrun when traveling the same number of feet at a

different stop would not be a red signal overrun. As discussed above, it is difficult to escape the fundamental responsibility of the operator to physically locate, observe, and follow the signal instruction at each stop regardless of the stopping distance provided. Testimony revealed that the stopping point delineators were installed when Metro Transit determined that it needed to have three car trains. As a result platforms needed to be lengthened where possible to allow three car trains to stop on a platform and load and disgorge passengers. The basic responsibility of the operator is to honor the instruction provided by the signal to stay focused and alert and to be vigilant rather than relying on expectation.

The second differential treatment argument put forth by the Union was that other operators committed four red signal overruns and were not sent back to bus operations as was the Grievant. The evidence did show that there were at least three rail operators identified here as operators A, B & C, who received four red signal overruns in a rolling calendar year. Two of the three were not removed from their positions and remain as light rail train operators today. Operator A committed four (4) red signal overruns between July 2004 and June 2005 but was not returned to bus service. Operator B also committed four (4) red signal overruns. Operator B committed the Class A violations between June 2005 and February 2006. Operator B was not removed from his position and made to return to bus service.

Testimony revealed, however, that the Employer adopted the policy regarding standards for operator performance in 2008. Consequently, the fact that operators A and B committed four red signal overruns and did not lose their position as rail operators is not useful in considering the discipline imposed on the Grievant here. The Employer followed the contractually agreed upon process to implement the work rules in order to discourage red signal overruns, among other performance problems as well as to establish a method of evaluating and rewarding performance. Nothing about the policy contravenes rights granted bargaining unit members by the collective bargaining agreement. Therefore, the fact that some operators were treated differently by management prior to 2008 is not helpful here. Testimony revealed that one goal of the policy adopted in 2008 was to strengthen the prohibition against red signal overruns and to make sure operators were consistently disciplined when they failed to do so. One management witness stated that the preference would have been to limit the number of red signal overruns in a

one year period to two rather than three. However, based on the discussions with the Union, the Employer settled on three red signal overruns as the standard.

The Union did provide one other example of a light rail operator who received four red signal overruns before being sent back to bus operations. Operator C committed the first of four red signal overruns the very first day on the job in July 2009. The Employer issued the warning as required by the policy and the Union grieved the issuance of the warning. The Employer agreed that there were mitigating or aggravating factors that contributed to Operator C running the stop signal. As a result, the Employer agreed to resolve the grievance by reducing the period of time the red signal overrun would remain on Operator C's record from 12 months to 6 months. As a result, by the time Operator C committed three additional red signal overruns, the one committed on her first day as a rail operator had already disappeared from her record. Consequently, Operator C's case is really similar to the Grievant's in that Operator C committed three red signal overruns in a rolling 12 month period and was sent back to bus operations.

The two cases are dissimilar in that there were valid mitigating circumstances with respect to Operator's C's first red signal overrun. First, it happened on Operator C's very first day as an operator. Secondly, according to testimony, there was a supervisor standing at the signal waiving Operator C pass the red signal. The confusion caused by a supervisor waiving the operator through a red light and it being the operator's first day of work are valid mitigating or aggravating factors. No such mitigating factors can be identified in the instant case. It is important to point out that while the Employer considered the mitigating factors in the case of Operator C, it did not erase the discipline but simply reduced the amount of time it remained on the operator's record. The message to the operators should have been clear. Even when there is confusion created by a supervisor on the ground at a stop, the operator must still obey the signal's instruction and/or call the Rail Control Center for clarification before proceeding.

Finally, the Union argued that the Employer must not simply play the "safety card" but must look at all of the circumstances surrounding the prohibited conduct. However, the "safety card" is one that both the Union and Employer agreed was important as evidenced by Article 10 of the collective bargaining agreement. The notion that operators "shall to the best of their ability, observe the operating rules of Metro Transit" commits the Union and its members to exercise

due diligence with regard to the safety considerations embodied in those rules.

**Award**

Based on all the testimony and documents presented, the arbitrator finds that the Employer had just and merited cause to discipline the Grievant.

The Grievance is DENIED.

Respectfully submitted

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A. Ray McCoy  
Arbitrator

Dated: August 25, 2011